

Policy number	Policy 027
Policy title	Legal representation for Elected Members and Employees
Strategic outcomes supported	CL3 – Accountability and good governance.

Policy objective:

To set out guidelines to assist Council in determining when it is appropriate to pay legal representation costs.

Policy scope:

This Policy does not apply to legal representation obtained by the Town (under *Policy 003 – Legal Advice*) in relation to the day-to-day management of the Town's affairs.

Policy definitions:

"approved lawyer" means:

- a. an Australian lawyer as defined in the *Legal Profession Uniform Law (WA)* section 6(1); and / or
- b. from a law firm on the WALGA panel of legal service providers, unless 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 CEO acting under delegated authority.

"Elected Member" means a current or former, Mayor, Councillor, Commissioner or non-elected member of a Council Committee of the Town.

"Employee" means a current or former Employee of the Town.

"legal proceedings" may be civil, criminal or investigative (including the conduct of an inquiry).

"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 the Elected Member or Employee; and
- b. legal proceedings involving the Elected Member or Employee that have been, or may be, commenced.

"legal services" includes advice, representation or documentation that is provided by an approved lawyer.

"payment" by the Town of legal representation costs may be either by:

- a. a direct payment to the approved lawyer (or the relevant firm); or
- b. a reimbursement to the Elected Member or Employee.

"WALGA" means the Western Australian Local Government Association.

Policy statement:

1. Under the *Local Government Act 1995*, the general function of a local government is to provide for the good government of the persons in its district. Money held by the local government may be applied towards the performance of this function including the expenditure of funds to provide legal representation for Elected Members and Employees, as long as the Town believes on reasonable grounds that the expenditure falls within the scope of the general function.
2. This Policy provides for criteria and circumstances for assessing the appropriateness of expending Town funds on the legal representation of Elected Members and Employees.
3. This policy only applies if the Town's insurers decline to accept responsibility for providing legal representation to Elected Members and Employees.

Payment Criteria

4. There are four major criteria for determining whether the Town 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 Elected Member or Employee, of their functions.
 - b. The legal representation costs must be in respect of legal proceedings that have been, or may be, commenced.
 - c. In performing the 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.
 - d. The legal representation costs do not relate to a matter that is of a personal or private nature.

Legal Representation Costs that May be approved

5. If the criteria in clause 4 are satisfied, the Council may approve 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. for involvement in a statutory or other inquiry that requires information to be given, or to which information is given, by an Elected Member or Employee in connection with his or her functions; or
 - c. 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
 - d. 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.
6. The Council will not approve the payment of legal representation costs to an Elected Member or Employee for a defamation action, or a negligence action, instituted by the Elected Member or Employee.

Application for payment

7. An Elected Member or Employee who seeks assistance under this Policy is to make an application(s) for payment of legal representation costs.

8. The application:
 - a. is to be made in writing to the Chief Executive Officer;
 - b. is to give details of:
 - i. the matter for which legal representation is sought;
 - ii. how the matter relates to the functions of the Elected Member or Employee;
 - iii. the lawyer (or law firm) who is to be asked to provide the legal representation;
 - iv. the nature of legal representation to be sought (such as advice, representation in court, preparation of a document. etc);
 - v. the estimated cost of the legal representation (if known); and
 - vi. why it is in the interests of the Town for payment to be made.
 - c. 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;
 - d. so far as possible, is to be made before seeking the legal representation to which the application relates.
9. The application is to be accompanied by a written statement by the applicant that they:
 - a. have read and understands the terms of this Policy;
 - b. acknowledged that any approval of legal representation costs is conditional on the repayment provisions of clause 23 and any other conditions to which the approval is subject; and
 - c. undertake to repay to the Town any legal representation costs in accordance with the provisions of clause 23.
10. In relation to clause 8(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.
11. An application is to be accompanied by a report, prepared by or on behalf of the CEO, to Council for approval.

Legal representation costs – limit

12. Unless otherwise determined by Council, payment of legal representation costs in respect of a particular application is not to exceed \$5,000.
13. An Elected Member or Employee may make a further application in respect of the same matter.

Council powers

14. Council may:
 - a. refuse;
 - b. grant; or
 - c. grant subject to conditions, an application for payment of legal representation costs.
15. A condition under clause 13 may include 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.
16. In assessing an application, regard may be had to any insurance benefits that may be available to the applicant under the Town's existing insurance policy.

17. Council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.
18. Council may, determine that an Elected Member or Employee whose application for legal representation costs has been approved:
 - a. has, in respect of the matter for which approval was given, not acted in good faith, or has acted unlawfully or in a way that constitutes improper conduct; or
 - b. has given false or misleading information in respect of the application.
19. A determination under clause 18 may be made by Council only on the basis of, and consistent with, the findings of a court, tribunal or inquiry.
20. Where Council makes a determination under clause 18, it may also determine that all or part of the legal representation costs paid by the Town, are to be repaid by the Elected Member or Employee in accordance with clause 24.

CEO Authorisation

21. In cases of urgency, the CEO, may exercise, on behalf of the Council, any of the powers of the Council under clause 5, to a limit of \$5,000, where a delay in approving an application would be detrimental to the legal rights of an Elected Member or Employee.
22. Where the CEO is the applicant, the powers in clause 21 are to be exercised by the Chief Financial Officer and the Mayor or Deputy Mayor.
23. An application approved by the CEO under clause 21, or by the Chief Financial Officer under clause 22, is to be submitted to the next meeting of Council which may exercise any of its powers under this Policy.

Repayment of Legal Representation Costs

24. An Elected Member or Employee, whose legal representation costs have been paid by the Town, is to repay the Town:
 - a. all or part of those costs – in accordance with a determination by Council under clause 18; 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 Town paid the legal representation costs.
25. The Town may take action in a court of competent jurisdiction to recover any monies due to it under this Policy.

Related documents

[Departmental Operational Guideline - Legal Representation for Council Members and Employees \(dlgsc.wa.gov.au\)](http://dlgsc.wa.gov.au)

Responsible officers	Coordinator Governance and Strategy
Policy manager	Manager Governance and Strategy
Approval authority	Council
Next evaluation date	August 2025

Revision history

Version	Action	Date	Authority	Resolution number	Report number
1	Adopted	15/08/2023	Council	176/2023	Item 11.6
2	Administratively amended	13/09/2023	Delegation		