
**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.

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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.

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- 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;

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- (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

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(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 \$2,000, 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.

Previous Policy No:	A2-12, EM15
Amendments:	CJ213-06/99, CJ001-02/01, CJ136-06/04
Issued:	July 2004
Related Documentation:	

00338

Allison Walker
27 Sweeney Way
Padbury 6025
9401 0089
9/2/05

To the Commissioners of the City of Joondalup,

APPLICATION FOR FURTHER FUNDING FOR LEGAL REPRESENTATION

Under Policy 2.2.8 I hereby apply for further funding for legal representation, as I am still involved and I am required to appear before the Panel Inquiry into the City of Joondalup.

The matter relates to me because :-
I am a Councillor (Suspended as of 5/12/03),
I was a member on the various committees to which the Inquiry directly and indirectly relates,
I was a member of the council when the various decisions were made that relate to this panel Inquiry

My legal adviser is Mr. Tony Heaver Wren of the Law Firm Phillips Fox.

I intend to seek advice, and support in the inquiry, and whatever else I feel I am unable to do for myself

I have already applied for and been granted an amount of \$5000.00, however, as this inquiry has become particularly protracted, and will continue for some time to come, and as there is some uncertainty regarding the insurance policy and its parameters, I am seeking a further funding at this time of up to \$2500.00, as my involvement with the inquiry is not yet completed, and I still require legal assistance.

I declare that, to my knowledge, I have always acted in good faith, and I have not acted unlawfully in any way that constitutes improper conduct to the matter to which this application relates.

I have read the policy and I understand the terms of the policy, and if I am granted any set off or if my costs are otherwise paid for, I will, of course, repay any moneys that may have been advanced to me by the council in accordance with clause 7 of Policy 2.2.8.

I will undertake to repay the council any representation costs in accordance with the provisions of clause 7 of Policy 2.2.8

Yours Faithfully,



Allison Walker

5 January 2005

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Mr Clayton Higham
Acting Chief Executive Officer
City of Joondalup
PO Box 21
JOONDALUP WA 6919

Dear Mr Higham

**LEGAL REPRESENTATION BEFORE THE INQUIRY – COUNCIL
POLICY 2.2.8**

I refer to Policy 2.2.8 – Legal Representation for Elected Members and Employees.

I am a current employee who has been issued with a summons to appear before the Inquiry into the City of Joondalup and wish to make an application for legal funding pursuant to Policy 2.2.8 for the forthcoming Inquiry.

I declare that the matters indicated in the Terms of Reference relate to functions of my position as an officer of the City in the role of Manager Marketing, Communications & Council Support Services. It is envisaged that the nature of the legal representation will be legal advice, representation before the Inquiry Panel hearing, and cross examination of witnesses giving evidence to the Inquiry.

At its meeting held on 10 September 2004, the Joint Commissioners resolved that: -

- 1 the Joint Commissioners DETERMINE that, notwithstanding Policy 2.2.8 relating to legal representation of elected members and employees in recognition of the special nature of an Inquiry and the duty that the City has to current employees, the City undertakes to provide legal assistance for current employees to the extent that they have acted within the scope of their functions and duties;
- 2 the legal assistance in 1 above is expected to be provided for all employees through the services of one law firm and extends to appearing on behalf of the City at the Inquiry to the extent necessary to assist employees with their evidence if this is necessary and if the Presiding Member of the Inquiry gives permission for this to occur;

- 3 the legal assistance in 1 above is only to be accessed after an employee has signed a declaration to the effect that:
 - (a) he or she has acted in good faith and has not acted unlawfully or in a way that constitutes improper conduct in relation to matters that are the subject of the terms of reference of the Inquiry and;
 - (b) that he or she is aware that the legal assistance will be terminated if it becomes apparent to the Lawyer appointed by the City that he or she has acted improperly outside the scope of their proper functions and duties;
- 4 in addition to the legal assistance provided in 1 above, employees continue to have access to Policy 2.2.8;
- 5 the Human Resources Manager be advised of this determination and provided with an opportunity to withdraw (in writing) his previous application under the Policy if he wishes to do so;
- 6 the Chief Executive Officer be requested to arrange for McLeod's to undertake to provide the legal assistance in 1 above and that this is advised to Counsel Assisting the Inquiry;
- 7 the arrangements and conditions applying to legal assistance to employees is advised to Counsel Assisting the Inquiry with the request that Council Assisting reviews the decision contained in the letter at Attachment 1 to JSC32-09/04 that the officers are not capable of being jointly represented;
- 8 in addition, the co-operation of the Inquiry is sought so that staff can be advised in advance, where this is possible, if questioning is anticipated to relate to the possibility that staff have acted improperly outside the scope of their proper functions and duties so that the staff have the opportunity to make alternative arrangements.

I initially intend to utilise the services of Mr McLeod of McLeods in accordance with the 10 September 2004 decision of the Joint Commissioners.

In terms of my legal representation before the Inquiry it should be noted that there may emerge issues that will involve a multiplicity of officers from the City whereby representation will not be possible to be performed by one practitioner. At this point in time it is not possible to be more precise.

Notwithstanding the above comment, Mr McLeod from Counsel Assisting will seek clarification on the matters and documents on which I will be examined. It is envisaged that once this information is obtained it will provide a clearer and more accurate assessment of any potential conflict of interest that may arise in terms of my representation by McLeods.

- 3 -

I am currently examining the possibility of lodging a claim pursuant Policy 05CH005534 held with Municipal Insurance Broking Services. I understand that to be eligible for indemnity under the policy there needs to be an allegation that I have committed a wrongful act. I have requested Mr McLeod to ascertain from Counsel Assisting of my position relating to any allegation of a wrongful act.

I declare that to the best of my knowledge I have acted in good faith and have not acted unlawfully or in a way that constitutes improper conduct in relation to the matter to which this application relates.

I have read and understand the terms of Policy 2.2.8. I acknowledge 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. I undertake to repay to the City any legal representation costs in accordance with the provisions of clause 7.

Please find attached my signed declaration pursuant to clause 3.3.

Yours sincerely



MICHAEL SMITH
Manager Marketing, Communications &
Council Support Services

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