



COUNCIL POLICY 1.8

Ex-Gratia Payments

Version: V1

PURPOSE

The purpose of the policy is to establish protocols for facilitating ex-gratia payments, or special payments.

SCOPE

This policy applies to all ex-gratia payments made by council to employees or third parties. This policy does not cover payments required by law or contractual obligation.

DEFINITION

TERM	DEFINITION
Chief Executive Officer	Chief Executive Officer – appointment held under section 194 of the Act. This includes any person acting in this position.
Council	Torres Shire Council
Councillor	All elected representatives who hold (current) office with council, including the mayor.
Employee/s	<p>Includes a person who carries out work in any capacity for council (i.e. permanent employee (including those engaged through an employment contract)).</p> <p><i>*For the purposes of this policy, employee does not include volunteers, labour hire, casual employees or contractors and subcontractors.</i></p>
Ex-Gratia Payments	<p>An ex-gratia payment is a discretionary, voluntary payment made by council without any legal or contractual obligation. These payments are made as an act of goodwill and are not an admission of liability or wrongdoing by the organisation.</p> <p><i>*These payments are separate, and should not be confused with, donations, grants or other general payments related to such incidents as floods or natural disasters.</i></p>
Terminated Employee	An employee who has either resigned or their employment has been terminated.

Policy Statement

This policy outlines the process under which Torres Shire Council (Council) may offer ex-gratia payments to individuals, groups, or organisations in situations where there is no legal obligation to provide compensation, but it is deemed appropriate as a goodwill gesture and is considered reasonable in all the circumstances.

Council must ensure special payments are appropriate, defensible, and transparent. Council supports the use of alternative strategies to achieve a mutually agreeable outcome, prior to considering progressing with an ex-gratia payment.

Each ex-gratia payment is voluntary and made based on the facts and circumstances relevant to each particular matter. The making of an ex-gratia payment does not create a precedent for other claims or payments and does not constitute an admission of liability on the part of either party.

The making of an ex-gratia payment under this policy also does not imply that payments of a similar value will be made in other matters.

Process and Payment Amount

The decision to make an ex-gratia payment will be determined on a case-by-case basis and, where applicable and appropriate, based on independent legal advice to ensure it is not setting a precedent.

The value of an ex-gratia payment must be reasonable and proportionate to the facts and circumstances of each matter.

Approval

Only the Chief Executive Officer (CEO) can negotiate and approve an ex-gratia payment within their financial delegation, or they may approve an ex-gratia payment under a special delegation for a matter beyond their financial delegation.

The CEO is authorised to negotiate and authorise ex-gratia payments for council staff and third-party matters. If the ex-gratia payment relates to the CEO, council must determine whether an ex-gratia payment is to be made and its value, unless council delegates the matter to the mayor to negotiate and authorise.

Record-Keeping

All documentation relating to the determination of an ex-gratia payment must be recorded and stored according to council's records management policies and procedures.

A formal record of all ex-gratia payments will be maintained by the CEO.

Council must keep proper records supporting each ex-gratia payment, including evidence of key decisions made and who they were made by. These records include:

- the payment date and the recipient of the payment;
- the reason for the payment and how the payment amount was determined;
- whether independent (legal) advice was obtained to support the basis and value of the payment;
- how the payment represents an appropriate use of public money;
- who approved the payment; and
- other payment details that council consider relevant.

Confidentiality / Non-Disclosure Agreement

While council must ensure ex-gratia payments are appropriate, defensible, and transparent, there may be aspects of the payments that must be treated confidentially by both parties unless otherwise required by law.

Non-disclosure Agreements (NDA) (or Confidentiality Agreements) may be entered into for such payments, to ensure appropriate confidentiality obligations apply to both parties. NDA's must not be utilised to contravene any legislative requirements or obligations, such as the *Public Interest Disclosure Act 2010* or the *Crime and Corruption Act 2021*.

RELEVANT LEGISLATION

- *Public Sector Ethics Act 1994*
- *Crime and Corruption Act 2001*
- *Civil Liabilities Act 2003*
- *Public Interest Disclosure Act 2010*
- *Information Privacy Act 2009*
- *Local Government Act 2009*
- *Local Government Regulations 2012*
- Crime and Corruption Commission publication - *Prevention-in-focus-Use-of-non-disclosure-agreements-what are-the-corruption-risks-2020.pdf*

DOCUMENT CONTROL

Version	Resolution Date	Resolution No.	Policy Author
V1	19 August 2025	25/8/10	Executive Manager Corporate & Community Services

Review Frequency: As legislation changes or guidelines are amended.