

1.33 Legal Representation for Elected Members, Employees & Volunteers

Policy Owner	Executive Director Corporate & Commercial Services
Responsible Officer	Manager Governance & Risk
Date of Approval	02/07/2021
Amended/Revised	25/06/2024

Objective

This policy sets out guidelines and procedures to assist the City of Albany Council in determining when it is appropriate to pay Legal Representation Costs.

Scope

This policy and associated procedure does not cover legal representation provided to, or on behalf of, the City.

Policy Statement

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.

Approved Lawyer

The Approved Lawyer is to be:

- A 'certificated practitioner' under the *Legal Practice Act 2003*; and
- Approved in writing by the City of Albany.

Legal Proceedings

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

Legal Representation

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

Provision & Payment of Legal Services

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:

- Direct payment to the Approved Lawyer (or the relevant law firm); or
- Reimbursement to the Elected Member or Employee.

Legislative and Strategic Context

Relevant Strategic context (Community Strategic Plan) and/or Federal or State legislation, directives, guidelines, Acts or Regulations that provide the broad framework within which the policy operates and/or with which it needs to comply:

- *Local Government Act 1995*
 - Part 9 - *Miscellaneous provisions, Division 2 (Enforcement and legal proceedings)*.

Community Strategic Plan 2032:

- **Pillar:** Leadership. A well governed city that uses resources wisely to meet local needs.
- **Objective:** 14.2 Provide cost effective financial management and value for money.
- **Objective:** 15.1 Grow awareness, understanding and engagement in City projects, activities and decisions.

Review Position and Date

This policy and procedure is to be reviewed by the Document Owner annually, with the Delegations Register.

Associated Documents

Proceedings (Approve Representation & Legal Expenses), which allows for the authorisation of Legal Expenses for Council Members, Employees and Volunteers.

Definitions

Key terms and acronyms used in the policy, and their definitions:

- **Legal Representation Costs** are the costs, including fees and disbursements, properly incurred in providing Legal Representation.
- **Elected Member or Employee** means a current or former Commissioner, Elected Member, and Employee (which includes a registered and inducted volunteer with the City of Albany administration).

1.33 Legal Representation for Elected Members, Employees & Volunteers Procedure and Guidelines

Criteria A: Payment Criteria

There are three major criteria for determining whether the City should pay the Legal Representation Costs, these are:

- Criteria One (1): The Legal Representation Costs must relate to a matter that arises from the performance of their function as wither an elected member and or employee.
- Criteria Two (2): The Legal Representation Costs must be in respect of Legal Proceedings that have been, or may be, commenced; and
- Criteria Three (3): In performing their 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.

Criteria B: Examples of Legal Representation Costs that may be approved

If Criteria A is satisfied, the City may approve the Payment of Legal Representation Costs:

- Where proceedings are brought against an Elected Member or Employee in connection with their 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
- 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 their functions.

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.

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.

Criteria C: Application for payment

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

The application:

- Is to be made in writing to the City of Albany; and
- Is to give details of:
 - the matter for which Legal Representation is sought;
 - The matter for which Legal Representation is sought;
 - How that matter relates to the functions of the relevant Elected Member or Employee;
 - The lawyer (or law firm) who is to be asked to provide the Legal Representation;
 - The nature of Legal Representation to be sought (such as advice, representation in court, preparation of a document etc.); and

- The estimated cost (if known) of the Legal Representation.
- 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
- So far as possible, is to be made before seeking the Legal Representation to which the application relates.

The application is to be accompanied by a written statement by the applicant that they:

- Have read, and understands, the terms of this Policy;
- Acknowledged that any approval of Legal Representation Costs is conditional on the repayment provisions of **criteria G** and any other conditions to which the approval is subject; and
- Undertakes to repay to the City any Legal Representation Costs in accordance with the provisions of **Criteria G**.

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 **Executive Director Corporate & Commercial Services**.

Criteria D: Legal Representation Costs – limit

Unless otherwise determined by the Council, payment of Legal Representation Costs in respect of a particular application is not to exceed \$10,000.

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

Criteria E: Council's powers

The Council may:

- Refuse;
- Grant; or
- Grant subject to conditions, including a financial limit, an application for payment of Legal Representation Costs.

A condition under **Criteria E** 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.

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).

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

The Council may, subject to **Criteria E**, 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:

- Not acted in good faith, or has acted unlawfully or in a way that constitutes improper conduct; or
- Given false or misleading information in respect of the application.

A determination under **Criteria E** may be made by the Council only on the basis of, and consistently with, the findings of a court, tribunal or inquiry.

Where the Council makes a determination under **Criteria E**, 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 **Criteria G**.

Criteria F: CEO's powers

In cases of urgency, the CEO, subject to **Criteria F**, may exercise, on behalf of the Council, any of the powers of the Council under **Criteria E**, to a limit of **\$10,000**, where a delay in approving an application would be detrimental to the legal rights of an Elected Member or Employee.

Where the CEO is the applicant, the powers in **Criteria F** are to be exercised by the Executive Director Corporate & Commercial Services.

An application approved by the CEO under **Criteria F**, or by the Executive Director Corporate Services, 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 **Criteria E**.

Criteria G: Repayment of Legal Representation Costs

An Elected Member or Employee whose Legal Representation Costs have been paid by the City is to repay the City:

- All or part of those costs – in accordance with a determination by the Council under **Criteria E**;
or
- As much of those costs as are available to be paid by way of offset – 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.

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