

Policy Section:	1. Corporate Governance
Policy Name:	Mayor Seeking Legal Advice
Classification:	Public – Council Policy
Adopted:	24 September 2019
Frequency of Review:	Within 12 months after the conclusion of each Local Government Council Election
Last Review:	August 2019
Next Review Due:	August 2022
Responsible Officer(s):	Chief Executive Officer Governance Officer
Policy and Code of Practice Manual File Ref:	CC10/2601
Council File Reference:	CR 19/51388
Legislation Authority:	Local Government Act 1999
Related Policies and Codes:	N/A
Related Procedures:	Obtaining Legal Advice: Guidelines for Mayors/ Chairpersons (Local Government Association of SA)

1. BACKGROUND / INTRODUCTION

- 1.1 As a general rule, any legal advice obtained on behalf of a Council will occur through the CEO or be authorised by the CEO or a Council resolution. A CEO of a Council is responsible for the implementation of lawful Council decisions and for the overall administration and budget management of the Council.
- 1.2 However, there may be limited circumstances where it is not appropriate or not possible for a Council to obtain legal advice through the CEO.

2. PURPOSE OF THE POLICY

- 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 CEO.

3. CIRCUMSTANCES IN WHICH IT IS APPROPRIATE FOR THE MAYOR TO SEEK LEGAL ADVICE

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

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

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 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* (the Act);
- (c) The legal advice will also be provided to the CEO (unless this is not appropriate – see below).

3.1.2 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:

- (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 will not confer with Council staff where the legal advice relates to the CEO's employment or other personal matter;
- (c) The Mayor may confer with other relevant senior Council staff, such as the Human Resources Manager, if the matter concerns an issue that is not confidential to the CEO, such as a conflict of interest matter relating matters disclosed in the register of interests;
- (d) 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;

- (e) 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. RECORD KEEPING AND CONFIDENTIAL DOCUMENTS

- 4.1 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.
- 4.2 The documents will be made password accessible and be available only to the Mayor and the [or other such senior officer]. 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. REVIEW AND EVALUATION

The effectiveness of this Policy will be reviewed within 12 months after the conclusion of each Local Government Council Election. .

The Chief Executive Office will report to Council on the outcome of the evaluation and if relevant make recommendations for amendments, alteration or substitution of a new Policy.

The Policy will not be altered or substituted so as to affect a process already commenced.

The Policy will be reviewed after each general election of Council.

6. FURTHER INFORMATION

Further information about this Code can be obtained by:-

Telephone: 8522 9211

Email: council@gawler.sa.gov.au

Appointment: Town of Gawler Administration Centre, 43 High Street, Gawler East.

Letter: PO Box 130, Gawler SA 5118

7. AVAILABILITY OF THE POLICY

The Policy is available for inspection during ordinary business hours at the Council principal office, Town of Gawler Administration Centre 43 High Street, Gawler East or is available from the Council website at www.gawler.sa.gov.au.

A copy of this Policy will be provided to interested parties upon request, for a fee as contained in the Register of Fees and Charges.