



**Australian Government**  
**Department of Finance**

**MINUTE**

**Rachel Manley**

A/g Assistant Secretary, Procurement and Discretionary Payments Branch, Procurement & Insurance Division

**Act of Grace Request –** §47F [REDACTED] / §22 [REDACTED]

**Due Date:** Friday, 24 February 2023

**Recommendations:**

That you:

- i. **agree** to decline two act of grace payments totaling \$1,085,195.33, requested by two investors that either provided funds to, or were investors of, §47F [REDACTED] and/or his company, §22 [REDACTED] under subsection 65(1) of the *Public Governance, Performance and Accountability Act 2013 (PGPA Act)*.

AGREED / NOT AGREED

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

SIGNED / AMENDMENTS REQUIRED

§22 [REDACTED]

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

**Key Issues:**

On 24 May 2021 and 23 July 2021, Finance received act of grace requests, submitted by §22 [REDACTED] Advisory Pty Ltd (§22 [REDACTED]), seeking payments totaling \$1,085,195.33, on behalf of two investors (**Applicants**) of §22 [REDACTED]

- a) Investors of Protect Ensure suffered losses due to the misappropriation of investor funds by §47F [REDACTED] and representatives of his company Protect Ensure, 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 s47F and s22 financial investment advice.

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

- a) The two applications, together with the attached supporting materials, received by Finance on 24 May 2021 and 23 July 2021, respectively (s22 Submission 1), including the appendices provided by email on 28 June 2021 and 28 July 2021, 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's response to ASIC Submission 1, dated 26 October 2021 and 25 January 2022, respectively (s22 Submission 2).
- d) ASIC's response to s22 Submission 2, 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).<sup>1</sup>
- f) s22's response to the Treasury Statement, received by Finance on 12 January 2023 (s22 Submission 3), together with previous comments made on 11 August 2020 (s22 Submission 4).

#### s22 Claims

3. In summary, s22 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 and/or 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 investors of s22 and/or 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 s22 or s22. Without an act of grace payment, the Applicants, who have suffered as a result of the actions s22 and s22 will continue to suffer without their funds.

s22's full submissions are available at Attachment B.

<sup>1</sup> s22 Submission 3 was provided by s22 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

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) §22 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 as any compensation scheme will be forward-looking.
  - e) Financial hardship is better addressed via existing Commonwealth support.

In particular, ASIC claims that:

- a) §47E(d)
- b) §47E(d)
- c) §47E(d)

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 two 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 §22 and/or §22 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 §22 or §22
  - b) The fundamental causes of the Applicants' losses are the actions of §22 and §22 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 the Applicants' funds by §22 and/or §22 was the cause of the Applicants' losses (and not the actions of ASIC).
    - i. §22 have not provided any evidence of a direct causal link between investor losses and any action, or omission, by the Commonwealth.
  - e) The claims by investors of §22 and/or §22 do not justify overriding a clear policy intention not to provide access to Commonwealth funded compensation where §22 and §22 investors suffered loss. .

- f) There are alternate means of financial support provided by the Commonwealth, which may be available to investors of §22 and §22 if they are facing financial insecurity and/or ill health.
7. A comprehensive statement of reasons explaining your decision for each of the two 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 §22 relating to thirteen (13) failed investment schemes. The total amount sought across the various claim groups is approximately \$412.6 million. §22 provides advocacy services to businesses and individuals experiencing financial distress and individuals impacted by financial impropriety. §22 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 five groups of claimants represented by §22 for a total of 371 requests to date §22 §22 §22). §22 sought internal review of the decisions relating to two of the failed investment schemes (§22), 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 §22 for a total of 306 requests §22 §22) and §22 §22 as there are viable remedies available to provide redress to §22 investors and §22 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, §22 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 two investors of §47F and Protect Ensure have been broadly addressed in the two 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 a submission for each Applicant, in response to the each s22 submission.
- 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

s42

s22

s22

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

