

## Mayor/Chairpersons Seeking Legal Advice

**Keywords:** Mayor; Legal, Advice

<b>Corporate Plan:</b>	N/A
<b>Classification:</b>	Executive Services – Elected Members – Mayor / Chairpersons Seeking Legal Advice
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<b>Review Frequency:</b>	Within 12 months after the conclusion of a periodic election, in line with legislative changes or by resolution of Council
<b>Last Reviewed:</b>	October 2023
<b>Next Review Due:</b>	2027
<b>Responsible Officer(s):</b>	Chief Executive Officer
<b>Council File Reference:</b>	Council Policies (P)
<b>Applicable Legislation:</b>	Section 90(3)(h) of the Local Government Act 1999;
<b>Relevant Policies:</b>	Code of Conduct Elected Members and Committee Members
<b>Related Procedures:</b>	Public Consultation <b>not</b> required prior to adoption
<b>Delegations:</b>	Chief Executive Officer

### 1. Purpose

As a general rule, any legal advice obtained on behalf of a Council will occur through the CEO (Chief Executive Officer) or be authorised by the CEO or a Council resolution. A CEO of a Council is responsible for the implementation of lawful Council decisions and for the overall administration and budget management of the Council. However, there may be limited circumstances where it is not appropriate or not possible for a Council to obtain legal advice through the CEO and in May 2011 the LGA issued *Guidelines for Mayors/Chairpersons – Obtaining Legal Advice* [available on the LGA website: [www.lga.sa.gov.au](http://www.lga.sa.gov.au)].

### 2. Definition

CEO	means the Chief Executive Officer of the Berri Barmera Council
Mayor	the Mayor presides over meetings and acts as the spokesperson of Council. The Mayor is elected to their office.
Council	means Berri Barmera Council

### 3. Principles

This policy is designed to set out Council's position in relation to the circumstances in which the Mayor/Chairperson is authorised to seek legal advice independently of the CEO.

## **4. Policy Statement**

### **4.1. Circumstances in which it is Appropriate for the Mayor/ Chairperson to Seek Legal Advice**

In circumstances in which it is not possible or appropriate for the CEO to seek legal advice, the Mayor/Chairperson should, ideally, seek a Council resolution to obtain legal advice. However, where this is not possible, the Mayor/Chairperson may seek the advice independently as set out below.

### **4.2. Urgent matters relating to a Council Meeting if the CEO is unavailable**

While the CEO [and Executive Assistant/Governance Officer] has a good working knowledge of Council meeting procedures, matters may arise from time to time which require an urgent legal opinion.

Where legal advice is required in the absence of the CEO:

- The Mayor/Chairperson may seek legal advice in situations in which a response is required urgently, including for an imminent Council meeting or other urgent matter (A practical example is where a Member requires legal advice to determine whether he/she has a prescribed interest in a matter before the Council for the purposes of Section 73 of the Local Government Act 1999);
- Any legal advice obtained in this way will be reported to the Council at the earliest available meeting (which may be conducted 'in confidence' for this purpose under section 90(3)(h) of the Local Government Act 1999);
- The legal advice will also be provided to the CEO (unless this is not appropriate – see below).

### **4.3. The legal advice relates to the CEO or the exercise of the CEO's powers**

In circumstances where Council is to consider a matter related to the CEO (e.g. urgent employment related issues or where the Council is investigating a failure by the CEO to comply with a resolution of Council or where a matter relates to the exercise of a CEO's powers) and it is the view of the Mayor/Chairperson that the consideration of this matter by the Council should occur with the benefit of legal advice:

- The advice will be obtained as a matter of administrative necessity by the Mayor/Chairperson to ensure the legality of the Council's actions and decisions;  
It is recommended that the Mayor/Chairperson will not confer with Council staff where the legal advice relates to the CEO's employment or other personal matter;
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- However, it is acknowledged that the Mayor/Chairperson may confer with other relevant senior Council staff, such as the Acting CEO or Human Resources Manager, if the matter concerns an issue that is not confidential to the CEO, such as a conflict-of-interest matter relating matters disclosed in the register of interests;
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- The Mayor/Chairperson will keep the Council fully informed of any advice obtained on behalf of the Council and advise members of the advice received at the next available meeting;
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- Where the Mayor/Chairperson has obtained the advice other than in accordance with a Council resolution Council should, as a matter of caution, retrospectively endorse the Mayor's/Chairperson's decision to obtain the advice.

## **5. Record Keeping and Confidential Documents**

Where the Mayor/Chairperson obtains legal advice relating to the CEO or the exercise of the CEO's powers, and it is not appropriate to provide that advice to the CEO, the advice must be placed in the records management system in such a way as to ensure that it cannot be accessed by the CEO. This procedure will also apply to other documents relevant to the matter which, in the opinion of the Council, should be kept confidential.

The documents will be made password accessible and be available only to the Mayor/Chairperson and the Acting CEO [or other such senior officer]. These restricted access records will be maintained in accordance with the *State Records Act 1997* and will remain subject to assessment as part of any relevant application made under the *Freedom of Information Act 1991*.

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