



**POLICY NO. CP 5.4.4**

**POLICY STATEMENT**

**LEGAL REPRESENTATION – ELECTED MEMBERS AND EMPLOYEES**

**PURPOSE**

This policy establishes guidelines for determining when it is appropriate for the City to pay legal representation costs to protect the interests of Elected Members and employees who become subject to legal proceedings through their performance of official functions.

**POLICY**

**1. SCOPE**

Section 9.56 of the *Local Government Act 1995* (the Act) provides protection from actions of tort for anything an Elected Member or employee has, in good faith, done in the performance or purported performance of a function under the Act or 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 of the local government.

Section 6.14A of the Act prohibits certain payments connected with legal matters.

Therefore, the City's approval to pay legal representation costs incurred by an individual Elected Member or employee will rely on the determination that it is reasonably concluded that the expenditure provides for the good governance of the district and does not contravene section 6.14A of the Act.

This policy does not apply to legal advice and representation that is obtained by the City in the normal course of fulfilling the functions and exercising the powers of a local government.

**2. EXPLANATION OF KEY TERMS**

**approved lawyer** is to be a lawyer approved in writing by Council or, where this policy allows, by the Chief Executive Officer.

**good faith** means a sincere belief or motive without any malice or desire to defraud others.

**Elected Member or employee** means a current or former Elected Member, employee, or member of a committee of Council.

**legal proceedings** may be civil, criminal or investigative.

**legal representation** is the provision of legal services, to or on behalf of an Elected Member or employee, by an approved lawyer that is 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 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 means either by –

- (a) A direct payment to the approved lawyer; or
- (b) A reimbursement to the Elected Member or employee.

### 3. PAYMENT CRITERIA

The legal representation costs must relate to a matter that arises from the performance, by the Elected Member or employee, of his or her functions.

### 4. LEGAL REPRESENTATION COSTS THAT MAY BE APPROVED

4.1 The City may approve the payment of legal representation costs:

- (a) Where proceedings are brought against an Elected Member or employee in connection with his or her functions.
- (b) To enable proceedings to be commenced and / or maintained by an Elected Member or employee to permit him or her to carry out his or her functions.
- (c) In exceptional circumstances as determined by Council.

4.2 The City will not approve, unless under exceptional circumstances, the payment of legal representation costs for a defamation action, instigated by an Elected Member or employee against another Elected Member or employee of the City.

4.3 The City will not pay for costs that are prohibited under section 6.14A of the Act.

### 5. APPLICATION FOR PAYMENT

5.1 An Elected Member or employee who seeks assistance under this policy is to make application in writing to the Chief Executive Officer.

5.2 The written application for payment of legal representation costs is to give details of:

- (a) The matter for which legal representation is sought;



- (b) How that matter relates to the functions of the Elected Member or employee;
- (c) The lawyer, or law firm, who is to be asked to provide the legal representation;
- (d) The nature of the legal representation to be sought (such as but not limited to advice, representation in court, preparation of documentation);
- (e) An estimate of the cost of the legal representation; and
- (f) Why it is the interest of the City for payment to be made.

**5.3** 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 9 of this policy 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 9 of this policy, if applicable.

**5.4** An application is to be presented to Council, accompanied by a report prepared by the Chief Executive Officer or where the Chief Executive Officer is the applicant, by a senior employee.

**6. LEGAL REPRESENTATION COSTS – LIMIT**

**6.1** Unless otherwise determined by Council, the payment of legal representation costs in respect of a particular matter is not to exceed \$20,000.

**6.2** An Elected Member or employee may make a further application to the Council in respect of the same matter.

**7. DETERMINING AN APPLICATION**

**7.1** In relation to an application for payment of legal representation costs, Council may:

- (a) Refuse;
- (b) Grant approval; or
- (c) Grant approval subject to conditions.

**7.2** In assessing an application, Council may have regard to any insurance benefits that may be available to the applicant under the City's Elected Member or employee indemnity insurance policy.



- 7.3** Council may, at any time, revoke or vary an approval or any condition of approval, for the payment of legal representation costs.
- 7.4** Subject to clause 7.5, where an application for legal representation costs has been approved, Council may determine that the Elected Member or employee is required to repay those costs where:
- (a) a court, tribunal or inquiry has found that the Elected Member or employee acted unlawfully or in a manner that constitutes improper conduct in connection with the matter for which the legal representation services costs were approved; or
  - (b) it is established that the Elected Member or employee provided false or misleading information in connection with the application for legal representation costs.
- 7.5** A determination under clause 7.4(a) may only be made where it is based on, and consistent with, the final findings or outcomes of a court, tribunal or inquiry, as applicable.
- 7.6** Where a determination is made under clause 7.4, the Elected Member or employee must repay any legal representation costs paid by the City, in accordance with clause 9 of this policy.

**8. URGENT ACCESS TO LEGAL REPRESENTATION**

- 8.1** In cases where a delay in the approval of an application would likely be detrimental to the legal rights of the applicant, the Chief Executive Officer may exercise, on behalf of Council, any of the powers provided in clause 7.1 of this policy to a maximum of \$10,000, in respect of a matter.
- 8.2** Where for the purposes of clause 8.1 of this policy, the Chief Executive Officer is the applicant, the Mayor may exercise the powers provided in clause 7.1 of this policy to a maximum of \$10,000, in respect of a matter.
- 8.3** An application approved in accordance with clauses 8.1 or 8.2 of this policy 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 7.3 of this policy.

**9. REPAYMENT OF LEGAL REPRESENTATION COSTS**

- 9.1** Where an Elected Member or employee is required to repay the City all or part of the legal representation costs paid by the City in accordance with a determination by Council under clauses 7.4 and 7.6 of this policy, the repayment must be made in accordance with this clause.
- 9.2** Payment can be made by way of set-off against monies the Elected Member or employee is to receive from the City.



**GOVERNANCE REFERENCES**

<b>Statutory Compliance</b>	Local Government Act 1995, s.3.1, s6.7(2), s6.14A, s.9.56
<b>Industry Compliance</b>	Department of Local Government; Sport and Cultural Industries Operational Guideline No.14 Legal Representation for Council Members and Employees
<b>Organisational Compliance</b>	Nil.
<b>Process Links</b>	Nil.

**POLICY ADMINISTRATION**

<b>Directorate</b>		<b>Officer Title</b>		<b>Contact:</b>	
Chief Executive Officer		Chief Executive Officer		9397 3000	
<b>Risk Rating</b> Low		<b>Review Cycle</b> Triennial		<b>Next Due:</b> 2029	
<b>Version</b>	<b>Decision Reference</b>	<b>Synopsis</b>			
1.	OCM 118/27/02/2001	Former policy revoked and new policy adopted.			
2.	OCM 412/25/08/2009	Former policy revoked and new policy adopted to align with the Departmental Operational Guideline and Model Policy			
3.	OCM 375/23/08/2011	Reviewed and amended.			
4.	OCM 385/23/09/2014	Reviewed with no amendment.			
5.	OCM 320/26/09/2017	Reviewed with no amendment.			
6.	Exec Team Meeting 02/10/2017	Administrative changes - name changes to Act and Gov't Department			
7.	OCM 251/08/09/2020	Reviewed and amended.			
8.	OCM 230/10/10/2023	Reviewed and amended.			
9.	OCM 2026/116 12/05/2026	Updated to reflect changes in legislation as per the <i>Local Government Amendment Act 2024</i>			