

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.

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. Treasury does not presently intend that any other circumstances be 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 a financial or other detriment as a result of the workings of government; and
- the State has no present legal obligation to compensate the person 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.

When making a determination, a Minister or Minister's delegate would ordinarily 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 of Statutory Act of Grace Payments

- (1) The accountable authority for a GSF agency should maintain a written register of Statutory Act of Grace Payments made in connection with the agency.
- (2) At a minimum, the following details should be recorded in the written register for each Statutory Act of Grace Payment:
 - (a) the amount of the Statutory Act of Grace Payment,
 - (b) the name and address of the person to whom the Statutory Act of Grace Payment was made,
 - (c) the date that the Statutory Act of Grace Payment was made,
 - (d) a comprehensive description of the special circumstances for making the Statutory Act of Grace payment,
 - (e) the name, position and financial delegation of the person 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.
- (3) The accountable authority for the GSF agency should review and certify the written 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.
- (4) The details which paragraph (2) requires to be kept in respect of a particular gift of government property should remain in the GSF agency's written register for a period of 5 years from the date of the Statutory Act of Grace Payment.
- (5) The accountable authority is to cause a current copy of the GSF agency's written register, except personal information as defined under Section 4 of the *Personal Information Protection Act 1998*, to be published on the agency's website.
- (6) For the avoidance of doubt, the obligations set out in this section of the circular are additional to any obligations arising under the *State Records Act 1998*.

This Treasury Circular does not address non-statutory ex-gratia 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

NSW Treasury website: www.treasury.nsw.gov.au/