

## POL 0037: Legal Representation Cost Indemnification

### Purpose

To define a process for meeting reasonable expenses incurred for legal representation that arises from being a member of council or staff in the course of their official functions.

### Scope

This policy applies to all elected members or staff, including past members and former employees.

### Definitions

N/A

### Practice

This policy is designed to protect the interests of Council members and employees (including past members and former employees) where they become involved in civil 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.

### General Principles

The local government may provide financial assistance to members and employees in connection with the performance of their 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 local government may provide such assistance in the following types of legal proceedings -

1. 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);
2. proceedings brought against members or employees [this could be 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
3. statutory or other inquiries where representation of members or employees is justified.

Once a court hearing or enquiry has been completed and an adverse finding has been determined in respect to an elected member or officer no further payment or refund of legal representation costs would be considered by Council.

The Local Government 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 considered to be of relevance against the Local Government.

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.

All applications for Financial Assistance and Repayment of Assistance will be made in accordance with the procedure outlined below.

### Associated Procedure

#### Applications for Financial Assistance

1. Subject to item (5), decisions as to financial assistance under this policy are to be made by the Council.
2. An elected member or employee requesting financial support for legal services under this policy is to make an application in writing, where possible in advance, to the Council providing full details of the circumstances of the matter and the legal services required.
3. An application to the Council is to be accompanied by an assessment of the request and with a recommendation, which has been prepared by, or on behalf of, the Chief Executive Officer (CEO).
4. An elected member or employee requesting financial support for legal services, or any other person who might have a financial interest in the matter, should take care to ensure compliance with the financial interest provisions of the *Local Government Act 1995*.
5. Where there is a need for the provision of urgent legal services before an application can be considered by Council, the CEO may give an authorisation up to the value of \$5,000.
6. Where it is the CEO who is seeking urgent financial support for legal services the Council shall deal with the application.

#### Repayment of Assistance

Any amount recovered by a member or employee in proceedings, whether for costs or damages, will be off set against any monies paid or payable by the Local Government.

Assistance will be withdrawn where the Council determines, upon legal advice, that a person has acted unreasonable, illegally, dishonestly, against the interest of the local government or otherwise in bad faith; or where information from the person is shown to have been false or misleading.

Where assistance is so withdrawn, the person who obtained financial support is to repay any monies already provided. The Local Government may take action to recover any such monies in a court of competent jurisdiction.

.....End.....

#### Document Information

Responsible Position	Chief Executive Officer
Risk Rating	Low

#### Referencing Documents

- *Local Government Act 1995*

#### Revision History

Date	Version	CM Reference	Reason for Change	Resolution #	Next Review
Nov 2000	1		New policy	O1100-629	Nov 2002
Nov 2003	2			O1103-0727	Nov 2005
Sept 2007	3	D12/47			
Jul 2015	4		Change of wording to refine Policy Objective	O0715-014	Jul 2017
Mar 2018	5	D16/29006	Removed the word emanates and replaced it with arises in the objective. Changed General Principles d) to read Further, the Local Government may seek its own advice on any aspect relating to such comments and criticisms considered to be of relevance against the Local Government.	O0318-073	Mar 2020
Nov 2019	6	D16/29006[v2]	Biennial review, no change	O1119-248	Nov 2021
Jan 2022	7	D16/29006[v3]	Remove reference to delegation as this is not a statutory requirement.	O0122-012	Jan 2024
Jan 2024	8	D16/29006[v4]	No change	O0124-004	Jan 2026
Dec 2025	9	D16/29006[v5]	Biennial review, no change.	O1225-098	Dec 2027