



Mayor Seeking Legal Advice Policy

Classification:	Council Policy
Version Number:	1
Review Frequency:	Once in the term of Council
Last Reviewed:	N/A
Review Due:	2030
Responsible Officer:	Chief Executive Officer
Applicable Legislation:	Local Government Act 1999
Related Policies/Procedures:	Procurement Policy

1. PURPOSE:

Council is committed to good governance, including in the procurement of legal advice to support the sound operations of Council.

The purpose of this Policy is to formalise 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).

2. LEGISLATIVE CONTEXT:

Section 39 of the Local Government Act 1999 describes the level of legal protection afforded to Council Members:

No civil liability attaches to a member of a council for an honest act or omission in the exercise, performance or discharge, or the purported exercise, performance or discharge, of the member's or the council's powers, functions or duties under this or other Acts.

A liability that would, but for this section, attach to a member of a council attaches instead to the council.

Section 62(4a) of the Act provides that:

- (4a) A member or former member of a council must not disclose information or a document—
- (a) in relation to which there is an order of a council or council committee in effect under section 90 or 91(7) requiring the information or document to be treated confidentially;
 - (b) or (b) that the member or former member knows, or ought reasonably to know, is information or a document that is otherwise required to be treated confidentially.

Section 78 of the Act covers the provision of facilities and services to Council Members and Section 78(1) provides that Councils may *'provide facilities and other forms of support to its members to assist the members in performing or discharging official functions and duties'*.

Section 137 of the Act prescribes that *'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'*.

3. SCOPE:

This Policy applies in circumstances where it is not possible or appropriate for Council to obtain legal advice through the CEO. Ideally, in these circumstances, the Mayor should seek a Council resolution to obtain legal advice, however, where this is not possible, the Mayor may seek the advice independently, as set out in this Policy.

4. POLICY PRINCIPLES:

Generally, any legal advice obtained on behalf of a Council will occur through the CEO, or be authorised by the CEO through delegation or a Council resolution.

The CEO of a Council is responsible for the implementation of lawful Council decisions and for the overall administration and budget management of the Council. However, there may be limited circumstances where it is not appropriate or not possible for a Council to obtain legal advice through the CEO.

In circumstances in which it is not possible or appropriate for the CEO to seek legal advice, the Mayor ideally should 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.

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

While the CEO and Executive Team have a comprehensive 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 may seek legal advice in situations in which a response is required urgently, including for an imminent Council meeting or other urgent matter;

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- 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 section 90(3)(h) of the Local Government Act 1999); and
 - The legal advice will also be provided to the CEO (unless this is not appropriate – refer below).

4.2 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 a Director, if the matter concerns an issue that is not confidential to the CEO, such as a conflict of interest matter 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 available meeting; and
- 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.

4.3 Exceptional Circumstances

Notwithstanding the above, the Council also understands that exceptional circumstances may arise, which require the Mayor to obtain legal advice outside of the parameters of this policy:

- In those circumstances, the Mayor may obtain the advice, but will be required to keep the Council fully informed of any such advice obtained on behalf of the Council, including providing reasons why it was required to be obtained;
- The Mayor will be required to advise members of the advice received at the next available meeting; and
- Subject to the reasons provided by the Mayor, the Council should, as a matter of caution, retrospectively endorse the Mayor's decision to obtain the 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 Council's 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.

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.

6. DELEGATION

In order to allow for the effective application of this Policy, the Council delegates the authority to the Mayor to procure legal services in the first instance up to the value of \$5,000 per matter.

7. AVAILABILITY OF THE POLICY:

This policy will be available for inspection at the Council office during ordinary business hours and on Council's website: www.kingstondc.sa.gov.au

8. REVIEW:

This policy may be amended at any time and shall be reviewed by the Kingston District Council at a minimum once every four (4) year Council term since its adoption, or latest amendment.