

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.

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 the Minister to make act of grace payments 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 act of grace payments.

What is an act of grace payment?

An act of grace payment is also known as an “ex gratia” 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 liable to make a payment to address the issue.

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

The GSF Act explicitly states that an act of grace payment is to be made using money that is otherwise lawfully available.

Who can make act of grace payments?

Section 5.7 of the Government Sector Finance Act 2018 (GSF Act) affords Ministers with a statutory power to make act of grace payments.

Currently, Ministers have a non-statutory power to make act of grace payments. The inclusion of this statutory power is a facilitative provision.

Making an act of grace payment is a **delegable function** (see section 9.7 of the GSF Act). Ministers can delegate the function of making act of grace payments (including in relation to the imposition of terms and conditions for payments that they make) 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.

Act of grace payments may be subject to terms and conditions imposed by the Minister.

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).

When can an act of grace payment be made?

An act of grace payment is a payment which is not:

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

An act of grace payment can be paid if a 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 officers of your agency, if your agency is

- (a) a Public Service agency for which the Minister is responsible, or
- (b) prescribed in 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?

Please consult the GSF Act Commencement Timetable [here](#).

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