

 LOWER EYRE COUNCIL	GOV-POL-20 – LEGAL ADVICE MANAGEMENT & ACCESS	Version No:	1.0
		Issued:	August 2026
		Next Review:	August 2027

Responsibility:	Corporate Services
Policy Adopted:	19/08/2026
Minute Reference:	OCM/26/053
Applicable Legislation:	Local Government Act 1999
Related Policies/Procedures:	Elected Member code of conduct and behavioural standards Employee code of conduct and staff values Internal Controls procedures
Review Frequency:	Following Council election

1. PURPOSE

The purpose of this Policy is to:

- a) establish a framework for obtaining legal advice on behalf of Council;
- b) protect legal professional privilege attaching to legal advice obtained by or on behalf of Council;
- c) provide clear guidance regarding the access, use, storage, management and disclosure of legal advice;
- d) ensure Elected Members and employees understand their responsibilities in relation to confidential legal information;
- e) support lawful and informed Council decision-making;
- f) minimise the risk of unauthorised disclosure of legal advice and the loss of legal professional privilege; and
- g) establish circumstances in which Council-funded legal advice may or may not be made available to Elected Members.

2. SCOPE

This Policy applies to:

- Elected Members;
- the Mayor or Chairperson;
- the Chief Executive Officer;
- Council employees;
- contractors and consultants engaged by Council; and
- any person authorised to access legal advice obtained on behalf of Council.

The Policy applies to all legal advice obtained by or on behalf of Council, whether written or verbal and whether obtained from internal or external legal practitioners.

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3. GUIDING PRINCIPLES

3.1. Council ownership

Legal advice obtained on behalf of Council or its representatives is commissioned for the benefit of Council as a corporate body. Unless expressly determined otherwise by Council, legal advice obtained on behalf of Council remains the property of Council and not of any individual Elected Member, employee or office holder.

3.2. Confidentiality

Legal advice received by Council is confidential and may be subject to legal professional privilege. Recipients must take all reasonable steps to preserve the confidentiality of legal advice.

3.3. Preservation of legal professional privilege

Council will take reasonable steps to preserve legal professional privilege attaching to legal advice. Recipients must not engage in conduct that may waive, compromise or prejudice legal professional privilege without lawful authority.

3.4. Need-to-know access

Access to legal advice will only be provided where reasonably required for the performance of official functions or duties.

4. AUTHORITY TO OBTAIN LEGAL ADVICE

4.1. Chief Executive Officer

As a general rule, legal advice on behalf of Council will be obtained by:

- the Chief Executive Officer; or
- a member of the Executive Management team.

The Chief Executive Officer is responsible for:

- administration of Council's legal services;
- management of legal expenditure;
- distribution of legal advice; and
- maintenance of appropriate records.

4.2. Council Resolution

Council may resolve to obtain legal advice on any matter relating to its powers, functions or operations.

4.3. Mayor or Chairperson obtaining legal advice

In limited circumstances it may not be appropriate or practicable for legal advice to be obtained through the Chief Executive Officer. Where this occurs, the Mayor or Chairperson may obtain legal advice on behalf of Council in accordance with this Policy and the clauses outlined below.

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4.3.1. Urgent Matters

The Mayor or Chairperson may seek legal advice where:

- a) urgent legal advice is required and the CEO is unavailable;
- b) the advice is needed for an imminent Council or Committee meeting or other urgent Council business; and
- c) the Chief Executive Officer is unavailable or unable to obtain the advice within the required timeframe.

Any legal advice obtained under this clause must be reported to Council at the earliest practical opportunity.

4.3.2. Matters Relating to the Chief Executive Officer

The Mayor or Chairperson may obtain legal advice where legal advice is required concerning:

- the employment of the Chief Executive Officer;
- the exercise or non-exercise of powers delegated to the Chief Executive Officer;
- an investigation involving the Chief Executive Officer;
- a dispute involving the Chief Executive Officer; or
- any matter where obtaining advice through the Chief Executive Officer would give rise to a conflict of interest or perceived conflict.

Where appropriate, Council should retrospectively endorse the obtaining of such advice and associated costs.

5. ACCESS TO LEGAL ADVICE BY ELECTED MEMBERS

5.1. General Principle

Elected Members may seek access to legal advice reasonably required to assist them in the performance or discharge of their official functions and duties.

Requests must be directed through the Chief Executive Officer who will determine whether advice can be provided by Administration or, if not, arrange advice on behalf of the member / Council. Any advice obtained through this clause will be provided to all Elected Members to assist with official duties and functions.

5.2. Matters for Which Access May Be Granted

Subject to approval by the Chief Executive Officer or Council, access to legal advice may be provided in relation to:

- Council governance matters;
- statutory responsibilities of Elected Members;
- conflict of interest obligations;
- interpretation of legislation affecting Council decisions;
- matters specifically authorised by Council; and
- civil liability matters where statutory indemnity arrangements apply.

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5.3. Excluded Matters

Council-funded legal advice, representation or reimbursement of legal expenses will not ordinarily be provided in relation to:

- alleged or actual breaches of the Behavioural Standards for Council Members;
- behavioural management complaints;
- Code of Conduct complaints;
- Ombudsman investigations;
- Office for Public Integrity investigations;
- ICAC investigations;
- police investigations;
- allegations of misconduct;
- allegations of maladministration;
- allegations of corruption;
- criminal proceedings;
- personal disputes unrelated to Council business;
- electoral matters;
- private business interests;
- personal employment or financial advice matters; or
- defamation proceedings initiated by an Elected Member.

Legal representation in such matters remains the personal responsibility of the Elected Member.

Council may determine otherwise by specific resolution in exceptional circumstances where it considers such action to be in the public interest.

6. DISTRIBUTION AND HANDLING OF LEGAL ADVICE

6.1. Confidential Marking

Where practical, legal advice distributed by Council should be clearly marked:

“CONFIDENTIAL – SUBJECT TO LEGAL PROFESSIONAL PRIVILEGE”

6.2. Verbal Legal Advice

Where legal advice is provided verbally:

- the advice must be treated as confidential;
- any notes of the advice must be securely stored;
- recipients must not disclose the substance of the advice unless authorised.

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6 DISTRIBUTION AND HANDLING OF LEGAL ADVICE

CONT'D:

6.3. Distribution Controls

Wherever possible, legal advice should:

- Be summarised rather than distributing the advice itself;
- If distributed, it must be provided only to authorised recipients;
- not be incorporated into extended email chains;
- be stored securely within Council's records management system;
- be protected against unauthorised access; and
- only be reproduced where necessary for official purposes.

7. OBLIGATIONS OF RECIPIENTS

7.1. A recipient of Council legal advice must not:

- release or publish the advice;
- provide the advice to members of the public;
- provide the advice to the media;
- forward the advice to third parties;
- upload the advice to social media or electronic platforms;
- disclose the substance of the advice without authority; or
- take any action likely to waive legal professional privilege.

7.2. Recipients must:

- maintain confidentiality;
- securely store legal advice;
- notify the Chief Executive Officer of any suspected unauthorised disclosure; and
- comply with any direction issued by Council concerning the handling of legal advice.

7.3. Disclosure to Personal Legal Advisers

An Elected Member or employee must not provide Council legal advice to their personal solicitor, adviser or representative without prior written approval from the Chief Executive Officer or Council.

Approval may only be granted where:

- there is a legitimate governance, legal or statutory purpose;
- Council's interests will not be prejudiced; and
- appropriate confidentiality arrangements are in place.

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8. RECORDS MANAGEMENT AND RESTRICTED ACCESS RECORDS

Legal advice obtained on behalf of Council must be managed in accordance with applicable records management legislation and Council policies.

Where legal advice concerns:

- the employment of the Chief Executive Officer;
- an investigation involving the Chief Executive Officer; or
- other confidential CEO-related matters,

Council may direct that access restrictions be applied.

Where appropriate, records may be stored in a manner that prevents access by the Chief Executive Officer or any other person whose access may present a conflict of interest.

9. BREACHES

Any suspected breach of this Policy must be reported to the Chief Executive Officer, or if the alleged breach relates to the Chief Executive Officer, to the Mayor or Chairperson.

Depending upon the circumstances, a breach may result in:

- referral under the Local Government Act 1999 to the Ombudsman or ICAC;
- referral under applicable Behavioural Standards processes;
- loss of legal professional privilege;
- administrative action; or
- any other lawful action considered necessary by Council.

10. TRAINING AND AWARENESS

Council will provide appropriate governance training relating to:

- legal professional privilege;
- confidentiality obligations;
- handling of legal advice;
- information security; and
- obligations of Elected Members and employees.

Training should occur:

- following each periodic election;
- during induction of new Elected Members;
- during induction of relevant employees; and
- where significant legislative changes occur.

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11. AVAILABILITY

Copies of this policy may be purchased for the fees outlined within Council's current Schedule of Fees & Charges. This policy is available for inspection at the Council offices during ordinary business hours or on Council's website (www.lowereyrepeninsula.sa.gov.au) at no cost.

DOCUMENT HISTORY		
Version:	Issue Date:	Description of Change:
1.0	August 2026	Development of draft policy for presentation to Council following Ombudsman notification of need to manage legal privilege and confidentiality.