



Australian Government  
Department of Finance

## MINUTE

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Assistant Secretary, Procurement and Discretionary Payments Branch, Procurement & Insurance Division

### Act of Grace Request –

s22

**Due Date:** Friday, 30 September, 2022

#### Recommendations:

That you:

- i. **agree** to decline s22 act of grace payments totalling s22 requested by s22 s22 as the responsible entity, under subsection 65(1) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

AGREED / NOT AGREED

- ii. **sign** s22 statements of reasons (with individual impact statements) explaining your decision, and the reasons for it (**Attachment A**).

SIGNED / AMENDMENTS REQUIRED

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Assistant Secretary  
Procurement and Discretionary Payments Branch  
September 2022

#### Key Issues:

Between s22 Finance received act of grace requests, s22 s22 seeking payments totalling s22 on behalf of s22 Applicants) s22

- a) s22 suffered losses s22
  - b) These act of grace requests relate to the purported lack of regulatory oversight by the Australian Securities and Investments Commission (ASIC) in respect of s22.
2. In making your decision, you need to consider the full contents of the Finance file that relate to the s22, including but not limited to the following documents:
- a) s22 act of grace request on behalf of s22 dated between s22 together with attached supporting materials s22
  - b) Submissions from ASIC, with attached supporting materials, received by Finance on 1 June 2021, 12 July 2021 and 28 April 2022 (ASIC Submissions).
  - c) A statement from the Department of Treasury (Treasury), received by Finance on 14 July 2020 (Treasury Statement), and email of 26 July 2022 (Treasury email).
  - d) s22 response to the Treasury Statement, dated 11 August 2020.
  - e) s22 response dated 18 June 2021 to the ASIC Submission of 1 June 2021.
  - f) s22 supplementary correspondence, dated 31 March 2022.

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3. In summary s22 claim that an act of grace payment is appropriate, on the basis of:
- a) ASIC's inaction, which could have prevented or minimised s22
  - b) the circumstances of this matter constitute special circumstances;
  - c) Commonwealth legislation and policy has had an unintended, anomalous, inequitable and unacceptable impact on the Applicants; and
  - d) compassionate grounds,
    - i. without an act of grace s22 suffered as a result of the actions of the responsible entities, will continue to suffer without their funds.

s22 submissions are available at Attachment B.

### Agency Claims

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ASIC's full submissions are available at **Attachment C**. The Treasury Statement and Treasury email are available at **Attachment D**.

5. On balance, it is recommended that you decline **s22**.
6. Finance does not consider that there are special circumstances associated with these requests, including but not limited to the following reasons:
  - a) The fundamental causes of the Applicants' losses are the actions of **s22** not the actions of the Commonwealth;
  - b) There is no unintended outcome from the decision by the Commonwealth not to introduce a compensation scheme that would **s22** would give rise to special circumstances, especially in light of a policy decision not to provide access to a Commonwealth funded compensation scheme **s22**
  - c) It is a matter for individual **s22** (i.e. not the Commonwealth) to make appropriate judgments and take personal responsibility for their own superannuation and investment decisions.
  - d) **s22** not provided any evidence of a direct causal link between **s22** losses and any action, or omission, by the Commonwealth;
  - e) **s22** do not justify overriding a clear policy intention not to provide access to Commonwealth funded compensation **s22** even where fraud existed; and
  - f) There are alternate means of financial support provided by the Commonwealth, which may be available to **s22** they are facing financial insecurity and/or ill health.
7. A comprehensive statement of reasons explaining your decision to each of the **s22** and the detailed reasons for it is at **Attachment A**. In addition to these arguments there may be further reasons for declining these requests.

**Background:**

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*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).

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<sup>s22</sup> [redacted] was originally prepared for ASIC under the *Scheme for Compensation for Detriment caused by Defective Administration* (CDDA Scheme). ASIC has advised<sup>s22</sup> [redacted] that it is unable to consider claims of defective administration under the CDDA Scheme due to the interactions of the CDDA Scheme and its establishing legislation.

14. There is no legal impediment to Finance considering these requests under the act of grace mechanism.

**Consultation:**

15. Treasury and ASIC were consulted in relation to this matter. In response:

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Director  
Claims Support Section  
Procurement and Discretionary Payments Branch  
19 September 2022