


Council Policy

ELECTED MEMBERS ACCESS TO LEGAL ADVICE



COUNCIL POLICY

 <p>Adelaide Hills COUNCIL</p>	ELECTED MEMBERS ACCESS TO LEGAL ADVICE
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Policy Number:	CM-03
Responsible Department(s):	Governance & Performance
Relevant Delegations:	As per the Delegations Register and as detailed in this Policy
Other Relevant Policies:	Behavioural Management Council Member Allowances & Support Procurement
Relevant Procedure(s):	Nil
Relevant Legislation:	<i>Local Government Act 1999</i>
Policies and Procedures Superseded by this policy on its Adoption:	8 September 2015, SPDPC, Item 12.2, 44
Adoption Authority:	Council
Date of Adoption:	25 February 2025
Effective From:	4 March 2025
Minute Reference for Adoption:	87/25
Next Review:	At the end of the Council term (November 2026) or as required by legislation or changed circumstances

Version Control

Version No.	Date of Effect	Description of Change(s)	Approval
1.0	28/6/2011	Initial Policy	Council - Res 205
1.1	8/9/2015	Nomenclature and legislative updates and creation of a procurement delegation to the Mayor (for procuring legal advice only)	SPDPC – Res 44
1.2	28/9/2021	Policy Review with minor amendments	Council – Res 209/21
1.2	13/02/2024	Policy review with amendments	Council – Res 18/24
1.3	25/02/2025	<ol style="list-style-type: none">1. Full policy review to satisfy the requirements of resolution 430/24.2. Insertion of a cover page	Council – Res 87/25

ELECTED MEMBERS ACCESS TO LEGAL ADVICE POLICY

1. PURPOSE

- 1.1 At times, Elected Members may require access to legal advice in order to perform their functions and duties.
- 1.2 The Chief Executive Officer (or their delegate) is responsible for the administration and budget management of the Council, including seeking legal advice. Accordingly, subject to the provisions of this Policy, legal advice obtained on behalf of Council will be obtained by the Chief Executive Officer and/or their delegate.
- 1.3 In general, when an Elected Member requires legal advice, they should speak to the Chief Executive Officer, the Executive Governance Officer or their delegates who may progress the matter in the normal course of their administrative roles.
- 1.4 On rare occasions, situations could arise where the involvement of the Chief Executive Officer, Executive Governance Officer and/or their delegate is (a) not possible, and/or (b) otherwise inappropriate. In such instances, the Council authorises the Deputy Mayor to seek legal advice on its behalf (independently of the Chief Executive Officer) but only in the following circumstances:
- (a) Where the matter is urgent and the legal advice is needed for an imminent Council (or Committee) meeting, and the Chief Executive Officer and the Executive Governance Officer are unavailable; or
 - (b) Where legal advice is required, as an administrative necessity, in relation to the Chief Executive Officer or the exercise of the Chief Executive Officer's powers (or the failure by the Chief Executive Officer to exercise his/her powers);
 - (c) In both instances, the Deputy Mayor is required to discuss the matter, and gain agreement in writing, from a Presiding Member of a Committee, or if the matter relates to a Committee, the Presiding Member of that particular Committee.
- 1.5 In all other circumstances Elected Members should seek Council's approval to access legal advice through a Motion with or without Notice.
- 1.6 Where legal advice has been accessed in relation to a matter that is in accordance with sections 6 to 8 of the *Local Government Act 1999* ("The Act") and this Policy, Elected Members will be provided the full text of any written legal advice,
- 1.7 In summary, this Policy defines those situations in which:
- an Elected Member, including the Deputy Mayor, may seek independent legal advice;
 - the Council will fund the costs of the legal advice obtained by the Elected Member, including the Deputy Mayor; and
 - the limits of that funding.

2. SCOPE

- 2.1 This Policy applies to all Elected Members, including the Deputy Mayor. This policy does not apply to employees of the Council.

3. LEGISLATION

- 3.1 Sections 6 to 8 inclusive of the Act sets out the role, functions and objectives of a council.

- 3.2 Sections 58 and 59 of the Act set out the specific roles of a principal member (Mayor) and the roles of all Elected Members.

- 3.3 Section 99 of the Act sets out the specific role of the Chief Executive Officer of a Council.

- 3.4 Section 39 of the Act describes the level of legal protection afforded to Elected Members, and provides that:

(1) 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.

(2) A liability that would, but for this section, attached to a member of a Council attaches instead to the Council.

- 3.5 Section 78 of the Act provides that a council may provide facilities and other forms of support to its Elected Members at the discretion of the Council.

- 3.6 Section 137 of the Act authorises a Council to expend its funds as follows:

"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."

4. POLICY STATEMENT

- 4.1 The objectives of this Policy are:

- a) To ensure the availability of appropriate facilities and services to Elected Members;
- b) To identify the situations where Elected Members can seek legal advice; and
- c) To identify situations where the Deputy Mayor can obtain legal advice independent of the Elected Members or the Chief Executive Officer.

5. CIRCUMSTANCES IN WHICH AN ELECTED MEMBER MAY OBTAIN LEGAL ADVICE

- 5.1 When an Elected Member requires legal advice, they should speak to the Chief Executive Officer, the Executive Governance Officer or their delegates who may, at their discretion, progress the matter in the normal course of their administrative roles.

- 5.2 Where the Chief Executive Officer, the Executive Governance Officer or their delegates provide access to legal advice for an Elected Member:

- a) The Chief Executive Officer, the Executive Governance Officer or their delegate, not the Elected Member, are responsible for instructing the legal provider.
 - b) The request for advice and the advice must be put in writing, noting that verbal advice may have been provided.
 - c) The advice should be treated confidentially and only provided to those who require access to the advice to perform their roles, functions and duties.
- 5.4 The CEO must ensure that all Elected Members have equal access to legal advice under this provision and that decisions regarding access to legal advice are made consistently and in the best interest of Council.
- 5.6 The 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 or defence of defamation proceedings by an Elected Member.
- 5.7 The Council will not provide access to legal advice or pay for or reimburse the legal costs of individual Elected Members in relation to a behaviour standard complaint, once it has been lodged.
- 5.8 If an Elected Member is unable to make a request for legal advice to the Chief Executive Officer or Executive Governance Officer for reasons described in clause 1.4, the Elected Member may make their request to the Deputy Mayor (or a Presiding Member of a Committee in circumstances where the Deputy Mayor may be absent or conflicted), who may, if applicable, seek legal advice independently of the Chief Executive Officer as set out below.

6. CIRCUMSTANCES IN WHICH A DEPUTY MAYOR MAY OBTAIN LEGAL ADVICE

- 6.1 There are limited circumstances in which it is (a) not possible, and/or (b) not appropriate for the Chief Executive Officer, the Executive Governance Officer and/or their delegates to obtain the required legal advice. In this regard, the Council authorises the Deputy Mayor to seek legal advice on its behalf (independently of the Chief Executive Officer) but only in the following circumstances:
- a) Where the matter is urgent and the legal advice is needed for an imminent Council (or Committee) meeting, and the Chief Executive Officer and the Executive Governance Officer are unavailable; or
 - b) Where legal advice is required, as an administrative necessity, in relation to the Chief Executive Officer or the exercise of the Chief Executive Officer's powers (or the failure by the Chief Executive Officer to exercise his/her powers).
 - c) In both instances, the Deputy Mayor is required to discuss the matter, and gain agreement in writing, from a Presiding Member of a Committee.
 - d) Where the advice being sought relates to a committee, the Deputy Mayor must discuss the need for the advice with, and gain agreement in writing from, the Presiding Member of the Committee.
- 6.2 Where the matter does not satisfy the requirements in 6.1, the Deputy Mayor must seek the support of Council through a motion (with or without notice), for legal advice to be obtained in this matter.

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- 6.3 Where the Deputy Mayor has obtained the advice other than in accordance with a Council resolution (that is, under 6.1(a) or (b)), the matter must be put to the next available Council meeting for the Council's retrospective endorsement.
- 6.4 Failure to secure retrospective approval at the next available Council meeting will result in the matter being escalated for internal review (under s270 of the *Local Government Act 1999*). This review will assess the circumstances of non-compliance and may result in recommendations to Council, including potential remedial actions.
- 6.5 Legal advice is to be sought and provided in writing, and on receipt of the legal advice, the Deputy Mayor will:
- a) Provide a copy of the request and advice in full to the Chief Executive Officer, the Executive Governance Officer, and Elected Members, within 5 business days, unless the legal advice directly relates to the Chief Executive Officer, in which case Council will determine whether the advice should be provided to the Chief Executive Officer as part of the retrospective endorsement process; and
 - b) Provide a written report to the next scheduled Council meeting detailing the circumstances in which the advice was sought, the cost of the advice, and the outcome of the legal advice. A full copy of the request for legal advice and the legal advice will be provided. Where appropriate, the report may be provided 'in confidence' under section 90(3) of the Act.
- 6.6 The legal advice obtained pursuant to this section is not required to be provided to the Chief Executive Officer if it directly relates to the Chief Executive Officer or the exercise of the Chief Executive Officer's powers.
- 6.7 Where the Deputy Mayor is absent or conflicted, the Council authorises a Presiding Member of a Committee to seek legal advice on its behalf (independent of the Chief Executive Officer) pursuant to this section and in accordance with this policy. In these circumstances the Presiding Member must seek agreement in writing from another Presiding Member of a Committee.
- 6.8 The legal advice obtained pursuant to this section is not required to be provided to an Elected Member if it directly relates to that Elected member.

7. PROCUREMENT PROCESSES

- 7.1 The procurement of legal advice under this Policy must be conducted in accordance with Council's *Procurement Policy* although procedural elements of the *Procurement Framework* will not be able to be complied with contemporaneously.

8. RECORD KEEPING

- 8.1 Where the Deputy Mayor obtains legal advice relating to the Chief Executive Officer or the exercise of the Chief Executive Officer'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 Chief Executive Officer. This procedure

will also apply to other documents relevant to the matter which, in the opinion of the Council, should be kept confidential.

88.2 Legal advice obtained by Council must be kept in the Council's records management system in such a way as to ensure it can only be accessed by authorised personnel.

9. DELEGATION

99.1 Council makes the following delegations:

- a. The Chief Executive Officer has the delegation to approve, amend and review any procedures that shall be consistent with this Policy; and
- b. The Chief Executive Officer has the delegation to make any formatting, nomenclature or other minor changes to the Policy during the period of its currency.

10. LIMITATIONS

10.1 The Deputy Mayor has the delegation to procure legal services to the value of \$10,000 (GST exclusive) per matter. If additional costs are anticipated beyond this limit for any single matter, separate approval must be sought from Council.

10.2 The Deputy Mayor must inform the legal provider that their delegation to procure legal services is limited to \$10,000 (GST exclusive) per matter, and that any expenditure beyond this limit requires separate Council approval.

10.3 Where an ongoing engagement with a legal provider addresses multiple related issues, the combined cost of the advice should not exceed the \$10,000 limit.

10.4 Where an ongoing engagement with a legal provider addresses multiple unrelated issues, each distinct issue will be considered a separate matter. The financial delegation of \$10,000 applies to each matter individually.

11. AVAILABILITY OF THE POLICY

11.1 This Policy will be available for inspection at the Council's Offices during ordinary business hours and via the Council's website www.ahc.sa.gov.au. Copies will also be provided to the public upon request, and upon payment of a fee in accordance with the Council's Schedule of Fees and Charges.