



Legal Engagement (External Lawyers) Policy

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DEFINITIONS

OVERVIEW

The University of Adelaide Act 1971 (SA) ("the Act") provides in Section 9 for Council to be the governing body of the University. Specifically, section 9 (d) requires the establishment of "policy and procedural principles consistent with legal requirements"; and further, Section 9 (e) requires Council to "*approve and monitor systems of control and accountability....*"

Consistent with its obligations under the Act, the University Council has adopted and published a Governance Statement (<https://www.adelaide.edu.au/governance/>). The Governance Statement designates certain policies to be governance policies. This Policy is a designated Governance Policy within the meaning of that term in the University's Governance Statement.

Legal Services for the University must take account of both governance and management frameworks within and applicable to the University. Legal Services must be of a high standard; advance the best interests of the University; be sensitive to the context within which the University operates; and may require consideration of interests or sensitivities broader than the interests of any one Division, Faculty, branch, school or individual including, without limitation, Honorary Titleholders of the University.

In order to prudently assess and manage the risks arising from giving and receiving legal advice, and the University's management of risk in both governance and management of legal risks, this policy provides a framework within which external lawyers may be approved as legal services providers to the University.

SCOPE AND APPLICATION

This policy outlines the principles and procedures to be followed for the engagement of any external lawyer for the provision of Legal Services.

The Office of General Counsel ("**the OGC**") is responsible for the provision of legal services, support and advice ("**Legal Services**") to the University of Adelaide.

Legal Services may be provided to the University only by designated in-house lawyers within the Legal and Risk Branch or by external lawyers with the prior approval of the Office of General Counsel.

Only with the prior approval of the General Counsel, or an Authority in the **University's delegations at <https://www.adelaide.edu.au/governance/delegations/>** may Legal Services be sourced externally, and then, only from approved legal providers and in accordance with this policy. Unless required by law or approved exceptional circumstances Legal Services are to be provided to or procured for only the University itself.

In limited circumstances the OGC may itself provide or authorise the provision by **Approved Providers of Legal Services** to the University's Controlled Entities.

This policy applies to directors and officers of Controlled Entities under relevant Deeds of Indemnity and subject to the terms of those Deeds, academic and professional staff members, Honorary Titleholders and contractors of the University and to all the University's activities and operations whether in Australia or elsewhere.

In addition to the express exclusions below, this policy is to be read subject to any obligations of law and duly authorised exceptions to University policies and procedures.

Exclusions

Legal Clinics

This policy does not apply to legal services provided by or through the legal clinics operated by or with the support of the University's Law School.

Provision of Legal Advice paid for by the University

This policy does not apply to prevent the engagement of independent legal advisors where the advice is to be provided by a legal provider to and for the benefit of an individual staff member or a member of the governing body, rather than to the University itself. Typically, an exclusion may apply where:

- Payment of the legal fee is the University's responsibility by the operation of law;
- The University itself is not the client or the beneficiary of the advice;
- Fees are to be reimbursed or paid directly to a provider where access to legal advice has been offered by the University where the University is not the client;
- The advice is required to be procured by or under a self-insurance scheme or policy of insurance or indemnity by an underwriter or mutual fund; and

In each of the circumstances listed above the engagement is to be authorised by and under an existing delegation.

POLICY PRINCIPLES

1. Provision of Legal Advice from within the Office of General Counsel

The Office of General Counsel is responsible for the provision of **Legal Services** to the University of Adelaide. Save as set out in paragraph 2 below, Legal Services may be provided to the University only by designated in-house lawyers within the Legal and Risk Branch or by external lawyers with the prior approval of the Office of General Counsel or an Authority.

2. Provision of Legal Advice by University staff confined to the Office of General Counsel

University staff may provide advice within their expertise to the University, however such advice may not be characterised as legal advice and will not be entitled to protection under principles of legal professional privilege.

3. Alignment with Institutional Procurement Policies

Subject to the University's financial procurement policies and procedures and any duly authorised exceptions under those policies and procedures, the OGC is responsible for setting, reviewing and monitoring the University's appointment of external lawyers as **Approved Providers** and for reviewing their services to the University.

4. In-house Legal Practitioner Compliance

Qualified legal practitioners who are employed by the University within the Office of General Counsel within the Legal and Risk Branch of the Division of University Operations, are subject to the national **Australian Solicitors Conduct Rules** and are required to acknowledge, respect and abide by the professional obligations on them as holders of practising certificates and as officers of the Courts. All practitioners' obligations are owed to the University as the client (as that term is understood in the ASCR's) and it is to the University that the obligation of independent and objective legal advice is owed.

5. Approved Legal Services Providers

Generally speaking it is preferred that the University's in-house lawyers provide Legal Services to the University however circumstances do arise from time to time that warrant the appointment of external lawyers. Only the Council and the General Counsel or approved delegate may approve the appointment of a legal services provider, their designation as an **Approved Provider to the University (Approved Provider)**, and the general **Terms of Engagement** on which the **Approved Provider** provides their services.

The scope of any particular engagement and the scope and terms of the particular instructions are within the authority of the **Internal Client** on recommendation by the Relevant Business Partner and subject to approval and review at any time by the General Counsel.

The OGC is responsible for pre-approving a legal services provider as an **Approved Provider**.

Only **Approved Providers** may be engaged to advise the University.

Where the University is unable to appoint or engage an **Approved Provider**, or an alternative provider is desirable in the circumstances, due for example to the requirements of a joint venture or some other arrangement with another party, or for some other approved reason an **Alternate Provider** may be appointed to provide Legal Services. The appointment of an Alternate Provider must be endorsed by the Office of General Counsel.

Special consideration will be given to urgent or exceptional circumstances where it can be demonstrated that it is in the best interests of the University for an **Alternate Provider** to be engaged. Such circumstances might arise where, for example, the University is not the sole determinant of who may be engaged to provide legal services to an entity or professional body or group in which the University has an interest or is a member, or to accommodate express preferences of government or funding bodies, or where circumstances of special need arise ("Special Circumstances").

Routine or urgent requests for approval of Alternate Providers may be made by direct request to the Office of General Counsel.

6. Responsibilities and Authority

- Only the OGC may approve legal services providers as an **Approved Provider** and endorse an **Alternate Provider**.
- The OGC is responsible for managing all agreements for services between the University and the University's **Approved Providers** irrespective of the area to whom the services are being delivered (**the Internal Client**) and irrespective of the area responsible for payment of any fees incurred in the engagement of the **Approved Providers**.
- Sources of funding and ancillary administrative arrangements for payment of fees (such as but not only the issue of Purchase Orders) for **Alternate Providers** must be approved in accordance with existing financial delegations.
- General Counsel will communicate the **University's Requirements** formally and regularly to all **Approved Providers**. **Approved Providers** are required to comply with formal directions issued from time to time by the Office of General Counsel. Compliance with the **University's Requirements** is a condition of ongoing approval as an **Approved Provider**.
- In consultation with the **Approved Providers** the OGC is responsible for monitoring of Approved Providers' services through a performance management framework and for ensuring services are provided in such a time and manner, and on such terms as advance the best interests of the University.
- Unless otherwise directed by the General Counsel, or where an exception has been agreed with the OGC and/or directed by the Vice Chancellor or the Chief Operating Officer, **Approved Legal Services Providers** are not permitted to be engaged on **Excluded Matters**.
- **Excluded Matters** include advice relating to the interpretation or application of the University's enabling legislation, its subordinate legislation, and all instruments pertaining to it; and the University's governance frameworks, protocols and rules. Excluded Matters are to be directed in the first instance to the Office of General Counsel.

7. Legal Categories

The Office of General Counsel will ensure that there are **Approved Providers** appointed to all relevant **Legal Categories**. Requests for additional categories are to be directed to General Counsel.

Approved Providers will be appointed to the **Legal Categories** published annually on the Legal and Risk website here: <https://www.adelaide.edu.au/legalandrisk/legal/engaging-external-lawyers>. Approved Providers may be appointed to multiple categories.

8. University Requirements – for University personnel

Requests for legal advice and support should be directed to the University's Legal Services team in the Legal and Risk Branch. Such requests may be directed to the Legal and Risk Branch via helpdesklegal@adelaide.edu.au; or directly to members of the legal team where established relationships exist between members of the Legal and Risk Branch and a local area (the Internal Client) or by request directly to General Counsel.

Sensitive or highly confidential issues may be referred directly to General Counsel at any time.

Terms and amendments and variations of appointment and engagement of Approved Providers may only be approved or varied by the OGC.

Responsibility for payment of professional charges of Approved Providers is to be agreed between the Relevant Business Partner and Internal Client before commencement of any engagement and where there is no Relevant Business Partner, directly with the OGC.

Sources of funding and ancillary administrative arrangements for payment of fees (such as but not only the issue of Purchase Orders) of Approved Providers are the responsibility of the Relevant Business Partner to determine in consultation with the Internal Client.

Sources of funding and ancillary administrative arrangements for payment of fees (such as but not only the issue of Purchase Orders) for **Alternate Providers** must be approved in accordance with existing financial delegations.

9. **University Requirements – For Legal Services Providers**

Compliance with **University Requirements** is a condition of appointment and ongoing status as an **Approved Provider**.

Approved Providers must comply with the **University's Requirements**. Non-compliance by Approved Providers is likely to result in the revocation of status as an **Approved Provider**.

University Requirements

Approved Providers must engage with the OGC annually as part of the overall relationship management with the University for the following:

- to confirm retainer terms and other terms of engagement for both financial and non-financial aspects of the relationship between the University and the Approved Provider;
- to ensure **University Requirements** are accepted, understood and complied with;
- to review value-add benefits offered or available to the University;
- to review adherence with all **University Requirements** including but not only with respect to reporting work in progress against fee estimates, reporting against authorised Purchase Orders, the Monthly Report and the requirements of the Legal Advices Register.
- Approved Providers are expected to extend access to continuing legal education sessions offered by their firms to University legal personnel;
- Approved Providers are expected to engage with the University on a range of charging methods including hourly rates, daily rates, reduced rates for volume and repeat services; and fixed fees where agreed.

10. **Monthly Report**

Approved Providers must provide to the OGC a **Monthly Report** in a form agreed annually and generally including the unique matter number/case identifier; the name of the partner overseeing the file; the name of the practitioner providing the advice; the quantum of work in progress and any fee estimates; the quantum of total fees; and a brief status update.

11. **Legal Advices Register**

The OGC maintains a Legal Advices Register.

All substantive advices provided by Approved Providers must be deposited to the Legal Advices Register concurrently with the advice provided to the **Internal Client**.

The Legal Advices Register is accessible to **Approved Legal Advices Register Staff** and to the **Auditor General**.

Approved Legal Advices Register Staff are designated from within the Office of General Counsel, and authorised by an Authority and published annually on the Legal and Risk Branch webpage. All content of the Legal Advices Register is confidential and subject to legal professional privilege.

Subject to principles of legal professional privilege and appropriate recognition of conflicts of interest, the Legal Advices Register is accessible to the Auditor General.

Absent an authority of the Council, the Legal Advices Register is not accessible to any person other than in accordance with this Policy or where compelled by law.

Any advice relating to workers compensation or allegations against or conduct of the General Counsel or staff of the Legal and Risk Branch are to be copied only to the Chief Operating Officer and such others as the Chief Operating Officer may direct in writing.

12. Excluded activities Effective Date

Subject to necessary **Transitional Arrangements**, the arrangements set out in the policy apply with immediate effect from the date the Policy is approved by Council.

13. Transitional Arrangements

All new instructions for Legal Services to be procured from the effective date must be procured in accordance with this Policy.

Any engagements that are already in place on the Effective Date may continue to their conclusion conditionally upon the Office of General Counsel being satisfied that they:

- have been reported to the OGC and included as reportable items in the Legal Advices Register unless otherwise exempt under this Policy;
- are subject to clear written instructions that have been approved by the OGC as to scope and terms; and
- are not Excluded Matters.

Breach of Policy

Breach of this policy within the University by members of the governing body, professional or academic staff, Honorary Titleholders, contractors may result in disciplinary proceedings which may include the imposition of sanctions or dismissal in serious cases for professional and academic staff, and where applicable, sanctions of other kinds and/or removal from office and/or removal of honorary titles.

Breach of this policy for Approved Providers may result in discontinuance of status as an Approved Provider and result in the termination of all instructions.

AUTHORITIES

| Key | Authority Category | Authority | Delegation Holder | Limits |
|---------------------------|---------------------------|---|--------------------------|---|
| Office of General Counsel | Legal Advices Register | Authority to require Approved Providers to deposit substantive legal advices to the University's Legal Advices Register (within a designated electronic database) | General Counsel | Any advice relating to General Counsel or personnel of Legal and Risk Branch to be sent to Chief Operating Officer only |

| Key | Authority Category | Authority | Delegation Holder | Limits |
|---------------------------|--|--|-------------------------------------|--|
| Office of General Counsel | Legal Advices Register | Permission to inspect | Auditor General | Exclusion of any matters involving other parties also audited by the Auditor General's Office |
| Office of General Counsel | Approved Legal Advices Register Staff | General Counsel to designate approved personnel from within the Legal and Risk Branch as being authorised to have limited access to the register; General Counsel to publish the authorised personnel annually and at any other time that personnel changes necessitate that the list be updated | General Counsel | Nil |
| Office of General Counsel | Designation of Approved Provider | To approve appointment, or continuance or removal of status as an Approved Provider | General Counsel | Where a policy of indemnity requires it, an underwriter may have first right of appointment of legal providers to conduct certain investigations or represent the University in litigation or tribunals where indemnity has been offered under a policy of insurance |
| Office of General Counsel | Designation of Alternate Provider | | Vice-Chancellor and General Counsel | Nil |
| Office of General Counsel | Monthly Report | Authority to require Approved Providers to deliver a monthly status report in a form agreed from time to time | General Counsel | Nil |
| Office of General Counsel | Designation of Alternate Providers for all University Categories | To approve appointment, or continuance, or removal of status as an Alternate Provider | Vice-Chancellor and General Counsel | Nil |

| Key | Authority Category | Authority | Delegation Holder | Limits |
|---------------------------|--|---|---|--|
| Office of General Counsel | Legal Services confined to the University | Only in designated circumstances, with prior approval of the Vice-Chancellor or the Chief Operating Officer, may the OGC provide Legal Services to the University's Controlled Entities | University Council Vice-Chancellor Chief Operating Officer General Counsel | May be applicable where the interests of the entity and the University are not aligned |
| Office of General Counsel | Approve the engagement of an Approved Provider | OGC to review and consider all Requests to Engage an Approved Provider submitted by Relevant Business Partners and notify the Relevant Business Partner of approval/refusal | General Counsel | Nil |
| Office of General Counsel | Responsibility for payment of external lawyers' professional fees and all ancillary administrative actions associated with incurring that liability | A financial liability incurred in respect of fees must be allocated before commencement of services by external lawyers. In consultation the Relevant Business Partner must identify and agree the source of funds for the payment of professional fees incurred | The Relevant Business Partner and the Internal Client | Other than to consider and identify the responsibility for payment of fees, the only other limitation is imposed by existing financial delegations |
| Office of General Counsel | Responsibility for payment of Alternate Provider's professional fees and all ancillary administrative actions associated with incurring that liability | A financial liability incurred in respect of fees must be allocated before commencement of services by external lawyers. | Authorised financial delegations' holders | Other than to consider and identify the responsibility for payment of fees, the only other limitation is imposed by existing financial delegations |
| Office of General Counsel | Request to Engage an Approved Provider | Appointment of Approved Providers via a formal request | Vice-Chancellor and General Counsel | Existing financial delegations |

PROCEDURES

1. Designation of Categories of Legal Services

Responsibility: *General Counsel*

- a) Annually and at any other time when it is required General Counsel shall designate categories of legal services in relation to which Approved and Alternate Providers may be appointed (and where appropriate to more than one Category) to provide legal services to the University.
- b) Any person or officer of the University may by formal or informal means request General Counsel to add to, delete or otherwise amend the Categories of Legal Service.

2. Publication of designated Legal Staff with access to Legal Advices Register

Responsibility: *General Counsel*

- a) General Counsel shall designate a limited number of staff within the Legal and Risk Branch who shall be approved to have access to the legal advices register for the purpose of managing the register and assisting General Counsel.
- b) General Counsel shall publish a list of the authorised personnel annually and at any other time that personnel changes necessitate an amendment to the annually published list.

3. Engagement of Approved Providers to provide Legal Services

Responsibility: *General Counsel*

- a) University personnel requiring legal advice may seek assistance from the University's Legal Services team via helpdesklegal@adelaide.edu.au or seek assistance directly from Legal and Risk Branch personnel.
- b) Where the relevant Legal Services cannot be provided by the University's in-house lawyers or external legal assistance is required or desirable for some other reason, a [Request to Engage an Approved Provider](#) should be submitted to the Office of the General Counsel (helpdesklegal@adelaide.edu.au) for approval.
- c) The General Counsel will assess the Request to Engage an Approved Provider and notify the Relevant Business Partner of the outcome in writing. Requests will be approved if they are in the University's interests, funding is available from a clearly identified source, the Legal Services cannot be provided by the University's Legal Services team, and the engagement is appropriate and/or desirable in all the circumstances.
- d) Subject to approval of the scope of the engagement by the General Counsel, the Relevant Business Partner will be responsible for liaising with and providing instructions to the Approved Provider.

4. Identifying Responsibility for Payment of External Lawyers' Fees

Responsibility: *Relevant Business Partner and Internal Client*

The Relevant Business Partner and the Internal Client will identify the source and responsibility for payment of professional fees to be incurred and to ensure compliance with other university procedures such as the issue of Purchase Orders, assessing and approving invoices and arranging for payment subject only to exemptions from such procedures authorised in writing from authorised delegates.

5. Engagement with Legal Firms for appointment as Approved Providers

Responsibility: *General Counsel*

- a) Following initial appointment as Approved Providers, General Counsel will advise the Approved Providers of the University's Requirements;
- b) Annually the Approved Providers will be invited to participate in a review of services and standards to assess that the services required are being delivered.

DEFINITIONS

Alternate Provider is a provider of legal services who has not been formally designated by the Office of General Counsel as an Approved Provider but for other reasons (such as a funding or insurance requirement) is approved to provide legal services to the University or an entity of which the University is a member;

Approved Provider is a legal services provider who has been designated by the Office of General Counsel as an approved provider for the provision to the University of legal services in accordance with the **University's Requirements**;

Approved Legal Advices Register Staff are those staff within the Legal and Risk Branch who are approved by the General Counsel to have access to the Legal Advices Register for the purposes of reviewing, maintaining and administering legal advices;

Authority is an authority given to a Category or Position as those terms are understood in the University's [Delegations and Authorities Register](#) and otherwise in accordance with the University's governance and management frameworks;

Controlled Entity has the meaning attributed to that term pursuant to Section 50AA of the Corporations Act 2001;

Excluded Matters are those matters that must be directed in the first instance to the Office of General Counsel or the Chief Security Officer of the Chief Operating Officer as prescribed in the annually published [Legal Categories](#);

Internal Client is a local area within a University Division, Faculty, School or Branch that requires or whose Relevant Business Partner has requested legal services that are to be submitted for or have been approved by General Counsel to be provided to the University for an internal client by an external lawyer;

Legal Advices Register is a confidential register subject to legal professional privilege into which all substantive legal advices must be deposited to an approved email address (legal@adelaide.edu.au) at the same time as the advice is provided to the University;

Legal Categories are the categories of legal services required by the University from time to time and published on the Legal and Risk website: <https://www.adelaide.edu.au/legalandrisk/legal/engaging-external-lawyers>;

Monthly Report is the report required to be provided at the intervals and in the form prescribed from time to time by the Officer of General Counsel;

Relevant Business Partner is the internal business partner of an Internal Client. For example, Human Resources, ITDS, Infrastructure, Marketing and Communications, ICP, and Legal and Risk Branch will commonly be Business Partners to Internal Clients;

Honorary Titleholder refers to a person who contributes to the achievement of the academic goals of the University and is awarded an honorary title in recognition of that contribution;

Special Circumstances mean those circumstances that require or commend the appointment of an Alternate Provider where the University is unable to appoint or engage an **Approved Provider**, or an alternative provider is desirable in the circumstances, such as to meet the requirements of a joint venture or some other arrangement with another party, or where a common or joint engagement is to be made through a professional network or body (such as the Group of Eight) or for some other approved reason.

University Requirements for Approved Providers are those matters prescribed in writing to the Approved Providers from time to time through the Office of General Counsel.

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| RMO File No. | F. 2021/6348 |
| Policy Custodian | Chief Operating Officer |
| Responsible policy officer | General Counsel and Executive Director, Legal Services |
| Endorsed by | Audit Compliance and Risk Committee on 11 November 2021 |
| Approved by | Council on 6 December 2021 Reaffirmed without amendment by COO for a further three years on 20 December 2024 – see D2025/84131 |
| Related Documents and Policies | |
| Related Legislation | <i>Higher Education Support Act 2003</i> <i>Independent Commissioner Against Corruption Act 2012 (SA)</i> <i>Tertiary Education Quality and Standards Agency Act 2011</i> <i>The University of Adelaide Act 1971 (SA)</i> |
| Superseded Policies | Nil |
| Effective from | 6 December 2021 |
| Review Date | 20 December 2027 |
| Contact for queries about the policy | General Counsel and Executive Director, Legal Services Tel: 8313 5033 |