

Mayor Seeking Legal Advice Policy

Strategic Reference	Objective 1: A caring, healthy resilient community. Strategy 1.7: Achieve or implement the statutory and core responsibilities of Council. Objective 4: Collaborative and respectful relationships amongst community, Council Members and Council. Strategy 4.2: To continuously strive for open and accountable administration practices.
File reference	AR19/3056
Responsibility	Chief Executive Officer
Revision Number	Original
Effective date	October 2019
Last revised date	N/A
Minutes reference	313/19
Next review date	October 2021 and every two (2) years thereafter (or when significant legislative changes occur that impacts this Policy)
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. Introduction

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

2. 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 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.

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3. Policy Application

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

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 this 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 (i.e.: 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 because 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 Infrastructure & Assets) and/or Organisational Development Coordinator, 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

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- Where the Mayor has obtained the legal 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 legal advice.

4. Procedure

Where the Mayor believes that legal advice is required for the Council to properly determine its position on a matter, this ordinarily occurs by way of a request to the CEO. The CEO will then assess the request and, where appropriate, arrange for the required legal advice to be obtained and made available to all Council Members.

Where the Mayor believes that legal advice is required for the benefit of the Council but, for good reason, does not believe that the 'usual processes' are available, the Mayor may seek legal advice directly, in accordance with the provisions of this Policy.

This Policy does not apply to circumstances where another Council Member seeks legal advice on any matter (which may, of course, be the subject of a notice of motion from a Member) or where any individual Council Member requires advice on a potential conflict of interest (where the process is for the Member to discuss the matter with the CEO, who will make the appropriate arrangements for legal advice).

5. Record Keeping and Confidential Documents

Where the Mayor obtains legal advice in accordance with this Policy and it is not appropriate to provide that advice to the CEO, the advice must nevertheless be saved in the Council's records management system but 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) and 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. Delegation

Council makes the following delegation:

- The Mayor has the delegation (solely under this Policy) to procure legal services in the first instance to the value of \$5,000.
- The CEO has the delegation to approve, amend and review any procedures that shall be consistent with this Policy.

7. Policy Review & Further information

This Policy is to be reviewed every two (2) years, or as necessary subject to legislative requirements. The next date for review is October 2021.

This Policy will be available for inspection at the Council offices listed below during ordinary business hours and available to be downloaded, free of charge, from Council's website: www.coorong.sa.gov.au.

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Coorong Civic Centre

95-101 Railway Terrace
PO Box 399, Tailem Bend
Fax: 8572 3822
Phone: 1300 785 277

Meningie Information Hub

49 Princes Highway
Meningie
Phone: 1300 785 277

Tintinara Customer Service Centre

37 Becker Terrace
Tintinara
Phone: 1300 785 277

Please email council@coorong.sa.gov.au should you wish to obtain a copy of this Policy.

Any grievances in relation to this policy or its application should be forwarded in writing addressed to the Chief Executive Officer of Council.

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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 78A sets out the provisions for the Scheme/Policy for obtaining legal advice. 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 (including general public services or facilities (including electricity, gas and water services, and waste collection, control or disposal services or facilities), health, welfare or community services or facilities, and cultural or recreational services or facilities);
- (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;

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- (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 and form partnerships 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;
- (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;
- (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 is—
 - (a) to preside at meetings of the council;
 - (b) if requested, to provide advice to the chief executive officer between council meetings on the implementation of a decision of the council;
 - (c) to act as the principal spokesperson of the council;
 - (d) to exercise other functions of the council as the council determines;
 - (e) to carry out the civic and ceremonial duties of the office of principal member.
- (2) Subsection (1)(c) does not apply in circumstances where a council has appointed another member to act as its principal spokesperson.

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.