

## 4.8 LEGAL REPRESENTATION FOR COUNCIL MEMBERS AND EMPLOYEES

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### SUSTAINABILITY THEME

Leadership

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### OBJECTIVES

To provide a framework and guidelines to assist the Council in determining when the City should provide financial assistance to Council members and employees for legal representation.

### POLICY STATEMENT

Under the *Local Government Act 1995*, the City of Greater Geraldton is empowered to protect the interests of individual Council members and employees (including past members and former employees) where they become involved in legal proceedings because of their official functions.

In each case it will be necessary to determine whether assistance with legal costs is justified for the good government of the City.

This policy provides criteria & circumstances for assessing the appropriateness of expending City funds on the legal representation of Council members and employees.

### POLICY DETAILS

#### 1. Payment Criteria

There are four major criteria for determining whether the City will pay 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 his or her functions;
- 1.2. the legal representation costs must be in respect of legal proceedings that have been, or may be, commenced;
- 1.3. in performing his or her functions, to which the legal representation relates, the Council member or employee, must have acted in good faith, and consistently with the City's Codes of Conduct, *Local Government (Rules of Conduct) Regulations 2007* (Council members), and other written laws;
- 1.4. 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 City may approve the payment of legal representation costs –
  - 2.1.1. where proceedings are brought against a Council 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 Council member or employee;
  - 2.1.2. to enable proceedings to be commenced and/or maintained by a Council member or employee to permit him or her to carry out his or her functions – for example, where a Council member or employee seeks to take action to obtain

a restraining order against a person using threatening behavior to the Council member or employee;

**2.1.3.** where exceptional circumstances are involved such that the Council member or employee is unable to continue to fulfill the functions of his or her office by reason of a loss of confidence in the individual – 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; or

**2.2.** 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 Payment**

**3.1.** A Council member or employee who seeks assistance under this policy is to make an application(s), in writing, to the CEO (unless the CEO is the applicant, in which case the application is to be made to the Director Corporate and Commercial Services).

**3.2.** A written application for payment of legal representation costs is to give details of –

**3.2.1.** the matter for which legal representation is sought;

**3.2.2.** how that matter relates to the functions of the Council member or employee making the application;

**3.2.3.** the lawyer (or law firm) who is to be asked to provide the legal representation;

**3.2.4.** the nature of legal representation to be sought (such as advice, representation in court, preparation of a document etc.);

**3.2.5.** an estimated cost of the legal representation; and

**3.2.6.** 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 he or she –

**3.5.1.** has read, and understands, the terms of this policy;

**3.5.2.** 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

**3.5.3.** undertakes to repay to the City any legal representation costs in accordance with the provisions of clause 5.7 and 7 as may be required by the terms of this policy.

**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.** When an application is received in accordance with this policy a report is to be prepared by the CEO (or, where the CEO is the applicant, the Director Corporate and Commercial Services).

#### **4. Legal Representation Costs – Limit**

- 4.1. Unless otherwise determined by absolute majority of Council, payment of legal representation costs in respect of a single application is not to exceed \$10,000.
- 4.2. A Council member or employee may make one or more additional applications to the Council in respect of the same matter. Such further application must be supported by a comprehensive explanation in respect to the increase and a letter confirming the details from the approved lawyer.

#### **5. Council's Powers**

- 5.1. The Council may –
  - refuse;
  - grant; or
  - 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:
  - 5.2.1. a financial limit; and/or
  - 5.2.2. a requirement to enter into a formal agreement with the City, 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 City's Council members 'or employees' insurance policy or its equivalent.
- 5.4. The Council may at any time 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 or employee whose application for legal representation costs has been approved has, in respect of the matter for which legal representation costs were approved –
  - 5.5.1. not acted in good faith, or has acted unlawfully or in a way that constitutes improper conduct; or
  - 5.5.2. 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, and gives the Council member or employee written notification of the determination:
  - 5.7.1. no further payments of legal representation costs are to be made;
  - 5.7.2. the legal representation costs paid by the City are immediately repayable by the Council member or employee in accordance with clause 7.
- 5.8. Where the Council resolves to vary an approval under clause 5.4 , but no determination has been made under clause 5.5
  - 5.8.1. the Council member or employee is to be notified in writing as soon as possible of the decision; and
  - 5.8.2. subject to clauses 5.7 and 7 , the Council member or employee is not required to bear the cost of or to refund , any legal representation costs incurred prior to notification as long as those costs were incurred in accordance with the prior approval.

5.9. Nothing in clause 5.8 prevents a later determination being made under clause 5.5 that required repayment under clause 5.7 or clause 7.

## 6. Delegation to Chief Executive Officer

6.1. In cases where a delay in the approval of an application will be detrimental to the legal rights of the applicant, the CEO may exercise, on behalf of the Council, any of the powers of the Council under clause 5.1 and 5.2, to a maximum of \$10,000 in respect of each application.

6.2. Where the CEO is the applicant, the powers in clause 6.1 may be exercised by Director Corporate and Commercial Services.

6.3. An application approved by the CEO under clause 6.1., or by the Director Corporate and Commercial Services under clause 6.2., 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 5.4.

## 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 –

7.1.1. all or part of those costs – in accordance with a determination by the Council under clause 5.7;

7.1.2. as much of those costs as are available to be paid by way of set-off – 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.

## KEY TERM DEFINITION

**Approved lawyer** is to be –

1. a 'local legal practitioner' under the *Legal Profession Act 2008*;
2. 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
3. approved in writing by the Council or the CEO under delegated authority.

**City** – City of Greater Geraldton.

**Council member or employee** means a current or former commissioner, Council member, non-elected member of a Council committee or employee 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 Council member or employee, by an approved lawyer that are in respect of –

1. a matter or matters arising from the performance of the functions of the Council member or employee; and
2. legal proceedings involving the Council member 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 may be either by –

1. a direct payment to the approved lawyer (or the relevant firm); or
2. a reimbursement to the Council member or employee.

## ROLES AND RESPONSIBILITIES

The Director Corporate and Commercial Services is responsible for administering this policy.

## WORKPLACE INFORMATION

*Local Government Act 1995*

Local Government Insurance Services

DLGSC Operational Guideline Number 14 – Legal Representation for Council Members and Employees

## POLICY ADMINISTRATION

Directorate		Officer	Review Cycle	Next Due
Corporate and Commercial Services		Manager Corporate Services	Biennial	2022
Version	Decision Reference	Date	Synopsis	
3.	CCS 521	26 August 2020	Policy Review	