

POLICY 1.45

LEGAL REPRESENTATION FOR COUNCIL MEMBERS AND EMPLOYEES

OBJECTIVE

To provide a clear framework under which financial assistance will be provided to Council Members and employees for legal services in connection with their roles.

SCOPE

This policy applies to all Council Members and employees

POLICY

1. Definitions

Approved lawyer is to be:

- a. an Australian Legal Practitioner as defined under the *Local Profession Uniform Law Application Act 2022*;
- b. from a law firm on the WALGA panel of legal service providers (unless Council considers this to be inappropriate due to a conflict of interest, insufficient expertise or similar);
- c. approved in writing by a resolution of Council or by the CEO under delegated authority; and
- d. appointed in accordance with the Shire's purchasing policy.

Council member or employee means a current or former commissioner, council member, non-elected member of a council committee, advisory group, working group or panel or employee of the Shire of Gingin.

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, 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 Shire of legal representation costs may be either by:

- a. a direct payment to the approved lawyer (or the relevant firm); or
- b. a reimbursement to the council member or employee.

Shire or local government means the Shire of Gingin.

2. Payment Criteria

2.1 If the criteria in cl. 1 of this policy are satisfied, the Shire may approve the payment of legal representation costs in the following instances:

- a. where proceedings are brought against a council member or employee in connection with their 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 – 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 council members or employees.

2.2 The Shire will not approve, unless under exceptional circumstances, the payment of legal representation costs for a defamation action, or a negligence action, instituted by a council member or employee.

2.3 The Shire will not approve the payment of legal representation costs that relate to a matter of a personal or private nature.

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 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 that matter relates to the functions of the council member or employee 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 or documents 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.

- 3.3 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 Unless exceptional circumstances apply, 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 cl. 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 cl. 7.
- 3.6 In relation to cl. 3.5c, 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 this 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.
- 4.2 A council member or employee 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 subject to conditions,
- an application for payment of legal representation costs.
- 5.2 Conditions under cl. 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, the council may have regard to any insurance benefits that may be available to the applicant under the Shire's insurance policy or policies relating to council members or employees, or the relevant 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 cl. 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 cl. 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 cl. 5.5, the legal representation costs paid by the Shire are to be repaid by the council member or employee in accordance with cl. 7.

6. CEO Authorisation

- 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, subject to cl. 6.2, may exercise, on behalf of the council, any of the powers of the council under cl. 5.1 and 5.2 to a maximum of \$10,000 in respect of each application.
- 6.2 In circumstances where the applicant is the CEO, the powers in cl. 6.1 are to be exercised by the Executive Manager Corporate and Community Services.
- 6.3 An application approved by the CEO under cl. 6.1 or the Executive Manager Corporate and Community Services under cl. 6.2 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 cl. 5.4.

7. Repayment of Legal Representation Costs

- 7.1 A council member or employee 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 cl. 5.7;
 - b. as much of those costs as are available to be paid by way of set-off – where the council member or employee received monies paid for costs, damages, or settlement, in respect of the matter for which the Shire paid the legal representation costs.
- 7.2 The Shire may take action in a court of competent jurisdiction to recover any monies due to it under this policy.

GOVERNANCE REFERENCES

Statutory Compliance	<i>Legal Profession Uniform Law (WA)</i> <i>Legal Profession Uniform Law Application Act 2022</i> <i>Local Government Act 1995 s.9.56</i>
Industry Compliance	DLGSC Guideline "Legal Representation for Council Members and Employees"
Organisational Compliance	Nil

POLICY ADMINISTRATION

Review Cycle	2 years	Next Review	2026
Department	Office of the CEO - Governance		

Version	Decision Reference	Synopsis
1.	OCM 17/09/2024 Item 12.4	Policy adopted.