

POL	<b>LEGAL REPRESENTATION – INDEMNIFICATION OF COSTS</b>	SES4
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<b>POLICY CODE:</b>	SES4
<b>DIRECTORATE:</b>	Executive Support Department
<b>BUSINESS UNIT:</b>	Executive Support Department
<b>SERVICE UNIT:</b>	Executive Support Services
<b>RESPONSIBLE OFFICER:</b>	Chief Executive Officer
<b>086/001</b>	182/001
<b>DATE FIRST ADOPTED:</b>	20 November 2001
<b>DATE LAST REVIEWED:</b>	10 March 2016
<b>ATTACHMENTS:</b>	N/A
<b>DELEGATED AUTHORITY REF.:</b>	SES4
<b>VERSION NO.</b>	4

<b>Dates of Amendments / Reviews:</b>	
DAPPS Meeting:	31 January 2013 22 May 2014 25 February 2016
OCM:	13 December 2007 14 February 2013 12 June 2014

**BACKGROUND:**

1. A member of the Council or an employee of the City of Cockburn may require legal advice and/or legal representation in connection with any matters touching on the conduct or duties of members or employees, which would necessarily incur legal expenses.
2. Questions may arise from time to time as to whether, and the extent to which the Council should arrange for provision of those legal services or should pay for or reimburse or provide indemnity for such expenses.

**PURPOSE:**

1. This policy is designed to set out circumstances in which the Council will generally provide financial assistance to Council members and employees who require legal advice and/or representation because of their official functions.
2. In each case it will be necessary to determine whether assistance with legal expenses and other liabilities is justified for the good government of the district. This policy applies in that respect.

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**POLICY:**

(1) Definitions

In this Policy:

“**Act**” means the Local Government Act 1995;

“**Department Inquiry**” means an inquiry initiated under section 8.3 of the Local Government Act 1995;

“**employee**” means a past or present employee of the City;

“**Inquiry**” includes a Department Inquiry or a Panel Inquiry under Part 8 of the Act, an Inquiry by the Corruption and Crime Commission and any other Inquiry of a similar kind;

“**legal representation**” means the provision of legal services for advice or in connection with court proceedings, or any other investigation inquiry or hearing or adjudication, including but without limiting the generality of the foregoing under Part 8 of the Act;

“**member**” means a past or present member of the Council of the City;

“**Panel Inquiry**” means an inquiry instituted under section 8.16 of the Act.

(2) Eligible persons

A person is eligible to make application for financial assistance under this Policy if that person is a member or an employee.

(3) Form of application

An application under this Policy shall:

1. be in writing;
2. provide full details of the nature and extent of the legal services anticipated to be required and when they are required;
3. in the event that the application is not made in advance - provide details of the services previously provided and the explanation for there being no application in advance;
4. indicate if the applicant considers that the application is urgent and the applicant’s reasons;

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5. contain an assurance that the circumstances in respect of which the financial assistance is required do not involve actions of the applicant that are illegal, improper, dishonest, or against the interests of the City; and
6. contain sufficient details to explain how the financial assistance is required in relation to the official functions of the applicant so as to be justified for the good government of the district of the City.

(4) Who determines an application

1. Subject to Clause 5, the CEO may determine an application seeking financial assistance not exceeding an amount of \$6,000.
2. Payment of financial assistance made in accordance with (1) above, may be made by either:
  - (a) a direct payment to the approved lawyer (or the relevant firm); or
  - (b) a reimbursement to the Council member or employee.
3. Notwithstanding subclause (1), the CEO may refer any application to the Council for determination.
4. All applications seeking financial assistance exceeding \$6,000 shall be determined by the Council.
5. Any decision by the CEO to provide financial assistance under this Policy is to be reported to the next Ordinary Meeting of the Council, for information.

(5) Formal agreement to be executed

1. A person to whom financial assistance is to be provided shall be required to execute a formal agreement with the City, prepared by the City's solicitors, setting out the terms and conditions upon which the assistance is offered.
2. The agreement shall be subject to the condition in cl.10 hereof and that clause shall be deemed to be included in any agreement if provisions to the same effect are not expressly included.
3. The person shall be required to execute the agreement prior to any financial assistance being provided.

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(6) Preconditions to the provision of financial assistance

Legal assistance will only be provided:

1. in the case of a Department Inquiry, where, prior to the final report on the outcome of the inquiry, an adverse allegation is made against the member or employee, or the inquiry or any officer assisting indicates that an adverse finding against the member or employee is possible;
2. in the case of a Panel Inquiry, where conduct of the member or employee is subject to inquiry and/or report or the member or employee receives a summons or subpoena from the Inquiry requiring him/her to give evidence and/or produce documents;
3. in the case of either a Departmental Inquiry or a Panel Inquiry:
  - (a) to a member in connection with the performance by the member of his or her functions as a member;
  - (b) to an employee in connection with the performance by the employee of his or her functions as an employee of the City; or
  - (c) in respect of legal representation to be provided prior to the conclusion of the Inquiry;
4. In the case of any other Inquiry, and where the subject matter of the application is connected with the performance by the member or employee of his or her function as such, if the member or employee has received a subpoena or summons to appear or is otherwise required to appear either to give evidence or to respond to or deal with an allegation against him or her.
5. in the case of other legal proceedings, where legal action has been taken or threatened or seems likely to be taken against the member or employee to be assisted;
6. in the case of legal proceedings taken or proposed to be taken by the member or employee, only where and to the extent the member or employee will not stand to gain financially from the actions; and
7. in any case, where no indemnity for legal costs is provided for under a policy of insurance taken out by the member or employee or by the City, or to the extent that cover is not provided under a policy of insurance.

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(7) No pledging of the City’s credit

Nothing in this policy is intended to represent that any person has authority to pledge the City’s credit or otherwise commit the City to any liability to legal expenses whatsoever.

(8) CEO may continue to seek legal advice

Nothing in this Policy derogates from the ability of the CEO or other employees of the City to seek legal advice concerning the business and affairs of the City from the City’s solicitors.

(9) Applications by the CEO

Where the employee seeking financial assistance is the CEO, then the matter is to be referred to Council for determination, in accordance with the provisions of this Policy.

(10) Repayment of financial assistance

It is a condition of the provision of financial assistance under this Policy, and it shall be a condition of the formal agreement referred to in clause 5, that:

- (a) the provision of financial assistance shall be at an end; and
- (b) any financial assistance already paid by the City shall be repaid by the member or employee,

in the event that:

- (i) a finding is made in the report of an Inquiry or in Court proceedings that the member or employee has acted illegally, improperly, dishonestly, against the interests of the City or in bad faith; or
- (ii) where information provided to the CEO in the application is materially false or misleading.

(11) Recovery

The City may take action to recover any financial assistance required to be repaid under clause 10 in a court of competent civil jurisdiction and the City is entitled to deduct the amount of such assistance from any allowance or salary payable by the City to the person.