



Mayor Seeking Legal Advice Policy

Policy Classification	Council Policy
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Next Date of Review:	May 2026
Version Number:	6
Applicable Legislation:	<i>Local Government Act 1999</i> <i>Independent Commissioner Against Corruption Act 2012</i>
Related Policies or Documents:	Elected Members Code of Conduct Complaints Against Council Employees
Associated Forms:	NA
Responsible Manager:	Chief Executive Officer
Approved by Council:	10 May 2022
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1. Preamble

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

2. Purpose

- 2.1. This policy is designed to set 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.
- 2.2. Any legal advice required on behalf of the Kangaroo Island Council (Council) will occur through the Chief Executive Officer (CEO) or be authorised by the CEO or a Council resolution. The CEO 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 to obtain legal advice through the CEO.
- 2.3. Reference to duties or authorisation of the CEO in this Policy shall include the CEO and/or the Acting CEO (ACEO).

3. Scope

- 3.1. The decision to engage a legal practitioner for the purposes of obtaining legal advice should be made by Council resolution or, if this is not possible or problematic, it may be obtained by the Mayor. The circumstances in which the Mayor may seek legal advice without the directive of a Council resolution are set out within this policy.

4. Definitions

- 4.1. **CEO** means the Chief Executive Officer of the Kangaroo Island Council.

5. Policy Statement

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

- 5.1.1. 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:

- a. 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;
- b. Any legal advice requested 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*);
- c. The legal advice will also be provided to the CEO (unless this is not appropriate as clarified below).

5.2. The legal advice relates to the CEO or the exercise of the CEO's powers

5.2.1. 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, a breach of Complaints Against Council Employees Policy, 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:

- a. 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;
- b. The Mayor may confer with other relevant senior Council staff, such as the Director Corporate Services or Governance Officer if the matter concerns an issue that is not confidential to the CEO, such as a conflict-of-interest issue relating to matters disclosed in the register of interests;
- c. 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 matter;
- d. The Mayor will keep the Council fully informed of any advice obtained on behalf of the Council and advise members of the advice obtained at the next available meeting.
- e. 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 that advice.

5.3. Record Keeping and Confidential Documents

5.3.1. As the Council has a paper based and electronic records management system, the documents will be kept in hard copy separate from other records and, when relevant, in the custody of the CEO and/or the ACEO and/or the Manager of People and Culture. 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.

5.4. Delegation

5.4.1. Council makes the following delegation:

- a. The Mayor has the delegation (solely under this Policy) to procure legal services in the first instance to the value of \$5,000 (GST exclusive) per matter.

6. Availability of the Policy

This Policy will be available via the Council's website: www.kangarooisland.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.

SIGNED:



Chief Executive Officer

Date: 10 May 2022

History:

Date Reviewed:	Version:	Reason for Amendment:
March 2012 (Not adopted.)	Version 1	1 st Draft: The introduction of the Local Government Association's (SA): <i>Obtaining Legal Advice Guidelines for Mayor-Chairpersons (May 2011)</i> and <i>Model Policy for Mayor-Chairpersons Seeking Legal Advice (June 2011)</i>
12 March 2014	Version 2	The advent of the <i>Independent Commissioner Against Corruption Act 2012</i> and subsequent Council' adoption of the <i>Elected Members Code of Conduct (Oct 2013)</i>
18 August 2015	Version 3	Review post Local Government Election and apply new Council Logo
13 June 2017	Version 4	Periodic Review Ref# C184:2017
14 May 2019	Version 5	Periodic Review Minute Ref# C170/2019
10 May 2022	Version 6	Periodic Review – inclusion of dollar amount