



# Elected members legal advice policy

<b>Classification</b>	Policy
<b>Strategic reference</b>	Goal 4 Organisational : Effective governance and organisational efficiencies
<b>Relevant legislation</b>	Local Government Act 1999
<b>Relevant documents</b>	Code of Conduct for Elected Members
<b>Responsible officer</b>	Chief Executive Officer
<b>Date adopted</b>	November 2019
<b>Next review date</b>	November 2022

## 1. Purpose

At times, Elected Members may require access to certain legal advice in order to perform their functions and duties. When an Elected Member requires legal advice, the standard practice of Southern Mallee District Council (**Council**) is that they should speak to the Chief Executive Officer or their delegate who will progress the matter in the normal course of their administrative roles.

On rare occasions, situations could arise where the involvement of the Chief Executive Officer or their delegate is (a) impossible in the time available, or (b) otherwise inappropriate.

In such instances only, the Mayor (unless the matter relates to the Mayor and is therefore inappropriate) may access the Council's panel of lawyers for legal advice within the limits of this Policy. 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.

In summary, this Policy defines those situations in which:

- the Elected Members may seek independent legal advice;
- the Mayor may seek independent legal advice;
- the Council will fund the costs of the legal advice obtained by the Elected Members or the Mayor; and
- the limits of that funding.

## 2. Scope

This policy applies to the Elected Members, including the Mayor, of the Council.

## 3. Policy statement

The objectives of this Policy are:

- to ensure the availability of appropriate legal advice to Elected Members within the framework of legislation;
- to identify the situations where the Council, as a matter of policy, will and will not fund the costs of providing legal advice for individual Elected Members; and
- to identify situations where the Mayor can obtain legal advice independent of the Elected Members or the Chief Executive Officer.

#### **4. Legislation**

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

Sections 58 and 59 of the Act sets out the specific roles of a principal member and the roles of all Elected Members.

Section 99 of the Act sets out the specific role of the Chief Executive Officer of a council.

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, attach to a member of a Council attaches instead to the Council.”

Section 78 of the Act provides that a Council may provide facilities and services to its Elected Members, at the discretion of the Council. Those facilities and services are conditional upon the following:

- “2(a) the Council must specifically resolve that the service is necessary or expedient to the performance or discharge of official functions or duties; and
- (b) services must be available to members on a uniform basis (other than services specifically provided for the benefit of the principal member)”

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.”

#### **5. Circumstances in which an Elected Member may obtain legal advice**

Elected Members will be provided access to legal advice in accordance with this Policy. This will generally be facilitated by the Chief Executive Officer or his/her delegate in his/her normal administrative roles.

The Council will pay for or reimburse legal costs for individual Elected Members in the following circumstances:

- where advice is required in relation to a Code of Conduct matter or investigation by a relevant authority is sought;
- at the Elected Member's request, where an Elected Member requires legal advice during a third party investigation (in addition to any legal support for a Code of Conduct complaint);
- where the issue relates to potential conflicts of interest pursuant to the Act, that may affect the Elected Member;
- where the proceedings relate to issues of civil liability and therefore invoke consideration of immunity pursuant to section 39 of the Act; or
- where the expenditure falls within section 137 of the Act and it can be demonstrated that the matter relates to the achievement of Council’s role, functions and objectives and/or the Elected Member’s role. Each case requires a Council resolution supporting the payment, which will be determined by Council with regard to legal and merit considerations.

Irrespective of this Policy, any Elected Member may seek initial or additional approval (or reimbursement) from Council for any legal advice sought or obtained, but it will be at the discretion of Council as to whether approval is granted, or reimbursement takes place further to the request.

Where legal advice has been sought in relation to a matter that is relevant to the performance or discharge of the Council's role, function and objectives, all Elected Members will be provided access to the full text of the legal advice.

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 of defamation proceedings by an Elected Member.

If an Elected Member is unable to make a request for legal advice to the Chief Executive Officer, and requires advice on an urgent basis (for instance, for an imminent Council meeting) the Elected Member may make their request to the Mayor, who may, if applicable, seek legal advice independently of the Chief Executive Officer as set out below.

#### **6. Circumstances in which a Mayor may obtain legal advice**

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 or their delegate.

There are limited circumstances in which it is (a) not possible, or (b) not appropriate for the Chief Executive Officer to obtain the required legal advice. In this regard, the Council authorises the Mayor to seek legal advice on its behalf (independently of the Chief Executive Officer) but only in the following circumstances only:

- where the matter is urgent and the legal advice is needed for an imminent Council (or committee) meeting, and the Chief Executive Officer is unavailable; or
- 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 exercise his/her powers).

Where the matter is not demonstrably urgent, the Mayor must seek the support of Council through a motion (with or without notice), for legal advice to be obtained in this manner.

Where the Mayor has obtained the advice other than in accordance with a Council resolution (that is, where the advice was sought on an urgent basis), the matter must be put to the next available Council meeting for the Council's retrospective endorsement.

On receipt of the legal advice, the Mayor will:

- provide a copy of the advice in full to the Chief Executive Officer, at the earliest opportunity; and
- provide a written report to the next scheduled Council meeting detailing the circumstances in which the advice was sought and the outcome of the legal advice. Where appropriate, the report may be provided 'in confidence' under section 90(3) of the Act.

Only in the following circumstances, is the legal advice obtained pursuant to this section 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; and
- there are reasonable grounds, taking into account all relevant considerations in the circumstances, not to disclose the legal advice to the Chief Executive Officer.

## **7. Limitations**

In accordance with this Policy, an Elected Member (including the Mayor) can seek legal advice to a maximum of \$5,000 + GST per financial year.

## **8. Record keeping**

Legal advice obtained by Council must be kept in the Council's records management system.

Where legal advice relates to the Chief Executive Officer and has not been provided to the Chief Executive Officer (on the bases outlined in this Policy) the advice should be placed in the records management system in such a way as to ensure that it cannot be accessed by the Chief Executive Officer.

## **9. Policy review**

The effectiveness of this policy will be reviewed every three years or as necessary.

## **10. Further information**

This document is available on Council's website [www.southernmallee.sa.gov.au](http://www.southernmallee.sa.gov.au) and at the principal office of the Southern Mallee District Council at Day Street, Pinnaroo SA 5304.

A copy of this document may be purchased from Council.