



## 2. COUNCIL POLICY

### 2.5 LEGAL AND STATUTORY

#### 2.5.4 Legal Representation for Shire Representatives

#### **Background and Issues**

This policy outlines principles and expectations applicable to the determination of legal representation for Shire representatives. This policy aligns with the Department of Local Government, Sport and Culture model policy for legal representation.

#### **Objectives**

The key objective of this policy is to provide clear guidance in determining requests for legal representation by Shire representatives.

#### **Area of Application (Eligibility)**

This policy applies to elected members (Shire President, Deputy Shire President and Councillors), committee members (where that Committee is a Committee of the Council), employees and volunteers of the Shire of Manjimup only.

#### **Policy Measures**

##### **1. Payment Criteria**

There are four major criteria for determining whether the Shire will pay the legal representation costs of an eligible person. These are:

1. The legal representation costs must relate to a matter that arises from the performance, by the eligible person, of their functions.
2. The legal representation cost must be in respect of legal proceedings that have been, or may be, commenced.
3. In performing their functions, to which the legal representation relates, the eligible person must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct.
4. 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**



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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 an eligible person in connection with their functions – for example, an action for defamation or negligence arising out of a decision made or action taken by the eligible person; or
  - b. to enable proceedings to be commenced and/or maintained by an eligible person to permit them to carry out their functions – for example, where an eligible person is required to take action to obtain a restraining order against a person using threatening behaviour to the eligible person;
  - 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 the eligible person.
2. The Shire will not approve, unless under exceptional circumstances, the payment of legal representation costs for defamation action, or a negligence action, instituted by an eligible person.

### 3. **Application for payment**

1. An eligible person who seeks assistance under this policy is to make an application(s), in writing, to the Council or the CEO.
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 eligible person making the application;
  - c. the lawyer (or law firm) who is to be asked to provide the legal representation;
  - d. the nature of legal representation to be sought (such as advice, representation in court, preparation of a document etc);
  - e. an estimated cost of the legal representation; and
  - f. why it is in the interests of the Shire for payment to be made.
3. The application is to contain a declaration by the applicant that they have acted in good faith, and have not acted unlawfully or in a way that constitutes improper conduct in relation to the matter to which the application relates.



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4. As far as possible, the application is to be made before commencement of the legal representation to which the application relates.
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 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.
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.
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.

**4. Legal representation costs – limit**

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.
2. An eligible person may make a further application to the Council in respect of the same matter.

**5. Determining applications**

1. The Council may:
  - a. refuse;
  - b. grant; or
  - c. grant subject to conditions,an application for payment of legal representation costs.
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.



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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 relevant insurance policy/ies, or its equivalent.
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. The Council may, subject to clause 5.6, determine that an 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, or has acted unlawfully or in a way that constitutes improper conduct; or
  - b. given false or misleading information in respect of the application.
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.
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 eligible person in accordance with clause 7.

**6. Delegation to Chief Executive Officer**

1. In cases where a delay in the approval of an application will be detrimental to the legal right 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 \$3,000 in respect of each applicant.
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 power under this policy, including its powers under clause 5.4.
3. Where it is the CEO who is seeking urgent financial support for legal services then the President, with the assistance of a Director shall deal with the application.

**7. Repayment of legal representation costs**

1. An eligible person 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;



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- b. as much of those costs as are available to be paid by way of set-off – where the eligible person receives monies paid for costs, damages, or settlement, in respect of the matter for which the Shire paid the legal representation costs.
2. The Shire may take action in a court of competent jurisdiction to recover any monies due to it under this policy.

### Explanation of key terms

- *Approved lawyer* is to be:
  1. A 'certified practitioner' under the *Professions Act 2008*;
  2. From a law firm on the Shire's panel of legal service providers, if relevant, and unless the Council considers that is not appropriate – for example where there is or may be a conflict of interest or insufficient expertise; and
  3. Approved in writing by the Council or the CEO under delegated authority.
- *Eligible Person* means a current or former Commissioner, council members, non-elected member of council committee, employee or volunteer of the Shire.
- *Legal proceedings* may be civil, criminal or investigative.
- *Legal representation* is the provision of legal services, to or on behalf of an eligible person, by an approved lawyer that are in respect of:
  1. A matter or matters arising from the performance of the functions of the eligible person; and
  2. Legal proceedings involving the eligible person 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:
  1. a direct payment to the approved lawyer (or the relevant firm); or
  2. a reimbursement to the eligible person.
- *Shire* refers to the Shire of Manjimup.

### Adoption and Date Due for Revision

**ADOPTED 11 JULY 2024**

**NEXT DUE FOR REVIEW JULY 2029**

**The Administration of this Policy is by Office of the CEO.**