

Legal Representation and Costs Indemnification Policy

Policy Owner: Governance and Executive Services
Contact Person: Coordinator Governance
Approval Date: 27 May 2014 – CS05-05/14

Key Terms

- Approved lawyer is to be:-
 - (a) a ‘certified practitioner’ under the Legal Practice Act 2003;
 - (b) from a law firm on the *City of Wanneroo* 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.
- City means the City of Wanneroo.
- 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:-
 - (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, instituted.
- Legal representation costs are the costs, including fees and disbursements, properly incurred in providing legal representation, and for which payment is made.
- Legal services includes advice, representation or documentation provided by an approved lawyer.
- Payment by the City of legal representation costs may be made by:-
 - (a) a direct payment to the approved lawyer (or the relevant firm); or
 - (b) a reimbursement to the Council member or employee.

1. **Payment Criteria**

There are four major criteria for determining whether the City 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 instituted;
- (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 must not relate to a matter that is of a personal or private nature.

2. **Legal representation costs that may be approved**

2.1 In the event that the criteria pursuant to clause 1 of this Policy is satisfied, the City 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 such that the Council member or employee is unable to continue to fulfil the functions of his or her office by reason of a loss of confidence in that Council member or employee – for example, where a person or organization 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 City will not approve, unless the action falls within the criteria pursuant to clause 2.1(b) and/or (c), 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 Council.

3.2 An employee who seeks assistance under this policy is to make an application(s), in writing, to the CEO.

- 3.3 The written application for payment of legal representation costs is to provide 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 approved lawyer who is 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 City of Wanneroo for payment to be made.
- 3.4 The application is to contain a declaration by the Council member or employee that he or she has acted in good faith, has not acted unlawfully or in a way that constitutes improper conduct in relation to the matter to which the application relates and that there are no circumstances known to the Council member or employee which would render those representations untrue.
- 3.5 As far as possible the application is to be made before commencement of the legal representation to which the application relates.
- 3.6 The application is to be accompanied by a signed written statement by the Council member or employee that he/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 City any legal representation costs pursuant to the provisions of clause 7; and
 - (d) acknowledges that the provisions of clause 7 apply in respect to repayment of legal representation costs.
- 3.7 Further, an application is to be accompanied by a report prepared by the CEO or, where the CEO is the employee making application, by an appropriate employee to Council setting out the details required pursuant to Clause 3.3 and 3.6 and seeking formal approval, or otherwise, as the case may be.

4. Limit on legal representation costs

- 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 the event that the estimate costs increase with such further application to be supported by a comprehensive explanation in respect to the increase and supported by a letter in support by the approved lawyer.

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 pursuant to clause 5.1 are to include, but not be limited 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 Council Member or employee under the 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 pursuant to clause 5.5, on receipt of written notification as to the determination by the Council member or employee, the legal representation costs paid by the City will be deemed a personal debt immediately owing to the City and immediately repayable by the 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 Council member or employee, 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 pursuant to this Policy, including its powers pursuant to 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 to the City:-
- (a) all or part of those costs determined by the Council pursuant to clause 5.7;
 - (b) immediately on receipt by the council member or employee of reimbursement by way of set-off, costs, damages, or settlement, in respect of the matter for which the City paid the legal representation costs, as much of the legal representation costs so reimbursed to the Council member or employee.
- 7.2 The City may take action in a court of competent jurisdiction to recover all or any monies due to it under this Policy as a debt due and owing by the Council member or employee.

Responsibility for Implementation

Executive Services in conjunction with the City's legal services team.

Versions	Next Review	Record No:
May 2008 (GS06-05/08)	May 2010	892507
May 2010 – CS05-05/10	March 2012	TRIM: 10/1285V2
May 2014 – CS05-05/14	May 2016	10/1285V2