

**POLICY 2.2.8 – LEGAL REPRESENTATION FOR ELECTED
MEMBERS AND EMPLOYEES**

OBJECTIVE

Under the *Local Government Act 1995*, the City's 'good government' powers allow it, in appropriate circumstances, to pay for the Legal Representation Costs of an individual Elected Member or Employee.

This Policy sets out guidelines to assist the Council in determining when it is appropriate to pay Legal Representation Costs.

This Policy does not cover legal representation provided to, or on behalf of, the City.

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.

Section 2.2 – Governance

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 or Employee.

GUIDELINES

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.

Section 2.2 – Governance

- 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;

Section 2.2 – Governance

- (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 \$5,000.
- 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

Office of the Councillor

ATTACHMENT 2

WHITFORDS WARD - Councillor Carol Mackintosh
(Suspended)City of
Joondalup

DATE 22 September '04 . YOUR REF

Phone/Fax: 9307 9851 4927
Mobile: 0407 385 826

ENQUIRIES

OUR REF

Dear Mr. Robinson,

Application to the City of Joondalup for Legal funding assistance for Carol Jane Mackintosh for Statutory Inquiry into the City of Joondalup.

Further to our conversation of today, please place before the City's Commissioners my application for additional funding of \$2,500 (please refer documentation from Lloyd Associates already submitted 21/9/04).

My application is based on the following:

- 1) The matters indicated in the Inquiry's Terms of Reference relate to the functions of my position as an Elected Member of the City of Joondalup.
- 2) The lawyer, I wish to represent me, is Mr Ron Birmingham QC of Law firm, Lloyd Associates.
- 3) The additional application of \$2,500 (over and above the initial \$5000 granted) represents representation for me, for one day of the hearing, and preparation of documents. At this stage, I have been advised I am required to attend the hearing on 23rd November 2004

City of Joondalup DOCUMENT REGISTRATION	
Reference #	: 72559 01173
Letter #	: 433245
Action Officer	: MABS CC: AES02 CEO
Date Received	: 22/09/2004
Action Required	: ACTION

- 4) All matters in which I have been involved as an Elected Member of the City Of Joondalup have involved acts and omissions performed in good faith and I so declare.
- 5) I have read and understand the City's Policy 2.2.8 and base this further application upon its conditions

Yours sincerely,
CJ Macintosh.

8. Vouchase Place
Kallaroo. 6025.

Please be advised, I am presently unavailable by e-mail. I can be contacted by phone, or fax, until further notice.

Fax

9400 4569

ATTACHMENT 3

City of Joondalup DOCUMENT REGISTRATION
Reference # : 72559
Letter # : 432085
Action Officer : MAES CC: AES02 CEO
Date Received : 24/09/2004
Action Required: ACTION

Paul Kimber
Suspended Councillor
Lake Side Ward
City of Joondalup
3 Coldlake Court
Joondalup WA 6027
pkimber@fesa.wa.gov.au
kimber@bigpond.net.au

September 22, 2004.

Mr Kevin Robinson
Manager Corporate Affairs
City of Joondalup
Boas Avenue
Joondalup WA 6027

Dear Kevin,

RE: Application to the City of Joondalup for Legal Funding assistance for Paul Kimber Councillor (Suspended) with respect to the Statutory Inquiry into the City of Joondalup.

I respectfully request that this letter be placed before the City's Commissioners seeking additional legal funding assistance of \$5000.00 with respect to my legal representation during the fore mentioned inquiry.

I foreshadow this application to the City based on the attached advice received from my instructing Solicitor which suggests that my legal representation fees may exceed the sum of \$5000 already approved by the City of Joondalup.

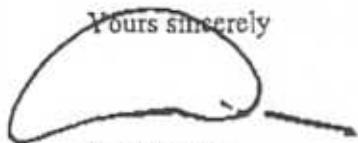
I have instructed my solicitor to provide services to me up to the amount of \$5000 and should any further representation be required, then this application would be placed before the Commissioners for approval.

My application for further funding assistance is also based on the following:

1. The matters indicated in the inquiry terms of reference relate to the functions of my position as an elected member of the City of Joondalup during the period specified.
2. The terms of reference indicate that I may be required to provide evidence on more than one occasion which may incur costs over and above the \$5000 previously granted.
3. I have instructed my Solicitor to engage the services of Mr Ron Birmingham QC of Law Firm, Lloyd and Associates who will require significant funding for his services.
4. I have been summonsed to appear before the inquiry on the 18th of October 2004 which will require legal representation.

5. As an elected member of the City of Joondalup, all matters I have been involved have been acts and omissions performed in good faith exercising duty of care and I so declare;
6. I have read and understand the City of Joondalup Policy 2.2.8 and base this application upon its conditions.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Paul Kimber', written over a horizontal line.

Paul Kimber
Cr (Susp) Lakeside Ward.

ATTACHMENT 4

City of Joondalup DOCUMENT REGISTRATION
 Reference # : 72559 01173
 Letter # : 433246
 Action Officer : MAES CC: AES02 CEO
 Date Received : 27/09/2004
 Action Required: ACTION

Mike O'Brien JP
 45 Aberdare Way
 WARWICK WA 6024
 Phone/Fax or Message 61(08) 9448 1717
 Mobile 0438 948 001
 Email: obrienclan@iinet.net.au

Mike O'Brien JP

Monday 27th September 2004

The Acting CEO
 The City of Joondalup
 Davidson Terrace

JOONDALUP WA 6027

Good Evening,

Application for further Funding - McIntyre Inquiry into the City of Joondalup
and matter of City's Indemnity Insurance as Late Items for Commissioners.

Please place before the City's Commissioners my application for further funding of Legal Representation based on the following:

1. The matters indicated in the Inquiry's Terms of Reference relate to the functions of my position as an Elected Member of the City of Joondalup.
2. The QC, who has been granted leave to appear for me and to represent me is Mr Ron Birmingham instructed by Sn Lloyd of the Law Firm Lloyd and Associates Barristers Solicitors And Mediators all accounts will be submitted by Sn Lloyd and Associates.
3. The Nature of the Legal Representation sought is, but not limited to, legal advice, representation before the Inquiry Panel, preparation of Submission to the Inquiry, cross examination of witnesses giving evidence to the inquiry, the instructing of Senior Counsel and appearance of Senior Counsel on my behalf, if and when required for protection of my interests during the course of the Inquiry and/or related Legal Proceedings and/or other matters related to my function as an Elected Member of the Municipality of The City of Joondalup.
4. The estimated cost will be the rate per hour charged by Sn Lloyd and which has been indicated in a letter dated 8th September 2004 to me from Lloyd and Associates which was faxed to Mr Kevin Robinson on 9th September 2004.
5. Today's proceedings indicate some concerns, that some "abnormal delays" are occurring as a result of "uncertainty" for Counsel instructed by witnesses being unable to predict when evidentiary documents in which particular witnesses may or may not have an interest are likely to be introduced.
6. The "uncertainty" rests to a large extent in that Counsel Assisting the Inquiry has mentioned a matter of there being some 4,039 documents resulting from the 2nd July advertised date for documents to be submitted, and it seems, some of which may be duplicated but all of which, it seems, at this stage, haven't been made available in CD ROM

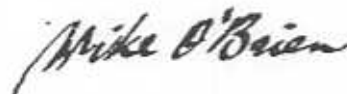
September 27, 2004

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format or in an indexed list for interested and summoned parties, thereby making it an impossibility for witnesses to instruct their legal representatives other than at the moment having to have their legal representatives present for each moment the inquiry is in session in order to protect the interests of their client by being ready to cross examine after evidence in chief has taken place in matters of documents not covered by usual "discovery" in other proceedings.

7. Such funding is in the interests of the City in order that Good Government continues to prevail within the City's Boundaries and Elected Members are able to participate without fear or favour from particular phases of political group's activities within and without the City's Boundaries.
8. All matters in which I have been involved as an Elected Member of the City of Joondalup have involved acts and omissions performed in good faith and I so declare.
9. I have read and understand the City's Policy 2.2.8. and I am aware that there is a "Policy" cap limit of \$5,000.00 affecting this application and any further extension above the current Policy cap would require additional consideration by the Commissioners.
10. It is hoped that funding may be covered by the City's insurance with Ace International.
11. May I be informed whether it is the City that is required to lodge a claim with the insurer, or the individual Elected Member and may I have a copy of the City's Insurance Policy which I understand is with Ace International.
12. I authorise the City's Officers to obtain an up to date cost and anticipated further cost estimates by direct contact with Su Lloyd by telephone on 9323 7787 and to let me know when any further application may be necessary.
13. It is hoped that an "observation from the Bench" by the Inquirer during tomorrow's proceedings regarding the availability of documents may alleviate the necessity for attendance by my Legal Representative QC and my Instructing Solicitor during each day of future proceedings and costs to the City may be reduced by the fact that the same Legal Team of QC and Instructing Solicitor have been granted leave to appear on behalf of two other Elected Members, thereby hopefully reducing costs.

Sincerely



Mike O'Brien JP

Cc. Su Lloyd and Associates