



Australian Government
Department of Finance

MINUTE

s22 [Redacted]

Director, Procurement and Discretionary Payments Branch, Procurement & Insurance Division

Act of Grace Request – s22 [Redacted]

Due Date: Wednesday, 7 June 2023

Recommendations:

That you:

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

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 Signature]

Director
Procurement and Discretionary Payments Branch
3 / May 2023

Key Issues:

Between 6 November 2020 and 2 December 2020, Finance received act of grace requests, submitted by s22 [Redacted] seeking payments totaling s22 [Redacted] on behalf of s22 [Redacted]

- a) s22 [Redacted]

- b) The act of grace requests relate to the purported lack of regulatory oversight by the Australian Securities and Investments Commission (ASIC) and limited access to compensation in respect of financial products offered or recommended by [redacted] s22

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

- a) The [redacted] applications, together with the attached supporting materials received by Finance between 6 November 2020 and 2 December 2020 [redacted] s22 including the appendices provided by email on 13 November 2020.
- b) A submission from ASIC, with attached supporting materials, received by Finance on 15 November 2021 (ASIC Submission 1).
- c) Further responses from [redacted] s22 to ASIC submissions, dated 3 December 2021 [redacted] s22, 4 April 2022 [redacted] s22 and 27 May 2022 [redacted] s22 together with attached supporting materials.
- d) Further responses from ASIC to [redacted] s22 submissions, dated [redacted] s22 (ASIC Submission 2) and [redacted] s22 (ASIC Submission 3).
- e) A statement from the Department of Treasury (Treasury), received by Finance on [redacted] s22 (Treasury Statement).¹
- f) [redacted] s22 response to the Treasury Statement, received by Finance on [redacted] s22 together with previous comments made on [redacted] s22

[redacted] s22

3. In summary [redacted] s22 claims 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 [redacted] s22
- 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] s22 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 [redacted] s22 Without an act of grace payment, the Applicants, who have suffered as a result of the actions [redacted] s22 will continue to suffer without their funds.

[redacted] s22

full submissions are available at Attachment B.

¹ [redacted] s22 Submission 6 was provided by [redacted] s22 in response to a previous Treasury statement dated 14 July 2020. The Treasury statement of [redacted] s22 that is included in the information considered in the statement of reasons is an updated version of the Treasury statement of 14 July 2020.

Agency Claims

4. ^{s47E} [Redacted]

ASIC's full submissions are 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} [Redacted] 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} [Redacted]
 - b) It is a matter for individual ^{s22} [Redacted] (i.e., not the Commonwealth) to make appropriate judgments and take personal responsibility for their own investment decisions.
 - c) Based on the evidence provided, the causes of the Applicants' losses cannot be attributed to the actions or inaction of ASIC.

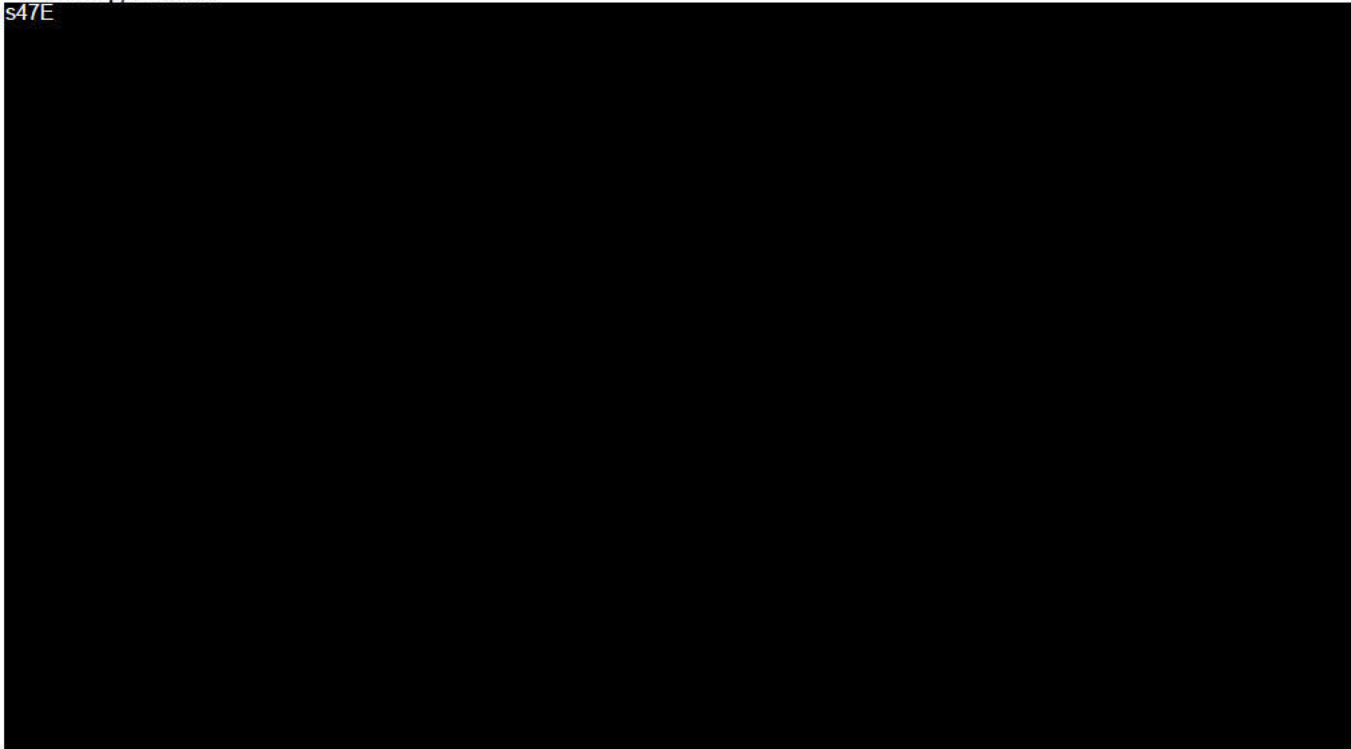
d) ^{s47E} [Redacted]

e) There are alternate means of financial support provided by the Commonwealth, which may be available to ^{s22} [Redacted] if they are facing financial insecurity and/or ill health.

7. A comprehensive statement of reasons explaining your decision for each of the [redacted] Applicants is at Attachment A. In addition to these arguments there may be further reasons for declining the requests.

Background:

s47E



11. For each group of claimants [redacted] has provided individual impact statements for 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 [redacted] [redacted] have been addressed in the [redacted] statements of reasons. 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:

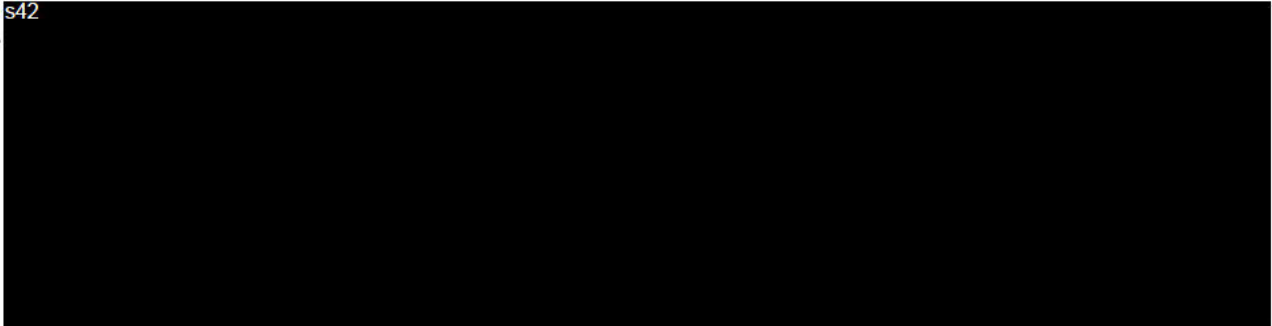
- a) An act of a non-corporate Commonwealth entity has caused an unintended and inequitable result.
- b) Commonwealth legislation or policy has had an unacceptable impact.
- c) The Commonwealth intends to introduce legislation or policy to cover this matter, and it would be desirable to apply the benefits 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:

- a) ASIC provided three 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.

17. ^{s42} 

^{s22} 

A/g Assistant Director, Claims Support Section
Procurement and Discretionary Payments Branch
31 May 2023