

**COUNCIL LEGAL REPRESENTATION AND COSTS
INDEMNIFICATION POLICY**

Responsible Directorate:	Office of the CEO
Responsible Service Unit:	Governance and Legal
Contact Person:	Executive Manager Governance and Legal
Date of Approval:	16 July 2024
Council Resolution No:	CE01-07/24

1. POLICY STATEMENT

The City is committed to providing a safe working environment for Eligible Persons by providing for the Funding of Legal Representation Costs which Eligible Persons may incur through Legal Proceedings arising as a result of or in the course of undertaking their functions and official duties as Eligible Persons. In doing so, the City is committed to its general function pursuant to section 3.1(1) of the Act to provide for the good government of the district.

2. OBJECTIVE AND PURPOSE

Objective

The objective of this Policy is to provide Funding to Eligible Persons who incur Legal Representation Costs arising as a result of or in the course of undertaking their functions and official duties as Eligible Persons, where Funding is not available to the Eligible Person through the City's insurance coverage with LGIS.

Purpose

The purpose of this Policy is to set out the circumstances under which Funding will be provided, the level of Funding that will be provided and the process to apply for Funding.

3. KEY DEFINITIONS

Term	Definition
Act	means the <i>Local Government Act 1995</i> .
Application	means an application in writing for Funding assistance pursuant to clause 7.2.
Approved Lawyer	means an Australian Legal Practitioner as defined by s. 6(1) of the <i>Legal Profession Uniform Law</i> from a law firm approved by the CEO on advice from the Executive Manager Governance and Legal.
City	means the City of Wanneroo.

<i>Eligible Person</i>	means a person who may be either a current or former – a. Member of Council as defined in section 1.4 of the Act; b. Person, other than a member of Council, appointed as a member of a Committee of Council established under section 5.8 of the Act; or c. Commissioner, appointed under Part 2, Division 7 of the Act of the City.
<i>Employee</i>	means a current or former employee of the City.
<i>Exceptional Circumstance</i>	means circumstances the Council deems exceptional by simple majority.
<i>Funding</i>	means part or full payment of the Eligible Person's Legal Representation Cost.
<i>Legal Proceedings</i>	means proceedings of a legal nature that may be civil, criminal or investigative.
<i>Legal Representation</i>	means the provision of Legal Services, to or on behalf of an Eligible Person by an Approved Lawyer in accordance with this Policy.
<i>Legal Representation Costs</i>	means the reasonable costs, including fees, GST, and disbursements, properly incurred in providing Legal Representation.
<i>Legal Services</i>	means advice, representation, or documentation provided by an Approved Lawyer.
<i>LGIS</i>	Local Government Insurance Scheme, the City's insurer
<i>Payment</i>	means the payment of funds in accordance with clause 7.6.

4. ELIGIBILITY

4.1 An Eligible Person seeking Legal Representation or Funding must refer the matter to the Local Government Insurance Scheme (**LGIS**) for assessment under the City's cover in respect of claims for any alleged wrongdoing arising out of an Eligible Person's official duties. Should LGIS deny coverage for Legal Representation, an Eligible Person may make an application pursuant to this Policy.

5. SCOPE

5.1 If clause 4 is satisfied, an Eligible Person may make an application for Funding if they meet the following criteria:

- (a) the Legal Representation Costs must relate to a matter that arises from the performance by the Eligible Person in undertaking their official duties or functions of their role.
- (b) the Legal Representation Costs must be in respect of legal proceedings that have been or may be commenced.
- (c) in performing the functions of their role or undertaking their official duties, the Eligible Person must have acted in good faith, and must not have acted unlawfully, dishonestly, in bad faith or in any way that constitutes improper conduct, misconduct, or corrupt conduct.
- (d) the Legal Representation Costs must not relate to a matter that is of a personal or private nature.

6. IMPLICATIONS

This Policy aligns with the following objective within the Strategic Community Plan 2017 – 2027:

“4 Civic Leadership

4.2 Good Governance

4.2.1 Provide transparent and accountable governance and leadership”

7. IMPLEMENTATION

7.1. Legal Representation Costs that may be approved

7.1.1. If the criteria set out in the Scope section of this Policy are satisfied, Council may approve the payment of Legal Representation Costs:

- (a) where Legal Proceedings are brought or threatened against an Eligible Person in connection with the functions of their role or in undertaking their official duties (including but not limited to, an action for defamation, negligence or a work, health and safety matter arising out of a decision made, omission or action taken by the Eligible Person); or
- (b) to enable Legal Proceedings to be commenced and/or maintained by an Eligible Person to permit them to carry out the functions of their role or to undertake their official duties (including but not limited to, where an Eligible Person seeks to take action to obtain a restraining order against a person using threatening behaviour directed at the Eligible Person); or
- (c) in Exceptional Circumstances (including but not limited to, where a person or organisation is negatively impacting the confidence of the community in the City by publicly making adverse personal comments about the Eligible Person); and
- (d) where Council is satisfied that the expenditure provides for the good government of the persons of the district.

7.1.2. Council will not approve the payment of or indemnify Legal Representation Costs:

- (a) for a defamation action, or a negligence action, instituted by an Eligible Person;
- (b) in circumstances where an Eligible Person is seeking to initiate legal action against another Eligible Person;
- (c) in circumstances where an Eligible Person is defending legal action initiated by another Eligible Person; or
- (d) if the Eligible Person obtained Legal Representation from a Lawyer who is not an Approved Lawyer.

unless Council determines that the circumstances of the case are Exceptional Circumstances.

7.2. Application for Funding assistance

7.2.1. An Eligible Person who seeks assistance under this Policy is to make an Application(s), on the prescribed form in **Attachment 1**, to the CEO.

7.2.2. The Application for payment of Legal Representation Costs must include details of:

- (a) the matter for which Legal Representation is sought;
- (b) how that matter relates to the functions of the role or undertaking the official duties of the Eligible Person making the Application;
- (c) the Approved Lawyer and the Approved Lawyer's law firm who is to be asked to provide the Legal Representation;
- (d) the nature of the Legal Representation to be sought (such as advice, representation in a court or tribunal, or preparation of a document);
- (e) an estimate of the Legal Representation Costs; and
- (f) the reasons why it is in the interests of the City for the payment to be made.

7.2.3. The Application is to contain a statutory declaration made by the Eligible Person that they have:

- (a) acted in good faith in undertaking the functions of their role or their official duties;
- (b) not acted unlawfully, dishonestly, in bad faith or in a way that constitutes improper conduct in relation to the matter to which the application relates; and

- (c) that there are no circumstances known to the Eligible Person which would render those representations untrue.

7.2.4. As far as possible, the Application is to be made before commencement of the Legal Representation to which the application relates.

7.2.5. The Application is to be accompanied by a signed written statement by the applicant that they:

- (a) have read, and understand, the terms of this Policy;
- (b) acknowledge that any approval of Legal Representation Costs is conditional on the repayment provisions of clause 7.7 below and any other conditions to which the approval is subject.
- (c) undertake to repay to the City any Legal Representation Costs payable in accordance with the provisions of clause 7.7.
- (d) acknowledges that the provisions of clause 7.7 apply in respect to repayment of Legal Representation Costs.

7.2.6. The Application is also to be accompanied by a report prepared by the Executive Manager Governance and Legal or the CEO.

7.2.7. Applications (and/or related reports) are confidential and all parties involved must maintain confidentiality. All applications received by the CEO together with the related report are to be considered by Council and determined at the next Council Meeting behind closed doors in accordance with the provisions of section 5.23(2) of the *Local Government Act 1995*.

7.3. Legal Representation Costs – Limit

7.3.1. Council shall set a limit on the Legal Representation Costs to be paid based on the estimated costs in the application when approving an application in accordance with this Policy.

7.3.2. An Eligible Person may make a further application to Council in respect of the same matter.

7.4. Council's Powers

7.4.1. Council may:

- (a) refuse;

- (b) approve; or
- (c) approve subject to conditions,

an application for Legal Representation Costs.

- 7.4.2. Conditions pursuant to clause 7.4.1(c) may include, but are not limited to, a financial limit, reporting requirements, and/or a requirement to enter into a formal agreement, (including a security agreement) relating to the payment, and repayment, of Legal Representation Costs.
- 7.4.3. In assessing an Application, Council may have regard to any insurance benefits that may be available to the applicant under the City's insurance policies.
- 7.4.4. Council may at any time revoke or vary an approval, or any conditions of approval, for the payment or repayment of Legal Representation Costs.
- 7.4.5. Subject to clause 7.4.6, Council may determine that the Eligible Person 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, dishonestly or has acted unlawfully or in a way that constitutes improper conduct, misconduct or corrupt conduct; or
 - (b) given false or misleading information in respect of the application.
- 7.4.6. Council's determination under clause 7.4.5 may only be made on the basis of, and consistent with, the findings of a court, tribunal or inquiry.
- 7.4.7. Where Council makes a determination under clause 7.4.5, the Legal Representation Costs paid by the City are to be repaid by the Eligible Person in accordance with clause 7.7.

7.5. Authorisation to Chief Executive Officer

- 7.5.1. Subject to clause 7.5.2, in circumstances where a delay in the approval of an application for Legal Representation Costs will be detrimental to the legal rights of the applicant, the CEO may exercise, on behalf of Council, any of the powers of the Council under clause 7.4.1 and 7.4.3, to a maximum of \$10,000 in respect of an application.
- 7.5.2. In circumstances where the applicant is defending legal action taken by the CEO against the applicant, the Council may exercise the powers in clause 6.5.1 at a Special Council Meeting.
- 7.5.3. An application approved by the CEO under clause 7.5.1, is to be submitted to the next Ordinary Council meeting and Council may exercise any of its powers under this Policy, including its powers under clause 7.4.4 in respect of that application.

7.6. Payment of Legal Representation Costs:

7.6.1. Payment of Legal Representation Costs may either be by:

- (a) a direct payment to the trust account of the Approved Lawyer or their law firm;
- (b) a reimbursement to the Eligible Person by a direct payment to the account nominated by the Eligible Person.

7.7. Repayment of Legal Representation Costs

7.7.1. An Eligible Person whose Legal Representation Costs have been paid by the City is to repay the City:

- (a) all or part of the Legal Representation Costs in accordance with a determination by Council under clause 7.4.7; or
- (b) as much of the Legal Representation Costs are available to be paid by way of set-off, where the Eligible Person receives monies paid for legal costs, damages, or settlement, in respect of the matter for which the City paid part or all of the Legal Representation Costs.

7.7.2. The City may take action in a court of competent jurisdiction to recover any monies due to it under this Policy.

7.8. Entrance into agreement

Any Eligible Person must enter a legal agreement with the City addressing the requirements of this policy, including any conditions imposed pursuant to clause 7.4.1(c) prior to any Legal Representation Costs being paid by the City.

7.9. Legal Representation and Costs Indemnification for Employees

Legal Representation and Costs Indemnification for Employees will be dealt with in accordance with the Corporate Policy *Legal Representation and Costs Indemnification for Employees* to be finalised and adopted by the CEO.

8. ROLES AND RESPONSIBILITIES

The Executive Manager Governance and Legal is responsible for publication, implementation, enforcement and compliance with this Policy and will provide an interpretation in the event of the need for clarification.

9. EVALUATION AND REVIEW

This Policy will be reviewed at least every three years or earlier if there are changes to the Local Government Operational Guideline – Legal Representation for Council Members and Employees that require this Policy to be reviewed.

10. RELATED DOCUMENTS

Nil

11. REFERENCES

Local Government Operational Guideline – Legal Representation for Council Members and Employees, issued by the Department of Local Government, Sport and Cultural Industries, last updated on 11 September 2023.

12. RESPONSIBILITY FOR IMPLEMENTATION

Executive Manger Governance and Legal.

REVISION HISTORY

Version	Next Review	Record No.
May 2008 – GS06-05/08	May 2010	892507
May 2010 – CS05-05/10	May 2012	10/1285v2
May 2014 – CS 05-05/14	May 2016	10/1285v2
July 2024 - CE01-07/24	May 2027	10/1285v3

Attachment 1**COUNCIL LEGAL REPRESENTATION COSTS APPLICATION FORM**

Once completed, please submit this form to the Chief Executive Officer

Applicant:	
Position:	

1. Description of matter for which legal representation is required:

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2. How is this matter related to your function as an Eligible Member?

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3. Name and contact details of the Approved Lawyer:

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4. What is the nature of the Legal Representation?	
<input type="checkbox"/>	Advice
<input type="checkbox"/>	Representation in Court or other forum
<input type="checkbox"/>	Preparation of a document
<input type="checkbox"/>	Other:

5. Estimated cost of Legal Representation:	
\$	(please attach invoice / quote)
\$	Amount requested for Payment

6. Why is it in the interest of the City to fund or contribute to the cost of your Legal Representation?

7. Has LGIS considered this matter? If yes please attach copy of report:

8. DECLARATION

I confirm and declare that I:

- (a) Have read and understand, the terms of this Policy;
- (b) Acknowledge that any approval of Legal Representation Costs is conditional on the repayment provisions of clause 7.7 of this Policy and any other conditions to which the approval is subject;
- (c) Undertake to repay to the City any Legal Representation Costs payable in accordance with the provisions of clause 7.7; and
- (d) Acknowledge that the provisions of clause 7.7 apply in respect to repayment of Legal Representation Costs.

Signature:	
Name:	
Date:	

ATTACHMENTS

<input type="checkbox"/>	Invoice / quote for Legal Representation Costs
<input type="checkbox"/>	Report prepared by Executive Manager Governance and Legal or CEO
<input type="checkbox"/>	Report prepared by LGIS
<input type="checkbox"/>	Statutory Declaration
<input type="checkbox"/>	Any other supporting documentation

Attachment 2 – Statutory Declaration in respect of Application pursuant to Legal Representation and Costs Indemnification Policy

I, _____ (Full name)
of _____ (Address)
_____ (Occupation)

sincerely declare as follows:

1. I am an Eligible Person as defined in the Legal Representation and Cost Indemnification Policy as amended by the City of Wanneroo from time to time;
2. I have acted in good faith in undertaking the functions of my role or my official duties;
3. I have not acted unlawfully, dishonestly, in bad faith or in a way that constitutes improper conduct in relation to the matter to which the application relates;
4. There are no circumstances known to me which would render these representations untrue.

This declaration is true and I know that it is an offence to make a declaration knowing that it is false in a material particular.

This declaration is made under the *Oaths, Affidavits and Statutory Declarations Act 2005*.

at _____ (Place)
on _____ (Date)

By _____
(signature of the person making the declaration)

In the presence of

_____ (Signature of authorised witness)
_____ (Name of authorised witness)
_____ (Qualification as such a witness)