Policy G8 – Legal Representation – Costs Indemnification

1. Policy Intent

This policy is designed to protect the interests of Council and Committee Members (Members) and employees (including past Members and former employees) where they become involved in legal proceedings as a result of performing their normal duties. In most situations the Shire of Murray (**Shire**) may assist the individual in meeting reasonable expenses and any liabilities incurred in relation to these proceedings.

2. Definitions

'approved lawyer' means a 'certified practitioner' (as defined in the *Legal Practice Act 2003*) who is from a law firm on the Shire's panel of legal service providers, unless the Council or Chief Executive Officer (**CEO**) considers that this is not appropriate – for example, where there is or may be a conflict of interest.

'Member' means the Shire President, Deputy Shire President, Councillors and Committee Members.

'employee' means an employee of the Shire.

'improper conduct' means a breach of the standards of conduct that a reasonable person would expect of a person knowing their duties, powers and authority.

'legal proceedings' may be civil or criminal.

'legal representation' means the provision of legal services, to or on behalf of a Member or employee, by an approved lawyer that is in respect of:

- a matter or matters arising from the performance of the functions of the Member or employee; and
- legal proceedings involving the 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' includes advice, representation or documentation that is provided by an approved lawyer.

'Shire' means the Shire of Murray.

3. Policy Statement

This Policy facilitates Members and employee's access to legal advice and representation:

- Where enabled in legislation;
- The matter falls within the scope and application of the Policy; and
- Relates to the role and functions of the Member or employee subject to considerations of this Policy.

Members and employees of the Shire performing their statutory roles and functions, may occasionally in the course of their duties, be exposed to legal action initiated by third parties. In these circumstances Members and employees may require legal advice and/or representation

and should be able to expect the Shire to provide financial assistance to meet the cost of the advice or representation. Accordingly, it is appropriate and prudent for the Shire to be in a position to assist members and employees by adopting a policy to fund or partly fund the cost of providing legal services in appropriate circumstances.

4. Legislative Framework

Section 9.56 of the *Local Government Act 1995* (**Act**) provides protection from actions of tort for anything a member of the council, or a member of a committee of the council or an employee has, in good faith, done in the performance or purported performance of a function under the Act or under any other written law.

However, the legislation does not preclude people taking-action against individual Members or employees if they believe that the Member or employee has not acted in good faith.

Section 3.1 of the Act provides that the general function of a local government is to provide for the good government of persons in its district. Section 6.7(2) of the Act provides that money held in the municipal fund may be applied towards the performance of the functions and the exercise of the powers conferred on the local government by the Act or any other written law. Under these provisions a local government can expend funds to provide legal representation for Members and employees as long as it believes that the expenditure falls within the scope of the local government's function.

5. Scope

This policy is applicable to all current and former Members and employees where the following may apply:

5.1 Criteria for determining application for legal representation

There are four criteria for determining whether an application for the payment of the legal representation costs of a Member or employee will be approved:

1. The legal representation costs must relate to a matter that arises from the performance, by the Member or employee, of their functions;
2. The legal representation costs 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 Member or employee must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct; and
4. The legal representation costs do not relate to a matter that is of a personal or private nature.

Section 6.14A of the Act prohibits certain payments to Members connected with legal matters, including in respect of an insurance policy premium. These are outlined in regulation 19D of the *Local Government (Financial Management) Regulations 1996* and include:

a) an amount that a council member is ordered to pay under section 8A.19(2) or the *Local Government (Local Government Inspector) Regulations 2025* regulation 7(6) or (7);

b) a modified penalty under an infringement notice issued to a council member under Part 9 Division 2 Subdivision 2A of the Act;

c) a fine imposed on a council member as a penalty for committing an offence under to Act;

d) an amount that a council member is ordered to pay under the *State Administrative Tribunal Act 2004* Part 4 Division 5;

e) any exemplary or punitive damages that are awarded against a council member in civil proceedings before a court.

5.1.1 Examples of legal representation costs that may be approved

If the criteria in clause 5.1 are satisfied, approval may be given for the payment of legal representation costs:

(a) Where legal proceedings are brought against al 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 Member or employee; or

(b) To enable proceedings to be commenced and/or maintained by a Member or employee to permit them to carry out their functions – for example where a Member or employee seeks to take-action to obtain a restraining order against a person using threatening behaviour to the 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 Members or employees.

5.2 Application

5.2.1 An application by writing to the Council which may approve or decline the application.

5.2.2 An application by an employee must be made in writing to the CEO who may approve or decline the application.

5.2.3 The application must give details of:

(a) The matter for which legal representation is sought;

(b) How that matter relates to the functions of the Member or employee making the application;

(c) The nature of the legal representation being sought (such as advice, representation in court, preparation of documents etc);

(d) The lawyer (or law firm) who is to be requested to provide the legal representation;

(e) An estimate of the cost of the legal representation; and

(f) Why it is in the interests of the Shire for payment to be made.

5.2.4 The application must contain a declaration by the applicant that they 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.

5.2.5 As far as possible the application is to be made before commencement of the legal proceedings to which the application relates.

5.2.6 The application must be accompanied by a statement signed by the applicant that

they:

(a) Have 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 5.5 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 clause 5.5.

5.2.7 In relation to clause 5.5, a person who receives payment of legal representation costs shall sign a document acknowledging that repayment may be required by the Shire under the terms of this Policy.

5.2.8 An application must be accompanied by a report prepared by the CEO or where the CEO is the applicant by an appropriate employee nominated by the Shire President.

5.3 Limit on Legal Representation Costs

5.3.1 When approving an application, the Council or CEO shall set a limit on the amount of costs to be paid, based on the nature of the matter and on the estimate of costs in the application.

5.3.2 A Member or employee may make a further application to the Council or CEO in respect of the same matter.

5.4 Assessing the Application

5.4.1 The Council or CEO may:

(a) Refuse;

(b) Grant; or

(c) Grant subject to conditions, an application for payment of legal representation costs.

5.4.2 Conditions under clause 5.4.1(c) 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.

5.4.3 In assessing an application, the Council or CEO may have regard to any insurance that may be available to the applicant under the Shire's insurance policy or its equivalent.

5.4.4 The Council or CEO may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.

5.4.5 The Council or CEO may determine, after an application has been approved, that a Member or employee:

(a) Has not acted in good faith, has acted unlawfully or has acted in a way that constitutes improper conduct; or

(b) Has given false or misleading information in respect of the application.

5.4.6 A determination under clause 5.4.5 may be made by the Council or CEO on the basis of and consistent with the findings of any court of competent jurisdiction, the State

Administrative Tribunal or of an inquiry conducted pursuant to Part 8 of the Act.

5.4.7 Where a determination is made under clause 5.4.5, the legal representation costs paid by the Shire are to be repaid by the Member or employee in accordance with clause 5.5.

5.5 Repayment of Legal Representation costs

5.5.1 A Member or employee whose legal representation costs have been paid by the Shire is to repay the Shire:

(c) All or part of those costs – in accordance with a determination by the Council or CEO under clause 3.2.1; or

(d) As much of those costs as are available to be paid by way of set-off:

- where the Member or employee receives monies paid for costs: and/or
- damages, or settlement, in respect of the matter for which the Shire paid the legal representation costs.

5.5.2 The Shire may take-action in any court of competent jurisdiction to recover any monies due to it under this Policy.

Policy Detail		
Responsible Directorate	Office of the CEO	
Responsible Department	Governance	
Responsible Officer	Manager Governance	
Next Policy Review / Schedule	2028 (3-yearly)	
Council Adoption	**Date / Resolution**	30 June 2011 (OCM11/099)
Amendment Record	**Date / Resolution**	23 June 2022 (OCM22/070)
		26 March 2026 (OCM26/018)