



1.08 Legal Representation for Council Members and Employees

Objective / Purpose

This policy is designed to protect the interests of Council members and Employees (including past members and former employees) of the Town of Port Hedland if they become involved in legal proceedings because of their official functions. In these situations, the Town may assist the individual in meeting reasonable expenses and any liabilities incurred in relation to those proceedings.

This policy is necessary to ensure security, equity and consistency for Members and Employees to work for the good government of the district. This policy applies in that respect.

This policy establishes the framework under which Council may approve payment of legal representation costs for Council Members and employees arising from the performance of their official functions. Decisions under this policy are made by Council unless authority has been delegated in accordance with the Town's Delegations Register.

Policy Statement

1. Payment criteria

- 1.1 There are four major criteria for determining whether the Town may pay the legal representation costs of a Council member or employee. These include:
- a) the legal representation costs are to relate to a matter that arises from the performance, by the Council member or employee, of his or her functions.
 - b) the legal representation cost is to be in respect of legal proceedings that have been, or may be, commenced.
 - c) in performing his or her functions, to which the legal representation relates, the Council member or employee is to have acted in good faith, and is not have acted unlawfully or in a way that constitutes improper conduct; and
 - d) the legal representation costs do not relate to a matter that is of a personal or private nature.

2. Examples of legal representation costs that may be approved

- 2.1 If the criteria in clause 1 of this policy are satisfied, the Town may approve the payment of legal representation costs:
- a) where proceedings are brought against a Council 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 Council member or employee; or
 - b) to enable proceedings to be commenced and/or maintained by a Council member or employee to permit him or her to carry out his or her functions - for example, where a Council member or employee seeks to take action to obtain a restraining order against a person using threatening behaviour to the Council member or employee; or
 - c) where exceptional circumstances are involved - for example, where a person or

organisation is lessening the confidence of the community in the local government by publicly making adverse personal comments about Council members or employees.

- 2.2 The Town will not approve, unless under exceptional circumstances, the payment of legal representation costs for a defamation action, or a negligence action, instituted by a Council member or employee.

3. Application for payment

- 3.1 A Council member or employee who seeks assistance under this policy is to make an application(s), in writing:
- a) in urgent cases under clause 6.1, to the CEO to be determined by CEO; and
 - b) otherwise to the CEO to be determined by the Council.
- 3.2 The written application for payment of legal representation costs 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 employee making the application;
 - c) the lawyer (or law firm) who is to be asked to provide the legal representation;
 - d) the nature of legal representation to be sought (such as advice, representation in court, preparation of a document etc);
 - e) an estimated cost of the legal representation; and
 - f) why it is in the interests of the Town for payment to be made.
- 3.3 The application 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.
- 3.4 Applications should be made and approved prior to the commencement of legal representation wherever practicable.
- 3.5 The application is to be accompanied by a signed 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 Town any legal representation costs in accordance with the provisions of clause 7.
- 3.6 In relation to clause 3.5(c), when a person is to be in receipt of such monies

the person is to sign a document which requires repayment of those monies to the Town as may be required by the Town and the terms of the policy.

- 3.7 An application is also to be accompanied by a report prepared by the CEO or, where the CEO is the applicant, by an appropriate employee.
- 3.8 Applications for payment of legal representation costs will be determined by Council, except where emergency approval is required and delegated authority applies under the Town's Delegations Register.
- 3.9 Any approval granted under delegated authority must be reported to Council at the next ordinary meeting.

4. Legal representation costs - limit

- 4.1 The Council in approving an application in accordance with this policy is to set a limit on the costs to be paid based on the estimated costs in the application.
- 4.2 Council 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,an application for payment of legal representation costs.
- 5.2 Conditions under clause 5.1 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.
- 5.3 In assessing an application, the Council may have regard to any insurance benefits that may be available to the applicant under the Town's Council members 'or employees' insurance policy or its equivalent. The Town will pay the excess on any insurance claim.
- 5.4 Council may vary or revoke an approval only where material new information has arisen and such variation or revocation is consistent with the findings of a court, tribunal or statutory inquiry.
- 5.5 Council may determine that repayment is required only where a court, tribunal or statutory inquiry has made a finding that the Council Member or employee did not act in good faith, acted unlawfully, or engaged in improper conduct (including serious misconduct where applicable). A determination under this Policy must be based solely on formal findings and must not be made solely due to a change in Council composition or policy position.
- 5.6 A determination under clause 5.5 may be made by the Council only on the basis of, and consistent with, the findings of a court, tribunal or inquiry.
- 5.7 Where the Council makes a determination under clause 5.5, the legal representation costs paid by the Town are to be repaid by the Council member or employee in accordance with clause 7.
- 5.8 Where Council has approved payment of legal representation costs under this policy, that approval remains valid for the matter for which it was granted and cannot be revoked solely

as a result of a change in Council composition or a subsequent change in Council view. Repayment or withdrawal of assistance may only occur where the circumstances set out in clauses 5.5–5.7 apply.

6. Approval of payment for legal representation costs in exceptional circumstances

- 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 the Council, any of the powers of the Council under clause 5.1 and 5.2, to a maximum of \$10,000 (Delegation Register 1.2.21) in respect of each application.
- 6.2 An application approved by the CEO under clause 6.1, is to be submitted to the next ordinary meeting of Council. Council may exercise any of its powers under this policy, including its powers under clause 5.4.

7. Repayment of legal representation costs

- 7.1 A Council member or employee whose legal representation costs have been paid by the Town is to repay the Town -
- a) all or part of those costs - in accordance with a determination by the Council under clause 5.7;
 - b) as much of those costs as are available to be paid by way of set-off - where the Council member or employee receives monies paid for costs, damages, or settlement, in respect of the matter for which the Town paid the legal representation costs.
- 7.2 The Town may take action in a court of competent jurisdiction to recover any monies due to it under this policy.

8. Legal Register

- 8.1 The Senior Legal Counsel and the Manager Governance are to maintain a register of all legal advice, not related to Human Resources in accordance with Delegation Register 22.4. The form to register legal advice can be found at the following link

<https://uintranet.porthedland.wa.gov.au/legal-register-external.aspx>

Legislative Framework

This policy is made and applied in accordance with the following legislation:

- Local Government Act 1995 (WA)
- Local Government (Administration) Regulations 1996 (WA)

Where there is any inconsistency between this policy and applicable legislation, the legislation prevails.

Related Policies and Governance Instruments

This policy is to be read and applied in conjunction with:

the Town's Delegations Register (including Delegation 1.2.21 – Emergency Legal Expenditure and Delegation 22.4 – Legal Register);

- the Records Management Policy; and
- any applicable insurance policies held by the Town.

All decisions under this policy must be exercised in accordance with the Town's current Delegations Register, as amended from time to time.

Definitions

Approved lawyer is to be -

- a) a 'legal practitioner' under the Legal Profession Act 2008;
- b) from a law firm on the Town's panel of legal service providers, if relevant, unless the Council considers that this is not appropriate -for example where there is or may be a conflict of interest or insufficient expertise; and
- c) approved in writing by the Council or the CEO under delegated authority.

Council member or employee means a current or former - commissioner, Council member, non-elected member of a Council committee or employee of the Town.

Legal proceedings may be civil, criminal or investigative.

Legal representation is the provision of legal services, to or on behalf of a Council member or employee, by an approved lawyer that are in respect of-

- a) a matter or matters arising from the performance of the functions of the Council member or employee; and
- b) legal proceedings involving the Council 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 Town of legal representation costs 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 employee.

Official Functions means functions performed in the capacity of a Council Member or employee under the Local Government Act 1995 (WA) or other written law.

Good Faith means acting honestly, without improper purpose and in the reasonable belief that the conduct was lawful and within authority.

Policy Administration

All approvals under this policy must be documented in writing and recorded in the Town's Legal Register.

Where approval is granted under delegated authority, the decision must be reported to Council at the next ordinary meeting.

Administration	Detail
Business Unit	Governance
Directorate	Corporate Services
Delegated Authority	Delegation 1.08 – Legal Representation for Council Members and Employees
Review Frequency	3 yearly

Document Control

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