

Executive Officer Termination Policy

Local Government Act 2009

1. Policy Statement

Townsville City Council (Council) payments to Executive officers upon termination or agreed resignation will ordinarily be in accordance with contractual terms. Council will only consider making payments to Executive officers beyond the terms of contracts upon termination or settlement (beyond contract payments) if requested in writing, where the termination agreement or settlement is the subject of external legal advice, and only after all other reasonable avenues of recourse have been exhausted.

This policy outlines the procedures and considerations for the termination of Executive officer contracts, ensuring probity, compliance with legal standards and minimising the risk of litigation. Beyond contract payments to Executive officers may only be made in accordance with this Policy.

2. Principles

Council must ensure that it acts appropriately, with probity and provides value for money. Ordinarily the termination of an Executive officer contract will be in accordance with contractual terms and conditions.

In general, performance appraisals and performance management, are to be a collaborative and constructive process that contributes to enhanced performance of Executive officers and as a consequence the Council in line with Council's Corporate Plan, Strategic Priorities and Operational Plan.

Terminations or settlements resulting in resignations before the conclusion of a contractual term which are not supported by evidence of poor performance risk claims by a person being terminated or leaving that the person has been the subject of adverse action or discrimination giving rise to a claim.

Before proceeding with the termination of an Executive officer or a settlement leading to the resignation of an Executive, there must be an assessment of the potential risks of litigation. If it is considered that the risk of litigation is low then ordinarily a contract would only be terminated in accordance with contractual terms.

Criteria for payments beyond contractual terms include the following:

- payments should be reasonable and proportionate to the nature of the risk of any claim and its prospects;
- payments should not set a precedent for future claims; and,
- payments should align with Council's budget and financial policies.

Council has considered the human rights protected under the *Human Rights Act 2019 (Qld)* when adopting and/or amending this policy. When applying this policy, Council will act and make decisions in a way that is compatible with human rights and give proper consideration to a human right relevant to the decision in accordance with this Act.

Council has also considered its obligations pursuant to the *Work Health and Safety Act 2011* to provide a safe workplace for Chief Executive Officers (CEO), acting CEOs and Executive Officers. When applying this policy, Council will act and make decisions in a way compatible with maintaining a safe workplace.

All members of the CEO Performance Review Committee and the CEO will be provided information and advice in processes associated with this policy and in effective performance management principles and practices, which will include fairness, equity, perspective, merit and natural justice.

3. Scope

This policy covers payments in addition to contractual entitlements upon termination or settlement for Executive officers. In respect of the *Chief Executive Officer Employment Performance Policy* it is intended that this policy be read in conjunction with that policy.

4. Responsibility

The responsibility for authorising beyond contract payments to Executive officers other than the CEO of Council lies with the CEO of Council in accordance with the processes contained in this Policy. Where there is a beyond contract payment to an Executive officer unless both the CEO and the Director of Business Services approve, a beyond contract payment may not be made. Where the Director of Business Services may be the recipient of a beyond contract payment, the CEO must choose a Director of another Directorate to be involved in the decision process. If the CEO and relevant Director do not agree then there will not be a beyond contract payment.

The Committee established for the purpose of performance appraisal of the CEO ¹for the review of performance is responsible for authorising any beyond contract payments to the CEO, following the processes contained in this Policy.

A resolution of Council is required before a termination of the CEO including terms beyond contractual payments or a settlement leading to the resignation of the CEO on terms beyond contractual payments.

5. Definitions

Beyond contract payments, or payments beyond contractual terms - payments to the CEO or other Executive Officers which are in addition to payments provided for within contracts between Executive Officers and Council.

Councillor - means all elected representatives including the Mayor.

¹ In accordance with the Council's *Chief Executive Officer Employment Performance Policy*.

Executive officer - includes the Chief Executive Officer (CEO), employees who the CEO supervises directly and Directors².

Performance Review Committee - means a Committee appointed by Council for the purpose of overseeing the Framework in accordance with the CEO Employment Performance Policy.

6. Policy

6.1. Termination or Settlement upon Contractual Terms

Ordinarily the termination of an Executive officer or a settlement leading to resignation will be in accordance with original contractual arrangements. This may be the result of agreement between the parties or where there is dissatisfaction with performance on the part of Council.

6.2 Terminations or Settlements Beyond Contractual Terms

A termination which occurs in circumstances where ordinary performance review processes have not been followed may risk a claim of adverse action or a breach of rights.

The key to avoiding terminations or settlements beyond contractual terms is in the setting and agreeing of performance expectations between the parties. The key documents underpinning this process include:

- Council's current Corporate Plan and, in particular the annual Operational Plan that delivers on the Corporate Plan;
- annual organisational priorities set by the CEO/Executive Leadership Team (ELT);
- the Code of Conduct for Staff;
- Council Value statements;
- the role statement or position description for the position of Executive Officer;
- core competencies for the position; and,
- a suite of relevant Corporate Key Performance Indicators.

In addition, for the CEO position the Chief Executive Officer Employment Performance Policy is a key document.

In cases where termination or settlement occurs beyond the terms of the employee's contract, the following steps must be taken:

6.2.1 Independent Assessment and Advice

In order to ensure that processes are independent and objective, Council will engage external legal counsel to provide advice in respect of any termination of employment or settlement leading to resignation which may result in payments beyond contractual terms.

² Directors are 'senior executive officers' under the *Local Government Act 2009*.

Where this is being contemplated Council will seek advice from qualified legal professionals from Council's panel of solicitors to determine an appropriate range for any negotiated settlement or termination without agreement (including how this has been calculated).

External counsel will evaluate, as a minimum:

- The total value of the employee's contract.
- The risk of litigation based on the facts available, and risks to reputation of Council of any litigation.
- The nature and strength of any potential claims the Executive officer may have.
- Potential external and internal legal costs associated with any claims.
- Opportunity costs related to prolonged disputes and their impact on the organisation.

6.2.2. Negotiation of Settlement

Based on the advice received, the CEO, in the case of a member of Executive staff, or the Performance Review Committee, in the case of the CEO, will negotiate a settlement that reflects:

- The external advice received; and
- The need to maintain a positive organisational reputation.

Any negotiated settlement or termination should include confidentiality agreements to ensure that sensitive or confidential information is protected post-termination. This is particularly important as Executive officers may have had access to proprietary information.

Deeds of settlement are not to protect Council or Council staff from allegations of bullying or inappropriate conduct. Any deeds will make clear that departing employees are encouraged to raise, where appropriate, allegations of bullying or inappropriate conduct with the Crime and Corruption Commission, the Office of the Independent Assessor, the Council Investigator or the People and Culture section of Council.

Council's treatment of any settlements will be consistent with its obligations pursuant to its privacy and confidentiality obligations, including the *Information Privacy Act 2009*, Council's *Information Privacy Policy* and Council's *Confidentiality Policy*.

6.2.3 Documentation and Communication

All decisions and communications regarding a termination or settlement beyond contractual terms must be documented, including:

- Clear records of performance reviews and any disciplinary actions taken prior to termination or settlement. This documentation can support the rationale for termination and mitigate claims of unfair dismissal.
- The rationale for termination and the basis for determining the appropriate amount.
- Records of legal consultations (which will be privileged).
- Details of any negotiated settlements.

- Records of the approval of any payment, noting that only the Performance Review Committee has authority to approve payment to the CEO and the CEO has authority to approve payments to other Executive Officers.
- The day of the payment.
- The recipient of the payment.
- The reason for the payment (this should very clearly articulate why the payment is being made to ensure there is no ambiguity and to ensure that payments for similar reasons can be calculated consistently and fairly), and
- The approval given for the payment.

6.3 Exit and Review

Contingent upon the circumstances, Council should consider offering a CEO or other Executive Officer being terminated access to the Employee Assistance Program or counselling services during the transition period. This can help maintain goodwill and support the employee's mental well-being.

Council should also consider conducting, where an Executive officer consents, exit interviews to gather feedback from the Executive Officer or CEO about their experience. This can provide valuable insights for improving workplace culture and practices.

7. Legal Parameters

Human Rights Act 2019

Industrial Relations Act 2016

Information Privacy Act 2009

Local Government Act 2009

8. Associated Documents

Chief Executive Officer Employment Performance Policy

Confidentiality Policy

Information Privacy Policy