

## SEEKING LEGAL ASSISTANCE / ADVICE POLICY

Policy Type:	Council Policy
Responsible Department:	People & Governance
Responsible Officer:	General Manager People & Governance
Related Policies and Procedures	Seeking Legal Assistance/advice Procedure. Code of practice for access to meetings and documents
Date Adopted:	23 June 2014, C1170
Last Council Review:	N/A
Next Review Date:	June 2017
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### 1 POLICY STATEMENT

As a general rule, any legal advice obtained on behalf of Council will occur through the CEO or be authorised by the CEO or a Council resolution. There may be limited circumstances where it is not appropriate or not possible for a Council to obtain legal advice through the CEO. This policy sets out Council's position in these circumstances.

### 2 COMMUNITY GOAL

O5.3; good governance and legislative framework.

### 3 POLICY OBJECTIVES

Pursuant to s.78A of the *Local Government Act 1999* ("Act"), this policy is designed to set out Council's position in relation to the circumstances in which the Mayor, Elected Members and the Administration are authorised to seek legal advice independently of the CEO from an external legal service provider.

### 4 PRINCIPLES

A CEO of a Council is responsible for the implementation of lawful Council decisions and for the overall administration and budget management of the Council, including seeking legal advice.

Council is committed to ensuring that legal advice is sought for appropriate purposes such as to clarify ambiguity or uncertainty as to the Council's legal rights, obligations

or liabilities and ensure when advice is sought, that it has been done so by the correct process and advice received is dealt with accordingly.

All legal advice obtained is an official Council record and therefore subject to the *State Records Act 1997*.

## 5 POLICY

### 5.1 CIRCUMSTANCES IN WHICH IT IS APPROPRIATE FOR THE MAYOR TO SEEK LEGAL ADVICE

In circumstances in which it is not possible or appropriate for the CEO to seek legal advice, the Mayor should, ideally, seek a Council resolution to obtain legal advice. However, where this is not possible, the Mayor may seek the advice independently as set out below.

#### 5.1.1 Urgent matters relating to a Council Meeting if the CEO is unavailable

While the CEO has a good working knowledge of Council meeting procedures, matters may arise from time to time which require an urgent legal opinion. Where legal advice is required in the absence of the CEO:

- The Mayor or a General Manager or Manager Governance & Risk, may seek legal advice in situations in which a response is required urgently, including for an imminent Council meeting or other urgent matter;
- Any legal advice obtained in this way will be reported to the Council at the earliest available meeting (which may be conducted 'in confidence' for this purpose under s.90 (3) (h) of the Act); and/or other grounds under S.90 (3) as appropriate to the matter being considered.
- The legal advice will also be provided to the CEO (unless this is not appropriate – see below).

#### 5.1.2 The legal advice relates to the CEO or the exercise of the CEO's powers

In circumstances where Council is to consider a matter related to the CEO (e.g. urgent employment related issues or where the Council is investigating a failure by the CEO to comply with a resolution of Council or where a matter relates to the exercise of a CEO's powers) and it is the view of the Mayor that the consideration of this matter by the Council should occur with the benefit of legal advice:

- The advice will be obtained as a matter of administrative necessity by the Mayor to ensure the legality of the Council's actions and decisions;
- The Mayor **will not** confer with Council staff where the legal advice relates to the CEO's employment or other personal matter;
- The Mayor may confer with other relevant senior Council staff, such as the General Managers, Manager Governance & Risk

and/or the Organisational Development Manager, if the matter concerns an issue that is not confidential to the CEO, such as a conflict of interest matters disclosed relating to the register of interests;

- The Mayor will keep the Council fully informed of any advice obtained on behalf of the Council and advise members of the advice received at the next available meeting;
- Where the Mayor has obtained the advice other than in accordance with a Council resolution Council should, as a matter of caution, retrospectively endorse the Mayor's decision to obtain the advice.

## **5.2 CIRCUMSTANCES IN WHICH IT IS APPROPRIATE FOR ELECTED MEMBERS TO SEEK LEGAL ADVICE**

At times elected members may require access to legal advice in order to properly perform their functions and duties, independent of the collective body of Council. Arrangements to access this legal advice are to be made through the CEO, or in his/her absence, the General Manager People & Governance or the Manager Governance & Risk prior to seeking the advice.

- 5.2.1 A member may seek the support of Council through a Motion With or Without Notice for legal advice to be obtained on any matter. Where legal advice is sought in relation to a matter that is relevant to the performance or discharge of Council's role, function and objectives, members will be provided access to the full text of the legal advice.
- 5.2.2 Where access to legal advice is required in relation to potential conflicts of interest that may affect individual Elected Members, arrangements **MUST** be made through the CEO or General Manager People & Governance.

Legal advice will be provided to elected members at the cost of Council in determining a potential conflict of interest in the course of conducting their official duties.

- 5.2.3 Council will reimburse legal costs for individual Elected members where:
- The proceedings relate to issues of 'civil liability' and therefore invoke consideration of the s.39 LGA immunity; or
  - The expenditure falls within s.137, expenditure of budgeted funds of the LGA and it can be demonstrated that the legal action relates to the achievement of Council's role, functions and objectives as described in Sections 6 to 8 of the Act and/or the elected member's roles as set out in Section 58 or 59 of the Act. Each such case requires a Council resolution supporting the payment, which will be determined by the Council with regard to legal and merit considerations.
- 5.2.4 Council **WILL NOT** provide access to legal advice or pay for or reimburse the legal costs of individual elected members in relation to the initiation of or in defence of defamation proceedings.

5.2.5 Other requirements by individual Council members for legal advice are to be met entirely by the members themselves if prior approval has not been sought from Council or the CEO.

### **5.3 CIRCUMSTANCES IN WHICH IT IS APPROPRIATE FOR EXECUTIVE TO SEEK LEGAL ASSISTANCE AND/OR ADVICE**

Council Administration through delegations have the ability under s.44 of the Act, to be able to seek legal advice for the daily operation of Council.

Prior to seeking legal assistance and should timeframes allow, then the Manager Governance & Risk should be contacted to ascertain whether the issue can be answered internally or if previous advice has been received on the matter.

### **5.4 CIRCUMSTANCES IN WHICH IT IS APPROPRIATE FOR STAFF TO SEEK LEGAL ASSISTANCE AND/OR ADVICE**

Staff should not be seeking direct legal assistance without the knowledge and authorisation of their General Manager and/or direct Manager and/or unless otherwise delegated to do so under s.44 of the Act.

Other than legal advice relating to a personal liability which is indemnified under S.121 of the Act, Council will not fund personal legal advice for a staff member.

### **5.5 RECORD KEEPING AND CONFIDENTIAL DOCUMENTS**

Where the Mayor obtains legal advice relating to the CEO or the exercise of the CEO's powers and it is not appropriate to provide that advice to the CEO, the advice must be placed in the records management system in such a way as to ensure that it cannot be accessed by the CEO. This procedure will also apply to other documents relevant to the matter which, in the opinion of the Council, should be kept confidential.

The documents will be made password accessible and be available only to the Mayor and the General Managers, Manager Organisational Development or Manager Governance and Risk. These restricted access records will be maintained in accordance with the *State Records Act 1997* and will remain subject to assessment as part of any relevant application made under the *Freedom of Information Act 1991*.

It is open to Council to keep confidential documents off-site with a reputable and trustworthy custodian where this option is chosen for documents that are to be kept confidential from the CEO; the relevant documents will be kept off-site until the requirement for confidentiality ceases. Council will carefully select the person or organisation to whose custody it will entrust its documents and ensure that appropriate procedures are in place to protect the integrity of those documents.

In this instance, the Mayor or his/her delegate will inform the Council's Record Management Unit of the name of the storage facility and the subject and type and number of records.

The Mayor may take advice on the appropriate option by consulting with the Local Government Association of SA (LGA) and may, where appropriate, choose to keep the relevant documents with the LGA or Council's legal advisors. The chosen custodian of the documents must agree to ensure the maintenance of the documents' integrity and ensure that the documents are readily identifiable and

accessible to allow their assessment as part of an application made under the *Freedom of Information Act 1991*. Such records remain subject to the *State Records Act 1997*.

## 6 DEFINITIONS

**Legal Advice:** *the giving of a formal opinion regarding the substance or procedure of the law*

**Legal Professional Privilege:** *a protection from disclosing evidence which is a right that attaches to the client/Council (not to the lawyer) and so may only be waived by the client/Council.*

## 7 LEGISLATION/REFERENCES

- *Local Government Act 1999*
- *Code of Conduct for Council Members*
- *Elected Member Allowances and Benefits Policy*
- *Independent Commissioner Against Corruption Act 2012*
- *Freedom of Information Act 1991*
- *Code of Conduct for Council Employees*
- *State Records Act 1997*

## 8 POLICY DELEGATIONS

For the purposes of this policy, the CEO, General Managers, Manager Governance & Risk are delegated pursuant to s.44 of the Act to obtain legal advice or to authorise a senior staff member to do so.

## 9 ROLES/RESPONSIBILITIES

Manager Governance & Risk to ensure the policy remains up to date with legislation and practices of Council.

Records Management for storage of confidential documents off site

## 10 AVAILABILITY

The policy is available for public inspection during normal office hours from;

Civic Centre  
181 Unley Road  
Unley SA 5061

A copy may be purchased for a fee as determined annually by Council.

It is also available for viewing, download and printing free of charge from the Council's website, [www.unley.sa.gov.au](http://www.unley.sa.gov.au)

## 11 DOCUMENT HISTORY

<b>Date:</b>	<b>Council/Committee/Internal</b>	<b>Comment:</b>
21 May 2014	Audit and Governance Committee, Item 91	New policy for endorsement to Council
23 June 2014	Council Item 1170	