2.14 LEGAL REPRESENTATION FOR COUNCIL MEMBERS AND CEO

Responsible Directorate	Corporate Services	
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CEO Policy Ref	Legal Representation for Employees Policy (CEO)	
Procedure Ref	N/A	

1. PURPOSE

This policy provides a framework to determine when it is appropriate for the Shire of Mundaring (the Shire) to pay reasonable legal expenses incurred by council members or the Chief Executive Officer (CEO) in the course of, or arising out of, the performance of their official functions.

2. SCOPE

This policy applies to council members or the CEO that meet the following criteria:

a. Legal representation costs must relate to a matter that arises from the performance by the council member or the CEO in undertaking their official duties or functions of their role;
b. Legal representation costs must be in respect of legal proceedings that have been or may be commenced;
c. In performing the functions of their role or undertaking their official duties, the council member or the CEO must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct; and
d. Legal representation costs must not relate to a matter that is of a personal or private matter.

3. DEFINITIONS

Act — the *Local Government Act 1995.*

applicant — person seeking legal representation as defined under this policy.

approved lawyer — is to be:

a. an Australian Legal Practitioner as defined under the *Legal Profession Uniform Law Application Act 2022*;
b. appointed in accordance with the Shire's "Purchasing Policy";

	c. from a law firm on the WALGA panel of legal service provider, unless Council considers this is inappropriate due to a conflict of interest or insufficient experience; and d. approved in writing by the Council or the CEO under delegated authority, e. or another suitably qualified legal practitioner approved by Council where specialist expertise is required, including integrity, employment, election, governance or work health and safety matters
CEO	the Chief Executive Officer who is the most senior employee in the organisation. The CEO is appointed by and directly accountable to the Council.
Code of Conduct	the Shire's adopted "Code of Conduct for Council Members, Committee Members and Candidates" as required by the *Local Government (Model Code of Conduct) Regulations 2021*.
Code of Conduct for Employees	the Shire's adopted "Code of Conduct for Employees" policy.
court proceedings	A course of action through which a party seeks to use the power of a court/tribunal to enforce a law or take legal action against another party.
council member	a person elected under the Act as a member of Council. The Shire's council members includes the Shire President, Deputy Shire President and Councillors (as defined by the Act).
department inquiry	an inquiry initiated under section 8.3 of the Act.
financial assistance	the provision of money by the Shire to pay the whole or part of the cost of legal services, such as but not limited to, fees and disbursements properly incurred while receiving legal representation.
improper conduct	in this policy describes conduct which would be appropriate to be reported to the Corruption and Crime Commission as corruption or improper conduct.
inquiry	a department inquiry or a panel inquiry under Part 8 of the Act.

legal proceedings	civil, criminal or investigative proceedings brought in a court, tribunal or authorised body within the jurisdiction of Western Australia.
legal representation	the provision of legal services, to or on behalf of a council member or the CEO, by an approved lawyer in accordance with this policy.
legal representation costs	costs, including fees and disbursements, properly incurred in providing legal representation.
legal services	includes advice, required attendance at legal proceedings or inquiries, legal proceedings representation or documentation provided by an approved lawyer.
payment	a payment by the Shire for legal representation costs, that may be either by: a. a direct payment to the Approved Lawyer (or the relevant firm); or b. a reimbursement to the council member or the CEO.
Public Interest	means consideration of whether the proposed expenditure is consistent with the good government of the district, community confidence in local government decision-making, transparency, accountability and the efficient discharge of local government functions.
WALGA	Western Australian Local Government Association

4. POLICY

Section 9.56 of the *Local Government Act 1995* provides protection from actions of tort for anything a council member or the CEO has, in good faith, done in the performance or purported performance of a function under the Act or under any other written law.

Under the provisions of section 6.7(2) a Council can expend funds to provide legal representation for council members or the CEO, as long as the local government believes on reasonable grounds that the expenditure does provide for the good government of the persons in its district. In each case it will be necessary to determine whether assistance with legal fees and expenses are justified for the good government of the district.

In all circumstances, the applicant must refer the matter to the Local Government Insurance Scheme for assessment in respect of claims against them personally. Should the cover not provide legal representation, the conditions of this policy apply.

4.1. Eligibility

A person is eligible to make application for legal representation under this policy if that person is a council member or the CEO.

For the purposes of this policy, council member and CEO may be expanded to include a current or former commissioner, former council members, former CEO and external members of committees established under section 5.8 of the Act.

4.2. Provision of financial assistance for legal representation costs

4.2.1. If the criteria set out in the scope of this policy are satisfied, the Shire may approve the payment of legal representation costs:

a. where legal proceedings are brought or threatened against a council member or the CEO in connection with the functions of their role or in undertaking their official duties (including but not limited to, an action for defamation, negligence or a work health and safety matter arising out of a decision made or action taken by the council member or the CEO); or

b. to enable legal proceedings to be commenced and/or maintained by a council member or the CEO to permit them to carry out the functions of their role or to undertake their official duties - for example, where a council member or the CEO seeks to take action to obtain a restraining order against a person using threatening behaviour to the council member or the CEO; or

c. in exceptional circumstances, including but not limited to, where a person or organisation, in the opinion of Council, is lessening the confidence of the community in the local government by publicly making adverse personal comments about council members or the CEO.

d. The Shire may also consider applications arising from:

i. online abuse or harassment;
ii. defamatory social media content;
iii. threatening communications;
iv. stalking;
v. intimidation;
vi. psychosocial hazards arising from the performance of official duties;
vii. matters involving the personal safety of a Council Member or the CEO

4.2.2. The Shire will not approve, unless under exceptional circumstances, the provision of financial assistance for legal representation costs:

a. for a defamation action, or negligence action, instituted by a council member or the CEO;

b. in circumstances where a council member or the CEO is seeking to initiate legal action against another council member; or

c. in circumstances where a council member or the CEO is defending legal action initiated by another council member.

Exceptional circumstances are defined as including but not limited to:

i. where a person or organisation in the opinion of the council, is lessening the confidence of the community and the local government by adverse personal comments about council members or the CEO; and/or
ii. where adverse personal comments about a member or the CEO may have the potential to cause psychosocial risks to the health of the member or the CEO.

4.2.3. The Shire will not ordinarily provide financial assistance where the primary purpose of the legal representation is to defend allegations of serious misconduct, corruption, unlawful conduct or breaches of statutory obligations that are the subject of investigation by:

d. the Corruption and Crime Commission;
e. the Public Sector Commission;
f. an authorised investigator appointed under the *Local Government Act 1995*; or
g. any Court, Tribunal or law enforcement agency.

4.2.4. Council may approve assistance where exceptional circumstances exist and Council is satisfied that:

a. the expenditure is in the public interest;
the application does not undermine the integrity of any investigation or inquiry; and
b. there is a reasonable basis for the provision of assistance.

4.3. Application for payment

A council member or the CEO (the applicant) who seeks assistance under this policy is to make an application, in writing, to the Council.

4.3.1. The application for payment of legal representation cost 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 the CEO making the application;
c. the lawyer (or law firm) who is asked to provide legal representation;
d. the nature of the legal services to be sought (such as advice, representation in court, preparation of a document etc.);
e. an estimated cost of the legal representation; and
f. the reasons why it is in the interests of the Shire for the payment to be made.

4.3.2. The application is to contain a statutory declaration made by the applicant that they have:

a. acted in good faith in undertaking the functions of their role or their official duties;
b. not acted unlawfully or in a way that constitutes improper conduct (e.g. failure to adhere to relevant "Code of Conduct") in relation to the matter to which the application relates; and
c. that there are no circumstances known to the applicant which would render those representations untrue.

4.3.3. The application is to be accompanied with a signed written statement by the applicant that they:

a. have read, and understand, the terms of this policy;
b. acknowledge that any approval of legal representation costs is conditional on the repayment provision of clause 4.7 below and any other conditions to which the approval is subject;
c. undertakes to repay the Shire any legal presentation costs in accordance with the provisions of clause 4.7; and
d. acknowledge that the provisions of 4.7 apply in respect to repayment of Legal Representation Costs.

As far as possible, the application is to be made before the commencement of the legal representation to which it relates. In the event that the application is not made in advance, details of the services previously provided and the explanation for there being no application in advance;

All applications are to be confidential. Where applications are to be considered by Council, the meeting will be closed to the public in accordance with section 5.23(2) of the Act.

When presented to Council, an application is to be accompanied by a report and recommendation prepared by the CEO or where the CEO is the applicant, by the Director Corporate Services.

For applications by the CEO exceeding $20,000, Council may resolve to obtain independent legal advice or an independent governance assessment before determining the application.

4.4. Legal representation costs – limit

Council shall set a limit on the legal representation cost to be paid based on the estimated costs in the application when approving an application in accordance with this policy.

A council member or the CEO may make further application to the Council in respect of the same matter.

4.5. Council powers

4.5.1. In considering an application for payment of legal representation costs Council may:

a. refuse;
b. approve;
c. approve, subject to conditions.

4.5.2. Conditions under 4.5.1(c) may include, but are not restricted to, 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. Council may require execution of a funding agreement before any legal costs are paid, including provisions relating to reporting, repayment, recovery and cost controls.

4.5.3. In assessing an application, Council may have regard to any insurance benefits that may be payable to the applicant under the Shire's council members or employees' insurance policy or equivalent.

4.5.4. Council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.

4.5.5. Council may, on the basis of, and consistent with, the findings of a court, tribunal or inquiry, determine that a council member or the CEO whose application for legal representation costs were approved has, in respect of the matter for which legal representation 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 respect of the application.

4.5.6. Where Council makes a determination under clause 4.5.5, the legal representation costs paid by the Shire are to be repaid by the council member or the CEO in accordance with clause 4.7.

4.5.7. The outcomes of legal representation and expenditure is to be reported to Council.

4.6. Authorisation to Chief Executive Officer

4.6.1. In cases where a delay in the approval of an application will be detrimental to the legal rights of the applicant, the CEO may exercise, on behalf of Council, any of the powers of the Council under clause 4.5.1 and 4.5.2, to a maximum of $20,000 in respect to each application.

4.6.2. An application approved by the CEO under 4.6.1 is to be submitted to the next ordinary meeting of Council and Council may exercise any of its powers under this policy, including its powers under clause 4.5.4 in respect of that application.

4.6.3. In circumstances where the applicant is defending legal action taken by the CEO against the applicant, Council may exercise the powers of clause 4.6.1 at a Special Council Meeting.

4.7. Repayment of Legal representation costs

A council member or the CEO whose legal representation costs have been paid by the Shire is to repay the Shire:

a. all or part of those costs, in accordance with a determination by the Council under clause 4.5.6;
b. as much of those costs as are available to be paid by way of set-off; where the council member receives monies paid for costs, damages, or settlement, in respect of the matter for which the Shire paid the legal representation costs.

The Shire may take action in a court of competent jurisdiction to recover any monies due to it under this policy.

4.8. Conflict of Interest

Where an applicant is a Council Member:

a. the applicant must disclose any interest in the matter in accordance with the *Local Government Act 1995*;
b. the applicant must not participate in Council's consideration of the application;
c. the applicant must leave the meeting room while the matter is considered;
d. Council shall consider whether any impartiality interest exists for any other Council Member participating in the decision.

5. RELATED LEGISLATION

Local Government Act 1995 section 9.56

Corruption, Crime and Misconduct Act 2003

Work Health and Safety Act 2020

6. RELATED DOCUMENTS

Code of Conduct for Council Members, Committee Members and Candidates 1.1

Code of Conduct for Employees CEO Policy 4.15