



## Policy G8 – Legal Representation - Costs Indemnification

### 1. Policy Intention

This policy is designed to protect the interests of Council 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 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 CEO considers that this is not appropriate – for example, where there is or may be a conflict of interest.

**'Shire'** means the Shire of Murray.

**'council member'** means a current council member.

**'employee'** means a current 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 council member or employee, by an approved lawyer that is 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'** includes advice, representation or documentation that is provided by an approved lawyer.

### 3. Policy

It is policy to facilitate Councillors and employees access to legal advice in such cases where enabled in legislation and where the matter falls within the scope and application of this policy as stated below.

The objective of this policy is to ensure that Council members and employees of the Shire are represented in legal action relating to their roles and functions subject to considerations set out below.

Council 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 their local government will 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.

#### 3.1 Legislative Framework

Section 9.56 of the *Local Government Act 1995* (the Act) provides protection from actions of tort for anything a council member or 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 council members or employees if they believe that the council 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) 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 council members and employees as long as it believes that the expenditure falls within the scope of the local government's function.

## **3.2 Scope**

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

### **3.2.1 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 council member or employee will be approved:

- (a) The legal representation costs must relate to a matter that arises from the performance, by the member or employee, of his or her functions.
- (b) The legal representation costs 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 member or employee 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.

### **3.2.2 Examples of legal representation costs that may be approved**

If the criteria in clause 3.2.1 are satisfied, approval may be given for the payment of legal representation costs:

- (a) where legal proceedings are brought against a council member or employee in connection with his or her 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.

## **3.3 Application**

**3.3.1** An application by a council member, or the Chief Executive Officer, must be made in writing to the Council which may approve or decline the application.

**3.3.2** An application by an employee must be made in writing to the Chief Executive Officer who may approve or decline the application.

**3.3.3** The application must give details of:

- (i) The matter for which legal representation is sought.
- (ii) How that matter relates to the functions of the member or employee making the application.
- (iii) The nature of the legal representation being sought (such as advice, representation in court, preparation of documents etc).
- (iv) The lawyer (or law firm) who is to be requested to provide the legal representation.
- (v) An estimate of the cost of the legal representation; and
- (vi) Why it is in the interests of the Shire for payment to be made.

**3.3.4** The application must 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.

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

**3.3.6** The application must be accompanied by a statement signed 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 3 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 3.

**3.3.7** In relation to clause 3.3.6(c), 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.

**3.3.8** An application must be accompanied by a report prepared by the Chief Executive Officer or where the Chief Executive Officer is the applicant by an appropriate employee nominated by the President.

**3.4 Limit on Legal Representation Costs**

**3.4.1** When approving an application the Council or Chief Executive Officer 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.

**3.4.2** A council member or employee may make a further application to the Council or Chief Executive Officer in respect of the same matter.

**3.5 Assessing the Application**

**3.5.1** The Council or Chief Executive Officer may:

- (a) Refuse;
- (b) Grant; or
- (c) Grant subject to conditions, an application for payment of legal representation costs.

**3.5.2** Conditions under clause 3.2.1 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.

- 3.5.3** In assessing an application, the Council or Chief Executive Officer may have regard to any insurance benefits that may be available to the applicant under the Shire’s council members or employees insurance policy or its equivalent.
- 3.5.4** The Council or Chief Executive Officer may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.
- 3.5.5** The Council or Chief Executive Officer may determine, after an application has been approved, that a council 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.
- 3.5.6** A determination under clause 3.2.2 may be made by the Council or Chief Executive Officer 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 *Local Government Act 1995*.
- 3.5.7** Where a determination is made under clause 3.2.2, the legal representation costs paid by the Shire are to be repaid by the council member or employee in accordance with clause 3.3.

### 3.6 Repayment of Legal Representation costs

- 3.6.1** 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 or CEO under clause 3.2.1 or
  - (b) As much of those costs as are available to be paid by way of set-off:
    - Where the council member or employee receives monies paid for costs.
    - Damages, or settlement, in respect of the matter for which the Shire paid the legal representation costs.
- 3.6.2** The Shire may take action in any court of competent jurisdiction to recover any monies due to it under this Policy.

Previous Policy Reference	CG9
Related Legislation	<i>Legal Practice Act 2003</i>
Related Policies	N/A
Related Documents	Department of Local Government Operational Guidelines No. 14 – Legal Representation for Council Members and Employees
Last Reviewed	January 2018
Next Review Date	2021
Initial Adoption Date	30 June 2011
Initial Adoption Resolution	OCM11/099
Amendment Record	