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| Title | Legal Representation & Costs Indemnification – Elected Members & Employees |
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Policy Type

Council

Policy Purpose

This policy is designed to protect the interests of Council members and employees (including past members and former employees) where they become involved in civil legal proceedings because of their official functions.

In most situations, the City may assist the individual in meeting reasonable expenses and any liabilities incurred in relation to legal proceedings. In each case it will be necessary to determine whether assistance with legal costs and other liabilities is justified for the good government of the City of Cockburn district. This policy applies in that respect.

Policy Statement

(1) Key Terms

1. Approved lawyer is to be:-
 - (a) a 'certified practitioner' under the Legal Practice Act 2003;
 - (b) appointed from a law firm on either the City of Cockburn or WA Local Government Association (WALGA) panels of legal service providers, or the Common Use Arrangements (CUA) with the State Government, unless the CEO considers that this is not appropriate, for example where there is or may be a conflict of interest or insufficient expertise; and
 - (c) approved in writing by the council or the CEO under delegated authority.
2. City means the City of Cockburn.
3. Elected member or employee means a current or former elected member, non-elected member of a Council committee, or employee of the City.
4. Legal proceedings may be civil, criminal or investigative.
5. Legal representation is the provision of legal services, to or on behalf of a Council member or employee, by an approved lawyer that are 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, instituted.
6. Legal representation costs are the costs, including fees and disbursements, properly incurred in providing legal representation, and for which payment is made.

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7. Legal services include advice, representation or documentation provided by an approved lawyer.
8. Payment by the City of legal representation costs may be made by:-
 - (a) a direct payment to the approved lawyer (or the relevant firm); or
 - (b) a reimbursement to the Council member or employee.

(2) General Principles

1. The City 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 City or otherwise in bad faith.
2. The City may provide such assistance in the following types of legal proceedings:
 - (a) proceedings brought by members and employees to enable them to carry out their local government functions (eg where a member or employee seeks a restraining order against a person using threatening behaviour);
 - (b) proceedings brought against members or employees [this could be in relation to a decision of Council or an employee which aggrieves another person (eg 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 (eg defamation actions)]; and
 - (c) statutory or other inquiries where representation of members or employees required or justified.
3. The City of Cockburn 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.
4. The legal services the subject of assistance under this policy will be provided by an approved lawyer, unless otherwise determined as being appropriate in the circumstances.

(3) Applications for Financial Assistance

1. Subject to clause (4) below, decisions for financial assistance under this policy are to be made by the Council.
2. 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.
3. An application to the Council 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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4. A member or employee requesting financial support for legal services, should ensure compliance with the financial interest provisions of the Local Government Act 1995.
5. Where there is a need for the provision of urgent legal services before an application can be considered by Council, the CEO may give an authorisation to the value of \$10,000 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.
6. Where it is the CEO who is seeking urgent financial support for legal services, the Council shall deal with the application.
7. This Policy may address the situation where council members and employees are interviewed during, or are required to give evidence to, an inquiry into the City. Determining whether financial assistance is given in these situations is one that will relate to the circumstances and reasons for the inquiry.

(4) Repayment of Assistance

1. Any amount recovered by a member or employee in proceedings, whether for costs or damages, will be offset against any monies paid or payable by the City.
2. 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.
3. Where assistance is so withdrawn, the person who obtained financial support is to repay any monies already provided. The local government may take action to recover any such monies in a court of competent jurisdiction.

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