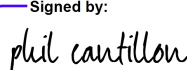




External Legal Advice Procedure

REM REFERENCE	A5512583
DOCUMENT TYPE	Procedure
APPROVAL	Chief Executive Officer
AUTHORISATION	Signed by:  CE7D4D7ACA72417...
DATE APPROVED	05 June 2025 16:21 AEST
DIRECTORATE	Corporate & Commercial Services
PROTOCOL OWNER	Manager Governance
NEXT REVIEW	May 2029
REVISION RECORD	VERSION REVISION DESCRIPTION
14/11/2017	1.0 Initial version
2020	2.0 Updated to reflect changes associated with <i>Local Government Act 2020</i>
05 June 2025 16:21 AEST	3.0 Updated to include content about risk management and other administrative updates

1. Purpose

The purpose of this procedure is:

- to achieve value when incurring legal fees;
- to facilitate appropriate oversight of emerging legal issues and trends across Council's diverse program areas; and
- to minimise financial and reputational risks associated with the escalation of legal matters.

2. Scope

This procedure applies where external legal advice is sought by Council officers.

For privacy reasons, legal advice regarding Human Resources matters is excluded from the scope of this procedure.

A separate Legal Advice Protocol applies where legal advice is requested by Councillors.

3. Background

The procurement of legal services is exempt from tendering requirements (see clause 12.2 of Council's Procurement Policy). However, legal fees can quickly escalate and it is important to maintain a prudent approach to the expenditure of public funds.

Legal expenditure across the organisation is monitored and reported to Council via a quarterly confidential report which sets out expenditure by category/department. A high-level version of this report is also published on Council's Transparency Hub.

4. Procedure

The following steps must be taken to minimise the potential for unnecessary expenditure:

4.1. Check that you are allowed to issue instructions for legal advice

The CEO has the power to issue instructions to external lawyers for legal advice, and this power is also sub-delegated by the CEO to certain officers through the S7 Instrument of Sub-Delegation.

Instructions for legal advice are generally prepared and issued by the Governance Department (Principal Legal Advisor or Manager Governance). It is preferable for instructions to be issued by the Governance Department, unless the circumstances are too urgent and immediate advice is required.

Apart from the Governance Department, only the CEO, Director or Manager of the relevant department and officers specified in the S7 Instrument of Sub-Delegation can issue instructions for legal advice. They are encouraged to approach the Governance Department for assistance, if necessary.

Other officers cannot seek legal advice directly but can prepare instructions to be approved and issued by their Manager.

If you are authorised to seek legal advice directly, you should follow the steps below.

4.2. Check that relevant advice has not already been obtained

The Governance Department maintains a database of legal advice. This database should be checked before seeking legal advice, to ensure that Council has not received recent advice on the same or a similar topic, which might obviate the need to obtain new advice. Please contact the Governance Department for assistance with this step.

4.3. Select a solicitor with relevant expertise

Council does not have a formal legal panel and there is no requirement to use any particular law firm. However, Council has established working relationships with a small number of law firms which have a record of good performance, responsiveness and reliable advice in the local government context. The Governance Department can assist with selecting a suitable law firm to instruct for a particular legal issue.

4.4. Understand the likely cost range for the advice or work you are requesting

It is important that you understand the likely cost range for the advice or work you are requesting so that any budget impact can be managed. You should seek a fee estimate before formalising instructions. This may be part of the verbal discussion with the solicitor to be instructed, before preparing formal instructions. For complex matters or matters likely to require ongoing advice and/or representation, you should request a written fee estimate.

4.5. Instructions must be clear and concise

Instructions must be carefully prepared to ensure that the advice you receive in response is based on a thorough consideration of all the relevant background and circumstances and focuses only on relevant matters.

The specific matters on which advice is sought should be clearly identified – you could consider phrasing these matters as questions.

4.6. All relevant documents must be supplied with the instructions and irrelevant material should be excluded.

It is recommended that you consult with the Governance Department, who can assist with drafting instructions. Whilst the Governance Department is experienced in seeking legal advice on a range of subjects, your input (in terms of technical expertise and knowledge of the subject matter and background to the issue) is vital to ensuring instructions are factually correct and complete. This best enables the solicitor to provide quality legal advice.

4.7. Written instructions must be copied to Principal Legal Advisor and saved into ReM

A copy of instructions issued, together with any background documents supplied, must be provided to Council's Principal Legal Advisor and saved into the corporate records system (ReM) so that they can be easily found if required for future reference.

A copy of any correspondence with the solicitor (e.g. clarification or modification of instructions) must also be saved into ReM. The ReM container is: QA89246_1 'Governance – Legal Services – Legal Advice & Opinions'. If you cannot access this container, please contact the Governance Department for assistance.

4.8. Verbal instructions and verbal advice should be documented

Where possible any verbal instructions and advice should be documented for future reference. This may be in a handwritten or typed file note, an email, or any other format that is convenient and appropriate in the circumstances. The document should be saved into ReM (QA89246_1 'Governance – Legal Services – Legal Advice & Opinions').

4.9. Written advice must be saved into ReM

All written advice must be copied or forwarded to the Principal Legal Advisor and saved into ReM (QA89246_1 'Governance – Legal Services – Legal Advice & Opinions').

Advice about sensitive or confidential matters should be saved with suitable access restrictions. Please contact a member of the Records Management teams who will be able to assist with restricting access as appropriate in the circumstances.

4.10. Invoices must be processed promptly

If you receive an invoice for legal services, please forward it to Accounts Payable so that it can be scanned into TechOne and then sent to the relevant officer for processing.

Invoices for legal services should be paid from the relevant budget using the account code for legal expenses.

Consistent with the tendering requirements exemption, an override code for 'legal services' has been established in TechOne so that these invoices can be approved without a purchase order.

4.11. Management of legal and reputational risks – Supreme Court and other high-profile matters

To facilitate appropriate management of legal and reputational risks to Council, it is important that relevant officers are notified at the earliest opportunity of:

- any Supreme Court matter in which Council is named as a party;
- any matter that is escalating in a way that may lead to significant reputational risk for Council.

If you become aware of a Supreme Court matter involving Council or a matter that is escalating in a way that may lead to significant reputational risk for Council, you should notify:

- Relevant Manager;
- Relevant Director;
- CEO;
- Risk Management Coordinator;
- Manager Community Relations; and
- Principal Legal Advisor.

5. Related documents

- Legal Advice Protocol;
- Procurement Policy.