

# Legal Representation for Elected Members and Employees

## Policy Objective

To provide guidance on circumstances in which the City would consider the provision of financial assistance to Elected Members and employees who require Legal Representation arising out of the performance of their official functions.

In each case it will be necessary for the City to determine whether the provision by the City of financial assistance to an Elected Member or Employee for Legal Representation is justified in the interests of the good government of the City of Belmont.

This policy does not apply to Legal Representation required in the ordinary course of the City's business.

## Policy Detail

Where Legal Representation is required by an Elected Member or an Employee of the City arising out of the performance of their official functions, the Elected Member or Employee may apply to the City for financial assistance in accordance with this policy.

### 1. Criteria

The City may provide financial assistance for Legal Representation of an Elected Member or Employee based on the following criteria:

- a) the requirement for Legal Representation arises from and/or assists the performance by an Elected Member or Employee of their lawful functions;
- b) the Legal Representation costs must be for Legal Proceedings that are reasonably likely to commence or have commenced;
- c) in performing their functions, the Elected Member or Employee must have acted reasonably, in good faith, and in accordance with the requirements of the Code of Conduct, the Act, any relevant subsidiary legislation, terms of employment (as provided in their contract of employment and/or relevant award and/or implied terms of employment agreed by the City), and other written laws applicable to the Elected Member or Employee; and
- d) the Legal Representation costs do not relate to a matter that is of a personal or private nature.

Matters outside these criteria may be referred to the Chief Executive Officer (CEO) and/or Council for consideration.

## 2. Exclusions

The City will not provide financial assistance to an Elected Member or Employee for Legal Representation in relation to:

- a) Matters where the City is unable to provide financial assistance by any legislation;
- b) The initiation of defamation proceedings by an Employee without approval from the CEO;
- c) The initiation of defamation proceedings by an Elected Member or CEO without approval from the Council
- d) A complaint of serious or minor misconduct under the *Corruption, Crime and Misconduct Act 2003 (WA)*.

## 3. Types of costs that may be approved

- a) Without limitation, the City may provide financial assistance for the following types of Legal Representation:
  - (i) Legal Proceedings brought by Elected Members and Employees to enable them to carry out their functions under the Act and subsidiary legislation (e.g., where a Member or Employee seeks a banning order or a misconduct or violence restraining order against a person who has used threatening or inappropriate language or behaviour); or
  - (ii) Legal Proceedings brought against Elected Members or Employees in their individual capacity but by reason of a decision made either by Council or its delegate and which has caused an allegedly aggrieved person to commence legal action (e.g., an action or defamation or negligence); or
  - (iii) Legal Proceedings brought against Elected Members or Employees where their conduct in carrying out their function has been alleged to be detrimental to a third party (e.g., defending defamation actions); or
  - (iv) Statutory or other inquiries where representation or attendance of an Elected Member or Employee is either compulsory or justified; or
  - (v) Attendance at Legal Proceedings as a witness in circumstances like those described above.
- b) Notwithstanding clause 3 a) above, the City in its absolute discretion, may pay or reimburse legal fees for Legal Proceedings taken by Elected Members or Employees in extreme cases for substantial, unwarranted and ongoing comments or criticisms levelled at their conduct in their respective roles. Such Legal Proceedings may include action in defamation and/or steps taken to stop bullying.

Examples include:

- (i) Where a person or organisation is potentially lessening the confidence of the community in the City by publicly making adverse personal comments about Elected Members or Employees; or
- (ii) Where the adverse personal comments by a person or organisation about Elected Members or Employees are resulting in an unsafe workplace.

#### 4. Application for Legal Representation and Payment

- a) As far as is practicable, an application for financial assistance for Legal Representation must be made to the CEO before the Legal Representation has commenced, or as soon as immediately possible after commencement. This is to enable the CEO or Council (as the case may be) to approve or reject the application according to this Policy including by referring to the City's insurer and determining which approved solicitor will act before costs are incurred.
- b) The application to the CEO for financial assistance for Legal Representation ("application") must be in writing and provide the following details:
  - (i) the matter for which Legal Representation is sought; and
  - (ii) how the matter relates to the functions of the Elected Member or Employee making the application; and
  - (iii) the nature of the Legal Representation sought (e.g., advice, preparation of a document or Legal Proceedings); and
  - (iv) the estimated cost of the Legal Representation; and
  - (v) why the City should pay for the Legal Representation.
- c) The application must also contain a declaration by the applicant that he or she has acted according to the legal and contractual requirements of their function, in good faith and has not acted or omitted to act unlawfully or in a way that constitutes improper conduct in relation to the matter to which the application relates.
- d) The application must be accompanied by a signed written statement by the applicant that he or she:
  - (i) Has read, and understands the terms of this policy;
  - (ii) Acknowledges and agrees that the City's payment of money to an Elected Member or Employee as financial assistance for Legal Representation will give rise to a debt owed by the Elected Member or Employee to the City and the City reserves all rights in respect of that debt;
  - (iii) Acknowledges that any approval of Legal Representation costs is conditional upon the repayment provisions in clause 7 and any other conditions to which the approval is subject; and
  - (iv) Undertakes to repay to the City any Legal Representation costs in accordance with clause 7.
- e) If the Legal Representation commences prior to approval being obtained from the CEO or the Council, the City will require the Elected Member or Employee to provide to the City copies of all documents (except for documents subject to client professional privilege) created prior to the approval by the CEO or Council. In the case of Elected Members, the approval of Council will be required for the reimbursement of expenses incurred without prior approval.
- f) The City will determine at its sole discretion the approved solicitor from whom the Legal Representation is to be obtained. Subject to section 6 below, the City's insurer may direct which legal practitioner or law firm is to be used. The City will not fund 'forum shopping' for further Legal Representation in the event the Elected Member or Employee does not accept or agree with the legal advice provided, including legal advice previously sought on the same subject matter.

## **5. Assessment and determination of applications**

- a) The payment of Legal Representation costs to an Elected Member or Employee, in respect of each application up to \$10,000 can be approved by the CEO. Any amount over \$10,000 requires approval by Council.
- b) The CEO or Council may approve, refuse or grant subject to conditions an application for payment of Legal Representation.
- c) Conditions under 5(b) may include, but are not restricted to, a financial limit and/or a requirement to enter a formal agreement, including repayment and manner of repayment and/or a security agreement relating to payment of Legal Representation costs.
- d) When considering the request for financial assistance for Legal Representation, the CEO or the Council may consider the following:
  - (i) whether alternate actions/means are available to resolve the matter;
  - (ii) whether prior legal advice has been received on the matter;
  - (iii) the seriousness of the matter; and
  - (iv) any history relevant to the matter.
- e) In the event an Elected Member's request for financial assistance to obtain Legal Representation is rejected by the CEO, the Elected Member may take the request to Council in the form of a notice of motion for it to determine the request for financial assistance for Legal Representation.
- f) Where there is a conflict in respect of an application, the Mayor replaces the CEO for the purposes of assessing and providing any approval of an application.
- g) Where appropriate, and not otherwise subject to court order, confidentiality, legal privilege, privacy or any other operational constraints, the CEO will report legal representation costs incurred by Elected Members and Employees and provide a summary of the status of any legal representation provided under this policy on a periodic basis.

## **6. Insured risk**

- a) In assessing an application, the CEO is to have regard to whether the Legal Proceedings are within an insured risk and must be referred to the City's insurer in the first instance.
- b) It will be at the CEO's discretion as to whether to take any action to either grant or decline financial assistance until the matter has been reviewed by the City's insurer.

## **7. Repayment of costs for Legal Representation**

- a) Assistance to an Elected Member or an Employee will be withdrawn, and that Elected Member or Employee will be required to repay any costs for Legal

Representation incurred by the City where the CEO or Council determines, upon legal advice or the decision of a Court, Tribunal or Standards Panel that the Elected Member or Employee has:

- (i) not acted lawfully, reasonably, in good faith, and in accordance with the Code of Conduct, the Act, any relevant subsidiary legislation, terms of employment, and any other applicable written laws; and/or
  - (ii) given false or misleading information in respect of the application for financial assistance from the City; and/or
  - (iii) failed to comply with the conditions of approval; and/or
  - (iv) not followed advice or direction of the CEO or Council.
- b) If the Elected Member or Employee is successful in Legal Proceedings the costs of which the City has fully or partly paid, and the Elected Member or Employee receives payment of costs, damages or settlement funds, the Elected Member or Employee shall reimburse to the City the costs incurred by the City for the Legal Representation.
- c) Where the City has determined that the financial assistance provided by the City for Legal Representation is to be repaid, the City will set a payment arrangement with the Elected Member or Employee and such payment arrangement shall include (and not be limited to) the following:
- (i) whether the financial assistance is to be repaid in full or in part; and
  - (ii) whether repayment can be made by instalments;
- with such matters to be solely determined by the CEO at the CEO's discretion.
- d) The payment arrangement shall also provide that the amount to be repaid is fully repaid to the City within 12 months or such other period as determined by the CEO.

## Reference/Associated Documents

*Local Government Act 1995 (WA)*

## Reference to Internal Procedure

To be advised.

## Definitions

**'Act'** means the *Local Government Act 1995 (WA)*.

**'approved solicitor'** means a legal practitioner or legal practice certified under the *Legal Profession Uniform Law (WA)* and on the City's panel of legal service providers or approved in writing by the CEO or Council.

**‘Code of Conduct’**, in relation to an Elected Member, means the Code of Conduct for Council Members, Committee Members and Candidates and, in relation to an Employee, means the Code of Conduct for Employees.

**‘Elected Member’** means a current or former member of the Council of the City or a Council Committee.

**‘Employee’** means a current or former employee of the City.

**‘Legal Proceedings’** means civil, criminal, or investigative proceedings in a court, tribunal, or authorised body (including a panel of inquiry) in Western Australia.

**‘Legal Representation’** includes the provision by an approved solicitor of legal assistance and representation and includes advice, attendance at Legal Proceedings, preparation of documents, witness fees or other required costs approved under this Policy.

**‘subsidiary legislation’** means any subsidiary legislation made under the Act and as amended from time to time, including but not limited to regulations and Local Laws.

<b>This Policy is supported by:</b>	
Policy No:	CP28
Strategic Community Plan Strategy:	<b>Goal 5: Responsible Belmont</b> <b>Strategy:</b> 5.6 Deliver effective, fair and transparent leadership and decision-making, reflective of community needs and aspirations
Register of Delegations:	1.1.27 Determination of Applications for Legal Representation for Elected Members and Employees
Service Area:	Corporate and Governance
Policy Owner:	Manager Governance and Legal

Policy Stakeholder:	N/A	
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