



## LEGAL SERVICES POLICY

Adopted: December 2018

TRIM: 033829.2019



## 1. PURPOSE

- 1.1 This policy sets out the arrangements for the control, coordination, management and provision of legal services for and on behalf of Liverpool City Council.
- 1.2 This policy applies to the Mayor, Councillors, members of Council staff and any other persons acting for or on behalf of, or in the name of, the Council irrespective of any delegation or authority issued in the name of any position title or individual member of Council staff.

## 2. LEGISLATIVE REQUIREMENTS

*Evidence Act 1995*

*Government Information (Public Access) Act 2009*

*Legal Profession Uniform Law (NSW)*

*Legal Profession Uniform Regulations 2015*

*Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*

*Legal Profession Uniform General Rules 2015*

*Local Government Act 1993*

*Privacy and Personal Information Protection Act 1998*

*Revised Professional Conduct and Practice Rules 1995 (Solicitors' Rules)*

## 3. DEFINITIONS

**Active Legal Matters Register** means a register or list of all legal matters, their status and costs which is subject to audit by NSW Audit.

**Council** means Liverpool City Council.

**CEO** means the Chief Executive Officer of Council.

**CFO** means the Chief Financial Officer of Council.

**Civic Risk Mutual Panel** means a panel of legal practitioners engaged by Civic Risk Mutual in accordance with a Deed of Agreement.

**Client** means the member of Council staff or other person acting for or on behalf of, or in the name of the Council, who is seeking legal services.

**Code of Conduct** means the Code of Conduct adopted by Council in accordance with the Model Code of Conduct prescribed by the Office of Local Government pursuant to the *Local Government Act 1993*

**Code of Conduct Procedures** means a set of procedures to deal with Code of Conduct issues and adopted by Council in accordance with the Model Code of Conduct Procedures prescribed by the Office of Local Government pursuant to the *Local Government Act 1993*

**Deputy General Counsel** means Council's Deputy General Counsel.

**General Counsel** means Council's General Counsel and Manager Governance, Legal Services and Procurement

**LSU** means Council's Legal Services Unit.

**Legal Services Provider** means a provider of legal services external to Council and includes a firm of solicitors or a barrister.

**Model Litigant Policy** means the Model Litigant Policy adopted by the Department of Justice NSW from time to time.

**Procurement Standards** means the procurement standards endorsed under Council's adopted Procurement Policy.

## 4. POLICY

### 4.1 The role of LSU

- 4.1.1 The General Counsel has primary responsibility for the control, coordination, management and provision of all legal advice and other legal services for and on behalf of Council.
- 4.1.2 LSU, through its in-house solicitors, is committed to providing professional legal advice and support to all areas of Council and ensuring that the legal service needs of Council are met in a timely and cost-effective manner, which facilitates outcomes in the best interests of Council.
- 4.1.3 LSU provides frank, fearless and independent legal advice and services that take into account the overall interests and business of Council.
- 4.1.4 LSU seeks to provide practical solutions to legal issues and to minimise the risk of claims and litigation against Council.
- 4.1.5 LSU will also strive to preserve and protect the reputation of Council in the community and its standing as a progressive local authority.
- 4.1.6 The role of LSU includes, but is not limited to:
  - a) advising on specific compliance, organisational governance, risk and legislative requirements;
  - b) representing Council in alternative dispute resolution, litigation and claims management;

- c) providing legal advice, including the interpretation and application of legislation and Council's policies and procedures;
- d) reporting on Council's legislative compliance and its claims and contingent liabilities;
- e) responding to court proceedings where Council is a party to those proceedings such as a statement of claim or an appeal summons;
- f) facilitating responses to requests from third parties under statutory authority;
- g) appearing as Prosecutor;
- h) advocacy and submissions to government or statutory agencies;
- i) seeking to recover reasonable professional costs and disbursements;
- j) providing periodic training to staff as required regarding compliance and legislative updates;
- k) reviewing, advising, negotiating and drafting contracts, agreements, and any other document required to give effect to the business and interests of Council, including but not limited to conveyancing and leasing; and
- l) tracking, monitoring and reporting on all external legal expenditure.

4.1.7 All LSU solicitors are admitted to practice in New South Wales and hold current practising certificates.

4.1.8 As well as being required to act in accordance with Council policies and procedures, LSU solicitors are officers of the Supreme Court of NSW and their practice and ethical standards must also be in accordance with the *Legal Profession Uniform Law (NSW)*, the *Legal Profession Uniform Regulations 2015* and the *Revised Professional Conduct and Practice Rules 1995 (Solicitors' Rules)* issued by the Law Society of New South Wales and as amended from time to time.

4.1.9 The General Counsel may from to time issue guidelines and procedures to assist with the implementation of this policy and the control, coordination, management and provision of legal services for Council.

4.1.10 Any legal services or advice requested from LSU, or from a Legal Services Provider engaged on behalf of Council, must relate to the business and interests of Council.

4.1.11 LSU cannot provide legal services or advice of a personal nature to the Mayor, Councillors or members of Council staff.

## **4.2 Requests for legal services**

4.2.1 All requests for legal services must be in writing to the General Counsel or Deputy General Counsel. The General Counsel may develop a form (including an electronic form) to be used when requesting legal services. All such requests are to be approved by, and copied to, the relevant Manager (or, in the case of requests by Managers, the relevant Director) of the requesting business unit/division.

4.2.2 For the avoidance of any doubt, LSU encourages staff to discuss any legal concern and sees value in managing organisational risk in providing opportunities to make preliminary general enquiries without the need to initiate a formal request for legal services. In these circumstances a request for legal services may or may not result from an initial conversation. Please refer to clause 4.3.2.

4.2.3 All requests for legal services must include detailed information about the matter or transaction (including a copy of all relevant documents) to LSU at the time a request for services is made. The following information is required before LSU can commence work:

- a) a summary of what the matter or transaction is about and, if a contract, details of what has already been negotiated with the other party;
- b) evidence that the matter or transaction has first been authorised by the person(s) with appropriate authority;
- c) the name of the person who will be instructing the LSU;
- d) all documents (including approvals) and background information relating to the matter or transaction, including all relevant evidence, plans and/or photographs, and any additional documents requested by LSU; and
- e) any other information requested by LSU.

4.2.4 The General Counsel or Deputy General Counsel shall acknowledge receipt of a request for legal services within 48 hours. That receipt is to include an estimate of the time required to provide the service and whether any further information is required.

4.2.5 Requests for legal services and any subsequent information provided will be referred to and accepted by LSU as "instructions".

4.2.6 The General Counsel, in consultation with the referring person, will determine whether the work is to be undertaken by LSU or through the use of a Legal Services Provider.

### **4.3 When to contact LSU**

4.3.1 Instructions received by LSU are normally dealt with in order of receipt, but receive priority according to the level of importance and genuine urgency. Accordingly, it is important to involve LSU as early as possible in any transaction or matter where legal advice or services are required, including where:

- a) there is an actual or potential dispute including an imminent or actual threat to commence litigation;
- b) it is proposed to procure goods or services for Council. If a transaction involves a tender with a specified timeframe, that timeframe should take into account any need for LSU to provide or seek certain advices, to review material and to prepare and settle documentation (such as draft contracts);
- c) Council is considering a proposal(s) from a third party such as a planning agreement or other agreement; or
- d) A communication is received from a solicitor or barrister.

4.3.2 Requests for legal advice through ad-hoc telephone calls and personal attendances on LSU solicitors (including the General Counsel and Deputy General Counsel) and their responses are intended to provide commentary and general information only. They should not be relied upon as specific legal advice unless notified otherwise. Formal legal advice should be sought in particular transactions or on matters of interest arising from such communications in accordance with clause 4.2.

### **4.4 External legal referrals and witnesses**

4.4.1 Unless otherwise stated in this Policy, the General Counsel is responsible for the control, coordination and management of all Legal Services Providers (including various prosecution agencies such as the NSW Police Force, Environmental Protection Authority and the NSW National Parks and Wildlife Service) and the legal requests referred to those providers. This is to:

- a) avoid conflicts of interest;
- b) ensure consistency and quality of service;

- c) maintain client legal privilege; and
  - d) maximise value from Council's expenditure on Legal Services Providers.
- 4.4.2 Other than the CEO (who may do so only in accordance with 4.4.5 and 4.4.6) Council staff must not directly engage a Legal Services Provider. For the avoidance of any doubt this applies to the initial engagement of a Legal Services Provider as Council staff may from time to time be requested to correspond with and provide instructions directly to a Legal Services Provider in certain circumstances for the purpose of efficiencies.
- 4.4.3 The General Counsel must consult with the referring officer before selecting a Legal Services Provider. The General Counsel, however, retains sole discretion as to the selection of this provider and the terms on which such referral of legal work will be made.
- 4.4.4 Legal Service Providers will be engaged in accordance with the Procurement Standards as adopted by Council.
- 4.4.5 The CEO may, at his/her sole discretion, directly engage a Legal Services Provider for work that is of a sensitive or urgent nature. Sensitive or urgent matters include but are not limited to:
- a) Industrial relations or staff matters (which may include seeking advice from LGNSW)
  - b) Public Interest Disclosures
  - c) Suspected breaches or privacy legislation, corrupt conduct or breaches of the Code of Conduct
- 4.4.6 For the purpose of clause 4.4.5, the CEO may direct the Director of City Corporate, the Internal Ombudsman or the Manager People and Organisational Development to directly engage a Legal Services Provider.
- 4.4.7 All engagements of a Legal Services Provider under clause 4.4.5 must be notified to the General Counsel including the name of any Legal Services Provider together with estimated costs. These details will be included in the Active Legal Matters Register and may be reported in the annual report and/or to any auditors as required by the *Local Government Act 1993*.
- 4.4.8 The General Counsel is responsible for the control, coordination and management of all expert witnesses. Council staff must not directly engage witnesses – doing so will jeopardise any claim for client legal privilege over communications with that expert/witness.

## **4.5 Client legal privilege**

- 4.5.1 Legal communication attracts client legal privilege. Client legal privilege may be waived (or lost) by inadvertent or actual disclosure of the advice or the existence of the advice to a third party.
- 4.5.2 Client legal privilege is recognised in many circumstances, including (relevantly for Council) as a basis for:
- a) closing a Council meeting to exclude members of the public under section 10A of the *Local Government Act 1993*;
  - b) withholding documents under the *Evidence Act 1995* and the *Government Information (Public Access) Act 2009*; and
  - c) withholding documents from production under a subpoena or notice to produce, whether or not Council is a party to the legal proceedings.
- 4.5.3 As a general rule, Council is entitled to claim client legal privilege for any communications between lawyers (including LSU lawyers) and members of Council staff or witnesses, provided those communications are for the dominant purpose of seeking or receiving legal advice or services, or where those communications relate to litigation that has already commenced or is anticipated.
- 4.5.4 All Councillors and members of Council staff must treat all communications between them and LSU (and any Legal Services Provider) as strictly private and confidential, and only disclose them to others within the Council on a "strictly need to know" basis. Legal advice should not, under any circumstances, be forwarded or even referred to in any published documents or written or verbal communications with anyone outside Council other than in cases of necessity, or for periodical confidential reporting to Council. Disclosing even the most general information about the legal advice may compromise its privileged status.
- 4.5.5 Communications from LSU to or from Legal Services Providers should not be disclosed to anyone outside Council, without first obtaining the written approval of the General Counsel or Deputy General Counsel.

#### **4.6 Notification of matters to the Mayor and Councillors**

- 4.6.1 The General Counsel will keep the Mayor and Councillors apprised of the progress and outcome major or significant litigation or transactions by providing quarterly reports to Council for consideration in confidential session.
- 4.6.2 All insured litigation, managed by the Civic Risk Mutual Panel, is dealt with through the Civic Risk Mutual Board. Councillors who are

members of the Board will receive information through the Board and must adhere to the Board's fiduciary obligations.

#### **4.7 Legal advice to be followed – Model litigant**

- 4.7.1 Other than as set out in 4.8.2 and 4.8.3, legal advice provided by the LSU or by a Legal Services Provider is to be followed by Council. It is noted that pursuant to section 731 of the *Local Government Act 1993*, Councillors and staff are not liable personally for anything done in good faith.
- 4.7.2 LSU and Council acknowledge the obligation to act as a model litigant in relation to civil claims and civil litigation in accordance with the Model Litigant Policy adopted by Department of Justice NSW. The obligation to act as a model litigant requires more than merely acting honestly and in accordance with the law and court rule. It also goes beyond the requirement for lawyer to act in accordance with their ethical obligations. Essentially it requires council to act with complete propriety, fairly and in accordance with the highest professional standards.
- 4.7.3 Council staff who do not wish to follow the advice provided by LSU or by a Legal Services Provider may request that the General Counsel seek a second opinion from another Legal Services Provider. After discussing the matter with the referring officer, the General Counsel may seek a second opinion from a Legal Services Provider in accordance with 4.4 (External legal referrals and witnesses).
- 4.7.4 The CEO, or the Council by resolution, may (in writing) authorise Council staff to not act in accordance with advice provided by LSU or by a Legal Services Provider and, in that case, the CEO will inform the General Counsel of his/her decision and the reasons for making that decision.

#### **4.8 Review of legal services**

- 4.8.1 Council staff may request that the General Counsel review specific legal services provided by LSU or a Legal Services Provider.
- 4.8.2 Requests for review must be in writing and contain sufficient information and supporting documents to enable the General Counsel to review the services provided.
- 4.8.3 The General Counsel must acknowledge receipt of a request for review within 48 hours and must respond to the request with 14 days (or such other reasonable time having regard to the request and the circumstances).

## **4.9 Breaches of this policy**

- 4.9.1 A breach of this policy will be dealt with in accordance with Council's Code of Conduct and Code of Conduct Procedures and in the case of staff, will consider the relevant provisions of the Award, relevant policies and/or enterprise/industrial agreements.

**AUTHORISED BY**

Council

**EFFECTIVE FROM**

28 February 2019

**DEPARTMENT RESPONSIBLE**

City Corporate (Governance, Legal & Procurement)

**REVIEW DATE**

February 2022

**REFERENCES**

Liverpool City Council: Code of Conduct

Liverpool City Council: Code of Conduct Procedures

Liverpool City Council: Ethical Governance: Conflicts of Interest Policy

Model Litigant Policy – NSW Department of Justice

<https://www.justice.nsw.gov.au/legal-services-coordination/Pages/info-for-govt-agencies/model-litigant-policy.aspx>

**VERSION**

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