



Ex Gratia Payments

Ministers only have the authority to approve ex gratia payments subject to the guidelines detailed in this circular. This power cannot be delegated. This circular clarifies the existing policy and replaces previous circular NSWTC05/05.

This Circular confirms that only Ministers have the authority to approve ex gratia payments in accordance with the following guidelines. Ministers can exercise this power as representatives of the Crown. The power cannot be delegated. This Circular does not change the existing policy but it clarifies the existing policy and withdraws and replaces the previous circular NSWTC 05/05.

Ex gratia payments, also known as act of grace payments, may be made to persons who Ministers consider have suffered a financial or other detriment as a result of the workings of government. This detriment must be of a nature which cannot be remedied through recourse to legal proceedings.

Payments which are made (a) to meet legal liabilities or (b) where legal advice is that the Government may be found liable to pay compensation, are not ex gratia in nature. Treasury Managed Fund will provide cover for legal liabilities for its member agencies.

For cases that relate to the provision of ex gratia legal assistance to Ministers, public officials and Crown employees, reference should be made to Premier's Memorandum M 1999-11.

Ex gratia payments are entirely discretionary in nature and it is for Ministers to determine those cases in which payments will be made having regard to all the circumstances. There are no formal or mandatory criteria for determining when or if such payments should be made. Every case must be considered on its own facts and in its own context.

When a Minister is deciding whether to make an ex gratia payment, a relevant consideration is whether that action would have potentially wider implications for agencies or the Government. The manner of an ex gratia payment should ensure that no expectations, interests or rights are created beyond the individual case.

Costs are to be met from the approving portfolio Minister's existing budget allocation. If the cost cannot be met the Treasurer's written approval must be obtained before entering into a commitment to pay.

As noted above, payments that are made to satisfy a legal liability or to avoid a potential legal liability (e.g. payments made to settle court proceedings against the Crown which have a real prospect of success) are not ex gratia payments.

If, however, an application for ex gratia payment is made in circumstances where legal action has also been commenced or threatened, Ministers should consider taking steps to ensure that the Crown is protected from further action. In appropriate cases consideration should be given to requiring the recipient of an ex gratia payment to enter into a deed of release agreeing to waive any claim or to undertake in writing to set off the ex gratia payment from any claim. Confidentiality clauses should also be considered.

This Treasury Circular is a direction issued under *Public Finance and Audit Act 1983*, section 9(2).

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