

LS 1 – Legal Representation For Elected Members, Committee Members and Employees

1 Objective

To establish guidelines for determining when it is appropriate for the Shire of Bridgetown-Greenbushes to pay legal representation costs to protect the interests of Elected Members, Committee Members and Employees who become subject to legal proceedings through their performance of official functions.

2 Scope

This policy applies to Elected Members, Committee Members and Employees.

3 Definitions

3.1 Approved Lawyer

Means:

- (a) 'certified practitioner' under the *Professions Act 2008*; and
- (b) approved in writing by the council or the CEO under delegated authority.

3.2 Elected Member

means a current or past elected councillor of the Shire of Bridgetown-Greenbushes in a local government election.

3.3 Committee Member

means a current or past person who is currently or was at the time a member of a committee appointed by Council who is not an Elected Member.

3.4 Employee

means a person who is currently or was at the relevant time an employee of the Shire of Bridgetown-Greenbushes pursuant to section 5.41(g) of the *Local Government Act 1995*, or, if the Chief Executive Officer, under section 5.36(1)(a).

3.5 Legal Proceedings

may be civil, criminal or investigative.

3.6 Legal Representation

means the provision of legal services, to or on behalf of an Elected Member, Committee Member or Employee, by an approved lawyer 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.

3.7 Legal Representation Costs

are costs, including fees and disbursements, properly incurred in providing legal representation.

3.8 Legal Services

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

Payment of Legal Representation Costs by the Shire

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.

4 Policy

4.1 Introduction

Section 9.56 of the *Local Government Act 1995* (the Act) provides protection from actions of tort for anything an Elected Member, Committee Member or Employee has in good faith done in the performance, or purported performance, of a function under the Act or under any other written law.

Section 3.1 of the Act provides that the general function of a local government is to provide for the good government of persons in its district.

Section 6.7 (2) provides that money held in the municipal fund may be applied towards the performance of the functions and the exercise of the powers conferred on the local government by the Act or any other written law.

Under these provisions a council can expend funds to provide legal representation for Elected Members and Employees as long as it believes that the expenditure falls within the scope of the local governments function.

4.2 Payment Criteria

There are four major criteria for determining whether the Shire will pay the legal representation costs of an Elected Member, Committee Member or Employee. These are:

- (a) The Legal Representation Costs must relate to a matter that arises from the performance, by the Elected Member, Committee Member or Employee, or 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 the functions, to which the Legal Representation relates, the Elected Member, Committee Member or Employee 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.

4.3 Examples of Legal Representation Costs That May be Approved

4.3.1 If the criteria in clause 4.2 of this policy are satisfied, the Shire may approve the payment of Legal Representation Costs:

- (a) Where proceedings are brought against an Elected Member, Committee Member or Employee in connection with his or her function – for example, an action for defamation or negligence rising out of a decision made or action taken by the Elected Member, Committee Member or Employee; or

- (b) To enable proceedings to be commenced and/or maintained by an Elected Member, Committee Member or Employee to permit him or her carrying out his or her functions, for example, where an Elected Member, Committee Member or Employee seeks to take action to commence defamation action or to obtain a restraining order against a person using threatening behaviour to the Elected Member, Committee Member or Employee; or
- (c) 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, Committee Members or Employees.

4.3.2 The Shire will not approve, unless under exceptional circumstances, the payment of legal representation costs for a defamation action, or a negligence action, instituted by an Elected Member, Committee Member or Employee.

4.4 Application for Permit

- (a) An Elected Member, Committee Member or Employee who seeks assistance under this policy is to make an application(s), in writing, to the council or the CEO.
- (b) The written application for payment of legal representation costs is to give details of:
 - (i) the matter for which legal representation is sought;
 - (ii) how that matter relates to the functions of the Elected Member, Committee Member or Employee making the application;
 - (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) an estimated cost of the legal representation; and
 - (vi) why it is in the interests of the Shire for payment to be made.
- (c) 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.
- (d) As far as possible, the application is to be made before commencement of the legal representation to which the application relates.
- (e) The application is to be accompanied by a signed written statement by the applicant that he or she:
 - (i) has read, and understands, the terms of this policy;
 - (ii) acknowledges that any approval of legal representation costs is conditional on the repayment provisions of clause 4.8 and any other conditions to which the approval is subject; and
 - (iii) undertakes to repay to the Shire any legal representation costs in accordance with the provisions of clause 4.8.
- (f) In relation to clause 4.4(e)(iii), 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.

- (g) 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.

4.5 Legal Representation Costs - Limit

- (a) 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.
- (b) An Elected Member, Committee Member or Employee may make a further application to the council in respect of the same matter.

4.6 Council's Powers

- (a) The council may:
 - (i) refuse;
 - (ii) grant; or
 - (iii) grant subject to conditions,
an application for payment of legal representation costs.
- (b) Conditions under clause 4.6(a) 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.
- (c) In assessing an application, regard may be had to any insurance benefits that may be available to the applicant under the Shire's existing insurance policy.
- (d) The council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.
- (e) The council may, subject to clause 4.6(f), determine that an Elected Member, Committee Member or Employee whose application for legal representation costs has been approved –
 - (i) 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
 - (ii) Has given false or misleading information in respect of the application.
- (f) A determination under clause 4.6(e) may be made by the council only on the basis of, and consistent with, the findings of a court, tribunal or inquiry.
- (g) Where the council makes a determination under clause 4.6(e), the legal representation costs paid by the Shire are to be repaid by the Elected Member, Committee Member or Employee in accordance with clause 4.8.

4.7 Delegation to Chief Executive Officer

- (a) 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 4.6 (a) and 4.6(b), to a maximum of \$10,000 in respect of each application.
- (b) An application approved by the CEO under clause 4.7(a), 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 4.6(d).

4.8 Repayment of Legal Representation Costs

- (a) An Elected Member, Committee Member or Employee whose legal representation costs have been paid by the Shire is to repay the shire:
- (i) all or part of those costs – in accordance with a determination by the council under clause 4.6(g);
 - (ii) as much of those costs as are available to be paid by way of set-off – where the Elected Member, Committee Member or Employee receives monies paid for costs, damages, or settlement, in respect of the matter for which the shire paid the legal representation costs.
- (b) The shire may take action in a court of competent jurisdiction to recover any monies due to it under this policy.

5 Applicable Legislation and Documents

Act	<i>Local Government Act 1995</i> s.2.7(2)(b) – The council is to determine the local government’s policies s.3.1 – General function s.6.7(2) – Municipal fund s.9.56 – Certain persons protected from liability for wrongdoing
Regulation	r.35 <i>Local Government (Functions and General) Regulations 1996</i> – Certain persons protected from liability for wrongdoing
Local Law	N/A
Shire Policies	N/A
Related Documents	Department of Local government, Sport and Cultural Industries Operational Guidelines – Legal Representation for Council Members and Employees
Related Procedure	N/A

6 Administration

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