

1. Purpose

The Advice Guidelines for Councillors seeking information or advice from Council employees are required by Section 170A of the *Local Government Act 2009* and are designed to assist communication and information flow between Councillors and employees.

2. Scope

These Guidelines apply to all Councillors including the Mayor and Council employees.

3. Responsibility

The Act requires the Chief Executive Officer to prepare Advice Guidelines for Councillors' contact with employees.

4. Definitions

Chief Executive Officer

CEO - shall mean the person appointed to the position of Chief Executive Officer under the Act and anyone acting in that position.

Director

Director - shall mean the Directors of Council who constitute the Executive Management Team and who report directly to the Chief Executive Officer and persons acting in such positions.

Another employee

Another employee - shall mean all employees of Council including Directors but excluding the Chief Executive Officer.

Councillors

Councillors - shall mean all elected members of Council including the Mayor.

Council

Council - shall mean the Hinchinbrook Shire Council.

The Act

The Act - shall mean the *Queensland Local Government Act 2009*.

5. Guidelines

The *Queensland Local Government Act 2009* establishes a clear separation of powers and roles between Councillors and employees.

To ensure that the respective responsibilities can be effectively discharged, the Act contains specific provisions that prohibit Councillors from directing Council employees, but does permit Councillors to seek advice or information from employees to assist them in their decision making in accordance with advice guidelines.

Separation of Directions and Requests

- **Section 170 (Directions):**
 - The Mayor may give directions to the CEO, subject to limits in section 170(2).

- No Councillor, including the Mayor, may give a direction to any other local government employee. Contravention is misconduct under sections 150L(1)(c)(iv), 150AQ and 150AR.
- **Section 170A (Requests):**
 - Councillors may request advice or information from employees in accordance with these guidelines.
 - Requests must comply with the acceptable requests guidelines adopted by resolution under section 170A(7).

Acceptable request guidelines establish the rules about how a Councillor asks a local government employee for advice to assist the Councillor carry out their responsibilities under the *Local Government Act 2009* and the reasonable limits on requests that a Councillor may make. Section 170A(7) of the *Local Government Act 2009* requires that acceptable request guidelines are to be adopted by the resolution of the local government. These Guidelines satisfy the statutory requirement and Councillors are required to comply with them in accordance with the *Local Government Act 2009*.

Requests that do not comply with these guidelines have no effect under Section 170A(5). Requests may be subject to limits prescribed by regulation, such as maximum cost to Council.

The following provisions of the Act are most relevant:

Section 170 Giving directions to local government staff

- (1) *The Mayor may give a direction to the Chief Executive Officer;*
- (2) *However, a direction under subsection (1) must not be given if:*
 - (a) *It is inconsistent with a resolution, or a document adopted by resolution, of the local government; or*
 - (b) *It relates to the appointment of a local government employee under section 196(3); or*
 - (c) *It relates to disciplinary action by the Chief Executive Officer in relation to a local government employee under section 197 or a Councillor advisor; or*
 - (d) *It would result in the Chief Executive Officer contravening a provision of an Act.*
- (3) *No Councillor, including the Mayor, may give a direction to any other local government employee, except in accordance with guidelines made under section 170AA about the provision of administrative support to Councillors.*

Note –

Contravention of subsection (3) is misconduct that could result in disciplinary action being taken against a Councillor. See sections 150L(1)(c) (iv), 150AQ and 150AR.

- (4) *The Chief Executive Officer must:*
 - (a) *Keep a record of each direction given to the Chief Executive Officer; and*
 - (b) *Make available to the local government each direction mentioned in paragraph (a).*

Section 170A Requests for assistance or information

- (1) *A Councillor may ask a local government employee to provide advice to assist the Councillor to carry out his or her responsibilities under this Act;*
- (2) *A Councillor may, subject to any limits prescribed under a regulation, ask the Chief Executive Officer to provide information, that the local government has access to, relating to the local government.*

Example of a limit prescribed under a regulation –

A regulation may prescribe the maximum cost to a local government of providing information to a Councillor.

- (3) *If the advice or information requested under subsection (1) or (2) relates to a document, the requirement under subsection (9) to comply with the request includes a requirement to provide a copy of the document.*
- (4) *Subsections (2) and (3) do not apply to information or a document —*
 - (a) *that is a record of the conduct tribunal; or*
 - (b) *that was a record of a former conduct review body; or*
 - (c) *if disclosure of the information or document to the Councillor would be contrary to an order of a court or tribunal; or*
 - (d) *that would be privileged from production in a legal proceeding on the ground of legal professional privilege.*
- (5) *A request of a Councillor under subsection (1) or (2) is of no effect if the request does not comply with the acceptable requests guidelines.*
- (6) *Subsection (5) does not apply to—*
 - (a) *the Mayor; or*
 - (b) *the chairperson of a committee of a local government if the request relates to the role of the chairperson.*
- (7) *The acceptable requests guidelines are guidelines, adopted by resolution of the local government, about—*
 - (a) *the way in which a Councillor may ask a local government employee for advice to help the Councillor carry out his or her responsibilities under this Act; and*
 - (b) *reasonable limits on requests that a Councillor may make.*
- (8) *In this section a local government employee includes a person prescribed under a regulation.*
- (9) *The Chief Executive Officer must comply with a request made to the chief executive officer under subsection (1) or (2)—*
 - (a) *within 10 business days after receiving the request; or*
 - (b) *if the Chief Executive Officer reasonably believes it is not practicable to comply with the request within 10 business days—within 20 business days after receiving the request.*

Maximum penalty—20 penalty units.
- (10) *If the Chief Executive Officer forms the belief mentioned in subsection (9)(b), the Chief Executive Officer must give the Councillor notice about the belief and the reasons for the belief within 10 business days after receiving the request.*
- (11) *In this section—*

former conduct review body means a regional conduct review panel or the Local Government Remuneration and Discipline Tribunal under this Act as in force before the commencement of the Local Government (Councillor Complaints) and Other Legislation Amendment Act 2018, section 18.

Section 171 Use of information by Councillors

- (1) *A person who is, or has been, a Councillor must not use information that was acquired as a Councillor to—*
 - (a) *gain, directly or indirectly, a financial advantage for the person or someone else; or*
 - (b) *cause detriment to the local government.*

Maximum penalty—100 penalty units or 2 years imprisonment.

- (2) *Subsection (1) does not apply to information that is lawfully available to the public.*
- (3) *A Councillor must not release information that the Councillor knows, or should reasonably know, is information that is confidential to the local government.*

Note —

Contravention of subsection (3) is misconduct that could result in disciplinary action being taken against a Councillor. See sections 150L(1)(c)(iv), 150AQ and 150AR.

In addition to the requirements of the Act, Councillors must not disclose confidential information obtained through their role, except where the information is lawfully available to the public.

5.1 Contact Guidelines and Process

- 5.1.1 Councillors are entitled to request information or advice on any issue relating to Council's operations from the Chief Executive Officer;
- 5.1.2 The Chief Executive Officer must comply with all reasonable requests from Councillors as promptly as possible and in an appropriate manner, taking into account that some enquiries may require further investigation or liaison with Council departments before being answered. The Chief Executive Officer must comply with requests within 10 business days, or 20 business days where it is not practicable to do so, and must provide written notice of any delay within 10 business days, in accordance with section 170A(9)–(10) of the Act.
- 5.1.3 The Mayor has additional roles and responsibilities that include:
 - a. liaising with the Chief Executive Officer on behalf of Councillors; and
 - b. directing the Chief Executive Officer in accordance with the *Queensland Local Government Act 2009* and Councils policies and decisions.
- 5.1.4 A request for information or advice may relate to matters that are:
 - a. Requests for information on behalf of ratepayers, organisations or residents regarding budgeted routine works or services to which they are normally entitled;
 - b. Requests to investigate complaints or enquiries on behalf of ratepayers, organisations or residents which fall within normal day to day operations of Council; and
 - c. Follow up of procedural committee matters or basic interpretations (such as holding of inspections or clarification of agenda items).

Councillors may make the request for help or advice to the appropriate Director directly or to the Chief Executive Officer. Councillors must bear in mind that it is the Chief Executive Officer/Director's responsibility to determine the priority for the request for help or advice and to ensure such matters are dealt with efficiently and effectively in conjunction with other work procedures in place.

The Director will report on the results of the advice or help to the Chief Executive Officer.

"Attachment A" details the executive management structure and gives guidance on the areas of responsibility associated with each Director.

- 5.1.5 If the Director contacted is not responsible for the enquiry received, that Director shall refer the Councillor to the respective Director;
- 5.1.6 As stipulated in the Act, help or advice does not include a direction to the employee about the way in which the employee undertakes his/her work;
- 5.1.7 In no way are these guidelines meant to preclude pleasantries being exchanged between Councillors and employees;

- 5.1.8 To reduce the possibility of misinterpretation or incorrect information being given, Councillors are encouraged to submit requests in written form, preferably via email with cc to Mayor and Chief Executive Officer. This will allow matters to be referred to the relevant officer, investigated fully and a response provided to the Councillor and the person on whose behalf the request was sent;
- 5.1.9 Councillors are asked to use the customer service request system to report issues that should be addressed via those systems, for example reporting a road defect or other Council service requiring attention, in which case these guidelines do not apply;
- 5.1.10 It is also recognised that Councillors in carrying out their portfolio responsibilities will frequently interact with the Director responsible for the issues falling within the portfolio. It is not intended that these guidelines interfere with that regular interaction; and
- 5.1.11 Under no circumstances are Councillors permitted to communicate with any officer other than the Chief Executive Officer in respect to employment of staff or personal issues that would normally be confidentially contained within their personal file.

5.2 Inappropriate Interaction

Inappropriate interaction is any behaviour by Councillors or Council staff that bypasses or interferes with the approved channels of communication between them, or blurs the distinction between their areas of responsibility.

A Councillor (including the Mayor) must not under any circumstances give a direction to a staff member and only the Mayor may give a direction to the Chief Executive Officer.

The Councillor Conduct Guide issued by the Crime and Corruption Commission dated July 2013, states the following:

It is inappropriate for Councillors to:

- a. approach staff outside normal hours of work to discuss Council business;
- b. direct or pressure staff in relation to their work or recommendations they should make; and
- c. behave towards staff in an overbearing or threatening manner.

It is inappropriate for Council staff to:

- a. approach a Councillor rather than the staff member's Director, supervisor or union delegate on employment matters;
- b. discriminate against a particular Councillor by withholding information available to other Councillors; and
- c. fail to keep records of advice given to Councillors, as they would do if they were advising a member of the public (e.g. about town planning issues).

6. Legal Parameters

- *Local Government Act 2009* – Section 170 and 171.
- *Information Privacy Act 2009* (Qld)
- *Right to Information Act 2009* (Qld)
- *Public Records Act 2002* (Qld)
- *Privacy Act 1988* (Cth)

- Crime and Corruption Act 2001 (Qld)
- Human Rights Act 2019 (QLD)

7. Associated Documents

- Councillor Responsibilities under the *Local Government Act 2009* - Department of Local Government, Racing and Multicultural Affairs – October 2019.
- Code of Conduct for Councillors in Queensland
- Councillor Remuneration Policy
- Operational Plan
- Corporate Plan
- Delegations Register
- Council Meeting Rules / Standing Orders
- Administrative Complaints & Conduct Breach Policies
- Privacy Act Policy
- Audit and Risk Committee Charter and Policy

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CHIEF EXECUTIVE OFFICER

- Executive and Administration Support
- Grants
- Disaster Management
- Strategic Projects
- Financial Services
- Procurement Services
- Human Resources
- Work Health and Safety

**DIRECTOR CORPORATE, COMMUNITY and
DEVELOPMENT SERVICES**

- Tourism, Business and Events Development
- Hinchinbrook Visitor Information Centre
- Community Facilities Use
- Art, Library and Culture Services
- Cemetery Operations
- Customer and Administration Services
- Records Services
- Regulatory Services
- Information Services
- Governance Services

DIRECTOR INFRASTRUCTURE SERVICES

- Infrastructure Operations Services
- Infrastructure Asset Services
- Utility Services
- Public Spaces and Biosecurity Services