



Legal Representation for Elected Members and Employees

KFA	Governance and Civic Leadership
Status	Council
Responsible Division	Corporate & Strategy
Objective	To determine when it is appropriate to pay legal representation costs for elected members or employees.

Context

The policy sets the parameters and conditions for payment of legal representation for Elected Members and Employees.

There are four major criteria for determining whether the City of Nedlands will pay the legal representation costs of an elected member or employee. These are:

- the legal representation costs must relate to a matter that arises from the performance, by the elected member or employee, of his or her functions;
- the legal representation costs must be in respect of legal proceedings that have been, or may be commenced;
- in performing his or her 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; and
- the legal representation costs do not relate to a matter that is of a personal or private nature.

Definition

Approved lawyer is to be:

- a 'certified practitioner' under the *Legal Practice Act 2003*;
- from a law firm on the City of Nedlands 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
- approved in writing by the Council or the Chief Executive Officer under delegated authority.



Elected member or employee means an elected member of the Council of the City of Nedlands or an employee of the City of Nedlands.

Legal proceedings may be civil, criminal or investigative.

Legal representation is the provision of legal services, to or on behalf of an elected member or employee, by an approved lawyer 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.

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 City of Nedlands of legal representation costs may be either by:

- a direct payment to the approved lawyer (or the relevant firm); or
- a reimbursement to the elected member or employee.

Statement

Examples of legal representation costs that may be approved

The City of Nedlands may approve the payment of legal representation costs for the following reasons:

- where proceedings are brought against an elected 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 elected member or employee; or
- to enable proceedings to be commenced and/or maintained by an elected member or employee to permit him or her to carry out his or her functions – for example where an elected member or employee seeks to take action to obtain a restraining order against a person using threatening behaviour to the elected member or employee; or
- in the event of a local government enquiry or complaint lodged against an elected member or employee, to permit him or her to provide a proportionate response – for example when questioned by a member of the legal profession; and



- 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 elected members or employees.

The City of Nedlands will not approve, unless under exceptional circumstances, the payment of legal representation costs for a defamation action, or a negligence action, instituted by an elected member or employee.

Application for payment

An elected member or employee who seeks assistance under this policy is to make an application(s), in writing, to the Chief Executive Officer.

For payment to be made, the written application for payment of legal representation costs is to give details of:

- the matter for which legal representation is sought;
- how that matter relates to the functions of the elected member or employee making the application;
- 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);
- an estimated cost of the legal representation; and
- why it is in the interests of the City of Nedlands.

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.

As far as possible the application is to be made before commencement of the legal representation to which the application relates.

The application is to be accompanied by a signed written statement by the applicant that he/she:

- has read, and understands, the terms of the policy;
- acknowledges that any approval of legal representation costs is conditional on the repayment provisions and any other conditions to which the approval is subject; and



- undertakes to repay to the City of Nedlands any legal representation costs.

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.

An application is also to be accompanied by a report prepared by the Chief Executive Officer or where the Chief Executive Officer is the applicant by an appropriate employee.

Legal representation costs – Limit

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.

An elected member or employee may make a further application to Council in respect of the same matter.

Council's powers

The Council may:

- refuse;
- grant; or
- grant subject to conditions;

an application for payment for legal representation costs.

Conditions 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.

In assessing an application, the council may have regard to any insurance benefits that may be available to the applicant under the City of Nedlands' elected members or employee's 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 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.



If a determination is made by the Council it can only be on the basis of, and consistent with, the findings of a court, tribunal or inquiry.

Where the Council makes a determination, the legal representation costs paid by the City of Nedlands are to be repaid by the elected member or employee.

Delegation to Chief Executive Officer

In cases where a delay in the approval of an application will be detrimental to the legal rights of the applicant, the Chief Executive Officer may exercise, on behalf of the Council, approval to a maximum of \$10,000 in respect of each application.

An application approved by the Chief Executive Officer is to be submitted to the next ordinary meeting of the Council. Council may exercise any of its powers under this policy.

Repayment of legal representation costs

An elected member or employee whose legal representation costs have been paid by the City of Nedlands is to repay the City of Nedlands:

- all or part of those costs in accordance with a determination by the Council;
- as much of those costs as are available to be paid by way of set-off – where the elected member or employee receives monies paid for costs, damages, or settlement, in respect of the matter for which the City of Nedlands paid the legal representation costs.

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

Related documentation

Nil

Related Local Law / Legislation

Sections 3.1, 6.7(2) and 9.56 of the Local Government Act 1995

Related delegation

Nil



Review History

24 September 2013 (Report CPS28.13)

24 August 2010 (Report CM21.10)