What is the act of grace power?
The act of grace power is intended to ensure consistency and equity in the impact of government activities where other legislative and administrative provisions do not take sufficient account of the unique circumstances of individual cases. The act of grace power is available to provide a remedy for all non-corporate Commonwealth entities (NCEs).

*Act of grace payments are discretionary. This means there is no situation which creates an automatic entitlement to an act of grace payment.*

Who has the authority to make an act of grace payment?
The act of grace power is found in section 65 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and allows the Finance Minister of make payments that would not otherwise be authorised by law. The act of grace power has been delegated to officials within the Department of Finance (Finance).

When are act of grace payments made?
They may be made by the Finance Minister or delegate when it is considered appropriate to do so because of special circumstances.

The act of grace mechanism is generally an avenue of last resort. It is not used where there are other viable avenues available to provide redress.

The PGPA Act does not set out circumstances where a payment must be approved. There is no guarantee of a favourable outcome.

What are special circumstances?
Special circumstances are not defined but may apply where a decision maker is satisfied that:

- an act of a NCE has caused an unintended and inequitable result to the individual or organisation seeking the payment;
- Commonwealth legislation or policy has had an unintended, anomalous, inequitable or otherwise unacceptable impact on the claimant’s circumstances; or
- the matter is not covered by legislation or specific policy, but the Commonwealth Government intends to introduce such legislation or policy.

Who can apply for an act of grace payment?
Any individual, company or other organisation can apply for an act of grace payment, either for themselves or for an authorised third party.

The act of grace power is available to provide a remedy for NCEs. A list of these NCEs is available on the Finance website.

If your claim relates to an entity other than a NCE, the Department may be limited to considering issues arising from the application of legislation or broader policy issues. If a claim does not relate to the Commonwealth Government, Finance will be unlikely to be able to assist.

How do I apply?
Claims are made in writing and application forms are available online. Face-to-face meetings are generally not conducted.
You can apply for an act of grace payment by completing the application form. Please include all relevant evidence in support of your application e.g. correspondence between yourself and the relevant NCE, medical certificates, etc.

Application forms are available on the Finance website. Once completed and signed, they can be sent via email to sfc@finance.gov.au or via post to:

Discretionary Payments Section
Risk, Insurance and Special Claims Branch
Department of Finance
John Gorton Building
King Edward Terrace
PARKES   ACT   2600

When will a decision be made?
The investigation of an application is a lengthy process. Generally, Finance will seek information about your application from relevant NCEs. A copy of the NCE’s advice will be provided to you for an opportunity to comment, prior to a decision being made.

Once all relevant information is available, the request will be submitted for a decision as soon as practicable.

The decision maker will provide you with an explanation of his or her decision in writing.

What options do I have if my application is unsuccessful?
Generally, a request will not be considered again unless you can show that the decision maker made a serious factual mistake or if you provide relevant new evidence.

A Complaint to the Commonwealth Ombudsman

If you are dissatisfied with the way Finance handled your request for an act of grace payment, you can ask the Commonwealth Ombudsman to investigate. Investigations are independent, informal, private and free. The Ombudsman cannot investigate actions or decisions by a Minister.

If the Ombudsman decides to investigate your case, you and Finance will receive advice about the outcome of the investigation. The Ombudsman may make a recommendation to the Department for the matter to be considered again, but cannot change the decision.

You can contact the Commonwealth Ombudsman on the following details:

Website:   www.ombudsman.gov.au
Phone:     1300 362 072
Postal:    Commonwealth Ombudsman
           GPO Box 442
           CANBERRA   ACT   2601
Review under the Administrative Decisions (Judicial Review) Act 1977

Decisions about act of grace payments can be reviewed by the Federal Circuit Court and the Federal Court under the Administrative Decisions (Judicial Review) Act 1977 (ADJR Act). The grounds for review include a breach of the rules of natural justice or an error of law. You are also able to request a statement of reasons for the decision, within 28 days, under the ADJR Act. The statement will restate the reasons that you have already been given, formally setting out the facts, evidence used, and reasons for the decision.

The Court can set aside the decision and refer the case back to Finance for further consideration, but cannot review the merits of the decision, or substitute a decision to make a payment. Regardless of any view expressed by the Court, a decision maker may again decide not to approve a payment.

The ADJR Act prescribes various time limits and fees, and you may also face an award of costs if an application for judicial review is unsuccessful. You can find out more about your options under the ADJR Act and judicial review at www.fedcourt.gov.au.

It is recommended that you seek independent legal advice if considering judicial review.

Contacting the Discretionary Payments Section
You can contact the Discretionary Payments Section from Monday to Friday, 9am – 5pm (AEST).

Phone: 1800 227 572 (calls from mobile phones at mobile phone rates)
Email: sfc@finance.gov.au
Postal: Discretionary Payments Section
        Risk, Insurance and Special Claims Branch
        Department of Finance
        John Gorton Building
        King Edward Terrace
        PARKES ACT 2600