



Australian Government
Department of Finance

MINUTE

s22 [Redacted]

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

Act of Grace Request - s22 [Redacted]

Due Date: Friday, 24 February 2023

Recommendations:

That you:

- i. **agree** to decline s22 [Redacted] act of grace payments totaling s22 [Redacted] requested by s22 [Redacted] s22 [Redacted] that either provided funds to, or were s22 [Redacted] under subsection 65(1) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

AGREED / NOT AGREED

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

SIGNED / AMENDMENTS REQUIRED

s22 [Redacted]

AVg Assistant Secretary
Procurement and Discretionary Payments Branch
24 February 2023

Key Issues:

On 11 February 2022, Finance received act of grace requests, submitted by s22 [Redacted] s22 [Redacted] seeking payments totaling s22 [Redacted] on behalf of s22 [Redacted] (Applicants) that either provided funds to s22 [Redacted]

- a) s22 [Redacted] suffered losses due to s22 [Redacted] s22 [Redacted] who provided financial advice, who sought funds from individuals to invest in opportunities s22 [Redacted] s22 [Redacted]

- 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 [redacted] investment activities.

2. In making your decision, you need to consider the full contents of the Finance file that relate to the [redacted] requests, including but not limited to the following documents:

- a) [redacted] act of grace request on behalf of [redacted] Applicants, dated between 9 January 2022 and 18 February 2022, together with attached supporting materials [redacted]
- b) Submission from ASIC, with attached supporting materials, received by Finance on 13 April 2022.
- c) A statement from the Department of Treasury (Treasury), received by Finance on 8 December 2022 (Treasury Statement).
- d) [redacted] response to the Treasury Statement, received by Finance on 12 January 2023 together with previous [redacted] comments made on 11 August 2020.

3. In summary [redacted] claim that an act of grace payment is appropriate, on the basis of:

- a) ASIC's actions or omissions, which caused or contributed to losses suffered by the [redacted]
- b) the circumstances of this matter constitute special circumstances;
- c) Commonwealth policy in relation to the compensation of investors has resulted in an unfair, anomalous, inequitable or otherwise unacceptable outcome;
- d) Shortcomings of the external dispute resolution framework, has resulted in [redacted] being precluded from redress and compensation arrangements.
- e) compassionate grounds,
 - i. Court proceedings against [redacted] will fail to provide redress and/or compensation to the Applicants. Without an act of grace payment, [redacted] will continue to suffer without their funds.

[redacted] full submissions are available at **Attachment B**.

Agency Claims

4. In summary, ASIC and/or Treasury claim that:

[redacted]

In particular, ASIC claims that:

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ASIC's full submission is available at Attachment C. The Treasury Statement is available at Attachment D.

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

Background:

8. Since February 2020, Finance has received over s22

s47E

s47E



Act of Grace Process

12. 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).

13. *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.

14. 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 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.

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Consultation:

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

- a) ASIC provided one submission in response to the ^{s22} submissions.
- b) Treasury provided the Treasury Statement, a broad statement to Finance covering all claim groups.
- c) Treasury and ASIC were provided with an opportunity to fact check relevant extracts of drafts of the statement of reasons for accuracy.

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s22



g Ass Director, Claims Support Section
Procurement and Discretionary Payments Branch
17 February 2023