

Council Policy Name: Legal Representation for Council Members and Employees

Responsible Directorate: Finance and Corporate Services

Version: Current

1. PURPOSE

1.1. The purpose of this Policy is to provide guidance as to when the City may protect the interests of Council members and employees who become involved in legal proceedings because of their official functions.

2. SCOPE

2.1. This Policy is applicable to any current or former Council member or employee of the City of Busselton, subject to meeting the criteria set out in the Policy.

3. DEFINITIONS

Term	Meaning
Applicant	A current or former Council member or employee who makes an application under paragraph 5.6 of this Policy.
Approved Lawyer	<ul style="list-style-type: none"> a Lawyer as defined in section 4 ‘Terms relating to lawyers’ and section 5 ‘Terms relating to legal practitioners’ under the <i>Legal Profession Act 2008</i>; and from a law firm on the City’s or WALGA’s panel of legal service providers, if relevant, unless the Council considers that this is not appropriate - for example where there is or may be a conflict of interest or insufficient expertise.
Policy	This City of Busselton Council policy titled “Legal Representation for Council Members and Employees”.

4. STRATEGIC CONTEXT

4.1. This Policy links to Key Goal Area 6 - Leadership of the City’s Strategic Community Plan 2017 and specifically the Community Objective 6:1: Governance systems, process and practices are responsible, ethical and transparent.

5. POLICY STATEMENT

5.1. The City of Busselton may assist a current or former Council member or employee to meet reasonable expenses incurred in relation to legal proceedings they become involved in as a result of carrying out their official functions.

5.2. The provision of assistance must be justified for the good government of the district. Additionally, the following key criteria will apply when determining whether the City will pay the legal representation costs of a Council member or employee:

- a. the legal representation must relate to a matter that arises from the performance, by the Council member or employee, of his or her functions;

- b. the legal representation 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 Council 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.
- 5.3. If the criteria in clause 5.2 are satisfied, the City may approve the payment of legal representation costs in the following circumstances:
- a. where 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;
 - 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;
 - 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.
- 5.4. Legal representation must be provided by an Approved Lawyer and the engagement of an Approved Lawyer must be approved in writing by the Council or the CEO under delegated authority.
- 5.5. The City 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.

Application for Payment

- 5.6. A current or former Council member or employee who seeks assistance under this Policy is to make an application, in writing, to the Council or the CEO. The Applicant 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 Approved Lawyer 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 etc.);
 - e. an estimated cost of the legal representation; and
 - f. why it is in the interests of the City for payment to be made.
- 5.7. The application is to contain:
- a. a declaration by the Applicant that he or she has acted in good faith and, to the best of the Applicant's knowledge, the Applicant has not acted unlawfully or in a way that constitutes improper conduct in relation to the matter to which the application relates; and
 - b. a signed statement that he or she:
 - i. has read, and understands, this Policy;
 - ii. acknowledges that any approval of legal representation costs is conditional on the repayment provisions of paragraph 5.17 and any other conditions to which the approval is subject; and
 - iii. undertakes to repay to the City any legal representation costs in accordance with the provisions of paragraph 5.17 of this Policy.
- 5.8. Other than in exceptional circumstances, the application is to be made before commencement of the legal representation to which the application relates.

- 5.9. The Council must determine all applications made under this Policy. Applications to the Council must:
- a. be accompanied by a report prepared by the CEO; or
 - b. where the CEO is the Applicant, the accompanying report must be prepared by an appropriate employee, generally a Director or senior governance employee.
- 5.10. In determining an application, the Council may:
- a. refuse;
 - b. approve; or
 - c. approve subject to conditions.
- 5.11. Conditions of approval of an application may include 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.
- 5.12. The Council, in approving an application in accordance with this Policy:
- a. must set a limit on the costs to be paid, based on the estimated costs in the application; and
 - b. may also consider and approve additional costs in respect of the same matter.
- 5.13. In assessing an application, the Council may have regard to any City insurance policies that may apply to the Applicant.

Revocation and Variation

- 5.14. The Council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.
- 5.15. The Council may, subject to natural justice principles and consistent with the findings of a court, tribunal or inquiry, determine that a Council member or employee whose application has been approved has, in respect of the matter:
- 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;
- and where the Council makes such a determination, the legal representation costs paid by the City are to be repaid by the Council member or employee in accordance with 5.17.

Delegation to Chief Executive Officer

- 5.16. An application for urgent legal representation approved by the CEO under delegation is to be submitted for Council's noting to the next ordinary meeting of the Council.

Repayment of legal representation costs

- 5.17. An Applicant whose legal representation costs have been paid by the City is to repay the City:
- a. all or part of those costs - in accordance with a determination by the Council under paragraph 5.15; or
 - b. as much of those costs as are available to be paid by way of set-off - where the Applicant receives monies paid for costs, damages, or settlement, in respect of the matter for which the City paid legal representation costs.
- 5.18. The City may take action in a court of competent jurisdiction to recover any monies due to it under this Policy.

6. RELATED DOCUMENTATION / LEGISLATION

- 6.1. Local Government Operational Guideline 'Legal Representation for Council Members and Employees'
- 6.2. Delegation DA1-19 Urgent Legal Representation

7. REVIEW DETAILS

Review Frequency	3 yearly			
Council Adoption	DATE	14 October 2020	Resolution #	C2010/111
Previous Adoption	DATE	8 March, 2017	Resolution #	C1703/043