

Disclaimer: This is guidance material only and does not replace reading the legislation. For further information refer to the legislation. Please check the website for updates and other information.

Statutory act of grace payments

At a glance

- Section 5.7 of the Government Sector Finance Act 2018 (GSF Act) provides Ministers with a statutory power to make act of grace payments.
- The GSF Act enables a Minister to make an act of grace payment if the Minister is satisfied that there are special circumstances or other circumstances prescribed by the regulations.
- The new statutory power does not affect any other powers that Ministers currently possess to make ex gratia payments.

What is a statutory act of grace payment?

An act of grace payment is a special payment which is made to address issues arising from the operations of government, where the government is not otherwise legally required to make a payment.

Generally, an act of grace payments is a last resort means of providing compensation to persons who have been unfairly treated by the State, but who have no legal claim against it.

The Government Sector Finance Act 2018 (GSF Act) requires that an act of grace payment is to be made using money that is otherwise lawfully available. This means that the provision does not operate as a standing appropriation. An example of money that may be lawfully available for this purpose is money appropriated to the relevant Minister under an annual appropriation Act.

Who can make statutory act of grace payments?

Section 5.7 of the GSF Act confers on Ministers a statutory power to make act of grace payments. Act of grace payments is subject to any terms and conditions imposed by the Minister.

A Minister can delegate the function of making act of grace payments (including in relation to the imposition of terms and conditions for payments) to:

- an Accountable Authority for a GSF agency,
- any person employed in, or by, a Public Service agency that is responsible to the Minister under an administrative arrangements order made for the purposes of section 50C of the *Constitution Act 1902*,
- any other entity (or entity of a kind) prescribed by the regulations.

The Act does not limit any power, privilege or right conferred on a Minister or any other person by another law to make payments as an act of grace (whether or not it is for, or on behalf of, the Crown or the State). That is, a Minister's power to make act of grace payments independent of the *GSF Act* (pursuant to the executive power) is unaffected by the statutory power in s. 5.7.

When can a statutory act of grace payment be made?

An act of grace payment can be made even though the payment is not:

- (a) otherwise authorised by or under law, or
- (b) required to meet an obligation.

A Minister may authorise an act of grace payment to be paid to a person if the Minister is satisfied there are

- (a) special circumstances, or
- (b) circumstances of kind prescribed by regulation.

Do these provisions apply to my Agency?

A Minister may be able to delegate this function to certain officers of your agency, if your agency is

- (a) a Public Service agency for which the Minister is responsible, or
- (b) prescribed by regulation.

Ministers will also be able to delegate this function to the Accountable Authority of any GSF agency.

When do provision relating to Act of Grace payment commence?

Section 5.7 Act of Grace payments, under Division 5.2, of the GSF Act commenced on 1 July 2019.

Need more information?

For more detail, please refer to the following sections in the GSF Act:

- Part 5 Expenditure
- Division 5.2 5.7 Act of grace payments

Email the legislation team at Legislation@treasury.nsw.gov.au