

A3 Legal Representation Policy

Policy Objective

To protect the interests of Council members and Shire employees (including past members and former employees) where they become involved in civil legal proceedings because of their official functions.

Policy Statement

The Shire may assist individual Councillors and Staff in meeting reasonable legal expenses and any liabilities incurred in relation to those proceedings where they become involved in civil legal proceedings because of their official functions.

The Shire may provide financial assistance to members and employees in connection with the performance of their duties provided that the member or employee has acted reasonably and has not acted illegally, dishonestly, against the interests of the local government or otherwise in bad faith.

The Shire may provide such assistance in the following types of legal proceedings:

- proceedings brought by members and employees to enable them to carry out their local government functions (e.g. where a member or employee seeks a restraining order against a person using threatening behaviour);
- proceedings brought against members or employees [this could be in relation to a decision of Council or an employee which aggrieves another person (e.g. refusing a development application) or where the conduct of a member or employee in carrying out his or her functions is considered detrimental to the person (e.g. defending defamation actions)]; and
- statutory or other inquiries where representation of members or employees is justified.

The Shire will not support any defamation actions seeking the payment of damages for individual members or employees in regard to comments or criticisms levelled at their conduct in their respective roles. Members or employees are not precluded, however, from taking their own private action. Further, the Shire may seek its own advice on any aspect relating to such comments and criticisms of relevance to it.

The legal services the subject of assistance under this policy will usually be provided by the Shire's solicitors. Where this is not appropriate for practical reasons or because a conflict of interest, then the service may be provided by other solicitors approved by the Shire.

Applications for Financial Assistance

Subject to item (e), decisions as to financial assistance under this policy are to be made by the Council. A member or employee requesting financial support for legal services under this policy is to make an application in writing, where possible in advance, to the Council providing full details of the circumstances of the matter and the legal services required.

An application to the Shire is to be accompanied by an assessment of the request and with a recommendation which has been prepared by, or on behalf, of the Chief Executive Officer (CEO).

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A member or employee requesting financial support for legal services, or any other person who might have a financial interest in the matter, should take care to ensure compliance with the financial interest provisions of the *Local Government Act 1995*.

Where there is a need for the provision of urgent legal services before an application can be considered by the Council, the CEO may give an authorisation to the value of \$5000 provided that the power to make such an authorisation has been delegated to the CEO in writing under section 5.42 of the *Local Government Act 1995*.

Where it is the CEO who is seeking urgent financial support for legal services the Council shall deal with the application.

Repayment of Assistance

Any amount recovered by a member or employee in proceedings, whether for costs damages, will be offset against any moneys paid or payable by the local government.

Assistance will be withdrawn where the Council determines, upon legal advice, that a person has acted unreasonably, illegally, dishonestly, against the interests of the local government or otherwise in bad faith; or where information from the person is shown to have been false or misleading.

Where assistance is so withdrawn, the person who obtained financial support is to repay any moneys already provided. The local government may take action to recover any such moneys in a court of competent jurisdiction.

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