MINUTE

s22

A/g Assistant Secretary, Significant Matters Taskforce, Procurement & Insurance Division

Official: Sensitive: Legal

Act of Grace Requests - \$22

Due Date: Friday 1 October 2021

Recommendations:

That you:

i. agree to decline act of grace payments, totalling s22

under subsection 65(1) of the *Public Governance*, v. Act 2013 (**PGPA Act**)

Performance and Accountability Act 2013 (PGPA Act),

AGREED / NOT AGREED

ii. $sign_{2}^{2}$ statements of reasons explaining your decision, and the reasons for it (Attachment A).

SIGNED / AMENDMENTS REQUIRED

iii. **note** that the Department of Finance (Finance) that give reconsideration to the financial information, facts and claims of \$22.

NOTED / PLEASE DISCUSS

s22

A/g Assistant Secretary Significant Matters Taskforce 1 October 2021

Key Issues:

On 12 October 2020, Finance receive \$22

a. These requests broadly relate to alleged action, or omissions, by the Australian Securities Investments Commission (ASIC) in its role supervising financial institutions.

Official: Sensitive: Legal

	In making your decision, you need to consider the full contents of the Finance files that relate
to t	he ^{\$22} equests, including but not limited to the following documents:

- a. act of grace request on behalf of together with the attached supporting materials, including individual impact statements.
- b. Statements from the Department of Treasury (Treasury), received by Finance on 17 July 2020, 15 July 2021 and 28 July 2021.
- c. Submissions from ASIC, with attached supporting materials, received by Finance on 7 December 2020, 4 March 2021, 18 March 2021 and 26 May 2021.
- d. responses to the Treasury's statements dated 22 July 2021and 27 August 2021.
- e. response to ASIC's submissions, dated 3 February 2021 and 22 April 2021.

s22

- 3. In summary, see claim that:
 - a. ASIC was defective in the performance of its regulatory duties, which led to losses for
 - b. Size a make a large number of arguments in support of this claim, including that ASIC failed to:
 - i. Prevent the \$22
 - ii. Prevent the s22
 - iii. Prevent significant losses for \$22
 - iv. Take sufficient enforcement action.
 - c. ASIC's failure to regulate As such, S22

 not able to seek redress elsewhere and the act of grace mechanism is a remedy of last resort.
 - d. The ongoing financial hardship and personal impact on inequitable.
 - full submissions are available at Attachment B. All signification impact statements are available at Attachment C.

Agency Claims



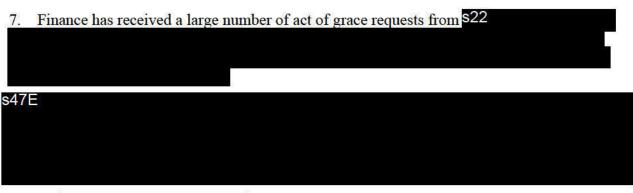


Reasons:

- On balance, it is recommended that you decline \$22
- Finance does not consider that there are special circumstances associated with these requests, including for, but not limited to, the following reasons:
 - It is a matter for individual \$22 i.e. not the Commonwealth) to make appropriate judgments and take responsibility for their own investment decisions.
 - While unfortunate, the circumstances \$22 b. have not arisen as a result of the Commonwealth, nor are they 'special'.
 - Instead, based on evidence provided, the actions of \$22 was a key cause of \$22 losses (and not the actions of ASIC). C.
 - d. The Commonwealth has other support mechanisms available to assist individuals experiencing financial hardship.

A comprehensive statement of reasons explaining your decision \$22 the detailed reasons for it, is at Attachment A. In addition to these arguments, there may be additional reasons for declining these requests.

Background:



9. For \$22 has provided Individual Impact Statements, articulating the individual impact and financial losses \$22 Each of these statements have been provided to you and the claims considered on their merits. The individual impacts have been reflected in \$22 statements of reasons.

Act of Grace Process

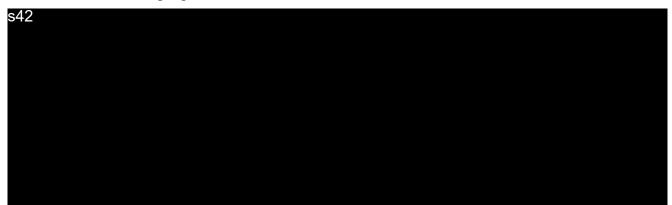
10. Section 65 of the PGPA Act provides that the Finance Minister, or their authorised delegate, may authorise an act of grace payment where it is considered appropriate to do so due to special circumstances. You are a delegate for this purpose (Accountable Authority Instructions refer).

Official: Sensitive: Legal

- 11. Resource Management Guide No. 401 Requests for discretionary financial assistance under the PGPA Act 2013 (RMG 401) provides guidance on situations where an act of grace payment may be appropriate for a delegate to approve.
- 12. Some of the relevant considerations, which have been addressed in detail in the reasons, include whether:
 - a. An act of a non-corporate Commonwealth entity (NCE) has caused an unintended and inequitable result.
 - b. Commonwealth legislation or policy has had an unacceptable impact.
 - c. The Commonwealth intends to introduce legislation or policy to cover this matter, and it would be desirable to apply the benefits of this prospectively.

CDDA Scheme

13. ASIC may not be able to consider claims of defective administration under the *Scheme for Compensation for Detriment caused by Defective Administration* (**CDDA Scheme**) due to a conflict in its enabling legislation.



15. Notwithstanding this, whether the Minister, or an ASIC delegate, can, or cannot, consider a CDDA Scheme request because of portfolio enabling legislation is ultimately considered a matter for Treasury and ASIC as the responsible entities (and not Finance as policy owners of the CDDA Scheme). Furthermore, as there is no legal impediment to Finance considering these requests under the act of grace mechanism, Finance has proceeded on this basis.

Consultation:

16. Treasury, ASIC and the Australia Taxation Office (ATO) were consulted in relation to this matter:





s22

Discretionary Payments Section Significant Matters Taskforce 1 October 2021