

POST-ELECTION MEETING

12 APRIL 2024

4**APPOINTMENT OF COUNCILLOR ADVISOR/S**

93/1/2 | #7396994

RECOMMENDATION:

That Council:

1. Resolves to allow the appointment of up to 2 councillor advisors for the current council term (2024-2028) in accordance with Section 197A - 197D of the *Local Government Act 2009*.
2. Notes the requirements of the *Local Government Act 2009* and *Local Government Regulations 2012* must be observed should the appointment of councillor advisors occur.

INTERESTED PARTIES:

nil

EXECUTIVE SUMMARY:

Councillor advisors are appointed to assist councillors to undertake their role under the *Local Government Act 2009* (LGA). The *Local Government Act 2009* outlines the rules about councillor advisors. It is covered in Part 5, Division 2A (Sections 197A – 197D).

The purpose of a councillor advisor is to provide their councillor with additional support and advice to help them make better decisions and interact effectively with the council and the community.

The local governments who may appoint councillor advisors and the maximum number for each councillor is prescribed by the *Local Government Regulation 2012*, specifically Schedule 4A. Local governments not prescribed by the Regulations cannot employ councillor advisors.

Under the Local Government Regulations, Cairns Regional Council is permitted a maximum number of two (2) councillor advisors whose appointment may only relate to the Mayor.

Requirements for those councils with council advisors include the following:

- must vote to pass a resolution to create councillor advisor positions
- must not appoint a close associate of the councillor
- appoint advisor, at the discretion of councillors and only until the councillor's term ends, unless re-appointed by a new councillor

- must have a written contract of employment with the council providing conditions of employment, functions, and key responsibilities, and when disciplinary action may be taken
- must report the number of councillor advisors appointed by the council and the total costs of councillor advisors to the council for the year in the council's annual report.

COMMENT:

Council has previously resolved to allow the appointment of up to two councillor advisors on 28 October 2020. No councillor advisors were appointed during this time.

With a new council commencing its term on the 4 April 2024, and in consideration of the financial impacts, it is appropriate for Council to reconfirm its decision to appoint councillor advisor/s.

The power to proceed with appointment, once a resolution is passed, is the responsibility of the Mayor, noting that whilst the Advisors are nominated by the Mayor, the appointment is made by the CEO.

The councillor advisor/s must enter into a written contract of employment with Council, and must not be a close associate of the Mayor.

The Council, not the individual councillor (in this case the Mayor) is the employer of the councillor advisor/s. In an exception to the otherwise strict requirements of section 170 of the Act prohibiting councillors directing staff, subsection (6) permit a councillor to give a direction to a council advisor that they have appointed.

The following table, published on the Department of State Development, Infrastructure Local Government and Planning summaries the difference between an advisor and support staff.

Councillor administrative support staff	Councillor advisors (larger councils only as prescribed by Regulation)
<ul style="list-style-type: none"> • Can be directed by mayor or councillor to complete administration tasks only (e.g., filing, phone, email, resident enquiries), in line with the CEO's guidelines about administrative support staff. • Can be given directions by mayor or councillor for day-to-day tasks in accordance with council's guidelines but report to the CEO or council manager. • Can give directions to other administrative support staff, for example if appointed by the CEO as an office manager. • Employed as a regular council employee, appointed by the CEO. 	<ul style="list-style-type: none"> • Can be directed by mayor or councillor to complete any tasks except political campaigning (e.g., administration support, liaising with community and stakeholders, research, media and social media activities, events, managing correspondence). • Reports to the mayor or councillor. • Cannot give directions except a direction of an administrative nature on behalf of the councillor to a local government employee who works in the councillor's office (including a ward office or mayoral office). Any such direction must be in line with the CEO's guideline for councillor administrative support staff. • Employed by council, nominated by mayor or councillor, and role ends if councillor's role ends (end of term or suspension as a councillor). • Mayors and councillors are accountable under the Code of conduct for councillors in Queensland for ensuring advisors are aware of the requirements of the code of conduct for councillor advisors.

CONSIDERATIONS:**Council Finance and the Local Economy:**

There is no current provision in the Council budget for a councillor advisor/s.

If approved, a budget allocation of up to \$357,000 will be required in the 2024/2025 budget for up to two councillor advisors.

Statutory:

The legislative requirements of a councillor advisor are very prescriptive.

To assist Council who are entitled to appoint councillor advisors, the Department of State Development, Infrastructure, Local Government and Planning has published a Code of Conduct for Councillor Advisors (attached).

OPTIONS:**Option 1**

That Council:

1. Resolves to allow the appointment of up to 2 councillor advisors for the current council term (2024-2028) in accordance with Section 197A - 197D of the *Local Government Act 2009*.
2. Notes the requirements of the *Local Government Act 2009* and *Local Government Regulations 2012* must be observed should the appointment of councillor advisors occur.

Option 2

That Council resolves not to allow the appointment of councillor advisors.

ATTACHMENTS:

Attachment 1 – Excerpt *Local Government Act 2009* Section 197A-197D

Attachment 2 - Code of Conduct for Councillor Advisors

Attachment 3 – Example Role Description Council Advisor



Mica Martin
Chief Executive Officer

Attachment 1 - Excerpt *Local Government Act 2009*

Division 2A Councillor advisors

197A Appointment and functions of councillor advisors

- (1) A local government prescribed under section 197D(1)(a) may, by resolution, allow a councillor to appoint 1 or more appropriately qualified persons (each a *councillor advisor*) to

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Current as at 1 February 2024

Authorised by the Parliamentary Counsel

Local Government Act 2009
Chapter 6 Administration

[s 197A]

assist the councillor in performing responsibilities under this Act.

Examples of assistance—

administrative support, coordinating media activities, event management functions, policy development, office management

- (1A) The resolution must state the number of councillor advisors, up to the maximum prescribed under section 197D(1)(b) for the local government, that the councillor may appoint.
- (2) However, the councillor must not appoint a close associate of the councillor as a councillor advisor.
- (3) If the councillor appoints a councillor advisor, the councillor advisor must enter into a written contract of employment with the local government.
- (4) The contract of employment must provide for—
- (a) the councillor advisor's conditions of employment, including remuneration, leave and superannuation entitlements; and
 - (b) the councillor advisor's functions and key responsibilities; and
 - (c) a requirement that the councillor advisor comply with the councillor advisor code of conduct made by the Minister under section 197C; and
 - (d) when disciplinary action may be taken, and the types of disciplinary action that may be taken, against the councillor advisor.
- (5) The councillor advisor's functions and responsibilities can not include—
- (a) carrying out or assisting in an activity relating to a councillor's campaign for re-election; or

Note—

A person who is appointed as a councillor advisor may carry out or assist in an activity mentioned in paragraph (a) other than in the person's capacity as a councillor advisor.

- (b) directing a local government employee.

[s 197B]

- (6) The councillor who appointed the councillor advisor may give a direction to the councillor advisor.

197B When appointment ends

- (1) A councillor advisor's appointment automatically ends on the day the councillor advisor is convicted of an offence against any of the following provisions—
 - (a) section 200(2) or (4);
 - (b) section 201D;
 - (c) section 201F(2) or (3);
 - (d) section 234(1).
- (2) Also, a councillor advisor's appointment automatically ends 2 weeks after the day either of the following happens—
 - (a) the term of the councillor who appointed the councillor advisor ends;
 - (b) the councillor who appointed the councillor advisor is suspended.

197C Minister to make councillor advisor code of conduct

- (1) The Minister must make a councillor advisor code of conduct that sets out standards of behaviour for councillor advisors in performing their functions for a local government or the council under this Act or the *City of Brisbane Act 2010*.
- (2) The councillor advisor code of conduct—
 - (a) must be consistent with the local government principles; and
 - (b) may contain anything the Minister considers necessary for, or incidental to, the standards of behaviour.
- (3) The approved councillor advisor code of conduct must be published on the department's website.

197D Regulation may prescribe particular matters relating to councillor advisors

- (1) A regulation may—
 - (a) prescribe a local government as a local government to which section 197A(1) applies; and
 - (b) prescribe the maximum number of councillor advisors each councillor may appoint; and
 - (c) limit the functions and key responsibilities that may be provided for in a councillor advisor's contract of employment.
- (2) Before recommending to the Governor in Council the making of a regulation under subsection (1)(a) or (b), the Minister must ask the remuneration commission for its recommendation about the proposed regulation.
- (3) The Minister must have regard to the recommendation of the remuneration commission in recommending the making of the regulation to the Governor in Council.
- (4) The maximum number of councillor advisors prescribed under subsection (1)(b)—
 - (a) is the number of full-time equivalent councillor advisors a councillor may appoint; and
 - (b) does not prevent a councillor appointing more than 1 part-time councillor advisor to perform the role of 1 full-time councillor advisor.

Code of Conduct for Councillor Advisors in Queensland

October 2020



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Introduction

Councillor advisors are appointed to assist councillors to undertake their role under the *Local Government Act 2009* (LGA) or the *City of Brisbane Act 2010* (COBA). The purpose of a councillor advisor is to provide their councillor with additional support and advice to help them make better decisions and interact effectively with the council and the community.

The local governments who may appoint councillor advisors and the maximum number for each councillor will initially be prescribed by the Local Government Regulation 2012 and City of Brisbane Regulation 2012. Local governments not prescribed by the Regulations cannot employ councillor advisors. In future, the Local Government Remuneration Commission will recommend to the Minister for Local Government which local governments may appoint councillor advisors and the maximum number for each councillor which is then prescribed through the Regulation. The relevant council (with the exception of Brisbane City Council) must then make a resolution to appoint councillor advisors and how many, up to the prescribed number. Brisbane City Council is not required to make a resolution to appoint councillor advisors up to the prescribed number.

Under section 197C of the LGA, the Minister for Local Government must make a code of conduct that states the standards of behaviour for Councillor advisors in the performance of their functions. Councillor advisors must ensure that in undertaking their role to support their councillor that they act with integrity and engage with council officers in a manner that supports the accountability and transparency of the local government.

All councillor advisors will be appointed via an employment contract. Before assuming their role they must understand and commit to complying with:

- the local government principles under the LGA
- the standards of behaviour set out in this code of conduct
- their council's code of conduct for officers/employees
- their council's policies and local laws.

If there is a conflict between this code of conduct and that for council employees generally, this code prevails to the extent of any inconsistency.

Purpose of the code of conduct

The code of conduct sets out the principles and standards of behaviour expected of councillor advisors when carrying out their roles, responsibilities and obligations. By adhering to the behaviours set out below, councillor advisors will contribute to the integrity and performance of the councillor and the council, and ultimately to increasing public confidence in local government decisions.

Councillor advisors should also continuously seek information and learning opportunities on matters relating to transparency, accountability and integrity, and take action to improve their understanding of local government legislation and the operating systems of their relevant council.

The code does not attempt to provide an exhaustive list of what to do in all situations. It represents a broad framework of ethical conduct that councillor advisors have an obligation to uphold.

Councillor advisors must always respect and comply with all relevant legislation, policies, procedures and resolutions of council.

Application of the code of conduct

This code applies continuously throughout the entire employment contract period of a councillor advisor, including periods of leave and off-duty times.

When a councillor advisor ceases their employment with a council they have a legal obligation to continue to respect confidentiality of information and ownership of intellectual property they had access to in the course of their councillor advisor position (unless required by law to act otherwise).

Unless otherwise authorised, when a councillor advisor ceases duty with council they cannot take any resources such as articles, processes and materials produced as part of the official functions of their employment or download information. These are the property of the council.

Access to information

Unlike for councillors, there is no statutory right under legislation for advisors to access information.

Councils should consider whether they wish to amend their existing acceptable request guidelines, which applies to both councillors and advisors (including mayor and committee chair advisors). Note that advisors must request information from the council chief executive officer (CEO) unless the council's acceptable request guidelines provide for advisors to seek information directly from an appropriate delegate such as a manager.

Local government principles

The standards of behaviour in this code are based on the five principles contained in section 4 of the *Local Government Act 2009* (LGA) and the *City of Brisbane Act 2010* (COBA), which councillors, councillor advisors, and other employees must comply with while performing their roles.

The principles are:

1. Transparent and effective processes, and decision-making in the public interest.
2. Sustainable development and management of assets and infrastructure and delivery of effective services.
3. Democratic representation, social inclusion and meaningful community engagement.
4. Good governance of and by local government.
5. Ethical and legal behaviour of councillors, local government employees and councillor advisors.

Councillor advisors must also comply with the values set out in the *Public Sector Ethics Act 1994*, as summarised below:

1. integrity and impartiality
2. promoting the public good
3. commitment to the system of government
4. accountability and transparency

Standards of behaviour

The standards of behaviour established below aim to help councillor advisors understand how the above principles and values should be put into practice while performing the duties of a councillor advisor.

Each standard of behaviour is not intended to cover every possible scenario. However, they provide general guidance about the manner in which councillor advisors are expected to conduct themselves.

The principles and standards set out in this code of conduct are of equal importance.

The expected standards of behaviour for councillor advisors are as follows:

1. Act ethically, honestly, fairly and in the public interest.
2. Treat people in a reasonable, just, respectful and non-discriminatory way.
3. Maintain public confidence in local government.

Councillor advisors are to understand and comply with these standards of behaviour in the performance of their roles.

1. Act ethically, honestly, fairly and in the public interest

Manage conflicts of interest

Councillor advisors must:

- submit, update and annually review registers of interests as required by legislation
- notify their councillor and the CEO in writing as soon as they become aware they have, or could reasonably be presumed to have, a conflict of interest
- resolve or appropriately manage any conflicts between their personal interests and the public interest in favour of the public interest
- not engage in additional (outside) paid employment or in the daily work of a business, or retain a directorship of a company, which could undermine community trust that the advisor is working to support the public interest rather than their own or another person's private interests (not including election campaigning if on leave from their council role)
- refuse offered gifts or benefits seeking to influence their advice, access to councillors, or their other actions as a councillor advisor
- not engage in any conduct on behalf of a councillor that if engaged in by a councillor directly would constitute misconduct.

In situations where their councillor has a conflict of interest, advisors should not have any involvement in the matter. However, advisors may provide factual information to the CEO that may assist councillors with their decision-making.

Use their position, information and resources appropriately

Councillor advisors must:

- respect the position of trust they hold, and not seek to improperly use their position, influence or access to inside information they may have, for any personal benefit for themselves or others

- respect the confidentiality of information obtained as a councillor advisor even when their appointment as a councillor advisor ends
- treat official information with care and only use it for the purpose it was collected, provided or authorised
- ensure that records are kept and are in sufficient detail to ensure all processes are accountable and transparent¹
- always use public resources in an effective and accountable manner
- ensure any political or personal involvement with any campaigning activity occurs in their personal time (for example after work hours, during lunch breaks or other unpaid time) and does not use public resources.

¹ Councillor advisors are required to comply with the requirements of the *Public Records Act 2001* and are encouraged to comply and be familiar with the guidelines *Council records: a guideline for mayors, councillors, CEOs and government employees* produced by the Crime and Corruption Commission and the Queensland State Archives.

2. Treat people in a reasonable, just, respectful and non-discriminatory way

Behave in a professional manner

Councillor advisors must:

- treat with respect and courtesy all those with whom they have contact in the course of their employment
- recognise that others have the right to hold views which may differ from theirs
- have proper regard for other people's rights, cultural differences, health and welfare
- not act in a way or use language (either oral or written) that is abusive, obscene or threatening.

Contribute to a positive workplace environment

Councillor advisors must:

- ensure they maintain a high standard of workplace behaviour and personal conduct
- ensure their conduct reflects a commitment to a workplace that is inclusive and free from harassment, and actively discourages any form of harassment or unlawful discrimination
- ensure that their behaviour or capacity to perform their work duties is not impaired by the use of substances that may put them or others at risk while performing their duties (for example alcohol, illegal drugs or prescribed/non-prescribed and/or restricted substances).

3. Maintain public confidence in local government

Interact appropriately with local government employees

Councillor advisors must:

- respect the role of local government employees, who are responsible for undertaking duties as directed by the CEO or other council manager or delegate
- ensure that they do not direct, or attempt to direct, a local government employee in the performance of their role except a direction of an administrative nature on behalf of the councillor to a local government employee who works in the councillor's office (including a ward office or mayoral office). Any such direction must be in line with the CEO's guideline for councillor administrative support staff
- not encourage, induce or attempt to encourage or induce another councillor advisor or other local government employee to breach the law, applicable standards, policies, procedures, guidelines or code of conduct.

Information requests

Councillor advisors must:

- ensure any requests they make for information comply with the council's acceptable request guidelines and are made transparently in writing, allowing reasonable timeframes for response
- only request information reasonably needed to assist mayors or councillors in carrying out their responsibilities, for example drafting replies to correspondence, event information for attendance at official events, information about policy development, matters coming before council for decision, or proposed community consultation and not personal information of businesses or ratepayers
- not request information for campaigning.

Ensure clarity between councillor and councillor advisor responsibilities

Councillor advisors must:

- recognise the role of the advisor is to provide advice to ensure the councillor can make informed decisions; however, decisions are the preserve of councillors
- not undertake the responsibilities or functions on behalf of the councillor, or speak on the councillor's behalf without express permission from the councillor
- comply with their council's media and social media policies
- not make public statements on a local government matter on behalf of the councillor unless authorised to do so by the councillor, and if making public comment clearly state whether they are speaking on behalf of council or expressing the personal views of the councillor.

Consequences of failing to comply with the code

It is expected that councillor advisors will not only meet the minimum standards of behaviour required in fulfilling their obligations under this code, and their council's code of conduct for employees, but will strive to achieve, and encourage others to achieve, the highest standard of conduct possible.

Complaints about the conduct of a councillor advisor are to be made to the CEO of the local government or their delegate, who will assess whether a councillor's advisor's conduct, while on or off duty, is in breach of this code.

Conduct in breach of this code may result in the councillor advisor being disciplined by the CEO in line with the terms of their employment contract.

Breaches that could constitute criminal offences or corrupt conduct must be referred to the Crime and Corruption Commission (CCC).

Within this framework, the appropriateness of conduct is determined with reference to the local government principles and the behavioural standards of the code.

Additional responsibilities under legislation

In addition to the local government principles and standards of behaviour within the code, councillor advisors are also subject to conduct provisions of the LGA, COBA and *Crime and Corruption Act 2001*.

Councillor advisors must ensure they understand these offences and the standards of behaviour required.

For example, councillor advisors must be aware of the following specific provisions under the local government legislation:

- misuse of information (section 200 LGA, section 197 COBA)
- intentional and dishonest failure to update register of interests (section 201D LGA, section 198D COBA)
- prohibited conduct in possession of inside information (section 201F LGA, section 198F COBA)
- failure to give particular returns under Local Government Electoral Act 2011 (section 172 LGA, section 174 COBA).

More information

Find further information and resources for councillors, councillor advisors and council employees at [Resources for CEOs and council officers | State Development, Infrastructure, Local Government and Planning](#) or via [LG Central](#).

Alternatively, please contact your regional office within the department:

Southern office

Phone: (07) 3452 6762

Email: southern@dlgrma.qld.gov.au

Northern office

Phone: (07) 4758 3472

Email: northern@dlgrma.qld.gov.au

Glossary

Term	Description
Actual conflict of interest	Involves a direct conflict between a public official’s current duties and responsibilities and existing private interests.
Benefit	Includes property, advantage, service, entertainment, the use of or access to property or facilities and anything of benefit to a person whether or not it has any inherent or tangible value, purpose or attribute ² .
Cause	In relation to an action, includes the following: <ul style="list-style-type: none"> • carry out the action • instigate the action • direct, or otherwise influence, another person to carry out or instigate the action³.
CCC	Crime and Corruption Commission
CEO	Chief executive officer
COBA	<i>City of Brisbane Act 2010</i>
Conflict of interest	Involves a conflict between a public official’s duties and responsibilities in serving the public interest and the public official’s private interests. A conflict of interest can arise from avoiding personal losses as well as gaining personal advantage. Conflicts of interest may be actual, or be perceived to exist, or potentially exist at some time in the future.
Corporate entity	Means a corporation owned by the local government ⁴ .
Corrupt conduct	Conduct that could, if proved, amount to a criminal offence or a disciplinary breach, providing reasonable grounds for termination of employment. Such breaches must be referred to the CEO of the local government.
Councillor advisor	A person appointed to assist a councillor in performing their responsibilities under the LGA or COBA. Examples of assistance provided may include administrative support, coordinating media activities, event management functions, policy development and office management. The councillor advisor’s functions and responsibilities cannot include directing a local government employee or carrying out or assisting in an activity

² Section 201D(2) of the *Local Government Act 2009* and 198D(2) of the *City of Brisbane Act 2010*

³ Section 201F(4) of the *Local Government Act 2009* and 198F(4) of the *City of Brisbane Act 2010*

⁴ Section 201F(4) of the *Local Government Act 2009* and 198F(4) of the *City of Brisbane Act 2010*

	relating to a councillor’s campaign for re-election other than during a councillor advisor’s personal time.
Detriment	Harm or damage caused to a person, which includes detriment caused to the person’s property ⁵ .
Gift	A gift is— (a) the transfer of money, other property or other benefit— (i) without consideration; or (ii) for a consideration substantially less than full consideration; or (b) a loan of money or other property made on a permanent or indefinite basis, other than an overdraft facility ⁶ .
Inside information	Information about any of the following: <ul style="list-style-type: none"> • the operations or finances of the council (including any business activity of the Council) or any of its corporate entities • a proposed policy of the Council, including proposed changes to an existing policy • a contract entered into or proposed to be entered into, by the Council or any of its corporate entities • a tender process being conducted by or for the Council or any of its corporate entities • a decision, or proposed decision, of the Council or any of its committees • the exercise of a power, under a local government related law, by the council, a councillor or a council employee • the exercise of a power, under an Act, by the state, a Minister, a statutory body or an employee of the state or statutory body, that affects the council, any of its corporate entities or land or infrastructure • any legal or financial advice created for the council, any of its committees or any of its corporate entities⁷.
Insider trading	The use of inside information (i.e. not publicly available) to decide whether or not to buy or sell an asset or provided to another person who may use the information in deciding whether or not to buy or sell an asset.
LGA	<i>Local Government Act 2009</i>

⁵ Section 201D(2) of the *Local Government Act 2009* and 198D(2) of the *City of Brisbane Act 2010*

⁶ Section 12(4) of the *Local Government Regulation 2012*

⁷ Section 201F(4) of the *Local Government Act 2009* and 198F(4) of the *City of Brisbane Act 2010*

Lobbyist	An entity that carries out a lobbying activity for a third party client or whose employees or contractors carry out a lobbying activity for a third party client ⁸ .
Public resources	Includes government premises, money, credit cards, goods, services, vehicles, office equipment, official records (including electronic records), Council officers, and telecommunications and information technology applications.
Register of interests	Is a register of the personal interests for the councillor advisor or a person related to the advisor as required by section 201A of the LGA or section 198A of the COBA.

⁸ Section 41(1) of the *Integrity Act 2009*

Attachment 3 – Example Role Description

Queensland Government

Sample role description – councillor advisor

Key accountabilities

- Assist the mayor/councillor to perform their responsibilities under the *Local Government Act 2009* or *City of Brisbane Act 2010*
- Provide timely advice to the mayor/councillor on complex strategic issues relevant to the local government area
- Liaise on the behalf of the mayor/councillor with the state and commonwealth elected representatives, the private sector and the community on strategic issues relevant to the local government area
- Analyse strategic proposals, carry out research and provide advice to the mayor/councillor
- Oversee the operations of the mayoral/councillor's office, including managing correspondence workflows
- Attend to enquiries for the mayor/councillor from the community and other stakeholders
- Identify and report on likely media issues by monitoring media information
- Identify media opportunities, prepare media statements and write articles and speeches
- Initiate and maintain effective working relationships on behalf of the mayor/councillor with key stakeholders, including community representatives, media personnel and council staff to inform discussion and the mayor/councillor's decision making
- Coordinate mayoral/councillor events and public attendances
- Demonstrate professional and ethical behaviour, treat others with respect and ensure personal conduct does not adversely impact on the reputation of the local government
- Act at all times in accordance with legislative obligations, the Code of conduct for councillor advisors in [Queensland](#) and council policies, including the acceptable request guidelines.

Skills

- Highly developed interpersonal skills with a demonstrated ability to quickly build rapport to gain the confidence of diverse stakeholders
- High level of political awareness to ensure delivery of the mayor/councillor's objectives
- Ability to work effectively and collaboratively with a range of stakeholders
- Ability to think critically and strategically and identify risk in the development of policies
- Ability to analyse, understand and convey complex information in a simplified form
- Ability to maintain confidentiality and use discretion, sound judgement and tact in dealing with sensitive issues

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Queensland Government

- Effective planning and co-ordination skills, with the ability to meet tight deadlines and manage competing priorities
- Communicate clearly, consistently and effectively