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| POLICY NO                         | CP/GOV-3103  |                      |
| POLICY                            | Legal Representation for Council Members and Employees           |                      |
| RESPONSIBLE DIRECTORATE           | Chief Executive Officer  |                      |
| RESPONSIBLE OFFICER               | Chief Executive Officer  |                      |
| COUNCIL ADOPTION                  | Date: 15/12/15   | Resolution No: 11215 |
| REVIEWED/MODIFIED                 | Date:  | Resolution No:       |
|                                   | Date:  | Resolution No:       |
| REVIEW DUE                        | Date: December 2017  |                      |
| LEGISLATION                       | <i>Local Government Act 1995 – Sections 3.1, 6.7(2) and 9.56</i> |                      |
| RELATED POLICIES                  | Nil  |                      |
| RELATED ORGANISATIONAL DIRECTIVES | Nil  |                      |

#### **PURPOSE:**

The purpose of this policy is to determine a clear set of principles to assist Council dealing with a situation where a Council member or employee is defending or will need to defend a legal action or requires advice or representation and is requesting financial assistance.

#### **DEFINITIONS:**

**Approved lawyer** is to be –

- (a) a ‘certified practitioner’ under the Professions Act 2008;
- (b) approved in writing by the Council or the CEO under delegated authority.

**Council member or employee** means a current or former council member, non-elected member of a council committee or employee of the Shire.

**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 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 Shire 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 council member or employee.

**Statutes of limitations** are laws passed by a legislative body in common law systems to set the maximum time after an event when legal proceedings may be initiated. When the period of time specified in a statute of limitations passes, a claim can no longer be filed

## **POLICY STATEMENTS:**

### **1. Payment Criteria**

1.1. There are four major criteria for determining whether the Shire will pay the legal representation costs of a council member or employee. These are –

- (a) 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;
- (b) the legal representation cost must be in respect of legal proceedings that have been, or may be, commenced, on the condition that it complies with the statute of limitations associated with relevant legislation;
- (c) in performing his or her 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
- (d) 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 Shire may approve the payment of legal representation costs –

- (a) 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; or
- (b) 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 behaviour to the council 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 council members or employees.

2.2. 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 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. Where the applicant is the CEO the application is to be made to the Council.

3.2. 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 council 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.

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 –

- (a) has 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 Shire 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 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. 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. The report must include advice from the Shire's insurer as to their direction/approval on the engagement of legal representation.

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

4.1. 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.

4.2. A council member or employee may make a further application to the council in respect of the same matter.

## **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. In assessing an application, the council may have regard to any insurance benefits that may be available to the applicant under the Shire'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 –

- (a) not acted in good faith, or has acted unlawfully or in a way that constitutes improper conduct; 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 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, the legal representation costs paid by the Shire are to be repaid by the council member or employee in accordance with 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. An application approved by the CEO under clause 6.1, 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 Shire is to repay the Shire –

(a) all or part of those costs – in accordance with a determination by the council under clause 5.7;

(b) 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 Shire paid the legal representation costs.

7.2. The Shire may take action in a court of competent jurisdiction to recover any monies due to it under this policy.

### **RISK:**

**Risk:** Failure to comply with legislative requirements leading to damage of reputation and/or financial loss.

**Control:** Review policies and procedures in accordance with review schedule.

**Risk:** Loss of corporate knowledge with staff turnover.

**Control:** Identify and implement staff attraction and retention strategies