



CP 2.17 | Legal representation

Objective

The Council is committed to protecting the interests of Council Members and employees in seeking legal advice or where they become involved in legal proceedings in the course of their official duties.

The Council will in certain circumstances provide financial assistance to Council Members and employees who are required to engage the legal services of an approved lawyer because of lawful actions they have undertaken in the fulfilment of their official duties.

Scope

This policy provides guidance in determining the circumstances, manner, and extent of assistance for legal representation for Council Members and employees of the City.

Definitions

approved lawyer means

- a. a 'certified practitioner' under the *Legal Professions Uniform Law Application Act 2022 (WA)*;
- b. from a law firm on the City's panel of legal service providers, if relevant, 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. approved in writing by the Council or the CEO under delegated authority.

Council Member or employee means a current or former Council Member, employee, volunteer or 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 a Council 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 Council Member or employee; and
- b. legal proceedings involving the Council Member or employee that have been, or may be, commenced.

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

payment of financial assistance by the city for legal service costs may be either by:

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



Policy statement

1. There are four major criteria for determining whether the City will pay the legal representation costs of a Council Member or employee. These are:
 - 1.1 the legal representation costs must relate to a matter that arises from the performance, by the Council Member or employee, of their functions.
 - 1.2 the legal representation cost must be in respect of legal proceedings that have been, or may be, commenced.
 - 1.3 in performing their functions, to which the legal representation relates, the Council Member or employee must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct; and
 - 1.4 the legal representation costs do not relate to a matter that is of a personal or private nature.

2. General Principles

If the criteria in clause 1 of this policy are satisfied, the City may approve the payment of legal representation costs:

- 2.1 where proceedings are brought against a Council 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 Council Member or employee; or
- 2.2 to enable proceedings to be commenced and/or maintained by a Council Member or employee to permit them to carry out their 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
- 2.3 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.
- 2.4 The City will not approve, unless under exceptional circumstances, the payment of legal representation costs for a defamation action, or a negligence action, instituted by a Council Member or employee.

3. Application for Financial Assistance

- 3.1 A Council Member or employee ('the applicant') 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 financial assistance is to provide details of:
 - a. the matter for which legal representation is sought.
 - b. how that matter relates to the functions of the Council Member or employee 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, 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 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 they:
 - a. have 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 provisions of clause 7.
 - 3.6 In relation to clause 3.5(c), when a person is to be in receipt of such monies the applicant must 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 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.
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4. Legal representation Financial Assistance - Limit
 - 4.1 The Council in approving an application in accordance with this policy will 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 in respect of the same matter.
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5. Council's 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 The Council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.



- 5.4 The Council may, subject to clause 5.5, 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 –
- not acted in good faith, or acted unlawfully or in a way that constitutes improper conduct; or
 - given false or misleading information in respect of the application.
- 5.5 A determination under clause 5.4 may be made by the Council only based on, and consistent with, the findings of a court, tribunal, or inquiry.
- 5.6 Where the Council decides under clause 5.4, the legal representation costs paid by the City are to be repaid by the Council Member or employee in accordance with clause 7.
6. CEO Authorisation
- 6.1 In cases of urgency, the CEO, subject to clause 6.2, may exercise, on behalf of the Council, any of the powers of the Council under clause 5, to a limit of \$10,000, where a delay in approving an application would be detrimental to the legal rights of a Council Member or Employee.
- 6.2 In circumstances where the CEO is the applicant and is seeking urgent financial support for legal services, then a General Manager, will deal with the application.
- 6.3 An application approved by the CEO under clause 6.1, or by a General Manager under clause 6.2, is to be submitted to the next meeting of Council.
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:
- all or part of those costs – in accordance with a determination by the Council under clause 5.6.
 - as much of those costs as are available to be paid by way of off-set – 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.
- 7.2 The City may take action in a court of competent jurisdiction to recover any monies due to it under this policy.



Document control

Policy context

Legislation, standards & external guidelines	<i>Local Government Act 1995</i>
Policies and procedures	
Strategies, plans and frameworks	

Document custodian

Alliance	CEO	Service unit	Governance
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Review management

Next review due	March 2025	Document management ref.	EDRMS-1336483316-796
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Document management

Version	Adopted by	Adoption date	Synopsis of changes
1.0	Ordinary Council Meeting	28 March 2023	Initial adoption