

Legal Policy

Section 1 - Purpose

(1) The purpose of the Legal Policy is to:

- a. define the scope of legal advice provided by Legal Services to Charles Sturt University (the University)
- b. define the responsibilities of the University's lawyers or external lawyers involved in the provision of legal advice
- c. define the responsibilities of employees in relation to obtaining legal advice, and
- d. establish legal procedures for the management of legal advice.

Scope

(2) This policy applies to all employees and organisational units of the University and its controlled entities.

Section 2 - Policy

Overview

(3) Legal Services and the University's lawyers are responsible for the provision of legal advice to the University and its controlled entities.

(4) The Office of Governance and Corporate Administration is responsible for providing the administrative structures to support the provision of legal advice by Legal Services.

(5) The General Counsel is the principal Legal Officer of the University and is responsible for:

- a. overall management of the provision of legal advice to the University, and
- b. ensuring the provision of independent, impartial and objective legal advice in the best interests of the University and consistent with the University's legal obligations.

(6) University lawyers and external lawyers are employed or retained to provide legal advice under the direction of the General Counsel, Legal Services. All University lawyers are admitted to practice in the state or territory in which they predominantly provide legal advice to the University and hold current practising certificates.

(7) Legal Services will escalate matters to more senior officers of the University for instructions where it identifies any concern about the overall interests of the University or significant risk.

(8) Any legal advice requested under this policy must relate to the business and interests of the University.

(9) University lawyers do not provide legal advice to students, nor do they provide legal advice to employees about matters of a personal nature.

Policy statement

(10) All employees are responsible for promoting and protecting the interests of the University, which includes obligations to comply with the law, and to ensure that the University complies with the law.

(11) The University will ensure that employees are aware of, and have access to, timely and appropriate legal advice when making legal or quasi-legal decisions that may affect the rights or responsibilities of the University or a third party.

(12) Legal advice will only be provided to employees by Legal Services if the matter is related to the business or interests of the University.

Obtaining legal advice

(13) Unless otherwise provided by this policy, legal advice must be requested on all matters involving substantive legal questions, including but not limited to the following:

- a. Agreements (see [Legal Procedure - Requesting Legal Advice](#))
- b. Claims (see [Legal Procedure - Court Orders, Claims and Investigations](#))
- c. Proposed activities that are complex or may be high risk and/or have the potential to cause significant damage if they are not performed correctly (for example, reputational damage or unauthorised disclosure of personal data).
- d. Proposed activities that involve a high risk of civil or criminal liability.
- e. Media enquiries regarding pending or potential litigation.
- f. Matters or transactions where the other party is represented by a lawyer.
- g. Questions related to interpretation and application of the [Charles Sturt University Act](#) or [Charles Sturt University By-Law](#), and University rules, policies, procedures and guidelines.
- h. Questions related to the interpretation and application of legislation and determining legal compliance obligations.

When legal advice is not required

(14) It is not necessary to obtain legal advice in the following circumstances unless substantive legal issues requiring legal advice are identified:

- a. Generic funding or other agreements in standard form prepared by Commonwealth or state government funding bodies where that standard form has already been approved by Legal Services (Legal Services works closely with areas such as the Office of Research Services to review head funding and similar agreements supplied by outside agencies).
- b. Standing purchase orders where the template purchase order and any related terms and conditions of sale have been reviewed and approved by Legal Services.
- c. Standard agreements that have been pre-approved by Legal Services for use without referral to Legal Services (see [Legal Procedure - Requesting Legal Advice](#)).
- d. Renewal of or minor variations to an existing agreement where there is no change to the University's legal obligations.
- e. Non-binding memorandum of understanding (those which clearly do not create legal obligations but simply set out the intentions of the parties).
- f. Where existing University rules, policies, procedures or guidelines set out the requirements for the making of a decision.
- g. Where procedures made under this policy or other University procedures specify other circumstances where

legal advice need not be obtained (for example, low value transactions).

Who is the client for the purpose of legal advice

(15) The client for the purpose of the provision of legal advice is the University.

Legal advice to controlled entities

(16) Legal Services may provide legal advice to controlled entities in the following circumstances:

- a. where there is no conflict between the interests of the University and that of the controlled entity in relation to the matter or transaction, and
- b. the matter or transaction has sufficient connection to the core business and interests of the University.

(17) Before agreeing to provide legal advice to a controlled entity, the General Counsel, Legal Services must also be satisfied that:

- a. the matter or transaction is within the expertise of Legal Services, and
- b. the matter or transaction will not unreasonably burden or divert the resources of Legal Services to the detriment of the University.

Responsibilities of University lawyers and external lawyers

(18) University lawyers and external lawyers engaged on behalf of the University are responsible for providing impartial and independent legal advice that:

- a. is in the best interests of the University and consistent with the University's legal obligations and University rules, policies, procedures and guidelines, and
- b. has regard to the law and takes into account the overall interests of the University (not just the specific interests of the employee or organisational unit concerned).

Requesting legal advice

(19) All requests for legal advice must be submitted to Legal Services in accordance with this policy and the [Legal Procedure - Requesting Legal Advice](#).

Responsibilities of employees in requesting and dealing with legal advice

(20) When requesting and dealing with legal advice, employees must, in accordance with this policy and the [Legal Procedure - Requesting Legal Advice](#):

- a. ensure that information supplied is complete and accurate and includes all relevant information necessary for the provision of impartial and independent legal advice
- b. maintain the confidentiality of all legal advice
- c. maintain the legal professional privilege that may be attached to legal advice (see [Legal Guidelines - Legal Professional Privilege](#))
- d. maintain appropriate and complete records (see [Legal Procedure - Legal Records](#))
- e. only discuss and disclose legal advice to other employees directly involved in the matter (except where the legal advice is not marked confidential and is clearly of a nature that is intended to be distributed throughout the relevant organisational unit or the University as a whole, such as where the advice is of a kind which outlines the general legal responsibilities of employees)

- f. only rely on the legal advice for the circumstances for which it was sought
- g. only rely on legal advice obtained in accordance with this policy, and
- h. deal with court orders in a timely manner and in accordance with this policy (see [Legal Procedure - Court Orders, Claims and Investigations](#)).

Referral of requests for legal advice to external lawyers

(21) Requests for legal advice may only be referred to an external lawyer in accordance with this policy and the [Legal Procedure - Requesting Legal Advice](#).

(22) The Vice-Chancellor, the Chief Operating Officer, the University Secretary and the General Counsel each have general authority to retain external lawyers and incur legal costs and fees for legal advice from such external lawyers on behalf of the University, subject to expenditure limits under [Delegation A - Governance and Legal Delegations](#).

(23) Other employees, identified in the [Legal Procedure - Requesting Legal Advice](#), have authority to retain external lawyers and incur legal costs and fees for legal advice from such external lawyers on behalf of the University within the specific areas of their responsibility and subject to their respective expenditure delegations.

(24) Each officer who refers requests for legal advice to an external lawyer must maintain a register of referrals and provide a copy of that register to the Office of the Vice-Chancellor and to Legal Services at the end of each year.

Establishment of a legal panel

(25) If directed by the Vice-Chancellor, a list of preferred legal service suppliers (legal panel) will be established and maintained by Legal Services to facilitate the timely, efficient and cost effective referral of requests for legal advice to external lawyers, where appropriate, in accordance with the [Legal Procedure - Requesting Legal Advice](#).

(26) An external lawyer who is not on the legal panel may be engaged in certain circumstances in accordance with the [Legal Procedure - Requesting Legal Advice](#).

Legal professional privilege

(27) Communications from or to a University lawyer or external lawyers must not be disclosed to anyone outside the University, without prior approval of the General Counsel.

(28) The General Counsel will liaise with the Vice-Chancellor or University Secretary, as appropriate, to seek authority to waive legal professional privilege on behalf of the University. Only the Vice-Chancellor or the University Secretary has authority to waive legal professional privilege on behalf of the University.

Costs

(29) Legal Services does not charge for legal advice provided to the University or its controlled entities.

(30) Legal Services has a limited approved budget for the engagement of external lawyers. In most instances, the relevant organisational unit (academic or administrative) will be responsible for payment of legal costs and fees for legal advice obtained from external lawyers. If the relevant organisational unit does not have an approved budget for legal expenses for external legal advice, they should first consult with the Office of the Chief Operating Officer before external legal advice is requested in the circumstances permitted under the [Legal Procedure - Requesting Legal Advice](#).

(31) The costs of any external legal advice obtained by Legal Services for and on behalf of a controlled entity are generally payable by that controlled entity, unless the General Counsel (after first consulting the Chief Operating Officer) agrees otherwise.

Claims (including litigation) by or against the University

(32) From time to time the University may become involved in disputes or claims involving third parties which can sometimes escalate to litigation involving the University as a party, either as a claimant or a plaintiff, or as a respondent or defendant, or other significant action. This policy and the related [Legal Procedure - Court Orders, Claims and Investigations](#) outline the principles and procedures to be followed when this occurs.

(33) This policy does not apply to:

- a. complaints (being expressions of concern, dissatisfaction or frustration with the quality or delivery of service, a policy or procedure, or the conduct of another person), that are managed in accordance with the University's [Complaints Management Policy](#) or by other processes under other statutory or policy frameworks, except where these escalate to action through a court, tribunal or regulatory authority
- b. disputes or litigation involving the University or a University controlled entity that are handled by the University's insurers (for example, worker's compensation, public liability claims), or
- c. matters under investigation for the purposes of the [Independent Commission Against Corruption Act 1988](#), which are handled in accordance with the [Fraud and Corruption Control Policy](#).

(34) Any employee who becomes aware of any actual or potential claim against the University should contact Legal Services immediately and provide all relevant details (see [Legal Procedure - Requesting Legal Advice](#)).

(35) Potential or actual claims must be dealt with in accordance with this policy and the [Legal Procedure - Court Orders, Claims and Investigations](#).

(36) The University, through its employees (including University lawyers), will act honestly, fairly and lawfully in the management of all claims by or against the University, but is not precluded from acting firmly in pursuit to protect its rights and legitimate interests and in ensuring that organisational integrity is not compromised. In particular, the University will:

- a. act consistently in the way it manages claims, taking into account individual merits and circumstances
- b. take into account the individual merits and circumstances of each claim
- c. not take purely technical points when no prejudice has been suffered
- d. not pursue claims (including appeals) that have no reasonable prospects of success
- e. seek to manage and resolve claims promptly and efficiently, without undue or unavoidable delay
- f. not require the other party to prove facts which the University knows to be true (nevertheless, properly testing claims against it)
- g. not yield to spurious demands
- h. pay legitimate claims without litigation, including making partial settlements of claims or interim payments, where it is clear that liability is at least as much as the amount to be paid
- i. where appropriate, endeavour to resolve claims (either before or after litigation commences) using suitable alternative dispute resolution methods, such as mediation, to try to resolve claims as efficiently and quickly as possible
- j. where it is not possible to avoid litigation, endeavour to keep the costs of litigation to a minimum except to the extent this compromises the University's legitimate interests
- k. not take advantage of a claimant who lacks the resources to litigate a legitimate claim
- l. where reasonable and appropriate:
 - i. apply for costs orders and security for costs, and pursue costs awarded in the University's favour
 - ii. rely on claims for legal professional privilege or other forms of protections or immunities
 - iii. apply for and enforce orders for security for costs

- iv. oppose and apply for orders to strike out claims or proceedings that are unreasonable, oppressive, untenable, vexatious or an abuse of process
- v. require opposing litigants and their lawyers to comply with their obligations to a court or tribunal, including directions and other procedural obligations
- vi. apply for orders for contempt of court
- vii. apply for orders to have proceedings or litigants declared vexatious, and
- viii. not undertake and pursue appeals unless the University believes that it has reasonable prospects for success or the appeal is otherwise justified in the University's interest.

(37) The University will continually monitor whether a claim is open to alternative dispute resolution (for example, mediation or arbitration) and will promote or agree to alternative dispute resolution wherever appropriate. All agreements entered into by the University should include a dispute resolution clause, where appropriate.

(38) The fundamental criterion for settling a claim against or by the University is that the settlement be in accordance with legal principles and best practice. In particular:

- a. in the case of a claim against the University, there must be at least a meaningful prospect of University liability (for example, spurious claims should not be settled merely to avoid the cost of defending them), and
- b. the amount of the settlement should reflect the prospects of the claim succeeding in court, and the prejudice to the University (by way of costs or otherwise) of continuing to defend or pursue the claim.

Failure to comply with this policy and legal procedures

Responsibility for costs for failing to comply with this legal policy or any legal procedure

(39) Any additional costs incurred in the provision of legal advice (such as referral of a matter to external lawyers) that arise because of a failure by an employee to:

- a. comply with this policy or any legal procedure
- b. obtain appropriate legal advice in relation to a legal matter
- c. properly instruct Legal Services in the first instance or to supply complete or accurate information in a timely manner, or
- d. notify Legal Services in a timely manner of the need for legal advice well ahead of an agreed deadline,

will be charged to the organisational unit or entity concerned unless otherwise approved by the Vice-Chancellor.

Employee failure to comply with policy or procedure

(40) A breach of this policy or any applicable legal procedure by an employee may be dealt with as a disciplinary offence under the relevant University disciplinary policies and procedures.

Section 3 - Procedures

(41) The following procedures support this policy and should be read alongside it:

- a. [Legal Procedure - Requesting Legal Advice](#)
- b. [Legal Procedure - Legal Records](#)
- c. [Legal Procedure - Court Orders, Claims and Investigations](#)

Section 4 - Guidelines

(42) Refer to the [Legal Guidelines - Legal Professional Privilege](#) for guidance on maintaining legal professional privilege as referred to in this policy and in the [Legal Procedure - Requesting Legal Advice](#).

Section 5 - Glossary

(43) In this policy:

- a. Agreement – includes a contract, deed, memorandum of understanding, letter or heads of agreement, lease, license, loan agreement, trust deed or similar documents between two or more parties setting out their legal rights and responsibilities.
- b. Claim – means a legal claim by or against the University and includes actions, notices of claim, letters of demand, legal proceedings and litigation, and material disputes or threatened legal action.
- c. Controlled entity – means an entity that is subject to the control of the University. Note: See also the definition of controlled entity in section 19A of the [Charles Sturt University Act 1989](#).
- d. Court order – means a subpoena, summons, warrant, notice to produce, writ, statements of claim or similar document.
- e. Employee – means all employees of the University, members of the University Council and adjunct staff, and includes employees of a controlled entity of the University.
- f. Legal advice – means advice and information about the law that applies to a particular case or situation and includes legal services and advice and the drafting or review of agreements, forms, correspondence and other University documents.
- g. Rules – means a rule made in accordance with section 32 of the [Charles Sturt University Act 1989](#).
- h. Transaction – means any arrangement that commits the University's funds, incurs expenditure or accrues other financial obligations to the University, or which commits the University to use or provide assets or resources.
- i. University lawyer - means a lawyer in the Legal Services unit of the University

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