

1.4 Legal Representation

PART A - Policy

Objective

The objective of this Policy is to provide a framework and clear guidelines for whether financial assistance may be provided to present and past Council members and employees who become respondents in legal proceedings because of their official functions.

In most situations, the local government may assist the individual in meeting reasonable expenses and any liabilities incurred in relation to those proceedings.

In each case it will be necessary to determine whether assistance with legal costs and other liabilities is justified for the good government of the district. This policy applies in that respect.

Policy Statement

The Council and the Shire of Dandaragan (the Shire) are committed to protecting the interests of Council members and employees in seeking legal advice or where they become involved in civil legal proceedings in the course of their official duties, provided that the member or employee has acted reasonably and has not acted illegally, dishonestly, against the interests of the local government or otherwise in bad faith.

The Shire may provide such assistance in the following types of legal proceedings:

- proceedings brought by members and employees to enable them to carry out their local government functions (e.g. where a member or employee seeks a restraining order against a person using threatening behaviour);
- proceedings brought against members or employees in relation to a decision of Council or an employee which aggrieves another person (e.g. refusing a development application) or where the conduct of a member or employee in carrying out his or her functions is considered detrimental to the person (e.g. defending defamation actions); and
- statutory or other inquiries where representation of members or employees is justified.

The Shire will not support any defamation actions seeking the payment of damages for individual members or employees in regard to comments or criticisms levelled at their conduct in their respective roles. Members or employees are not precluded, however, from taking their own private action. Further, the local government may seek its own advice on any aspect relating to such comments and criticisms of relevance to it.

The legal services the subject of assistance under this policy will usually be provided by the local government's solicitors. Where this is not appropriate for practical reasons or because of a conflict of interest then the service may be provided by other solicitors approved by the local government.

PART B - Management Procedures

1. Definitions

In this management procedure, unless the contrary intention appears:

Approved lawyer	Means: (a) a 'certified practitioner' under the <i>Legal Practices Act 2003</i> ; or (b) a law firm regularly utilised by the Shire for legal services, unless the Council considers that this is not appropriate – for example where there is or may be a conflict of interest or insufficient expertise, approved in writing by the Council or the Chief Executive Officer under delegated authority
Shire	means the Shire of Dandaragan
Legal proceedings	may be civil, criminal or investigative
Legal representation	is the provision of legal services, to or on behalf of a relevant person, by an approved lawyer that is in respect of a matter or matters arising from the performance of the functions of the relevant person; and legal proceedings involving the relevant person 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 Shire of legal representation costs may be either by: (a) a direct payment to the approved lawyer (or relevant firm); or (b) a reimbursement to the relevant person.
Relevant person	means a current or former council member or employee

2. Payment Criteria

There are three (3) major criteria for determining whether the Shire will pay the legal representation costs of a relevant person. These are –

- (a) the legal representation costs must relate to a matter that arises from the performance, by the relevant person, of his or her functions;
- (b) in performing his or her functions, to which the legal representation relates, the relevant person must have acted in good faith, and must not have acted unlawfully or in any way that constitutes improper conduct; and
- (c) the legal representation costs must not relate to a matter that is of a personal or private nature.

3. Examples of Legal Representation Costs that maybe Approved

3.1 If the criteria in clause 2 are satisfied, the Shire may approve the payment of legal representation costs:

- (a) where proceedings are brought against a relevant person 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 relevant person;
- (b) to enable proceedings to be commenced and/or maintained by a relevant person to permit him or her to carry out his or her functions – for example where a relevant

- person seeks to take action to obtain a restraining order against a person using threatening behaviour to the relevant person; or
- (c) where exceptional circumstances are involved – for example, where a person or organisation is lessening the confidence of the community in the Council by publicly making adverse personal comments about a relevant person.
- 3.2 Subject to clause 3.1, the Shire will not approve, other than in exceptional circumstances, the payment of legal representation costs in respect of legal proceedings instituted by a relevant person, such as a defamation action or negligence action.

4. Application for Payment

- 4.1 A relevant person who seeks assistance under this policy is to make written application to the Council.
- 4.2 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 relevant person 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 Shire for payment to be made.
- 4.3 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.
- 4.4 As far as practicable the application is to be made before commencement of the legal representation to which the application relates.
- 4.5 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 Management Procedure;
 - (b) acknowledges that any approval of legal representation costs is conditional on the repayment provisions of clause 8 and any other conditions to which the approval is subject; and
 - (c) undertakes to repay to the Shire any legal representation costs in accordance with the provisions of clause 9.
- 4.6 An application is also to be accompanied by a report prepared by the Chief Executive Officer (CEO) or, where the CEO is the applicant, by the Executive Manager Corporate and Community Services.

5. Assistance to be Retrospective

Financial assistance will be paid retrospectively at the conclusion of the legal action for which financial assistance was sought except in cases of serious financial hardship as determined by Council.

6. Legal Representation Costs - Limit

- 6.1 Unless otherwise determined by the Council, payment of legal representation costs in respect of a particular application is not to exceed \$5,000. A relevant person may make a further application to the Council in respect of the same matter.
- 6.2 As far as practicable, approved payments for legal representation of relevant persons will be made by the Shire directly to the approved lawyer.

7. Council's Powers

- 7.1 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.
- 7.2 In assessing an application, the Council may have regard to any insurance benefits that may be available to the applicant under the Shire's Management Liability insurance policy (or their equivalent).
- 7.3 The Council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.
- 7.4 The Council may, subject to clause 7.5, determine that a relevant person 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.
- 7.5 A determination under clause 7.4 may be made by the Council only on the basis of, and consistent with, the findings of a court, tribunal or inquiry.
- 7.6 Where the Council makes a determination under clause 7.4, the legal representation costs paid by the Shire are to be repaid by the relevant person in accordance with clause 9.

8. Chief Executive Officer's Powers and Duties

- 8.1 In cases where a delay in the approval of an application would be detrimental to the legal rights of the applicant, the CEO may authorise financial assistance for legal representation costs in accordance with delegated authority.
- 8.2 Where the CEO is the applicant, the Executive Manager Corporate and Community Services may authorise financial assistance for legal representation costs in accordance with delegated authority.

8.3 An application approved by the CEO under clause 8.1, or by the Executive Director Corporate and Community Services under clause 9.2, 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 7.3.

9. Repayment Of Legal Representation Costs

- 9.1 A relevant person whose legal representation costs have been paid by the Shire is to repay the Shire –
- (a) all or part of those costs – in accordance with a determination by the Council under clause 7.4; or
 - (b) as much of those costs as are available to be paid by way of set-off – where the relevant person receives monies paid for costs, damages or settlement, in respect of the matter for which the Shire paid all or part of the legal representation costs.
- 9.2 The Shire may take action in a court of competent jurisdiction to recover any monies due it under these Management Procedures.

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