Mayor Seeking Legal Advice Policy

Strategic Reference	Outcome 5 – Leadership Strategy 3.4 – Council Members are strong advocates for the community. Strategy 3.8 – Council Members demonstrate 'good governance' in their roles.
File reference	AR19/3056
Responsibility	Office of Chief Executive Officer
Revision Number	2
Effective date	October 2019
Last revised date	August 2025
Minutes reference	197/25, 313/19
Next review date	August 2028
Applicable Legislation	Local Government Act 1999 State Records Act 1997
Related Policies	Records Management Policy
Related Documents	Obtaining Legal Advice: Guidelines for Mayors/Chairpersons (LGA 2011)

1. Purpose

This Policy sets out Council's position in relation to the circumstances in which the Mayor is authorised to seek legal advice independently of the Chief Executive Officer ("CEO").

The extent of this authorisation for the Mayor is for the purposes of ensuring that legal advice is sought for appropriate reasons such as to clarify ambiguity or uncertainty as to the Council's legal rights, obligations, or liabilities and to ensure that when advice is sought, that it occurs in accordance with the correct process and that the legal advice received is dealt with accordingly.

This policy also applies to the Deputy Mayor, or other Councillor, for any period which they act in the duties and/or office of the Mayor.

2. Scope

This Policy identifies the circumstances when it is appropriate for the Mayor to directly access legal advice because the CEO is not available, or where it is not appropriate, in the particular circumstances, to obtain advice through the CEO.

In most cases, the CEO is responsible for obtaining, or authorising an employee to obtain legal advice on behalf of the Council. The exceptions to this general rule are outlined in this Policy.

3. Policy Statement

3.1. Circumstances in which it is appropriate for Mayor to seek legal advice:

In circumstances where it is not possible or appropriate for the CEO to seek legal advice, the Mayor should, ideally, seek a Council resolution to obtain the legal advice. However, where this is not possible, due to issues of urgency, or otherwise the timing of the Council meeting at which the authority would be sought, the Mayor may seek the advice independently and directly as set out below:

1) Urgent matters relating to a Council Meeting if the CEO is unavailable

Matters may arise from time to time which require an urgent legal opinion. Where legal advice is required, in the absence of the CEO and appropriate senior staff:

- The Mayor may seek the legal advice where the response is required urgently, including for an imminent Council meeting or other urgent matter;
- Legal advice obtained in this manner will be reported to the Council at the next meeting (which may consider the advice 'in confidence' for these purposes under *Section 90(3)(h) of the Local Government Act 1999)*; and
- The legal advice will be provided to the CEO, unless not appropriate as clarified below.

2) The legal advice relates to the CEO or the exercise of the CEO's powers

In circumstances where the Council is to consider a matter related to the CEO (ie.: inclusive of but not limited to urgent employment issues related to the CEO or where the Council is investigating an alleged failure by the CEO to comply with a resolution of the Council or where a matter relates to the exercise of the 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 necessity by the Mayor to ensure that the Council's actions and decisions are lawful and/or to address issues of liability risk for the Council;
- The Mayor will not confer with or otherwise seek advice from Council staff where the legal advice relates to the CEO's employment or other personal matters;
- The Mayor may confer with relevant senior Council staff, such as the Directors (Director Community & Corporate and Director Roads & Infrastructure) and/or Executive Officer, if the matter concerns an issue that is not confidential to the CEO, such as a conflict of interest matter relating to matters disclosed in 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 meeting (including by providing Members, on a strictly confidential basis, with a copy of the advice); and

- Where the Mayor has obtained the legal advice other than in accordance with a Council resolution, Council may, as a matter of caution, retrospectively endorse the Mayor's decision to obtain the legal advice.

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 accessible only to the Information Management Team (for the sole purposes of entering, storing and delegation of said documents), the Executive Officer and/or the Executive Assistant to the CEO and Mayor. 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* or any oversight body investigation.

6. Authority to Act

The Mayor (or Councillor acting in the role of Mayor) has the authority (solely under this Policy) to procure legal services up to the value of $10,000.

7. Delegations

Council makes the following delegation:

- The CEO or Executive Officer holds the respective financial delegation to authorise payment of invoices where legal services have been procured by the Mayor, solely under this Policy (given financial delegations are made to Council officers only);

- The CEO has the delegation to approve, amend and review any internal procedures that shall be consistent with this Policy.

8. Availability/Accessibility

This Policy is available for inspection at Council's offices during normal business hours and Council's website and will be emailed to interested parties on request (please lodge request in writing via email to council@coorong.sa.gov.au).

9. Document History

This Policy will be reviewed at least every three (3) years or more frequently if legislation or Council requires.

Version	Adopted	Minute No	Description of change(s)
1	15 October 2019	313/19	New policy
2	19 August 2025	197/25	Introductory and scope components revised and duplication removed where applicable Organisational Development Coordinator position replaced with Executive Officer, given the change in reporting structures since policy was created Clarity provided in clause 6 (Delegation) (ie. segregation of authority versus financial delegation) Relevant sections of Appendix 1 updated to match amendments to Local Government Act 1999 owing to local government reforms Clauses 6 and 7 separated following recommendation of Governance & Policy Review Working Group

Appendix 1

References for the Local Government Act 1999

Sections 6 to 8 inclusive of the Local Government Act 1999 (the Act) sets out the role, functions and objectives of a Council. Section 58 of the Act sets out the role of the principal member (Mayor). Section 137 authorises Council to expend its funds.

6—Principal role of a council

A council is, under the system of local government established by this Act, established to provide for the government and management of its area at the local level and, in particular—

a) to act as a representative, informed and responsible decision-maker in the interests of its community; and
b) to provide and co-ordinate various public services and facilities and to develop its community and resources in a socially just and ecologically sustainable manner; and
c) to encourage and develop initiatives within its community for improving the quality of life of the community; and
d) to represent the interests of its community to the wider community; and
e) to exercise, perform and discharge the powers, functions and duties of local government under this and other Acts in relation to the area for which it is constituted.

7—Functions of a council

The functions of a council include—

a) to plan at the local and regional level for the development and future requirements of its area;
b) to provide services and facilities that benefit its area, its ratepayers and residents, and visitors to its area;
(ba) to determine the appropriate financial contribution to be made by ratepayers to the resources of the council;
c) to provide for the welfare, well-being and interests of individuals and groups within its community;
d) to take measures to protect its area from natural and other hazards and to mitigate the effects of such hazards;
e) to manage, develop, protect, restore, enhance and conserve the environment in an ecologically sustainable manner, and to improve amenity;
f) to provide infrastructure for its community and for development within its area (including infrastructure that helps to protect any part of the local or broader community from any hazard or other event, or that assists in the management of any area);
g) to promote its area and to provide an attractive climate and locations for the development of business, commerce, industry and tourism;
h) to establish or support organisations or programs that benefit people in its area or local government generally;
i) to manage and, if appropriate, develop, public areas vested in, or occupied by, the council;
j) to manage, improve and develop resources available to the council;
k) to undertake other functions and activities conferred by or under an Act.

8—Principles to be observed by a council

A council must act to uphold and promote observance of the following principles in the performance of its roles and functions—

(a) provide open, responsive and accountable government;
(b) be responsive to the needs, interests and aspirations of individuals and groups within its community;
(c) participate with other councils, and with State and national governments, in setting public policy and achieving regional, State and national objectives;

(d) give due weight, in all its plans, policies and activities, to regional, State and national objectives and strategies concerning the economic, social, physical and environmental development and management of the community;
(e) seek to co-ordinate with State and national government in the planning and delivery of services in which those governments have an interest;
(ea) seek to collaborate, form partnerships and share resources with other councils and regional bodies for the purposes of delivering cost-effective services (while avoiding cost-shifting among councils), integrated planning, maintaining local representation of communities and facilitating community benefit;
(f) seek to facilitate sustainable development and the protection of the environment and to ensure a proper balance within its community between economic, social, environmental and cultural considerations;
(g) manage its operations and affairs in a manner that emphasises the importance of service to the community;
(h) seek to ensure that council resources are used fairly, effectively and efficiently and council services, facilities and programs are provided effectively and efficiently;
(i) seek to provide services, facilities and programs that are adequate and appropriate and seek to ensure equitable access to its services, facilities and programs;
(ia) seek to balance the provision of services, facilities and programs with the financial impact of the provision of those services, facilities and programs on ratepayers;
(j) achieve and maintain standards of good public administration;
(k) ensure the sustainability of the council's long-term financial performance and position.

58—Specific roles of principal member

(1) The role of the principal member of a council as leader of council is—
(a) to provide leadership and guidance to the council; and
(b) to lead the promotion of positive and constructive working relationships among members of the council; and
(c) to provide guidance to council members on the performance of their role, including on the exercise and performance of their official functions and duties; and
(d) to support council members' understanding of the separation of responsibilities between elected representatives and employees of the council; and
(e) to preside at meetings of the council; and
(f) to liaise with the chief executive officer between council meetings on the implementation of a decision of the council; and
(g) to act as the principal spokesperson of the council; and
(h) to exercise other functions of the council as the council determines; and
(i) to carry out the civic and ceremonial duties of the office of principal member.

(2) Subsection (1)(g) does not apply in circumstances where a council has appointed another member to act as its principal spokesperson.

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.