

POLICY 8-7 – LEGAL REPRESENTATION FOR ELECTED MEMBERS, **the CEO AND EMPLOYEES**

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| STATUS: | City Policy - <i>A policy that is developed for administrative and operational imperatives and has an internal focus.</i> <i>Developed by the Policy Committee and/or the administration and adopted by Council.</i> |
| RESPONSIBLE DIRECTORATE: | Office of the CEO |
| OBJECTIVE: | <p>Under the <i>Local Government Act 1995</i>, the City's 'good government' powers allow it, in appropriate circumstances, to pay for the Legal Representation Costs of an individual Elected Member, the CEO or Employee.</p> <p>This Policy sets out guidelines to assist the Council and City in determining when it is appropriate to pay Legal Representation Costs.</p> <p>This Policy does not cover legal representation provided to, or on behalf of, the City.</p> |

STATEMENT:

1 Payment Criteria

There are three major criteria for determining whether the City should pay the Legal Representation Costs of an Elected Member, **the CEO** or an Employee. These are:

- (a) the Legal Representation Costs must relate to a matter that arises from the performance, by the Elected Member, **the CEO** or Employee, of his or her functions;
- (b) the Legal Representation Costs must be in respect of Legal Proceedings that have been, or may be, commenced; and
- (c) in performing his or her functions, to which the Legal Representation relates, the Elected Member, **the CEO** or Employee must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct.

2 Examples of Legal Representation Costs that may be approved

- 2.1 If the criteria in section 1 are satisfied, **the CEO or Council** may approve the Payment of Legal Representation Costs:

- (a) where proceedings are brought **against** an Elected 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 Elected Member, **the CEO** or Employee; or
- (b) for involvement in a statutory or other inquiry that requires information to be given, or to which information is given, by an Elected Member, **the CEO** or Employee in connection with his or her functions.

2.2 This policy does not relate to situations where legal proceedings are commenced by an Elected Member, **the CEO** or Employee and there is a presumption that the City will not pay for legal representation costs in these circumstances. However this policy does not preclude such a request being submitted and considered by the Council for extenuating circumstances where the Elected Member, **the CEO** or Employee is the subject of threatening behaviour by another person.

2.3 The City will not approve the Payment of Legal Representation Costs to an Elected Member, **the CEO** or Employee for a defamation action, or a negligence action, instituted by the Elected Member, the CEO or Employee.

3 Application for payment by an Elected Member, the CEO or an Employee

3.1 An Elected Member or **the CEO** may seek assistance by making an application(s) for Payment of Legal Representation Costs to Council.

3.2 An Employee may seek assistance by making an application(s) for Payment of Legal Representation Costs to the CEO.

3.3 Any application **made under sections 3.1 or 3.2:**

- (a) is to be made in writing to the Council **if it relates to an Elected Member or the CEO, or to the CEO if it relates to an Employee;** and
- (b) is to give details of:
 - (i) the matter for which Legal Representation is sought;
 - (ii) how that matter relates to the functions of the relevant Elected Member, **the CEO** or Employee;
 - (iii) the lawyer (or law firm) who is to be asked to provide the Legal Representation;
 - (iv) the nature of Legal Representation to be sought (such as advice, representation in court, preparation of a document etc); and
 - (v) the estimated cost (if known) of the Legal Representation.

- (c) is to contain a declaration by the applicant that he or she has acted in good faith, and has not acted unlawfully or in a way that constitutes improper conduct in relation to the matter to which the application relates; and
 - (d) so far as possible, is to be made before seeking the Legal Representation to which the application relates.
- 3.4 The application is to be accompanied by a written statement by the applicant that he or she:
 - (a) has read, and understands, the terms of this Policy;
 - (b) acknowledges that any approval of Legal Representation Costs is conditional on the repayment provisions of section 8 and any other conditions to which the approval is subject; and
 - (c) undertakes to repay to the City any Legal Representation Costs in accordance with the provisions of section 8.
- 3.5 An application for an Elected Member or the CEO is also to be accompanied by a report prepared by or on behalf of the CEO or, where the CEO is the applicant, by the Director Corporate Services.

4 Employee entitlement to payment when performing day-to-day operations

- 4.1 All Employees are entitled to Payment for Legal Representation Costs by the City in circumstances where the action arose from the Employee performing their day-to-day functions.
- 4.2 The entitlement above is subject to confirmation of the circumstances outlined in section 1 of this Policy by the CEO and completion of the application process outlined in section 3 of this Policy.

5 Legal Representation Costs - limit

- 5.1 Unless otherwise determined by the Council, or by the CEO under clause 4.2, payment of Legal Representation Costs in respect of a particular application is not to exceed \$6,000.
- 5.2 An Elected Member, the CEO or an Employee under clause 4.2, may make a further application to the Council or the CEO in respect of the same matter, however, any additional applications must be accompanied by an estimate from the selected legal representative as to the costs required to complete the legal action.

6 Council and CEO powers

- 6.1 The Council or the CEO may:
 - (a) refuse;
 - (b) grant; or

- (c) grant subject to conditions, including a financial limit,

an application for payment of Legal Representation Costs brought before it/he/she.
- 6.2 A condition under clause 6.1 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.
- 6.3 In assessing an application, the City may have regard to any insurance benefits that may be available to the applicant under the City's Councillors and Officers insurance policy (or its equivalent).
- 6.4 The Council or the CEO may, subject to clause 6.5, determine that an Elected Member, the CEO or Employee whose application for Legal Representation Costs has been 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.
- 6.5 A determination under clause 6.4 may be made by the Council or the CEO only on the basis of, and consistently with, the findings of a court, tribunal or inquiry.
- 6.6 The Council or the CEO may at any time revoke or vary an approval, or any conditions of approval, for the payment of Legal Representation Costs previously brought before it/he/she, if doing so is consistent with a finding under clause 6.5.
- 6.7 Where the Council or the CEO makes a determination under clause 6.4, it may also determine that all or part of the Legal Representation Costs paid by the City are to be repaid by the Elected Member, the CEO or Employee in accordance with section 8.

7 CEO Powers in cases of urgency

- 7.1 In cases of urgency, the CEO may exercise, on behalf of the Council, any of the powers of the Council under clauses 6.1 and 6.2, to a limit of \$6,000, where a delay in approving an application would be detrimental to the legal rights of an Elected Member.
- 7.2 Where the CEO is the applicant, the powers in clause 7.1 are to be exercised by the Director Corporate Services.
- 7.3 An application approved by the CEO under clause 7.1, or by the Director Corporate Services under clause 7.2, is to be submitted to the next meeting of the Council which may exercise any of its powers under this Policy, including its powers under clause 6.4.

8 Repayment of Legal Representation Costs

8.1 An Elected Member, **the CEO** or Employee 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 clause 6.7; or
- (b) as much of those costs as are available to be paid by way of set-off – where the Elected Member, **the CEO** or Employee receives monies paid for costs, damages, or settlement, in respect of the matter for which the City paid the Legal Representation Costs.

8.2 The City may take action in a court of competent jurisdiction to recover any monies due it under this Policy.

Explanation of Key Terms

Approved Lawyer is to be:

- (a) a 'certificated practitioner' under the *Legal Practice Act 2003*; and
- (b) approved in writing by the Council.

CEO means a current or former Chief Executive Officer of the City.

Elected Member means a current or former Commissioner or Elected Member of the City.

Employee means a current or former Employee of the City.

Legal Proceedings may be civil, criminal or investigative (including an inquiry under any written law).

Legal Representation is the provision, to or on behalf of an Elected Member or Employee, by an Approved Lawyer of Legal Services that are in respect of:

- (a) a matter or matters arising from the performance of the functions of the Elected Member or Employee; and
- (b) Legal Proceedings involving the Elected Member, the CEO or Employee that have been, or may be, commenced.

Legal Representation Costs are the costs, including fees and disbursements, properly incurred in providing Legal Representation.

Legal Services includes advice, representation or documentation that is provided by an Approved Lawyer.

Payment by the City of Legal Representation Costs may be either by:

- (a) a direct payment to the Approved Lawyer (or the relevant law firm); or
- (b) a reimbursement to the Elected Member, the CEO or Employee.

Amendments: CJ213-06/99, CJ001-02/01, CJ136-06/04,
CJ206-10/05, CJ207-10/07, CJ199-09/08

Related Documentation:

Issued: October 2008

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STATEMENT:

1 Payment Criteria

There are three major criteria for determining whether the City should pay the Legal Representation Costs of an Elected Member or Employee. These are:

- (a) the Legal Representation Costs must relate to a matter that arises from the performance, by the Elected Member or Employee, of his or her functions;
- (b) the Legal Representation Costs must be in respect of Legal Proceedings that have been, or may be, commenced; and
- (c) in performing his or her functions, to which the Legal Representation relates, the Elected Member or Employee must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct.

2 Examples of Legal Representation Costs that may be approved

- 2.1 If the criteria in clause 1 are satisfied, the City may approve the Payment of Legal Representation Costs:

- (a) where proceedings are brought **against** an Elected 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 Elected Member or Employee; or
- (b) for involvement in a statutory or other inquiry that requires information to be given, or to which information is given, by an Elected Member or Employee in connection with his or her functions.

2.2 This policy does not relate to situations where legal proceedings are commenced by an Elected Member or Employee and there is a presumption that the City will not pay for legal representation costs in these circumstances. However this policy does not preclude such a request being submitted and considered by the Council for extenuating circumstances where the Elected Member or Employee is the subject of threatening behaviour by another person.

2.3 The City will not approve the Payment of Legal Representation Costs to an Elected Member or Employee for a defamation action, or a negligence action, instituted by the Elected Member or Employee.

3 Application for payment

3.1 An Elected Member or Employee who seeks assistance under this Policy is to make an application(s) for Payment of Legal Representation Costs.

3.2 The application:

- (a) is to be made in writing to the Council; and
- (b) is to give details of:
 - (i) the matter for which Legal Representation is sought;
 - (ii) how that matter relates to the functions of the relevant Elected Member or Employee;
 - (iii) the lawyer (or law firm) who is to be asked to provide the Legal Representation;
 - (iv) the nature of Legal Representation to be sought (such as advice, representation in court, preparation of a document etc); and
 - (v) the estimated cost (if known) of the Legal Representation.
- (c) is to contain a declaration by the applicant that he or she has acted in good faith, and has not acted unlawfully or in a way that constitutes improper conduct in relation to the matter to which the application relates; and

- (d) so far as possible, is to be made before seeking the Legal Representation to which the application relates.

3.3 The application is to be accompanied by a written statement by the applicant that he or she:

- (a) has read, and understands, the terms of this Policy;
- (b) acknowledges that any approval of Legal Representation Costs is conditional on the repayment provisions of clause 7 and any other conditions to which the approval is subject; and
- (c) undertakes to repay to the City any Legal Representation Costs in accordance with the provisions of clause 7.

3.4 An application is also to be accompanied by a report prepared by or on behalf of the CEO or, where the CEO is the applicant, by the Director Corporate Services and Resource Management.

4 Legal Representation Costs - limit

4.1 Unless otherwise determined by the Council, payment of Legal Representation Costs in respect of a particular application is not to exceed \$6,000.

4.2 An Elected Member or Employee may make a further application to the Council in respect of the same matter.

5 Council's powers

5.1 The Council may:

- (a) refuse;
- (b) grant; or
- (c) grant subject to conditions, including a financial limit,

an application for payment of Legal Representation Costs.

5.2 A condition under clause 5.1 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.

5.3 In assessing an application, the City may have regard to any insurance benefits that may be available to the applicant under the City's Councillors and Officers insurance policy (or its equivalent).

5.4 The Council may at any time revoke or vary an approval, or any conditions of approval, for the payment of Legal Representation Costs.

- 5.5 The Council may, subject to clause 5.6, determine that an Elected Member or Employee whose application for Legal Representation Costs has been 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.
- 5.6 A determination under clause 5.5 may be made by the Council only on the basis of, and consistently with, the findings of a court, tribunal or inquiry.
- 5.7 Where the Council makes a determination under clause 5.5, it may also determine that all or part of the Legal Representation Costs paid by the City are to be repaid by the Elected Member or Employee in accordance with clause 7.

6 CEO's powers

- 6.1 In cases of urgency, the CEO, subject to clause 6.2, may exercise, on behalf of the Council, any of the powers of the Council under clauses 5.1 and 5.2, to a limit of \$6,000, where a delay in approving an application would be detrimental to the legal rights of an Elected Member or Employee.
- 6.2 Where the CEO is the applicant, the powers in clause 6.1 are to be exercised by the Director Corporate Services and Resource Management.
- 6.3 An application approved by the CEO under clause 6.1, or by the Director Corporate Services and Resource Management under clause 6.2, is to be submitted to the next meeting of the Council which may exercise any of its powers under this Policy, including its powers under clause 5.4.

7 Repayment of Legal Representation Costs

- 7.1 An Elected Member or Employee 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 clause 5.7; or
 - (b) as much of those costs as are available to be paid by way of set-off – where the Elected Member or Employee receives monies paid for costs, damages, or settlement, in respect of the matter for which the City paid the Legal Representation Costs.

- 7.2 The City may take action in a court of competent jurisdiction to recover any monies due it under this Policy.

Explanation of Key Terms

Approved Lawyer is to be:

- (a) a 'certificated practitioner' under the *Legal Practice Act 2003*; and
- (b) approved in writing by the Council.

Elected Member or Employee means a current or former Commissioner, Elected Member, or Employee of the City.

Legal Proceedings may be civil, criminal or investigative (including an inquiry under any written law).

Legal Representation is the provision, to or on behalf of an Elected Member or Employee, by an Approved Lawyer of Legal Services that are in respect of:

- (a) a matter or matters arising from the performance of the functions of the Elected Member or Employee; and
- (b) Legal Proceedings involving the Elected Member or Employee that have been, or may be, commenced.

Legal Representation Costs are the costs, including fees and disbursements, properly incurred in providing Legal Representation.

Legal Services includes advice, representation or documentation that is provided by an Approved Lawyer.

Payment by the City of Legal Representation Costs may be either by:

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