

Council Member
Councillor Martin

Public

Contact Officer:
Amanda McIlroy, Chief
Operating Officer

MOTION ON NOTICE

Councillor Martin will move a motion and seek a seconder for the matter shown below to facilitate consideration by the Council:

That Council:

Resolves that:

1. Any elected member who is the subject of any integrity agency investigation into allegations of misconduct or corruption in the performance of their duties will not be eligible for legal assistance provided and paid by the City of Adelaide unless such assistance has the prior approval of the Council;
2. Any member of staff who is the subject of any integrity agency investigation into allegations of misconduct or corruption in the performance of their duties will not be eligible for legal assistance provided and paid by the City of Adelaide unless such assistance has the prior approval of the Council or (in the case of a member of staff in circumstances where section 104 of the Local Government Act 1999 applies) the CEO; and
3. Where the CEO has provided approval for the purposes of paragraph 2, it will be the subject of a confidential report to Council.
4. In the event Council approval for legal assistance is provided, it will be on the condition that if there is a finding by any integrity agency of misconduct or corruption by the individual concerned, that individual will repay the City of Adelaide the costs of such assistance unless otherwise determined by Council.'

ADMINISTRATION COMMENT

1. For the information of Council to assist in its consideration of this motion, sections 103 and 104 of the *Local Government Act 1999* (the Act) are relevant and read as follows:

Part 2—Appointment of other staff

103—Appointment etc by chief executive officer

The chief executive officer is responsible for appointing, managing, suspending and dismissing the other employees of the council (on behalf of the council).

The chief executive officer must ensure that an appointment under subsection (1) is consistent with strategic policies and budgets approved by the council.

The chief executive officer must, in acting under subsection (1), comply with any relevant Act, award or industrial agreement.

Suspension of an employee by the chief executive officer does not affect a right to remuneration in respect of the period of suspension.

104—Remuneration etc of other employees

Subject to any relevant Act, award or industrial agreement, the remuneration and other conditions of service of an employee of a council will be as determined by the chief executive officer.

2. In the event that the motion is adopted by Council, and the circumstances described in the motion arise in future, appropriate advice will be prepared for Council consideration.
3. In the event that there are circumstances as described in the proposed motion with respect to the CEO, under the Act, the CEO is unable (of her own volition) to seek legal advice for personal wrongdoing with costs to be borne by City of Adelaide, unless Council approval has previously been sought. This is the case regardless of whether this motion is adopted or otherwise.
4. It should be noted, however, that the legal framework in which an integrity agency is operating may constrain whether, or the extent to which, Council can be advised about an investigation. In either case the Administration will obtain legal advice to ensure it is compliant with the resolution of Council, while respecting any constraints that might be imposed by an integrity agency.

Should the motion be carried, the following implications of this motion should be considered. Note any costs provided are estimates only – no quotes or prices have been obtained:	
Public consultation	Not applicable.
External consultant advice	Not applicable.
Legal advice / litigation (eg contract breach)	Not applicable.
Impacts on existing projects	Not applicable.
Budget reallocation	Not applicable.
Capital investment	Not applicable.
Staff time in preparing the workshop / report requested in the motion	Not applicable.
Other	Not applicable.
Staff time in receiving and preparing this administration comment	To prepare this administration comment in response to the motion on notice took approximately 4.5 hours.

- END OF REPORT -