

EME007	LEGAL EXPENSES - ELECTED MEMBERS AND EMPLOYEES		
POLICY OWNER:	Council		
DEPARTMENT:	Office of the CEO		
CREATION DATE:	23/08/2022	REVIEW SCHEDULE:	Annually
RELATED PROCEDURES:	N/A		
RELATED FORMS:	N/A		
RELATED DELEGATIONS:	N/A		
RELATED POLICIES:	N/A		
LEGISLATION:	N/A		
DOCUMENT CONTROL			
DATE REVIEWED:	REVIEWED BY:	CHANGES (IF ANY):	ENDORSED BY COUNCIL:
23/08/2022	Council	Nil	FC7/8/22
28/03/2023	Council	Nil	FC 5/3/23
26/03/2024	Council	Nil	OCM 07/03/24

EME007 Legal Expenses – Elected Members and Employees

OBJECTIVES

To make available legal representation to Elected Members and Shire employees on matters which may arise during normal duties.

POLICY STATEMENT/S

Legal Representation Criteria

There are four major criteria for determining whether the Shire of Carnarvon will pay the legal representation costs of an Elected Member or employee –

- relative to a matter that arises from the performance, by the Elected Member or employee, in fulfilling his or her functions for the Shire of Carnarvon,
- in respect of legal proceedings that have been, or may be, commenced,
- in performing their 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
- that costs do not relate to a matter that is of a personal or private nature.

Examples of legal representation costs that may be approved

If the criteria in this policy are satisfied, the Shire of Carnarvon may approve the payment of legal representation costs –

- 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

- 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 Elected Members or employees.
- d. The Shire of Carnarvon 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 Council or the CEO.

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 Elected 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 Shire of Carnarvon for payment to be made.

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 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 this Policy and any other conditions to which the approval is subject; and
- c. undertakes to repay to the Shire of Carnarvon any legal representation costs in accordance with the provisions of this Policy.

Where a person is to be in receipt of such monies the person shall 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 CEO or where the CEO is the applicant by an appropriate employee, and presented to Council.

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 the Council in respect of the same matter.

Council's powers

The Council may –

- a. refuse,
- b. grant; or
- c. grant subject to conditions, an application for payment of legal representation costs.

Conditions under the above 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 Shire of Carnarvon's Elected Members or employees 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, subject to this Policy, 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 –

- 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.

A determination may be made by the Council only on the basis of, and consistent with, the findings of a court, tribunal or inquiry.

Where the Council decides, the legal representation costs paid by the Shire of Carnarvon are to be repaid by the Elected Member or employee in accordance with this Policy.

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 CEO may exercise, on behalf of the Council, any of the powers of the Council under this Policy, to a maximum of \$5,000 in respect of each application.



An application approved by the CEO, is to be submitted to the next ordinary meeting of the Council or if deemed necessary by the Shire President, a Special Council Meeting. 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 Shire of Carnarvon is to repay the Shire of Carnarvon –

- a. all or part of those costs – in accordance with a determination by the Council,
- b. 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 Shire of Carnarvon paid the legal representation costs.

The Shire of Carnarvon may act in a court of competent jurisdiction to recover any monies due to it under this Policy.

Definitions

Approved lawyer means – (a) a ‘certified practitioner’ under the Legal Practice Act 2003 and from a law firm on the Shire of Carnarvon panel of legal service providers, or as otherwise determined by Council based on need for a specific skill and/or expertise (b) a person or firm approved in writing by the Council or the CEO under delegated authority.

Elected Member or employee means a current or former commissioner, Elected Member, non-Elected Member of a Council committee or employee of the Shire of Carnarvon. Legal proceedings mean civil, criminal, or investigative.

Legal representation means the provision of legal services to or on behalf of an Elected Member or employee, by an approved lawyer that is in respect of –

- a. a matter or matters arising from the performance of the functions of the Elected Member or employee; and
- b. legal proceedings involving the Elected Member or employee that have been or may be commenced.

Legal representation costs mean costs, including fees and disbursements, properly incurred in providing legal representation.

Legal services mean advice, representation or documentation that is provided by an approved lawyer.

Payment means payment by the Shire of Carnarvon of legal representation costs either by –

- a. a direct payment to the approved lawyer (or the relevant firm); or
- b. a reimbursement to the Elected Member or employee.