



Australian Government
Department of Finance

MINUTE

§22

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

Act of Grace Request – §22

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)*, 37 act of grace payments totaling \$36.9 million, requested by 37 investors who invested in financial products offered by §22 and/or his associated companies; §22 and §22 (together the §22).

AGREED / NOT AGREED

- ii. **sign** 37 statements of reasons (with individual impact statements) explaining your decision, and the reasons for it (**Attachment A**).

SIGNED / AMENDMENTS REQUIRED

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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 §22 Advisory Pty Ltd (§22) seeking payments totaling \$36.9 million, on behalf of 37 investors (**Applicants**) of §22 and the §22 companies.

- a) Investors of §22 and the §22 companies suffered losses from investing in financial products promoted by §22 and his associated companies. These investments included managed and agriculture investment schemes and other property and growth funds managed by §22 and/or the §22 companies.

- 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 §22 and the §22 companies.

2. In making your decision, you need to consider the full contents of the Finance files that relate to the 37 requests, including but not limited to the following documents:

- a) The 37 applications, together with the attached supporting materials, received by Finance between 6 November 2020 and 2 December 2020 (§22 Submission 1), 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 §22 to ASIC submissions, dated 3 December 2021 (§22 Submission 2), 4 April 2022 (§22 Submission 3) and 27 May 2022 (§22 Submission 4), together with attached supporting materials.
- d) Further responses from ASIC to §22 submissions, dated 7 March 2022 (ASIC Submission 2) and 28 April 2022 (ASIC Submission 3).
- e) A statement from the Department of Treasury (Treasury), received by Finance on 8 December 2022 (Treasury Statement).¹
- f) §22 response to the Treasury Statement, received by Finance on 12 January 2023 (§22 Submission 5), together with previous comments made on 11 August 2020 (§22 Submission 6).

§22 Claims

3. In summary, §22 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 as investors of §22 and/or the §22 companies;
- 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 §22 and/or §22 companies 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 §22 or the §22 companies. Without an act of grace payment, the Applicants, who have suffered as a result of the actions §22 and the §22 companies, will continue to suffer without their funds.

§22 full submissions are available at Attachment B.

¹ §22 Submission 6 was provided by §22 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 the statement of reasons 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.

In particular, ASIC claims that:

- i. §47E(d)
- ii. §47E(d)
- iii. §47E(d)

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 37 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 the §22 companies 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 the §22 companies.
 - b) 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.
 - c) Based on the evidence provided, the causes of the Applicants’ losses cannot be attributed to the actions or inaction of ASIC.
 - i. §22 has not provided any evidence of a direct causal link between investor losses and any action, or omission, by the Commonwealth.
 - d) The claims by investors of §22 and/or the §22 companies do not justify overriding a clear policy intention not to provide access to Commonwealth funded compensation where §22 and the §22 companies’ investors suffered loss.
 - e) There are alternate means of financial support provided by the Commonwealth, which may be available to investors of §22 and the §22 companies if they are facing financial insecurity and/or ill health.

7. A comprehensive statement of reasons explaining your decision for each of the 37 Applicants is at Attachment A. In addition to these arguments there may be further reasons for declining the requests.

Background:

8. Since February 2020, Finance has received over 929 act of grace requests from s22 relating to thirteen (13) failed investment schemes. The total amount sought across the various claim groups is approximately \$398.6 million. s22 provides advocacy services to businesses and individuals experiencing financial distress and individuals impacted by financial impropriety. s22 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 six groups of claimants represented by s22 for a total of 370 requests to date (s22). s22 sought internal review of the decisions relating to two of the failed investment schemes (s22), both of which were declined.

10. On 30 January 2023, Finance finalised act of grace requests for three groups of claimants represented by s22 for a total of 306 requests (s22), s22 (s22) and s22 (s22)), as there are viable remedies available to provide redress to s22 investors and s22 members. The consultation process has been completed for requests relating to the remaining three schemes.

11. For each group of claimants, s22 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 37 investors of s22 and the s22 companies have been addressed in the 37 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.

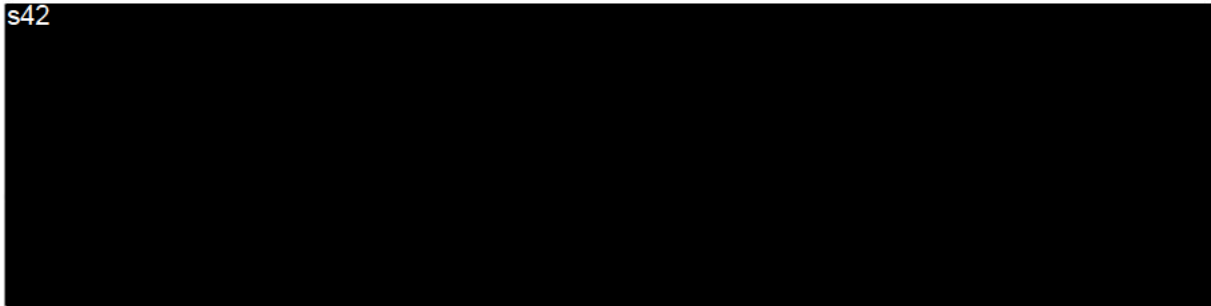
15. There is no legal impediment to Finance considering these requests under the act of grace mechanism.

Consultation:

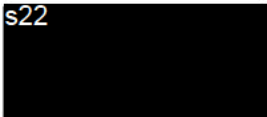
16. Treasury and ASIC were consulted in relation to this matter. In response:

- 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



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

