

**Policy Title: Legal Representation for Mindarie Regional Council Elected Members, Committee Members and Employees.**

**Policy Statement:**

The Council may provide financial assistance to relevant persons in connection with the performance of their functions provided that the relevant person has acted in good faith and in accordance with their role(s), power(s) and responsibility(s).

In each case it will be necessary to determine whether assistance with legal costs and other liabilities is justified for the good governance of the Council.

**Definitions**

**Approved lawyer** is to be:

- a) A 'person who is admitted to the legal profession' under the *Legal Profession Act 2008*;
- b) From a law firm listed as a WALGA preferred supplier, if relevant, unless the Council considers that this is not the 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 Chief Executive Officer (CEO) under delegated authority.

**Council** is the Mindarie Regional Council

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

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

**Legal representation** is the provision of legal services, to or on behalf of a relevant person, by an approved lawyer that are in respect of;

- a) A matter or matters arising from the performance of the functions of the relevant person; and
- b) Legal proceedings involving the relevant 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** include advice, representation or documentation that is provided by an approved lawyer.

**Payment** by the Council of legal representation costs may be either by:

- a) A direct payment to the approved lawyer; or
- b) A reimbursement to the relevant person.

**Relevant Person** mean a current or former Elected Members, Committee Members and Employees of the Council.

**Procedure:**

## **1. Payment Criteria**

- 1.1. There are four major criteria for determining whether the Council will pay the legal representation costs of a relevant person. These are:
- a) The legal representation costs must relate to a matter that arises from the performance by the relevant person, or his or her functions;
  - b) The legal representation cost must be in respect of legal proceedings that have been, or may be, commenced;
  - c) In performing his or her functions, to which the legal representation relates, the relevant person 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 Council may approve the payment of legal representation costs:
- a) where proceedings are brought against a relevant person in connection with his or her functions an action for defamation or negligence arising out of a decision made or action taken by the relevant person;
  - b) to enable proceedings to be commenced and/or maintained by a relevant person to permit his or her functions (e.g. where a relevant person seeks to take action to obtain a restraining order against a person using threatening behaviour to the relevant person; or
  - c) where exceptional circumstances are involved (e.g. where a person or organisation is lessening the confidence of the community in the Council by publicly making adverse personal comments about a relevant person.)
- 2.2. The Council will not approve, unless under exceptional circumstances, the payment of legal representation costs for a defamation action, or a negligence action, instituted by a relevant person.

## **3. Applications for Payment**

- 3.1. A relevant person who seeks assistance under this policy is to make an application in writing to the Council or the CEO.
- 3.2. 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 the matter relates to the functions of the relevant person making the application;
  - c) the proposed 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 documents etc.);
  - e) an estimated cost of the legal representation; and
  - f) why it is in the interest of the Council 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 the Council any legal representation costs in accordance with the provisions of clause 7.
- 3.6. In relation to clause 3.5 (c), when a relevant person is to be in receipt of such monies the relevant person should sign a document which requires repayment of that money to the Council as may be required by the Council 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.

#### **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 or any other amount that it sees fit.
- 4.2. A relevant person 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 subjects 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, Council may have regard to any insurance benefits that may be available to the applicant under the Council relevant person's 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 relevant 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.
- 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 Council are to be repaid by the relevant person in accordance with clause 7.

#### **6. Delegation to the 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.
- 6.3. This clause shall not apply where the applicant is the CEO. The matter will instead be referred to Council at the earliest opportunity, including a special meeting.

## **7. Repayment of Legal Representation Costs**

- 7.1. A relevant person whose legal representation costs have been paid by the Council is to repay the Council:
- a) all or part of those costs – in accordance with a determination by Council under clause 5.7;
  - b) as much of those costs as are available to be paid by way of set-off, where the relevant employee receives monies paid for costs, damages or settlement, in respect of the matter for which the Council paid the legal representation costs.
- 7.2. The Council may take action in a court of competent jurisdiction to recover any monies due to it under Policy.

<b>Legislation</b>	<i>Local Government Act 1995 S9.56, S3.1, S6.7(2) Legal Profession Act 2008</i>
<b>Guidelines</b>	Department of Local Government of Communities Operational Guideline No 14 Legal Representation for Council Members and Employees April 2006
<b>Responsible Officer</b>	Chief Executive Officer
<b>Council Meeting Date</b>	29 September 2022
<b>Review History</b>	01/08/2019, 18/06/2020, 12/08/2021
<b>Next Review Date</b>	01/08/2023
<b>Delegation to the Chief Executive Officer</b>	Clause 6
<b>Review History</b>	19/08/2022 no change