



Council Member Legal Advice Policy

Reference Number:	1.11
Type:	Council Policy
Category:	Council Members
Relevant Community Plan Outcome:	<ul style="list-style-type: none">• Create opportunities for community leadership and civic participation.• Be bold and innovative in our practices, leadership and decision making.
Responsible Officer(s):	Manager Governance & Operational Support
First Issued/Approved:	May 2007
Minutes Reference:	CoS 4/06/2018, Item 3.31
Last Reviewed:	June 2018
Next Review Due:	June 2020
Applicable Legislation:	Local Government Act 1999
Related Policies:	Council Member Allowances and Support Policy
Related Procedures:	Not applicable

1. Purpose

At times Council Members may require access to certain legal advice in order to properly perform their functions and duties. Generally this would be facilitated by the Chief Executive Officer or his delegate/s in the normal course of their administrative roles. However there may be occasions when individual Council Members require legal advice independent of the collective Council body.

This policy seeks to define those situations where Council will fund the costs of providing legal advice for individual Council Members.

2. Scope

This policy applies to the Council Members of the City of Charles Sturt.

3. Policy Statement

The objectives of this policy are:

- to ensure the availability of appropriate legal advice to Council Members within the framework of legislation; and
- to identify the situations where Council, as a matter of policy, will and will not fund the costs of providing legal advice for individual Council Members.

4. Legislation

Sections 6 to 8 inclusive of the Local Government Act 1999 (the LG Act) sets out the role, functions and objectives of a council. Sections 58 and 59 of the LG Act set out the specific roles of a Principal Member (Mayor) and the roles of all Members of councils.

Section 39 of the LG Act describes the level of legal protection afforded to Council Members, viz:

- “(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 LG Act covers the provision of facilities and services to Council Members. This section specifies that these may be provided at the discretion of the Council subject to complying with 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 LG Act authorises a council to expend its funds, viz:

“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 Application

Council Members will, in accordance with this policy, be provided access to legal advice. This will generally be facilitated by the Chief Executive Officer in his normal administrative role. The Chief Executive Officer may delegate this authority and responsibility, in accordance with this policy, to other Council Officers.

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

Individual Council Members are able to access legal advice in relation to potential conflicts of interest that may affect them. Arrangements to access this legal advice are to be made through the Chief Executive Officer, General Manager Corporate Service or Manager Governance & Operational Support.

Council will not provide access to legal advice or pay for or reimburse the legal costs of individual Council Members in relation to the initiation of defamation proceedings by a Council Member. Not only is there a lack of statutory authority for the Council to incur such expenditure but such action generally relates to the reputation of an individual and not to the Council itself, regardless of the fact that the alleged damage to the reputation of the individual has occurred as a result of holding public office as a Council Member.

Council will only pay for or reimburse legal costs for individual Council Members where:

- the proceedings relate to issues of 'civil liability' and therefore invoke consideration of the Section 39 immunity; or
- the expenditure falls within Section 137 of the LG Act and it can be demonstrated that the legal action relates to the achievement of Council's role, functions and objectives as described in Sections 6 to 8 of the LG Act and/or the Council Member's roles as set out in Section 58 or 59 of the LG Act. Each such case requires a Council resolution supporting the payment, which will be determined by the Council with regard to legal and merit considerations.

Other requirements by individual Council Members for legal advice are to be met entirely by the members themselves.

5. Policy Procedures

Where a Council Member believes legal advice is required for Council to properly determine its position in a matter, they should direct this request to the Chief Executive Officer. The Chief Executive Officer will assess the request and, where appropriate, arrange for the required legal advice to be obtained and made available to all Members of Council.

A Council Member may seek the support of Council through a Motion on Notice for legal advice to be obtained on any matter.

Where an individual Council Member requires advice on a potential conflict of interest they should discuss the matter with the Chief Executive Officer, who will make arrangements for a solicitor to contact the Member and obtain the relevant details. All advice provided under this arrangement is to be in (or confirmed in) writing with a copy provided to Council for future reference, as well as to the Member.