

6.12. EX-GRATIA (SPECIAL) PAYMENTS POLICY

REPORT AUTHOR	Acting Manager Governance
MANAGER	General Manager TC Jasper Corporate and Communities
DEPARTMENT	Governance
RECOMMENDATION	

That Council adopt the new Ex-Gratia (Special) Payments Policy.

EXECUTIVE SUMMARY

A control deficiency was identified by the Queensland Audit Office (QAO) as part of the 2023/2024 audit relating to the lack of a council policy with respect to ex-gratia payments.

BACKGROUND

An ex-gratia payment is a voluntary payment that an entity is not legally required to make under a contract or otherwise.

The implications of not having a policy is that there is an increased risk to council that ex-gratia payments:

- might be difficult to support given they involve the use of public money,
- lack transparency in relation to when they can be made, how they are calculated and who needs to approve them.

The effect of this is that such payments may be made, that Council are not bound by the contract to pay, and there is no documentation of Council's consideration of whether the payment was an appropriate use of Council's funds.

COMMENTS

The following advice has been provided by the QAO.

To ensure that ex-gratia payments made can be supported and are defensible and it is important that public sector entities/councils have robust policies and guidance covering:

- the type of ex-gratia payments that can be made and when they can be made
- the basis for determining the appropriate amount paid
- who can approve them.

Public sector entities should also maintain proper records supporting each ex-gratia payment including evidence of key decisions made and who they were made by. At a minimum, these should record:

- the payment date and the recipient of the payment
- the reason for the payment and how the payment amount was determined
- whether independent advice was obtained to support the basis and amount of the payment
- how the payment represents appropriate use of public money
- who approved the payment

- other payment details the executives, board or council consider relevant.

Public sector entities should also ensure they are not using non-disclosure agreements (NDAs) to try and reduce transparency of, and accountability for, the use of public money.

Council management agreed with the QAO recommendation that the Council establishes a clear policy in relation to termination/ex-gratia payments which covers the points noted above.

The draft Ex-Gratia (Special) Payments policy has been developed and is attached.

PROPOSAL

That Council adopts the new Ex-Gratia (Special) Payments Policy.

FINANCIAL/RESOURCE IMPLICATIONS

Not applicable at this time

RISK MANAGEMENT IMPLICATIONS

Risks occur when use of public money is not supported by robust policies.

SUSTAINABILITY IMPLICATIONS

Economic: Nil

Environmental: Nil

Social: Nil

CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE

This report has been prepared in accordance with the following:

Corporate Plan 2019-2024 Initiatives:

Theme 5 - Robust Governance and Efficient Service Delivery

Strong governance and financial management are the foundations of the way in which Council will conduct its business and implement the initiatives of the Corporate Plan.

Goal 1 - *We will conduct Council business in an open and transparent manner with strong oversight and open reporting.*

Goal 3 - *We will make sound financial decisions by ensuring robust strategic planning, financial management and reporting.*

Operational Plan 2024-2025 Actions:

Legislative requirement.

COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following areas outline where Council has a clear responsibility to act:

Advocate Council makes representation on behalf of the community on important issues, funding opportunities, projects and programs. Council will use its influence to seek the best outcomes for the community.

CONSULTATION

Internal: Executive Leadership Team, Policy was discussed with councillors at a council workshop held on 11 February 2025

External: Queensland Audit Office, Local Government Managers Association (LGMA), LGAQ

COMMUNITY ENGAGEMENT

Nil

ATTACHMENTS

1. Ex Gratia Special Payments Policy (1) [6.12.1 - 4 pages]



EX-GRATIA (SPECIAL) PAYMENTS POLICY

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 Douglas Shire Council (Council) to employees or third parties. This policy does not cover payments required by law or contractual obligation.

Policy Statement

This policy outlines the process under which 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 and the Chief Executive Officer (CEO) acknowledge that an ex-gratia payment comprises public monies and ex-gratia payments should only occur in extraordinary 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.

Definitions

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	Douglas Shire Council.
Councillor	All elected representatives who hold (current) office with Council, including the mayor.
Employee/s	Includes a person who carries out work in any capacity for Council (i.e. permanent employee (including those engaged through an employment contract).

TERM	DEFINITION
	<i>*for the purposes of this policy, employee does not include volunteers, labour hire, casual employees or contractors and subcontractors.</i>
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.

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

The CEO is authorised to negotiate and approve ex-gratia payments for Council staff and third-party matters within their financial delegation or under a special delegation for a matter beyond their financial delegation.

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 policy and procedures.

A formal record of all ex-gratia payments will be maintained by the Chief Executive Office.

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 are not to protect council or council staff from allegations of bullying or inappropriate conduct. Any agreement will make clear that departing employees are encouraged to raise, where appropriate, allegations of bullying or inappropriate conduct with the Crime and Conduct Commission, Officer of the Independent Assessor or the People and Culture section of Council. 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*.

Related 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](#)

Related Documents

Public Interest Disclosure policy

Procurement policy

Information Privacy Policy

Policy Review

This policy is to be reviewed whenever legislation changes, or every 4 years if no changes have been required to be enacted, at the direction of the Chief Executive Officer.

Policy Details

Policy Name	
Policy Number	

Policy Version	1
Document Number	
Endorsed by	Chief Executive Officer
Policy Type	Statutory/Council/Administrative
Approval Authority	Council
Date Adopted	Date adopted at Council
Time Period	4 Years
Review Date	Insert date -
Policy Department	CEO and Corporate and Community
Link to Corporate Plan	
Revoked/Superseded	If Applicable – Leave blank if not

This policy is to remain in force until otherwise determined by Council.