



COUNCIL POLICY - draft

P040124 LEGAL REPRESENTATION FOR COUNCIL MEMBERS & EMPLOYEES

Objective

This policy is designed to protect the interests of council members, employees and council committee members (including past members and former employees) where they become involved in the civil legal proceedings because of the official functions. 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

EXPLANATION OF KEY TERMS

approved lawyer is to be –

- (a) a 'certified practitioner' under the *Legal Practice Act 2003*;
- (b) from a law firm on the Shire of Denmark'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 Shire of Denmark.

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 Shire of Denmark 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.

1. PAYMENT CRITERIA

There are four major criteria for determining whether the Shire of Denmark will pay the legal representation costs of a council member or employee. These are –

- (a) the legal representation costs must 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 must 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 must have acted in good faith, and must 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 Shire of Denmark 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 organization is lessening the confidence of the community in the local government by publicly making adverse personal comments about council members or employees; or

2.2 The Shire of Denmark 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, to the council or the CEO.

3.2 The written application for payment of legal representation costs is to give details of –

- (i) the matter for which legal representation is sought;
- (ii) how that matter relates to the functions of the council member or employee making the application;
- (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);
- (v) an estimated cost of the legal representation; and
- (vi) why it is in the interests of the Shire of Denmark 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 As far as possible the application is to be made before commencement of the legal representation to which the application relates.
- 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 Shire of Denmark 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 should sign a document which requires repayment of that money to the local government as may be required by the local government 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.

4. LEGAL REPRESENTATION COSTS – LIMIT

- 4.1 The council in approving an application in accordance with this policy shall set a limit on the costs to be paid based on the estimated costs in the application.
- 4.2 A 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 Shire of Denmark council members or employees 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 a council 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
- 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 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 Shire of Denmark are to be repaid by the council member or employee in accordance with clause 7.

6. DELEGATION TO CHIEF EXECUTIVE OFFICER & URGENT PAYMENTS

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 in respect of each application.

6.2 An application approved by the CEO or the Shire President under clause 6.1, is to be submitted to the next ordinary meeting of the 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 Shire of Denmark is to repay the Shire of Denmark –

- 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 Shire of Denmark paid the legal representation costs.

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

Responsible Officer

The Chief Executive Officer is the responsible officer for implementing this policy.