



**POLICY**

<b>TITLE:</b>	<b>LEGAL REPRESENTATION FOR MEMBERS AND EMPLOYEES</b>	<b>CODE:</b>	<b>CM192</b>
<b>PURPOSE or OBJECTIVE:</b>	To outline the conditions under which a member or employee may be eligible to have the City approve and fund his or her legal representation costs.		
<b>REFERENCE DOCUMENTS:</b>	Local Government Act 1995 Legal Profession Act 2008		

**POLICY STATEMENT**

**The City will consider applications for funding the costs of a member or employee engaging legal representation in a matter relating to the function or performance of the member or employee.**

**All applications will be received and processed in accordance with the provisions of this policy.**

**1. Scope**

This Policy applies to all members and City employees against whom legal proceedings have been, or may be, commenced on a matter that arises from the performance by the member or employee of his or her functions.

**2. Definitions**

- approved lawyer* is an Australian lawyer, approved by the council or by the CEO under delegated authority, who holds a current local practising certificate under the *Legal Profession Act 2008* and who is from a law firm on the City's panel of legal service providers, if relevant, unless the council considers that this is inappropriate due to a conflict of interest or insufficient experience.
- member or employee* means a current or former commissioner, elected mayor or councillor, or non-elected member of a council committee, or City employee.
- legal proceedings* a legal action initiated, or intended to be initiated, against a member or an employee which may be civil, criminal or investigative in character, including an inquiry under any written law.
- legal representation* is the provision of legal services, to or on behalf of a member or employee, by an approved lawyer, in respect of:
  - (a) a matter or matters arising from the performance of the functions of the member or employee; and
  - (b) 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 provided by an approved lawyer.

**3. Payment Criteria**

- (1) To qualify for the City paying or contributing to the legal representation cost of a member or employee:
  - (a) the costs must relate to a matter that arises from the performance by the member or employee of his or her functions; and
  - (b) the costs must be in respect of legal proceedings that have been, or may be, commenced; and

- (c) in performing his or her functions to which the legal representation relates, the member or employee acted in good faith and must not have acted unlawfully or in a way that constituted improper conduct; and
  - (d) the costs must not relate to a matter that is of a personal or private nature.
- (2) Payment by the City of legal representation costs may be either by:
- (a) a direct payment to the approved lawyer (or the relevant firm); or
  - (b) reimbursement to the member or employee.

#### **4. Examples of Legal Representation Costs that may be Approved**

If the criteria in clause 3 of this policy are satisfied, the payment of legal representation costs may be approved:

- (1) where proceedings are brought against a member or employee in connection with his or her functions. e.g. an action for defamation or negligence arising out of a decision made or action taken by the member or employee; or
- (2) to enable proceedings to be commenced and/or maintained by a member or employee to permit him or her to carry out his or her functions, e.g. where a member or employee seeks to take action to obtain a restraining order against a person using threatening behaviour to the member of employee; or
- (3) for involvement in legal proceedings that require or enable evidence or information to be given by a member or employee in connection with his or her functions; or
- (4) where exceptional circumstances are involved, e.g. where a person or organisation is lessening the community's confidence in the local government by publicly making adverse comments about members or employees.

#### **5. Applications for Legal Representation Costs**

- (1) A member or employee seeking legal representation costs under this policy must submit a written application to the Council or the CEO by completing the Application for Legal Representation Costs Form. (Attached)
- (2) As far as possible the application must be made before the legal representation is commenced.
- (3) An application must be accompanied by a report prepared by the CEO or – where the CEO is the applicant – by the Director Corporate Services or an appropriate alternative employee.
- (4) In cases where a delay in the approval of an application will be detrimental to the legal rights of the applicant, the CEO may approve the application to a maximum of \$10,000. Where the CEO is the applicant the mayor may approve the application, also to a maximum of \$10,000.
- (5) An application approved under subclause (4) must be submitted to the Council at its next Ordinary meeting where the Council may revoke or vary an approval, or any conditions of approval determined by the CEO or mayor.
- (6) A member or employee may make further application to the Council or the CEO for additional legal representation costs where the cost limit determined by Council, the CEO or the mayor is exceeded, or estimated to be exceeded.

#### **6. Determining Applications**

- (1) The Council and – subject to clause 5(4) - CEO or mayor may:
  - (a) refuse;
  - (b) approve; or
  - (c) approve subject to conditions,
 an application for payment of legal representation costs.
- (2) Conditions under subclause 1(c) includes – but is not restricted to – setting a financial limit on the amount to be contributed or reimbursed by the City, and/or a requirement to enter into a formal agreement, including a security agreement, relating to the payment and/or repayment of the costs.
- (3) In approving an application the Council is to set a limit on the costs to be paid or reimbursed based on the estimated costs set out in the Application for Legal Representation Costs Form.
- (4) In assessing an application, the Council, CEO or mayor must take into account any insurance benefits that may be available to the applicant under the City's Directors and Officers insurance policy, or its equivalent.
- (5) The Council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.
- (6) Members and employees whose applications are refused by the CEO or mayor under clause 5(4) may appeal the refusal to Council.

## 7. Repayment of Costs by Members and Employees

- (1) The Council may determine that a member or employee whose application for legal representation costs was approved has, in the matter for which these 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 the application.
- (2) A determination by Council under subclause (1) may only be made on the basis of, and consistent with, the findings of a court, tribunal or inquiry.
- (3) Where the Council makes a determination under subclause (1), it may also determine that all or part of the legal representation costs paid by the City is to be repaid by the member or employee.
- (4) Where the member or employee receives monies awarded for costs, damages or settlement of a matter for which the City paid or contributed to the legal representation cost, as much of those awarded monies that are available after the disbursement of other costs associated with the matter are to be repaid to the City, to a maximum of the amount paid by the City. Note: "other costs" in this subclause does not include cost claims for a member's or employee's time unless the member or employee can provide proof that the time spent in attending to the matter resulted in a loss of earnings.
- (5) The City may take action in a court of competent jurisdiction to recover any monies due to it under this policy.

### GOVERNANCE REFERENCES

<b>Statutory Compliance</b>	Local Government Act 1995 – s.3.1 and s.6.7(2) Legal Profession Act 2008 – Part 5
<b>Process Links</b>	Attachment – Application for Legal Representation Costs Form

### POLICY ADMINISTRATION

<b>Directorate</b>		<b>Officer Title</b>	<b>Authority to Approve</b>
Corporate Services		Director Corporate Services	Council
<b>Version</b>	<b>Decision Reference</b>	<b>Synopsis</b>	<b>Delegation No:</b>
1	February 2016	Existing policy amended and converted to current template	
1	OCM 19/4/2016 (CR-010-16)	Adopted	



APPLICATION FOR LEGAL REPRESENTATION COSTS FORM

APPLICANT \_\_\_\_\_ TITLE (Member/Employee) \_\_\_\_\_

Description of the matter for which legal representation costs is requested:

[Empty box for description of matter]

How is this matter related to your function as a Council member or employee?

[Empty box for relation to function]

The name and contact details of the legal advisor, or law firm, you intend to engage?

[Empty box for legal advisor details]

What is the nature of the legal representation you are seeking?

Advice Representation in court Preparation of a document All three
Other:

What is the estimated cost of the legal representation?

\$ [ ]

What amount are you requesting the City to contribute?

\$ [ ]

Why do you consider it in the interest of the City that it funds or contributes to the cost of your legal representation?

[Empty box for justification]

DECLARATION BY APPLICANT

In submitting this application I declare that:

- 1. I believe I acted in good faith and have not acted unlawfully or in a way that constitutes improper conduct in relation to the matter to which this application relates.
2. I have read and understand the provisions of Policy CM192 – Legal Representation for Members and Employees.
3. I acknowledge that legal representation costs approved by the City is conditional on the repayment provisions of clause 7 of Policy CM192, and any other conditions of the approval, and that I may subsequently be required to repay the City all or some of the legal representation costs it incurred on this matter.

SIGNED \_\_\_\_\_ DATE \_\_\_\_\_