Legal Representation for Elected Members and Employees Policy

Aligned City Value/s	**Approachable**	**Responsive**	**Transparent**	**Innovative**
Responsible Directorate	**Office of the Chief Executive Officer**			
Responsible Business Unit/s	**Governance**			
Responsible Officer	**Manager Governance**			
Affected Business Unit/s	**All**			

Objective

This policy provides guidance in determining when it is appropriate for the City to pay costs for legal representation for Elected Members and employees, as well as detailing other legal matter provisions for Elected Members under the *Local Government Act 1995*.

The City is committed to protecting the interests of Elected Members and employees (including past members and former employees) in seeking legal representation or where they become involved in legal proceedings in the course of their official duties.

Scope

This policy demonstrates the City's commitment in protecting the interests of Elected Members and employees (including past members and former employees) in seeking legal representation or where they become involved in legal proceedings in the course of their official functions.

This policy does not apply to legal representation obtained by the City in relation to the day-to-day functions of the City, or where action is taken against the City in its corporate name. Funding allocation for such legal matters is contained within the City's Annual Budget.

Policy

1. General Principles

1.1 The City may approve the legal representation costs of an Elected Member or employee if the following criteria are satisfied:

a) The legal representation costs must relate to a matter that arises from the performance, by the Elected Member or employee in the course of their duties, or where it relates to the professional registration of an employee.
b) The legal representation costs must be in respect of legal proceedings that have been, or may be, commenced;
c) In performing their 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 or could constitute, misconduct or serious misconduct under the *Corruption, Crime and Misconduct Act 2003*; and
d) The legal representation costs must not relate to a matter that is of a personal or private nature.

1.2 In each case it will be necessary to determine whether assistance with legal representation costs is justified through the provision for the good government of the City's people and its district.

2. Payment criteria

2.1 If the criteria in item 1.1 of this policy are satisfied, the City may approve the payment of legal representation costs as follows:

a) Where proceedings are brought against an Elected Member or employee in connection with their 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 where an act is performed:
- under a delegation or sub delegation;
- as an authorised persons, approved person or designated officer;
- under an instrument of appointment;
- as a registered practitioner whose registration is required for their employment; or

b) To enable proceedings to be commenced and/or maintained by an Elected Member or employee to permit them to carry out their 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 compromising the confidence within the community by publicly making adverse personal comments in relation to an Elected Member or employee.

2.2 The City will not approve, unless under exceptional circumstances, the payment of legal representation costs:

a) for a defamation action, or a negligence action, instituted by an Elected Member or employee;

b) in circumstances where an Elected Member or employee is seeking to initiate legal proceedings against another Elected Member or employee; or

c) in circumstances where an Elected Member or employee is defending action in legal proceedings initiated by another Elected Member or employee.

3. Application for payment

3.1 An Elected Member or employee seeking assistance under this policy is required to make an application, in writing, to the Chief Executive Officer. The Chief Executive Officer may seek the guidance of the City's Chief People Officer where the matter relates to an employee.

3.2 The written application for payment of legal representation costs is to give details of:

a) The matter for which legal representation is requested;
b) How the matter relates to the functions of the Elected Member or employee;
c) The lawyer (or law firm) nominated to provide the legal representation;
d) The nature of legal representation to be sought (such as advice, representation in court or legal proceedings, 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.

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

3.4 The application must be accompanied by a written statement signed by the applicant that they:

a) Have read and understand the terms of this policy;
b) Acknowledge 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;
c) Undertake to repay to the City any legal representation costs in accordance with the provisions of clause 7; and
d) Have acted in good faith, and have not acted unlawfully or in a way that constitutes or could constitute misconduct or serious misconduct (as defined by the *Corruption, Crime and Misconduct Act 2003*) in relation to the matter to which the application relates.

3.5 Subject to clause 3.6 an application is to be submitted to Council and also accompanied by a report prepared by the Chief Executive Officer or, where the Chief Executive Officer is the applicant, by the Director Corporate Services.

3.6 Before an application is determined the Chief Executive Officer is to refer the matter to the City's insurers to assess whether the City's Management Liability Insurance (Elected Members and Employees Liability) will cover the costs associated with claims made personally against the applicant for alleged wrongful acts arising from their official duties.

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 legal representation costs to be paid based on the estimated costs in the application.

4.2 An Elected Member or employee may make a further application to the Council in respect of the same matter.

5. Chief Executive Officer's powers

5.1 The Chief Executive Officer may:

a) Refuse;
b) Grant; or
c) Grant subject to conditions, an application for payment of legal representation costs.

5.2 In addition to the limit on legal representation costs set under clause 4.1, conditions under clause 5.1 may include, but are not restricted to, 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 Chief Executive Officer 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.

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

5.5 The Chief Executive Officer may, subject to clause 5.6, 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 misconduct or serious misconduct (as defined by the *Corruption, Crime and Misconduct Act 2003*); 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 Chief Executive Officer only on the basis of, and consistent with, the findings of a court, tribunal or inquiry.

5.7 Where the Chief Executive Officer makes a determination under clause 5.5, it may also determine that all or part of the legal representation costs paid by the City, are to be repaid by the Elected Member or employee in accordance with clause 7.

6. Chief Executive Officer authorisation

6.1 The Chief Executive Officer may exercise any of the powers under clause 5.1 and 5.2, to a maximum of $10,000 in respect of each application.

6.2 Where the Chief Executive Officer is the applicant, the powers in clause 6.1 are to be exercised by the Director Corporate Services.

6.3 Any further applications by an Elected Member or employee above $10,000 is to be referred to Council for its determination.

6.4 Council in considering any further applications made by an Elected Member or employee above $10,000, are to consider the matters detailed within the policy.

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 5.7; or
b) As much of those costs as are available to be paid by way of off-set – 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.

8. Prohibition on certain payments connected with legal matters

8.1 Section 6.14A of the *Local Government Act 1995* and Regulation 19D of the *Local Government (Financial Management) Regulations 1996* makes provision in relation to the restriction of payment of a liability for certain legal matters for Elected Members.

Definitions

Approved Lawyer means:

a) An Australian Lawyer as defined under the *Legal Profession Uniform Law (WA),* and/or ;
b) From a law firm on WALGA's preferred supplier panel for legal services, 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
c) Who is approved in writing by the Council or the Chief Executive Officer.

Elected Member or employee means a person who is, or was, a Commissioner, Elected Member, an external committee member or employee of the City.

Exceptional circumstances means circumstances the Chief Executive Officer deems an exception exists.

Legal matter as defined by section 6.14A of the *Local Government Act 1995:*

a) means any of the following:
   (i) a complaint, an investigation, or proceedings under Part 8A of the *Local Government Act 1995*;
   (ii) proceedings before the State Administrative Tribunal or any other tribunal;
   (iii) criminal proceedings, including an infringement notice under Part 9 of the *Local Government Act 1995* or any similar type of notice under another written law;
   (iv) a criminal investigation;
   (v) any other type of statutory investigation or proceedings;

   but

b) does not include any of the following —
   (i) an inquiry under Part 8;
   (ii) civil proceedings before a court (but subject to subsection (4));
   (iii) a prescribed investigation, proceedings, or other matter;

Legal Proceedings means civil, criminal, or investigative proceedings (including the conduct of an enquiry) brought in a court, tribunal, or authorised body within the jurisdiction of Western Australia**.**

Legal Representation means the provision of legal services, to or on behalf of an Elected Member or employee, by an approved lawyer that are in respect of:

a) A matter or matters arising from the performance of the functions of an Elected Member or employee; and
b) Legal proceedings involving an Elected Member or employee that have been, or may be commenced.

Legal Representation Costs mean the costs, including fees and disbursements, properly incurred in providing legal representation.

Legal Services means the provision of advice or documentation for legal proceedings or representation at legal proceedings or documentation that is provided by an approved lawyer.

Liability as defined by section 6.14A of the *Local Government Act 1995* includes the following**:**

a) a cost or expense incurred for, or in respect of, legal advice, representation, or other services;
b) any other type of cost or expense; and
c) a fine or modified penalty in respect of an offence.

Payment means City of legal representation costs by either:

a) A direct payment to the approved lawyer (or the relevant firm); or
b) A reimbursement to an Elected Member or employee.

WALGA means the Western Australian Local Government Association.

Written law has the mean given to it in section 5 of the *Interpretation Act 1984.*

Relevant management practices/documents

Code of Conduct for Council Members, Committee Members and Candidates
Employee Code of Conduct
Department of Local Government Operational Guideline – Legal Representation for Council Members and Employees.

Legislation/local law requirements

Corruption, Crime and Misconduct Act 2003
Interpretation Act 1984
Legal Profession Uniform Law (WA)
Local Government Act 1995
Local Government (Financial Management) Regulations 1996

Office use only				
Relevant delegations	Not Applicable			
Initial Council adoption	**Date**	20 February 2007	**Resolution #**	Item 11.1/A7
Last reviewed	**Date**	3 November 2026	**Resolution #**	1126/041
Next review due	**Date**	2028		