

Policy number	Policy 003
Policy title	Legal advice – Engage solicitor for opinions
Strategic outcomes supported	CL8 – Visionary civic leadership with sound and accountable governance that reflects objective decision making.

Policy objective:

To establish the considerations prior to seeking legal advice.

Policy scope:

This policy applies to the intended procurement of any legal advice or legal representation by the Town.

Policy definitions:

legal advice means:

- a. the procurement of specialist advice for areas of work where there are gaps in specialist and/or legal knowledge within the Town; or
- b. for the engagement of legal representation in a court or tribunal.

Policy statement:

1. To prescribe procedures for the Town’s administration in obtaining legal advice or engaging legal representation to ensure the most efficient and effective use of these resources.

Introduction:

2. The Town will seek expert legal advice where, in the opinion of the Chief Executive Officer (CEO), that advice is required to:
 - a. minimise the potential risk of litigation;
 - b. obtain assistance on interpretation and implications of relevant new and/or existing legislation or legal precedent;
 - c. clarify statutory powers and responsibilities;
 - d. clarify the Town’s responsibility to take action to protect the health, safety and well-being of the Town’s ratepayers/residents, general public and protection of property;
 - e. ensure the best commercial outcome for the Town; or
 - f. represent the Town in matters proceeding to a court or tribunal.

Authorisation:

3. The CEO only will be able to access legal advice.
4. Where necessary, the CEO may approve of other employees obtaining legal advice.

Legal Advice:

5. The legal advice will be sought from the panel of legal practitioners established by the Western Australian Local Government Association (WALGA) as updated from time to time, or from another legal firm having specialised expertise in the matter being considered in accordance with Policy 301 - Purchasing.
6. All legal advice will be recorded in a Legal Advice Register or appropriate file.

Procedure:

Introduction

7. Many legislative duties and functions are discharged on a daily basis through employees being aware of legislation which they are authorised to administer as well as through the development and implementation of policies and procedures.
8. There may be occasions, where new, unfamiliar, urgent or potentially high risk circumstances emerge which are not covered by the Town's standard procedures or documentation. In these circumstances, it may be necessary to seek further advice.

Risk Assessment

9. In circumstances where legal advice is being obtained it will usually be necessary to undertake a risk assessment.
10. Factors that need to be considered in determining whether professional legal advice may be required include:
 - a. Actual or potential risk of litigation;
 - b. Assistance on interpretation and implications of relevant new and/or existing legal precedent or legislation;
 - c. Lack of clarity around statutory position, powers or responsibilities;
 - d. The responsibility of the Town to take responsible action to protect the health, safety and wellbeing of the Town's ratepayers/residents, general public and protection of property;
 - e. The need to be represented by legal counsel in a court or tribunal.
11. By the nature of the Town's business and its position as a public authority, legislative compliance is a statutory duty.

Requesting Legal Advice

12. For certain matters it may be possible to obtain legal advice quickly over the telephone.
13. To assist the Town's legal advisers to provide comprehensive advice, where possible, it will be necessary to include details of all relevant factors provided or reference all relevant documentation and outline specific issues on which advice is being sought.
14. Any guidance or advice given should ideally be given in writing. Careful consideration needs to be given to the method of communication to ensure that confidentiality and the rules around transmission of confidential material are adhered to.
15. In the unlikely event that legal advice is required out of hours, this should be referred to the CEO for authorisation.

Recording and Monitoring

16. The advice should be recorded on the Legal Advice Register or appropriate file, which will become a reference point for authorised persons and is to be reviewed prior to making legal enquires. This will help to develop a knowledge base on the legal matters within the Town.

Legal Advice Providers

17. The Town will obtain legal advice from:
 - a. WALGA's Legal Services Panel of Preferred Suppliers; or
 - b. Another legal firm having expertise in the matter being sought.

Internal Procedure

18. The following procedure is to be followed:
 - a. Prior to contacting any solicitors/lawyers for any advice, a 'Legal Advice Authorisation Form' as prescribed by the CEO, is to be completed and the matter is to be referred (either by memorandum or orally) to the CEO.
 - b. The Town will seek preliminary advice from WALGA's Legal Services Panel of Preferred Suppliers (or at least two of them) as to the prospect of success of any action/appeal and an estimate of fees/costs.
 - c. After considering the legal firm's response, the CEO may prescribe a maximum amount which is not to be exceeded unless a variation is subsequently approved.

Authorised Persons

19. Where an employee has been authorised to make a direct approach to external legal advisers, they are individually responsible for ensuring that the firm approached is on WALGA's Legal Services Panel of Preferred Suppliers. If consideration is being given to the use of another firm, approval should be obtained from the CEO.

All Employees to Comply with the Policy Procedure

20. All employees must comply with this procedure. In particular, employees are reminded that there shall be no direct approach to external legal advisers without proper authorisation, and that any contact or correspondence relating to matters of civil or criminal liability should be passed immediately to their relevant Chief or the CEO.

Implementation

21. All Chiefs and Managers are responsible for ensuring that all employees within their responsibility have read and understood this document and are competent to carry out their duties in accordance with this policy and procedure.

Related documents

Responsible officers	Coordinator Governance and Strategy
Policy manager	Manager Governance and Strategy
Approval authority	Council
Next evaluation date	

Revision history

Version	Action	Date	Authority	Resolution number	Report number
1	Adopted	22/02/2011	Council	-	Item 11.2
1	Reviewed	09/07/2013	Council	-	Item 10.1
1	Reviewed	11/08/2015	Council	-	Item 10.1
2	Reviewed and amended	20/08/2019	Council	148/2019	Item 10.1
2	Reviewed	17/03/2020	Council	354/2020	Item 15.3
3	Reviewed and amended	20/04/2021	Council	78/2021	Item 15.4
4	Reviewed and amended	12/02/2022	Council	73/22	Item 15.5