



Australian Government
Department of Finance

MINUTE

PDR Number: EC22-000308

To Andrew Danks
First Assistant Secretary, Procurement and Insurance Division

s22 - request for internal review of act of grace decision

Due Date: 29 July 2022

Recommendation:

That you:

- i. **Agree** that an internal review should not be undertaken of the decisions made by Gareth Sebar to refuse act of grace payment to the 102 members of the **s22** claim group.

AGREED / ~~NOT AGREED~~

- ii. **Sign** the letter (Attachment A) to the **s22** informing them of the reasons for your decision.

SIGNED / ~~AMENDMENTS REQUIRED~~

Digitally signed by
Danks, Andrew
Date: 2022.07.27
09:49:49 +10'00'

Andrew Danks
First Assistant Secretary
Procurement and Insurance Division
27 July 2022

Issue:

On 11 February 2022, the s22 wrote to the Department of Finance (Finance) (Attachment B) seeking reconsideration of the decisions made by Assistant Secretary Gareth Sebar between 29 November and 1 December 2021 to refuse act of grace payments to the 102 members of the s22 Claim Group. An example of these decisions is at Attachment C.

2. *Resource Management Guide 401: requests for discretionary financial assistance under the Public Governance, Performance and Accountability Act 2013* (RMG 401) provides under section 15 that an applicant may “request reconsideration of the decision if relevant new information or a serious factual error is identified.”

3. Following receipt of the request the Department s42

a. s42

b. s42

4. s42

5. In seeking reconsideration of the decisions the s22 set out a number of issues with the decisions. These are summarised below:

- **Special Circumstances** – that lack of action by the Australia Securities and Investment Commission (ASIC) and the Australian Prudential Regulatory Authority (APRA) resulted in an unintended and inequitable result for the s22 clients, noting that the Parliamentary Joint Committee on Corporations and Financial Services May 2012 report “*Inquiry into the collapse of s22*” and Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry were critical of ASIC and APRA.
- **ASIC** – ASIC caused an unintended and inequitable result for s22 clients through failing to recognise red flags of s22 smooth returns until a tip off from an industry participant, and approving the purchase of the license without due diligence and without checking whether s22 was a fit and proper person to administer the license.
- **Seven Gaps** – the Parliamentary Joint Committee’s review of the s22 collapse identified seven expectation gaps. s22 submit that the expectation gap is due to a lack of information about fraud risk and that being informed about the lack of protection against fraud risk would have helped provide fraud protection to self-managed super funds (SMSFs).

- APRA – The Joint Parliamentary Committee made a key finding that the “checks and balances in the Australian financial and superannuation system did not work to identify the existence of fraudulent conduct and to shut it down rapidly”. s47E(d)

6. Finance considers that while the submissions are detailed, s22 does not:
- a. clearly identify any relevant new information that was not considered by the decision-maker, but ought to have been; and
 - b. does not clearly identify any serious factual errors in the decision.

Rather, the submissions largely point to passages in the act of grace decision and how those views differed to that of the Parliamentary Inquiry (noting that the report of the Parliamentary Inquiry was considered by the original decision-maker).

7. The s22 also attached additional documents (Attachments E-I). Of these, three documents (Attachments E, H and I) were specifically identified in the decisions as having been considered by the original decision maker and as such are not new information. A further two documents (Attachments F and G) were not available to the original decision maker, however these contain extracts of opinion articles which are not considered to be relevant new information.

8. Based on the considerations above and review of the files supporting the original decisions, including s22 submissions and the submissions from Treasury, ASIC and APRA, Finance does not consider an internal review is appropriate as there is no relevant new information or serious error of fact identified. s42

9. A draft decision letter (Attachment A) has been prepared for your signature which addresses the issues raised by the s22 and attachments to the letter of 11 February 2022.

Background:

10. Between March and September 2020, the s22 made applications to Finance on behalf of 102 s22 members for act of grace payments under section 65 of the *Public Governance, Performance and Accountability Act*. The applications related to claimed failures of the responsible regulators the ASIC and APRA which s22 claim resulted in losses to s22 clients.

11. Following the receipt of the applications, Finance sought submissions from ASIC, APRA and Treasury. These were then supplied to the s22, as authorised representative to the applicants, for their comment. Once this procedural fairness process was completed, decisions were prepared for the relevant delegate, Mr Sebar.

Mr Sebar signed these decisions between 29 November and 1 December 2021 which included a full statement of reasons. These decisions were then provided to the s2 [REDACTED] on or around the same day.

Consultation:

12. s42 [REDACTED].

s22 [REDACTED]

Director
Discretionary Payment
27 July 2022

PDR Number: EC22-000308
Contact Officer: s22 [REDACTED]
Telephone: s22 [REDACTED]
Location: s22 [REDACTED]
e-mail: s22 [REDACTED] [@finance.gov.au](mailto:[REDACTED]@finance.gov.au)