

## 1. Policy Statement

- 1.1. The role of an Elected Member is defined by various legislation and regulations. The environment is largely regulated and from time to time, it can be complex. Elected Members should not incur legal expenses as a result of performing and discharging their official functions and duties. Generally, seeking legal advice would be facilitated by the Chief Executive Officer or their delegate/s in the course of their administrative role. However, there may be occasion when individual Elected Members required legal advice independent of the collective council body.
- 1.2. Section 78A of the Local Government Act 1999 (the Act), provides that Councils may *'establish a scheme under which a member of a council may directly obtain legal advice at the expense of the council to assist the member in performing or discharging official functions and duties.'*

## 2. Policy Scope

This Policy applies to Elected Members of the City of Marion and provides the parameters in which an Elected Member can seek legal advice in accordance with section 78A of the Act.

## 3. Objectives

The objectives of the policy are:

- 3.1 To ensure the availability of the appropriate legal advice to Elected Members within the framework of the legislation
- 3.2 To identify the situations where Council, as a matter of policy, will and will not fund the costs of provided legal advice for individual Elected Members.

## 4. Application

Elected Members will, in accordance with this Policy be provided access to legal advice for the following matters:

- 4.1 Performance and or discharge of official functions and duties prescribed within the Act.
- 4.2 Individual conflict of interest.
- 4.3 Legal proceedings related to a civil liability where section 39 of the Act has been invoked.

Council will not provide access to legal advice or reimburse the legal costs of individual Elected Members in relation to:

- 4.4 Personal matters outside the scope of their role as an Elected Member.
- 4.5 Criminal matters.
- 4.6 Alleged breaches of the Code of Conduct including behavioural matters, misconduct, maladministration and corruption (Council may consider re-

imbursement of costs via separate resolution if the allegations are determined to be unsubstantiated).

- 4.7 The initiation of defamation proceedings by an Elected Member.
- 4.8 Legal action where the Elected Member has not been indemnified under section 39 of the Act by the Local Government Association Mutual Liability Scheme, as it has been determined that the member was not acting in good faith and in accordance with their duties.

## 5. Limitations

In accordance with this Policy, an Elected Member can seek legal advice to a maximum of \$2,000 plus GST per financial year.

## 6. Process

Where an individual Elected Member believes legal advice is required to properly determine a legal position on a matter, a written request should be made to either the Mayor or the Chief Executive Officer.

If the request complies with the parameters of this Policy and section 137 of the Act, written approval will be provided to the Elected Member by the Mayor or Chief Executive Officer.

If the Mayor has provided the approval, they will notify the Chief Executive Officer (or their delegate) who will notify the agreed legal provider with the parameters of the approval.

If appropriate, the Elected Member will provide a copy of the legal advice obtained to the Chief Executive Officer to be recorded in Councils record management system.

The total cost of the advice will be recorded in the Elected Member Benefits and Expenses Register.

Where the request for legal advice is not approved, an Elected Member may seek the support of Council through a Motion on Notice for legal advice to be obtained.

## 7. Local Government Act 1999

### 39—Protection of members

- (1) No civil liability attaches to a member of a council for an honest act or omission in the exercise, performance or discharge, or purported exercise, performance or discharge, of the member's or council's powers, functions or duties under this or other Acts.
- (2) A liability that would, but for this section, attach to a member of a council attaches instead to the council.

### 78A—Obtaining of legal advice

- (1) The regulations may establish a scheme under which a member of a council may directly obtain legal advice at the expense of the council to assist the member in performing or discharging official functions and duties.
- (2) The scheme may require the preparation and adoption of a policy by a council and include provisions for the variation of the policy and its availability to the public.
- (3) The scheme or a policy adopted under the scheme may—

- (a) impose limitations on the obtaining of legal advice; and
- (b) provide for a process for approval of requests to obtain legal advice; and
- (c) allow for conditions to be imposed on an approval, including a condition limiting the expenditure that may be incurred; and
- (d) provide for a council to set an overall budget for the purpose; and
- (e) include other relevant provisions.

### 137—Expenditure of funds

Subject to this or another Act, a council may expend its funds as the council thinks fit in the exercise, performance or discharge of its powers, functions or duties under this or other Acts.