

Additional Information Issued Pursuant to Section 61 of the Local Government Act 1999

Agenda Item 3.3.1 – Notice of Motion – Cr Preece for the Ordinary Council Meeting of 19 May 2026

Request for Advice

Hi Tracy

Given S39 is for a civil liability this request is irrelevant is it not?

The issues arising from complaints are not giving rise to a civil liability surely?

Thoughts?

Thanks Martin

Martin McCarthy

Chief Executive Officer

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Advice

Hi Martin

You have requested advice with respect to the request you have received from Cr Preece for reimbursement of his legal fees incurred to date, and that the Council also meet the cost of his future legal fees.

Section 39

Section 39 provides as follows for the 'protection of members' (there is a similarly worded provision for officers at section 121):

- (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**.

There are three (3) barriers to Cr Preece relying on the protections under section 39 of the Act:

1. At this time, there is no civil liability for Cr Preece. He is not, for example, the subject of any defamation proceedings and disciplinary proceedings are not a 'civil' liability'. Quite clearly and evidentially, the 'liability' with respect to disciplinary proceedings, is not a liability that can, or could attach to the Council. It is 'the Member' subject of those proceedings (as we saw in the decision of Her Honour in the Knight matter).
2. However, even were it to be the case that such proceedings could be considered a 'civil liability' then it **could not** be said that Cr Preece's actions and behaviours, subject of his current 'liability' (i.e. disciplinary proceedings) are '*honest acts or omissions*' arising out of giving effect to his role. In fact, noting the findings against him by both the Council, and the Panel, he was acting contrary to his duties and obligations under the Act to not to give effect to the sanctions imposed on him, first by resolution of the Council, and then by the findings of the Panel. In which case, the indemnity is simply not available to him.
3. Lastly, even were it the case he could suggest these was a civil liability, and these were honest acts or omissions he has already engaged his own solicitor and has been actively managing his own defence, for some years now.

That is, he intended to (and is) running his own defence and is not proposing that the Council subrogate its rights to defend and resolve the claim against him (as an Elected Member of the Council) to the MLS. Rather, what he is proposing is that MLS (it is not the Council) fund his own private action. This is entirely inconsistent with the Scheme Rules and in essence amounts to an 'open cheque book' expectation upon the MLS to his private solicitor, rather than the indemnity for the Council as against any claim under section 39 of the Act.

The Council is always at liberty to determine to deal with a matter itself, without seeking indemnity, or even to take a position that, in its opinion, the Elected Member has failed to satisfy it of the application of the immunity in the particular circumstances.

I can assure you that even were the Council to resolve to refer the matter to the MLS, the MLS would return it to the Council, for it to fund. This was very clearly the advice received from the MLS when former Cr Bagster, previously of the City of Burnside, attempted a similar thing when faced with defending applications for seven (7) intervention orders for his actions and behaviours.

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