



ACT OF GRACE PAYMENTS

Policy and Procedures Guide

Chief Minister, Treasury and
Economic Development
Directorate

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Kathy Leigh
Director-General
Chief Minister, Treasury and Economic
Development Directorate

Date

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ACT OF GRACE PAYMENTS

Definition

1. An act of grace payment is a payment of money to a person from the Territory that would not otherwise be authorised by law or required to meet a legal liability, but is authorised by the Treasurer because the Treasurer considers it is appropriate to do so because of special circumstances. It is ordinarily the case that the Territory has some moral obligation in respect of the special circumstances that warrants the authorisation of the payment. The Treasurer will make a decision after receiving advice in relation to the act of grace request and will be assisted by the procedures outlined in these guidelines.

Authority

2. The authority for act of grace payments is provided by section 130 of the *Financial Management Act 1996* (FMA). This Act provides statutory authority for an act of grace payment so that there is a lawful basis for the expenditure of public money where it is not otherwise authorised by law.

Discretion of Treasurer

3. The act of grace power is a unique discretion given to the Treasurer to authorise the making of payments to persons in special circumstances. The act of grace mechanism enables the authorisation of payments, but does not create an obligation to make these. There is no entitlement to an act of grace payment and the making of a request that sets out complete information does not guarantee a favourable outcome for the applicant.

Purpose of this Guide

4. The purpose of this guide is to set out the procedures relating to act of grace payments and thereby assist people, both in the community and in the ACT Government, in understanding why and how such payments are requested and sometimes made.

5. This guide is not intended as a guide for decision-makers in assessing the nature of special circumstances, nor the merits of any individual case. It does not limit the decision-making powers of the Treasurer nor of a decision-maker for an act of grace payment.

Request Process and Payment

6. The following procedures are addressed by these guidelines.

- Process for making a request.
- Act of grace considerations and decision-making.
- Payment and records for reporting.

Things to Consider Before Making a Request

7. Each request for an act of grace payment (as a form of discretionary financial assistance):

- is considered on its individual merits;
- is decided at the discretion of the decision-maker; and
- once decided, does not establish a precedent for other requests.

8. The act of grace mechanism is generally a remedy of last resort and is not used when there is another viable remedy available to provide redress in the circumstances giving rise to the request, such as administrative review or legal action.

9. If other avenues exist for a person to receive financial assistance from the ACT Government or elsewhere (such as existing legislation or schemes), it is recommended that those avenues be investigated before a request is made for an act of grace payment.

PROCESS FOR MAKING A REQUEST

Individuals and organisations seeking an act of grace

10. Individuals and organisations seeking an act of grace payment should write to the Treasurer to seek an act of grace payment. A fact sheet is available on the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) website explaining this process in more detail.

11. There is no prescribed format for the making of a request for an act of grace payment.

12. Those submitting a request are asked to do so by sending a letter, or an email, to the ACT Treasurer, and to include or attach all relevant evidence in support of the request. This would include information, where relevant, about:

- a) a clear explanation of the incident/situation and how it occurred;
- b) what actions on the Government's part contributed to the situation;
- c) what actions or factors, relating to yourself or to other relevant individuals or organisations have contributed to the situation in either a positive or negative way;
- d) why the situation warrants being considered a special circumstance;
- e) what other avenues have been explored (including legal and financial), and with what outcomes;
- f) why a payment would be appropriate, and the value of the payment being sought;
- g) Evidence, including:
 - i. how has the value of the payment being sought been estimated;
 - ii. documentary evidence of the circumstances, for example, correspondence, agreements and other documents establishing the circumstances and any loss (e.g. medical certificates and statements);
 - iii. details of court or Tribunal findings; and
 - iv. what reviews have been undertaken or may be underway;
- h) previous correspondence with Government;
- i) yourself (name, date of birth, place of residence) and how you can be readily contacted (via email, phone and post); and
- j) other information that is likely to be relevant.

ACT agencies as the receiver of a request

13. Any request for an act of grace payment received by an ACT Government agency from an applicant should be forwarded to the Under Treasurer via either the Director-General, or an executive, of the agency receiving it. It would be useful for the recipient agency to liaise with Treasury prior to doing this to see whether any other information could usefully be provided at the same time.

ACT agencies as the author of a request

14. An agency may bring an individual matter or set of circumstances to the attention of ACT Treasury to discuss the merit of a request for an act of grace payment. However, an agency should generally only make a specific request for such a payment on behalf of an individual or organisation with their approval, and should consult with Treasury before doing so to ensure to the extent possible that sufficient and appropriate information is provided to help Treasury with their assessment of the application.

15. The agency receiving (or making) the request for the payment may prepare a submission for Director-General approval, justifying why an act of grace payment may be appropriate or not. A request should address the matters outlined above (relevant information and evidence) and any other matters the agency considers relevant. It should refer to what (if any) correspondence or contact has been had with the individual or organisation to whom the request relates.

16. Any submission should be forwarded to the Chief Finance Officer (or equivalent) in the agency, prior to Director-General approval. Once approved by the Director-General, the Chief Finance Officer will send the request to the Finance and Budget Division of Treasury in CMTEDD for the purposes of preparing advice for consideration by the decision maker.

Treasury review upon receipt of the request

17. Upon receipt of the request, Treasury will send a letter acknowledging receipt along with this guide. This will give the opportunity for those submitting the request to provide any additional information in relation to the request or confirm the existing application is complete.

18. When an act of grace request is made directly to the Treasurer, or to a delegate in CMTEDD, Treasury will consider the request and may undertake research in relation to the claims.

19. Staff of the Finance and Budget Division of Treasury in CMTEDD may be in contact with relevant areas of ACT Government and with the requestor to seek information.

20. Treasury will then develop advice for the Treasurer, or delegate, to consider along with the information provided in the request.

Requests for comment from agencies

21. At any stage, an agency may be invited to provide formal advice to Treasury or to the Treasurer. If there are particular sensitivities in providing comment, please liaise with an Executive in the Finance and Budget Division to ascertain an appropriate way forward.

Act of grace considerations

22. The FMA provides a discretion to the Treasurer, or an authorised delegate, to approve an act of grace payment, but does not obligate doing so.

23. The decision-maker will assess the nature of special circumstances and the appropriateness of making a payment of a relevant amount, including whether the Territory has any moral obligation in relation to the particular matter. 'Special circumstances' and 'relevant amount' are not defined in the FMA and are for the Treasurer or delegate, as decision-maker, to assess and decide on.

24. Individual circumstances are relevant in considering whether the application of a Territory law or policy, or Government action or inaction, has produced a moral obligation and/or an inequitable result in a particular case.

25. In deciding whether special circumstances exist, the decision maker may consider whether any of the following give rise to circumstances that are uncommon, exceptional or extraordinary in some way:

- a) the direct role of ACT Government in causing an unintended and inequitable result to a person such that it considers it has a moral responsibility to address the circumstances of the individual;
- b) ACT legislation or policy has had an unintended, anomalous, inequitable or otherwise unacceptable impact on the individual's or organisation's circumstances, and the impact on the individual's or organisation's circumstances is:
 - i. specific to the individual or organisation;
 - ii. outside the parameters of events for which the individual or organisation was responsible or had the capacity to adequately control; but
 - iii. not merely the intended effect of the legislation; and
- c) the matter is not covered by legislation or specific policy, but the ACT intends to introduce such legislation or policy, and it is considered desirable in a particular case to apply the benefits of the relevant policy to the individual or organisation prior to the legislation or policy's commencement.

26. The decision-maker may consider any other matter that is relevant to the circumstances being considered.

27. Act of grace payments may not be approved, for example:

- a) when the proposed payments would have the effect of supplementing capped payments set by other specific legislation, in circumstances where that legislation expresses the clear intention that particular payment levels cannot be exceeded in any circumstances;
- b) when the proposed payments would have the effect of establishing a payment scheme to apply to a group of individuals, without considering the merits of their requests on an individual basis;
- c) when a request has arisen from private circumstances outside the sphere of ACT administration, there has been no involvement of an agent or ACT Government employee or entity and the matter is not related to the impact of any ACT legislation;
- d) in respect of a matter that relates solely to the involvement of a Territory-owned Corporation that has a separate legal identity to the ACT Government;
- e) to compensate a person or body for a debt owed to the ACT Government; or
- f) to compensate a person for a loss arising from a judicial decision not involving the executive arm of the Government.

28. Act of grace requests are not likely to be approved in cases where a requestor's sole assertion is that it is unfair that the individual or organisation has been historically ineligible to receive a benefit for which a person or organisation in a similar contemporary situation would now be eligible. They are also not likely to be approved in cases where a person or organisation was historically eligible for a payment but is now ineligible due to a change in certain criteria.

The decision-making step

29. Treasury will provide advice to the decision-maker, which will be considered alongside the request and any other material that has been provided.

30. The Treasurer or delegate is not obliged to follow the advice of Treasury, as full discretion to decide on a request for an act of grace payment is vested in the Treasurer, or delegate.

31. As there is no timeframe specified for the making of a decision, the decision will be made as soon as possible in light of all of the circumstances. Gathering information relevant to the request may involve Treasury making enquiries, requesting further information, conducting independent research or investigating claims made in the request. This may include seeking further information from the requestor.

32. Treasury must continue to perform its ordinary functions throughout this process and at certain times of the year (for example, in the lead up to the budget and budget review milestones) delays in the processing of an act of grace request may be unavoidable. Requestors who consider that there is time criticality for a decision should set out those matters in the request.

33. An authorisation of an act of grace payment by the Treasurer or a delegate may be expressed as being subject to conditions that need to be complied with by the payee, as set out in section 130 of the FMA.

Notification of decision

34. The outcome of the decision will be conveyed by the decision-maker to the requestor in writing. If the request is successful, the decision maker will also write to the relevant agency to notify them of the payment and any conditions attaching to it. If a requestor is unhappy with the decision, it is open to them to request reconsideration of the decision if relevant new information or a serious factual error is identified. Requestors are also welcome to seek legal advice.

Payment

35. Where a request is successful, the relevant agency will arrange for payment of the authorised amount, subject to any conditions having first been met.

Payments under the act of grace mechanism must be made from money appropriated by the ACT Legislative Assembly; and these will be reported in line with legislative requirements.

- a) If a condition is contravened, the Treasurer or a delegate may, by written notice addressed to the last-known address of the payee, require the payee, within 30 days of receipt of the notice, to pay an amount equal to all or part of the relevant amount.
- b) If the payee does not pay the amount specified in the notice, the amount may be recovered by the Territory as a debt.

Records for reporting

36. Directorates and territory authorities will keep records of all payments for reporting in the notes to financial statements in accordance with the FMA, which will detail the amount and grounds for each payment made that financial year. The FMA prohibits the disclosure of details in relation to the payee, unless disclosure was agreed to by the payee as a condition of the Treasurer authorising the payment.

RELATED DOCUMENTS

Accessible from ACT Legislation Register (at www.legislation.act.gov.au)

Financial Management Act 1996 (FMA)

Legislation Act 2001

Act of Grace Payments Factsheet



Chief Ministers, Treasury and Economic
Development Directorate

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