



Australian Government
Department of Finance

MINUTE

s22 [Redacted]

A/g 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 s22 [Redacted] s22 [Redacted] that either provided funds to s22 [Redacted] 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]

A/g Assistant Secretary
Procurement and Discretionary Payments Branch
24 February 2023

Key Issues:

On s22 [Redacted], Finance received act of grace requests, submitted by s22 [Redacted] s22 [Redacted] seeking payments totaling s22 [Redacted] on behalf of s22 [Redacted] s22 [Redacted]

- a) s22 [Redacted] suffered losses due to the s22 [Redacted] s22 [Redacted] when acting as financial advisers.

- 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} [redacted] financial investment advice.

2. In making your decision, you need to consider the full contents of the Finance files that relate to the ^{s22} [redacted] requests, including but not limited to the following documents:

- a) The ^{s22} [redacted] applications, together with the attached supporting materials, received by Finance on ^{s22} [redacted] including the appendices provided by email on ^{s22} [redacted] respectively.
- b) A submission from ASIC, with attached supporting materials, received by Finance on 27 September 2021 and 16 December 2021, respectively (**ASIC Submission 1**).
- c) ^{s22} [redacted] response to ASIC Submission 1 dated 26 October 2021 and 25 January 2022, respectively ^{s22} [redacted]
- d) ASIC's response to ^{s22} [redacted] received by Finance on 24 November 2021 and 15 February 2022, respectively (**ASIC Submission 2**).
- e) A statement from the Department of Treasury (**Treasury**), received by Finance on 8 December 2022 (**Treasury Statement**).¹
- f) ^{s22} [redacted] response to the Treasury Statement, received by Finance on 12 January 2023 ^{s22} [redacted] together with previous comments made on 11 August 2020

^{s22} [redacted] *Claims*

3. In summary ^{s22} [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 Applicants ^{s22} [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 ^{s22} [redacted] of ^{s22} [redacted] being precluded from redress and compensation arrangements.
- e) compassionate grounds,
 - i. There are no alternate avenues available to the Applicants to seek redress/compensation against ^{s22} [redacted] Without an act of grace payment, the Applicants, who have suffered as a result of the actions ^{s22} [redacted] will continue to suffer without their funds.

^{s22} [redacted] full submissions are available at **Attachment B**.

^{s22} [redacted] was provided to ^{s22} [redacted] in response to a previous Treasury statement dated 14 July 2020. The Treasury Statement of 8 December 2022 that is included in the information considered in this decision is an updated version of the Treasury statement of 14 July 2020.

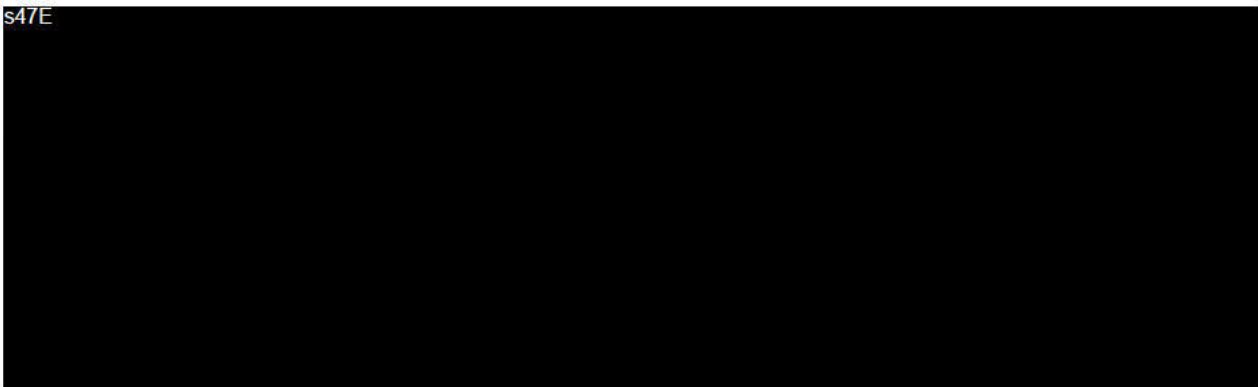
Agency Claims

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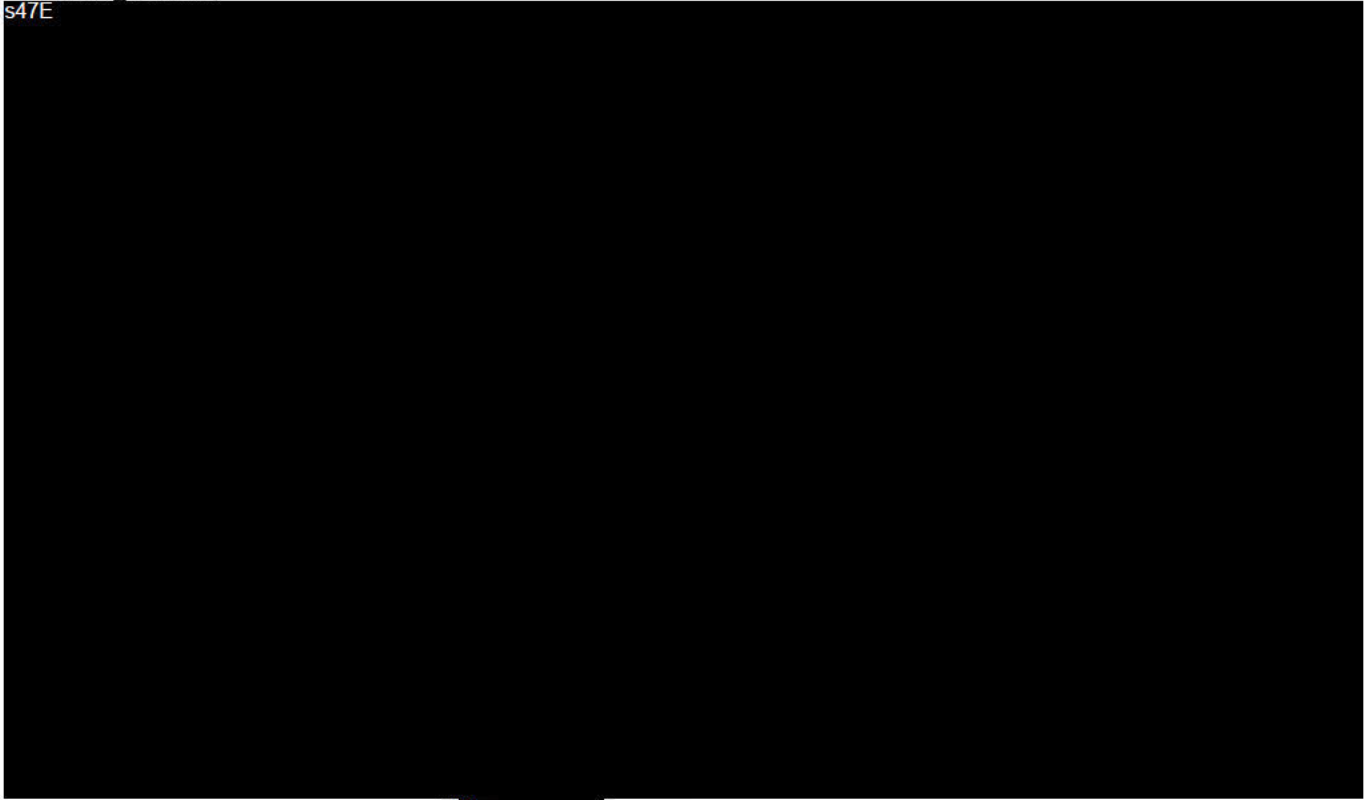
ASIC's full submission is available at Attachment C. The Treasury Statement is available at Attachment D.

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 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, s22 s22 was the cause of the Applicants' losses (and not the actions of 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) The claims by s22 do not justify overriding a clear policy intention not to provide access to Commonwealth funded compensation where s22 suffered loss. .

- 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:

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11. For each group of claimants s22 has provided individual impact statements for most of the claimants, articulating the individual impact and financial losses. These statements have been provided to you and considered on their merits. The individual impacts of the s22 of s22 have been broadly addressed in the s22 statements of reasons. Also attached is an original act of grace application form available at Attachment E.

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.

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

Consultation:

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

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s22



Assistant Director, Claims Support Section
Procurement and Discretionary Payments Branch
24 February 2023