

Legal Procedure - Requesting Legal Advice

Section 1 - Purpose

(1) This procedure supports the [Legal Policy](#) and outlines procedures for requesting legal advice from University lawyers or from external lawyers, including in relation to agreements.

Scope

(2) This procedure applies to all employees and organisational units of Charles Sturt University (the University).

Section 2 - Policy

(3) See the [Legal Policy](#).

Section 3 - Procedure

Part A - Procedure for requesting advice from a University lawyer

Requesting legal advice from Legal Services

(4) All requests for legal advice must be submitted to Legal Services, within the Office of Governance and Corporate Administration, in accordance with this procedure.

(5) A request for legal advice should usually be made in writing and by or with the approval of an authorised officer with line responsibility for activities relevant to the request to ensure the request is approved and supported by the relevant organisational unit.

(6) Requests for legal advice may be submitted in writing to any of the following, or a combination of the following:

- a. Legal Services email inbox (legal@csu.edu.au)
- b. General Counsel
- c. A specific University lawyer if the authorised officer is reasonably satisfied the matter relates to a matter or category of work previously managed by the relevant University lawyer.

The General Counsel may establish additional processes and/or forms for requesting legal advice, which will be detailed on the [Legal Services webpage](#).

(7) An authorised officer may appoint another employee to provide instructions on a case by case basis ('the instructing officer'). Where an instructing officer has been appointed, the instructing officer will have the same authorities and responsibilities as the authorised officer.

(8) University lawyers have a discretion to accept verbal requests for advice, or requests submitted by employees other than authorised officers or approved instructing officers, in appropriate circumstances (e.g. if the matter is urgent or straightforward or relates to a previous matter managed by the relevant University lawyer).

(9) Any changes to a request for legal advice must be approved in writing by the authorised officer or the instructing officer who made the original request.

(10) Legal Services will, in appropriate circumstances, escalate a particular matter or transaction to a more senior officer of the University for instructions where there is any concern about the overall interests of the University or significant risk.

Requests for legal advice must be submitted in a timely way and with all appropriate information

(11) A request for legal advice must be made at the earliest opportunity to ensure that there is adequate time for the relevant lawyer to provide appropriate legal advice before any applicable deadlines, and so that the area requesting the advice has time to properly consider and respond to the advice.

(12) A request for legal advice must contain clear instructions with a summary of what the matter or transaction is about, and must be accompanied by all relevant background information and documents. At a minimum most requests should include:

- a. the name and contact details of the authorised officer or instructing officer
- b. background information
- c. copies of relevant documents
- d. specific legal questions to be answered
- e. desired outcome of the request
- f. the date the work must be completed, and
- g. any other information requested by Legal Services.

(13) A request for legal advice regarding an agreement (e.g. review, drafting, interpretation) should, in addition to any relevant information described in clause 12, also include:

- a. a copy of the agreement or draft agreement, if any, and details of anything that has already been negotiated with the other party
- b. a copy of any related agreement(s) (such as a head agreement, funding agreement, prior variations, prior memoranda of understanding, etc.)
- c. any relevant correspondence
- d. in the case of new agreements:
 - i. evidence that the transaction has been authorised by the person(s) with appropriate authority (including funding arrangements) and confirmation that all applicable approvals and sign-offs have been granted and details of any exemption from applicable University rules, policies, procedures or guidelines that has been granted
 - ii. any new business case, applicable quotation, proposal, response to tender, statement of requirements, scope of works or similar
 - iii. details of any applicable commercial terms that need to be included in the agreement (these will vary considerably according to the type of agreement, but will include the full names of the parties (and their address and ABN) an agreed term and any amounts payable, and may include a budget, deliverables, milestones, fees payable, payment due dates, agreed intellectual property arrangements, any options to renew, details of key personnel etc.

(14) Requests for legal advice received by Legal Services are normally dealt with in order of receipt, but are prioritised according to level of importance and genuine urgency. Accordingly, it is important to involve Legal Services 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 claim (even if the matter has not yet escalated to litigation), or
- b. when there are time critical considerations involved in the proposed matter or transaction (e.g. funding arrangements or a proposal to purchase goods or services for the University or for the University to supply goods or services).

(15) Employees are responsible for ensuring that any tender proposal or similar which has a specified timeframe takes into account any need for Legal Services to provide legal advice, such as the preparation of agreements.

(16) If there are deadlines that impact the requirement for legal advice, the authorised officer or instructing officer should negotiate a timeframe for expected provision of legal advice with Legal Services, noting generally that:

- a. priority will be given by Legal Services to matters which fall within the University's priority areas or which may have a material impact on the University and/or its strategy, purpose and vision
- b. requests for urgent advice will be prioritised on a case by case basis. Urgent requests for legal advice should be labelled "Urgent" and include the date and details of any relevant deadline. A request will not be considered urgent simply because an employee failed to request legal advice in a timely manner
- c. in straightforward non-urgent matters, legal advice will generally be provided within 21 days (this should generally be an upper limit, subject to priorities and workloads). The responsible University lawyer should keep the authorised officer or instructing officer informed if delays are likely
- d. in simple matters with few issues, legal advice may be faster, subject to other priorities, and
- e. the timeframe for legal advice on matters which may require lengthy negotiations and multiple communications with third parties (e.g. agreements and disputes) or which are governed by external processes and timeframes (e.g. litigation) will be dependent on the circumstances, although Legal Services will take into account any key deadlines when confirming any timeframe for the provision of legal advice.

(17) If Legal Services is unlikely to be able to meet an urgent timeframe (e.g. due to other priorities or because the matters involve complex issues requiring specialist legal advice), the General Counsel will consult with the authorised officer or instructing officer to discuss the possibility of engaging external lawyers to assist and, if agreed, obtain quotes and manage any engagement in accordance with Part B of this procedure.

Responsibilities of the authorised officer to communicate with third parties and negotiate terms

(18) When a matter is referred to Legal Services with a request for legal advice, the authorised officer or instructing officer remains responsible for:

- a. undertaking any internal consultation that the authorised officer or instructing officer must undertake within the limits of their delegated authority
- b. obtaining any approvals that are required under applicable University rules, policies, procedures and guidelines
- c. the management of all communications with third parties about the relevant matter, and
- d. the negotiation of terms acceptable to the University.

(19) Where it is more efficient or appropriate for a University lawyer to take over certain communications (e.g. communication with the legal representative of a third party to negotiate standard legal terms in an agreement, as opposed to commercial terms such as fees and services) the authorised officer or instructing officer and Legal Services may agree to the relevant University lawyer taking on such communications.

(20) In general, University lawyers will not communicate directly with third parties in relation to matters which are the subject of a request for legal advice, or respond to communication by third parties to a University lawyer, without the presence of the relevant authorised officer or instructing officer in those discussions. University lawyers will generally

refer all third party contacts to the relevant authorised officer or instructing officer to ensure all communication is through a single pathway to reduce the risk of miscommunication or inconsistency in the University's approach.

(21) The General Counsel has authority to take over direct communication with a third party in relation to any legal matter at any time in the best interests of the University. This authority will generally only be exercised in relation to legal matters involving actual or potential litigation or where the third party is legally represented (refer to the [Legal Procedure - Court Orders, Claims and Investigations](#) for more information about the management of claims by or against the University).

Part B - Procedure for obtaining legal advice from an external lawyer

Work may only be referred to external lawyers in accordance with this procedure

(22) Requests for legal advice will only be referred to an external law firm or a specific lawyer in an external law firm (an external lawyer) in accordance with this Part.

General Counsel may refer a matter to an external lawyer

(23) The General Counsel may approve the referral of legal work to an external lawyer from time to time in accordance with the following procedures:

- a. If a legal panel exists in accordance with the [Legal Policy](#), the General Counsel may select the external lawyer from the legal panel most appropriate for the type and nature of work required.
- b. If no legal panel exists, the General Counsel may select an external lawyer from a trusted law firm whom the University has previously engaged most appropriate for the type and nature of work required.
- c. An external lawyer or alternative law firm that falls outside the scope of subclauses 23a) or 23b) may be engaged where, in the opinion of the General Counsel (in consultation with the authorised officer), there is a conflict that necessitates or warrants the engagement of an alternative law firm, or where an alternative law firm holds unique skills, knowledge or experience making them suited to advise on the matter.

(24) The General Counsel will:

- a. before entering a costs agreement, letter of engagement or similar with an external lawyer:
 - i. subject to clause 23, ensure that any engagement of external lawyers is undertaken in a manner consistent with the [Finance Procedure - Procurement](#)
 - ii. ensure that all necessary approvals are obtained having regard to [Delegation Schedule A - Governance and Legal](#)

Note: This includes, where circumstances permit, seeking the requisite number of quotes for estimated expenditure of costs from the preferred external lawyer(s), which the General Counsel will then discuss with the authorised officer. As an exception to the [Finance Procedure - Procurement](#), the University Secretary may waive the requirement for a quote for expenditure up to \$50,000 and the Vice-Chancellor may waive the requirement for a quote for expenditure up to \$150,000 upon advice from the General Counsel (e.g. if the matter is particularly sensitive and/or urgent, such as where legal proceedings have been commenced against the University)

- a. enter a suitable costs agreement, letter of engagement or similar with the approved external lawyer
- b. supervise and instruct the external lawyer's services on behalf of the University, or direct another University lawyer to do so
- c. monitor the scope of work sought and provided and fees incurred, and
- d. report any performance issues related to the work undertaken by any external lawyer to the Office of the Vice-

Chancellor, having regard to best legal practice.

Certain executives may refer certain types of requests for legal advice to an external lawyer

(25) Subject to the [Legal Procedure - Court Orders, Claims and Investigations](#) (in particular the paragraphs dealing with claims in relation to insured risks managed by the University's lawyers) the Chief Financial Officer may:

- a. endorse the appointment of an external lawyer retained by an insurer under the University's contracts of insurance in respect of an insured claim under the University's policies of insurance, and
- b. manage the insured claim (which includes managing communications with the insurer's lawyers, assisting the insurer's lawyers in obtaining information necessary to defend the claim, and liaising with employees who have management responsibilities and insights into matters relevant to the claim),

although it should be noted that in such circumstances the external lawyer acts for the insurer, not the University.

(26) In respect of employment law matters, the Executive Director, People and Culture may refer requests for legal advice to:

- a. an external lawyer on the legal panel (if any) or to a trusted law firm whom the University has previously engaged in respect of such matters
- b. to a consultant retained by the Australian Higher Education Industrial Association, or
- c. an alternative law firm if the Executive Director, People and Culture is of the opinion that an alternative law firm holds unique skills, knowledge or experience making them most suited to advise on the matter, and they have consulted with the General Counsel before engaging that alternative law firm.

(27) In respect of intellectual property and research consultancy matters, the Deputy Vice-Chancellor (Research) may refer requests for legal advice to an external lawyer on the legal panel (if any) or to a trusted law firm whom the University has previously engaged in respect of such matters. If the Deputy Vice-Chancellor (Research) is of the opinion that an alternative law firm holds unique skills, knowledge or experience making them most suited to advise on the matter, they should consult with the General Counsel before engaging that alternative law firm.

(28) The following executives have authority to refer requests for legal advice to an external lawyer from time to time in a manner consistent with the procedures set out in clause 23, subject to applicable legal expenditure limits in [Delegation Schedule A - Governance and Legal](#):

- a. Vice-Chancellor
- b. Chief Operating Officer
- c. University Secretary
- d. General Counsel

(29) Any request for legal advice by an authorised executive under Part B must be undertaken in accordance with procedures equivalent to those set out in clause 24, including requirements to:

- a. where circumstances permit, seek the requisite number of quotes for estimated expenditure of costs from the preferred external lawyer(s)
- b. enter into a suitable costs agreement, letter of engagement or similar with the approved external lawyer
- c. supervise and instruct the external lawyer's services on behalf of the University
- d. monitor the scope of work sought and provided and fees incurred, and
- e. report any performance issues related to the work undertaken by any external lawyer to the Office of the Vice-Chancellor,

having regard to best legal practice.

Register of referrals to external legal consultants to be maintained

(30) All employees who are authorised to refer requests for legal advice to external lawyers must maintain a legal advice register in accordance with this procedure.

(31) The legal advice register must include:

- a. title of the matter
- b. brief description of the matter
- c. parties to the matter
- d. firm or individual to whom the matter referred
- e. date of referral and duration of engagement, and
- f. details of fees incurred and, when complete, a record of the total cost of legal work.

(32) The legal advice register must be forwarded to the Office of the Vice-Chancellor and the General Counsel annually, and otherwise upon request.

Part C - Procedure relating to requests for legal advice in relation to agreements

Authority to commence negotiations for agreements

(33) An employee may only commence negotiations for an agreement with a third party after consulting and obtaining the written consent of the authorised officer within the organisational area responsible for the relevant relationship, transaction or activity, and in accordance with any other University rule, policy, procedure or guideline relevant to the formation of the agreement. Employees must not commit the University to sign an agreement unless and until all applicable approvals and sign-offs have been granted.

Request to review or draft an agreement

(34) A request to review or draft an agreement will be submitted in accordance with clauses 12 and 13.

(35) The General Counsel may establish additional requirements, and approve additional forms, for requests for legal advice relating to agreements.

(36) Where an employee is aware that an agreement will need to be drafted in the future, the employee must notify the General Counsel as soon as possible (ideally at least three months in advance, or where the agreement is complex at least six months in advance), prior to a request for legal advice, to ensure sufficient time is available to review or draft the agreement and to negotiate amendments with the third party.

(37) The authorised officer is responsible for ensuring that all relevant areas of the University who are, or may be, affected by, or have obligations under, a proposed agreement are consulted fully in the course of negotiating the agreement. University lawyers will not be responsible for checking whether areas have been consulted.

Review of agreements prepared by third parties

(38) Unless otherwise exempted by the [Legal Policy](#) or this procedure, all agreements prepared by a third party for execution by the University must be submitted for legal review to Legal Services in accordance with this procedure (refer to the standard agreements heading below).

Authority to sign agreement

(39) An agreement may only be signed by an employee:

- a. who has delegated authority to sign such an agreement in accordance with the University's delegations (see the [Charles Sturt University Act 1989 \(the Act\)](#), the [Delegations and Authorisations Policy](#), the various [delegations schedules](#), and any applicable University rules, policies, procedures and guidelines), and
- b. who is satisfied that the organisational area responsible for the relevant relationship, transaction or activity endorses the agreement, and that all applicable approvals and sign-offs have been granted.

Circumstances where the University must not enter into an agreement

(40) An employee must not enter into negotiations, or continue negotiations, for an agreement with a third party where it is required, or becomes clear, that any resultant agreement will require the University to:

- a. undertake tasks or functions that are not permitted under [the Act](#), [By-law](#) or Rules,
- b. breach a mandatory requirement or procedural obligation imposed under [the Act](#), [By-law](#) or Rules, or
- c. breach Australian law or laws in the jurisdiction in which the services, goods or other things under the agreement are to be supplied.

Controlled entities must obtain approval of Vice-Chancellor to enter into agreements

(41) A controlled entity:

- a. must obtain the approval of the Vice-Chancellor prior to initiating negotiations with the third party, and before entering into an agreement with a third party, including where the University is the other party, and
- b. may only enter into an agreement with a third party within the limits of authority under its Articles of Association or Constitution or other establishing documents and in compliance with the [Corporations Act 2001](#) or other law that regulates the type of controlled entity, and any other laws that regulate the performance of agreement in the jurisdiction in which the agreement is formed or in which goods, services or other things are to be supplied under the agreement.

Special procedures for standard University agreements

(42) The Vice-Chancellor may, at the recommendation of the General Counsel, approve standard form agreements (standard University agreements) from time to time in areas, where the risks associated with the activity are low or quantifiable, or the form of arrangement for the activity is routine.

(43) An approved standard University agreement represents the University's basic requirements for an agreement of that type and its legal terms may not be varied, except to the extent permitted under the form of the standard University agreement (e.g. the template may identify different options for certain terms and conditions, which a user may select between without having to consult Legal Services).

(44) Employees may use a standard University agreement as a basis for negotiation with a third party, but any material variations to legal terms must be approved by Legal Services.

(45) The terms and conditions set out in standard University agreements are approved as a standard format for contracts of that type. Standard agreements must not be varied, amended or altered without the approval of the General Counsel.

Translation of agreements into other languages

(46) The translation of agreements into foreign languages must be undertaken by accredited legal translators

appointed by the relevant organisational unit with the approval of the General Counsel. Any engagement will be subject to any expenditure delegation of the relevant delegate approving the terms of engagement.

(47) The cost for the translation of agreements or other documents into other languages will be charged to the organisational unit requesting the work.

Section 4 - Guidelines

(48) [Legal Guidelines - Legal Professional Privilege](#).

Section 5 - Glossary

(49) This procedure uses terms defined in the [Legal Policy](#), as well as the following:

- a. Authorised officer - means:
 - i. Vice-Chancellor
 - ii. Deputy Vice-Chancellors
 - iii. Chief Operating Officer
 - iv. University Secretary
 - v. Pro Vice-Chancellors
 - vi. Executive Deans
 - vii. Executive Directors and equivalent
 - viii. Directors
 - ix. Managers, or
 - x. any other employee as approved by the Vice-Chancellor or University Secretary from time to time.

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