
Legal Assistance for Councillors and Employees

CONTROL:

Policy Type:	Financial
Authorised by:	Council
Head of Power:	Local Government Act 2009
Responsible Officer:	Chief Executive Officer
Adopted / Approved:	Minute No. 2022.06.20-OM-4
Last Reviewed:	June 2022
Review:	<p>This Policy is reviewed internally for applicability, continuing effect and consistency with related documents and other legislative provisions when any of the following occurs:</p> <ol style="list-style-type: none"> 1) The related documents are amended. 2) The related documents are replaced by new documents. 3) Amendments which affect the allowable scope and effect of a Policy of this nature are made to the head of power. 4) Other circumstances as determined from time to time by a resolution of Council. <p>Notwithstanding the above, this Policy is to be reviewed at least once every two years for relevance and to ensure that its effectiveness is maintained.</p>
Version:	3

1. INTRODUCTION

1.1 PURPOSE:

This policy seeks to provide guidance about the provision of legal assistance and associated expenses for councillors and council employees.

1.2 POLICY OBJECTIVES:

To provide a transparent and accountable policy for providing legal assistance and associated expenses for councillors and employees so that the community maintains confidence that public funds are being expended in an appropriate way. The matters covered in this policy will include:

- when it is appropriate to provide legal assistance; and
- who is authorised to make the decision that financial support will be provided; and
- the limits or levels of assistance that are to be given; and
- the criteria for providing additional support; and
- the circumstances in approval for assistance may be revoked and repayment sought; and
- the process to procure legal assistance.

Legal Assistance for Councillors and Employees

1.3 COMMENCEMENT OF POLICY:

This Policy will commence on adoption. It replaces all other specific Legal Assistance for Councillors and Employees policies of Council (whether written or not).

2. POLICY

2.1 CONTEXT:

Section 235 of the Local Government Act 2009 (LGA) provides that a local government administrator is not civilly liable for an act done under the LGA or the Local Government Electoral Act 2011 (LGEA), or omission made under the LGA or the LGEA, honestly and without negligence.

2.2 POLICY STATEMENT:

In today's society there is an increased risk of legal action being taken or threatened against individual council members and employees. Council members and employees may require legal advice and representation and expect their local government to provide financial assistance to meet the cost of the advice or representation.

3. STANDARDS AND PROCEDURES

3.1 SPECIFIC AND STANDARD

3.1.1 Payment Criteria

There are four major criteria for determining whether Council will pay the legal representation costs of a councillor 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 councillor 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.

3.1.2 Legal Representation Costs

If the criteria in clause 3.1.1 of this policy are satisfied, the Council may approve the payment of legal representation costs –

- a) where proceedings are brought against a councillor 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 councillor or employee; or
- b) to enable proceedings to be commenced and/or maintained by a councillor 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 councillor or employee; or

Legal Assistance for Councillors and Employees

- c) 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 councillors or employees.

The Council will not approve, unless under exceptional circumstances, the payment of legal representation costs for a defamation action, or a negligence action, instituted by a councillor or employee.

3.1.3 Procurement of Lawyer

The selected lawyer must be approved in writing by the council or the CEO under delegated authority.

The lawyer should be from a law firm on Councils panel of legal service providers unless the council considers that this is not appropriate – for example where there is or may be a conflict of interest or insufficient expertise.

3.1.4 Application for Payment

A councillor 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 councillor 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 Council 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 they –

- a) have read, and understood, the terms of this policy;
- b) acknowledge that any approval of legal representation costs is conditional on the repayment provisions of clause 3.1.9 and any other conditions to which the approval is subject; and
- c) undertake to repay to the Council any legal representation costs in accordance with the provisions of clause 3.1.9.

When a person is to be paid such monies the person should sign a document which requires repayment of those monies to the local government as may be required by the local government and the terms of this 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.

3.1.5 Payment

Payment by Council of legal representation costs may be either by –

Legal Assistance for Councillors and Employees

- a) a direct payment to the approved lawyer (or the relevant firm); or
- b) a reimbursement to the councillor or employee on presentation of tax invoice.

3.1.6 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.

A councillor or employee may make a further application to the council in respect of the same matter.

3.1.7 Council's Powers

- a) The council may –
 - (i) refuse;
 - (ii) grant; or
 - (iii) grant subject to conditions,
an application for payment of legal representation costs.
- b) Conditions under clause 3.1.7 (a) 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.
- c) In assessing an application, the council may have regard to any insurance benefits that may be available to the applicant under the Councils insurance policy or its equivalent.
- d) The council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.
- e) The council may, subject to clause 3.1.7 (f) determine that a councillor or employee whose application for legal representation costs has been approved has, in respect of the matter for which legal representation costs were approved –
 - (i) not acted in good faith, or has acted unlawfully or in a way that constitutes improper conduct; or
 - (ii) given false or misleading information in respect of the application.
- f) A determination under clause 3.1.7 (e) may be made by the council only on the basis of, and consistent with, the findings of a court, tribunal or inquiry.
- g) Where the council makes a determination under clause 3.1.7 (f) the legal representation costs paid by the Council are to be repaid by the councillor or employee in accordance with clause 3.1.9.

3.1.8 Delegation to the 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 clause 3.1.7 (a) and (b), to a maximum of \$10,000 in respect of each application.

An application approved by the CEO under this clause, 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 3.1.7 (d).

Legal Assistance for Councillors and Employees

3.1.9 Repayment of Legal Representation Expenses

A councillor or employee whose legal representation costs have been paid by the Council is to repay the Council –

- a) all or part of those costs – in accordance with a determination by the council under clause 3.1.7 (g);
- b) as much of those costs as are available to be paid by way of set-off – where the councillor or employee receives monies paid for costs, damages, or settlement, in respect of the matter for which the Council paid the legal representation costs.

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

4. REFERENCE AND SUPPORTING INFORMATION

4.1 DEFINITIONS:

To assist in interpretation, the following definitions shall apply:

Word / Term	Definition
CEO	means Chief Executive Officer
Council	means Diamantina Shire Council.
Councillor or Employee	means a current or former elected member or employee of Council.
Lawyer	Means a 'certified practitioner' under Division 2 of the Queensland Professions Act 2007;
Local Government Administrator	A local government administrator is a councillor, the chief executive officer, an authorised person, another local government employee or interim administrator.
Legal proceedings	may be civil, criminal or investigative.
Legal representation	is the provision of legal services by an approved lawyer
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

4.2 RELATED POLICIES, LEGISLATION AND DOCUMENTS:

Links to supporting documentation
Local Government Act 2009 (LGA)
Local Government Electoral Act 2011 (LGEA)

Legal Assistance for Councillors and Employees

4.3 VERSION CONTROL:

Previous Version Number	Adopted/Approved Date
1	June 25 2018; Minute No. 2018.06.25-OM-4
2	June 22 2020;Minute No. 2020.06.22-OM-18