

Legal representation and Costs Indemnification

Policy Owner:	Governance
Distributed to:	All Elected Members
Person Responsible:	All Executive Managers
Date of Approval:	17 February 2010
Amended:	

Objectives

The policy aims to protect the interests of individual Elected 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 Shire 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 Shire of Chittering. This policy applies in that respect.

Policy

- (a) The Shire may provide financial assistance to members and employees in connection with the performance of their duties provided that the Elected Member or employee has acted reasonably and has not acted dishonestly, against the interest of the Shire or otherwise in bad faith.
- (b) The Shire may provide such assistance in the following types of legal proceedings:
 - i) proceedings brought by Elected Members and employees to enable them to carry out their local government functions (e.g. where an Elected Member or employee seeks a restraining order against a person using threatening behaviour)
 - ii) proceedings brought against Elected 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 an Elected Member or employee in carrying out his or her functions is considered detrimental to the person (e.g. defending defamation actions)]
 - iii) statutory or other inquiries where representation of an Elected Members or employees is justified.
- (c) The Shire will not support any defamation actions seeking the payment of damages for individual Elected Members or employees in regard to comments or criticisms levelled at their conduct in their respective roles. Elected Members or employees are not precluded, however, from taking their own private action. Further, the Shire, through the Chief Executive Officer, may seek its own advice on any aspect relating to such comments and criticisms of relevance to it.

- (d) The legal services the subject of assistance under this policy will usually be provided by the Shire'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 at the Chief Executive Officer's discretion.

Applications for financial assistance

- (a) Subject to item e) below, decisions as to financial assistance under this policy are to be made by the Council.
- (b) An Elected Member or employee requesting personal financial support for legal services under this policy is to make an application in writing, where possible in advance, to the Chief Executive Officer, providing full details of the circumstances of the matter and the legal services required. [See (f) below].
- (c) 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.
- (d) 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***.
- (e) Where there is a need for the provision of urgent legal services before an application can be considered by Council, the Chief Executive Officer may give an authorisation to the value of \$5,000.
- (f) Where it is the Chief Executive Officer who is seeking urgent financial support for legal services the Council shall deal with the application.
- (g) The Elected Member or employee shall sign an agreement between him or her and the Shire agreeing that the financial assistance shall be provided on the terms and conditions of this policy.

Repayment of assistance

- (a) Any amount recovered by an Elected Member or employee in proceedings, whether for costs or damages, will be off set against any monies paid or payable by the Shire.
- (b) Assistance will be withdrawn where the Council determines, upon legal advice that a person has acted dishonestly.
- (c) Where assistance is so withdrawn, the person who obtained financial support is to repay any moneys already provided. The Shire may take action to recover any such monies in a court of competent jurisdiction.