

## Statutory Act of Grace Payments

**Ministers have a statutory power under the GSF Act to make act of grace payments. Ministers may delegate the function of making these payments.**

*This Circular supersedes the TC21-02 Statutory Act of Grace Payments.*

### Overview

Ministers have the power under section 5.7 of the *Government Sector Finance Act 2018* (GSF Act) to make an act of grace payment (Statutory Act of Grace Payment). The exercise of this power is at the discretion of the Minister or the Minister's delegate.

Statutory Act of Grace Payments may be made under section 5.7 of the GSF Act where the Minister, or Minister's delegate, is satisfied that there are "special circumstances", or other circumstances of a kind prescribed by regulation. There are currently no other circumstances prescribed by regulation.

### Delegation of statutory power

Section 5.7(4) of the GSF Act allows a Minister to delegate the function of making a Statutory Act of Grace Payment only to:

- the accountable authority for a GSF agency; or
- any person who is employed in or by a Public Service agency (if the agency is responsible to the Minister under an administrative arrangements order made for the purposes of section 50C of the *Constitution Act 1902*); or
- "any other entity" or "an entity of a kind" prescribed by regulation under the GSF Act.

This function cannot be subdelegated.

### Circumstances for Statutory Act of Grace Payments

Statutory Act of Grace Payments must be made using money that is lawfully available.

It is for the Minister, or Minister's delegate, to determine whether the particular circumstances before them are "special circumstances" which warrant the making of a Statutory Act of Grace Payment, having regard to the legal test for "special circumstances."

The circumstances in which a Minister, or Minister's delegate, may be warranted in finding that "special circumstances" exist may include where:

- a person, or persons, have suffered financial or other detriment as a result of the workings of government, or
- a person, or persons, have suffered financial or other detriment as a result of significant natural, health, or other disasters requiring an emergency government response; and
- the State has no present legal obligation to compensate the person or persons for that detriment, but it is nonetheless morally justifiable for the State to make a payment in the circumstances.

The above matters are set out for the purposes of guidance only and are not an exhaustive list.

When making a determination, a Minister or Minister's delegate should have regard to whether any likely legal liability arises from the workings of government that caused the financial or other detriment. The existence of such a liability may weigh against the making of a Statutory Act of Grace Payment.

### **Disclosure and reporting requirements of Statutory Act of Grace Payments**

- (1) The accountable authority for a GSF agency should maintain a written internal register of all Statutory Act of Grace Payments made using the agency's funds.
- (2) The following details should be recorded in the internal register for each Statutory Act of Grace Payment:
  - (a) the date that the Statutory Act of Grace Payment was made,
  - (b) the amount of the Statutory Act of Grace Payment,
  - (c) the name and address of the person to whom the Statutory Act of Grace Payment was made,
  - (d) a description of the special circumstances for making the Statutory Act of Grace payment,
  - (e) the Minister or the name, position and financial delegation of the Minister's delegate who approved the Statutory Act of Grace Payment, and
  - (f) details of any terms or conditions imposed as a part of making the Statutory Act of Grace Payment, the contravention of which would render the payment a debt recoverable by the Crown.

This clause applies to all Statutory Act of Grace Payments, except for those made through a high-volume payment program.

- (3) For each high-volume payment program made as a Statutory Act of Grace Payment, the following details should be recorded in the internal register:
  - (a) the name of the Statutory Act of Grace program,
  - (b) the commencement date and end date, if applicable, of payments,
  - (c) the aggregate value of payments distributed through the program,
  - (d) the total number of recipients of the payments,
  - (e) the Minister or the name, position and financial delegation of the Minister's delegate who approved the program, and
  - (f) a description of the program, including the purpose of the program, the intended recipients of the program and a comprehensive list of circumstances that would qualify people to the program.

For these high-volume payment programs, the GSF Agency should also retain detailed information of:

- (g) each payment recipient of the program, including their name and address,
  - (h) each payment amount and date of the payment, and
  - (i) any terms or conditions imposed as a part of making the Statutory Act of Grace Payment, the contravention of which would render the payment a debt recoverable by the Crown.
- (4) The details which paragraph (2) and (3) require to be recorded should remain in the GSF agency's internal register for a period of 5 years from the date of the Statutory Act of Grace Payment.
- (5) The Accountable Authority for the GSF agency must review and certify the internal register at least once per year. The register should be submitted to the agency's Audit and Risk Committee for review at least once per year.
- (6) The Accountable Authority must publish a current copy of the GSF agency's Statutory Act of Grace Payments register on the agency's website at least once per year. The published register should:
  - (a) exclude any personal information as defined under Section 4 of the *Personal Information Protection Act 1998*, and
  - (b) include the Accountable Authority's certification.

If no Statutory Act of Grace Payments were made, the Accountable Authority must provide a 'NIL' statement on the published Statutory Act of Grace Payments register.

*Appendix 1* provides a template that may be used to publish an agency's Statutory Act of Grace Payments register.

- (7) For the avoidance of doubt, the obligations set out in this circular are additional to any obligations arising under the *State Records Act 1998*.

This Treasury Circular does not address non-statutory act of grace payments.



Stewart Walters  
Chief Financial and Operations Officer

**Further Information:**      **Director, Financial Management Governance & Analytics**  
Phone: (02) 9228 5233  
Email: [finpol@treasury.nsw.gov.au](mailto:finpol@treasury.nsw.gov.au)

NSW Treasury website:      [www.treasury.nsw.gov.au/](http://www.treasury.nsw.gov.au/)

## Appendix 1- Statutory Act of Grace Payments Register Template

Notes:

- All personal information as defined under Section 4 of the *Personal Information Protection Act 1998*, must be removed before publishing on the agency's website.
- NIL declarations, when applicable, are required to be made

**[GSF Agency Name]'s Statutory Act of Grace Payments Register [date: DD/MM/YYYY-DD/MM/YYYY]**

### Individual Statutory Act of Grace payments:

Date of payment	Amount of payment	Name and address of recipient*	Description of special circumstances	Approving Minister/Minister's delegate	Terms and conditions of payment

\*This information may need to be excluded in the published register, if it is personal information under Section 4 of the *Personal Information Protection Act 1998*.

### High-volume payment program Statutory Act of Grace Payments:

Name of the Statutory Act of Grace program	Commencement and end date, if applicable, of payments	Aggregate value of payments to date	Total number of recipients to date	Approving Minister/Minister's delegate	Program details, including qualifying circumstances for the program

### Certification by Accountable Authority

I have reviewed and certify that, to the best of my knowledge and belief that the above register is complete and accurate.

[Signature, Name, Date]

To access this template, please [click here](#).