

PREVENTION in focus

Role clarity in councils: understanding the respective roles of Mayor and CEO



The CCC has seen a number of elected officials interfere in decision making that is outside their lawful area of responsibility.

In recent investigations the Crime and Corruption Commission (CCC) has seen a number of elected officials (mayors and councillors) interfere in decision making that is outside their lawful area of responsibility. One such area is the recruitment of council staff, which is the designated responsibility of the chief executive officer (CEO).

This is particularly problematic where the appointment is for a position that works closely with the mayor – for example, an executive officer or chief of staff – and the mayor seeks to appoint a friend or associate without following the proper recruitment process. This issue was highlighted by the conviction and jailing of former Fraser Coast Regional Council Mayor Chris Loft¹ for attempting to orchestrate the employment of a friend as his executive officer and interfering outside his lawful role.

What you should know

- The CEO of a council is responsible for appointing council employees.^{2,3}
- Elected officials must not interfere in matters that are not their responsibility, or attempt to dishonestly affect the outcome of a matter which is the domain of the CEO.
- CEOs must ensure that they do not allow their roles and responsibilities to be usurped by mayors or councillors, and should act robustly to reject any attempts by mayors or councillors to overstep their boundaries.
- Elected officials must declare and properly manage conflicts of interest.⁴ An elected official who acts, or tries to act, to benefit a friend or family member may be committing a criminal offence.

This publication is aimed at elected officials (particularly mayors and councillors) and council CEOs to ensure that they understand that attempting to interfere in processes in which they have no authority can have serious consequences.

¹ While Chris Loft no longer holds the position of mayor at FCRC, he has been referred to as Mayor throughout this paper as this was the position he held at the time of the events described.

² Section 196 *Local Government Act 2009*; Section 193 *City of Brisbane Act 2010*.

³ Recent amendments to the LGA and the COBA allow councillors, with the approval of council to appoint an advisor for the purpose of assisting the councillor perform their functions.

⁴ Sections 175A to 175J *Local Government Act 2009*; Section 177A to 177J *City of Brisbane Act 2010*.

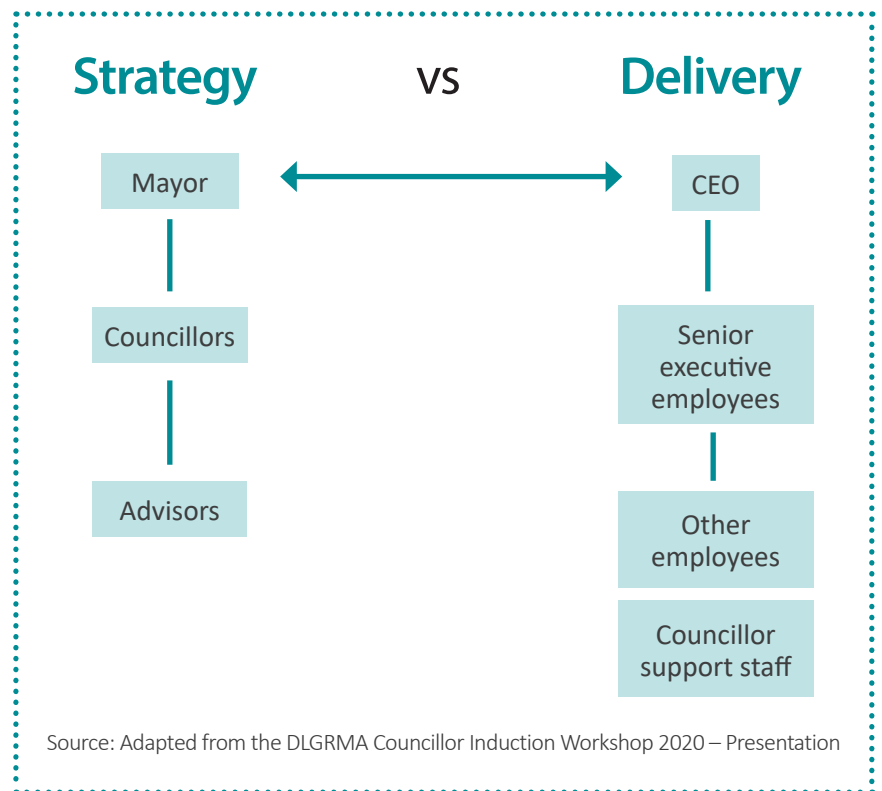
The principle of “separation of powers” underpins good government at all levels in Australia.



Joining the public sector – new roles, new responsibilities

Mayors and councillors come from varied backgrounds, and some people elected to council for the first time come with little or no experience in the public sector. Following Queensland’s local government elections in March 2020, a mix of new and returning mayors and councillors were elected across Queensland’s 77 councils.

Within councils, one of the most important public sector principles that newly elected officials must be clear on is the demarcation between their areas of influence and control and those of the CEO. The role of mayors and councillors is to focus on strategic leadership, not delivery of day-to-day matters, while the role of the CEO is to manage the day-to-day business and operations, and other local government employees.⁵



The principle of “separation of powers” underpins good government at all levels in Australia.

The case of Chris Loft shows how failing to respect the separation of powers resulted in a criminal conviction and a jail sentence for misconduct in public office. The case study on the next page highlights particular stages of the Mayor’s unlawful intervention in a recruitment process, quoting the emails between Mayor Loft and his friend, and from the Mayor to the CEO.

The following emails that are referenced in this Prevention in focus were obtained as part of the investigation and used in evidence as part of the prosecution of Loft in open court.

⁵ DLGRMA: Councillor Induction Workshop 2020 – Presentation (reproduced with permission).



Case study

Mayor's efforts to employ his friend as his executive officer

Chris Loft was a local businessman in the Maryborough area when he was elected mayor of the Fraser Coast Regional Council (FCRC) in March 2016. Soon after his election, Loft set about getting his close friend and former campaign manager a position with the Council as his executive officer.

1. Mayor allows friend to write job description

Loft allowed his friend to write his own position description (PD), specifically tailored to his particular strengths and experience. The salary for the position was \$180,000 per annum plus a vehicle, to be paid by the Council.

The friend asked what his title should be, suggesting Mayoral Executive Officer *"as I'll be your right hand man..."* and asking what weight different titles would carry with senior bureaucrats.

Loft replied: *"Sounds good to me even chief of staff I was told is still possible...we can create whatever titles we want once in. But to get in first easily, that has to be the title."*

Loft gave the PD to the CEO⁶, but failed to disclose that his friend had written it and would be applying for the position.

2. The recruitment process: independent panel formed by CEO

The position was advertised in September 2016, and Loft's friend applied. However, once the friend saw the position as it was advertised, he wrote to the Mayor, complaining about changes the CEO had made to the PD he had written for himself:

From: [REDACTED]
To: Chris Loft
Message:
She [the CEO] has added/changed things in the description... and ...Reports to – Chief Executive Officer with 'direct Supervision by Mayor'!?!? Needs to have 'reports' to the Mayor...Chris, I believe you definitely need to put your foot down and amend this advert to what you gave her i.e. the above has to be amended and/or deleted

From: [REDACTED]
To: Chris Loft
Message:
She has also left off the 'Selection Criteria'
9. Understanding of and commitment to the effective implementation of Occupational Health and Safety Programmes
10. Must reside and have knowledge of the Fraser Coast ...
Please put your foot down and have these re-instated...

The CEO followed Council's selection process and appointed an independent recruitment panel. After the position closed, the CEO gave the Mayor an update about the recruitment process, including the names of the panel members and the list of six shortlisted candidates, which did not include the Mayor's friend.

3. Mayor gives confidential selection documents to friend

The next day the Mayor asked the CEO for the individual applications of the shortlisted candidates. When she provided the CVs and applications to Loft, he in turn gave them to his friend for comment. His friend replied:

From: [REDACTED]
To: Chris Loft
Message:
Attached you will find a new spreadsheet which has the correct criteria etc. In my opinion none of the applicant merit an interview.
I have also attached an Email to the CEO for your perusal and augmentation...

⁶ The person who held the position of CEO at the time of these events has since left the Council, but will be referred to throughout as the CEO.



Case study continued

The attached spreadsheet included a ranking of the five shortlisted applicants, and the letter drafted for the Mayor to give to the CEO included:

From: [REDACTED]

To: Chris Loft

Message:

I am utterly bemused as to the selection process you have over seen thus far for my Mayoral Secretary's position, as it is fundamentally flawed. I was quite specific re the 'Selection Criteria' and the Mandatory and Desirable Qualifications/Experience/Licences).....

Why your team has adopted other criteria (as per the selection spreadsheet) is a mystery to me. I want you to direct your team to go back to the beginning and re-rank all applicants against the above criteria. I have drafted a spreadsheet (attached) and re-ranked the five people you proposed for shortlisting. None of these are worthy of an interview. After completing the re-ranking, I want to see the full spreadsheet and also the six candidates they have deemed best suited for the roll [sic]. I ultimately will have the power of vito [sic].

As previously advised I intend to hire a 'local' ... as I will be interviewing the successful six, one on one, face to face. I will then decide who I wish to work with...

4. Mayor acknowledges contravening process for this "unique position"

A week later, the Mayor wrote to the CEO saying:

From: Chris Loft

To: [REDACTED]

Message:

I am au fait with the *Local Government Act 2009* and acknowledge that in normal circumstances the CEO oversees [sic] all recruitment processes. I had hoped however that common sense would prevail with this unique position, whereby you would pass these powers over to me.

The process thus far is "fundamentally flawed" as you have changed the 'Selection Criteria/Mandatory and Desirable Qualifications/Experience/Licences (please see below) as advertised and now in the public domain. ...

Attached you will find a spreadsheet I drew up comparing your shortlist with the correct 'Selection Criteria/Mandatory and Desirable Qualifications/Experience/Licences which has 18 components – ...

None of these applicants are suitable for the Mayoral Secretary's Position.

I want you to direct your team to go back to the beginning and re-rank all applicants against the above criteria. After completing re-ranking, I want to see the full spreadsheet and also the four candidates they have deemed best suited for the roll [sic].

As previously advised I intend to hire a 'local' ... as I wish to interview the successful four, one on one, face to face. I will then decide who I wish to work with....



Case study continued

5. Panel makes its choice – Mayor refuses to meet with the successful applicant

Despite Loft's repeated interventions in the process in his attempt to have his friend shortlisted and selected for the position, the panel independently selected another applicant. However, Loft then refused to meet with the successful applicant and the position was not filled. A council staff member involved in the recruitment later advised the Mayor:

From: [REDACTED]
To: Chris Loft
Message:

Further to discussions earlier this week and in consultation with the selection panel and the Director Organisational Services, it has been decided not to appoint any candidate to the position of Executive Officer. It should be noted that I believe a transparent merit-based process has been followed in the recruitment for this position in accordance with Councils standard procedures which resulted in the panel agreeing on a preferred candidate. As a result of not appointing the preferred candidate to the position, it will not be possible to recommence the recruitment process for this position. We will now contact all applicants and advise them of the outcome and thank them for their efforts in applying for the position and apologise for any inconvenience caused.

Loft forwarded this to his friend.

After the Mayor's friend received advice that he was not successful for the role, he drafted a further email for the Mayor to send to the council staff member in response, which again criticised the selection process as being "fundamentally flawed" and repeating a number of the comments he had made in previous emails.

The Mayor subsequently sent an email to the CEO saying:

From: Chris Loft
To: [REDACTED]
Message:

Since the attempt to find the above person was not successful and agreed outcome we need to find that special person.

I have requested verbally on a number of occasions as to where we are at with this process, I have heard nothing concrete.

We need to fire this up again urgently as I am drowning in a sea of emails, meetings, paperwork etc. It is now 8 months since I became Mayor ...

While I am fully au fait with the role of Council CEO in the appointment of new staff under the act, this is a unique role and cannot follow the normal selection process.

In all other councils that I am aware the Mayor selects his own team, as their [sic] needs to be a positive chemistry between us.

I am requesting that in this case you involve me from day one in the process and ultimately I will be the decider as to whom is appointed.

I would appreciate your response by return email.

Despite the Mayor's insistence on his right to choose his own executive officer, the position was not filled.

Loft charged with criminal offence for his attempts to subvert recruitment process

In November 2017, following a CCC investigation, Loft was charged with misconduct in relation to public office (Section 92A of the *Criminal Code*⁷) for his interference in the recruitment process and his attempts to get his friend a job.

A public officer commits this offence if they, with intent to dishonestly gain a benefit for the officer or another person, or to dishonestly cause a detriment to another person—

- (a) deals with information gained because of office; or
- (b) performs or fails to perform a function of office; or
- (c) does an act or makes an omission in abuse of the authority of office.

Loft was found guilty of misconduct in relation to public office, and sentenced to 12 months imprisonment, to serve six months.

In sentencing Loft, the District Court Judge said:

it is clear that the jury's verdict against you is ... (for) ... a serious offence, because of the breach of trust and influence attaching to your office as Mayor of the Fraser Coast Regional Council, which is involved in that offending...

It is concerning that it appears that you have failed to demonstrate any insight in respect of the complete and gross lack of judgment which you demonstrated in committing this offence and in the accompanying abuse of the authority of your office that was involved in it.

It is clear that in such circumstances where offending of this kind occurs, there is a duty on this Court to mark the seriousness of it, particularly as attaching to a person holding an office such as mayor's position in a regional council, and to do so in order to particularly achieve deterrence in respect of such conduct.

That is not just the message being sent to you, but otherwise being sent more generally into the community. That is why...a term of imprisonment must be imposed for your offending.

7 The offence carries a maximum penalty of seven years imprisonment.



Further reading

- Operation Yabber:**
 The CCC report entitled *Operation Yabber: An investigation into allegations relating to the Gold Coast City Council* highlighted role demarcation issues between the Mayor and the CEO in relation to staff recruitment and discipline.
- Roles and powers of mayors councillors:**
 For more information about the roles and powers as a councillor please refer to the [Councillor Code of Conduct](#) and the [Councillor complaints framework](#) online modules.

Acknowledgements

The CCC acknowledges the contribution of the Department of Local Government, Racing and Multicultural Affairs to this paper, including their permission to reproduce content from DLGRMA materials.

Lessons for councils

Elected officials are obliged always to act in the public interest. The funds used to employ council staff come from the community, and for that reason the *Local Government Act 2009* and the *City of Brisbane Act 2010* contain a number of important safeguards to ensure that funds are spent in the best interests of the community. Requests by any person to avoid or not follow these obligations, at any time, are likely to amount to corrupt conduct and may result in that person facing criminal charges.

The case of Mayor Loft highlights that:

- Elected officials have a responsibility to follow the five local government principles while performing their role as an elected representative.**⁸ Of particular relevance in this case is *Principle 1 - Transparent and effective processes, and decision-making in the public interest*⁹

- Conflicts of interest, perceived or actual, must be declared.**

Loft failed to declare any conflict of interest about his relationship with an applicant for a council position, or the extent of the applicant's involvement in the recruitment process.

*It is vitally important that elected officials do not participate in any decision to approve council spending, a development, contract or anything else that might specifically help the officials themselves or people they are close to.*¹⁰

- Councillors, including mayors, do not have authority to appoint council staff.** The responsibility for appointing council employees belongs to the CEO. Recent amendments to the LGA and the COBA allow a councillor, with the approval of council, to appoint an advisor for the purpose of assisting the councillor perform their functions.¹¹

- “Unique” circumstances do not override legislation.**

Loft could not claim ignorance of how the Council functioned. He repeatedly claimed he understood the roles and functions of the CEO. He was well aware that it was the CEO's role to oversee recruitment processes, but refused to act in accordance with this principle, stating that his circumstances were “special” and “unique”.

- Non-compliance with legislation has consequences**¹²

The *Local Government Act 2009*, the *City of Brisbane Act 2010* and other legislation establish processes to deal with circumstances where councillors fail to meet their legislated obligations. Elected officials who are found to have breached their obligations may face a range of penalties including being suspended, fined, dismissed from office or jailed.

⁸ www.dlgrma.qld.gov.au/resources/publication/local-government/code-of-conduct-for-queensland-councillors.pdf

^{9,10,12} DLGRMA: Councillor Induction Workshop 2020 – Presentation

¹¹ At the time of publication these sections had not commenced. Please refer to the relevant act for the commencement date.