

POLICY– COUNCIL

Elected Member Legal Advice Policy

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1. Document control

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2. Preamble

The contents of and the commitments that council makes in this policy are not intended to be and should not be interpreted to be any more than a statement of the City of Onkaparinga's general position in relation to those matters, and to facilitate its aspirations wherever it is reasonable to do so.

3. Policy purpose

The role of an Elected Member is defined by various legislation and regulations. The environment is largely regulated and from time to time, it can be complex. Elected Members should not incur legal expenses as a result of performing and discharging their official functions and duties.

Generally, seeking legal advice would be facilitated by the Chief Executive Officer (CEO) or their delegate/s in the course of their administrative role in supporting elected members. However, there may be occasion when individual Elected Members require legal advice independent of the collective council body.

Section 78 of the *Local Government Act 1999* covers the provision of facilities and support to council members. This section specifies that these may be provided at the discretion of the Council on the

basis the 'provision of facilities or service is necessary or expedient to the performance or discharge official functions and duties.'

The purpose of this policy is to provide guidance on the extent and limitations where Council will fund the costs of providing legal advice for individual elected members.

At the Council Meeting of 15 October 2019 Council resolved the following:

1. *That Council adopt the Elected Member Legal Advice Policy as per attachment 1 of the agenda report.*
2. *That the Elected Member Allowances, Benefits and Support procedure be updated to include the addition of reimbursement of costs for legal advice of up to \$2,500 annually per member in accordance with the Elected Member Legal Advice Policy.*

This Policy extends in accordance with its terms to the provision of legal advice only. It does not extend to any form of legal representation. Legal representation at the cost of the Council may only occur via resolution of the Council.

It is acknowledged that any legislative requirement which affects Council will take precedence over Council's policies and procedures.

4. Scope

This policy applies to all Elected Members of the City of Onkaparinga.

5. Definitions

Legal advice	is professional advice, by the provision of a professional or formal legal opinion about the substance or procedure of the law, to the elected member as the recipient of the sourced advice.
Legal representation	is when a professional advocate stands in the shoes of the elected member and, whether in writing or orally, makes submissions on behalf of the elected member to a third party, whether that third party is the Council or any other person.

6. Policy

The following general principles will apply to any request for assistance within the terms of this Policy:

- any matter or issue in respect of which legal advice is required must be relevant to and connected with the performance or discharge of official functions and duties of public office.

This policy provides for Elected Members to be reimbursed for the provision of legal advice with respect to the following types of matters:

- Advice is sought in relation to a Code of Conduct matter and is in line with Council's Procedure for Investigating Complaints under the Code of Conduct for Council Members.
- Advice is sought in relation to potential Conflicts of Interest pursuant to the *Local Government Act 1999* or other relevant Act.

- Advice is sought for issues relating to civil liability and therefore invokes consideration of the immunity in Section 39 of the *Local Government Act 1999*.
- Advice is sought in relation to investigations requested by the Ombudsman or ICAC, relating to matters arising from the performance or discharge of the Elected Member's official function and duties.

6.1 POLICY PROCEDURE

Elected Members are able to seek their own legal advice from a provider of their own choice in relation to matters relevant and connected with the performance or discharge of official functions and duties of public office.

Or

Access to legal advice may also be facilitated by the Chief Executive Officer or the Director Corporate and City Services at the elected member's request.

Where a request to access legal advice is made through the Chief Executive Officer, the Elected Member shall provide written instructions to the Chief Executive Officer to ensure that the advice received is in accordance with the Elected Members request.

In accordance with Section 79 of the *Local Government Act 1999* any expenses reimbursed or incurred by an elected member will be recorded in the public register of Allowances and Benefits.

Where a Council Member believes legal advice is required for **Council** (as a collective body) 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.

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. 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 an Elected Member.

Elected Members may seek advice from the Chief Executive Officer at any time in relation to whether the intended approach for legal advice is within the constraints of their role as an elected member. Should an elected member not seek this advice prior to the incurring of costs, the Elected Member is advised that the discretion to reimburse monies paid for legal advice may be declined if the Chief Executive Officer deems that it is not within the ordinary course of the role of an elected member or not in accordance with this Section 4.

The Chief Executive Officer may use discretion to refer a matter to Council where there is a question over the applicability of this policy to an elected member's request for legal advice or an individual elected member request for reimbursement for legal advice they have personally obtained.

6.2 LAW FIRMS AND LIMITS

Elected members may seek reimbursement from council for the cost of seeking legal advice from a provider of their choice up to a maximum \$2,500 per member per annum (January to December). The Chief Executive Officer's approval of the reimbursement will not exceed \$2,500 on any single legal matter.

Or

Elected members may request legal advice through the Chief Executive Officer up to a maximum of \$2,500 per member per annum (January to December). The legal advice sought by the Chief Executive Officer shall be provided by a law firm selected from council's legal services providers. The Chief Executive Officer's approval of the reimbursement will not exceed \$2,500 on any single legal matter.

Any costs exceeding the above amounts will be referred to Council for consideration for determination by Council regarding the exceedance cost.

7. Relevant legislation and references

Local Government Act 1999:

Section 78 (2) 'a council may provide facilities and other forms of support to its members to assist the members in performing or discharging official functions and duties'

Section 39 'describes the level of legal protection afforded to Elected Members'

8. Further information

It is also available for inspection, downloading or printing from our website www.onkaparingacity.com.au.