



Australian Government
Department of Finance

MINUTE

~~Gareth Sebar~~ *Rachel Manley*
Assistant Secretary, Procurement and Discretionary Payments Branch, Procurement & Insurance
Division

Act of Grace Request – s22 / s22

Due Date: Friday, 24 February 2023

Recommendations:

That you:

- i. **agree** to decline 20 act of grace payments totaling \$11,363,828.41, requested by a cohort of investors that either provided funds to, or were investors of, s22 and/or his company, s22 (in Liquidation) (together s22), under subsection 65(1) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

AGREED / NOT AGREED

- ii. **sign** 20 statements of reasons (with individual impact statements) explaining your decision, and the reasons for it (**Attachment A**).

SIGNED / AMENDMENTS REQUIRED

s22

HEL MANLEY
Ag 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 s22, seeking payments totaling \$11,363,828.41, on behalf of 20 investors (**Applicants**) that either provided funds to, or were investors of, Papalia.

- a) Investors of s22 suffered losses due to the misappropriation of their funds by s22 an accountant who provided financial advice, who sought funds from individuals to invest in opportunities that he would arrange, facilitate and manage.

- 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] and s22 [REDACTED] investment activities.

2. In making your decision, you need to consider the full contents of the Finance file that relate to the 20 requests, including but not limited to the following documents:

- a) s22 [REDACTED]'s act of grace request on behalf of 20 Applicants, dated between 9 January 2022 and 18 February 2022, together with attached supporting materials s22 [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) s22 [REDACTED]'s response to the Treasury Statement, received by Finance on 12 January 2023 together with previous s22 [REDACTED] 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 as investors of 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 investors in s22 [REDACTED] being precluded from redress and compensation arrangements.
- e) compassionate grounds,
- i. Court proceedings against s22 [REDACTED] will fail to provide redress and/or compensation to the Applicants. Without an act of grace payment, investors of s22 [REDACTED] who have suffered as a result of the actions s22 [REDACTED] will continue to suffer without their funds.

s22 [REDACTED]'s full submissions are available at Attachment B.

Agency Claims

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

- a) Private investments are ultimately a matter for individuals.
- b) While the Commonwealth has powers to act, it is not obliged to take regulatory action.
- c) s22 [REDACTED] has provided no evidence that the Commonwealth's alleged actions, or omissions, caused the losses suffered by the Applicants.
- d) In relation to compensation, the Government has considered the outcomes of the Financial Services Royal Commission, and has decided what policy settings are appropriate. No further compensation will be made.
- e) Financial hardship is better addressed via existing Commonwealth support.

In particular, ASIC claims that:

- a) s47E(d) [REDACTED]
- b) s47E(d) [REDACTED]
- c) s47E(d) [REDACTED]

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 20 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 investors of 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 investors of s22 [REDACTED]
 - b) The fundamental causes of the Applicants' losses are the actions of s22 [REDACTED] and not the actions of the Commonwealth.
 - c) It is a matter for individual investors (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 [REDACTED] investors' funds by s22 [REDACTED] was the cause of s22 [REDACTED] investors' losses (and not the actions of ASIC).
 - i. s22 [REDACTED] have not provided any evidence of a direct causal link between investor losses and any action, or omission, by the Commonwealth.
 - e) s22 [REDACTED] investors' claims do not justify overriding a clear policy intention not to provide access to Commonwealth funded compensation where s22 [REDACTED] investors 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 investors of 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 20 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 978 act of grace requests from s22 [REDACTED] relating to thirteen (13) failed investment schemes. The total amount sought across the various claim groups is approximately \$412.6 million. s22 [REDACTED] provides advocacy services to businesses and individuals experiencing financial distress and individuals impacted by financial impropriety. s22 [REDACTED] operates under a fee for service model with the aim of securing compensation for their clients.

9. Finance has declined act of grace payments for four groups of claimants represented by s22 s22 for a total of 351 requests to date (s22 s22). s22 sought internal review of the decisions relating to two of the failed investment schemes (Bookmakers Superannuation Fund and Trio Capital Limited), both of which were declined. The consultation process has recently been completed for requests relating to the remaining nine schemes.

10. On 30 January 2023, Finance finalised act of grace requests for two groups of claimants represented by s22 for a total of 306 requests (s22 s22) and s22 s22 as there are viable remedies available to provide redress to s22 Holdings investors and s22 members. For this reason, Finance finalised these requests and will take no further action in relation to both groups of claimants.

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 claimants have been addressed in the 20 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:

- 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.

17. s42

a)

s42



b)

s22



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

