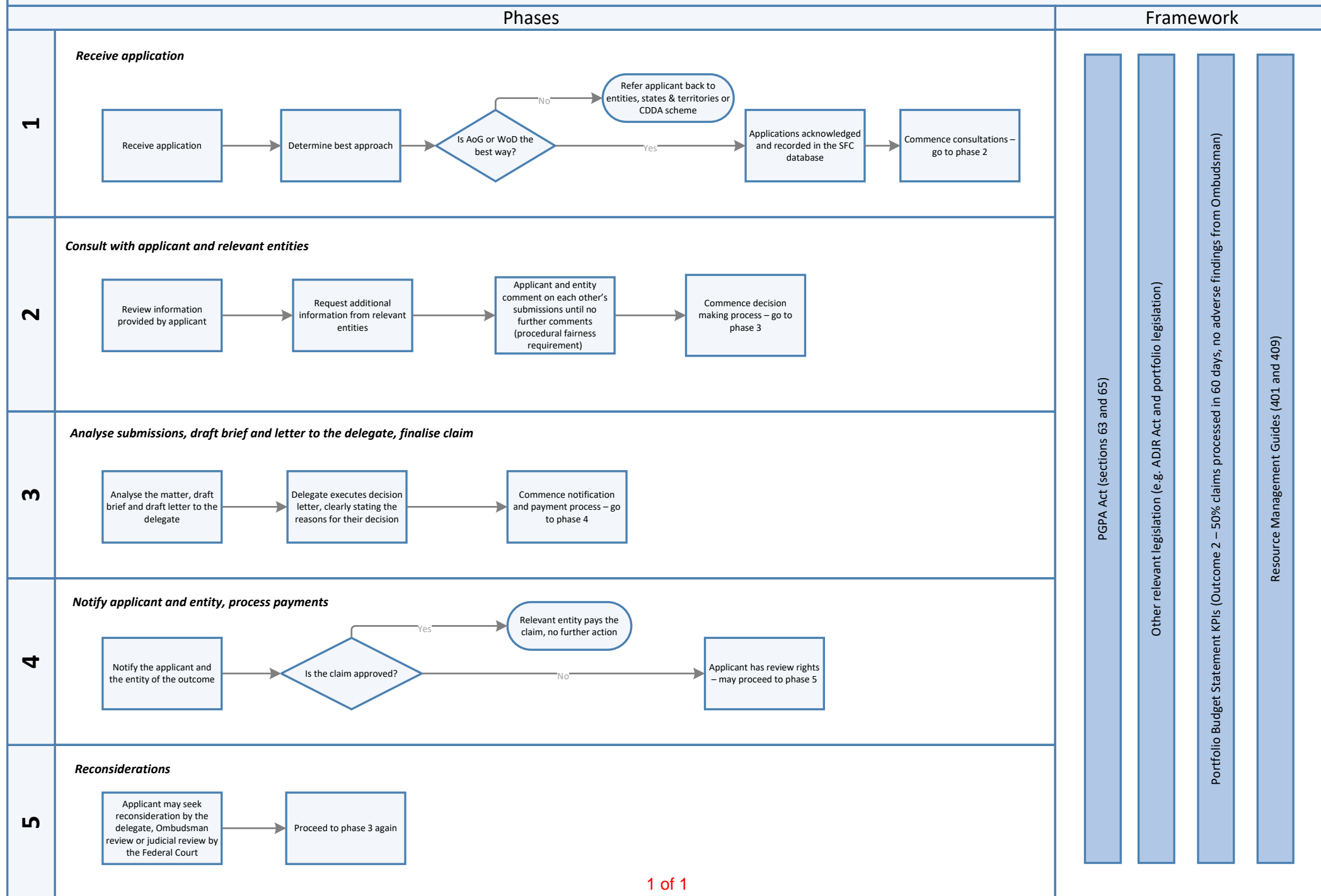


Business Process – Conceptual Overview



DISCRETIONARY PAYMENTS SECTION (DPS)

DPS work (act of grace and waiver of debt) is complex administrative decision making where application of administrative law is important and a high standard is expected in management of cases and the reasoning reflected in decisions. There are few areas across Finance/the Commonwealth which are directly comparable.

For the calendar year 2016, DPS finalised 572 cases with an average processing timeframes from initial lodgement to finalisation of 50.5 days across all application types. This equates to a 10 week average case turnaround time.

PROCESS STEPS

There are a number of defined steps in managing the work in DPS.

New case – Allocation

A Case Officer will complete the following on initial allocation of a new case (lodged by mail or email):

- Read the application and form a view on the completeness of the application and additional information requirements.
- The lodgement is acknowledged by sending an email or letter – template letters are amended to respond to specific questions or provide relevant information.
- Case details are recorded on the SFC database.
- A client folder is made on the G Drive and electronic documents are saved in that folder. Where applications are lodged by mail the Case Officer will need to scan the application
- Electronic documents are attached to the SFC database.
- A request may be sent to the relevant Agency requesting background and specific information.
- A hard file cover is requested.
- A sling file holder is created for the Compactus – Case Officers print the clients name and cut it to size to fit the sling holder.
- Average time to complete this for a 'normal' complexity case: 1 hour.

Follow-up – Responses

A Case Officer will follow up anticipated responses and process responses received:

- Review SFC database or diary management to identify Agency responses requiring follow up.
- Under 3 months since request made – depending on the agency this can be done by checking agency progress reporting tables, by sending an email requesting update, or by calling a contact officer where there are reasons for concern.
- Over 3 months since request made – case requires escalation which would involve a call to a manager at the agency or by preparation of an email or letter for Director.
- Where a response is received, read that response and consider next steps. Consider if response is adequate for DPS purpose – if not request further information.
- Ensure the applicant is provided a copy of any submission, particularly any adverse material.
- Update the SFC database with details of receipt of information and next processing steps.
- Place hard copy of the response on file and an electronic copy in the G: Drive, and consider linking to SFC database.

- Time to complete this for a 'normal' complexity case: 30 to 60 minutes

Case consideration and brief preparation

A Case Officer will analyse a case, ascertain merits, consider an appropriate outcome, decide on the decision-making approach and level of delegate required, prepare documentation for consideration by the delegate and for notification of the client.

Case consideration

- Read the application and all submissions on file identifying all relevant issues
- Check relevant legislation and conduct online research to check facts
- Review similar decisions made by DPS to consider whether appropriate to consider consistency of approach or outcome
- In complex and moderately complex matters this may require the use of mind maps or other decision support tools to assist clarification of facts and issues
- Time to complete this for a 'normal' complexity case: 3 to 4 hours

Brief and notification letter preparation

- Consider format and approach to brief and letter. Factors include:
 - Advisory Committee for approvals over \$500,000 – preliminary step is establishment and brief preparation to support Advisory Committee consideration and document outcome. Once the Advisory Committee Report is finalised, a Ministerial Submission and proposed notification letter is provided to the SMOS for decision
 - SMOS for approvals over \$100,000 requires Ministerial Submission and notification letter.
 - Approvals under \$100,000 require a Minute with recommendations for consideration by a Finance delegate and a letter to the applicant
 - For approvals, reasons are contained in the Minute, with notification letter advising the outcome only
 - For decisions to decline, reasons are contained in the letter with the Minute outlining issues the Delegate should consider.
 - Determine what information to reflect in Background, Claims, Findings on Material Facts and Reasons elements
 - Check addresses and representative details
- Proof read draft documents and check back to application and file
- Once Case Officer is satisfied with documentation, print and place in internal QA tray
- Update SFC with Processing status 'Internal QA'
- Time to complete this for a 'normal' complexity case: 3 to 4 hours

QA case and feedback

A Case Officer will the conduct a decision QA process:

- Check the draft Minute and Letter for logic, flow or argument
- Identify and mark any typographic or stylistic errors
- Check key dates and facts by reference to source documents, to ensure they are accurate
- Check the application and key documents on file to ensure all relevant factors have been identified and addressed
- Discuss any thoughts and issues with the preparing Case Officer

- Preparing Case Officer considers recommendations and makes changes as appropriate
- Update SFC to reflect processing stage as 'with Directors'. Note all cases currently referred to Director (currently considering other delegations).
- Update SFC as case progresses to more senior delegates.
- Time to complete this for a 'normal' complexity case: 30 to 60 minutes

Support delegate

A Case Officer will then support the Director and Delegate to finalise an application:

- Respond to questions from delegate to clarify the case and proposed approach
- Note where an Advisory Committee has been established, this involves supporting three members of the committee, including an independent committee member who will generally be unfamiliar with the business area and may be unfamiliar with the discretionary powers under the PGPA.
- Seek additional information as requested by the Delegate or Advisory Committee
- Make changes to Minute and Letter as requested by the Delegate or Advisory Committee
- Time to complete this for a 'normal' complexity case: 1-2 hours

Finalise decision

A Case Officer will finalise a decision once a Delegate has signed the authorisation Minute and advice letter:

- Scan the decision and letter to G:Drive and upload a copy to SFC.
- Update SFC with details of the decision and finalise case on SFC.
- Print a copy of the letter to be retained on file.
- Print envelope and send decision to applicant (where necessary with additional 'Information Sheet').
- Send an email to agency outlining decision and attaching a copy of the notification letter. If authorised, request agency to advise when decision is implemented. Update SFC with agency notification details and follow-up dates.
- Ensure all documents are securely stored on the file and G:drive and SFC contain soft copies of all relevant documents.
- Place the file in the DPS Audit tray for checking and finalisation.
- Time to complete this for a 'normal' complexity case: 30 minutes.

Caseload management

A Case Officer will manage their caseload on a daily basis:

- Check whether any correspondence has been received in relation to a case and respond.
- Check that case processing stages are accurately reflected in SFC.
- Identify cases where there is a delay in response or impediment to resolution and follow up as appropriate.
- Establish which cases have priority for action.
- Escalate issues to Director or processing Agency as appropriate.
- Time to complete this for a recommended caseload: 30 minutes per day.
- Note: if more than the recommended caseload is allocated, this step will take longer as Case Officers are likely to have more requests for progress information to respond to and there

will be cases sitting 'on the backburner' that will require more intensive research to check that status is up to date.

Other

These are other things a Case Officer will need to do in managing a caseload:

- Respond to a request for an ADJR statement of reasons. This can involve the creation of a detailed statement of reasons from scratch, have this reviewed by Legal and making recommended changes. There are statutory timeframes for completion of this work. Time can be 1-2 days.
- Consider additional information lodged after decision. DPS policy is that new information provided after a decision has been made should be considered and if it is substantial, new information or points to an error in the original decision, the case should be reassessed on that basis.
- Case Officers will need to review any new information provided, will need to review the original decision and file and form a view as to whether a reconsideration should occur. If no reconsideration is appropriate a letter is sent to the applicant with reasons why the new information does not change the original decision. If a reconsideration is appropriate, the case is enlivened and the consideration process starts again, generally the case is referred to a new Case Officer.
- Consider recommendations from the Ombudsman or Federal Court where reconsideration is recommended or required. Following discussion with Director, these cases are usually referred to another Case Officer.
- Conduct a Case Audit of all finalised cases to ensure all documents are on file and the case is adequately reflected in SFC.
- Close the case in SFC and send the file to RMU for storage.
- Nominal time of 1 hour per week for these activities to reflect the relatively unusual nature of the more time consuming matters.



Standard Operating Procedure

TITLE: SOP – DPS – Act of Grace – Completing the Decline Decision Template RESPONSIBLE TEAM: Discretionary Payments Section (DPS) LOCATION: ED2019-13117	PAGE 1 of
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APPROVAL BLOCK

APPROVALS	NAME	POSITION TITLE	DATE
PREPARED BY:	s 22	Assistant Director	19/06/2018
REVIEWED BY:			
APPROVED BY:			

QUARTERLY REVIEW

DATE DUE	DATE COMPLETED	NAME
19/06/2020		

RELATED PROCEDURES/DOCUMENTS

NAME	LOCATION (HPE CM)
SOP – AoG/WoD Approval – Delegate’s decision email	ED2019-12992 ⁱ
AoG Decline letter – Template	ED2019-8808 ⁱⁱ
SOP – The DPS Quality Assurance (QA) Process	ED2019-9729 ⁱⁱⁱ
DPS Manual – New Starter – Act of Grace	ED2019-9699 ^{iv}

Contents

DEFINITIONS/ACRONYMS	2
OVERVIEW	2
PURPOSE	3
THE TEMPLATE	3
Introduction	3
Decision	3
Relevant Legislation and Authority	3
Relevant Information Considered	3
Claims	4
Findings on Material Questions of Fact	5
Reasons	6
Conclusion	10

DEFINITIONS/ACRONYMS

TERM	DEFINITION
DPS	Discretionary Payments Section
Minister	Minister for Finance
NCE	Non-corporate Commonwealth Entity
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013.</i>

OVERVIEW

Section 65 of the PGPA Act provide authority to the Minister to make decisions regarding requests for act of grace payments. The Discretionary Payments Section (DPS), with the Department of Finance, is responsible for assessing these requests.

Following investigation of a request for an act of grace payment, a Claims Officer or Assistant Director (the writer) prepares a draft decision/recommendation for consideration by the Minister or delegate.

PURPOSE

The purpose of this SOP is to assist the writer to prepare the draft decision/recommendation utilising the AoG Decision Letter Template, and to:

- maintain a high standard of decision documentation
- ensure consistency in decision-making

THE TEMPLATE

The AoG Decline Letter Template is located on CM at ED2019-8808^v.

Introduction

Standard wording is included in the template. The background should consist of one sentence summarising the request at the highest level e.g.

The request relates to the actions of the [NCE] in regard to the liquidation of your company.

Decision

Standard wording is included in the template. There is no need to amend or add any additional wording unless you are partially approving payment

e.g.

I have decided, under section 65(1) of the Public Governance, Performance and Accountability Act 2013 (PGPA Act), to authorise a partial an act of grace payment of [\$] in this instance.

Relevant Legislation and Authority

Standard wording is included in the template. There is no need to amend or add any additional wording.

Relevant Information Considered

Standard wording is included in the template.

List the primary documentation on which the delegate will base his/her decision ([procedural fairness](#)).

Remove any RMG 401 references from the template not relevant to the matter. Add any additional RMG 401 references relevant to the matter.

Add any other legislation, policy or guidance relevant to the matter.

e.g.

I also had regard to the following provisions of the [legislation]:

- *[legislative reference] - services provided by medical practitioners will not be eligible for [benefit] unless the practitioner meets certain training or accreditation standards (such as obtaining specialist qualifications), if they became a medical practitioner on or after [day, month, year].*
- *[legislative reference] – [benefit] is not payable in respect of professional services rendered by a person who is an overseas trained doctor, subject to a number of exceptions. The Minister may, by writing, grant an exemption, which may be made subject to such conditions as the Minister thinks fit.*
- *[legislative reference] - A medical practitioner or a person acting on behalf of the medical practitioner, is guilty of an offence if he/she renders to another person a professional service in respect of which a [benefit] is not payable because of [legislative reference] and did not take steps prior to rendering the service to inform the other person that a [benefit] would not be payable. This is a strict liability offence of one penalty unit.*

In addition I had regard to the Explanatory Statement to the [legislative reference] (ES) which indicates that the purpose of granting exemptions under [legislative reference] is to alleviate medical workforce shortages in recognised district workforce shortage areas; particularly in regional and remote communities, and where there are indigenous populations.

Claims

Succinctly summarise the claimant's claims. Articulate the claims as if the delegate has accepted them as fact. Avoid repeating derogatory language or using inflammatory wording (e.g. you allege).

e.g.

- *Due to your dyslexia, the difference between the [benefit] and [benefit] was not obvious or clear to you when you completed the [title] form in relation to your child. In addition, when you completed the form, you were a first time mother and experiencing considerable stress and anxiety, heightened by the trauma of a miscarriage and your first child's significant health issues. As a result, you completed the wrong sections of the [title] form and, therefore, failed to claim a benefit for which you consider you were otherwise eligible.*
- *You submitted a [title] form within the legislative timeframe and met all the criteria for a [benefit]. Should you have sought assistance from [NCE] at that time, you would have received a [benefit]. However, due to the legislative provisions surrounding the [benefit], you are unable to amend the [title] form and receive a retrospective payment of [benefit] for your child. The legislated timeframe does not contain provisions relating to special circumstances. As a result, the legislation has produced an inequitable result in your situation.*

Succinctly summarise the NCE's claims. Articulate the claims as if the delegate has accepted them as fact.

e.g.

- *Section 60 of the PPL Act provides that a claim for a PLP may be made in the period that starts on the day that is [number] days before the expected date of birth of the child and ends on the day before the child's first birthday. You did not lodge an effective claim during this period. The PPL Act does not permit a determination in relation to a PLP unless an effective claim is made. The legislation has been applied correctly and the outcome is in a large part, the result of the lengthy delay in lodging your claim for a PLP.*
- *You indicated that your dyslexia caused you extreme difficulty in understanding letters and forms. It was therefore your responsibility to seek assistance if required, in order to mitigate any incapacity in this regard.*
- *For the above reasons, DSS does not support your request for an act of grace payment.*

Findings on Material Questions of Fact

Clearly list the information that the delegate is willing to accept as fact in this case. Avoid assumptions, unless informed by other facts or logically based on evidence. Discuss any facts in contention and make a finding. The delegate may make no finding on a fact if it is in contention and it is immaterial to the decision.

e.g.

Findings on material questions of fact

- *For the period [day, month, year to day, month, year], you were employed as a [title] by [NCE]. During this time, you temporarily ceased duties with [employer]. You applied for a position at [NCE] following your graduate year, but were unsuccessful. You subsequently obtained employment as a [title] with [employer].*
- *In [year] you commenced a proceeding in the Supreme Court of [state] against [employer] and the Commonwealth. You sought damages for pain and suffering, and economic loss. The proceeding was resolved prior to hearing by settlement.*

Findings on material questions of fact in contention

- *You state that that the legal providers engaged to represent the Commonwealth, acted unfairly in their role as a party to the litigation and failed to abide by model litigant obligations. In this regard, I understand that [NCE] consulted with the relevant legal firms and reviewed the materials associated with this matter. [NCE] was unable to establish any evidence that the providers engaged in practices inconsistent or unusual in the management of your claim. There is no evidence before me to dispute this conclusion. Therefore, for the purpose of making my decision, I find that the providers acted appropriately in representing the Commonwealth in relation to the Supreme Court of [state] proceedings.*
- *You state that [NCE] failed to fulfil its regulatory obligations during the period of your employment as a [title]. I note that [NCE] declined to provide a submission in*

relation to your request for an act of grace payment, and you provided no evidence to substantiate your claims. I therefore consider that there is insufficient evidence before me to make a finding in this regard.

Reasons

The reasons must explain how the delegate arrived at the decision.

Standard introductory wording summarising the relevant RMG401 provisions is included in the template. Adjust as appropriate.

1. Begin the reasons by summarising in one paragraph the claimant's claims.

e.g.

Your primary claim in support of an act of grace payment is that [NCE] was defective in its administration of your social security entitlements and those of your wife. As a result, you suffered financial loss in the form of additional interest relating to your mortgage.

2. Address each claim objectively, providing reasoning based on your findings of material questions of fact. Write assertively and in a logical format. Use empathetic language where appropriate. Avoid making assumptions.

Address any claims that are out of scope (i.e. state government, private entities etc.).

e.g.

You contend that, although [NCE] did not have responsibility for your loan with [company], it had a responsibility to respond to [company]'s unconscionable conduct under [legislative reference], and misleading and deceptive conduct under [legislative reference].

It is important to note that the act of grace mechanism is limited to consideration of actions taken by non-corporate Commonwealth entities and, as a result, the actions of [company] fall outside the scope of my consideration. Although I have had regard to the documentation in relation to [company], I have limited my consideration of your application to claims against the Commonwealth, specifically [NCE]

3. Discuss the relevant sections of RMG401 and make a finding on each point.

e.g.

Although I accept that [NCE] could have referred you to a social worker at an earlier date for assessment for exemption from the [test], I note that [NCE] referred you to [NCE] in [year] specifically for the purpose of applying for an exemption but you failed to act on this advice. I give weight to [NCE's] letters to you reiterating that you were in receipt of the [benefit] base rate and outlining your responsibilities in relation to the [test]. It is also apparent that information in relation to the [benefit], [test] and exemption was readily available to the public on [NCE's] website. Noting the nature of your contact with [NCE] and [NCE], I consider it was reasonable for these entities to assume that you had received and understood the information provided to you in relation to your [benefit].

Based on the documentation before me, I am unable to establish that [NCE] or [NCE] failed to meet their obligations to you under the [legislative reference] or policy guidance and, as such, I do not accept that an action of the Commonwealth caused an unintended and inequitable result in your case.

I understand that a number of factors, such as the expansion of the mining and gas industries, which contributed to widespread staff shortages within the fishing industry, may have contributed to your financial losses and the emotional stress experienced your family. I also note that potential options, in relation to sublicensing or quota transfer (even if only marginal return was expected), or redirecting efforts to other areas of its business, may have been available to you to mitigate any financial losses you considered would result introduction of the [policy].

The policy development and planning process was not specific to you, rather, as [NCE] advises, many businesses were affected by these events. I understand that at the same time the [NCE] was developing the [policy], it was developing an additional 43 [policy] around Australia. As such, this uncertainty was a systemic industry-wide matter for businesses operating both within [location] and outside of this zone. For the reasons above I do not consider that the policy had an unintended, anomalous, inequitable or otherwise unacceptable impact in your circumstances.

4. Consider whether there are other factors outside of guidance provided by RMG401 that could give rise to special circumstances.

e.g.

I acknowledge the stress of being a new parent and the additional impact that a child with significant health issues, and a miscarriage can cause. I also acknowledge the financial difficulties experienced by you following the birth of your child, which impacted your marriage, and understand that a [benefit] would have provided welcome assistance at the time. Although these factors may, in some cases, weigh in favour of granting an act of grace payment, I do not consider that they outweigh the factors against granting an act of grace payment in this instance.

5. In considering whether special circumstances apply a discussion may be appropriate in relation to:

- The application of the relevant legislation, policy, guidance to the claimant's circumstances.

e.g.

The [benefit] is governed by the [legislative reference], as in force at [day, month, year]. [legislative reference] provides that the Secretary must make a determination in relation to an effective primary claim for a [benefit] for a child. [legislative reference] sets out when a claim for a [benefit] is 'effective' for the purpose of [legislative reference].

[legislative reference] provides that a claim for a [benefit] is not effective unless the requirements of [legislative reference] are satisfied. [legislative reference] confirms that a claim for a [benefit] that is not effective is taken not to have been made.

[legislative reference] sets out the form requirements for a [benefit] claim as follows:

- (1) The claim for parental leave pay must:*
 - (a) be made in the form approved, and the manner required, by the Secretary for that type of claim; and*
 - (b) contain any information...required by the Secretary;*
- and*
- (c) be accompanied by any documents required by the Secretary.*

[legislative reference] provides that a claim for a [benefit] must be made in the period that starts on the day that is [number] days before the expected date of birth of the child, and ends on the day before the child's first birthday.

Your first child was born on [day, month, year]. Accordingly, in order to make a claim for PLP in relation to your first child, you were required to make that claim between [day, month, year and day, month, year] (the 'legislative period'). You and your husband completed [title and title] forms on [day, month, year]. As such, you completed the applicable forms required to make a claim for a [benefit] during the legislative period. However, when completing the applicable forms, you failed to select the relevant fields, and provide the required documentation and information, in order to make a claim for a [benefit]. As a result, you did not submit an effective claim for a [benefit] within the legislative period.

- The broad intention of the relevant legislation applicable to the claimant's circumstances.

e.g.

I understand from the Explanatory Memorandum (EM) that the intent of the [legislative reference] is to ensure that the costs of processing an application are the responsibility of the applicant rather than the general community. As a result, I agree with the [NCE's] position that permitting a refund of the application fee, or waiving/remitting a future application fee in your circumstances, is inconsistent with the intention of the legislation. This is on the basis that each new application requires processing, which would be administered at the expense of the Commonwealth. This weighs against granting an act of grace payment.

- The broad obligations of the NCE.

e.g.

I understand that [NCE] has a range of investigative powers and a broad discretion to decide when to exercise those powers. I note that Information Sheet 515, [NCE's] approach to enforcement, referred to in [NCE's] letter to you, dated [day, month, year], explains the approach taken by [NCE] in responding to breaches of the law. This document outlines the considerations of [NCE] in assessing matters and determining whether a formal investigation should be undertaken, including:

- *the extent of the harm or loss*
- *the benefits of pursuing the misconduct, relative to the expense*
- *the type and seriousness of the misconduct and the evidence available*
- *alternative courses of action*

I note that investigations conducted by [NCE] are for regulatory purposes and generally result in the issuing of infringement notices, civil penalties or in some cases the commencement of prosecutions. [NCE] contends that it does not represent individuals and does not generally seek compensation in relation to a matter unless it would be in the public interest, extending beyond the interest of the affected person. I understand that [NCE] does not settle credit disputes and is unable to:

- *order money to be paid to make good on investment or other losses*
- *make a binding decision about who is right or wrong in a dispute*
- *give legal advice or generally act on behalf of individual consumers*

In addition to the above, under [legislative reference], I note that [NCE] is further restricted in the investigation of complaints by statutory timeframes applying to civil action for loss or damage.

- The weight given to a claim or a finding.

e.g.

I accept that the training delivered by you was of a high standard and in line with the objectives of the [scheme]. I acknowledge that if the request for an act of grace payment is declined, you would have provided these services at no charge. While I recognise that this is not an ideal outcome, I do not consider that this factor outweighs the factors below against granting an act of grace payment. [outline factors]

- Whether the claimant could have taken action to mitigate the circumstances.

e.g.

Although I accept that a reduction of [benefit] would have impacted your financial situation, the allocation of monies to expenses within your household is a personal matter, based on the priorities and needs of your family. The Commonwealth has no involvement in these decisions and therefore cannot be held responsible for any losses incurred as a result.

In addition to the above, there is evidence before me to establish that NCE advised you of the requirement for an amended trust deed or deed or renunciation on [day, month, year]. Had you submitted either of these documents at that time it may have been possible for you to mitigate any potential loss.

I also note that you received a refund of all monies paid towards your debt and a large back payment. You have not indicated why these monies could not be applied to your loan to either fully or partially mitigate any previous losses.

On the basis that the allocation of your income is not within the control of the Commonwealth, and there is insufficient evidence before me to establish that you suffered a loss which you were unable to mitigate, I am not satisfied that special circumstances exist in this instance.

- Alternative resolution options that remain open to the claimant.

e.g.

DHS have confirmed that it is open to you to make an application to the Family Court of Australia or the Federal Circuit Court of Australia, under [legislative reference], for leave for the court to make a departure order. If leave is granted under [legislative reference], the court is then empowered to make a departure order under [legislative reference] in relation to your child support assessment.

As the child support period in question commenced on [day, month, year], you would need to apply to the court before [day, month, year] to have the entire period considered, as the court cannot amend the assessment for any period that is more than seven years prior to the court application being lodged.

It is important to note that the outcome of the court application cannot be guaranteed and may not result in your child support assessment being reduced. However, as there remains an alternative avenue of redress, I do not consider an act of grace payment to be appropriate at this time.

Finish the reasons with a concise concluding statement summarising your argument.

e.g.

For the reasons above, I do not consider that an act of an NCE, the application of Commonwealth legislation or policy or any other matter, has contributed to your situation in such a way as to give rise to special circumstances.

Conclusion

Standard wording is included in the template. Amend as required.

e.g.

While I have empathy for your situation, for the reasons above, I have determined that special circumstances do not exist and therefore an act of grace payment is not appropriate in this instance.



Standard
i Operating Procedure



AoG - Decline letter
- Template.tr5
ii



Standard
iii Operating Procedur



DPS Manual - New
iv Starter - Act of Grace



AoG - Decline letter
- Template.tr5
v

s 22

From: SFC
Sent: Tuesday, 27 February 2018 12:42 PM
Subject: Request for extension of time to reply

Good morning/afternoon (Claimant),

Thank you for contacting the Department of Finance (Finance) Discretionary Payments Section.

Your request for an extension of time has been noted on your file. Please submit your response by (date).

Should you require more time to prepare your response, please contact the Discretionary Payments Section.

Kind regards



Discretionary Payments Section
Risk and Claims Branch
Department of Finance
T: 1800 227 572 E: sfc@finance.gov.au
A: One Canberra Avenue, FORREST ACT 2603

s 22

From: SFC
Sent: Monday, 26 March 2018 8:57 PM
Attachments: 1. Entity Flowchart.pdf; 2. Entity Checklist.docx; 3. Cover Letter.doc; 4. Entity Submissions - Long Form.docx; 5. Schedule of Documents.docx

Dear colleagues

The Department of Finance (**Finance**) has received **an act of grace/a waiver of debt** request. A copy of that request is **attached** for your information.

The **act of grace/waiver of debt** mechanism is intended to be an instrument of last resort. If you are aware of any alternate avenues of redress available to the applicant, please discuss this with Finance, as we may be able to finalise the matter based on this information.

Alternate remedies may include:

- Internal reviews;
- Consideration under other schemes (CDDA, etc.);
- Review by the AAT, Commonwealth Ombudsman or other review body; and/or
- Judicial Review
- Repayment plans (for debts);

Should no alternate remedies be available, Finance wishes to provide an opportunity for your agency to make submissions on this request, including the following information:

- background/history of the matter;
- confirmed quantum;
- whether the claim is supported; and
- any other relevant information.

Action Required

1. Please provide your submissions to Finance by **COB, xxxxxx** or contact Finance to discuss an extension. A template form is **attached** for your assistance.
2. To ensure natural justice, please forward a finalised copy of your submissions to the applicant. A template cover letter to the applicant is **attached** for your assistance with this step.
3. You may also wish to consider whether there is a need to liaise with executive staff, your media team or other relevant stakeholders in anticipation of any sensitivities.

Further Guidance

Finance has published material to assist agencies with their submissions, including detailed information in [Resource Management Guide 401](#) regarding claims for **act of grace/waivers of debt**.

A flowchart and checklist has been **attached** for your information.

Should you have any questions, please contact the Finance Discretionary Payments Section via sfc@finance.gov.au or at:

- First point of contact: S 22 – Assistant Director/Registrar – S 22 or S 22 @finance.gov.au
- S 22 – Registry Team Leader – S 22 or S 22 @finance.gov.au
- S 22 – Director – S 22 or S 22 @finance.gov.au

We ask that these contacts (other than our 1800 number and sfc@finance.gov.au) **not be provided to applicants or their representatives under any circumstances.**

Kind regards



Discretionary Payments Section

Risk and Claims Branch

Department of Finance

T: 1800 227 572 E: sfc@finance.gov.au

A: One Canberra Avenue, FORREST ACT 2603



Standard Operating Procedure

TITLE: Delegate decision email (Act of Grace & Waiver of Debt) SOP NUMBER: RESPONSIBLE TEAM: Discretionary Payments Section	PAGE 1 of
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APPROVAL BLOCK

APPROVALS	NAME	POSITION TITLE	DATE
PREPARED BY:	s 22	Assistant Director	17/09/2018
REVIEWED BY:			
APPROVED BY:			

VERSION HISTORY

VERSION	EFFECTIVE DATE	DESCRIPTION OF CHANGE	NAME
V1	17/09/2018	Initial draft	s 22
V2	13/03/2019	Revised draft	s 22

QUARTERLY REVIEW

DATE DUE	DATE COMPLETED	NAME

RELATED PROCEDURES

NAME	LOCATION

CONTENTS

1. DEFINITIONS/ACRONYMS.....	2
2. OVERVIEW AND PURPOSE.....	2
3. TEMPLATE	2
4. ACT OF GRACE.....	2
5. WAIVER OF DEBT.....	5

1. DEFINITIONS/ACRONYMS

TERM	DEFINITION
Finance	Department of Finance
DPS	Discretionary Payments Section
NCE	Non-corporate Commonwealth Entity
AoG	Act of Grace
WoD	Waiver of Debt

2. OVERVIEW AND PURPOSE

For process efficiency, in July 2018, DPS introduced an email recommendation (delegate decision email), in lieu of a formal decision minute. This email is to be used in circumstances where the recommending officer is of opinion that sufficient grounds exist to warrant granting an act of grace payment or waiver of debt.

The delegate's decision email is to be accompanied by a [decision letter](#). In the event the delegate is in agreement with the recommendation, the delegate will note his or her agreement via return email. This email is to be saved in the claimant's file as a record of the decision. The delegate will also sign the decision letter. This letter is to be provided to the claimant and relevant NCE ([AoG/WoD](#)).

The purpose of this SOP is to provide guidance to assist in the completion of the delegate decision email.

3. TEMPLATES

Delegate decision email templates and sample emails for AoG and WoD are available on the [G-Drive](#).

4. ACT OF GRACE

Introduction

Your email should contain the following wording:

Please see [below a link to the G-Drive containing documentation/attached documentation] and a draft decision letter in relation to the matter of [Salutation, First name, Surname].

[insert link to G-Drive if referred to above]

Recommendation

Your email should contain the following wording:

On the basis of the reasons provided below, I am of the view that special circumstances exist and recommend that you approve an act of grace payment, pursuant to your delegation under subsection 65(1) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), to [Salutation, Surname] for the amount of [\$].

Key issues

Insert dot points or a brief paragraph identifying the key issues.

Example:

In 2017, Dr X performed multiple bariatric procedures and claimed Medicare benefits under a number of Medicare Benefits Schedule (MBS) items, including MBS item no 31584 (reversal bariatric surgery). Dr X's claims for item 31584 were refused by the Department of Human Services (DHS). Although refusal was in line with the relevant legislative provisions, DHS and the Department of Health subsequently found disallowance of claims for MSB item no 31584, when performed with other bariatric procedures, to be contrary to the original policy intent. As a result, the legislation was amended to allow such claims. This amendment was not retrospective.

The Department of Health supports act of grace payments of this type as there are no remedies available to rectify cases affected by this issue in the period July 2017 to 16 November 2017.

Background

Insert one to four succinct paragraphs describing the general circumstances applicable to the claimant.

Example:

DHS conducted a system upgrade in July 2017 to align with changes made to the Health Insurance (General Medical Services Table) Regulations (GMST). This upgrade implemented a legislative change from 2013 that had not previously been administered. The legislative change disallowed a claim for reversal bariatric surgery MBS item number 31584, when performed in conjunction with other bariatric procedures.

Between September 2017 and October 2017 Dr X performed multiple bariatric procedures on 4 of his patients. Dr X subsequently made claims for Medicare benefits, under MBS item no 31584, via the DHS payment system. As a result of the coding within the DHS payment system, Dr X's claims under MBS item 31584 were blocked and he did not receive Medicare benefits for this item.

The practice in which Dr X works utilises the simplified billing method when charging patients that are privately insured. As a billing agent (approved by DHS) the practice acts on behalf of patients to claim un-paid and in-hospital Medicare and private health insurance benefits, as a component of payment for services. As a result of the non-payment of Medicare benefits for MBS item no 31584, Dr X essentially performed services for which he was not remunerated. On 22 February 2018, Dr X submitted a request for an act of grace payment of \$2,683.13, in lieu of the disallowed Medicare benefits.

The Department of Health supports Dr X's request, although at a lower amount than specified, due to the multiple services rule. Dr X noted his subsequent agreement to the payment of the amount specified by the Department of Health (\$1,715.76).

Reasons

Insert one to four succinct paragraphs outlining the factors supporting an act of grace payment.

Example

I consider that Commonwealth legislation had an unintended and inequitable result in Dr X's circumstances which was:

- *specific to Dr X; in that the inability to claim MSB item no 31584 when performing multiple bariatric procedures affected only a small group of practitioners, during a restricted period in 2017*
- *outside the parameters of events for which Dr X was responsible; in that Dr X was prevented, by the legislation and the DHS Payments System, from claiming MBS item no 31584, even though bariatric reversal surgery would justifiably be co-claimed with other bariatric surgery items on the same occasion*
- *consistent with the broad intention of the relevant legislation; in that the GMST was inconsistent with the original policy intent*

There are no other apparent avenues of redress for Dr X, and it appears that his application for an act of grace payment is a last resort in this instance.

Considering the above, I am of the view that special circumstances exist and recommend that you approve an act of grace payment, pursuant to your delegation under subsection 65(1) of the PGPA Act, to Dr X for the amount of \$1,715.76.

Delegate's decision

On receipt of the above email, the delegate will review the recommended decision and provide their approval via return email. A copy of this return email, including the recommendation, must be saved to the applicant's file (TRIM/G-Drive/Paper file) and attached to the SFC database. Sample approval wording is below:

Hi [First name]

Thank you for referring the matter of [Salutation, Surname] to me for decision.

I agree with your reasons and the recommendation provided. I have therefore decided, under subsection 65(1) of the PGPA Act, to authorise an act of grace payment to [Salutation, Surname] for [\$].

Please see attached a signed letter recording my decision.

If the delegate does not agree with the recommendation or requires further information, the delegate will respond via return email with instructions in this regard. Any email correspondence should be saved to the TRIM/G-Drive/Paper file.

5. WAIVER OF DEBT

Introduction

Your email should contain the following wording:

Please see [below a link to the G-Drive containing documentation/attached documentation] and a draft decision letter in relation to the matter of [Salutation, First name, Surname].

[insert link to G-Drive if referred to above]

Recommendation

The recommendation should contain the following wording:

On the basis of the reasons provided below, I recommend that you authorise a waiver of debt, pursuant to your delegation under subsection 63(1) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), for [Salutation, Surname] of [\$].

Key issues

Insert dot points or a brief paragraph identifying the key issues.

Example:

- *The Australian Taxation Office (ATO) revoked X Organisation's Fringe Benefits Tax (FBT) exempt status on 28 March 2017, retrospective to 3 December 2012. The ATO did not notify X Organisation of this revocation.*
- *X Organisation lodged FBT returns in July 2017 for the previous five years which resulted in the Australian Taxation Office (ATO) raising a FTB debt of \$128,411.00.*
- *The ATO accepts that had it taken appropriate steps in relation to the revocation of X Organisation's FTB status, X Organisation would have been in a position to avoid the debt.*
- *X Organisation is not for profit and repayment of the debt may reduce the services they provide to the community.*

Background

Insert one to four succinct paragraphs describing the general and specific circumstances applicable to the claimant.

Example:

X Organisation is a community based organisation providing cultural, educational and welfare services to the X community. It provides emergency relief to the underprivileged and raise funds through the community centre to support the ongoing provision of welfare services.

In failing to notify X Organisation of the change to its FTB status, the ATO denied X Organisation the ability to restructure its remuneration packages during 2013 to 2017 to avoid incurring a FTB debt. On 10 July 2018, X Organisation requested a partial waiver of \$60,238.00 representing the difference between the FBT liability currently due, and the potential liability had the ATO notified X Organisation in 2012.

Reasons

Insert one to four succinct paragraphs outlining the factors supporting a waiver of debt.

Example:

I recommend that you authorise a waiver of debt on the basis that:

- *the debt occurred due to a failure by the ATO to advise X Organisation of the status change*
- *the ATO is unable to release the debt, and non-pursuit may be an unsuitable option in this case*
- *X Organisation has taken steps to mitigate its losses and has entered into a payment arrangement*
- *X Organisation is a not for profit organisation and repayment of the debt would impact negatively on the provision of services to the community*

With the exception of non-pursuit, which appears unsuitable in the circumstances, there are no other apparent avenues of redress for X Organisation, and a waiver of debt is a last resort in this instance.

Delegate's decision

On receipt of the above email, the delegate will review the recommended decision and provide their approval via return email. A copy of this return email, including the recommendation, must be saved to the applicant's file (TRIM/G-Drive/Paper file) and attached to the SFC database.

Sample approval wording is below:

Hi [First name]

Thank you for referring the matter of [Salutation, Surname] to me for decision.

I agree with your reasons and the recommendation provided. I have therefore decided, under subsection 63(1) of the PGPA Act, to authorise waiver of debt for [Salutation, Surname] of [\$].

Please see attached a signed letter recording my decision.



Standard Operating Procedure

TITLE: Delegate decision email (Act of Grace & Waiver of Debt) SOP NUMBER: RESPONSIBLE TEAM: Discretionary Payments Section	PAGE 1 of
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APPROVAL BLOCK

APPROVALS	NAME	POSITION TITLE	DATE
PREPARED BY:	s 22	Assistant Director	17/09/2018
REVIEWED BY:			
APPROVED BY:			

VERSION HISTORY

VERSION	EFFECTIVE DATE	DESCRIPTION OF CHANGE	NAME
V1	17/09/2018	Initial draft	s 22
V2	21/04/2021	Update	s 22

QUARTERLY REVIEW

DATE DUE	DATE COMPLETED	NAME

RELATED PROCEDURES

NAME	LOCATION
Template – Delegate's Decision Email	ED2021-9304

CONTENTS

1. DEFINITIONS/ACRONYMS	2
2. OVERVIEW AND PURPOSE	3
3. TEMPLATE	3
4. ACT OF GRACE.....	3
Background.....	3
Relevant legislation (if applicable)	4
Claimant circumstances	4
NCE submissions.....	4
Reasons	5
Recommendation	5
Delegate's decision	5
5. WAIVER OF DEBT	6
Background.....	6
Relevant legislation (if applicable)	6
Claimant circumstances	6
NCE submissions.....	6
Reasons	7
Recommendation	7
Delegate's decision	7
APPENDIX 1: TEMPLATE SAMPLE	8

1. DEFINITIONS/ACRONYMS

TERM	DEFINITION
AOG	Act of Grace
DPS	Discretionary Payments Section
Finance	Department of Finance
HPE CM	HPE Content Manager
NCE	Non-corporate Commonwealth Entity
WOD	Waiver of Debt

2. OVERVIEW AND PURPOSE

For process efficiency, in July 2018, DPS introduced an email recommendation (Delegate's Decision Email), in lieu of a formal decision minute. This email is to be used in circumstances where the recommending officer is of opinion that sufficient grounds exist to warrant granting a full act of grace (AOG) payment/waiver of debt (WOD).

The delegate's decision email is to be accompanied by a [decision letter](#). In the event the delegate is in agreement with the recommendation, the delegate will note his or her agreement via return email. This email is to be saved in the Requestor's HPE CM file as a record of the decision. The delegate will also sign the decision letter. This letter is to be provided to the Requestor and relevant NCE.

NOTE: *In situations where the decision to approve is in conflict with the opinion expressed by the NCE in the NCE submission, the Claims Officer is to provide a short summary of the reasons for approval in the email advising the NCE of the decision.*

The purpose of this SOP is to provide guidance to assist Claims Officers in the completion of the delegate decision email.

3. TEMPLATE

A template for the delegate decision email is available at ED2021-9304. A screen shot example of the template is available [here](#).

4. ACT OF GRACE

Background

Insert one to three succinct paragraphs describing the general circumstances applicable to the Requestor.

Example:

The Department of Human Services (DHS) conducted a system upgrade in July 2017 to align with changes made to the Health Insurance (General Medical Services Table) Regulations (GMST). This upgrade implemented a legislative change from 2013 that had not previously been administered. The legislative change disallowed a claim for reversal bariatric Medicare Benefits Schedule (MBS) item number 31584, when performed in conjunction with other bariatric procedures.

Subsequent to the system change, DHS and the Department of Health agreed that the technical wording of the legislation was contrary to the original policy intent, in that reversal bariatric surgery (MBS item 31584) would justifiably be co-claimed with other bariatric surgery MBS items on the same occasion. As a result DHS and the Department of Health formed an intention to change the legislation. In November 2017 an interim solution was introduced but was not retrospective. As of July 2018 a permanent solution applied, again not retrospective.

The Department of Health supports act of grace payments of this type as there are no remedies available to rectify cases affected by this issue in the period July 2017 to 16 November 2017.

Relevant legislation (if applicable)

Insert a brief description of the legislation relevant to the matter.

Example:

Schedule 1, Part 2, Division 2.45 of the GMST specifies the ability to claim under item number 20792 anaesthesia for bariatric surgery in a patient with clinically severe obesity.

Requestor's circumstances

Insert one to three succinct paragraphs describing the specific circumstances applicable to the Requestor.

Example:

Between July 2017 and October 2017 Dr X performed multiple bariatric procedures on 6 patients. Dr X subsequently made claims for Medicare benefits, under MBS item no 31584, via the DHS payment system. As a result of the coding within the DHS payment system, Dr X's claims under MBS item 31584 were blocked and she did not receive Medicare benefits for this item.

The practice in which Dr X works utilises the simplified billing method when charging patients that are privately insured. As a billing agent (approved by DHS) the practice acts on behalf of patients to claim un-paid and in-hospital Medicare and private health insurance benefits, as a component of payment for services. As a result of the non-payment of Medicare benefits for MBS item no 31584, Dr X essentially performed services for which she was not remunerated. On 13 March 2020, Dr X submitted a request for an act of grace payment of \$3,000, in lieu of the disallowed Medicare benefits.

NCE submissions

Insert a paragraph outlining the submissions by each NCE in relation to the Requestor's circumstances.

Example:

The Department of Health supports Dr X's request, although at a lower amount than specified, due to the multiple services rule. Dr X noted her subsequent agreement to the payment of the amount specified by the Department of Health (\$1,500).

Reasons

Insert one to three succinct paragraphs outlining the factors supporting an act of grace payment.

Example

I consider that Commonwealth legislation had an unintended and inequitable result in Dr X's circumstances which was:

- *specific to Dr X; in that the inability to claim MSB item no 31584 when performing multiple bariatric procedures affected only a small group of practitioners, during a restricted period in 2017*
- *outside the parameters of events for which Dr X was responsible; in that Dr X was prevented, by the legislation and the DHS Payments System, from claiming MBS item no 31584, even though bariatric reversal surgery would justifiably be co-claimed with other bariatric surgery items on the same occasion*
- *consistent with the broad intention of the relevant legislation; in that the GMST was inconsistent with the original policy intent*

In addition, I note that the GMST was subsequently amended to enable practitioners to claim Medicare benefits for reversal bariatric surgery, when claimed in conjunction with other bariatric procedures.

I understand that there are no other apparent avenues of redress for Dr X, and that her application for an act of grace payment is a last resort in this instance.

Recommendation

Insert a short recommendation.

Example:

Considering the above, I am of the view that special circumstances exist and recommend that you approve an act of grace payment to Dr X for the amount of \$1,500.

Delegate's decision

On receipt of the above email, the delegate will review the recommended decision and provide their approval via return email. A copy of this return email, including the recommendation, must be saved to the Requestor's file in HPE CM.

If the delegate does not agree with the recommendation or requires further information, the delegate will response via return email with instructions in this regard. Any email correspondence in this regard should be saved to the Requestor's HPE CM file.

5. WAIVER OF DEBT

Background

Insert one to three succinct paragraphs describing the general circumstances applicable to the Requestor.

Example:

X Organisation is a community based organisation providing cultural, educational and welfare services to the X community. They provide emergency relief to the underprivileged and raise funds through the community centre to support the ongoing provision of welfare services.

Relevant legislation (if applicable)

Insert a brief description of the legislation relevant to the matter.

Example:

Part XIA, Division 2, 135B of the Fringe Benefits Tax Assessment Act 1986 (FBT Act) outlines the conditions that must be satisfied in relation to an exemption from record keeping regarding FBT.

Requestor's circumstances

Insert one to three succinct paragraphs describing the specific circumstances applicable to the Requestor.

Example:

X Organisation's Fringe Benefits Tax (FBT) exempt status was revoked on 30 March 2020, retrospective to 3 December 2019. X Organisation lodged FBT returns in July 2020 for the previous five years which resulted in the Australian Taxation Office (ATO) raising a FTB debt of \$150,000.

The ATO did not notify X Organisation of the change to its FTB status, denying X Organisation the ability to restructure their remuneration packages during 2015 to 2019 to avoid incurring a FTB debt. On 29 July 2019, X Organisation requested a partial waiver of \$30,000 representing the difference between the FBT liability currently due, and the potential liability had the ATO notified X Organisation in 2014.

NCE submissions

Insert a paragraph outlining the submissions by each NCE in relation to the Requestor's circumstances.

Example:

The ATO supports X Organisations request for a waiver of debt on the basis that:

- *the debt occurred due to a failure by the ATO to advise X Organisation of the status change*
- *the ATO is unable to release the debt, and non-pursuit may be an unsuitable option in this case*
- *X Organisation has taken steps to mitigate its losses and has entered into a payment arrangement*
- *X Organisation is a not for profit organisation and repayment of the debt would impact negatively on the provision of services to the community*

Reasons

Insert one to three succinct paragraphs outlining the factors supporting a waiver of debt.

Example:

The ATO accepts that had it taken appropriate steps in relation to the revocation of X Organisation's FTB status, X Organisation would have been in a position to avoid the debt. X Organisation is not for profit and repayment of the debt may reduce the services they provide to the community. With the exception of non-pursuit, which appears unsuitable in the circumstances, there are no other apparent avenues of redress for X Organisation, and a waiver of debt is a last resort in this instance.

Recommendation

Amend the standard text as applicable.

Example:

Considering the above, I recommend that you approve a partial waiver of debt for X Organisation of \$30,000.

Delegate's decision

On receipt of the above email, the delegate will review the recommended decision and provide their approval via return email. A copy of this return email, including the recommendation, must be saved to the Requestor's file in HPE CM.

If the delegate does not agree with the recommendation or requires further information, the delegate will respond via return email with instructions in this regard. Any email correspondence in this regard should be saved to the Requestor's HPE CM file.

APPENDIX 1: TEMPLATE SAMPLE

SURNAME First name - Delegate decision email - Message (HTML)

File Message Insert Options Format Text Review Tell me what you want to do...

Send and File to MIE Insert from MIE Paste Copy Format Painter Cut Clipboard Basic Text Address Book Names Attach File Attach Item Signature Follow Up High Importance Low Importance Advanced TITUS

From s 22

To...

Cc...

Subject SURNAME First name - Delegate decision email

Hi [first name],

Please find at [HPE CM Record Number of file] documentation and a decision letter [HPE CM Record Number of decision letter] in relation to [Salutation, First name, Surname]. The decision letter is supported by the reasons below:

Background

Relevant legislation

[Salutation, Surname's] circumstances

NCE submissions

Reasons

I understand that there are no other apparent avenues of redress for [Salutation Surname] and that [his/her] application for an act of grace payment is a last resort in this instance.

Recommendation

Considering the above, I am of the view that special circumstances exist and recommend that you approve an act of grace payment to [Salutation Surname] of [\$].

Or

Considering the above, I recommend that you approve a waiver of debt for [Salutation Surname] of [\$].



Australian Government
Department of Finance

ACT OF GRACE

Training manual

s 22

sfc@finance.gov.au



Discretionary Payments Section – AOG- Training Manual

TITLE: Discretionary Payments Section Claims Officer Training Manual RESPONSIBLE TEAM: Discretionary Payments Section (DPS) LOCATION: ED2019-9699	PAGE 1 of
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APPROVAL BLOCK

APPROVALS	NAME	POSITION TITLE	DATE
PREPARED BY:	§ 22	Assistant Director, Quality Assurance	06/05/2019
REVIEWED BY:			
APPROVED BY:			

QUARTERLY REVIEW

DATE DUE	DATE COMPLETED	NAME
06/05/2020	12/02/2021	§ 22
	19/04/2021	§ 22 (update)

RELATED PROCEDURES/DOCUMENTATION

NAME	LOCATION
DPS Induction Training – Session 1 – DPS Introduction – PowerPoint slides	ED2021-4221
DPS Induction Training – Session 3 – Act of Grace – PowerPoint slides	ED2021-9206
DPS Manual – DPS Induction Training – Presenter Manual	ED2021-9243
SOP – AOG - Completing the decline decision template	ED2019-13117
SOP – DPS - Approval recommendations – Preparing the Delegate’s Decision Email	ED2019-12992
SOP – The DPS Quality Assurance (QA) Process	ED2019-9729
SOP – Registry – Various	E2019/54-08

AOG email templates	E2019/60-06
AOG decision templates	E2019/60-08
Discretionary Payments Section (DPS) resources	E2019/77
Non-corporate Commonwealth entity (NCE) specific resources	E2019/78

Contents

OVERVIEW AND PURPOSE	4
DEFINITIONS/ACRONYMS	4
ICONS	5
KEY POINTS	5
DPS	6
THE ROLE OF THE NCE	7
HISTORY	7
LEGISLATION	8
AOGVS EX-GRATIA	8
DELEGATIONS	9
PROCESS	10
TEMPLATES	11
SAMPLE DECISION LETTER WORDING	11
GUIDANCE	11
Estimates Memorandum	11
Finance circulars	11
RMG 401	13
Relevant case law	15
ADMINISTRATIVE LAW	21
APPEAL MECHANISMS	22
Internal Review	22
Commonwealth Ombudsman	22
Federal Circuit Court and Federal Court	22
SIGNIFICANT MATTERS	24
PRIVACY	25
TAX FILE NUMBERS	28
CONFLICT OF INTEREST	28
BIAS	29
MENTAL HEALTH	30

INAPPROPRIATE BEHAVIOUR.....	30
RESOURCES	30
AOG resources.....	30
Writing resources	31

OVERVIEW AND PURPOSE

The purpose of this manual is to assist Claims Officers to assess requests for act of grace payments and prepare draft decision documentation for consideration by the Minister or relevant delegate.

DEFINITIONS/ACRONYMS

TERM	DEFINITION
AAO	Administrative Arrangements Orders
AOG	AOG
ADJR Act	<i>Administrative Decisions (Judicial Review) Act 1977</i>
Advisory Committee	The Advisory Committee is convened to provide recommendation to the Finance Minister in relation to matter above \$500,000. It comprises of representatives from Infrastructure, Finance and the relevant Agency
Agency	A Commonwealth Government Agency/Department. Can be a Non-Corporate Commonwealth Entity (NCE), Corporate Commonwealth Entity (CCE) or a Commonwealth Company.
Agency Portal	A portal where Agencies can login to E-claims to provide information and/or submissions regarding requests for AOG or waiver of debts.
Audit Act	<i>Audit Act 1901</i>
Authorised Representative	A person or organisation authorised to act on behalf of a Requestor or an Organisation. Authorisation may be comprehensive or may be limited to specific Request(s), and may have limited duration.
CDDA	Compensation for Detriment caused by Defective Administration
Clause Bank	Standardised text that can be used to populate Decision or Finalisation letter templates, email templates etc.
CM	HPE Content Manager
Decision	A decision that has been made by the Decision Maker/Delegate.
Decision Types	<ul style="list-style-type: none"> • Approved – A Request for AOG is approved for: <ul style="list-style-type: none"> ○ the full amount requested by the Requestor, or

	<ul style="list-style-type: none"> ○ an alternative amount <u>more than</u> the original amount requested by the Requestor ● Partially Approved – A Request for AOG is approved for <u>less than</u> the amount requested by the Requestor. ● Not Approved - A Request for AOG is declined.
Decision Maker	The Minister for Finance and the Public Service or his/her delegates
DPS	Discretionary Payments Section
DPS CRM	The Client Relationship Management system for DPS.
FC	Federal Court
FCC	Federal Circuit Court
Finance	Department of Finance
FMA Act	<i>Financial Management and Accountability Act 1997</i>
FMA Regulations	<i>Financial Management and Accountability Regulations 1997</i>
LAB	Legal Assurance Branch
NCE	Non-corporate Commonwealth entity
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
PGPA Rule	<i>Public Governance, Performance and Accountability Rule 2014</i>
Procedural fairness	The requirement to provide opportunity for the claimant to comment on adverse information that is credible, relevant and significant ¹
Requestor	An individual, group, company or other body who submits an application for an AOG payment
Registry Team	The DPS Team with registry responsibilities.
RMG 401	<i>Requests for discretionary financial assistance under the Public Governance, Performance and Accountability Act 2013 - Resource Management Guide No. 401</i>
SFC Database	Special Financial Claims (SFC) Database

ICONS

TERM	DEFINITION
	Special Financial Claims (SFC) Database or DPS CRM

KEY POINTS

¹ *Kioa and Others v West and Another* (1985) 159 CLR 550 at 629.

- Section 65 of the [PGPA Act](#) provides the decision maker, with an unfettered discretion to approve a singular or periodic AOG payment to a person or body (e.g. company), where special circumstances exist.
- AOG payments are ‘special gifts’ of money by the Commonwealth which fall outside statutory or legal entitlement.
- There is no time limit on lodging a request for an AOG payment.
- AOG payments are permissive, in that the decision maker is able to approve a payment but is not obliged to do so.
- AOG payments extend the body of the law and may be approved where the Commonwealth considers it has a moral, rather than a legal, obligation to pay.
- Historically, around 28% of the requests received under the AOG mechanism are approved (26%) or partially approved (2%)
- Special circumstances are for the decision maker to determine. Each case is considered on its own merits. Even if special circumstances exist, the decision maker is not obliged to authorise an AOG payment.
- While, AOG decisions hold no precedent value, there is an expectation of consistency in decision making.
- AOG payments are debited against the annual appropriation of the relevant NCE. Therefore, they are generally only applicable to the actions of, and/or legislation/policy administered by, an NCE and/or its contracted providers.
- The AOG mechanism is not used to reconsider decisions made by NCEs under the [CDDA](#) scheme.
- AOG payments are not to be used as an alternative to other avenues of redress.
- Finance may reconsider an AOG decision on the basis of error of fact or law, or on the provision of new evidence.
- AOG decisions are subject to administrative review by the Commonwealth Ombudsman, Federal Circuit Court and Federal Court.
- [Procedural fairness](#) applies to AOG decisions.²

DPS

DPS employs a diverse range of ongoing, non-ongoing and contract staff of varying age groups, with different backgrounds, work/personal experience, and cultural/religious beliefs.

DPS engages in regular case discussions where staff of all levels are invited to provide opinion on the circumstances surrounding individual or groups of AOG requests. Respectful debate is encouraged in relation to case specific or topical issues in order to tease out relevant considerations and potential outcomes.

Due to the discretionary nature of AOG payments, it is important that staff identify and openly discuss any personal biases to ensure that they do not impact on ability to make objective recommendations/decisions. On occasion, it may be appropriate for a staff member to abstain from recommendation or decision in relation to a matter for which they hold bias.

² [Natural justice and ‘act of grace’ payments](#) – Australian Government Solicitor – 4 March 2009

DPS seeks to work collaboratively with NCEs to facilitate an outcome suitable to the claimant's circumstances. The decision maker takes into account both the views and expertise of the NCE, and the circumstances of the claimant in making a decision. The Claims Officer and decision maker must treat all parties with respect and courtesy consistent with the [APS Values and Code of Conduct](#). This extends to the language used in decision documentation.

Although decisions made in relation to requests for AOG payments hold no precedent value, DPS places high importance on the quality and consistency of decisions. For this reason decisions are subject to one or more quality assurance reviewsⁱ prior to determination.

THE ROLE OF THE NCE

NCEs are encouraged to provide submissions to finance in response to requests for AOG payments containing the following information:

- Whether any alternative avenues of redress exist.
- Extracts and discussion relating to the intent of relevant legislation or policy.
- Specific details of any actions taken by the NCE which may have directly contributed to the claimant's situation.
- History and background of the matter, including the outcomes of any avenues of redress or appeal.
- Any perceived anomaly in the law and an estimate of the number of people/organisations affected.
- Any other information relating to the existence of special circumstances.
- Whether the NCE supports the request for an AOG payment and why.

NCEs must provide a copy of their submission to the claimant for comment.

NCEs are required to arrange the payment of any monies authorised by the decision maker under the AOG mechanism.

HISTORY

The legislative power enabling the Commonwealth to make an AOG payment originated in the Audit Act. Although the term 'act of grace' was not present in the Audit Act until [1979](#), the [Parliament of Australia Database](#) holds evidence of the Commonwealth's consideration of AOG payments as far back as 1909.

Section 34A of the Audit Act:

- permitted the decision maker to authorise an AOG payment where it was reasonable to do so because of special circumstances; and
- established a committee to advise the decision maker on AOG requests over a specified amount.

In 1993 amendment was made to section 34A to:

- allow the decision maker to attach directions, terms and conditions to AOG payments; and
- require repayment for non-compliance with the directions, terms and conditions.

The Audit Act was repealed in 1998 and replaced by the [FMA Act](#) and [FMA Regulations](#). The provisions relating to AOG remained largely unchanged.

From December 1988 to October 1995, the Minister for Finance trialled the devolution of responsibility for AOG payments by delegating power to agency heads to approve payments up to \$50,000, with the requirement to consult Finance prior to decision.³

Following evaluation of the trial in 1991-92 Finance provided a report to a Senate committee opposing permanent devolution of the AOG power. The Senate committee suggested a lower level of devolution \$5,000. However, on introduction of the CDDA scheme in 1995, requests for compensation for the effects of defective administration were no longer considered under the AOG power and the Minister for Finance revoked the agency head delegations.

In 2014 the PGPA Act and PGPA Rule replaced the FMA Act. Again, the provisions relating to AOG remained largely unchanged, with the exception of a new requirement that approval of an AOG payment be in writing.

LEGISLATION

[Section 65](#) of the PGPA Act provides:

- the decision maker may, on behalf of the Commonwealth, approve payment/s to a person because of special circumstances, even though the payment/s is not authorised by law or required to meet a legal liability.
- AOG payments must be made from money appropriated by Parliament. Payment is generally debited from an NCE's annual appropriation, providing that the matter relates to the administration of the NCE.
- a condition may be attached to an AOG payment. If the condition is not met, the Commonwealth may recover the payment.

[Section 24](#) of the PGPA Rule requires the Finance Minister to:

- establish an advisory committee consisting of representatives from Finance, the Infrastructure Department and the relevant NCE; and
- consider a report by this committee before approving AOG payments over \$500,000.

AOGVS EX-GRATIA

AOG payments differ from ex-gratia payments in that:

³ [To compensate or not to compensate?](#) Own motion investigation of Commonwealth arrangements for providing financial redress for maladministration -

- ex-gratia payments are made to restore equity to groups of people. AOG payments are used to compensate an individual in special circumstances where there is a moral responsibility to do so;
- ex-gratia payments are based on the Constitutional power of Government. AOG payments are governed by the PGPA Act; and
- ex-gratia payments are approved by the Prime Minister and/or Cabinet. AOG payments are approved by the Minister for Finance and the Public Service or his/her delegates⁴.

DELEGATIONS

Section 65 (1) of the PGPA Act contains two steps. The first step is to consider whether it is appropriate that an AOG payment be made by reason of special circumstances and if not, decline the application on this basis. In the event that special circumstances exist, the second step is to decide whether to authorise an AOG payment. On this basis delegates may make decisions to decline AOG payment s regardless of the monetary value assigned to their delegation (see [Ashby v Commonwealth](#))

The majority of requests for AOG payment s are determined by Finance EL and SES staff:

- \$10,000 - Assistant Director, DPS
- \$20,000 - Director, DPS
- \$50,000 - AS, Risk and Claims Branch
- \$100,000 -
 - First Assistant Secretary, Procurement and Insurance Division
 - Deputy Secretary, Commercial and Government Services Group
 - Secretary, Finance

Recommendations for approval over \$100,000 must be determined by the Minister for Finance, or the Assistant Minister for Finance, Charities and Electoral Matters.

Under section 24 of the PGPA Rule, recommendations for approval over \$500,000 must be referred to an Advisory Committee consisting of persons occupying positions specified by the PGPA Rule. The relevant Minister must consider the recommendation of the Advisory Committee when making a decision. DPS provides secretariat services to the Advisory Committee.

The Department of Finance [Delegations Instrument](#) at Part 11, outlines the delegations in relation to act of grace. All delegates can decline an application for waiver of debt, regardless of the claimed amount.⁵

⁴ The Senate Legal and Constitutional Affairs References Committee – Review of Government Compensation Payments - [Chapter 3 – Other government compensation mechanisms](#)

⁵ 8 December 2008 - [Finance Delegations Advice](#)
17 March 2017 [AGS Delegations and CCEs](#)

PROCESS

1. An individual, group, company or other body submits a request for an AOG payment directly to Finance or via an NCE. The request is received by email (sfc@finance.gov.au) or post.ⁱⁱ
2. For privacy and disclosure reasons, Finance requires completion of an [Application for an AOG payment form](#). Attachments are permitted.
3. The Registry Team within DPS reviews the application form and attachments and requests further information from the claimant as necessary.ⁱⁱⁱ
4. The Registry Team may finalise^{iv} a matter if:
 - a. alternative remedies are available^v
 - b. it does not relate to the actions of an NCE or the impact of Commonwealth legislation or policy.^{vi}
 - c. the CDDA scheme is applicable^{vii} or another reason.
5. The Registry Team identifies the NCE/s to which the request relates. The Registry Team forwards the application form and attachments to the NCE with a request for agency submission^{viii}. The NCE is given four weeks to reply. The Registry Team will generally approve an extension of time if requested.^{ix}
6. For [procedural fairness](#), the NCE provides a copy of its submission to the claimant.^x In some circumstances, this function may be performed by the Registry Team.^{xi} The claimant is given four weeks to comment on the NCE submission. The Registry Team will generally approve an extension of time if requested.^{xii}
7. If the claimant submits further information, the Registry Team provides the information to the NCE for comment. The NCE is given four weeks to reply. The Registry Team will generally approve an extension of time if requested.^{xiii}
8. When either the claimant or the NCE declines to provide further information, the matter is ready for drafting. The Registry Team allocates the matter to a Claims Officer for consideration.^{xiv}
9. The Claims Officer reviews the matter and determines whether any further information is required from the claimant or NCE. If so, the Claims Officer requests this information and conducts any required follow up.
10. If no further information is required, the Claims Officer prepares a recommendation email and notification letter (approval)^{xv} or a draft decision letter (partial approval or decline)^{xvi} for the relevant decision maker.⁶
11. Prior to sending the documentation to the decision maker, the Claims Officer refers the draft recommendation, notification or decision letter to a supervisor, the Assistant Director, Quality Assurance, or a peer for quality assurance.^{xvii}
12. The supervisor, Assistant Director, Quality Assurance or peer reviews the documentation and provides feedback to the Claims Officer.^{xviii}
13. The Claims Officer incorporates the feedback and refers the documentation to the relevant decision maker for decision. If the decision maker is the Finance Minister or Assistant Finance Minister, a [Ministerial Submission](#) is required in addition to the decision documentation.

⁶ Where a Claims Officer's recommendation differs from the recommendation of an NCE, the Claims Officer may contact the NCE, prior to decision, to advise the possibility that the delegate's decision may be at odds with the NCE recommendation.

14. The decision maker reviews the documentation and either signs the decision letter (with minor amendment if applicable) or refers the matter back to the Claims Officer with feedback. This process continues until the decision maker signs the decision letter and provides it to the Claims Officer.
15. The Claims Officer scans the signed decision letter and places it on the G-Drive or CM file. The Claims Officer advises the claimant^{xxix} and relevant NCEs^{xx} of the decision. The Claims Officer provides the claimant with appeal rights.^{xxi}
16. The Claims Officer finalises the matter on the SFC Database.^{xxii}
17. The Claims Officer submits the paper or CM file for audit.^{xxiii}
18. The Registry Team audits the paper or CM file and transfers the matter from ongoing to completed, in the G-Drive or CM.

TEMPLATES

AOG templates are located on CM at ED2019-8807^{xxiv} (Approval) and ED2019-8808^{xxv} (Decline).

Approval recommendations are to be sent to the delegate via email. A SOP including instructions for preparing the delegate's decision is email is located on CM at ED2019-12992.^{xxvi} The template is on CM at ED2019-8689^{xxvii}. A sample delegate's decision email is located on CM at ED2019-8688^{xxviii}.

Decline recommendations are sent to the delegate via an email link. The template is located on CM at ED2019-12994^{xxix}. A SOP including instructions for completing the AOG decline decision template^{xxx} is located on CM at ED2019-13117.⁷

SAMPLE DECISION LETTER WORDING

Example text for decision documentation is located on CM at ED2019-7811^{xxxi}.

GUIDANCE

Estimates Memorandum

In 1995 Finance noted in an Estimates Memorandum (1995/42) that it would not consider a request for an AOG payment where the request was previously rejected by an NCE under the CDDA scheme and relates to defective administration.

Finance circulars

In November 1997, Finance issued Finance Circular to Commonwealth agencies. This document noted that AOG payments were 'special gifts' of money by the Commonwealth that fell outside statutory entitlements, government approved schemes (such as grants in aid), and payments by the Commonwealth under legal liability (including settlement of legal claims).



Standard
7 Operating Procedures

The circular further noted that AOG payment s could be made to anyone, for any reason, but generally provided fair and just remedies to persons unfairly disadvantaged by government activities, with no other avenue for redress.

Further Finance Circulars, issued in 2006⁸ and 2009⁹, noted:

- The AOG power is afforded to the Minister. The Minister is interchangeable for legal purposes, with the Special Minister of State.¹⁰
- The AOG power is available to provide a remedy in respect of all NCEs. CCEs have a separate legal identity to the Commonwealth and therefore are not generally subject to AOG payment s.
- There is no time limit on submitting an AOG request.
- There is no automatic entitlement to an AOG payment, the decision maker is able to approve a payment, but is not obliged to do so.
- The AOG mechanism is designed to take into consideration circumstances specific to individual persons or bodies, each request is considered on its own merits.
- Guidance aims to achieve consistency and impartiality in evaluating the merits of different circumstances. It is not prescriptive.
- AOG payment s were appropriate as a last resort. However, the AOG mechanism may be used where barriers exist that prevent the pursuit of alternative remedies and there is an overarching moral obligation to make an AOG payment.
- Decisions are made at the discretion of the decision maker. Special circumstances are not defined and are for the decision maker to assess. Generally they are considered to apply where:
 - a loss has arisen from an alleged act or omission on the part of an agency/agent of the Australian Government, the agency/agent was the direct cause of the loss and the loss was not a result of the initiation of processes consistent with the agency/agent's responsibilities under the [AAO](#). (e.g. where the agency/agent is obligated to initiate prosecution against a claimant.)
 - Commonwealth legislation had an unintended, anomalous, inequitable or otherwise unacceptable result in the claimant's circumstances which was specific to the claimant, outside the claimant's control and consistent with the legislative intent.
 - prospective legislative change is proposed to correct an anomaly or unintended effect which could be applied to the claimant.
- AOG payment s should not be used:
 - to compensate a person or body for a debt owed to the Commonwealth. An AOG payment may be approved where a claimant has paid a debt that would have been waived under the FMA Act if it still existed.
 - to address legal claims for monetary compensation. These matters can be considered under the [Legal Services Directions](#).
 - to address APS employment matters. These matters can be considered by the agency head under [section 73 of the Public Service Act 1999](#).

⁸ [Finance Circular 2006/05 – Discretionary Compensation Mechanisms](#)

⁹ [Finance Circular 2009/09 - Discretionary Compensation and Waiver of Debt Mechanisms](#)

¹⁰ Section 19A of the [Acts Interpretation Act 1901](#)

- to supplement payments set by specific legislation which caps the amount a beneficiary may receive, in circumstances where the legislation expresses clear intention that these caps not be exceeded.
- where the AOG payment would be applied to all or most beneficiaries under the legislation on an ongoing basis, or for a significant period of time.
- where the AOG payment would have the effect of establishing a payment scheme for a group of claimants, without regard to the merits of each individual's circumstances. These matters may be considered by Parliament as an ex-gratia payments under [section 61 of the Constitution](#).
- where the matter relates:
 - to private circumstances, outside the sphere of Commonwealth administration or legislation,
 - to a judicial decision, on the basis of the doctrine of [separation of powers](#)
 - to a change in criteria which resulted in ineligibility for a benefit previously received, on the basis that legislation is [progressive](#)
- AOG payment s can cover both economic and non-economic loss. Claims regarding loss which would normally relate to CDDA, can sometimes be considered under the AOG mechanism where a moral, rather than administrative reason, for payment exists. For example, where the agency has determined that no defective administration exists but legislative intent raises a moral ground for payment.
- The AOG Power is not used to provide remedies for major legislative or program deficiencies. These provisions should be rectified through statutory remedies with retrospective effect.
- The decision maker determines the amount of payment having regard to the circumstances of the request and, as far as possible, restoring the claimant to the position he/she would have been in had the circumstance not arisen. Considerations:
 - any benefit the claimant may have been entitled to had the special circumstances not arisen
 - any claimed financial loss
 - the extent to which the claimant contributed to the loss, and what steps they took to minimise or contain the loss
 - any interest or taxation implications
- Procedural fairness is afforded to claimant s prior to decision
- A deed of release and indemnity may be appropriate
- Reconsideration will only be conducted if pertinent new evidence/facts/arguments are presented
- Decisions made under the AOG mechanism do not establish precedents

RMG 401

The current guidance for decision makers is [RMG 401](#). Where the RMG differs from the Finance Circulars above, the RMG takes precedent.

RMG 401 provides the following guidance to decision makers in considering requests for AOG payment s

9. *'Special circumstances' and 'appropriate' are not defined in the PGPA Act and are for the decision-maker to assess.*
10. *Examples of special circumstances that may make it appropriate to approve an AOG payment include instances when:*
- *an act of a non-corporate Commonwealth entity (NCE) has caused an unintended and inequitable result to a person seeking a payment*
 - *Commonwealth legislation or policy has had an unintended, anomalous, inequitable or otherwise unacceptable impact on the claimant's circumstances, and those circumstances were:*
 - *specific to the claimant*
 - *outside the parameters of events for which the claimant was responsible or had the capacity to adequately control*
 - *consistent with what could be considered to be the broad intention of the relevant legislation*
 - *the matter is not covered by legislation or specific policy, but the Commonwealth intends to introduce such legislation or policy, and it is considered desirable in a particular case to apply the benefits of the relevant policy prospectively*
11. *The Commonwealth uses contracted providers for some services. The actions of contracted providers are not within the scope of the CDDA Scheme. Where a person alleges that the actions of a contracted provider may have caused financial detriment to them, the matter may be considered under the AOG mechanism.*
12. *AOG payments may not be approved, for example, when:*
- *The proposed payments would have the effect of supplementing capped payments set by other specific legislation, in circumstances where that legislation expresses the clear intention that particular payment levels cannot be exceeded in any circumstances.*
 - *The proposed payments would have the effect of establishing a payment scheme to apply to a group of individuals, without considering the merits of their requests on an individual basis.*
13. *Payments under the AOG mechanism must be made from money appropriated by the Parliament. Therefore, as a matter of practice, the AOG mechanism is generally not available:*
- *when a request has arisen from private circumstances outside the sphere of Commonwealth administration, there has been no involvement of an agent or NCE of the Commonwealth and the matter is not related to the impact of any Commonwealth legislation*

- *in respect of a matter that relates solely to the involvement of corporate Commonwealth entities which have a separate legal identity to the Commonwealth*
- *to compensate a person or body for a debt owed to the Commonwealth*
- *to compensate a person for a loss arising from a judicial decision not involving the executive arm of the Government.*

In addition to the Finance Circulars above, RMG 401 notes:

- Prior to lodging a request for an AOG payment the claimant should:
 - investigate other avenues for a person to receive financial assistance from the Commonwealth.
 - exhaust options for internal and external review.
 - utilise existing legal review mechanisms for decisions incorrect at law.

Relevant case law

[Attorney-General \(NSW\) v Quin \(1990\) 170 CLR 1](#)

Justice Brennan noted that if the power is conferred by statute but the statute prescribes no criteria governing the exercise of the power, the power must be at large. (33)

[Groth v Secretary, Department of Social Security \(1995\) 40 ALD 541](#)

Justice Kiefel noted that if a tribunal were to conclude that something unfair, unintended or unjust had occurred there must be some feature out of the ordinary. (545)

[United Mexican States v Cabal \[2001\] HCA 60](#)

Justice Gleeson noted:

- special circumstances may be present where the individual case is different from both the ordinary course of events and the disadvantage a person in the situation would ordinarily endure. The circumstances need to be extraordinary. (60)
- It is not necessary to establish that any particular circumstance should be regarded as special, several factors in combination can constitute special circumstances. (52)
- Delay is not a special circumstance, unless unusual. (54)

[Toomer v Slipper\[2001\] FCA 981](#)

Justice Weinberg noted:

- the discretion invested in the Minister is broad. Any number of circumstances may give rise to an AOG payment. It is impossible to anticipate the situations in which an AOG payment may be warranted. The Minister is not bound to have regard to any other matter than those set out in s 33 (FMA Act) itself and any that may be discerned by implication from the subject matter, scope and purpose of the FMA Act. (31)

- the Minister is entrusted with the power to authorise an AOG payment. These payments are not based on legal entitlement but are made in response to moral obligations assumed by the Commonwealth as a result of its actions or instruments. Provided that the Minister exercises the power lawfully, the decision cannot be disputed. (47)

Minister for Immigration and Multicultural and Indigenous Affairs; Ex parte Palme (2003) 216 CLR 212 HCA 56

Justice Kirby noted that administrative decisions should:

- encourage examination of the relevant issues, elimination of extraneous considerations, consistency in decision-making and guidance for future like decisions.
- promote acceptance of the outcome
- facilitate the work of the courts in performing their supervisory functions
- encourage good administration by ensuring that proper consideration by the decision-maker
- promote real consideration of the issues and discourage the decision-maker from merely going through the motions
- increase public confidence in, and the legitimacy of, the administrative process. (105)

Clement v Minister for Finance and Deregulation [2009] FMCA 43 (30 January 2009)

Federal Magistrate Neville noted:

- the decision to refuse an AOG payment under section 33 of the FMA Act is a reviewable decision under the *Administrative Decisions (Judicial Review Act 1977)* (ADJR Act). However, such decisions are not open to merits review.
- section 33 of the FMA Act gives rise to a moral responsibility or obligation to remedy an injustice that is incapable of solution through the ordinary processes of the law. The responsibility must be based on the virtue of justice, rather than charity and cannot be exercised on a whim. There must be no other avenues available to remedy the circumstance.
- it is impossible to state in advance what may constitute special circumstances. The decision to make a payment rests, as a matter of discretion, on the Finance Minister. There is no duty or compulsion for the Finance Minister to authorise a payment, even if special circumstances exist.

G & M Nicholas Pty Ltd v Minister for Finance and Deregulation (2009) 174 FCR 471

Justice Cowdroy noted:

- the power to approve an AOG payment is unconfined and depends solely upon the opinion that it is appropriate to do so. (41)
- natural justice demands that the party affected by a decision be given opportunity to deal with matters which are adverse to their interests and are credible, relevant and significant to the decision. (54)

- the fact that the discretion is broad and describes no procedure for its exercise does not mean that the Minister is absolved from the requirement to provide the claimant s with the material on which he would rely. (65)

Taylor v United States of America [2012] FCA 366

Justice Collier noted that special circumstances depend on the particular facts of the case and consideration of the entirety of the circumstance of the claimant. (24)

Simeon v Minister for Finance and Deregulation [2012] FCA 286

Justice Edmonds noted that the weight to be attributed to evidence is ultimately a matter for the Minister. (35)

Tomson v Minister for Finance and Deregulation [2013] FCA 664 33

Justice Rares noted:

- ‘Special’ is used to describe what is different or exceeds in some way from ordinary, usual or common, due to:
 - distinguishing qualities or features,
 - distinct or individual character, or
 - having individual, particular or limited application (35)
- There is nothing in the FMA Act that suggests the Minister is limited the breadth of factors that he/she may take into account, or must have regard to certain conditions when exercising the discretion under section 33 of the FMA Act. However, the Minister must exercise his/her discretion reasonably, having regard to the scope and purpose of the FMA Act. (37)
- In determining whether or not it is appropriate to reconsider a matter, the decision maker should:
 - determine whether the application, considered as a whole, raises special circumstances that warrant the exercise of the discretion to authorise a payment (43)
 - be willing to depart from any applicable policy (48)
 - give proper, genuine and realistic consideration to the merits of the case (48)
 - have regard to the evidence available to the original decision maker (50)
 - have regard to any new information provided by the claimant (50)

Quintano v Minister for Finance and Deregulation [2014], FCA 531

Justice Edmonds, McKerracher and Katzmann noted (65):

The Minister said he had considered the Finance Circular. Paragraph 6 of Attachment B of the Circular states that one of the key features of the act of grace mechanism is that “it is appropriate in cases where there is a moral, rather than legal, obligation to the person or body concerned”. In these circumstances, there is no reason to conclude that the Minister did not consider whether there was a moral

obligation to Mr Quintano. True it is, the Minister did not use the expression “moral obligation”. But, as the Minister submitted, there is no particular magic in those words. As we have already observed, the matters raised in paras 6, 11 and 12 of the Minister’s statement of reasons relate to that very question.

[Williams v Commonwealth \(No 2\) \[2014\] HCA 23](#)

French CJ, Hayne, Crennan, Kiefel, Bell and Keane JJ noted (in summary):

- payments made by the Commonwealth must be supported by the executive power under s 61¹¹ of the Constitution
- questions about the ambit of the Executive’s power to spend must be decided in light of all of the relevant provisions of the Constitution
- the Commonwealth requires legislative authority in order to expend public money

[Ward v Commissioner of Taxation \[2016\] FCAFC 132](#)

Justice Roberson, Davies and Wigney noted:

- There was a misconception by the decision maker that special circumstances could only apply if something unintended, other than the natural and foreseeable consequences of the claimant’s decisions had occurred. (40)
- It was open to the decision maker to find that special circumstances existed if the provisions operated on the claimant, in his/her individual circumstances, in an unfair or unjust way because the claimant, acting on the advice of another, accidentally breached a rule which had consequences disproportionate to the intended operation of the statute. (41)
- The decision maker erred in law by taking too narrow a view of what constitute special circumstances, by considering factors in isolation before focusing on the entirety of the circumstances. (43)

[Dennis V Minister For Finance \[2017\] FCCA 45](#)

Judge Jarrett noted:

- Section 65(1) does not confine the Minister’s discretion. It does not make the consideration of any particular matter mandatory. The ground of failure to take into account a relevant consideration can only be made out if the decision-maker fails to take into account a consideration which he is bound to take into account in making that decision. (60)
- The question of unreasonableness applied to the exercise of the discretion conferred by s65 (1) of the PGPA Act. In the absence of the Minister being satisfied that special circumstances existed so as to give rise to an occasion for the exercise of the discretion

¹¹ The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen’s representative, and extends to the execution and maintenance of this Constitution and the laws of the Commonwealth

[Stirling v Minister for Finance \[2017\] FCA 874](#)

Justice Tracey noted:

- The decision maker is required to:
 - consider and apply the definitions or statutory provision identified as being relevant to the decision (13)
 - make findings on material questions of fact referring to the evidence or other material on which those findings were based (15) that inform the reader whether or not the decision maker accepts the statements or opinions of the relevant parties (20)
 - make a finding in relation to a claim prior to rejecting the claim (20)
 - give reasons for the decision that explain the ‘actual path of reasoning’ by which the decision maker arrived at a conclusion in sufficient detail as to enable a reviewing court to determine whether an error of law has occurred (21)
 - explain how the reasons engage with the case being put (21)
 - explain the relevance of each argument to the decision (29)(30)
 - give quality of attention to mandatory considerations and engage in active intellectual process, in which each relevant matter receives genuine consideration (40)
 - consider the broad intent of the PGPA Act (44)
 - consider the representations of the claim as a whole, rather than the various items of evidence and individual submissions by the claimant, which do not each become mandatory items for consideration (45)

[Tsvetnenko v United States of America \[2019\] FCA 206 \(22 February 2019\)](#)

Justice Mckerracher noted that special circumstances should be considered cumulatively. (181)

[Ashby v Commonwealth of Australia \[2021\] FCA 40 \(29 January 2021\)](#)

Justice Bromwich noted:

- *...where relevant considerations are not specified in a relation to the exercise of an executive power, it is largely for the decision-maker, in light of the material furnished, to decide relevance and comparative importance (6)...Merely declining to give a particular claim or part of a claim...weight or significance, including by way of making findings on material questions of fact about it and in reaching determinative conclusions, does not...demonstrate that there is a vitiating deficiency in the decision-making process...the delegate was not obliged to...treat such claims as being significant, let alone determinative (7)...The delegate was entitled to give those considerations no separate weight and not to address them further in the findings of material facts or in the reasons or conclusions reached (9)*

- Delegates are entitled to make decisions to decline applications for AOG payment s, regardless of the monetary limit attached to the delegation (15), on the basis that the power under s 65(1) of the PGPA Act, contains two separate steps:
 - First to consider whether it is appropriate that an AOG payment be made on the basis of special circumstances and, if not, decline to authorise an AOG payment (13) *An application can fail at the first hurdle, without there being any need to consider authorisation of a payment if that point is not reached* (14)
 - Second, only if satisfied that it is appropriate for an AOG payment to be made on the basis of special circumstances, decided whether to authorise such a payment (13) *If the requirement of a payment being appropriate by reason of special circumstances is not met, the step of approval of payment is never reached* (14)
 - This interpretation is supported by :
 - Section 24 of the PGPA Rule, which requires the Minister to consider a report from the advisory committee prior to authorising an AOG payment over \$500,000 and ...*contemplates appropriateness potentially requiring more than special circumstances being established* (15)
 - Section 65(2) of the PGPA Act, which provides that authorisation of a payment, must be in accordance with any requirements prescribed by the rules (15)
 - ...*when considering whether an application for an AOG payment should result in a payment being authorised, it will first and separately be determined whether any such payment first meets the test of being appropriate by reason of special circumstances having been established* (15)

[Ogawa v Finance Minister \[2021\] FCA 59 \(5 February 2021\)](#)

Justice Snaden noted:

- *The PGPA Act does not define what might or might not constitute “special circumstances”. There is no other legislative fetter on the very broad discretion that the section confers.*
- The decision maker was not obliged, whether by reason of authority (including *Teoh*) or otherwise, to give advanced notice of a decision to decline the claimant’s AOG application. The claimant cannot be understood to have possessed any ‘legitimate expectation’ that the AOG application would be decided in their favour.
- The claimant ’s submission claims that the decision maker, ...*had he been acting reasonably under the light of the facts with which he was confronted, could not have come to any conclusion other than it was appropriate to make an AOG payment* . The facts do not mandate any particular outcome. Even if the decision maker had accepted all factual assertions made by the claimant , ...*it would still have been open to [the decision maker], acting reasonably, not to have formed the view that it was appropriate to make an AOG payment*

ADMINISTRATIVE LAW

Decision makers must record their decision in writing^{12xxxii} along with the reasons for the decision. This document is called a statement of reasons (SOR). The decision maker is legally responsible for the SOR.

The ADJR Act requires that a SOR contain:

- the decision;
- findings on material questions of fact;
- reference to the evidence or other material on which those findings were based; and
- the reasons for the decision.

An SOR must:

- be written in plain English, avoiding technical terminology and abbreviations
- reference the authorising legislation, being section 65 of the PGPA Act
- state the decision maker's title and/or position number and standing i.e. authorised delegate
- reference any submissions, recommendations or reports considered in making the decision (e.g. Advisory Committee report/NCE advice)
- clearly articulate the findings of fact and the process of inference and identify evidence that was considered relevant, credible and significant in relation to each material finding of fact
- if evidence is conflicting, the SOR should identify which evidence was preferred and why
- logically explain the reasoning process that led to the decision, linking in the findings of fact
- reference legislation, case law, policy, guidelines or other material taken into account
- provide both internal and external appeal rights

Decision makers are expected to operate with accountability and transparency. A decision maker will be subject to criticism from review bodies, including the Ombudsman and courts, if the reasons for a decision are deficient, inaccurate or do not describe why the decision was made.

Any person or organisation '[aggrieved](#)' by a decision may request an SOR. The term '[aggrieved](#)' is not limited to the person/organisation to which the decision relates. It may also cover persons/organisations that have a material or non-material interest affected by the decision¹³.

¹² Section 65(1) – PGPA Act

¹³ Section 4 – ADJR Act

Although decision makers are obliged to provide an SOR on request¹⁴, it is best practice to provide this document when notifying the claimant of the decision. DPS follows this practice for all decisions declining or partially approving an AOG payment. DPS provides reasons on request for decisions approving an AOG payment in full.

APPEAL MECHANISMS

Internal Review

A claimant may request an internal review (reconsideration) of the decision.

Requests for reconsideration will only be accepted if the decision contains an error of fact or law, or the claimant presents new evidence which is [material to the decision](#). A policy for assessing requests for reconsideration is located on CM at ED2019-8693.¹⁵

Requests for reconsideration are considered impartially by decision makers not associated with the original decision. The decision maker reviews all documentation on file and determines whether reconsideration is appropriate. The decision maker advises the claimant of his/her decision^{xxxiii}.

Commonwealth Ombudsman

A claimant may lodge a complaint with the [Commonwealth Ombudsman](#) (the Ombudsman).

The Ombudsman investigates actions and decisions of Australian Government agencies to see if they are wrong, unjust, unlawful, discriminatory or unfair. The Ombudsman also seeks remedies for administrative deficiency and takes action to improve public administration.

The Ombudsman is unable to review decisions of Ministers.

The Ombudsman is not obliged to investigate the complaint. If the Ombudsman determines that investigation is warranted, it will contact Finance for information. Finance may offer to review the matter internally if warranted.

Following investigation, the Ombudsman will issue a finding and recommendation/s (if applicable). Although Finance is not obliged to implement the Ombudsman's recommendations, it is best practice to do so.

Federal Circuit Court and Federal Court

¹⁴ Section 13 – Reasons for decision may be obtained – ADJR Act (within 28 days from the date the decision is made)



First draft of an
SOP on reconsiderat

A claimant may file an application with the Federal Circuit Court ([FCC](#)) or Federal Court ([FC](#)). Claims Officers can track matters before the FCC/FC on the [Commonwealth Courts Portal](#).

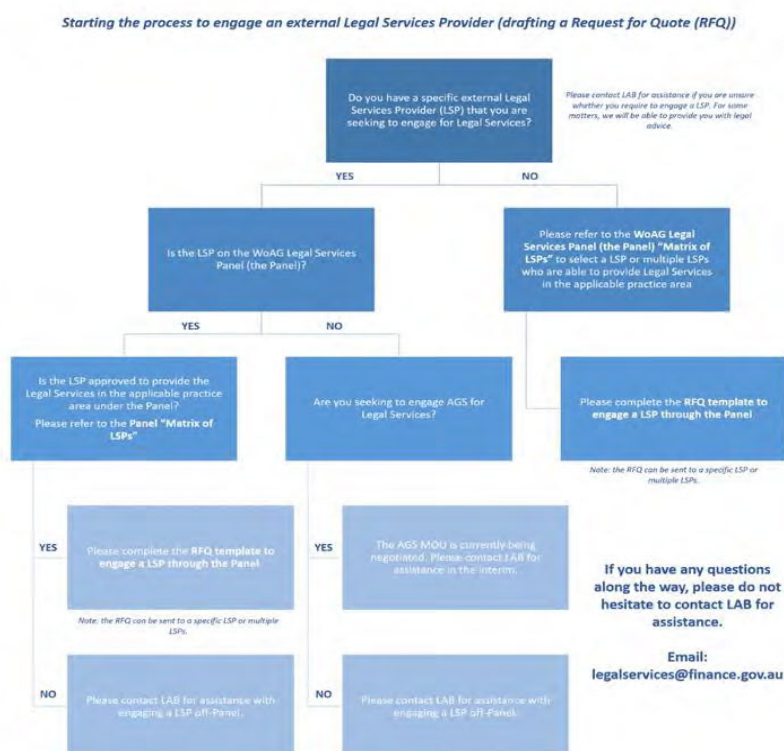
The claimant must pay a fee ([FCC/FC](#)) to lodge their application with the FCC/FC, and may be subject to other costs associated with the hearing.

When handing down judgement, the FCC/FC may consider awarding costs to the successful party. Both parties have the option of seeking a [costs order](#) for legal costs associated with lodging an application or defending against an application before the FCC/FC.

When an claimant lodges application with the FCC/FC, the claimant will serve Finance with a [Notice of Filing and Hearing](#). The [Respondent](#) is the Finance Minister.

The Claims Officer provides the Notice of Filing and Hearing to the Legal Assurance Branch (LAB) and the Director, DPS. The Claims Officer informs the Finance Minister via the [Significant Matters](#) Report and/or by [Ministerial Submission](#).

The Claims Officer engages an external legal service provider to represent the Respondent. The process for commencing the engagement of an external legal provider is below.



Guidance and step by step processes, including recorded webinars and forms, can be found on the LAB intranet page [here](#). In seeking external legal advice, Claims Officers must ensure they both abide by their obligations under the [Legal Services Directions](#) and maintain protection of [Legal Professional Privilege](#).

The Claims Officer seeks prospects of success from the legal service provider. The Claims Officer provides copies of all correspondence with the legal service provider to LAB and the Director DPS for input, prior to sending.

The Claims Officer manages the contract with the legal service provider and arranges payment of invoices through the Registry Team.

The FCC/FC have jurisdiction to hear applications under the [Administrative Decisions \(Judicial Review Act 1977\)](#). The FCC/FC can review decisions on the following grounds:

- the claimant was not afforded procedural fairness
- the decision maker did not follow the procedures required by law
- the decision maker did not have the appropriate jurisdiction to make the decision
- the decision maker was not a delegated officer under the PGPA Act
- the making of the decision was an improper exercise of power conferred by the PGPA Act:
 - taking into account an irrelevant consideration or failing to take into account a relevant consideration
 - using the power for a purpose other than which it was conferred
 - using a discretionary power in bad faith
 - failing to have regards to the merits of the case
 - exercising the a personal discretion at the direction or behest of another
 - the result of the exercise of power is uncertain
 - there is an abuse of the power
- the decision involved an error of law, whether or not the error appears in the decision
- the decision was induced or affected by fraud
- there was no evidence or other material before the decision maker to justify the decision
- the decision was otherwise contrary to law

The FCC/FC considers decisions under [administrative law](#). The FCC/FC may decide whether the decision maker applied the law correctly and provided a fair process.

Due to the discretionary nature of section 63 of the PGPA Act, the FCC/FC is unable to conduct a [merits review](#) of the decision, and therefore cannot change the decision. If the FCC/FC find in favour of the claimant, it must refer the matter back to Finance to remake the decision in accordance with the relevant legal requirements.

SIGNIFICANT MATTERS

DPS is required to report to the Secretary and Minister on significant matters. A significant matter is a matter which may be politically sensitive or attract media attention. The Registry Team runs a significant matters report via the SFC database every Thursday.

The SFC database has a 'Risk rating' – 'Significant field'. If this field is selected for a matter the matter will appear on the automatically generated Significant Matters report. If you think a matter should be escalated to the Significant Matters Report, please consult your team

leader. If your matter is to be regarded as a significant matter you please complete the following steps in the SFC database:

- Select 'Significant' in the 'Risk Rating' field.
- Insert one of the following numbers and add a brief explanatory comment in the 'Reason for Risk Rating' field.

1. Submission	This is used for matters where a submission is being prepared and will be with the Minister in the next week, or is already with the Minister (include the date referred)
2. MP representation - [name of MP]	For all cases with an MP representation
3. Advisory Committee	For cases where an Advisory Committee has been established, or is considered likely
4. Wrote to the Finance Minister	For cases where correspondence has been addressed to FM or AFM – whether it came through PWS or not
5. Other – (short reason for inclusion)	For cases we want on the Minister's radar.

- Ensure that current 'Status' in the 'Process History' tab includes a summary, in chronological order, of the history of the case including the current status e.g.
 - 12/06/19 - NCE update received - response to be provided by 14 June 2019
 - 11/06/19 - Reminder sent to NCE
 - 30/05/19 - Reminder sent to NCE
 - 26/04/19 - Claimant response sent to NCE for comment.
 - 26/04/19 - Claimant response to NCE advice received
 - 26/04/19 - Request for status update on response to NCE advice - Claimant
 - 18/04/19 - Request for status update on response to NCE advice - Claimant
 - 12/04/19 - Claimant response to request for information
 - 03/04/19 - Request for information - Claimant
 - 29/03/19 - Request sent to claimant for response to NCE advice
 - 29/03/19 - NCE advice received

PRIVACY

DPS holds a wide variety of information and facts about individuals which may be regarded as 'personal information'.

The *Privacy Act 1988* (Privacy Act) defines 'personal information' as:

Information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- a) *Whether the information or opinion is true or not; and*
- b) *Whether the information or opinion is recorded in material form or not*

The Department of Finance has developed a [guide](#) to help identify what may or may not be personal information. The guide includes common examples of personal information i.e.

Personal attributes or characteristics e.g.	Information on an individual's private life, history or preferences e.g.
<ul style="list-style-type: none"> • Name (first name and surname) • Age or date of birth • Place of birth • Gender • Race or ethnicity • Signature • Physical appearance (eye colour, hair colour, height, weight or finger prints) • Temperament or other personality traits • Contact details (address, phone number, email) 	<ul style="list-style-type: none"> • Education or social background • Criminal convictions or charges • Marital status • Details of family or friends • Membership of community organisations or other groups • Tastes, activities, hobbies or pastimes • Sexual orientation or practices • Political, philosophical, or religious beliefs
Employment information e.g.	Government identifiers e.g.
<ul style="list-style-type: none"> • Current or former employees • Current or former employment positions • Salary • Contact details • Work performance, skills, qualifications, or aptitude • Work hours, leave history or other employment practices • Members of professional or trade associations/unions 	<ul style="list-style-type: none"> • Australian Government Service (AGS) number • Tax File Number (TFN) • Licence number • Medicare number
Health information e.g.	Financial information e.g.
<ul style="list-style-type: none"> • Blood type • Personal or family history of illness or disability • Biometric or genetic information 	<ul style="list-style-type: none"> • Credit care details • Bank details • Loan details • Financial assets or habits

Personal information can be a single detail, such as a name, or a combination of details that, when collated, could reasonably be used to identify an individual.

Under the Privacy Act, DPS is only permitted to collect the minimum amount of information needed to make a decision under the relevant legislation. DPS is not permitted to collect information about an individual on the basis that it might be required in the future. The application forms used by DPS outline what information we collect, why we collect it and what we will use it for.

DPS must take reasonable steps to protect personal information from unauthorised access or disclosure, misuse, interference and loss. Of particular concern within DPS is unauthorised access or disclosure.

Unauthorised access is when personal information held by DPS is accessed by a person (a Finance employee or other), who:

- is not permitted to access that information, or
- is permitted to access personal information, but does so for a purpose other than required to perform their role. For example, out of interest, or for the purpose of identity fraud or other crime

Unauthorised disclosure is when personal information is made accessible or visible to others outside of DPS who are not authorised to receive this information.

Unauthorised access or disclosure may result in a privacy data breach. Privacy data breaches must be reported and responded to in line with the Finance [Data \(Privacy\) Breach Response Plan](#). The Finance [Privacy Team](#) is available to assist in the event of a suspected privacy breach.

Claims Officers can take steps to prevent privacy breaches by:

- turning off Outlook auto-populate in relation to email addresses
- checking CM and the SFC Database for updates to home or email addresses prior to sending information/decisions to claimants
- ensuring that only the NCE/s relevant to the circumstances identified by the claimant, receive information about the AOG application, and that this information does not contain personal details in excess of that required to address the claimant's submission/s, such as [tax file numbers](#) or other
- providing a summary of claims, as opposed to the original documents, omitting any areas of privacy concern highlighted by the claimant (summaries may be provided to the claimant for feedback prior to distribution to the relevant NCE/s)
- checking that any email attachments (including applications and decision documentation) relate to the correct claimant, prior to sending
- checking that any redacted documents do not unintentionally contain personal information that could, on its own, or in combination with other information, reasonably be expected to identify the claimant, or any other individual, group, company or body for which there is a privacy concern

TAX FILE NUMBERS

Privacy (Tax File Number) Rule 2015 ([TFN Rule](#)) regulates the collection, storage, use, disclosure, security and disposal of individual's tax file number (TFN) information. A breach of the TFN Rule constitutes a breach of the Privacy Act and may result in a complaint to the [Information Commissioner](#). In addition, authorised use or disclosure of TFN's can be an offence under the *Taxation Administration Act 1953* (TAA) with penalties including fines and imprisonment.

TFN can only be requested or collected by TFN recipients. A TFN recipient is:

- the Commissioner of Taxation
- an assistance agency
- an approved recipient
- an authorised recipient
- the trustee of a superannuation fund

Finance and in particular, DPS, is not a TFN recipient. This means that DPS cannot request or collect TFN's from an individual. In the event that DPS is provided with a TFN by a claimant (which occurs frequently), DPS must:

- take reasonable steps to immediately destroy or permanently de-identify TFN information
- not use or disclose the TFN to any other party

Should you encounter a TFN on CM or another records management system, immediately notify the Registry Team.

CONFLICT OF INTEREST

In line with the [APS Code of Conduct](#), Case Officers must ensure that their personal interests are not in conflict with their official duties.

A Claims Officer may experience a conflict of interest, for example, in relation to:

- personal involvement in a decision or action that relates to an application for an AOG payment
- personal involvement in external committees, organisations or companies (including as a shareholder)
- applications for AOG payment is made by friends, family, organisations or other bodies with a personal connection to the Claims Officer
- applicants involved in recruitment or procurement processes known personally to the Claims Officer

If the interest of a Claims Officer could reasonably be perceived to influence their duties they must:

- Advise a supervisor in writing
- Agree on suitable mitigation strategies (such as refraining from involvement in a matter)
- Complete a [conflict of interest form](#) (if applicable)

BIAS

The [Macquarie Dictionary](#) defines bias as ‘a particular tendency or inclination, especially one which prevents unprejudiced consideration of a question’. In broad terms bias is the action of supporting or opposing a particular person or things in an unfair way, because of allowing personal opinions to influence judgement¹⁶

Claims Officer/Delegates may have conscious or unconscious bias for example, in relation to the following:

- the age, race, sex, background, personality, physical or mental health of the claimant
- the circumstances of the claimant in relation to the Claims Officer/Delegate’s personal experience, the experience of friends or family members, or decisions in relation to previous applications, and/or
- opinions formed on publically available information, such as media articles

Other forms of bias that relate to decision making include:

- overconfidence bias - being overly optimistic about one’s ‘correctness’
- anchoring bias – fixation on initial information and failing to adjust opinion on the basis of further investigation
- confirmation bias – gathering data to support own conclusions, rather than to objectively investigate a claim
- representative bias:
 - wrongly comparing two situations because of perceived similarities, ignoring individual circumstances
 - failing to compare similar situations, leading to inconsistency in decision making
- availability bias – using the information most readily available rather than sourcing new information to address queries or concerns in an attempt to quickly resolve a matter
- commitment errors – persisting with a bad decision despite information to support an alternative decision
- randomness errors – creating meaning out of random events in an attempt to support a pre-determined view

To mitigate the effect of bias, either real or perceived, and ensure the objectivity of decisions, DPS employs the following strategies:

¹⁶ <https://dictionary.cambridge.org/dictionary/english/bias>

- a two-step decision making process
- case discussions (team or one or individual)
- quality assurance and peer review
- respectful and professional clarification and questioning of NCEs in relation to response submissions

MENTAL HEALTH

As a Claims Officer/Delegate in DPS you will be exposed to information that is potentially distressing or emotionally draining. It is important that Claims Officers/Delegates recognise when they are being impacted by the work they are doing and take steps to manage their mental health such as:

- discussing feelings/concerns with a peer, manager, a Mental Health First Aid Officer, a Health and Safety Representative who will be able to suggest options for managing mental health
- attending training provided by Beyond Blue, the Workplace Mental Health Institute (as advertised on our intranet), Lifeline (accidental counsellor) or other resilience, or mental health courses, and implementing learnings
- contacting our EAP for assistance
- working on a project that does not involve casework
- taking a break, going for a walk, having a cup of tea or working on an alternate matter
- having a case discussion or debrief with a peer, Delegate or manager within DPS

INAPPROPRIATE BEHAVIOUR

As a Claims Officer/Delegate, it is important to be aware that claimants must exhaust all available avenues of redress prior to requesting an AOG payment. It is normal therefore for a claimant to be upset, angry or frustrated about their circumstances. However, there is never an excuse for aggressive, threatening or inappropriate behaviour, and it is within the rights of Claims Officer/Delegates to expect the claimant to refrain from this behaviour when communicating with DPS. To assist Claims Officers/Delegates DPS has developed guidance^{xxxiv} for dealing with situations where a claimant is exhibiting these types of behaviours, in addition to the following resources:

- NSW Ombudsman – Managing Unreasonable Complainant Conduct (ED2019-13213)^{xxxv}
- Dealing with Difficult Customers (ED2019-13212)^{xxxvi}

RESOURCES

AOG resources

- [Agency Contact List](#)
- [Natural Justice and AOG payment s](#) – Australian Government Solicitor
- [Am I special enough? The payment of ex-gratia compensation by the Commonwealth](#) – Sarah Major

- [Compensation and debt relief in special circumstances](#) – ANAO
- [Judicial review of refusals to make AOG payment s: When is it possible?](#) – Clayton Utz
- [Discretionary payments of compensation](#) – Ombudsman
- [Review of Government Compensation Payments](#) – Legal and Constitutional Affairs References Committee
- [To compensate or not to compensate?](#) – Ombudsman

Writing resources

- Sample decision letter wording (ED2019-7811)¹⁷
- [Politics and the English Language](#) by George Orwell
 - Never use a metaphor, simile or other figure of speech which you are used to seeing in print.
 - Never use a long word where a short one will do.
 - If it is possible to cut a word out, always cut it out.
 - Never use the passive where you can use the active.
 - Never use a foreign phrase, a scientific word or a jargon word if you can think of an everyday English equivalent.
 - Break any of these rules sooner than say anything barbarous.
- Essential Writing Skills for Executive Levels – Australian Public Service Commission (ED2019-13126)¹⁸
 - Plan your writing project – initiate and plan the writing task
 - Think about relevant content – think about your reader’s needs and how to meet them
 - Write persuasively – write in a style that supports action and accountability
 - Survive scrutiny – review documents for substance and style
- [The A – Z of alternative words](#) – The Plain English Campaign.
- [Finance Writing Style Guide](#)
- [Government Style Manual](#)
- Writing for busy decision makers – Mike Pieloor (ED2019-13124)¹⁹
 - Consider your reader
 - Identify key messages and content
 - Use a [deductive](#) structure to support decision makers
 - Provide evidence based information
 - Develop effective recommendations



General - Table -
Sample decision lett

17






















Essential Writing
for Executive Levels

















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Writing for busy
decision makers.tr5

19

-
- i  Standard Operating Procedure
- ii  Process History – Pending
- iii  Process History – Advice Sought Claimant
- iv  Process History – Finalised
- v  Sunset letter - finalisation other av
- vi  Sunset letter - state or territory governm
- vii  Sunset letter - CDDA - no agency a
- viii  2. NCE Request for NCE advice.tr5  Process History – Advice Sought – Agency
- ix  3. Reply for a request for an exten
- x  3. Cover Letter.tr5  Process History – Advice Sought - Claimant
- xi  5. Emailing Agency advice to claimant.tr
- xii  3. Reply for a request for an exten
- xiii  3. Reply for a request for an exten
- xiv  Process History – Brief Being Prepared
- xv  20190313 - SOP - Delegate s decision  AoG Delegate s Decision Email Temp  AoG - Approval letter.tr5

xvi	 AoG - Decline letter.tr5
xvii	 Template - Refer for quality assurance.tr5
xviii	 Standard Operating Procedure
xix	 7. Act of grace - claimant - advice of
xx	 7. Act of Grace - NCE - Advice of deci
xxi	 f you disagree with the decision.tr5
xxii	
xxiii	
xxiv	 AoG - Approval letter.tr5
xxv	 AoG - Decline letter.tr5
xxvi	
xxvii	
xxviii	 Sample AoG - Delegate's decision
xxix	 7. Act of Grace - Decline - Delegate's
xxx	 AoG - Decline letter.tr5
xxxi	 General - Table - Sample decision lett
xxxii	 Not to print - REVISED Best Practic
xxxiii	 AoG Delegate's Decision Email Temp
xxxiv	ED2019-13215 and ED2019-13216
xxxv	 NSW Ombudsman - Managing Unreasonable
xxxvi	 Difficult customers (external).tr5



Australian Government

Department of Finance

DPS Induction Training Session 5 – Drafting Decisions

Participant Manual

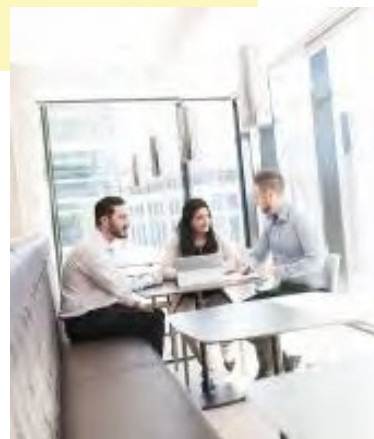


Table of Contents

Collaborative Case Drafting	3
Administrative Law	4
Before you start	5
Writing Skills	6
Common issues	6
Exercise – Taxi Driver	9
Plain English	10
Punctuation	
Apostrophes	15
Hyphens	16
Terminating marks	19
Marks within sentences	20
Shortened forms, acronyms and abbreviations	24
Capitalisation	25
Grammar	27
Numbers and measurement	28
Language	29
General	30
Assertive writing	31
Final review - Checklist	32
Final review - Readability	33
Quality Assurance	34
Before you begin	35
Substance	36
Style	37
Accuracy	38
Feedback	39
Presentation slides	41

Collaborative Case Drafting

Activity



STEP 1 – Read and Summarise



Read the Requestor's file in full and prepare a case summary noting the Requestors claims, the claims of the Non-corporate Commonwealth entity (NCE) and any relevant considerations. Include any questions you would like answered before you commence your draft. *DISCUSS*



STEP 2 – Claims and Findings of Fact

Draft all sections of the template (approval or decline) with the exception of the 'Reasons' section. *DISCUSS*



STEP 3 – Reasons (Part 1)

Identify the considerations to address under 'Reasons'. Draft a summary paragraph of the Requestor's claims. *DISCUSS*



STEP 3 – Reasons (Part 2)

Draft the remainder of the Reasons section. *DISCUSS*



STEP 4 – Editing your Writing and Quality Assurance

Use writing techniques and the Quality Assurance Standard Operating Procedure (SOP) to edit your draft decision. *DISCUSS*



STEP 5 – Delegate Decision

Seek review, input and sign off from the delegate. Finalise the decision. Review lessons learnt. *DISCUSS*

Guidance

Administrative Law (*Administrative Decisions (Judicial Review) Act 1977*)

The Administrative Decisions (Judicial Review) Act 1977 (ADJR Act*) requires administrative decisions, such as those made in relation to waiver of debt/act of grace, to be in writing and contain reasons. This document is called a Statement of Reasons (SOR).

A SOR must be written in plain English** and contain:

- the decision
- findings on material questions of fact
- evidence or other material on which those findings were based
- reasons for the decision
- the decision maker's title, position number and delegated power
- reference to any submission, recommendations or reports considered by the decision maker
- the findings of fact and any facts in contention
- identification of evidence that is relevant, credible and significant in relation to the decision
- a logical explanation of the reasons that led to the decision, linking in the findings of fact
- references to the relevant legislation, case law, policy, guidelines or other materials taken into account by the decision maker
- appeal rights

In *Minister for Immigration and Multicultural and Indigenous Affairs; Ex parte Palme* (2003) 216 CLR 121 HCA 56, Justice Kirby stated that administrative decisions should also:

- examine the relevant issues
- eliminate extraneous*** considerations
- promote consistency in decision making and provide guidance for future like decisions
- promote acceptance of the outcome
- facilitate the courts to perform their supervisory functions
- ensure proper and real consideration of the issue
- discourage the decision maker from merely going through the motions
- increase public confidence in, and the legitimacy of, the administrative process

The DPS decision making templates contain headings to assist the delegate/Finance Minister to meet the SOR obligations under the ADJR Act



*ADJR Act –

See [Federal Register of Legislation](#)

Information on writing in plain English – See **DPS Induction Training – Session 5 – Drafting Decisions – Participant Manual (ED2021-9905)

*** *Definition* – irrelevant or unrelated to the subject being considered

Drafting decisions

Before you start



1. Read the DPS file in full

- Make notes of claims and key points as you go

2. Compile a case summary

- Summarise or dot point the Requestor and NCE claims
- Do you have any questions? Is any further information required before a decision can be made?
- Are there any alternative avenues of redress*? Are they viable?**
- Identify the arguments for approval and decline.
- What do you think the decision should be in this case (approval/partial approval or decline)?
- Are there compelling reasons to waive the debt? If so:
 - Who will be the delegate?
 - Is a PGPA Rule 24 advisory committee required?

3. Do your research

- Look for similar cases on the SFC database. Is your planned decision consistent with other cases? If not, is there an exceptional reason to approve/decline in this instance?
- Obtain relevant information, legislative provisions, policies, explanatory memorandum, bills or first readings etc.
- Consider likely public/political opinion in relation to the matter
- Consider how the RMG401 or other guidance (Finance Circulars/relevant case law) will assist you in making the decision?
- Refer to the sample wording document*** to see if there is any text applicable to the Requestor's circumstances

If in doubt, have a case discussion!



*See page 28 for alternative avenues of redress



**If viable alternative remedies exist, talk to your supervisor, or the Registry team about whether to finalise or 'Sunset' the case.

***For sample wording – See **General Table – Sample Decision Letter Wording (ED2019-7811)**

Writing Skills

Common issues

According to the Australian Public Service Commission (APSC)* common issues with public sector writing include:



Here is a short sample paragraph explaining the reasons for a decision.

The delegate noted that you incurred significant cost in using isobutene to make product Y. But before you made product Y, NCE told you that isobutene does not help digest proteins, and fails to comply with safety standard 94325, and section 19 of the Z Act. The intention of section 19 of Z Act is to avoid hazardous substances in edibles, and protect public health. On this basis, the Delegate declined your request for an act of grace payment under section 65 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

Let's take a look at the common issues outlined above in the content of this paragraph:

Issue	Example
Overuse of jargon and technical language	NCE repudiated that isobutene was a key peripheral in the anabolism of proteins. NCE gave numerous admonitions in this regard to Company X prior to synthesisation of product Y. The Delegate noted that, notwithstanding NCE's forewarning, Company X utilised isobutene in the manufacture of product Y, incurring significant expenditure. The subsumed isobutene in product Y fails to comply with safety standard 94325 under section 19 of Z Act. The purpose of section 19 of Z Act is to avoid containment of hazardous substances in edibles and therefore conserve salubrity of the public. On this basis the Delegate declined Company X's petition for an AoG payment in line with section 65 of the PGPA Act.

Issue	Example
Passive sentence construction	Significant costs were incurred by you in using isobutene to make product Y, noted the Delegate. Warning that isobutene does not help digest proteins and fails to comply with safety standard 94325, and section 19 of the Z Act, was given to you by NCE before product Y was made by you. Section 19 of Z Act has the intention of avoiding hazardous substances in edibles, and protecting public health. Your request for an act of grace payment, under section 65 of the <i>Public Governance, Performance and Accountability Act 2013</i> (PGPA Act), was declined by the Delegate on this basis.
Agentless phrasing	It is noted that significant costs were incurred in using isobutene to make product Y. But warning that isobutene does not help digest proteins and fails to comply with safety standard 94325, and section 19 of Z Act, was given before making product Y. The intention of section 19 of Z Act is to avoid hazardous substances in edibles and protect public health. On this basis, the request for an act of grace payment, under section 65 of the <i>Public Governance, Performance and Accountability Act 2013</i> (PGPA Act), was declined.
Poor grammar and punctuation	The Delegate noted that you incur significant costs in using isobutene to make product Y but NCE warnings that isobutene did not help digest proteins and failed to comply with safety standard 94325, and section 19 of Z Act, prior to you making product Y. The intent of section 19 of Z Act was to avoid hazardous substances in edibles and protection of public health. On this basis the Delegate decline your request for act of grace payment, under section 65 of the <i>Public Governance, Performance and Accountability Act 2013</i> (PGPA Act)



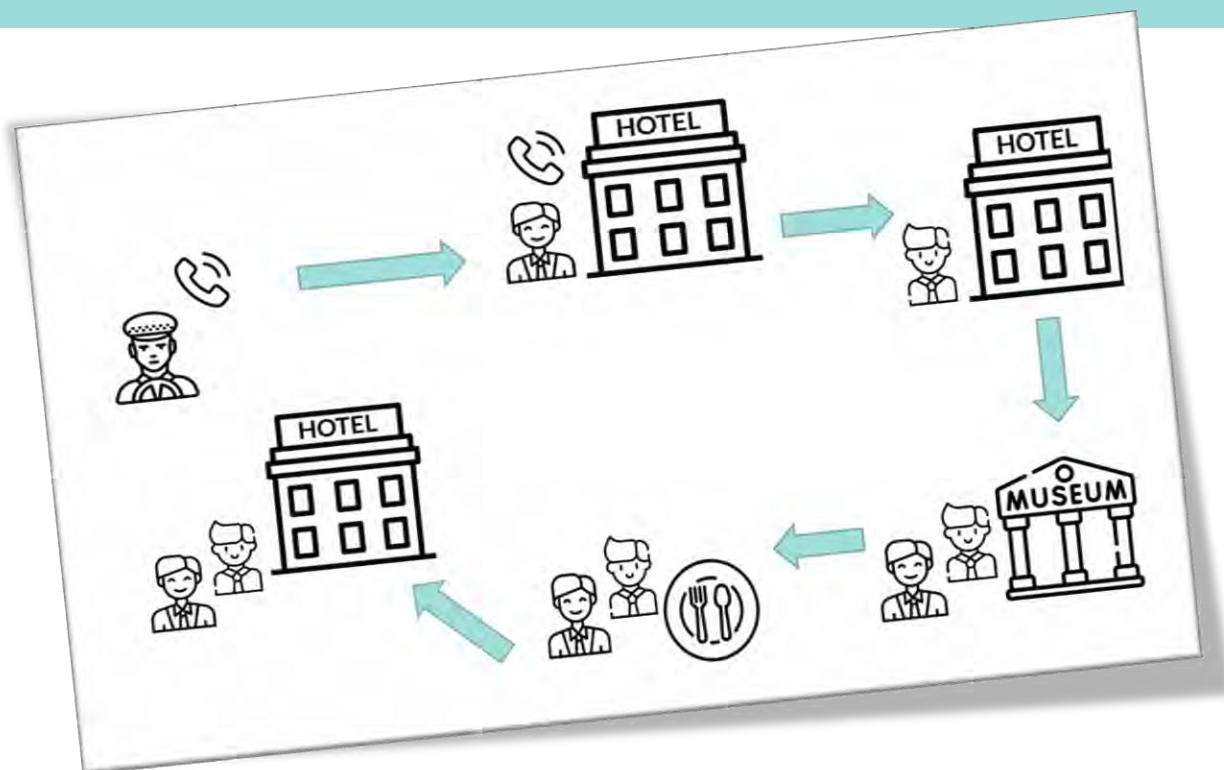
Issue	Example
Too many words	<p>The Delegate noted that isobutene, in its original form, without variation and in isolation, does not primarily assist in the digestion of, amongst other substances, protein. Contemplating this fact, the Delegate opined that the correlation between isobutene and protein did not contain sufficient nexus for NCE to find that it had an acceptable use in product Y. Product Y is an interesting edible, in that it is gummy like and has a sweet taste. The Delegate understands that this product is similar to what is currently referred to as possibly a 'Gummy Bear', but with differing qualities. The Delegate placed significant weight on this fact.</p> <p>Regardless of the above, the Delegate noted with particular interest that NCE told you about the digestive impact of isobutene in relation to the substance of protein before you made product Y. The Delegate also observed that isobutene is not a chemical that would usually or normally comply with safety standard 94325, because of the fact that it is, in some case, considered to be a hazardous substance.</p> <p>The Delegate further acknowledged that isobutene is an issue when it comes to Division 2, Part 33, Section 19, subsection (a) of Z Act. The Delegate understands that the primary intent of Division 2, Part 33, Section 19, subsection (a) of Z Act is to avoid the hazardous substances in edibles. In addition, it is also the intention of Division 2, Part 33, section 19, subsection (a) of Z Act to protect public health, once again by avoiding addition of hazardous substances in edibles (i.e. food, but could relate to other things that are edible but not food, such as chewing gum).</p> <p>For the above mentioned reasons, in conjunction with advice from NCE, after much deliberation, the Delegate saw fit to decline to approve your request for an act of grace payment.</p>
Weak arguments	<p>Isobutene does not help digest proteins and fails to comply with safety standard 94325. On this basis, the Delegate declined your request for an act of grace payment, under section 65 of the <i>Public Governance, Performance and Accountability Act 2013</i> (PGPA Act).</p>



*Source – *Essential Writing for Executive Levels (APSC) ED2019-13126*

Writing Skills

Exercise – Taxi Driver



Blah, blah, blah, blah,
 blah, blah, blah, blah,
 blah, key message,
 blah, blah, blah, blah,

Key message

Overloading the
 Requestor with
 irrelevant information
 can prevent them from
 understanding the key
 message

Blah, blah, blah, blah,
 blah, blah, blah, blah,
 blah, ~~key message~~,
 blah, blah, blah, blah,

?



Writing Skills

Plain English

Dr George Stern, Consultant Lecturer in Linguistics, Centre for Continuing Education, Australian National University, opined that there was a great need for public servants to use plain English (Dear Mum style) rather than 'Yes Minister' style, even in official or legal papers.

Plain English is easy to read and inclusive of the general population. It gives the Requestor less words to read for the same amount of information.

Dr Stern compiled a [list](#) (below) of nearly 200 terms that are often used in public sector writing and their plain English equivalents. You can use this list to improve the quality of your draft decisions.

Although there is nothing wrong with using technical terms for technical things, it is important to use everyday words for everyday things.



Official ("Yes, Minister") language	Plain ("Dear Mum") language
a further meeting	another meeting
able to	can
above-mentioned	mentioned above
accordingly	so / therefore
additional	more
additionally	and
adjacent to	next to / near
advice has been received that	my officers have told me that
advise you that / of	let you know ...
aforementioned	mentioned before / mentioned above
all things considered	so / therefore
alter / alteration	change
amongst	among
anticipate	expect
approximately	roughly / about
as a consequence of	because of
as noted previously	as I have said (written) above
as soon as practicable	as soon as possible
as you would be aware	as you know
ascertain	find out / check
assist / assistance	help
at an early opportunity	soon
at this point in time	now / at present
at your earliest convenience	as soon as possible
attached hereto	attached please find
be applicable	applies
be in accordance with	accords with
by virtue of	under / because of
commence	start / begin

commencement	start / beginning
completion	end / finish
comprise	make up
concerning	about
concur	agree
concurrence	agreement
consequent	later
consequently	so / therefore
considerable amount of	a lot of / many / much
contiguous to	next to / near
conversely	but / on the other hand
currently	now / at present
dated	of
dispatch	send
due to	because of
e.g.	for example / for instance
emanating from	coming from
embark on	start
endeavour	try
et al	and others
Etc. / et cetera	and so on
experienced delays	there were delays / had delays
extremely	very
facilitate	enable / make possible
failed to	did not
falls within the responsibility of Bloggs	Bloggs is responsible for
familiarise you with	make you familiar with
for the duration of	during
for the purpose of	to / for
for your consideration	for your decision / for your information
forthwith	immediately
forward	send
further developments	more developments / new developments
a further meeting	another meeting
further to my letter concerning	I am writing again about
furthermore	and / also
hence	so / therefore
henceforth	from now on
hereby / herewith	here / please find
hereunder	below
however	but
I acknowledge receipt of	thank you for
I am advised that	my department tells me that
I am directed to advise you that	the (minister) has asked me to tell you that
I am grateful for	thank you for
I appreciate that	I understand that / I know that
I appreciate your	thank you for your
I can confirm that	(Leave it out.)
I consider that	I think that / I believe that

I refer to your letter dated	thank you for your letter of
I regret the delay / the delay is regretted	I am sorry for the delay
I trust this addresses your concerns	I hope this answers your points (questions)
I will be pleased to	I will be happy to
I wish to advise that	(Leave it out.)
I would appreciate it if	please / would you please / could you please
I would be grateful if	please / would you please / could you please
i.e.	that is
if so-and-so transpires	if so-and-so happens
in a timely manner	as soon as possible
in accordance with section 12	under section 12
in conjunction with	with / together with
in consideration of	for / because of
in excess of	more than
in keeping with	under
in order to	to
in relation to	about
in respect of / to	about
in situ	in place
in spite of the fact that	though / although
in terms of	in
in the course of	during
in the event of	if
in the majority of cases	in most cases
in the vicinity of	near
in this regard	(Leave it out.)
in this respect	(Leave it out.)
in toto	in total / altogether / all up
in view of the fact that	because
inform you of / inform you that	let you know
inter alia	among other things / among others
is applicable	applies
is dependent on / upon	depends on
is located in	is in
it appears to be the case that	it seems that
it is considered that	I think that / I believe that
it is incumbent on you	you should / you must / you need to
it is my considered view that	I think that / I believe that
it should be noted that	(Leave it out.)
locate	find / put / place
location	place
manner	way
Messrs A and B	Mr A and Mr B
negligible amount of	a little / a few
notify you / me	let you / me know
notwithstanding	despite / although
obtain	get
occurred	happened / took place
owing to	because of

paradigm	model
per annum	a year
pertains to	is about
please be advised that	(Leave it out.)
please do not hesitate to contact me / Bloggs	please contact (get in touch with) me / Bloggs
predominantly	mainly / mostly
previous	last / latest / earlier
previously	earlier
prior to	before
pro tem	for the time being
proceeded to (walk / drive)	walked / drove (started to walk / drive)
provide you with further information	let you have / give you more information
provided / providing	if
purchase	buy
pursuant to clause 12	under clause 12
rectify	fix / correct / repair
regarding	about
relating to	about
rendered	made
reply	answer
require	need
requirement	need
respond / response	answer
retain	keep
reveal	show / tell
review the matter	look at the matter again
should it be necessary	if necessary
Should you require further information, please do not hesitate to contact Bloggs	If you need more information, please get in touch with Bloggs (Or leave it out.)
should you wish to	if you want to / if you like
significant amount of	a lot of / much / many
status quo	as is / the existing state
subsequent to	After
subsequently	Later
substantial amount of	a lot of / much / many
tacit understanding	informal / unstated / understanding
take the matter up with Bloggs	contact Bloggs about the matter
the delay (the mistake) is regretted	I am sorry for the delay (the mistake)
thereby	because of this
thus	so / therefore
transmit	Send
transpire	Happen
unable to	Cannot
undertake to do so-and-so	will (must) do so-and-so
upon	on
utilise	use
verify	check / confirm
via	through / by way of
viz	namely

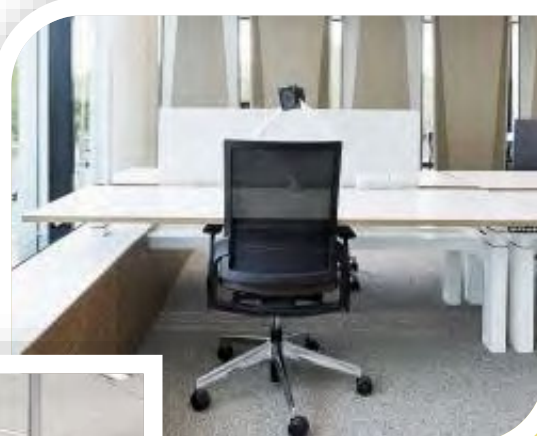
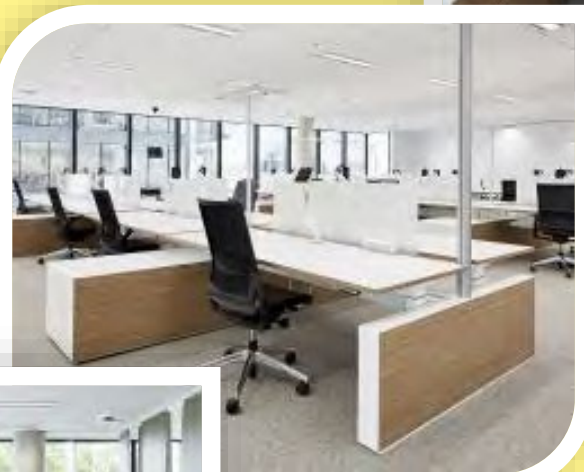
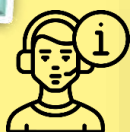
whereas	because
whilst	while
with a view to	to
with due regard for (something)	taking (something) into account
with immediate effect	straight away / immediately
with reference to	about
with regard to	about
with respect to	about
you may care to	you might like to
you will be required to	you need to / you should / you must
your letter of the 20th instant	your letter of 20 May



Plain English resources - See:

- [**Finance Writing Style Guide**](#)
- [**Australian Government Style Manual**](#)
- [**Plain English Guide for Government Communicators**](#)
- [**Words at Work – Building inclusion through the power of language**](#)
- [**Plain Language or Easy English?**](#)

When drafting
decision, imagine that
you are talking to the
Requestor. Use clear,
helpful and polite
language



Writing Skills

Punctuation – Apostrophes

Possession and common nouns

Singular - insert the apostrophe before the possessive s, even if the word ends in s eg *...the government's policy, the boss's office, COAG's response*

Plural - if the word does not end in s, add apostrophe s. If the word ends in s, just add an apostrophe eg *...the women's concerns, the states' position, the Council of Australian Governments' response*

Non-possessive Phrases

If the plural noun is descriptive rather than possessive, do not use an apostrophe eg *Drivers Licence, Travellers cheques*

Possessive Phrases

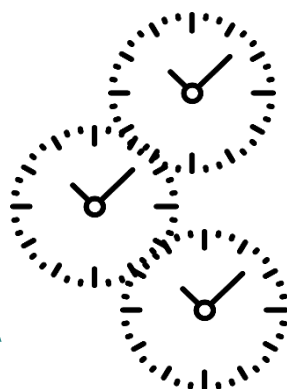
Add an apostrophe s eg *the staff member's desk, the Leader of the Opposition's office*

Acronyms and initialisms

Show possession by using an apostrophe eg *ANU's policy, COAG's decision*

Names of institutions

Follow the institution's style eg *NSW Teachers Federation, National Farmers' Federation*



Placenames

Do not use an apostrophe eg *Kings Cross, St Marys*.

Proper names

Use an apostrophe s eg *Senator Smith's office, Mr Jones's office*

Expressions of time

Plural - the apostrophe is left out as the phrase is more descriptive than possessive eg *two weeks notice*.

Singular - the apostrophe is retained to help mark a noun as singular eg *one day's notice*



Source – [Finance Writing Style Guide – Word and sentence punctuation](#)

Writing Skills

Punctuation - Hyphens

Hyphens

Use sparingly to prevent misreading where the vowel ending the prefix is the same as the one at the start of the word eg *co-ordinate*

Or to clarify the meaning of formations that might otherwise be confused with established words eg *co-educational*

Recover (get better)



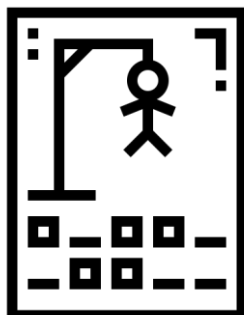
Re-cover (cover again)



Use a hyphen to convey the correct meaning of the word

Non-breaking hyphens

Non-breaking hyphens are used when the hyphenated word would remain in full at the end of the line or go in full to the beginning of the next line (Use CTRL+ Shift + - to create a non-breaking hyphen) eg forward-looking or high-level



Hanging Hyphens

Structure your sentences to avoid confusion eg *full - and part-time positions* to *full-time and part-time positions*



Source – [Finance Writing Style Guide – Word and sentence punctuation](#)

Writing Skills

Punctuation - Hyphens

Compound nouns

Word class combination	Example	Hyphen or no hyphen?
verb-plus-adverb	shake-out, make-up	hyphenate to show the adverb is linked with the compound rather than other parts of the sentence
adverb-plus-verb	bypass, downpour	unhyphenated
verb-plus-noun or noun-plus-verb	roadblock, scarecrow, rattlesnake	unhyphenated
noun-plus noun	owner-driver, city-state hocus-pocus, culture-vulture	hyphenate when each element of the compound has equal status or when the elements of the compound rhyme
adjective-plus-noun	black market, red tape, free will	unhyphenated and written as two words

Compound adjectives

Word class combination	Example	Hyphen or no hyphen?
adjective-plus-adjective or noun-plus-adjective	bitter-sweet, colour-blind, icy-cold, disease-free	hyphenate, regardless of whether the adjective precedes or follows the noun it is describing
noun-plus-noun or adjective-plus-noun	a tax office ruling the stock exchange report a retrospective tax-office ruling	usually unhyphenated; however, some phrases may be hyphenated to avoid ambiguity
short adverbial phrases	an up-to-date account surface-to-air missiles	hyphenated
adjective-plus-number whether expressed in words or figures	21-gun salute four-part series	hyphenated
compound adjective containing capital letters, italics or quotation marks	a High Court decision a 'do or die' attitude	unhyphenated



Source – Finance Writing Style Guide – Word and sentence punctuation

Writing Skills

Punctuation - Hyphens

Compound verbs

Word class combination	Example	Hyphen or no hyphen?
adjective-plus-noun noun-plus-verb	cold-shoulder gift-wrap	hyphenate
adverb-plus-verb	bypass, overreact, undergo	unhyphenated

Compound adverbs

Word class combination	Example	Hyphen or no hyphen?
compound adverbs are constructed from two words	barefoot, downstream, overboard, everywhere, hereby	unhyphenated



Writing Skills

Punctuation – Terminating marks

Exclamation Mark

Use at the end of a sentence to provide emphasis. Not appropriate for use in draft decisions.



Question Mark

Use at the end of a sentence, after a direct question eg *is that correct?*

There is no need to use a question mark with indirect questions eg *can you please provide feedback by the end of the day.*



Full stop

Use a full stop at the end of your sentence unless it is a direct question or an exclamation.



Writing skills

Punctuation – Marks within sentences (Parentheses, Square Brackets, Colon)

Dashes —

em dash (—). (Find in symbols)

Use to:

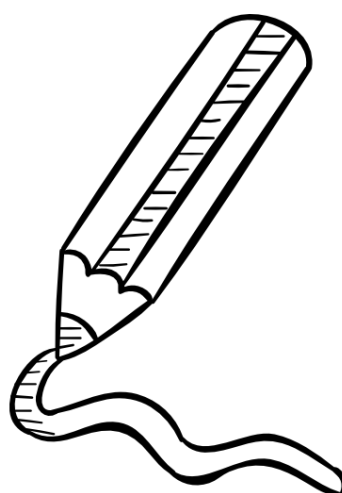
- indicate an abrupt change eg *the main reason for outsourcing was to reduce costs but this is not what we came here to talk about*
- Introduce an amplification or explanation eg *the effects can occur some distance away—for example, vegetation clearing can result in salinity 100km away*
- Set apart a parenthetical expression within a sentence eg *National policies may change the decision making environment—water licensing reform is an example—or provide guidance on suitable areas for government investment*

en dash (–). Use:

- to indicate spans of numbers, time or distance eg *2010-11*
- as a minus sign (unspaced to indicate negative value) eg *-6.8, 10 – 5*
- to show an association between words with separate identities eg *a Commonwealth-Queensland imitative*

Parentheses ()

Use to separate and enclose definitions, provide additional information or refer to shortened forms of the name in full eg *The Australian Competition and Consumer Commission (ACCC) investigated the matter.*



Colon :

Use to:

- introduce a word, phrase or clause that summarises, contrasts or adds to the sentence before eg *there was one word for him: brave*
- introduce dot points eg *there are three central agencies:*
 - *Department of Prime Minister and Cabinet*
 - *Department of Finance*
 - *The Treasury*
- introduce a direct question eg *my question is this: who was responsible?*
- introduce a block quotation eg *the press release began:*

In a first for Australian editing, the Council of Australian Societies of Editors has released Australian standards for editing practice.

Square Brackets []

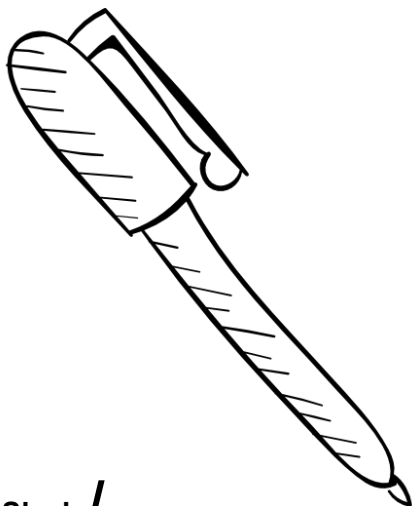
Use to signify editorial insertions to clarify, provide further information or to point to errors in the original text eg *although I grew up in Sydney I was born in Wellington [New Zealand], where my father ran a newspaper.*



Source – [Finance Writing Style Guide – Word and sentence punctuation](#)

Writing skills

Punctuation – Marks within sentences (Ellipsis Points, Forward Slash and Quotation Marks)



Forward Slash /

Use to show alternatives, in mathematical expressions, substitute for words like per, an or a in abbreviated measurements, and in web addresses eg *yes/no*, $(x+y)/(a+b)$, *60km/h*

Ellipsis Points ... (CNTL + ALT +.)

Use to indicate omission of words from a quote. If a paragraph has been omitted, put the ellipsis points on their own line. Spaces should be inserted before and after ellipsis points and there should never be more than three points eg *the new system will simplify tax arrangements ...*

TIP:

If the quote contains punctuation put it inside the quotation marks. If the punctuation is not part of the quote, put it on the outside eg *'What did we agree?' he asked*

Place full stops inside the quotation marks when there is no career expression eg *'It's an exciting time.'* (She said *'It's an exciting time.'*)

Quotation Marks “ ”

Use to:

- enclose direct speech either as a full quote or as a fragment of a quote eg *'this is an ambitious policy' she said, the committee expressed 'grave concern' at the 'discriminatory approach to law enforcement'*
- enclose the title of an unpublished document, a charter in a published work, an essay, a lecture, a short poem or a song eg *he delivered his lecture, 'the importance of innovation', clearly and persuasively*



Source – Finance Writing Style Guide – Word and sentence punctuation

Writing skills

Punctuation – Marks within sentences (Commas)



Use to:

- eliminate ambiguity eg *he was not punished, mercifully*
- separate items in a list, not needed before and/or unless to reduce ambiguity eg *The colours of the Australian Flag are red, white and blue*
- link coordinate clauses equal in weight but joined with conjunctions (and, but, yet, or, nor, for and so) eg *The policy was successfully implemented, but the effects will not be fully realised for many years*
- separate introductory and transitional expressions like however, furthermore eg *however, the response was inadequate*
- separate parenthetical expressions eg *The Prime Minister, despite the heavy rain, was given a tour of the school building site*
- To indicate that a word has been omitted eg *In 2000 there were seven cases; in 1999, five*
- To separate post-nominals where a person has more than one title or affiliation eg *Mr Smith OAM, CPA*



Do not:

- Place between a subject and its verb eg *the network that provides email and full internet access, is effective* (*The network that provides email and full internet access is effective*)
- Use only one comma when there should be a pair eg *the conference was held in Sydney, Australia during March* (*The conference was held in Sydney, Australia, during March*)
- Misplace commas around expressions that could be put in brackets, if the sentence would still make sense with the elements that could be in brackets were removed eg *we arrived at the airport early, and because our flight was late, spent the next hour rehearsing our presentation* (*We arrived at the airport early and, because our flight was late, spent the next hour rehearsing our presentation*)



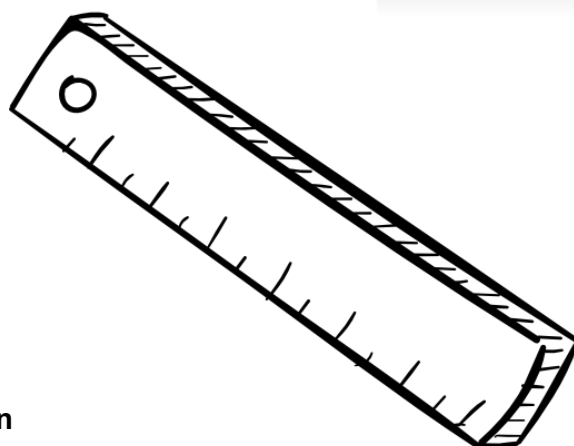
Writing skills

Punctuation – Marks within sentences (Semicolons and spacing)

Semicolon;

Use to:

- Link two clauses related in meaning. The clauses should be able to be written as two short sentences or be joined by a conjunction. Connective expressions (however, alternatively, nevertheless, therefore) at the start of the second clause must be preceded by either a semicolon or a full stop eg *we expect to hear soon; however, it may take some time*
- Separate items in a series eg *The cities visited include Brisbane, Queensland, Melbourne, Victoria; and Hobart, Tasmania*



Spacing after punctuation

Always use **one** space, not two, after a colon or semicolon and after a full stop or other sentence-closing punctuation mark.

Non-breaking spaces (CTRL + Shift + Space)

A non-breaking space is a special space character used to prevent an automatic line break where it has been inserted. Use between parts of an expression that should not spill over a line break—for example, phone numbers and names. Avoid splitting a person's name over two lines. Insert non-breaking spaces between the title, first name and surname.



Source – [Finance Writing Style Guide – Word and sentence punctuation](#)

Writing Skills

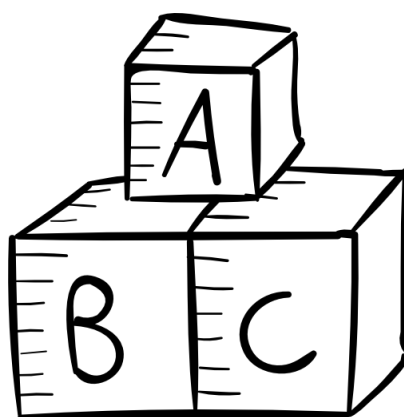
Shortened forms, Acronyms and Abbreviations

Shortened phrases and Acronyms

Use the full term if mentioned once or twice in a decision. When using acronyms (strings of initial letters pronounced as a word eg ASIO) or initialisms (strings of initial letters, not pronounced as a word eg NSW), write the reference in full and include the acronym in brackets eg *Australian Security Intelligence Organisation (ASIO)*

To make acronyms and initialisms:

- plural, add an s without the apostrophe
- possessive, add an s with an apostrophe



Contractions

Contractions contain the first and last letters of a word, but may contain other letter also. Contractions should be unpunctuated and capitalised in line with their uncontracted form eg *Mr, Rd, Cwth, dept, Pty Ltd*

Avoid using etc when the words for example or such as are used in a sentence, as they show that the sentence is incomplete



Abbreviation	Meaning	Use	Example
eg	for example	before giving one or more examples of what comes before	Training courses (eg Project Management and Fraud Awareness) are available in Learnhub.
etc	and so forth, and so on	at the end of a statement where more of the same could be included but isn't because it wouldn't add to the explanation	Information, Technology and Workplace Division manages Finance tenancies and maintain air conditioning, electrical, lighting, plumbing etc.
ie	that is	before an explanation of what's just been said	Do you have the jurisdiction (ie a valid delegation or authorisation) to make the decision?



*Source – [Finance Writing Style Guide – Shortened forms and acronyms](#)

Writing Skills

Capitalisation

Always use capitals:

- at the start of a sentence
- for proper nouns (full names of specific people, places and organisations)
- for the title of books, periodicals, booklets, reports, articles or other publications
- when the lack of capital letters could cause confusion eg *Cabinet/cabinet*
- for the following words:
 - *the Cabinet*
 - *Bill(s)*
 - *the Treasury*
 - *the Crown*
 - *the House*
 - *the Budget* (not as an adjective or plural noun e.g. *budget provisions, budgetary processes*)

Do not use capitals:

- When a proper name has become a common noun eg *internet*
- For generic reference to titles or positions eg *director, minister*



Writing skills

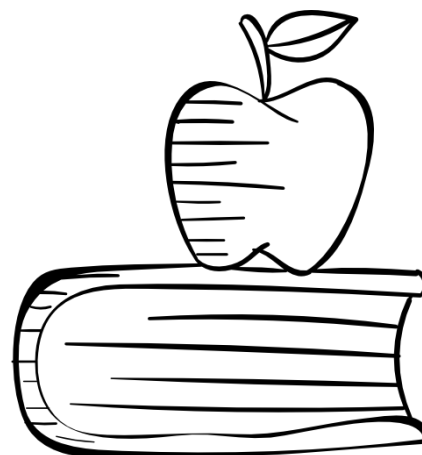
Capitalisation

Term	Use when
Government	<p>Capitalise when used as a part of formal title (the Australian Government) or when referring to a specific government, but use lower case elsewhere.</p> <p><i>The Australian Government...</i></p> <p><i>The government...</i></p> <p><i>The state governments...</i></p>
Commonwealth	<p>Always capitalise when referring to the Commonwealth of Australia.</p> <p>Defence is a <i>Commonwealth</i> responsibility.</p> <p>Note that when providing documents for an international readership, <i>Commonwealth</i> is much more readily associated with the Commonwealth of Nations (formerly the British Empire). Where a misunderstanding may occur, it is best to use the word <i>Australian</i> instead of <i>Commonwealth</i>.</p> <p><i>The Australian Government</i></p> <p><i>The Australian Parliament</i></p> <p>An uncapitalised <i>commonwealth</i> has several meanings, reinforcing the need for capitalisation in the Australian context.</p>
Federal	<p>Capitalise only if it is part of an official name or abbreviated name that retains a specific element. The federal government should not be capitalised.</p> <p><i>Federal Budget</i></p>
States and territories	<p>Do not capitalise the words state and territory except in official titles.</p> <p><i>The Australian Capital Territory's total area is...</i></p> <p><i>Responsibility has been delegated to the states and territories.</i></p>
Parliament	<p>Only capitalise when used in an official title.</p> <p><i>The Parliament of Australia...</i></p> <p><i>The parliament met last week...</i></p> <p>Always capitalise references to the House of Representatives or the Senate.</p>
Department	<p>Capitalise the full title (Department of Finance), the abbreviated title (Finance) and the preference is to also capitalise the Department - when talking about the Department of Finance. Other departments have a capital for the full and abbreviated title, but lower case otherwise, for example</p> <p><i>...except at the Department of Education, because at that department there is...</i></p>
Groups, divisions, branches and teams	<p>Capitalise the name of the group, division, branch or team when using full titles.</p> <p><i>Business Enabling Services, Corporate Services Division, People Branch</i></p> <p>When referring to groups generically, do not capitalise.</p> <p><i>Finance has four business groups; the branch is comprised of four teams; the divisions will report on their progress annually.</i></p>
Titles of staff members	<p>Capitalise for the titles of staff members when referring to them specifically. When using generically, do not capitalise.</p> <p><i>David Fredericks, Deputy Secretary, Business Enabling Services</i></p> <p><i>The proposal will need approval from your director</i></p> <p><i>... according to the Department of Finance Secretary.</i></p> <p><i>The secretaries view was shared by ...</i></p>

Grammar

A or An

Use the first sound of the next word, not the first letter, to decide whether to use a or an. Vowel sounds use an, consonant sounds use a. The same rule applies to initialisms and acronyms eg *an hour, a GST requirement, a hospital, an MC, an undertaking, an ASIO employee.*

**Because (and other subordinates – start of sentence)**

Because, although, since, while can be used at the start of sentences and do not require words either side of them eg *Because he is the person responsible, we notified the secretary.*

And or but (start of sentence)

And or but can be used at the start of a sentence to connect with the meaning of the previous sentence eg *I'll argue the case. But only if you'll back me up.*

That and which

That and which are not interchangeable. Use 'that' to provide information, define or limit the subject. Before using, consider whether your sentence makes sense without 'that' eg *the recommendations that were controversial were not accepted (controversial recommendations were not accepted)*

Use which with paired commas to add details not essential to the main point eg *the recommendations, which were controversial, were not accepted.*

Is/are and its/their

Use is/its for singular and are/their for plural eg *the office is vacant, the office gives its occupants a view of the park, the offices are vacant, the offices give their occupants a view of the park.*

Tense

Is and have are present tense, was and had are past tense. Ensure that your sentences are tense consistent

Fewer and less

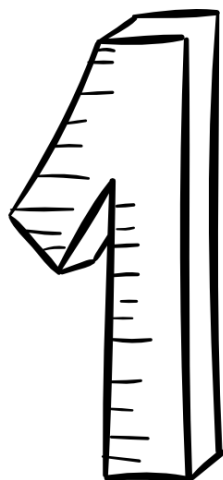
Use fewer for countable nouns and less for singular mass nouns eg *fewer positions* (the number of positions can be counted), *less employment* (employment can be measured but not counted).



Source – [Finance Writing Style Guide](#)
– [Word and sentence punctuation](#)

Writing skills

Numbers and measurement



Numbers as words

Use words up to 9 and at the beginning of a sentence (or rearrange the sentence to use numerals eg *twenty new graduates will start in January* (there will be 20 new graduates starting in January)). Plural numbers should be written as such eg 2.5 kilograms.

Combinations

Use a combination of numerals and words for large numbers eg \$3.8 million or \$3.8m.

Use a comma between two sets of numerals that appear together eg by 2025, 75 more employees will be needed.



Numbers as numerals

Use numerals for 10 and above, for symbols, tables, mathematical contexts, and in a related series of numbers for comparison.

Use an en dash to indicate spans of time and numbers, eg the 9–12, 45–50

Use a hyphen to illustrate negative numbers and zero values in a table eg -\$180 billion.

Use a comma to separate strings of four or more numerals eg 5,499.

Fractions and percentages

Use decimals or words to represent fractions eg *the levels varied between 6.452 and 7.894 over the period, one-third, one and three-quarters, a half.*

Use words, numerals and per cent in text and numerals and % in tables (you can use % in text if it is easier to read) eg *five per cent, 25%.*



Plurals

Identify plurals in text but not numerals eg 2.5 kilograms, 2.5kg

Date and time

Use words for dates without punctuation eg Wednesday 25 January 2021.

Use 12 hour time and separate the hour from the minute with a full stop. Don't use spaces between the number and am/pm. Two zeros are not required to indicate whole hours unless the period spans hours and minutes eg 8pm to 9.30pm.



Writing Skills

Language

Active voice

Active voice is a sentence structure that involves the use of **subject-verb-object**. The subject acts on the verb eg

The Delegate (subject) *made* (verb) *a decision* (object).

The [NCE] (subject) *does not support* (verb) *your request for an act of grace payment* (object).

Active language is:

- informal and conversational
- clear and assertive
- direct and easy to read
- accountable and transparent

Yoda (Star Wars) uses passive voice and agentless phrasing as part of his unique dialogue.



Passive voice

Passive voice is a sentence structure that involves the use of **object-verb-subject**. The verb acts on the subject eg

The decision (object) *was made* (verb) *by the Delegate* (subject).

Your request for an act of grace payment (object) *is not supported* (verb) *by the [NCE]* (subject).

Passive voice and agentless phrasing (taking out the decision maker or person/group/organisation etc responsible for the action) is often used to avoid accountability or where the source is unknown eg

A decision (object) *has been made* (verb) *in relation to your request for an act of grace payment* (subject)

Passive voice/agentless phrasing can sound impersonal and is often interpreted as evasive. Avoid using where possible.

Writing skills

General

Sentences

Use sentences to develop the main idea from a topic sentence e.g. *give examples or details, draw conclusions from evidence*. Keep sentences short, no more than 25 lines. Break up long sentences with dot points.

Dot points

Each dot point should read as a complete sentence when combined with the introductory phrase eg *these circumstances were*:

- *specific to the Requestor*
- *in line with the relevant legislative provisions*

If you repeat a word at the beginning of several dot points, consider adding the word to the introductory phrase instead eg *you claim*:

- *that you received incorrect advice*
- *that you suffered financial detriment*
- *that you lost your home*

In this example, you can add the 'that you' to the introductory phrase eg *you claim that you*:

- *received incorrect advice*
- *suffered financial detriment*
- *lost your home*

Repeated words

Avoid repeating words in sentences or paragraphs eg *Company X gave them incorrect **advice**, but the Australian Securities and Investment Commission (ASIC) gave them correct **advice** before they bought and held shares in Company X. I **note** that Services Australia declined your application for a benefit. I **note** that this cause you financial hardship. I **note** that you successfully appealed this decision.*

Wondering about the spelling of a word?
Confused about which word to use? Check out Finance's [spelling page](#)



Hedging words

Hedging words are used to express uncertainty eg *seem, tend, appear, think, believe, indicate, suggest, assume, possibly, perhaps, could, usually, generally, normally and potentially*.

Limit use of hedging words to increase the reader's confidence in the decision.

Double negatives

Avoid using double negatives eg *the evidence is certainly not irrefutable, the results are not inconclusive, he wasn't irresponsible about his duties*.

Paragraphs

Limit paragraphs to one idea. Keep paragraphs short, no more than 3 sentences. Structure paragraphs in logical order e.g. *problem then solution, pros then cons*.

Emphasising words

Emphasising words are used to stress importance or weight, but often don't add value eg *very, carefully, quickly, clearly, always, big, large*.

Remove emphasising words where possible.

Writing skills

Assertive writing

Assertive writing should be firm and direct, while empathetic to the individual's circumstances. This is opposed to aggressive language which is direct but does not express empathy.

When writing assertively you:

- take responsibility for findings and opinions by using 'I' statements, such as I note, I acknowledge, I accept, I understand
- ensure that the reasons for the decision are crystal clear and the arguments in support of the decision are evidence based

Take time to think about the Requestor and how they might react to the decision. Keep in mind their thoughts, feelings and beliefs, and choose your words carefully. Give proper consideration to claims and accept when there are circumstances in favour of an approval, even if you are declining the request eg

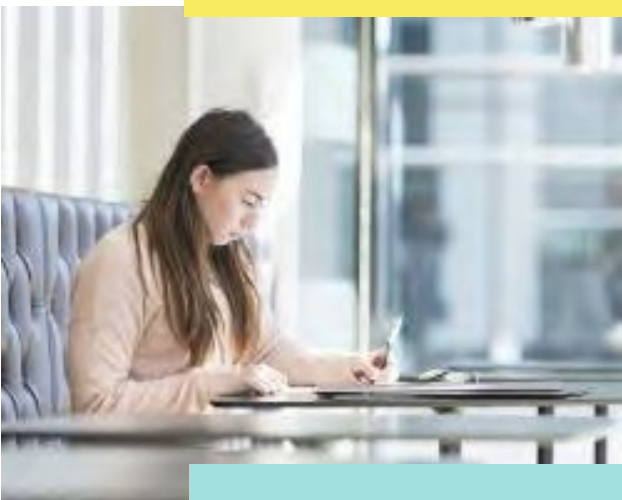
Paragraph 28 of RMG 401 states that the waiver of debt mechanism is a remedy of last resort. While I acknowledge that there are circumstances which support a waiver of debt, I am of the view that these circumstances are outweighed by the options that remain available to you to resolve your situation.

Sympathy is when we share the emotions of the Requestor in relation to a situation. Empathy is when we imagine or understand how the Requestor feels, without sharing the emotion ourselves. Empathy keeps us objective in decision making.



Writing skills

Final review – Checklist



Take a few minutes to check for:

- excessive acronyms, jargon and technical language (use plain English)
- passive language or agentless phrasing (use active language)
- sentences longer than 25 words (add punctuation or dot points)
- paragraphs longer than 3 lines (limit to one topic)
- grammatical and/or punctuation errors (Spell Check)
- formatting issues (names, spacing, text size)
- consistent tense (past, present or future)
- weak arguments (use evidence to support your decision)
- appropriate tone (use empathetic language)
- excessive wording (be ruthless, limit words to those necessary)
- repeated words in sentences or paragraphs (substitute for a similar word)



More resources – See: [Finance Writing Style Guide – Planning](#) or [Finance Writing Style Guide – Inclusive language](#)



Writing Skills

Final review - Readability

Features of clear and readable documents include:

- language that is simple, direct and familiar
- omission of needless words
- sentence structures that are clear and direct
- material organised in an orderly and logical way

Flesch-Kincaid readability tests

The Flesch Reading Ease test is measured on a 100-point scale. The higher the score, the easier it is to understand the information. Aim for between 60 and 70.

The Flesch-Kincaid Grade Level test is based on US school grade levels. For example, a score of 8 means an eighth grade student can understand the document. For most documents, aim for a score of seven to eight.

Find out more [here](#).

Assess the readability of your draft decision by enabling readability statistics in Microsoft Word.

1. Select **File** in Microsoft Word and then select **options**.
2. Select **Proofing**.
3. Make sure **Check grammar with spelling** is selected.
4. Under **when correcting grammar** in Word, select the **Show readability statistics** check box.

When Word finishes checking the spelling and grammar, it displays information about the reading level of the document.



The Gunning Fog Index

The Gunning Fog Index uses a formula to measure readability. The formula uses the types of words and the number of words per sentence to determine readability.

The index estimates the number of years of formal education needed to understand the text on a first reading. For example, a score of 13 requires the reading level of a senior high school student around 18 years old.

Visit [Gunning Fog Index](#) to find out about the readability of your document.



Quality Assurance

Overview

The purpose of the Quality Assurance (QA) process is to:

- maintain a high standard of decision documentation
- ensure consistency in decision making
- assist in the prevention of fraud and bias



A QA review involves 4 components:

1. **Substance** – Are the reasons for decision convincing?
2. **Style** – Are there any spelling, grammar, flow or formatting errors?
3. **Accuracy** – Is the content accurate?
4. **Feedback** – What feedback or suggestions do you have for strengthening the decision?

Quality Assurance

Before you begin

Read through the entire file to ensure you have a sound understanding of the Requestor's circumstances including:

- The application form and any supporting documentation
- NCE submissions
- The Requestor's response to NCE submissions

Application form (sample)

Application for an Act of Grace Payment

What is an act of grace payment?
Act of grace payments may be made when the Finance Minister or delegate considers it is appropriate to do so because of special circumstances (section 95 of the Public Governance, Performance and Accountability Act 2013 (PGPA Act)).
Act of grace payments are discretionary. There is no guarantee of an outcome in favour of the applicant.

Who can apply?
Any individual, company or other organisation can apply for an act of grace payment, either for themselves or for a third party if authorised. If a company applies for an act of grace payment, this form must be completed by an individual who is authorised to make this claim on behalf of the company (eg. director).
Claims are made in writing. Face-to-face meetings are generally not conducted.
The act of grace power is available to provide a remedy for the actions of NCEs. A list of NCEs is available on the Finance website.
If your claim relates to a entity other than a NCE, Finance may be limited to considering issues arising from the application of legislation or broader policy issues. If your claim does not relate to the Commonwealth Government, Finance will be unlikely to be able to assist.

What are special circumstances?
Special circumstances are not defined but may apply where a decision maker is satisfied that:
• an act of a non-corporate Commonwealth entity (NCE) has caused an unintended and inequitable result to the individual or organisation seeking the payment;
• Commonwealth legislation or policy has had an unintended, anomalous, inequitable or otherwise unacceptable impact on the claimant's circumstances; or
• the matter is not covered by legislation or specific policy, but the Commonwealth Government intends to introduce such legislation or policy.

What happens after you apply?
The investigation of an application will be a lengthy process. If you want to find out about the progress of your application, you can contact the Discretionary Payments Section.
Generally, Finance will seek information about your application from relevant NCEs. A copy of any information provided by another NCE will ordinarily be provided.

NCE submission (sample)

ATO SUBMISSION

Introduction
The ATO is responsible for the administration of repayments of study and training support loans and ensures that clients are informed about their repayment obligations. The ATO administers the accounts (including creating loan accounts for new clients), collects voluntary repayments and raises compulsory repayments where the client's income exceeds the minimum repayment threshold.
On 1 June of each year, the ATO also applies indexation on the part of the debt that has remained unpaid for more than 11 months. Indexation is not interest but is based on changes in the Consumer Price Index (CPI).
Further information about indexation can be found via <https://www.ato.gov.au/Rates/Study-and-training-loan-indexation-rate/>.

Legislation
Study and training support loans are administered jointly by the ATO and the relevant agency (see table below). The ATO is the collection agent for study and training support loan debts on behalf of the relevant agency. There is no power under any of the Acts listed below for the Commissioner of Taxation to waive study and training support loan debts, indexation or settle a debt by agreement.

Loan type	Agency	Legislation
Higher Education Loan Program (HELP)	Department of Education, Skills and Employment (DESE)	Higher Education Support Act 2003 (HESA)
Student Financial Supplement Scheme (SFSS)	Services Australia	Social Security Act 1991 (SSA), Student Assistance Act 1973 (SAA)
VET Student Loans (VSL)	Department of Education, Skills and Employment (DESE)	VET Student Loans Act 2016
Student Start-up Loans (SSL)	Services Australia	Social Security Act 1991 (SSA)
ABSTUDY Student Start-up Loans (ABSTUDY SSL)	Services Australia	Student Assistance Act 1973 (SAA)
Trade Support Loans (TSL)	Department of Education, Skills and Employment (DESE)	Trade Support Loan Act 2014

Response to NCE submission (sample)

Response to NCE submission - Internal (SYSTEM)

Hi DPS,

I would like to respond to the submission of NCE by stating that I don't agree with their assessment of my taxation and HECS debt. I did not study with that provider....

Requestor

Consider whether:

- the Requestor's claims are clear
- the result the Requestor is seeking is achievable
- the Requestor has provided sufficient evidence to support their claims
- any provisions of Resource Management Guide (RMG) 401 would apply to the Requestor's situation
- the Delegate will require any further information before making a decision



Quality Assurance

Substance

1. Substance

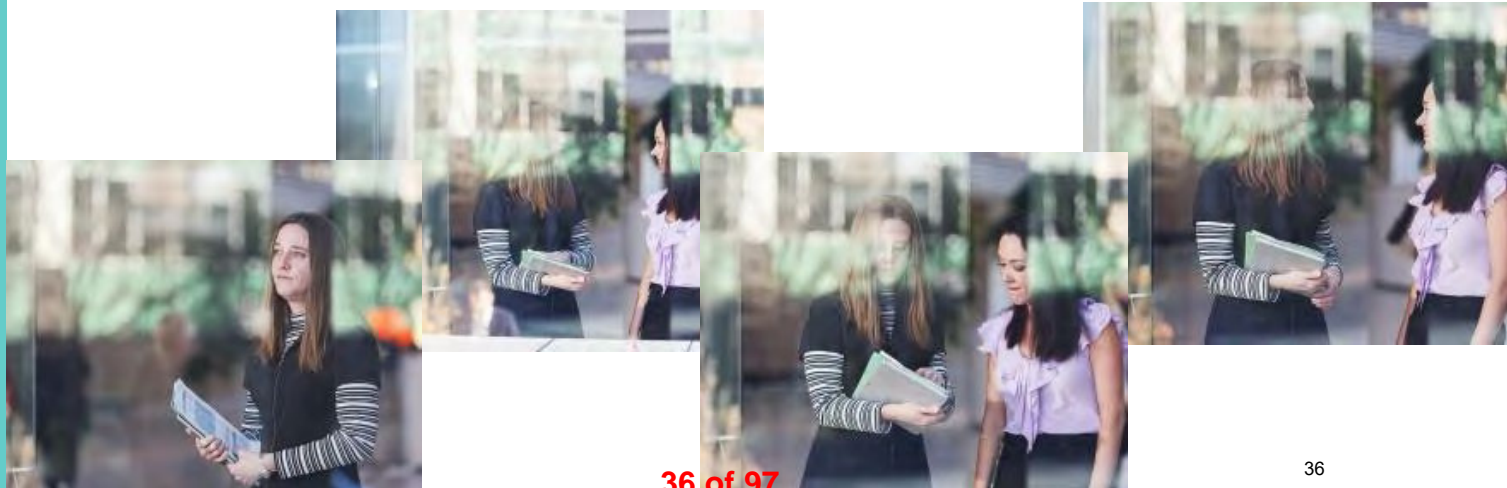
Read through the draft decision considering the reasoning outlined in the document:

- Are all claims by the applicant and the NCE accurately and succinctly defined?
- Is there any evidence to support the 'Findings on Material Questions of Fact'?
- Are all claims relevant or irrelevant, adequately addressed?
- Is legislative intent addressed? (if applicable)
- Is financial hardship addressed? (if applicable)
- Is the decision consistent with RMG 401? Is RMG 401 used to literally? Are there other factors that could be considered?
- Is the reasoning clear and based on the available evidence? Are there any unsupported assumptions in the 'Findings on Material Questions of Fact' or the 'Reasons'?
- Is there any sample wording (ED2019-7811) that could be used to strengthen the draft decision?
- Is the decision consistent with other decisions made by DPS contained within the [SFC Database](#)? If not, is there a good reason to deviate from previous decisions?
- Do you agree with the decision? Why/why not?

When checking the reasons consider whether all parties are equally represented. If more weight is placed on the information provided by one party over another, for example the NCE, is an explanation provided under 'Findings on material questions of fact'? Is it based on evidence? Is the description of events logical? Does the information make sense in the context of all the facts available? Is there missing content? If you have a question, ask.

Avoid making changes to the document. Allow the Claims Officer to have a go at implementing your suggestions. This assists in continuous learning and development. Record your feedback by return email (ED2019-10314) or as comments in the draft decision (track changes).

Provide any significant suggestions for amendment to the Claims Officer prior to progressing further with the QA review, as the draft decision may change considerably and therefore checking the grammar, spelling etc at this stage is not required.



Quality Assurance

Style

2. Style

Read through the draft decision again focusing on spelling, grammar, flow and formatting:

- Is the decision on the current template?
- Is the document succinct?
- Is information repeated?
- Is plain English used?
- Is active language used?
- Is the tense consistent i.e. past or present?
- Is there a logical flow to the document?
- Are the items list under 'Relevant Information Considered' referenced in the draft decision? Is there any information missing from this list that is referenced within the document?
- Is the relevant legislation identified?
- Is the tone appropriate? Is the decision written with empathy and consideration for the applicant's circumstances?
- Are numbers correctly referred to i.e. in words up to ten then numerical characters?
- Are there breaks in dates or names?
- Are there extra spaces between words, or at the beginning of a sentence?
- Is the applicant consistently referred to e.g. as 'you' or 'Mr Smith'.
- Are quotations presented consistently e.g. reduced font, quotation marks etc.?
- Are any full stops/commas missing?
- Are abbreviations defined appropriately?
- Is the sentence structure appropriate? Are sentences too long (over 25 words)? Are words repeated? Do they have a logical flow? Do they contain unnecessary words?
- Is the paragraph structure appropriate [key message, explanation, evidence, example, conclusion/link to topic]?
- Are paragraphs too long (over 3 lines)? Do they have a logical flow? Do they address more than one point?
- Are dot points consistent throughout the document? Are they overused/underused?
- Is there an overuse of hedging words e.g. usually, however, generally, somewhat, relatively etc.?
- Is there an overuse of emphasising words e.g. carefully considered, meaningful conversations, sincerely apologise?

Record feedback by return email or as comments in the draft decision (Track Changes).



Quality Assurance

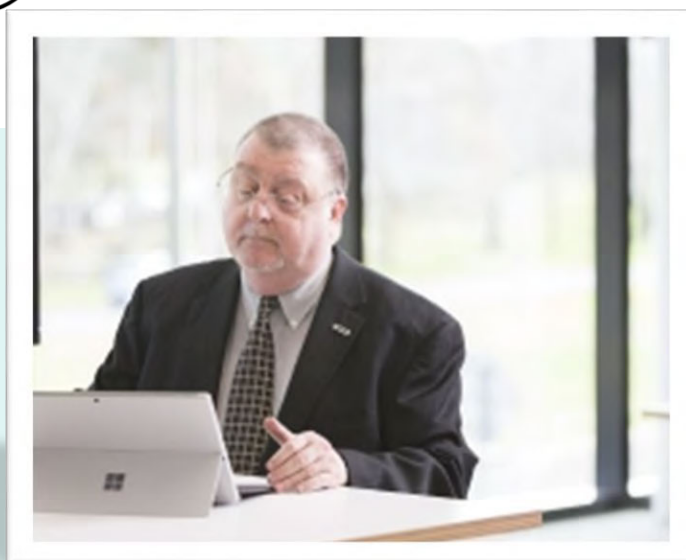
Accuracy

3. Accuracy

Read through the draft decision again focusing on accuracy of content.

Record any amendments in Track Changes.

F A C T C H E C K



- Is the DPS reference number referred to at the top of the document and under 'Information considered in making this decision' correct?
- Are all names and titles correct?
- Is the street and email address of the applicant correct?
- Are all dates correct?
- Is the amount requested/approved correct?
- Is the standard text correct and in line with the most recent template wording?
- Are the legislative references and references to RMG 401 relevant and accurately quoted?
- Are the delegate's details correct?
- Is the title of the document correct eg *20210610 – SMITH M – Waiver of Debt – Decision Letter*

Quality Assurance

Feedback

4. Feedback

Provide objective and specific feedback, and examples of best practice or preferred text to assist the Claims Officer. Highlight any areas of best practice in the draft decision and give praise for quality work.

Provide verbal feedback to the Claims Officer prior to written feedback. Copy the Claims Officer's supervisor into any written feedback.

Sample feedback wording

It appears that there are alternative resolution options available to (Salutation, Surname). Has consideration been given to whether a Sunset letter is appropriate?

It appears that [Name of NCE] is responsible for [insert responsibility]. Has consideration been given to contacting [Name of NCE] for a statement in this regard?

It appears that [NCE] has not addressed the applicant's claim in relation to [insert claim]. Perhaps we should request a response from [NCE] before proceeding.

Perhaps you could give consideration to a partial payment on the basis of [insert reasons].

The clarity of the decision could be strengthened by [insert suggestions] eg

- grouping and succinctly summarising the claims made by (Salutation, Surname) and/or [NCE]
- separating the facts not in contention and facts in contention
- adding a paragraph under 'Reasons' summarising the primary claims



*I agree with your recommendation. You have clearly and succinctly articulated the Requestor's claims. Your reasons for decision appropriately show understanding and empathy, and I particularly like paragraph about the intent of the legislation. **Well done!***

Perhaps you could further strengthen the reasons by adding information about the general responsibilities of the NCE and how they relate to the Requestor's circumstances.

Quality Assurance

Feedback

4. Feedback

Sample wording cont.

Consider how your language could be adjusted to show empathy in relation to [Salutation, Surname's] circumstances, while being assertive in relation to the reasons for declining [his/her] request for an act of grace payment/waiver of debt. Examples of empathetic language include:

- I acknowledge
- I accept
- I understand

Consider whether any statements have been made that are not supported by evidence, for example [insert specific reference].

Consider whether more/less weight should be given to [insert claim/reference] on the basis that [insert reason].

Consider whether [Salutation Surname/Organisation] could have mitigated [his/her] circumstances.

Consider whether the information under 'Claims' could be more succinctly summarised with the detail included instead under 'Findings on Material Questions of Fact' in order to avoid duplication.

Under 'Reasons' you may wish to consider the role of the NCE in ensuring [insert subject], and the broad intention of the scheme in relation to [Salutation Surname's] circumstances.

When you have collated your feedback in an email or in track changes and comments, address the email to the Claims Officer and their supervisor and save the email in your drafts. Make an appointment to meet with the Claims Officer to talk through the feedback. After the meeting, send the email.

Consider providing general feedback or links to resources to assist the Claims Officer with future cases



More information – See: **Standard Operating Procedure (SOP) – The DPS Quality Assurance Process** (ED2019/54-10)

Presentation Slides

STEPS

STEP 1 – Read and Summarise



Read the Requestor's file in full and prepare a case summary noting the Requestors claims, the claims of the Non-corporate Commonwealth entity (NCE) and any relevant considerations. Include any questions you would like answered before you commence your draft. *DISCUSS*



STEP 2 – Claims and Findings of Fact



Draft all sections of the template (approval or decline) with the exception of the 'Reasons' section. *DISCUSS*

STEP 3 – Reasons (Part 1)



Identify the considerations to address under 'Reasons'. Draft a summary paragraph of the Requestor's claims. *DISCUSS*

STEP 3 – Reasons (Part 2)



Identify the considerations to address under 'Reasons'. Draft a summary paragraph of the Requestor's claims. *DISCUSS*

STEP 4 – Editing your Writing and Quality Assurance



Use writing techniques and the Quality Assurance Standard Operating Procedure (SOP) to edit your draft decision. *DISCUSS*

STEP 5 – Delegate Decision



Seek review, input and sign off from the delegate. Finalise the decision. Review lessons learnt. *DISCUSS*

3

Notes

Step 1



Read and Summarise

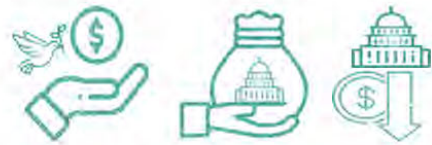
Read the Requestor's file in full and prepare a case summary noting the Requestors claims, the claims of the Non-corporate Commonwealth entity (NCE) and any relevant considerations. Include any questions you would like answered before you commence your draft.

1. Participants read out loud their case summaries
2. Discuss relevant considerations
3. Questions? – is further information needed?
4. Select a template – Approve/partially approve or decline?
5. Next steps – **Step 2 - Claims and Findings of Fact**

4

Notes

Step 2



Claims and Findings of Fact

Draft all sections of the template (approval or decline) with the exception of the 'Reasons' section.

1. Participants read out loud their draft of the claims and findings of fact
2. Identify the key claims
3. Are there any facts in contention? How will these be addressed?
4. Are there any items out of scope? How will these be addressed?
5. What will we need to consider in the 'Reasons' section?
6. Next steps – **Step 3 - Reasons**

5

Notes

Step 3



Reasons

Draft a summary paragraph of the Requester's claims. Draft the 'Reasons' for decision.

1. Participants read out loud their draft of the summary paragraph
2. Participants read out loud their draft reasons starting with the relevant provisions of the RMG
3. Other reasons
4. Conclusion
5. Next steps – **Step 4 – Editing your writing and Quality Assurance**

6

Notes

Writing skills



According to the Australian Public Service Commission (APSC) common issues with public sector writing include:

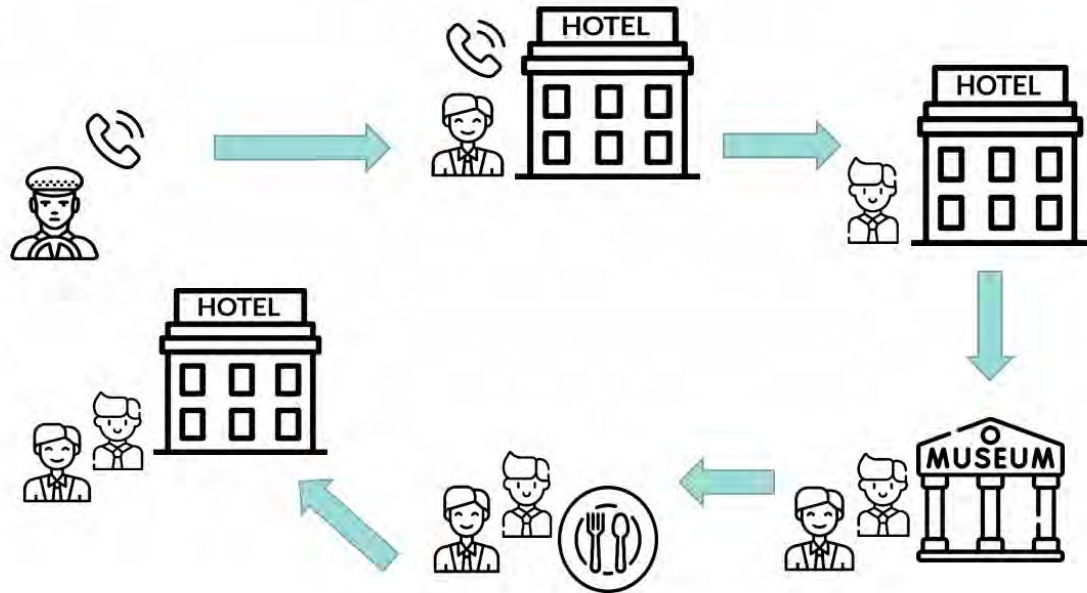
- Overuse of jargon and technical language
- Passive sentence construction
- Agentless phrasing
- Poor grammar and punctuation
- Too many words
- Weak arguments

8

Notes

Writing skills

Exercise – Taxi Driver



9

Notes

Writing skills



Activity 1 Writing in Plain English

I acknowledge receipt of your correspondence dated 4 January 2021 however by virtue of the manner in which Messrs Smith and Warren were seemingly provided with veracious information by ASIC prior to purchasing and retaining shares in Company X notwithstanding what occurred subsequently with a considerable amount of loss involving their portfolio please be advised that it is my considered view that in spite of the fact that upon commencement in accordance with erroneous advice concerning the nature of the investment Messrs Smith and Warren anticipated extremely positive results I can confirm that I have declined their application for a waiver of debt to the Commonwealth pertaining to their income taxation assessment.

11

Notes

Writing skills



Activity – Writing in Plain English

Thank you for your letter dated 4 January 2021 but because Mr Smith and Mr Warren were seemingly given correct information by ASIC before buying and holding shares in Company X despite what happened after with a lot of loss involving their portfolio at the beginning based on advice about their investment Mr Smith and Mr Warren expected very good results I have declined their request for a waiver of debt about their income taxation assessment.

12

Notes

Writing skills



Activity – Punctuation (Short sentences)

Thank you for your letter dated 4 January 2021 but because Mr Smith and Mr Warren were seemingly given correct information by ASIC before buying and holding shares in Company X despite what happened after with a lot of loss involving their portfolio at the beginning based on advice about their investment Mr Smith and Mr Warren expected very good results I have declined their request for a waiver of debt about their income taxation assessment.

13

Notes

Writing skills



Activity – Punctuation (Short sentences)

Thank you for your letter dated 4 January 2021. But because Mr Smith and Mr Warren were seemingly given correct information by ASIC before buying and holding shares in Company X. Despite what happened after with a lot of loss involving their portfolio, at the beginning based on advice about their investment Mr Smith and Mr Warren expected very good results. I have declined their request for a waiver of debt about their income taxation assessment.

14

Notes

Writing skills



Activity – Punctuation (Other)

Thank you for your letter, dated 4 January 2021. But because Mr Smith and Mr Warren were seemingly given correct information by ASIC before buying and holding shares in Company X. Despite what happened after with a lot of loss involving their portfolio, at the beginning, based on advice about their investment, Mr Smith and Mr Warren expected very good results. I have declined their request for a waiver of debt about their income taxation assessment.

15

Notes

Writing skills



Activity – Logical order

Thank you for your letter, dated 4 January 2021. Despite what happened after with a lot of loss involving their portfolio, at the beginning, based on advice about their investment, Mr Smith and Mr Warren expected very good results. But because Mr Smith and Mr Warren were seemingly given information by ASIC before buying and holding shares in Company X. I have declined their request for a waiver of debt about their income taxation assessment.

16

Notes

Writing skills



Activity – Jargon

Thank you for your letter, dated 4 January 2021. Despite what happened after with a lot of loss involving their portfolio, at the beginning, based on advice about their investment, Mr Smith and Mr Warren expected very good results. But because Mr Smith and Mr Warren were seemingly given correct information by ASIC before buying and holding shares in Company X. I have declined their request for a waiver of debt about their income taxation assessment.

17

Notes

Writing skills



Activity – Jargon

Thank you for your letter, dated 4 January 2021. Despite what happened after with a lot of loss involving **their portfolio**, at the beginning, based on advice about their investment, Mr Smith and Mr Warren expected very good results. But because Mr Smith and Mr Warren were seemingly given correct information by **ASIC** before buying and holding shares in Company X. I have declined their request for a waiver of debt about their income taxation assessment.

18

Notes

Writing skills



Activity – Jargon

Thank you for your letter, dated 4 January 2021. Despite what happened after with a lot of loss involving their portfolio*, at the beginning, based on advice about their investment, Mr Smith and Mr Warren expected very good results. But because Mr Smith and Mr Warren were seemingly given correct information by Australian Securities and Investment Commission (ASIC) before buying and holding shares in Company X. I have declined their request for a waiver of debt about their income taxation assessment.

*A portfolio is a collection of financial investments like stocks, bonds, commodities, cash, and cash equivalents, including closed-end funds and exchange traded funds (ETFs). A portfolio may contain a wide range of assets including real estate, art, and private investments.

19

Notes

Writing skills



Activity – Jargon

But because Mr Smith and Mr Warren were seemingly given correct information by Australian Securities and Investment Commission (ASIC) before buying and holding shares in Company X.

But because Mr Smith and Mr Warren were seemingly given correct information by **the** Australian Securities and Investment Commission (ASIC) before buying and holding shares in Company X.

But because Mr Smith and Mr Warren were seemingly given correct information by **the** ASIC before buying and holding shares in Company X.

But because Mr Smith and Mr Warren were seemingly given correct information by ASIC before buying and holding shares in Company X.

20

Notes

Writing skills



Activity – But and Because

But because Mr Smith and Mr Warren were seemingly given correct information by ASIC before buying and holding shares in Company X.

However, Mr Smith and Mr Warren were seemingly given correct information by ASIC before buying and holding shares in Company X.

21

Notes

Writing skills



Activity – Active voice

Active voice is a sentence structure that involves the use of **subject-verb-object**. The subject acts on the verb.

The Delegate (subject) *made* (verb) *a decision* (object).

Passive voice is a sentence structure that involves the use of **object-verb-subject**. The verb acts on the subject.

The decision (object) *was made* (verb) *by the Delegate* (subject)

22

Notes

Writing skills



Activity – Active language and accountability

Often passive voice is used to avoid accountability or is used where the source is unknown.

A decision (object) has been made (verb) in relation to your request for an act of grace payment (subject)

Active voice:

The delegate (subject), made (verb) a decision (object).

23

Notes

Writing skills



Activity – Active language

Thank you for your letter, dated 4 January 2021. Despite what happened after with a lot of loss involving their portfolio*, at the beginning, based on advice about their investment, Mr Smith and Mr Warren expected very good results. But because Mr Smith and Mr Warren were seemingly given correct information by the Australian Securities and Investment Commission (ASIC) before buying and holding shares in Company X. I have declined their request for a waiver of debt about their income taxation assessment.

*A portfolio is a collection of financial investments like stocks, bonds, commodities, cash, and cash equivalents, including closed-end funds and exchange traded funds (ETFs). A portfolio may contain a wide range of assets including real estate, art, and private investments.

24

Notes

Writing skills



Activity – Active language

Thank you for your letter, dated 4 January 2021. **Despite what happened after with a lot of loss involving portfolio* losses, at the beginning, based on advice about their investment, Mr Smith and Mr Warren expected very good results.** But because Mr Smith and Mr Warren were seemingly given correct information by the Australian Securities and Investment Commission (ASIC) before buying and holding shares in Company X. I have declined their request for a waiver of debt about their income taxation assessment.

*A portfolio is a collection of financial investments like stocks, bonds, commodities, cash, and cash equivalents, including closed-end funds and exchange traded funds (ETFs). A portfolio may contain a wide range of assets including real estate, art, and private investments.

25

Notes

Writing skills



Activity – Active language

Despite what happened after with a lot of loss involving their portfolio*, at the beginning, based on advice about their investment, Mr Smith and Mr Warren expected very good results.

*Despite what happened after, with a lot of loss (verb) involving their portfolio**

*at the beginning, based on advice about their investment (object),
Mr Smith and Mr Warren (subject) expected very good results (verb).*

26

Notes

Writing skills



Activity – Active language

Company X gave advice to Mr Smith and Mr Warren about their investment. Based on this advice, Mr Smith and Mr Warren expected very good results from their shares. But the Global Financial Crisis (GFC) in 2007 resulted in portfolio losses for Mr Smith and Mr Warren.

Company X (subject) gave (verb) advice to Mr Smith and Mr Warren about their investment (object). Based on this advice, Mr Smith and Mr Warren (subject) expected (verb) very good results (verb) from the shares. The Global Financial Crisis (GFC) in 2007 (subject) resulted (verb) in portfolio losses for Mr Smith and Mr Warren (object).

27

Notes

Writing skills



Activity – Active language

Thank you for your letter, dated 4 January 2021. Despite what happened after with a lot of loss involving portfolio*, at the beginning, based on advice about their investment, Mr Smith and Mr Warren expected very good results. **But because Mr Smith and Mr Warren were seemingly given correct information by the Australian Securities and Investment Commission (ASIC) before buying and holding shares in Company X.** I have declined their request for a waiver of debt about their income taxation assessment.

*A portfolio is a collection of financial investments like stocks, bonds, commodities, cash, and cash equivalents, including closed-end funds and exchange traded funds (ETFs). A portfolio may contain a wide range of assets including real estate, art, and private investments.

28

Notes

Writing skills



Activity – Active language

But because Mr Smith and Mr Warren were seemingly given correct information by the Australian Securities and Investment Commission (ASIC) before buying and holding shares in Company X.

But because Mr Smith and Mr Warren (object) were given (verb) correct information by the Australian Securities and Investment Commission (ASIC) (subject) before buying and holding shares in Company X.

29

Notes

Writing skills



Activity – Active language

The Australian Securities and Investment Commission (ASIC) seemingly gave correct information to Mr Smith and Mr Warren before they bought and held shares in Company X.

The Australian Securities and Investment Commission (ASIC) (subject), gave (verb) correct information to Mr Smith and Mr Warren (object) before they bought (verb) and held (verb) shares (object) in Company X (object).

30

Notes

Writing skills



Activity – Hedging words

Thank you for your letter, dated 4 January 2021. Company X gave incorrect advice to Mr Smith and Mr Warren about their investment. Based on this advice, Mr Smith and Mr Warren expected very good results from their shares. But the Global Financial Crisis (GFC) in 2007 resulted in portfolio losses for Mr Smith and Mr Warren. The Australian Securities and Investment Commission (ASIC) seemingly gave correct information to Mr Smith and Mr Warren before they bought and held shares in Company X. I have declined their request for a waiver of debt about their income taxation assessment.

*A portfolio is a collection of financial investments like stocks, bonds, commodities, cash, and cash equivalents, including closed-end funds and exchange traded funds (ETFs). A portfolio may contain a wide range of assets including real estate, art, and private investments.

31

Notes

Writing skills



Activity – Hedging words

Thank you for your letter, dated 4 January 2021. Company X gave incorrect advice to Mr Smith and Mr Warren about their investment. Based on this advice, Mr Smith and Mr Warren expected very good results from their shares. But the Global Financial Crisis (GFC) in 2007 resulted in portfolio losses for Mr Smith and Mr Warren. The Australian Securities and Investment Commission (ASIC) seemingly gave correct information to Mr Smith and Mr Warren before they bought and held shares in Company X. I have declined their request for a waiver of debt about their income taxation assessment.

*A portfolio is a collection of financial investments like stocks, bonds, commodities, cash, and cash equivalents, including closed-end funds and exchange traded funds (ETFs). A portfolio may contain a wide range of assets including real estate, art, and private investments.

32

Notes

Writing skills



Activity – Emphasising words

Thank you for your letter, dated 4 January 2021. Company X gave incorrect advice to Mr Smith and Mr Warren about their investment. Based on this advice, Mr Smith and Mr Warren expected very good results from their shares. But the Global Financial Crisis (GFC) in 2007 resulted in portfolio losses for Mr Smith and Mr Warren. The Australian Securities and Investment Commission (ASIC) gave correct information to Mr Smith and Mr Warren before they bought and held shares in Company X. I have declined their request for a waiver of debt about their income taxation assessment.

*A portfolio is a collection of financial investments like stocks, bonds, commodities, cash, and cash equivalents, including closed-end funds and exchange traded funds (ETFs). A portfolio may contain a wide range of assets including real estate, art, and private investments.

33

Notes

Writing skills



Activity – Number of words

Thank you for your letter, dated 4 January 2021. Company X gave incorrect advice to Mr Smith and Mr Warren about their investment. Based on this advice, Mr Smith and Mr Warren expected very good results from their shares. But the Global Financial Crisis (GFC) in 2007 resulted in portfolio losses for Mr Smith and Mr Warren. The Australian Securities and Investment Commission (ASIC) gave correct information to Mr Smith and Mr Warren before they bought and held shares in Company X. I have declined their request for a waiver of debt about their income taxation assessment.

*A portfolio is a collection of financial investments like stocks, bonds, commodities, cash, and cash equivalents, including closed-end funds and exchange traded funds (ETFs). A portfolio may contain a wide range of assets including real estate, art, and private investments.

34

Notes

Writing skills



Activity – Number of words

Thank you for your letter, dated 4 January 2021. The Global Financial Crisis (GFC) caused Mr Smith and Mr Warren offset and hedging* losses. They expected good results from their shares because Company X gave them incorrect advice. But the Australian Securities and Investment Commission (ASIC) gave them correct advice before they bought and held shares in Company X. For this reason, I have declined their request for a waiver of debt about their income taxation assessment.

* An offset involves assuming an opposite position in relation to an original opening position in the securities markets. For example, if you are long 100 shares of XYZ, selling 100 shares of XYZ would be the offsetting position. A hedge is an investment that is made with the intention of reducing the risk of adverse price movements in an asset. Normally, a hedge consists of taking an offsetting or opposite position in a related security.

35

Notes

Writing skills



Activity – Repeated words

I consider your claims to be:

- That you lost money in the GFC
- That the loss of money occurred due to advice provided by ASIC
- That the advice provided by ASIC was incorrect
- That you were also provided with incorrect advice from Company X

These claims could be summarised in one dot point:

- You lost money in the GFC because ASIC and Company X gave you incorrect advice

‘That’ is a meaningless word in the context of the above example and can be removed.

36

Notes

Writing skills



Activity – Repeated words

Thank you for your letter, dated 4 January 2021. The Global Financial Crisis (GFC) caused Mr Smith and Mr Warren portfolio* losses. They expected good results from their shares because Company X gave them incorrect **advice**. But the Australian Securities and Investment Commission (ASIC) gave them correct **advice** before they bought and held shares in Company X. For this reason, I have declined **their** request for a waiver of debt about **their** income taxation assessment.

*A portfolio is a collection of financial investments like stocks, bonds, commodities, cash, and cash equivalents, including closed-end funds and exchange traded funds (ETFs). A portfolio may contain a wide range of assets including real estate, art, and private investments.

37

Notes

Writing skills



Activity – Repeated words

I note that Services Australia declined your application for a benefit. I note that this cause you financial hardship. I note that you successfully appealed this decision.

I note that Services Australia declined your application for a benefit. I acknowledge that this caused you financial hardship. I understand that you successfully appealed the decision.

38

Notes

Writing skills



Activity – Assertive language and weak arguments

Thank you for your letter, dated 4 January 2021. The Global Financial Crisis (GFC) caused Mr Smith and Mr Warren portfolio* losses and they are seeking a waiver of income tax. They expected good results from their shares because Company X gave them incorrect advice. But the Australian Securities and Investment Commission (ASIC) gave them the right information before they bought and held shares in Company X. For this reason, I have declined their request for a waiver of debt.

*A portfolio is a collection of financial investments like stocks, bonds, commodities, cash, and cash equivalents, including closed-end funds and exchange traded funds (ETFs). A portfolio may contain a wide range of assets including real estate, art, and private investments.

39

Notes

Writing skills



Activity – Assertive language and weak arguments

Thank you for your letter, dated 4 January 2021. The Global Financial Crisis (GFC) caused Mr Smith and Mr Warren portfolio* losses and they are seeking a waiver of income tax. They expected good results from their shares because Company X gave them incorrect advice. But the Australian Securities and Investment Commission (ASIC) gave them correct information **to assist them in mitigating the risk of their portfolio** before they bought and held shares in Company X. **Noting that the Commonwealth was not at fault**, I have declined their request for a waiver of debt.

*A portfolio is a collection of financial investments like stocks, bonds, commodities, cash, and cash equivalents, including closed-end funds and exchange traded funds (ETFs). A portfolio may contain a wide range of assets including real estate, art, and private investments.

40

Notes

Writing skills



Activity – Assertive language and empathy

Thank you for your letter, dated 4 January 2021. The Global Financial Crisis (GFC) caused Mr Smith and Mr Warren portfolio* losses and they are seeking a waiver of income tax. They expected good results from their shares because Company X gave them incorrect advice. But the Australian Securities and Investment Commission (ASIC) gave them correct information to assist them in mitigating the risk of their portfolio, before they bought and held shares in Company X. Noting that the Commonwealth was not at fault, I have declined their request for a waiver of debt.

*A portfolio is a collection of financial investments like stocks, bonds, commodities, cash, and cash equivalents, including closed-end funds and exchange traded funds (ETFs). A portfolio may contain a wide range of assets including real estate, art, and private investments.

41

Notes

Writing skills



Activity – Assertive language and empathy

Thank you for your letter, dated 4 January 2021. The Global Financial Crisis (GFC) caused Mr Smith and Mr Warren portfolio* losses and they are seeking a waiver of income tax. They expected good results from their shares because Company X gave them incorrect advice. But the Australian Securities and Investment Commission (ASIC) gave them correct information to assist them in mitigating the risk of their portfolio, before they bought and held shares in Company X. While I acknowledge the stress experienced by Mr Smith and Mr Warren as a result of their losses, noting that the Commonwealth was not at fault, I have declined their request for a waiver of debt.

*A portfolio is a collection of financial investments like stocks, bonds, commodities, cash, and cash equivalents, including closed-end funds and exchange traded funds (ETFs). A portfolio may contain a wide range of assets including real estate, art, and private investments.

43

Notes

Writing skills



Activity – Paragraphs

Thank you for your letter, dated 4 January 2021. The Global Financial Crisis (GFC) caused Mr Smith and Mr Warren portfolio* losses and they are seeking a waiver of income tax. They expected good results from their shares because Company X gave them incorrect advice. But the Australian Securities and Investment Commission (ASIC) gave them correct information to assist them in mitigating the risk of their portfolio, before they bought and held shares in Company X. While I acknowledge the stress experienced by Mr Smith and Mr Warren as a result of their losses, noting that the Commonwealth was not at fault, I have declined their request for a waiver of debt.

*A portfolio is a collection of financial investments like stocks, bonds, commodities, cash, and cash equivalents, including closed-end funds and exchange traded funds (ETFs). A portfolio may contain a wide range of assets including real estate, art, and private investments.

44

Notes

Writing skills



Activity – Assertive language and empathy

Thank you for your letter, dated 4 January 2021. The Global Financial Crisis (GFC) caused Mr Smith and Mr Warren portfolio* losses and they are seeking a waiver of income tax.

They expected good results from their shares because Company X gave them incorrect advice. But the Australian Securities and Investment Commission (ASIC) gave them correct information to assist them in mitigating the risk of their portfolio, before they bought and held shares in Company X.

While I acknowledge the stress experienced by Mr Smith and Mr Warren as a result of their losses, noting that the Commonwealth was not at fault, I have declined their request for a waiver of debt.

*A portfolio is a collection of financial investments like stocks, bonds, commodities, cash, and cash equivalents, including closed-end funds and exchange traded funds (ETFs). A portfolio may contain a wide range of assets including real estate, art, and private investments.

45

Notes

Writing skills



Activity – Final review

- Limit jargon and technical language
- Use active language where possible
- Use short sentences (no longer than 4 lines)
- Check grammar and punctuation
- Use plain English
- Be assertive with strong arguments and use of empathy
- Limit the number of words to those necessary to get the point across

46

Notes

Writing skills



Activity – Final review

Thank you for your letter, dated 4 January 2021. The Global Financial Crisis (GFC) caused portfolio* losses for Mr Smith and Mr Warren and they are seeking a waiver of income tax.

They expected good results from their **investment** because Company X gave them **misleading** advice. But before they bought and held shares in Company X, the Australian Securities and Investment Commission (ASIC) **supplied** them **with** correct information to assist **in mitigating risk**.

While I acknowledge the stress experienced by Mr Smith and Mr Warren as a result of their losses, the Commonwealth was not at fault. **For this reason** I have declined their request for a waiver of debt.

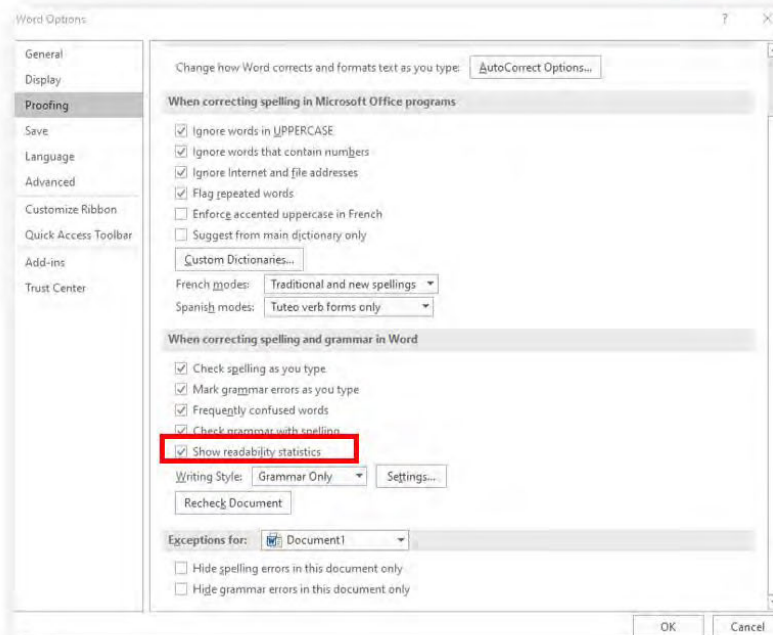
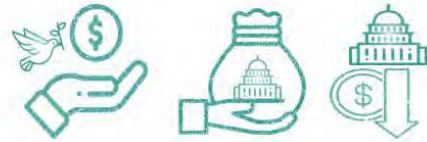
*A portfolio is a collection of financial investments like stocks, bonds, commodities, cash, and cash equivalents, including closed-end funds and exchange traded funds (ETFs). A portfolio may contain a wide range of assets including real estate, art, and private investments.

47

Notes

Writing skills

Activity – Final review



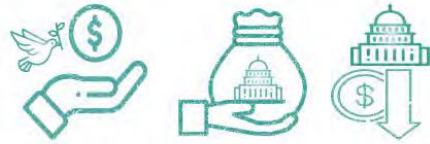
48

Notes

[illegible]

Writing skills

Activity – Final review



Readability Statistics	
Counts	
Words	112
Characters	614
Paragraphs	1
Sentences	1
Averages	
Sentences per Paragraph	1.0
Words per Sentence	112.0
Characters per Word	5.4
Readability	
Passive Sentences	0%
Flesch Reading Ease	0.0
Flesch-Kincaid Grade Level	49.6
OK	

Readability Statistics	
Counts	
Words	110
Characters	548
Paragraphs	3
Sentences	6
Averages	
Sentences per Paragraph	2.0
Words per Sentence	18.3
Characters per Word	4.8
Readability	
Passive Sentences	0%
Flesch Reading Ease	53.6
Flesch-Kincaid Grade Level	10.3
OK	

49

Notes

Writing skills



Activity – Final review

I acknowledge receipt of your correspondence dated 4 January 2021 however by virtue of the manner in which Messrs Smith and Warren were seemingly provided with veracious information by ASIC prior to purchasing and retaining shares in Company X notwithstanding what occurred subsequently with a considerable amount of loss involving their portfolio please be advised that it is my considered view that in spite of the fact that upon commencement in accordance with erroneous advice concerning the nature of the investment Messrs Smith and Warren anticipated extremely positive results I can confirm that I have declined their application for a waiver of debt to the Commonwealth pertaining to their income taxation assessment.

50

Notes

Writing skills



Activity – Final review

Thank you for your letter, dated 4 January 2021. The Global Financial Crisis (GFC) caused portfolio* losses for Mr Smith and Mr Warren and they are seeking a waiver of income tax.

They expected good results from their investment because Company X gave them misleading advice. But before they bought and held shares in Company X, the Australian Securities and Investment Commission (ASIC) supplied them with correct information to assist in mitigating risk.

While I acknowledge the stress experienced by Mr Smith and Mr Warren as a result of their losses, the Commonwealth was not at fault. For this reason I have declined their request for a waiver of debt.

*A portfolio is a collection of financial investments like stocks, bonds, commodities, cash, and cash equivalents, including closed-end funds and exchange traded funds (ETFs). A portfolio may contain a wide range of assets including real estate, art, and private investments.

51

Notes

Quality Assurance



What is Quality Assurance (QA)?

Quality Assurance or QA is a process of reviewing draft decisions before they are presented to the appropriate delegate. QA is normally conducted by a supervisor or peer, but you can select anyone in the team to QA your work.

What is the purpose of QA?

The purpose of QA is to:

- maintain a high standard of decision documentation
- ensure consistency in decision-making
- assist in the prevention of fraud

53

Notes

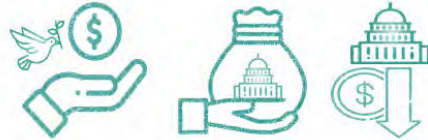
Quality Assurance



54

Notes

Quality Assurance



Application for an Act of Grace Payment

What is an act of grace payment?
An act of grace payment may be made when the Finance Minister or delegate considers it is appropriate to do so because of special circumstances (section 63 of the Public Governance, Performance and Accountability Act 2013 (PGPA Act)).

Act of grace payments are discretionary. There is no guarantee of an outcome in favour of the applicant.

What are special circumstances?
Special circumstances are not defined but may apply where a decision maker is satisfied that:

- an act of a non-corporate Commonwealth entity (NCE) has caused an unintended and inequitable result to the individual or organisation seeking the payment;
- Commonwealth legislation or policy has had an unintended, unforeseen, avoidable or otherwise understandable impact on the claimant's circumstances; or
- the matter is not covered by legislation or specific policy, but the Commonwealth Government intends to introduce such legislation or policy.

Who can apply?
Any individual, company or other organisation can apply for an act of grace payment, either for themselves or for a third party if authorised. If a company applies for an act of grace payment, this form must be completed by an individual who is authorised to make the claim on behalf of the company (eg. director). Claims are made in writing. Face-to-face meetings are generally not conducted.

The act of grace power is available to provide a remedy for the actions of NCEs. A list of NCEs is available on the Finance website.

If your claim relates to an entity other than a NCE, Finance may be limited to considering issues arising from the application of legislation or transfer policy issues. If your claim does not relate to the Commonwealth Government, Finance will be unlikely to be able to assist.

What happens after you apply?
The investigation of an application will be a lengthy process. If you need to find out about the progress of your application, you can contact the Discretionary Payments Section.

Generally, Finance will seek information about your application from relevant NCEs. A list of any information provided by another NCE, will ordinarily be provided.

ATO SUBMISSION

Introduction
The ATO is responsible for the administration of repayments of study and training support loans and ensures that clients are informed about their repayment obligations. The ATO administers the accounts (including creating loan accounts for new clients), collects voluntary repayments and issues compulsory repayments where the client's income exceeds the minimum repayment threshold.

On 1 June of each year, the ATO also applies indexation on the part of the debt that has remained unpaid for more than 11 months. Indexation is not interest but is based on changes in the Consumer Price Index (CPI). Further information about indexation can be found via <https://www.ato.gov.au/About-ATO-and-Training-Loans/indexation.html>.

Legislation
Study and training support loans are administered jointly by the ATO and the relevant agency (see table below). The ATO is the collection agent for study and training support loan debts on behalf of the relevant agency. There is no power under any of the Acts listed below for the Commissioner of Taxation to waive study and training support loan debts, reduction or settle a debt by agreement.

Loan type	Agency	Legislation
Higher Education Loan Program (HELP)	Department of Education, Skills and Employment (DESE)	Higher Education Support Act 2003 (HESA)
Student Financial Supplement Scheme (SFSS)	Services Australia	Social Security Act 1991 (SSA), Student Assistance Act 1973 (SAA)
VET Student Loans (VSL)	Department of Education, Skills and Employment (DESE)	VET Student Loans Act 2016
Student Startup Loans (SSL)	Services Australia	Social Security Act 1991 (SSA)
ABSTUDY Student Startup Loans (ABSTUDY SSL)	Services Australia	Student Assistance Act 1973 (SAA)
Trade Support Loans (TSL)	Department of Education, Skills and Employment (DESE)	Trade Support Loan Act 2014

Response to NCE Submission (Message ID: 1191)

Hi DPS,

I would like to respond to the submission of NCE by stating that I don't agree with their assessment of my taxation and HECS debt. I did not study with that provider...

Requester:

55

Notes

Quality Assurance



Notes

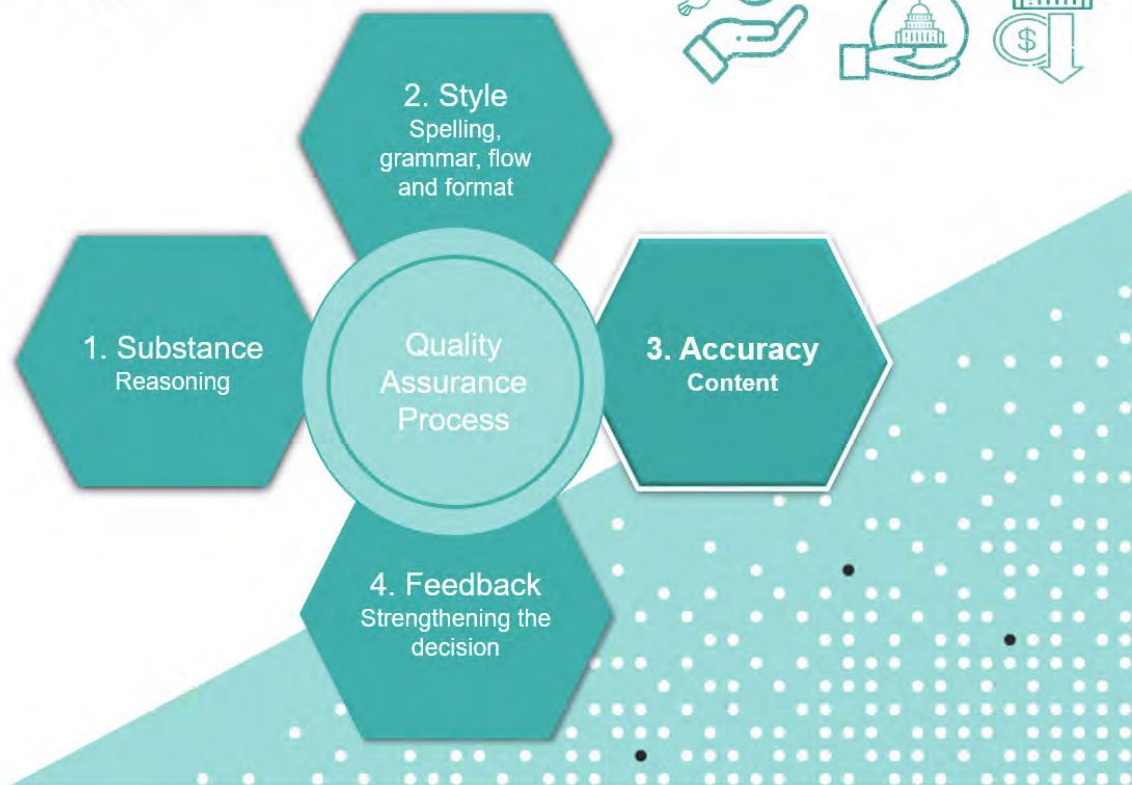
Quality Assurance



57

Notes

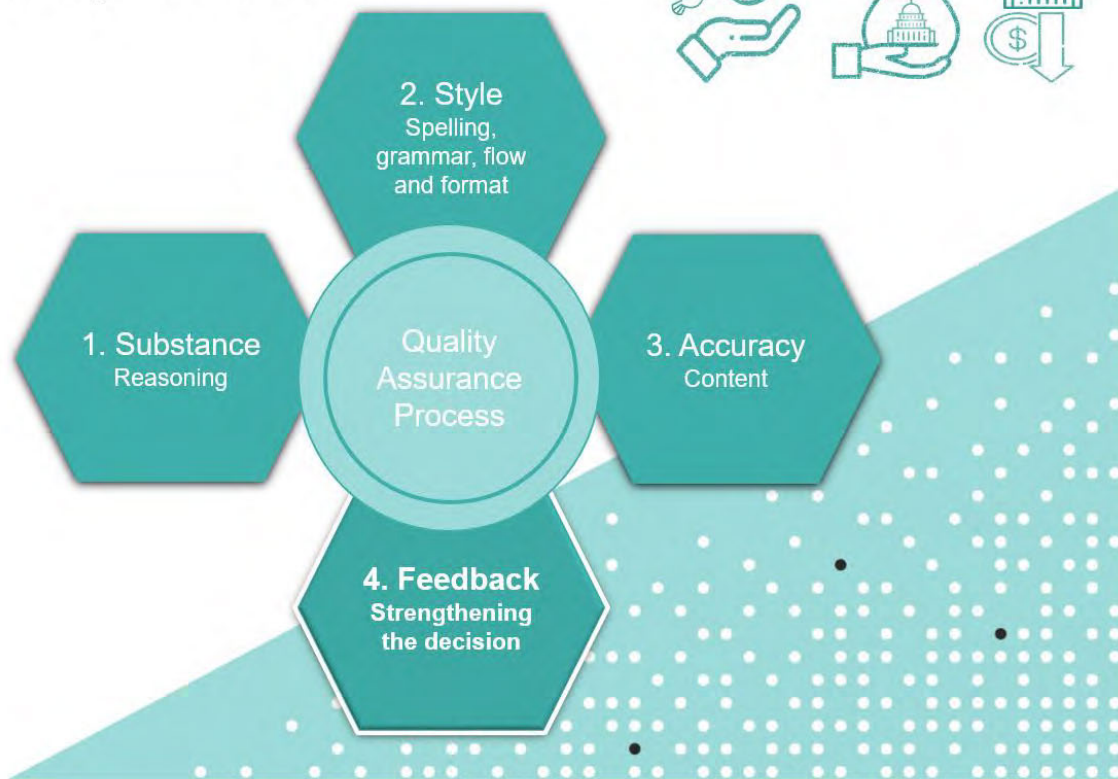
Quality Assurance



58

Notes

Quality Assurance



59

Notes

Step 4



Editing your Writing and Quality Assurance

Use writing techniques and the Quality Assurance Standard Operating Procedure (SOP) to edit the draft decision

1. Lets look at our changes
2. Seeking Quality Assurance
3. Sending the decision to the Delegate
4. Next steps – **Step 5 – Delegate decision**

60

Notes

Step 5



Delegate decision

Seek review, input and sign off by the delegate. Finalise the decision. Review lessons learnt.

1. What did we learn from the QA process?
2. What did we learn from the Delegate's feedback?
3. Finalising the decision

61

Notes

[illegible]

[illegible]



Standard Operating Procedure

TITLE: SOP – The DPS Quality Assurance (QA) Process SOP NUMBER: ED2019-9729 RESPONSIBLE TEAM: Discretionary Payments Section (DPS)	PAGE 1 of
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APPROVAL BLOCK

APPROVALS	NAME	POSITION TITLE	DATE
PREPARED BY:	s 22	Assistant Director	22/08/2018
REVIEWED BY:	s 22	Assistant Director	19/05/2021
APPROVED BY:			

VERSION HISTORY

VERSION	EFFECTIVE DATE	DESCRIPTION OF CHANGE	NAME
V1	22/08/2018	Initial draft	s 22
V2	30/05/2019	Final draft	s 22
V3	19/05/2021	Updated draft	s 22

QUARTERLY REVIEW

DATE DUE	DATE COMPLETED	NAME
30/05/2020		

RELATED TEMPLATES

QA – Feedback Template	ED2019-9731
QA – Request Template	ED2019-10315
Quality Assurance Issues Register	ED2019-9730

DEFINITIONS/ACRONYMS

TERM	DEFINITION
DPS	Discretionary Payments Section
Minister	Minister for Finance
NCE	Non-corporate Commonwealth Entity
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013.</i>

OVERVIEW

Section 63 (waiver of debt) and 65 (act of grace) of the PGPA Act provide authority to the Minister to make decisions regarding requests for discretionary financial assistance. The Discretionary Payments Section (DPS), with the Department of Finance, is responsible for assessing these requests.

Following investigation of a request for discretionary financial assistance, a Claims Officer or Assistant Director (the writer) prepares a draft decision/recommendation for consideration by the Minister or Delegate.

Prior to provision to the Delegate, the writer refers the draft decision/recommendation to a peer, supervisor or the Director, DPS for a Quality Assurance (QA) review using the QA – Request template.¹

PURPOSE

The purpose of the QA review is to:

- maintain a high standard of decision documentation
- ensure consistency in decision-making
- assist in the prevention of fraud and bias

THE QA REVIEW PROCESS**Understanding the Requestor's claims**

As the person responsible for the QA review you should read all documentation on file to ensure a sound understanding of the Requestor's claims, including:

- the application form and any supporting documentation;
- submissions made by the relevant Non corporate Commonwealth Entity (NCE); and

- the Requestor's response to submissions made by the NCE.

Considerations:

- Are the Requestor's claims clear?
- What result is the Requestor seeking?
- Is there sufficient evidence to support the Requestor's claims?
- Do any of the provisions of RMG401 apply to the Requestor's circumstances?
- Does the response by the relevant NCE address the entirety of the Requestor's claims?
- Is there sufficient evidence to support any claims by the NCE?

If you consider that further information is required before a decision can be made, note the specifics of this information in your feedback to the Claims Officer.

Reviewing the draft decision/recommendation

Before you begin:

- Save a copy of the decision in the relevant 'Decision documents' folder on the G-Drive or HPE CM.
- Open the copy and turn on track changes.
- Open the QA Feedback Templateⁱⁱ.

Substance (*Reasoning*)

Read through the entirety of the draft decision letter/recommendation considering the reasoning outlined in the document.

Considerations:

- Are all the Requestor/NCE claims accurately and succinctly defined?
- Is there evidence to support the 'Findings on Material Questions of Fact'?
- Are all claims, relevant and irrelevant, adequately addressed?
- Is legislative intent addressed (if applicable)?
- Is financial hardship addressed (if applicable)?
- Is the decision consistent with the RMG? Is the RMG used too literally? Are there other factors that could be considered?
- Is the reasoning clear and based on the available evidence? Are there unsupported assumptions in the findings of fact or reasoning?
- Do you agree with the proposed decision/recommendation?
- Is the decision consistent with other decisions made by DPS contained within the [SFC Database](#)? In considering previous decisions note the use of legislative references, application of the RMG and other relevant content which may strengthen the decision/recommendation currently under QA.

Record minor feedback/amendments as comments/track changes within the draft decision letter /recommendation. Avoid making major changes. Any suggestions for significant amendment should be noted on the QA Feedback Template and provided to the writer for consideration/implementation, prior to progressing a review of style or accuracy.

Style (*Spelling, grammar, flow and formatting*)

Read through the entity of the decision/recommendation a second time focusing on spelling, grammar, flow and formatting.

Considerations:

- Is the decision on the current DPS template?
- Is the document succinct? Is information repeated?
- Is plain English used?
- Is active language used?
- Is the tense consistent i.e. past or present?
- Is there a logical flow to the document?
- Are the items list under 'Relevant Information Considered' referenced in the decision/recommendation? Is there any information missing from this list that is referenced within the document?
- Is the relevant legislation identified?
- Is the tone appropriate? Is the decision written with empathy and consideration for the Requestor's circumstances?
- Are numbers correctly referred to i.e. in words up to ten then numerical characters?
- Are there breaks in dates or names? i.e. are the on the same line?
- Are there extra spaces between words, or at the beginning of a sentence?
- Is the Requestor consistently referred to e.g. as 'you' or 'Mr Smith'. If the reference is to Mr Smith – consider the wording of the appeal provisions contained in the attachment e.g. 'If you disagree with this decision'
- Are quotations presented consistently e.g. reduced font, quotation marks etc.?
- Are any full stops/commas missing?
- Are abbreviations defined appropriately?
- Is the sentence structure appropriate? Are sentences too long (over 3 lines)? Are words repeated? Do they have a logical flow? Do they contain unnecessary words?
- Is the paragraph structure appropriate [i.e. structured as key message, explanation, evidence, example, conclusion/link to topic]?
- Are paragraphs too long (over 6 lines)? Do they have a logical flow? Do they address more than one point?
- Are dot points consistent throughout the document? Are they overused/underused?
- Is there an overuse of hedging words e.g. usually, however, generally, somewhat, relatively etc.?
- Is there an overuse of boosting words e.g. *significant* consideration, *carefully* considered, *meaningful* conversations, *sincerely* apologise?

Record minor feedback/amendments as comments/track changes within the draft decision letter/recommendation. Avoid making major changes. Any suggestions for significant amendment should be noted on the QA Feedback Template and provided to the writer for consideration/implementation.

Accuracy (*Accuracy of content*)

Read through the entirety of the decision a third time focusing on the accuracy of the content.

Considerations:

- Is the RMS reference number referred to at the top of the document and under 'Information considered in making this decision' correct?
- Are all names and titles correct?
- Is the street and email address of the Requestor correct?
- Are all dates correct?
- Is the amount requested/approved correct?
- Is the standard text correct and in line with the most recent template wording?

- Are the legislative references and references to the RMG relevant and accurately quoted?
- Is the delegate's name accurate?
- Is the date of decision correct?

Record minor feedback/amendments as comments/track changes within the draft decision letter/recommendation.

Providing feedback

You are encouraged to provide written well-constructed and constructive feedback to assist in staff development. Avoid making direct changes to decisions, unless these changes are minor i.e. a word or two, spelling or grammatical error etc. or the matter is in need of urgent finalisation.

Keep your feedback objective and specific. Provide examples of best practice or preferred text provided to assist the writer. Highlight any areas of best practice in the draft decision letter/recommendation and give praise in this regard.

Provide verbal feedback to the writer prior to written feedback. Copy the writer's supervisor into any written feedback provided so that they are able to assist the writer to implement the feedback if required.

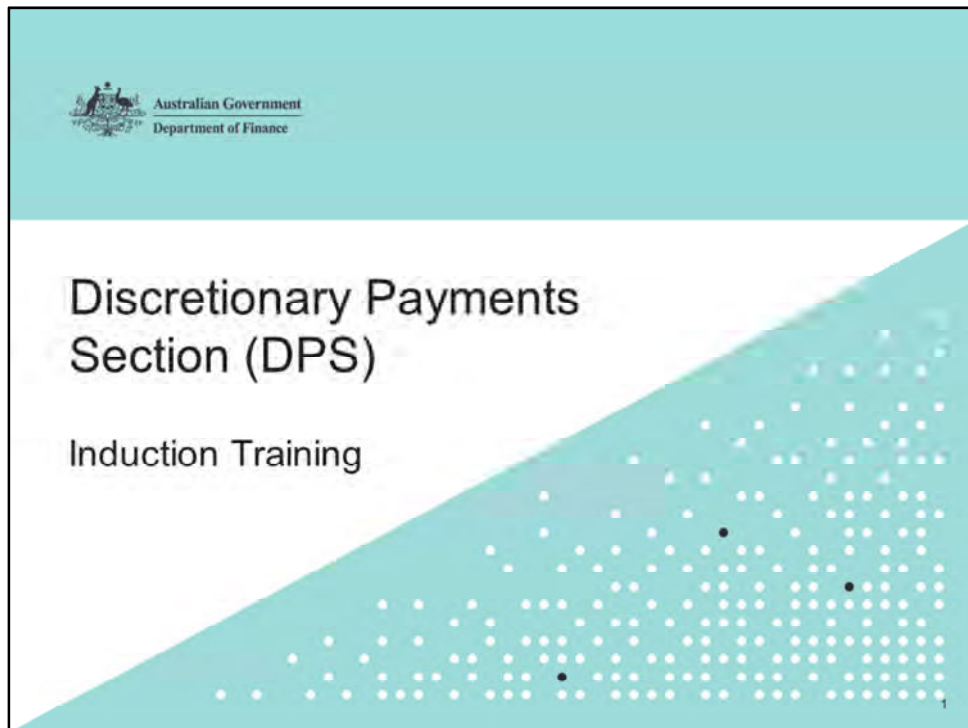
Sample feedback wording is below:

- It appears that there are alternative resolution options available to (Salutation, Surname). Has consideration been given to whether a Sunset letter is appropriate?
- It appears that [NCE] is responsible for [insert responsibility]. Has consideration been given to contacting [NCE] for a statement in this regard?
- It appears that [NCE] has not addressed the Requestor's claim in relation to [insert claim]. Perhaps we should request a response from [NCE] before proceeding.
- Perhaps you could give consideration to a partial payment on the basis of [insert reasons].
- The clarity of the decision could be strengthened by [insert suggestions] e.g.
 - Grouping and succinctly summarising the claims made by (Salutation, Surname) and/or [NCE]
 - separating the facts not in contention and facts in contention
 - adding a paragraph under 'Reasons' summarising the primary claim made by the Requestor to remind yourself of the claims to address
- The argument to [approve/decline] could be strengthened by [insert suggestions] e.g.:
 - Applying the relevant RMG criteria to the circumstances of [Salutation, Surname] and making findings in this regard.
 - Identifying the intent of the applicable legislation, applying this intent to the circumstances of [Salutation, Surname], and making findings in this regard.
 - Considering the role of [NCE] in relation to the general circumstances of the matter, and make findings in this regard.
 - Addressing [Salutation Surname's/Organisation's] claim relating to [summarise claim].
- Consider how your language may be adjusted to show empathy in relation to [Salutation, Surname's] circumstances, while being assertive in relation to the reasons for declining [his/her] request for an act of grace payment/waiver of debt. Examples of empathetic language include:
 - I acknowledge
 - I accept
 - I understand etc.

- Consider whether any statements have been made that are not supported by evidence, for example [insert specific reference].
- Consider whether more/less weight should be given to [insert claim/reference] on the basis that [insert reason].
- Consider whether [Salutation Surname/Organisation] could have mitigated their circumstances.
- Consider whether the information under 'Claims' could be more succinctly summarised with the detail included instead under 'Findings on Material Questions of Fact' in order to avoid duplication.
- Under 'Reasons' you may wish to consider the role of the NCE in ensuring compliance, and the broad intention of the scheme in relation to the Requestor's circumstances.

RECORDING ISSUES

Record any general issues identified during the quality assurance process in the [Quality Assurance Issues Register](#).





What is an act of grace payment?




- An act of grace payment is a 'special gift' of money by the Commonwealth.
- Act of grace payments are made outside of statutory or legal entitlements.
- There is no time limit on lodging a request for an act of grace payment.
- 'Special circumstances' must exist in order to approve an act of grace payment. However, even if special circumstances exist, the decision maker is not obliged to approve a payment.
- Special circumstances are not defined in the PGPA Act
- Act of grace payments are debited against the annual appropriation of the relevant NCE. Therefore, they are generally only applicable to the actions of, and/or legislation/policy administered by, an NCE and/or its contracted providers.
- The act of grace mechanism is not used to reconsider decisions made by NCEs under the CDDA scheme.
- Historically, around 28% of the requests received under the act of grace mechanism are approved/partially approved.

3

- An act of grace payment is a 'special gift' of money by the commonwealth.
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Act of Grace vs Ex-Gratia



Act of grace payments differ from ex-gratia payments in that:

- ex-gratia payments are made to restore equity to groups of people, where as act of grace payments are used to compensate an individual in special circumstances where there is a moral responsibility to do so.
- ex-gratia payments are based on the Constitutional power of Government, where as act of grace payments are governed by the PGPA Act.
- ex-gratia payments are approved by the Prime Minister and/or Cabinet, where as act of grace payments are approved by the Minister for Finance and the Public Service or his/her delegates.

4

Act of grace payments differ from ex-gratia payments in that:

- ex-gratia payments are made to restore equity to groups of people. Act of grace payments are used to compensate an individual in special circumstances where there is a moral responsibility to do so;
- ex-gratia payments are based on the Constitutional power of Government. Act of grace payments are governed by the PGPA Act; and
- ex-gratia payments are approved by the Prime Minister and/or Cabinet. Act of grace payments are approved by the Minister for Finance and the Public Service or his/her delegates.



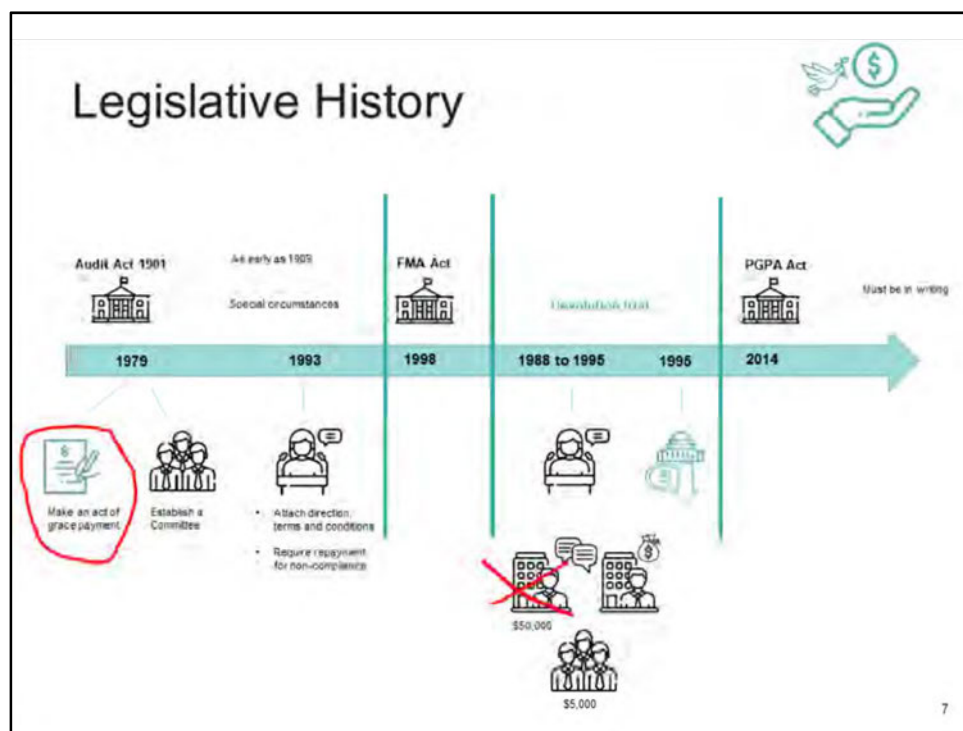
The legislative provisions applicable to waiver of debt are contained within the Public Governance, Performance and Accountability Act 2013 (PGPA Act) and the PGPA Rules

Legislative History



Lets take a look at how the power to make an act of grace payment has developed over time...

6



The legislative power enabling the Commonwealth to make an act of grace payment originated in the Audit Act. Although the term 'act of grace' was not present in the Audit Act until [1979](#), the [Parliament of Australia Database](#) holds evidence of the Commonwealth's consideration of act of grace payments as far back as 1909.

Section 34A of the Audit Act:

permitted the decision maker to authorise an act of grace payment where it was reasonable to do so because of special circumstances; and established a committee to advise the decision maker on act of grace requests over a specified amount.

In 1993 amendment was made to section 34A to:

allow the decision maker to attach directions, terms and conditions to act of grace payments; and
require repayment for non-compliance with the directions, terms and conditions.

The Audit Act was repealed in 1998 and replaced by the [FMA Act](#) and [FMA Regulations](#). The provisions relating to act of grace remained largely unchanged.


From December 1988 to October 1995, the Minister for Finance trialled the devolution of responsibility for act of grace payments by delegating power to agency heads to approve payments up to \$50,000, with the requirement to consult Finance prior to decision.

Following evaluation of the trial in 1991-92 Finance provided a report to a Senate committee opposing permanent devolution of the act of grace power. The Senate committee suggested a lower level of devolution \$5,000. However, in 1995 Cabinet made a decision to introduce the CDDA scheme. As a result requests for compensation for the effects of defective administration were no longer considered under the act of grace power and the Minister for Finance revoked all related agency head delegations.

In 2014 the PGPA Act and PGPA Rule replaced the FMA Act. Again, the provisions relating to act of grace remained largely unchanged, with the exception of a new requirement that approval of an act of grace payment be in writing.

[To compensate or not to compensate?](#) Own motion investigation of Commonwealth arrangements for providing financial redress for maladministration -

The Constitution



Section 61:

The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.

8

How does the Constitution relate to the power to make an act of grace payment? (If already covered under Waiver of Debt – Skip to the last paragraph)

Williams v Commonwealth of Australia number 1 (2012) and number 2 (2014), otherwise known as the School Chaplains cases contain important judgements relating to the power of the Commonwealth Government to enter into contracts and/or spend public monies under section 61 of the constitution.

Prior to the Williams cases, it was arguable that the Commonwealth had unlimited power to spend public monies.

Mr Ronald Williams, a father, challenged a Commonwealth funded chaplaincy scheme on the basis that it violated religious freedom protections in the constitution and exceeded the Commonwealth's funding powers.

The High Court considered Mr Williams claims. Section 116 of the Constitution provides that 'no religious test shall be required as a qualification for any office or public trust under the Commonwealth'. The High Court dismissed Mr Williams challenge on religious freedom because the relevant chaplains were engaged by outside contractors and did not enter into any contractual arrangements with the Commonwealth.

However, the High Court upheld Mr Williams contention that the funding for the school chaplains program exceeded the executive powers of the Commonwealth for funding. In the absence of legislation authorising the Commonwealth to enter into the funding agreement, the Commonwealth relied on section 61 of the Constitution.

Section 61 provides that the executive power of the Commonwealth extends to the execution and maintenance of the constitution and of the laws of the Commonwealth.

In the absence of statutory authority i.e. legislation, the Commonwealth section 61 did not empower the Commonwealth to enter into a funding agreement with school chaplains. The reason for this is that the executive power of the commonwealth does not empower it to do what Parliament could authorise to executive to do, ie the Parliament enacts legislation (as we discussed under waiver of debt – separation of powers).

In response to the decision taken by the High court in relation to Williams 1, the Commonwealth created and had Parliament enact the Financial Framework Legislation Amendment Act (No 3) in an attempt to validate the school chaplains program. The Act purported to provide authority for the Commonwealth to make payments in relation to over 400 non-statutory funding schemes, which were in doubt following Williams 1. Further, there was provision for the Commonwealth to add other programs to the list by making a disallowance instrument under a new section (32B) added to the FMA Act.

Mr Williams challenged the validity of this act and the associated regulations in Williams 2.

Mr Williams argued that the act was invalid as it extended beyond the scope of Parliament's power under the Constitution. Mr Williams stated that there was no Commonwealth head of legislative power to support the authorisation of expenditure in relation to the school chaplains program.

Mr Williams further argued that section 32B of the FMA Act effectively delegated to the executive the power to authorise expenditure because they were able to make and amend regulations.

The Commonwealth argued that:

- the program provided benefits to students which was authorised under section 51 of the Constitution provided a power to make laws with respect to the provision of maternity allowances, widow's pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services, benefits to students and family allowances.
- section 51 of the Constitution was further relevant in that it enable the Parliament to make laws in respect of foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth.
- section 51 also gave the Parliament power to make laws with respect to matters incidental to the executive of any power vested b the Constitution in Parliament, or in the Commonwealth, or in Federal Judicature, or any department of officer of the Commonwealth.

- its executive powers equated with those of the British executive power.

The Commonwealth also sought to reopen the findings in Williams 1 noting that the decision led to considerable inconvenience with no significant correspondence benefit.

The High Court agreed with Mr Williams and again found the payments in relation to the school chaplains program to be invalid.

The High Court expressed its frustration with the Commonwealth in continuing to refuse to accept the limitation on its executive power. The High Court noted the Commonwealth can make, vary or administer arrangement or grants only where it is within the power of the Parliament to authorise this expenditure. The power of Parliament to authorise expenditure must be contained within the Constitution.

The High Court found that:

- the word 'benefits' in relation to section 51, does not just mean any and every kind of advantage or good. It should be 'material aid provided against the human wants which the student has by reason of being a student'. While the chaplains program may have desirable ends, seeking to achieve them within the course of the school day does not give the payments associated with the program the quality of being benefits to students.
- there was no mention in the Act of regulation or permissions of acts by or on behalf of any corporations.
- the Commonwealth's argument in relation to the power to make laws incidental to the execution of the executive power of the Commonwealth is contrary to the findings in Pape (another constitutional case) and Williams 1, in that the powers of the Commonwealth do not extend to any and every form of expenditure of public monies and the making of agreements to spend those monies.
- The executive power of the Commonwealth was not the same as that of the executive power in Britain, and the Act cannot be purported to relate to nationhood power (in protection of Australia or the Constitution) when it provides authority to spend monies on mathematics and computer curriculum resources.

The High Court refused to reopen the matter of Williams 1 on the grounds that this decision was supporting by existing case law (Pape) and was not impressed by the Commonwealth's argument that essentially it wished the decision in Williams 1 had been different and it wanted a further opportunity to persuade the court to its view. The High Court noted that the Commonwealth continuing to repeat the same arguments about why it should have the power to expend public monies as it sees fit does not demonstrate the validity of these arguments.

In response to Williams 2, The ANAO found all payments made in relation to the chaplains program to be debts. The Minister for Finance waived all the debts (totalling \$156.1 million) under the FMA Act. Because monies had been paid upfront in relation to the chaplains program, the program continued for the remainder of 2014 despite being invalidated. There is suggestion that where a payment is held to be unconstitutional, it is

not appropriate for the Commonwealth to avoid its constitutional limits by choosing not to recover the invalid payments. The Commonwealth cannot rely on waiver of debt as a back up plan to avoid the consequences of making unconstitutional payments.

In summary the Commonwealth (or the executive) can only spend money that is authorised by legislation enacted by Parliament in line with its powers under the Constitution.

This means that we can only authorise act of grace payments if we have a power to do so under the Constitution. This power lies in the PGPA Act. However, as expressed in Section 65 of the PGPA Act, which we will discuss in a moment, act of grace payments can only be made from money appropriated by Parliament. Therefore payments are generally debited from an NCE's annual appropriation, providing that the matter relates to the administration of the NCE.

PGPA Act



Section 65:

- The decision maker may, on behalf of the Commonwealth approve payment/s to a person because of special circumstances, even though the payment/s is not authorised by law or required to meet a legal liability.
- Act of grace payments must be made from money appropriated by Parliament. Payment is generally debited from an NCE's annual appropriation, providing that the matter relates to the administration of the NCE.
- A condition may be attached to an act of grace payment. If the condition is not met, the Commonwealth may recover the payment.

9

Public Governance, Performance and Accountability Act 2013

[Section 65](#) of the PGPA Act provides:

- the decision maker may, on behalf of the Commonwealth, approve payment/s to a person because of special circumstances, even though the payment/s is not authorised by law or required to meet a legal liability.
- act of grace payments must be made from money appropriated by Parliament. Payment is generally debited from an NCE's annual appropriation, providing that the matter relates to the administration of the NCE.
- a condition may be attached to an act of grace payment. If the condition is not met, the Commonwealth may recover the payment.

Section 65 of the PGPA Act provides the decision maker, with an unfettered discretion to approve a singular or periodic act of grace payment to a person or body (e.g. company), where special circumstances exist.

PGPA Rule

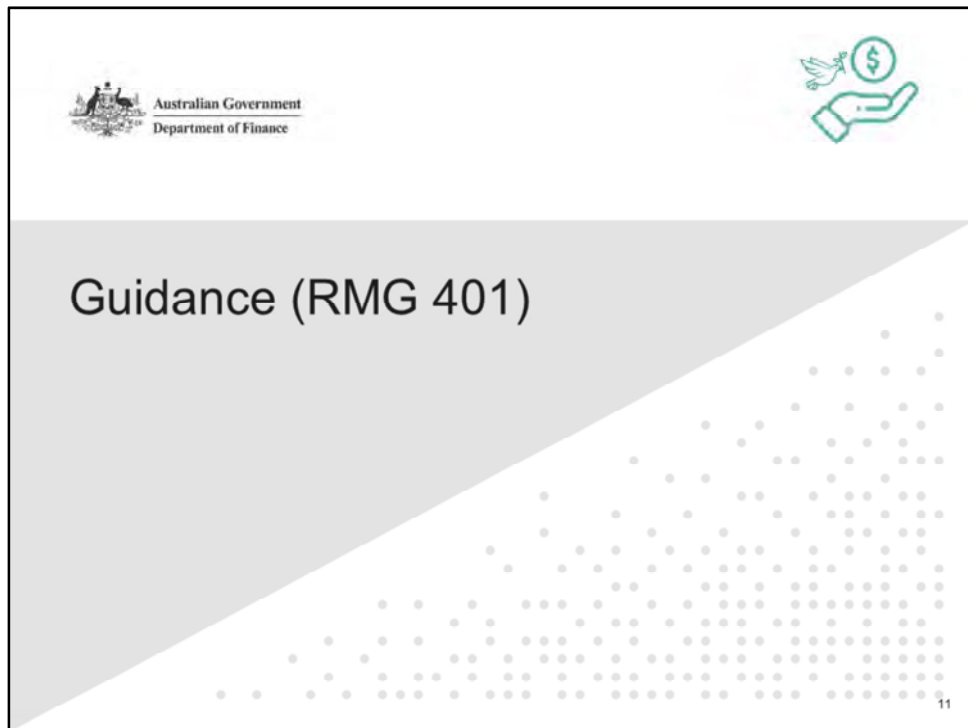


Section 24:

- Establish an advisory committee consisting of representatives from Finance, the Infrastructure Department and the relevant NCE; and
- Consider a report by this committee before approving an act of grace payment over \$500,000

10


Public Governance, Performance and Accountability Rule 2014



RMG 401

10 & 11. The decision-maker will consider whether:

- an act of an NCE has caused an unintended and inequitable result to a person seeking a payment
- Commonwealth legislation or policy has had an unintended, anomalous, inequitable or otherwise unacceptable impact on the Requestor's circumstances which was:
 - Specific to the Requestor
 - Outside the parameters of events for which the Requestor was responsible
 - Consistent with the broad intention of the relevant legislation
- the matter is not covered by legislation or specific policy but the Commonwealth intends to introduce such legislation or policy
- a contracted provider to the Commonwealth has caused the Requestor financial detriment



12

Examples of special circumstances that may make it appropriate to approve an act of grace payment include instances when:

- an act of a non-corporate Commonwealth entity (NCE) has caused an unintended and inequitable result to a person seeking a payment (except where the loss was a result of the initiation of processes consistent with the NCE's responsibilities).
- Commonwealth legislation or policy has had an unintended, anomalous, inequitable or otherwise unacceptable impact on the Requestor's circumstances, and those circumstances were:
 - specific to the Requestor
 - outside the parameters of events for which the Requestor was responsible or had the capacity to adequately control
 - consistent with what could be considered to be the broad intention of the relevant legislation
 -
- the matter is not covered by legislation or specific policy, but the Commonwealth intends to introduce such legislation or policy, and it is considered desirable in a particular case to apply the benefits of the relevant policy prospectively

- The Commonwealth uses contracted providers for some services. The actions of contracted providers are not within the scope of the CDDA Scheme. Where a person alleges that the actions of a contracted provider may have caused financial detriment to them, the matter may be considered under the act of grace mechanism.

RMG 401



12. Act of grace payments may not be approved when the payment would have the effect of:

- supplementing capped payments set by other legislation, where there is a clear intention that the payment not be exceeded
- establishing a payment scheme to apply to a group of individuals, without considering the individual merits of their requests

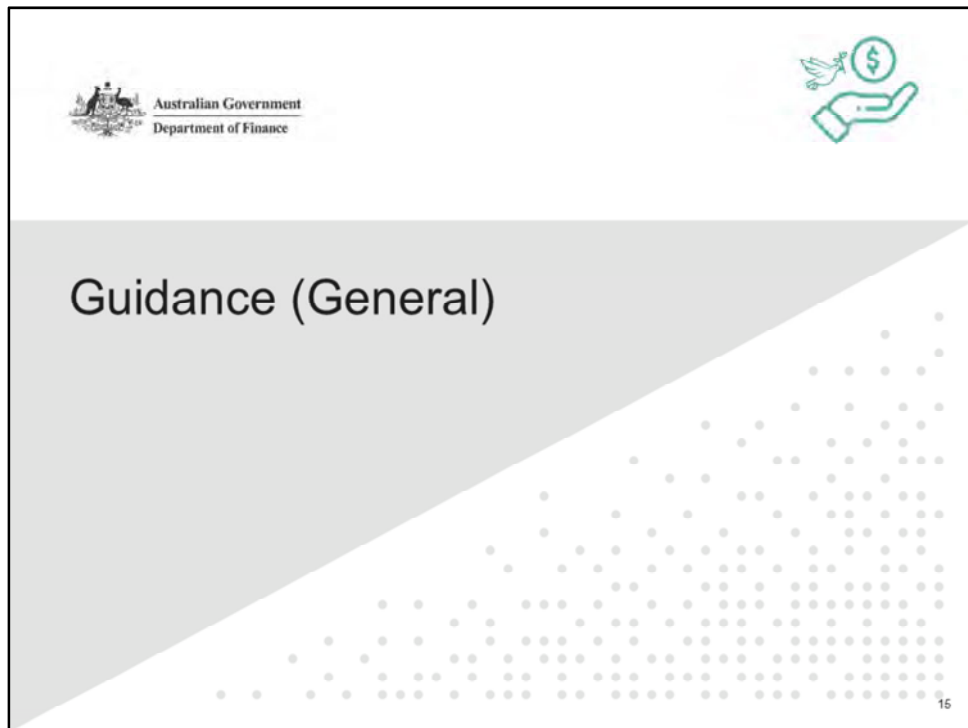
RMG 401




13. Act of grace payment would generally not be available when:

- A request arises from private circumstances outside the sphere of the Commonwealth, where there is no involvement of the Commonwealth or any Commonwealth legislation
- The matter relates to a corporate Commonwealth Entity (CCE)
- To compensate a person for a debt owing to the Commonwealth
- To compensate for a loss arising from a judicial decision not involving the executive arm of the Government

14



Guidance



Act of grace payments:

- Are a remedy of last resort, but can be used where barriers prevent a person from pursuing alternative remedies
- Can be made to anyone for any reason, but generally for the purpose of a fair and just remedy for persons disadvantaged by Commonwealth Government activities.
- Generally only applicable in relation to the actions of an NCE (or its contracted providers) and/or the impact of Commonwealth legislation or policy.
- Permissive, in that the decision maker is able to make a payment but is not obliged to do so.

16

The following guidance is taken from a series of Finance Circulars dated between 2001 and 2009. The RMG replaced Finance Circulars in 2010.

Finance circulars provide further detail in relation to the Parliamentary intent of act of grace payments and on deciding the amount of an act of grace payment.

- Act of grace payments were appropriate as a last resort. However, the act of grace mechanism may be used where barriers exist that prevent the pursuit of alternative remedies and there is an overarching moral obligation to make an act of grace payment.
- Act of grace payments could be made to anyone, for any reason, but generally provided fair and just remedies to persons unfairly disadvantaged by government activities, with no other avenue for redress.
- The act of grace power is available to provide a remedy in respect of all NCEs. CCEs have a separate legal identity to the Commonwealth and therefore are not generally subject to act of grace payments.
- There is no automatic entitlement to an act of grace payment, the decision maker is able to approve a payment, but is not obliged to do so.

Guidance



- have no time limit for application
- are designed to consider individual circumstances
- are not prescriptive, but informed by guidelines
- hold no precedence but there is an expectation of consistency in decision making
- can cover both economic and non-economic loss
- are subject to procedural fairness and reconsideration

17

- There is no time limit on submitting an act of grace request.
- The act of grace mechanism is designed to take into consideration circumstances specific to individual persons or bodies, each request is considered on its own merits.
- Guidance aims to achieve consistency and impartiality in evaluating the merits of different circumstances. It is not prescriptive.
- Act of grace payments can cover both economic and non-economic loss. Claims regarding loss which would normally relate to CDDA, can sometimes be considered under the act of grace mechanism where a moral, rather than administrative reason, for payment exists. For example, where the agency has determined that no defective administration exists but legislative intent raises a moral ground for payment.

Guidance



Act of grace is not intended for use where:

- the request relates to defective administration and was previously rejected by an NCE under the CDDA Scheme
- to compensate a person for a debt owing to the Commonwealth, unless the debt has been paid and cannot therefore be considered under the waiver of debt mechanism
- the claim is a legal claim for monetary compensation
- it would address APS employment matters
- it would supplement capped payments

18

- In 1995 Finance noted in an Estimates Memorandum (1995/42) that it would not consider a request for an act of grace payment where the request was previously rejected by an NCE under the CDDA scheme and relates to defective administration. Act of grace is not to be used to reconsider decisions made under CDDA. This is the role of the Commonwealth Ombudsman.
- to compensate a person or body for a debt owed to the Commonwealth. An act of grace payment may be approved where a Requestor has paid a debt that would have been waived under the FMA Act if it still existed.
- to address legal claims for monetary compensation. These matters can be considered under the [Legal Services Directions](#).
- to address APS employment matters. These matters can be considered by the agency head under [section 73 of the Public Service Act 1999](#).

Guidance



- the payment could be considered to apply to all or most beneficiaries under the legislation on an ongoing basis or for a significant amount of time
- it would have the effect of establishing a payment scheme for a group of Requestors without regard to the merits of each individual's circumstances
- a person is no longer eligible for a benefit they were previously able to claim due to a change in criteria
- it would be used as a remedy for major legislative or program deficiencies
- It would circumvent legislation or policy operating as intended unless addressing an anomaly

19

- where the act of grace payment would have the effect of establishing a payment scheme for a group of claimants, without regard to the merits of each individual's circumstances. These matters may be considered by Parliament as an ex-gratia payments under [section 61 of the Constitution](#).
- In relation to a change in criteria which resulted in ineligibility for a benefit previously received, on the basis that legislation is [progressive](#)
- The act of grace power is not used to provide remedies for major legislative or program deficiencies. These provisions should be rectified through statutory remedies with retrospective effect.
- to circumvent legislation or policy operating as intended unless addressing an anomaly

Guidance



In determining the amount of payment to be made the aim should be to restore the Requestor to the position he/she would have been in had the circumstances not arisen including:

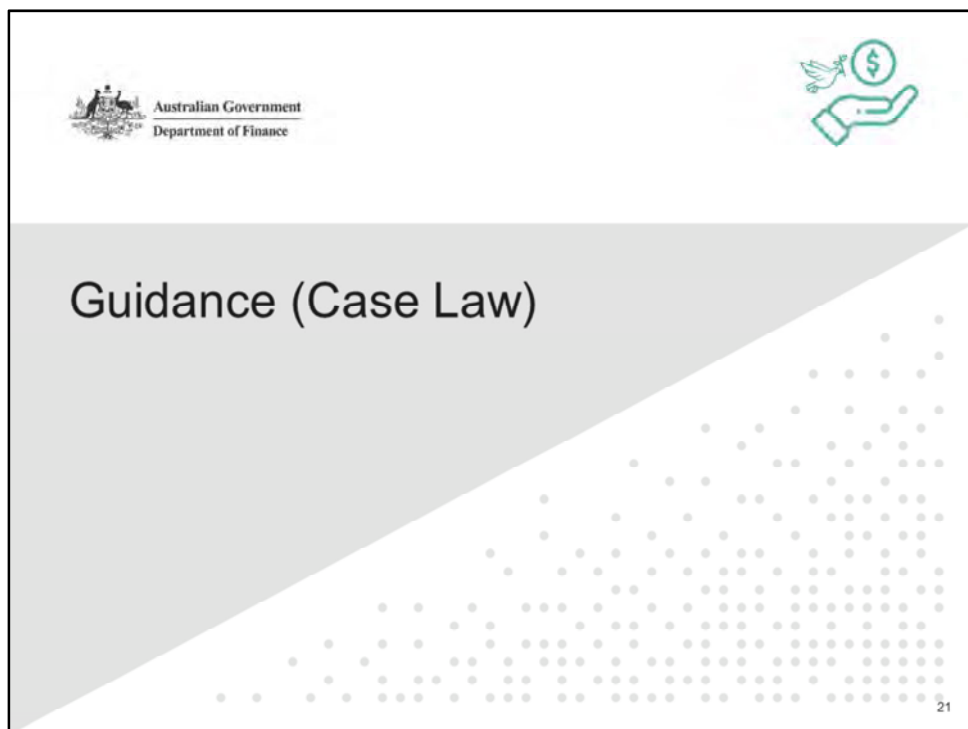
- any benefit the Requestor may have been entitled to
- any claimed financial loss
- the extent to which the Requestor contributed to the loss, and what steps they took to contain the loss
- any interest or taxation implication

A deed of release and indemnity may be appropriate in certain circumstances

20

The decision maker determines the amount of payment having regard to the circumstances of the request and, as far as possible, restoring the Requestor to the position he/she would have been in had the circumstance not arisen. Considerations:

- any benefit the Requestor may have been entitled to had the special circumstances not arisen
- any claimed financial loss
- the extent to which the Requestor contributed to the loss, and what steps they took to minimise or contain the loss
- any interest or taxation implications



Relevant case law



United Mexican States v Cabal [2001] HCA 60

- Special circumstances may be present where the individual case is different from both the ordinary course of events and the disadvantage a person in the situation would ordinarily endure. The circumstances need to be extraordinary
- Several factors in combination can constitute special circumstances
- Delay is not a special circumstance

Toomer v Slipper[2001] FCA 981

- The discretion is broad, any number of circumstances may give rise to an act of grace payment.

22

In addition to the administrative guidelines outlined in the ADJR Act, the following case law is relevant to the consideration of special circumstances:

[*United Mexican States v Cabal* \[2001\] HCA 60](#)

Justice Gleeson noted:

- special circumstances may be present where the individual case is different from both the ordinary course of events and the disadvantage a person in the situation would ordinarily endure. The circumstances need to be extraordinary. (60)
- It is not necessary to establish that any particular circumstance should be regarded as special, several factors in combination can constitute special circumstances. (52)
- Delay is not a special circumstance, unless unusual. (54)

[*Toomer v Slipper*\[2001\] FCA 981](#)

Justice Weinberg noted:

- the discretion invested in the Minister is broad. Any number of circumstances may give rise to an act of grace payment. It is impossible to anticipate the situations in

which an act of grace payment may be warranted.

Relevant case law



- The Minister is not bound to have regard to any other matter than those set out in the PGPA Act (formerly the FMA Act).
- Payments under the act of grace mechanism are made in response to moral obligations.

Clement v Minister for Finance and Deregulation [2009] FMCA 43 (30 January 2009)

- A decision to refuse an act of grace payment is a reviewable decision under the ADJR Act.
- Payments under the act of grace mechanism are made in response to moral obligations or to remedy an injustice, rather than charity. It cannot be exercised on a whim.

23

- The Minister is not bound to have regard to any other matter than those set out in s 33 (FMA Act) itself and any that may be discerned by implication from the subject matter, scope and purpose of the FMA Act. (31)
- the Minister is entrusted with the power to authorise an act of grace payment. These payments are not based on legal entitlement but are made in response to moral obligations assumed by the Commonwealth as a result of its actions or instruments. Provided that the Minister exercises the power lawfully, the decision cannot be disputed. (47)

Clement v Minister for Finance and Deregulation [2009] FMCA 43 (30 January 2009)

Federal Magistrate Neville noted:

- the decision to refuse an act of grace payment under section 33 of the FMA Act is a reviewable decision under the [*Administrative Decisions \(Judicial Review Act 1977\)* \(ADJR Act\)](#). However, such decisions are not open to merits review.
- section 33 of the FMA Act gives rise to a moral responsibility or obligation to remedy an injustice that is incapable of solution through the ordinary

processes of the law. The responsibility must be based on the virtue of justice, rather than charity and cannot be exercised on a whim. There must be no other avenues available to remedy the circumstance.

Relevant case law



- There must be no other avenues available to the Requestor.
- It is impossible to state what may constitute special circumstances.
- There is no duty to authorise an act of grace payment, even if special circumstances exist.

G & M Nicholas Pty Ltd v Minister for Finance and Deregulation (2009) 174 FCR 471

- The power to approve an act of grace payment is unconfined and depends solely upon the opinion that it is appropriate to do so.
- Natural justice applies to act of grace decisions. The Minister must provide the Requestor with the material on which the decision is based.

24

it is impossible to state in advance what may constitute special circumstances. The decision to make a payment rests, as a matter of discretion, on the Finance Minister. There is no duty or compulsion for the Finance Minister to authorise a payment, even if special circumstances exist.

[*G & M Nicholas Pty Ltd v Minister for Finance and Deregulation \(2009\) 174 FCR 471*](#)

Justice Cowdroy noted:

- the power to approve an act of grace payment is unconfined and depends solely upon the opinion that it is appropriate to do so. (41)
- natural justice demands that the party affected by a decision be given opportunity to deal with matters which are adverse to their interests and are credible, relevant and significant to the decision. (54)
- the fact that the discretion is broad and describes no procedure for its exercise does not mean that the Minister is absolved from the requirement to provide the Requestor s with the material on which he would rely. (65)

Relevant case law



Taylor v United States of America [2012] FCA 366

- special circumstances depend on the particular facts of the case and consideration of the entirety of the circumstance of the Requestor.

Tomson v Minister for Finance and Deregulation [2013] FCA 664 33

- Special is used to describe what is different or exceeds ordinary, usual or common due to:
 - Distinguishing qualities or features
 - Distinct individual character
 - Having individual, particular or limited application
- The decision maker is not limited in what can be taken into account and does not have to have regard to certain conditions, as long as the exercise of the discretion is reasonable.

25

[*Taylor v United States of America \[2012\] FCA 366*](#)

Justice Collier noted that special circumstances depend on the particular facts of the case and consideration of the entirety of the circumstance of the claimant. (24)

[*Tomson v Minister for Finance and Deregulation \[2013\] FCA 664 33*](#)

Justice Rares noted:

- ‘Special’ is used to describe what is different or exceeds in some way from ordinary, usual or common, due to:
 - distinguishing qualities or features,
 - distinct or individual character, or
 - having individual, particular or limited application (35)
- There is nothing in the FMA Act that suggests the Minister is limited the breadth of factors that he/she may take into account, or must have regard to certain conditions when exercising the discretion under section 33 of the FMA Act. However, the Minister must exercise his/her discretion reasonably, having regard to the scope and purpose of the FMA Act. (37)

Relevant case law



In determining whether or not to reconsider a matter, the decision maker should:

- determine whether the circumstances as a whole, raise special circumstances
- be willing to depart from any applicable policy
- give proper, genuine and realistic consideration to the merits
- have regard to the evidence available to the original decision maker
- have regard to any new information provided

26

- In determining whether or not it is appropriate to reconsider a matter, the decision maker should:
 - determine whether the application, considered as a whole, raises special circumstances that warrant the exercise of the discretion to authorise a payment (43)
 - be willing to depart from any applicable policy (48)
 - give proper, genuine and realistic consideration to the merits of the case (48)
 - have regard to the evidence available to the original decision maker (50)
 - have regard to any new information provided by the Requestor (50)

Relevant case law



Williams v Commonwealth (No 2) [2014] HCA 23

- Payments made by the commonwealth must be supported by the executive power under s 61 of the Constitution.

Ward v Commissioner of Taxation [2016] FCAFC 132

- Special circumstance may exist if legislation operated on the Requestor in an unfair or unjust way and the consequences were disproportionate to the intended operation of the statute.

Dennis v Minister For Finance [2017] FCCA 45

- There is no confinement to the discretion of the decision maker, nor is any matter mandatory to consider.

Tsvetnenko v United States of America [2019] FCA 206 (22 February 2019)

- Special circumstances should be considered cumulatively.

27

[*Williams v Commonwealth \(No 2\) \[2014\] HCA 23*](#)

French CJ, Hayne, Crennan, Kiefel, Bell and Keane JJ noted (in summary):

- payments made by the Commonwealth must be supported by the executive power under s 61 of the Constitution
- The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this Constitution and the laws of the Commonwealth
- questions about the ambit of the Executive's power to spend must be decided in light of all of the relevant provisions of the Constitution
- the Commonwealth requires legislative authority in order to expend public money

[*Ward v Commissioner of Taxation \[2016\] FCAFC 132*](#)

Justice Roberson, Davies and Wigney noted:

- There was a misconception by the decision maker that special circumstances could only apply if something unintended, other than the natural and foreseeable consequences of the claimant's decisions had occurred. (40)
- It was open to the decision maker to find that special circumstances existed if the provisions operated on the claimant, in his/her individual circumstances, in an unfair or unjust way because the claimant, acting on the advice of another, accidentally breached a rule which had consequences disproportionate to the intended operation of the statute. (41)
- The decision maker cannot take a narrow view of what constitutes special circumstances by considering the factors in isolation without looking at the entirety of the situation.

The decision maker erred in law by taking too narrow a view of what constitute special circumstances, by considering factors in isolation before focusing on the entirety of the circumstances. (43)

[Dennis V Minister For Finance \[2017\] FCCA 45](#)

Judge Jarrett noted:

- Section 65(1) does not confine the Minister's discretion. It does not make the consideration of any particular matter mandatory. The ground of failure to take into account a relevant consideration can only be made out if the decision-maker fails to take into account a consideration which he is bound to take into account in making that decision. (60)
- The question of unreasonableness applied to the exercise of the discretion conferred by s65(1) of the PGPA Act. In the absence of the Minister being satisfied that special circumstances existed so as to give rise to an occasion for the exercise of the discretion

[Tsvetnenko v United States of America \[2019\] FCA 206 \(22 February 2019\)](#)

Justice Mckerracher noted that special circumstances should be considered cumulatively. (181)

Relevant case law



Ashby v Commonwealth of Australia [2021] FCA 40 (29 January 2021)

- The decision maker is not obliged to give a particular claim weight or significance.
- All delegates are authorised to make decline decisions, regardless of monetary value, on the basis that the act of grace decision has two parts:
 - First to consider whether special circumstances exist
 - Second to determine whether a payment should be made on the basis of the special circumstances

28

[*Ashby v Commonwealth of Australia \[2021\] FCA 40 \(29 January 2021\)*](#)

Justice Bromwich noted:

- *...where relevant considerations are not specified in a relation to the exercise of an executive power, it is largely for the decision-maker, in light of the material furnished, to decided relevance and comparative importance (6)...Merely declining to give a particular claim or part of a claim...weight or significance, including by way of making findings on material questions of fact about it and in reaching determinative conclusions, does not...demonstrate that there is a vitiating deficiency in the decision-making process...the delegate was not obliged to...treat such claims as being significant, let alone determinative (7)...The delegate was entitled to give those considerations no separate weight and not to address them further in the findings of material facts or in the reasons or conclusions reached (9)*
- Delegates are entitled to make decisions to decline applications for act of grace payments, regardless of the monetary limit attached to the delegation (15), on the basis that the power under s 65(1) of the PGPA Act, contains two separate steps:
 - First to consider whether it is appropriate that an act of grace payment be made on the basis of special circumstances and, if not, decline to authorise an

act of grace payment (13) *An application can fail at the first hurdle, without there being any need to consider authorisation of a payment if that point is not reached (14)*

- Second, only if satisfied that it is appropriate for an act of grace payment to be made on the basis of special circumstances, decided whether to authorise such a payment (13) *If the requirement of a payment being appropriate by reason of special circumstances is not met, the step of approval of payment is never reached (14)*
- This interpretation is supported by :
 - Section 24 of the PGPA Rule, which requires the Minister to consider a report from the advisory committee prior to authorising an act of grace payment over \$500,000 and ...*contemplates appropriateness potentially requiring more than special circumstances being established (15)*
 - Section 65(2) of the PGPA Act, which provides that authorisation of a payment, must be in accordance with any requirements prescribed by the rules (15)
 - ...*when considering whether an application for an act of grace payment should result in a payment being authorised, it will first and separately be determined whether any such payment first meets the test of being appropriate by reason of special circumstances having been established (15)*

○

Relevant case law



Ogawa v Finance Minister [2021] FCA 59 (5 February 2021)

- There is no definition of special circumstances.
- The decision maker is not obliged to give advanced notice of the decision, as the Requestor cannot be said to have possessed any legitimate expectation that the decision would be in their favour.
- The facts provided by a Requestor do not mandate a particular outcome. Even if a decision maker accepts all claims, there is no obligation to make a favourable decision.

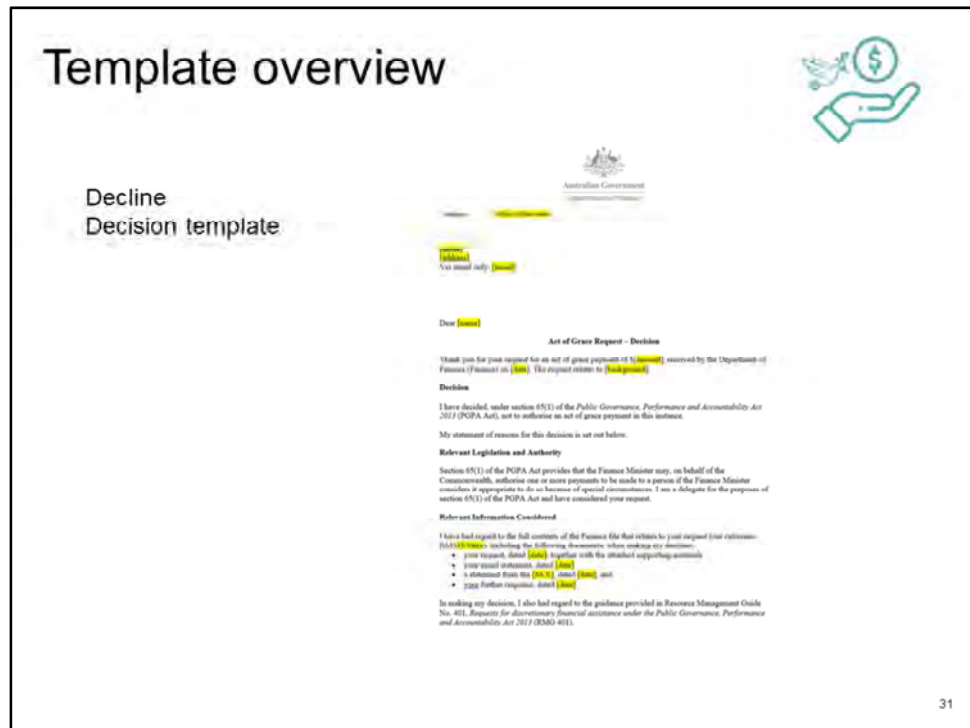
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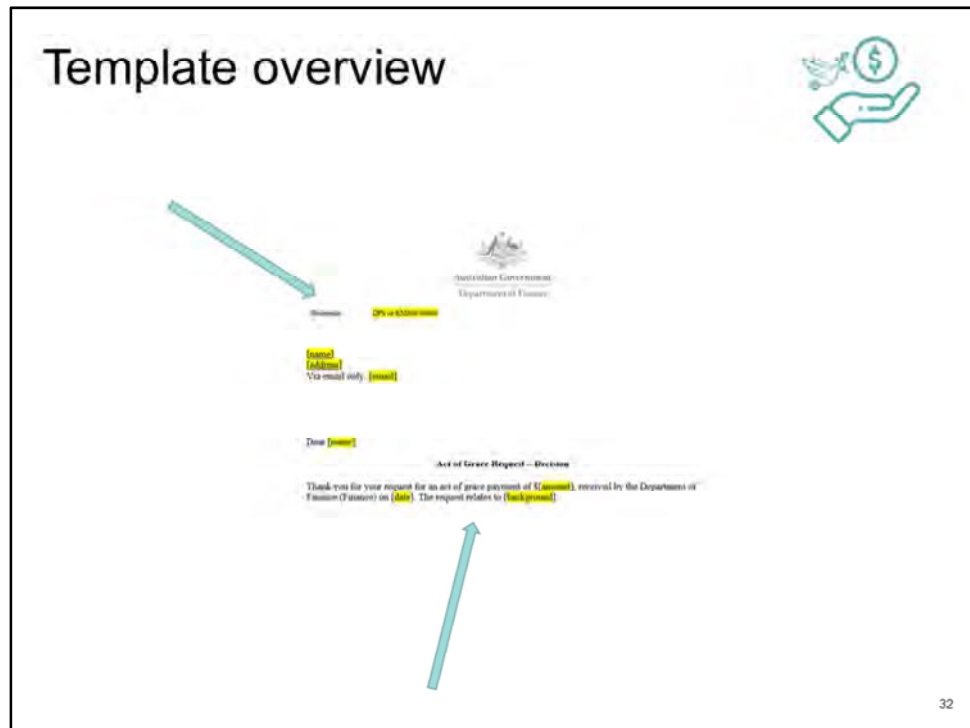
[*Ogawa v Finance Minister \[2021\] FCA 59 \(5 February 2021\)*](#)

Justice Snaden noted:

- *The PGPA Act does not define what might or might not constitute “special circumstances”. There is no other legislative fetter on the very broad discretion that the section confers.*
- The decision maker was not obliged, whether by reason of authority (including *Teoh*) or otherwise, to give advanced notice of a decision to decline the claimant’s act of grace application. The Requestor cannot be understood to have possessed any ‘legitimate expectation’ that the act of grace application would be decided in their favour.
- The Requestor’s submission claims that the decision maker, *...had he been acting reasonably under the light of the facts with which he was confronted, could not have come to any conclusion other than it was appropriate to make an act of grace payment*. The facts do not mandate any particular outcome. Even if the decision maker had accepted all factual assertions made by the Requestor, *...it would still have been open to [the decision maker], acting reasonably, not to have formed the view that it was appropriate to make an act of grace payment*







Reference number

The Reference number is the HPE CM number or if the matter is older it may have a physical paper file (RMS number).

Ensure that the address and email details are the most current details on file. Check for any change of address or email in communications sent after the application was received.

Introduction


Standard wording is included in the template. Add the amount claimed and the date of receipt of the request.

The background should consist of one sentence summarising the request at the highest level e.g.

The request relates to an over allocation of long service leave.

When reading the documents on file, please check the correct [naming conventions](#) are in place

Template overview



Decision

I have decided, under section 65(1) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), not to authorise an act of grace payment in this instance.

My statement of reasons for this decision is set out below.

Relevant Legislation and Authority

Section 65(1) of the PGPA Act provides that the Finance Minister may, on behalf of the Commonwealth, authorise one or more payments to be made to a person if the Finance Minister considers it appropriate to do so because of special circumstances. I am a delegate for the purposes of section 65(1) of the PGPA Act and have considered your request.

33

Decision


Standard wording is included in the template. There is no need to amend or add any additional wording unless you are partially waiving the debt.
e.g.

I have decided, under section 63(1) of the Public Governance, Performance and Accountability Act 2013 (PGPA Act), to authorise a partial waiver of debt of [\$] in this instance.

Relevant Legislation and Authority

Standard wording is included in the template. There is no need to amend or add any additional wording.

Template overview



Relevant Information Considered

I have had regard to the full contents of the Finance file that relates to your request (our reference: DIPS21-XXXX), including the following documents, when making my decision:

- your request, dated [date], together with the attached supporting materials
- your email statement, dated [date]
- a statement from the [NCE], dated [date], and
- your further response, dated [date]

In making my decision, I also had regard to the guidance provided in Resource Management Guide No. 401, *Requests for discretionary financial assistance under the Public Governance, Performance and Accountability Act 2013* (RMG 401).

9. 'Special circumstances' and 'appropriate' are not defined in the PGPA Act and are for the decision-maker to assess.

10. Examples of special circumstances that may make it appropriate to approve an act of grace payment include instances when:

- an act of a non-corporate Commonwealth entity (NCE) has caused an unintended and inequitable result to a person seeking a payment
- Commonwealth legislation or policy has had an unintended, anomalous, inequitable or otherwise unacceptable impact on the applicant's circumstances, and those circumstances were:
 - specific to the applicant
 - outside the parameters of events for which the applicant was responsible or had the capacity to adequately control
 - consistent with what could be considered to be the broad intention of the relevant legislation

34

Standard wording is included in the template.

List the primary documentation on which the delegate will base a decision ([procedural fairness](#)).


Remove any RMG 401 references from the template not relevant to the matter. Add any additional RMG 401 references relevant to the matter.

Add any other legislation, policy or guidance relevant to the matter e.g.

*I also had regard to the following provisions of the [legislation]:
[legislative reference]*

In addition I had regard to the Explanatory Statement to the [legislative reference] (ES) which indicates that the purpose of granting exemptions under [legislative reference] is to alleviate medical workforce shortages in recognised district workforce shortage areas; particularly in regional and remote communities, and where there are indigenous populations.

Template overview



Claims

As set out in your submissions, I consider your claims can be summarised as follows:

- Your request seeks an act of grace payment of \$[amount]
- [reasons]

In its submission, [NCE] states the following:

- [reasons]
- On the basis of the above, [NCE] [does/does not] support your request for an act of grace payment

35

The aim of the 'Claims' section is to make the Requestor feel heard and understood.

Succinctly summarise the claimant's claims. Articulate the claims as if the delegate has accepted them as fact. Avoid repeating derogatory language or using inflammatory wording (e.g. you allege).

e.g.

Due to your dyslexia, the difference between the [benefit] and [benefit] was not obvious or clear to you when you completed the [title] form in relation to your child. In addition, when you completed the form, you were a first time mother and experiencing considerable stress and anxiety, heightened by the trauma of a miscarriage and your first child's significant health issues. As a result, you completed the wrong sections of the [title] form and, therefore, failed to claim a benefit for which you consider you were otherwise eligible.

You submitted a [title] form within the legislative timeframe and met all the criteria for a [benefit]. Should you have sought assistance from [NCE] at that time, you would have received a [benefit]. However, due to the legislative provisions surrounding the [benefit], you are unable to amend the [title] form and receive a retrospective payment of [benefit] for your child. The legislated timeframe does not contain provisions relating to special circumstances. As a result, the legislation has produced an inequitable result in your situation.

Succinctly summarise the NCE's claims. Articulate the claims as if the delegate has accepted them as fact.

e.g.


Section 60 of the PPL Act provides that a claim for a PLP may be made in the period that starts on the day that is [number] days before the expected date of birth of the child and ends on the day before the child's first birthday. You did not lodge an effective claim during this period. The PPL Act does not permit a determination in relation to a PLP unless an effective claim is made. The legislation has been applied correctly and the outcome is in a large part, the result of the lengthy delay in lodging your claim for a PLP.

You indicated that your dyslexia caused you extreme difficulty in understanding letters and forms. It was therefore your responsibility to seek assistance if required, in order to mitigate any incapacity in this regard.

For the above reasons, [NCE] does not support your request for an act of grace payment.

Summarise the chronology of events, as provided by the NCE, and note their opinion and supporting reasons as to whether or not an act of grace payment is appropriate in the circumstances

Template overview



Reasons

In considering your request it is necessary for me to examine any special circumstances that may make it appropriate to approve an act of grace payment including (but not limited to):

- Whether an act of an NCE has caused an unintended and inequitable result in your circumstances
- Whether Commonwealth legislation or policy has had an unintended, anomalous, inequitable or otherwise unacceptable impact on your circumstances which were:
 - specific to you;
 - outside the parameters of events for which you were responsible or had the capacity to adequately control; and
 - consistent with the broad intention of the relevant legislation

36

Reasons

The reasons must explain how the delegate arrived at the decision.

Standard introductory wording summarising the relevant RMG401 provisions is included in the template. Adjust as appropriate.

Begin the reasons by summarising in one paragraph the claimant's claims.
e.g.

Your primary claim in support of an act of grace payment is that [NCE] was defective in its administration of your social security entitlements and those of your wife. As a result, you suffered financial loss in the form of additional interest relating to your mortgage.

Address any claims that are out of scope (i.e. state government, private entities etc.).
e.g.

You contend that, although [NCE] did not have responsibility for your loan with [company], it had a responsibility to respond to [company]'s unconscionable conduct under [legislative reference], and misleading and deceptive conduct under [legislative reference].

It is important to note that the act of grace mechanism is limited to consideration of actions taken by non-corporate Commonwealth entities and, as a result, the actions of [company] fall outside the scope of my consideration. Although I have had regard to the documentation in relation to [company], I have limited my consideration of your application to claims against the Commonwealth, specifically [NCE]

Address each claim objectively, providing reasoning based on your findings of material questions of fact. Write assertively and in a logical format. Use empathetic language where appropriate. Avoid making assumptions.

Discuss the relevant sections of RMG401* and make a finding on each point.

e.g.

Although I accept that [NCE] could have referred you to a social worker at an earlier date for assessment for exemption from the [test], I note that [NCE] referred you to [NCE] in [year] specifically for the purpose of applying for an exemption but you failed to act on this advice. I give weight to [NCE's] letters to you reiterating that you were in receipt of the [benefit] base rate and outlining your responsibilities in relation to the [test]. It is also apparent that information in relation to the [benefit], [test] and exemption was readily available to the public on [NCE's] website. Noting the nature of your contact with [NCE] and [NCE], I consider it was reasonable for these entities to assume that you had received and understood the information provided to you in relation to your [benefit].

Based on the documentation before me, I am unable to establish that [NCE] or [NCE] failed to meet their obligations to you under the [legislative reference] or policy guidance and, as such, I do not accept that an action of the Commonwealth caused an unintended and inequitable result in your case.

I understand that a number of factors, such as the expansion of the mining and gas industries, which contributed to widespread staff shortages within the fishing industry, may have contributed to your financial losses and the emotional stress experienced your family. I also note that potential options, in relation to sublicensing or quota transfer (even if only marginal return was expected), or redirecting efforts to other areas of its business, may have been available to you to mitigate any financial losses you considered would result introduction of the [policy].

The policy development and planning process was not specific to you, rather, as [NCE] advises, many businesses were affected by these events. I understand that at the same time the [NCE] was developing the [policy], it was developing an additional 43 [policy] around Australia. As such, this uncertainty was a systemic industry-wide matter for businesses operating both within [location] and outside of this zone. For the reasons above I do not consider that the policy had an

unintended, anomalous inequitable or otherwise unacceptable impact in your circumstances.

Address all components of RMG401 relating to the claimants circumstances

Consider whether there are other factors outside of guidance provided by RMG401 that could give rise to special circumstances.

e.g.

I acknowledge the stress of being a new parent and the additional impact that a child with significant health issues, and a miscarriage can cause. I also acknowledge the financial difficulties experienced by you following the birth of your child, which impacted your marriage, and understand that a [benefit] would have provided welcome assistance at the time. Although these factors may, in some cases, weigh in favour of granting an act of grace payment, I do not consider that they outweigh the factors against granting an act of grace payment in this instance.

In considering whether special circumstances apply, a discussion may be appropriate in relation to:

The application of the relevant legislation, policy, guidance to the claimant's circumstances.

e.g.

The [benefit] is governed by the [legislative reference], as in force at [day, month, year]. [legislative reference] provides that the Secretary must make a determination in relation to an effective primary claim for a [benefit] for a child. [legislative reference] sets out when a claim for a [benefit] is 'effective' for the purpose of [legislative reference].

Your first child was born on [day, month, year]. Accordingly, in order to make a claim for PLP in relation to your first child, you were required to make that claim between [day, month, year and day, month, year] (the 'legislative period'). You and your husband completed [title and title] forms on [day, month, year]. As such, you completed the applicable forms required to make a claim for a [benefit] during the legislative period. However, when completing the applicable forms, you failed to select the relevant fields, and provide the required documentation and information, in order to make a claim for a [benefit]. As a result, you did not submit an effective claim for a [benefit] within the legislative period.

The broad intention of the relevant legislation applicable to the claimant's circumstances.

e.g.

I understand from the Explanatory Memorandum (EM) that the intent of the [legislative reference] is to ensure that the costs of processing an application are the responsibility of the applicant rather than the general community. As a result, I agree with the [NCE's] position that permitting a refund of the application fee, or waiving/remitting a future application fee in your circumstances, is inconsistent

with the intention of the legislation. This is on the basis that each new application requires processing, which would be administered at the expense of the Commonwealth. This weighs against granting an act of grace payment.

The broad obligations of the NCE.

e.g.

I understand that [NCE] has a range of investigative powers and a broad discretion to decide when to exercise those powers. I note that Information Sheet 515, [NCE's] approach to enforcement, referred to in [NCE's] letter to you, dated [day, month, year], explains the approach taken by [NCE] in responding to breaches of the law. This document outlines the considerations of [NCE] in assessing matters and determining whether a formal investigation should be undertaken, including:

- *the extent of the harm or loss*
- *the benefits of pursuing the misconduct, relative to the expense*
- *the type and seriousness of the misconduct and the evidence available*
- *alternative courses of action*

I note that investigations conducted by [NCE] are for regulatory purposes and generally result in the issuing of infringement notices, civil penalties or in some cases the commencement of prosecutions. [NCE] contends that it does not represent individuals and does not generally seek compensation in relation to a matter unless it would be in the public interest, extending beyond the interest of the affected person. I understand that [NCE] does not settle credit disputes and is unable to:

- *order money to be paid to make good on investment or other losses*
- *make a binding decision about who is right or wrong in a dispute*
- *give legal advice or generally act on behalf of individual consumers*

In addition to the above, under [legislative reference], I note that [NCE] is further restricted in the investigation of complaints by statutory timeframes applying to civil action for loss or damage.

NCE obligations can be found on their website usually under 'About us'

The weight given to a claim or a finding.

e.g.

I accept that the training delivered by you was of a high standard and in line with the objectives of the [scheme]. I acknowledge that if the request for an act of grace payment is declined, you would have provided these services at no charge. While I recognise that this is not an ideal outcome, I do not consider that this factor outweighs the factors below against granting an act of grace payment.

Whether the Requestor could have taken action to mitigate the circumstances.

e.g.

Although I accept that a reduction of [benefit] would have impacted your financial situation, the allocation of monies to expenses within your household is a personal matter, based on the priorities and needs of your family. The Commonwealth has no involvement in these decisions and therefore cannot be held responsible for any losses incurred as a result.

In addition to the above, there is evidence before me to establish that NCE advised you of the requirement for an amended trust deed or deed or renunciation on [day, month, year]. Had you submitted either of these documents at that time it may have been possible for you to mitigate any potential loss.

I also note that you received a refund of all monies paid towards your debt and a large back payment. You have not indicated why these monies could not be applied to your loan to either fully or partially mitigate any previous losses.

On the basis that the allocation of your income is not within the control of the Commonwealth, and there is insufficient evidence before me to establish that you suffered a loss which you were unable to mitigate, I am not satisfied that special circumstances exist in this instance.

Alternative resolution options* that remain open to the claimant.
e.g.

DHS have confirmed that it is open to you to make an application to the Family Court of Australia or the Federal Circuit Court of Australia, under [legislative reference], for leave for the court to make a departure order. If leave is granted under [legislative reference], the court is then empowered to make a departure order under [legislative reference] in relation to your child support assessment.

As the child support period in question commenced on [day, month, year], you would need to apply to the court before [day, month, year] to have the entire period considered, as the court cannot amend the assessment for any period that is more than seven years prior to the court application being lodged.

It is important to note that the outcome of the court application cannot be guaranteed and may not result in your child support assessment being reduced. However, as there remains an alternative avenue of redress, I do not consider an act of grace payment to be appropriate at this time.

Finish the reasons with a concise concluding statement summarising your argument.
e.g.

For the reasons above, I do not consider that an act of an NCE, the application of Commonwealth legislation or policy or any other matter, has contributed to your situation in such a way as to give rise to special circumstances.



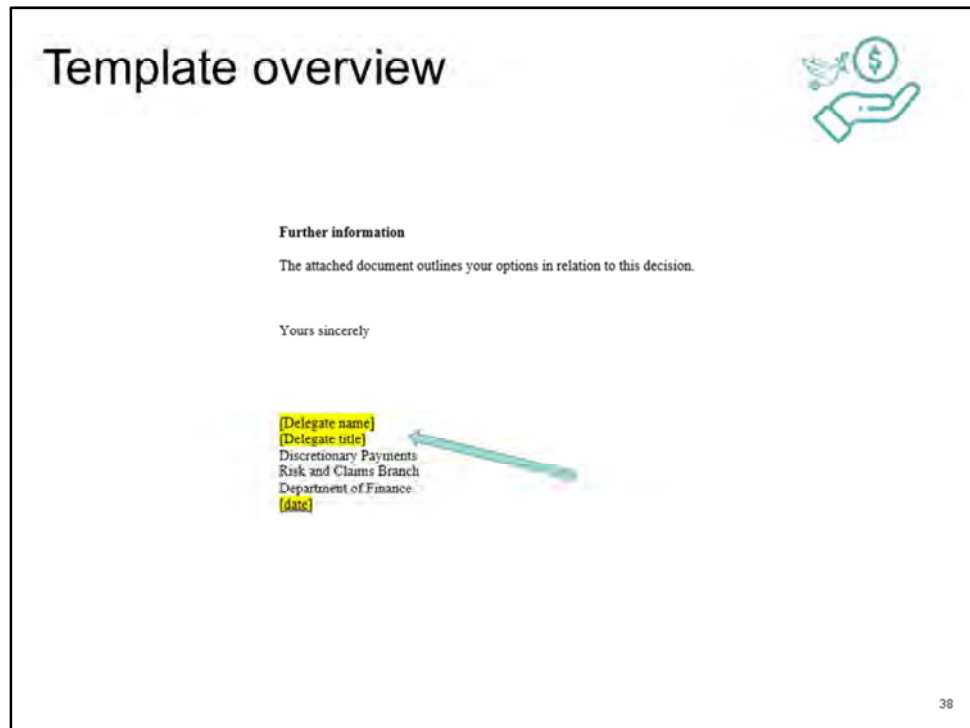
Conclusion

Standard wording is included in the template. Amend as required to reflect the reasons for decline.

e.g.

On the basis that viable avenues of resolution remain available to you, I have declined to authorise an act of grace payment at this time.

In the event that you exhaust all alternative options and remain dissatisfied, you may submit a further request for an act of grace payment.



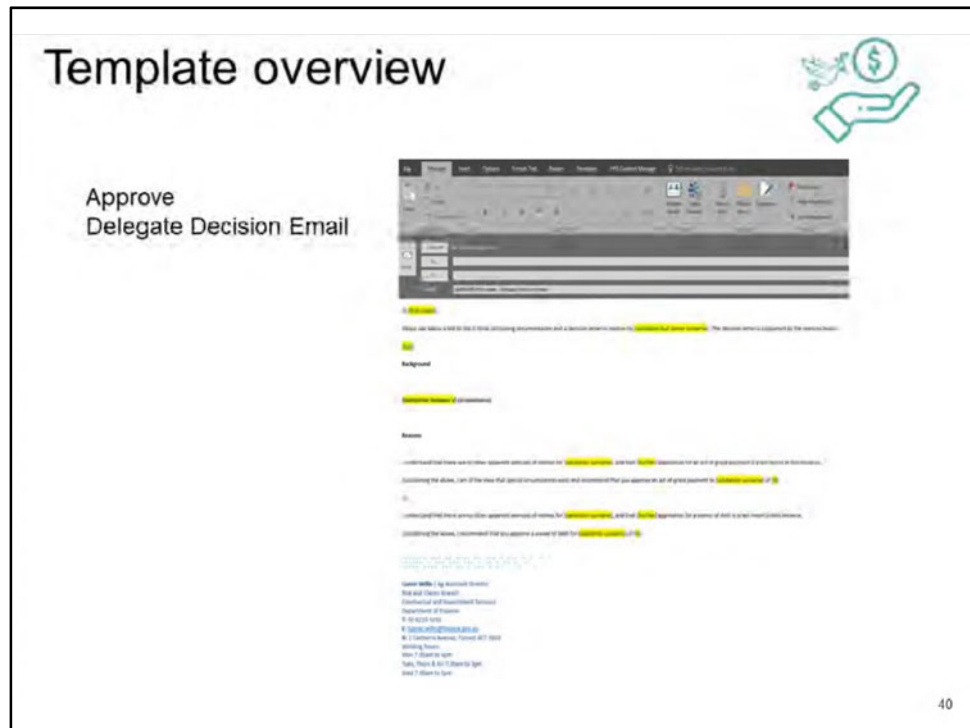
Further information

Standard wording is included in the template. Please ensure that the delegate's name and title, and the date of decision are correct prior to signing.



Appeal Rights

An information sheet containing the appeal rights in relation to the delegate's decision is attached to the decline decision template. The standard wording is only to be amended in circumstances where a decision is made by the Minister. The Commonwealth Ombudsman is unable to review decisions in this regard and therefore this section must be removed.




Open SOP – DPS – Approval recommendations – Preparing the Delegate’s Decision Email – ED2019-12992

Open the Delegate’s Decision Email Template - G:\BPAM\CCD\RISC\4. Discretionary Payments\1.Discretionary Payments Section - other\Templates\Email Templates

In Microsoft Teams select ‘Share Content’ (Ctrl-Shift-E) and select the Delegate’s Decision Email Template

Walk through the template with participants using the DPS – Approval recommendations – Preparing the Delegate’s Decision Email to provide guidance

Template overview



From •

License@treasury.gov.au

Send

To...

Cc...

Subject:

SUBSNAME First name - Delegate decision email

Hi **First name**,

Please find at **HPE CM record number of file** documentation and a decision letter **HPE CM Record Number of decision letter** in relation to **Salutation, First name, Surname**. The decision letter is supported by the reasons below:

41


For process efficiency, in July 2018, DPS introduced an email recommendation (Delegate's Decision Email), in lieu of a formal decision minute. This email is to be used in circumstances where the recommending officer is of opinion that sufficient grounds exist to warrant granting a full act of grace (AOG) payment.

The delegate's decision email is to be accompanied by a [decision letter](#). In the event the delegate is in agreement with the recommendation, the delegate will note his or her agreement via return email. This email is to be saved in the Requestor's HPE CM file as a record of the decision. The delegate will also sign the decision letter. This letter is to be provided to the Requestor and relevant NCE.

Introduction

Standard wording is included in the email template. Insert the name of the delegate, the HPE CM record number of the file and of the draft decision letter and the name of the Requestor in the highlighted fields.

Template overview



Background

The Department of Human Services (DHS) conducted a system upgrade in July 2017 to align with changes made to the Health Insurance (General Medical Services Table) Regulations (GMST). This upgrade implemented a legislative change from 2013 that had not previously been administered. The legislative change disallowed a claim for reversal bariatric Medicare Benefits Schedule (MBS) item number 31584, when performed in conjunction with other bariatric procedures.

Subsequent to the system change, DHS and the Department of Health agreed that the technical wording of the legislation was contrary to the original policy intent, in that reversal bariatric surgery (MBS item 31584) would justifiably be co-claimed with other bariatric surgery MBS items on the same occasion. As a result DHS and the Department of Health formed an intention to change the legislation. In November 2017 an interim solution was introduced but was not retrospective. As of July 2018 a permanent solution applied, again not retrospective.

The Department of Health supports act of grace payments of this type as there are no remedies available to rectify cases affected by this issue in the period July 2017 to 16 November 2017.

42

Background

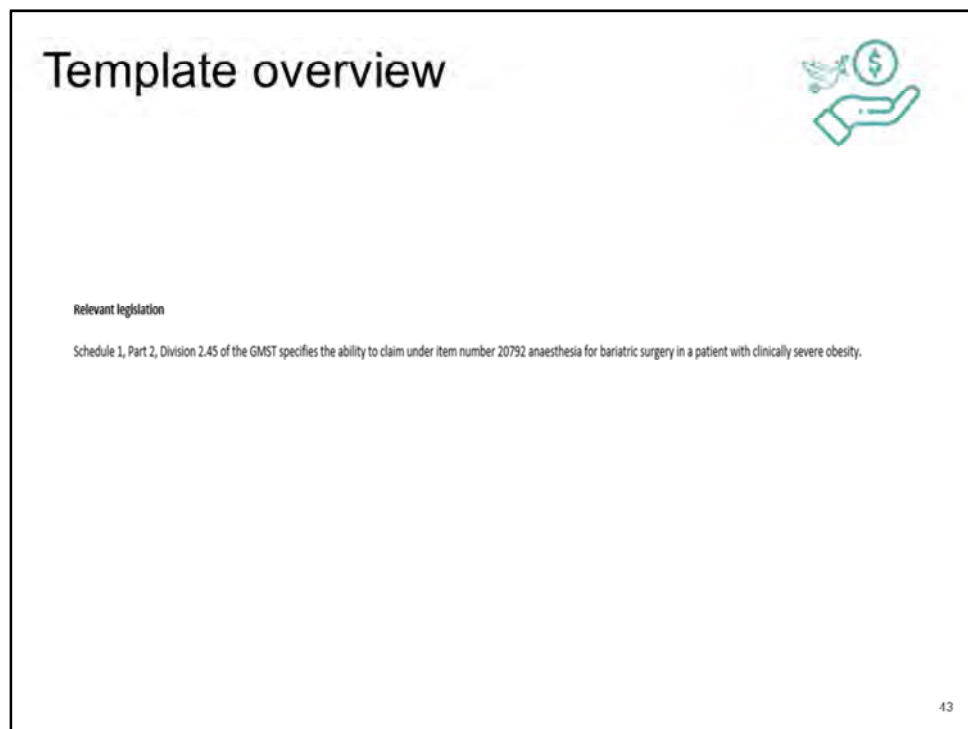
Insert one to three succinct paragraphs describing the general circumstances applicable to the Requestor.

Example:

The Department of Human Services (DHS) conducted a system upgrade in July 2017 to align with changes made to the Health Insurance (General Medical Services Table) Regulations (GMST). This upgrade implemented a legislative change from 2013 that had not previously been administered. The legislative change disallowed a claim for reversal bariatric Medicare Benefits Schedule (MBS) item number 31584, when performed in conjunction with other bariatric procedures.

Subsequent to the system change, DHS and the Department of Health agreed that the technical wording of the legislation was contrary to the original policy intent, in that reversal bariatric surgery (MBS item 31584) would justifiably be co-claimed with other bariatric surgery MBS items on the same occasion. As a result DHS and the Department of Health formed an intention to change the legislation. In November 2017 an interim solution was introduced but was not retrospective. As of July 2018 a permanent solution applied, again not retrospective.

The Department of Health supports act of grace payments of this type as there are no remedies available to rectify cases affected by this issue in the period July 2017 to 16 November 2017.



Relevant legislation (if applicable)

Insert a brief description of the legislation relevant to the matter.

Example:

Schedule 1, Part 2, Division 2.45 of the GMST specifies the ability to claim under item number 20792 anaesthesia for bariatric surgery in a patient with clinically severe obesity.

The relevant legislative provisions are usually contained in the Agency submission.



Requestor's circumstances

Insert one to three succinct paragraphs describing the specific circumstances applicable to the Requestor.

Example:

Between July 2017 and October 2017 Dr X performed multiple bariatric procedures on 6 patients. Dr X subsequently made claims for Medicare benefits, under MBS item no 31584, via the DHS payment system. As a result of the coding within the DHS payment system, Dr X's claims under MBS item 31584 were blocked and she did not receive Medicare benefits for this item.

The practice in which Dr X works utilises the simplified billing method when charging patients that are privately insured. As a billing agent (approved by DHS) the practice acts on behalf of patients to claim un-paid and in-hospital Medicare and private health insurance benefits, as a component of payment for services. As a result of the non-payment of Medicare benefits for MBS item no 31584, Dr X essentially performed services for which she was not remunerated. On 13 March 2020, Dr X submitted a request for an act of grace payment of \$3,000, in lieu of the disallowed Medicare benefits.

The Requestor's circumstances can be ascertained from their application and

attachments, and from Agency submissions



NCE submissions

Insert a paragraph outlining the submissions by each NCE in relation to the Requestor's circumstances.

Example:

The Department of Health supports Dr X's request, although at a lower amount than specified, due to the multiple services rule. Dr X noted her subsequent agreement to the payment of the amount specified by the Department of Health (\$1,500).

Template overview



Reasons

I understand that there are no other apparent avenues of redress for Dr X and that her application for an act of grace payment is a last resort in this instance.

I consider that Commonwealth legislation had an unintended and inequitable result in Dr X's circumstances which was:

- specific to Dr X; in that the inability to claim MSB item no 31584 when performing multiple bariatric procedures affected only a small group of practitioners, during a restricted period in 2017
- outside the parameters of events for which Dr X was responsible; in that Dr X was prevented, by the legislation and the DHS Payments System, from claiming MBS item no 31584, even though bariatric reversal surgery would justifiably be co-claimed with other bariatric surgery items on the same occasion
- consistent with the broad intention of the relevant legislation; in that the GMST was inconsistent with the original policy intent

In addition, I note that the GMST was subsequently amended to enable practitioners to claim Medicare benefits for reversal bariatric surgery, when claimed in conjunction with other bariatric procedures.

I understand that there are no other apparent avenues of redress for Dr X, and that her application for an act of grace payment is a last resort in this instance.

46

Reasons

Insert one to three succinct paragraphs outlining the factors supporting an act of grace payment.

Example:

I consider that Commonwealth legislation had an unintended and inequitable result in Dr X's circumstances which was:

- *specific to Dr X; in that the inability to claim MSB item no 31584 when performing multiple bariatric procedures affected only a small group of practitioners, during a restricted period in 2017*
- *outside the parameters of events for which Dr X was responsible; in that Dr X was prevented, by the legislation and the DHS Payments System, from claiming MBS item no 31584, even though bariatric reversal surgery would justifiably be co-claimed with other bariatric surgery items on the same occasion*
- *consistent with the broad intention of the relevant legislation; in that the GMST was inconsistent with the original policy intent*

In addition, I note that the GMST was subsequently amended to enable practitioners to claim Medicare benefits for reversal bariatric surgery, when claimed in conjunction with other bariatric procedures.

I understand that there are no other apparent avenues of redress for Dr X, and that her application for an act of grace payment is a last resort in this instance.

Template overview



Recommendation

Considering the above, I am of the view that special circumstances exist and recommend that you approve an act of grace payment to Dr X of \$1,500.

Kind regards

Lianne Willis | Assistant Director
Significant Matters Taskforce
Procurement and Insurance Division
Department of Finance
T: 02 6215 3953
E: lianne.willis@finance.gov.au
A: One Canberra Avenue, FORREST ACT 2603

47

Recommendation

Insert a short recommendation.

Example:

Considering the above, I am of the view that special circumstances exist and recommend that you approve an act of grace payment to Dr X for the amount of \$1,500.

Template overview

§ 22

To:

Subject:

§ 22

Please find an DP21/0000 documentation and a decision letter E02021-0004 in relation to Dr Y K. The decision letter is supported by the reasons below:

Background

The Department of Human Services (DHS) conducted a system upgrade in July 2017 to align with changes made to the Health Insurance (General Medical Services Table) Regulations (GMSR). This upgrade implemented a legislative change from 2013 that had not previously been administered. The legislative change disabled a claim for medical benefits (Medicare benefits Schedule (MBS) item number 12154, when performed in conjunction with other surgical procedures).

Subsequent to the system change, DHS and the Department of Health agreed that the technical wording of the legislation was contrary to the original policy intent, so that medical surgical surgery (MBS item 12154) would partially be co-claimed with other surgical surgery MBS items on the same occasion. As a result DHS and the Department of Health formed an intention to change the legislation. In November 2017 an interim solution was introduced but was not retrospective. As of July 2018 a permanent solution applied, again not retrospective.

The Department of Health supports acts of grace payments of this type as there are no remedies available to rectify cases affected by this issue in the period July 2017 to 14 November 2017.

Relevant legislation

Schedule 1, Part 2, Division 2.45 of the GMSR specifies the ability to claim under item number 20702 notwithstanding for surgical surgery in a patient with clinically severe obesity.

Dr Y K's circumstances


Between July 2017 and October 2017 Dr Y performed multiple surgical procedures on 9 patients. Dr Y subsequently made claims for Medicare benefits, under MBS item no 12154, via the DHS payment system. As a result of the coding within the DHS payment system, Dr Y's claims under MBS item 12154 were blocked and she did not receive Medicare benefits for this item.

The practice in which Dr Y works utilizes the simplified coding method when charging patients that are generally insured. As a billing agent approved by DHS the practice acts on behalf of patients to claim on- and off-hospital Medicare and private health insurance benefits, as a component of payment for services. As a result of the non-payment of Medicare benefits for MBS item no. 12154, Dr Y eventually performed services for which she was not reimbursed. On 13 March 2020, Dr Y submitted a request for an act of grace payment of \$1,000, in lieu of the disallowed Medicare benefits.

DCF submission

The Department of Health supports Dr Y's request, although at a lower amount than specified, due to the multiple services rule. Dr Y noted her subsequent agreement to the payment of the amount specified by the Department of Health (\$1,340).

Reasons



I understand that there are no other apparent avenues of redress for Dr Y, and that her application for an act of grace payment is a last resort in this instance.

I consider that Commonwealth legislation had an unintended and inequitable result in Dr Y's circumstances which was:

- specific to Dr Y, in that the inability to claim MBS item no 12154 when performing multiple surgical procedures affected only a small group of practitioners, during a restricted period in 2017
- outside the awareness of events for which Dr Y was responsible, in that Dr Y was prevented, by the legislation and the DHS Payments System, from claiming MBS item no 12154, even though surgical services were provided and/or performed with other surgical surgery items on the same occasion
- consistent with the broad intention of the relevant legislation, in that the GMSR was inconsistent with the original policy intent.

In addition, I note that the GMSR was subsequently amended to enable practitioners to claim Medicare benefits for medical surgical surgery, when claimed in conjunction with other surgical procedures.

I understand that there are no other apparent avenues of redress for Dr Y, and that her application for an act of grace payment is a last resort in this instance.

Recommendation

Considering the above, I am of the view that special circumstances exist and recommend that you approve an act of grace payment to Dr Y of \$1,340.

Kind regards

§ 22 Associate Director
Legislation, Systems, Compliance
Procurement and Insurance Division
Department of Health

§ 22
A. [Redacted] 14/7/2020



Or

Considering the above, I recommend that you approve a waiver of debt for [Salutation Surname] of [\$].

Key points



- Section 65 of the PGPA Act provides the decision maker, with an unfettered discretion to approve a singular or periodic act of grace payment to a person or body (e.g. company), where special circumstances exist.
- Act of grace payments are 'special gifts' of money by the Commonwealth which fall outside statutory or legal entitlement.
- There is no time limit on lodging a request for an act of grace payment.
- Act of grace payments are permissive, in that the decision maker is able to approve a payment but is not obliged to do so.
- Act of grace payments extend the body of the law and may be approved where the Commonwealth considers it has a moral, rather than a legal, obligation to pay.
- Historically, around 28% of the requests received under the act of grace mechanism are approved (26%) or partially approved (2%).

50

Key points



- Special circumstances are for the decision maker to determine. Each case is considered on its own merits. Even if special circumstances exist, the decision maker is not obliged to authorise an act of grace payment.
- While, act of grace decisions hold no precedent value, there is an expectation of consistency in decision making.
- Act of grace payments are debited against the annual appropriation of the relevant NCE. Therefore, they are generally only applicable to the actions of, and/or legislation/policy administered by, an NCE and/or its contracted providers.
- The act of grace mechanism is not used to reconsider decisions made by NCEs under the CDDA scheme.
- Act of grace payments are not to be used as an alternative to other avenues of redress.

51

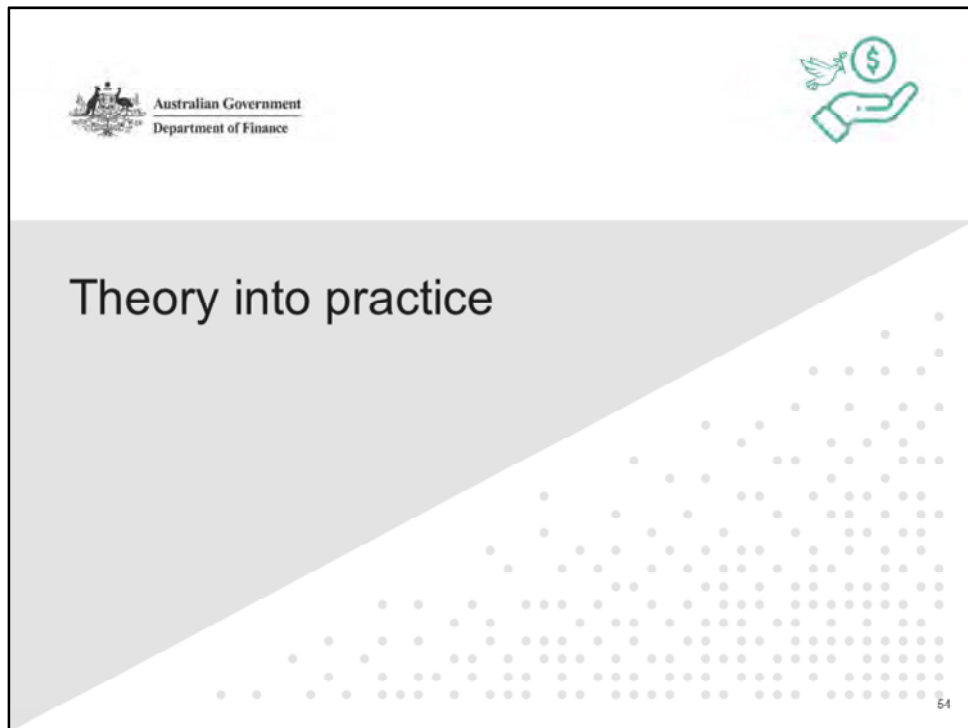
Key points

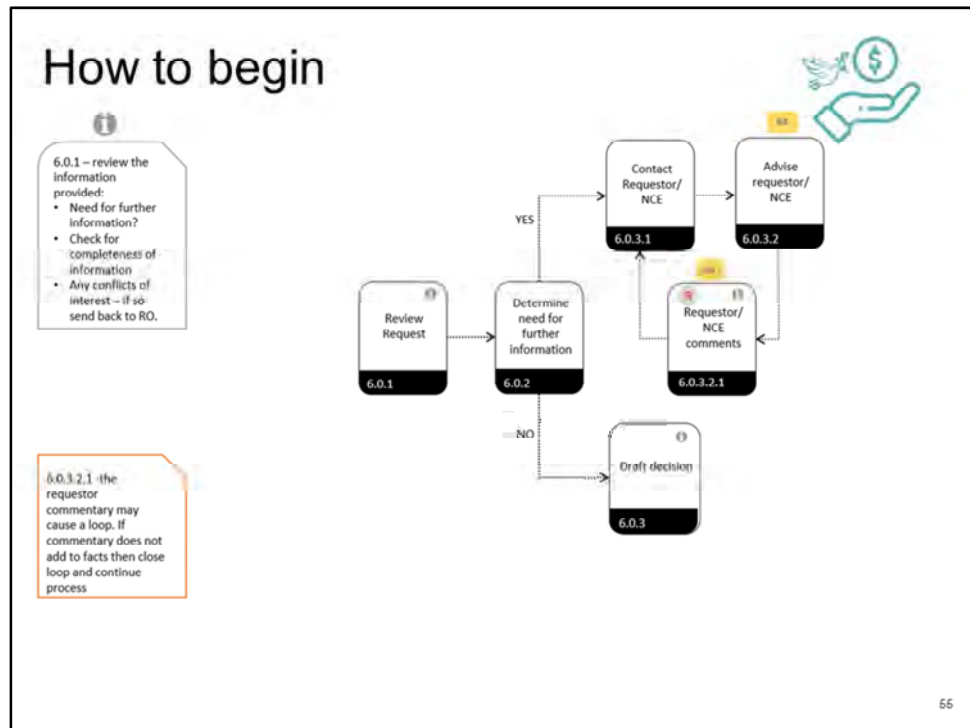


- Finance may reconsider an act of grace decision on the basis of error of fact or law, or on the provision of new evidence.
- Act of grace decisions are subject to administrative review by the Commonwealth Ombudsman, Federal Circuit Court and Federal Court.
- Procedural fairness applies to act of grace decisions.

52







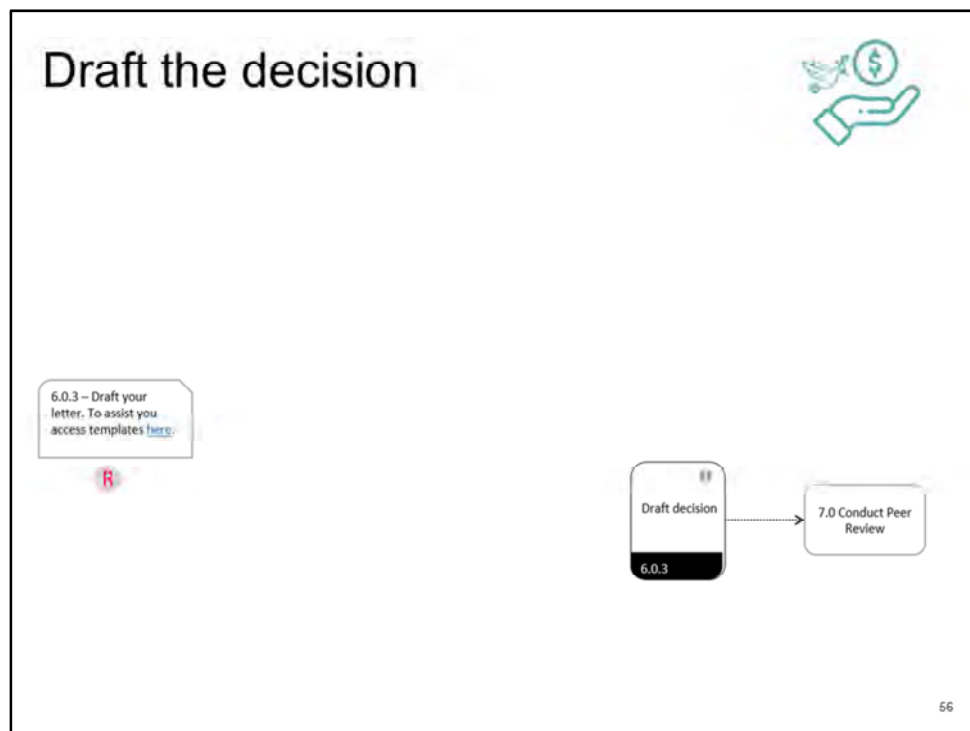
1. Open the Requestor's file on HPE CM
2. Click 'Applicant' – read all documentation contained in the 'Applicant' folder. Make a note of any questions that arise as you read through the documentation. Record any changes of contact details, such as updates to addresses/email etc. If financial hardship is claimed, check that the Requestor has completed the income and expenditure details on the form. As you read through the documentation, check that the titles align with the DPS naming convention e.g.

YYYYMMDD – SURNAME First Name – Act of Grace – *further descriptor of correspondence*

3. Click 'Agency' – read all documentation contained in the 'Agency' folder. Make a note of any questions that remain unanswered in relation to the Requestor's claims and any other questions that arise as you read through the documentation. As you read through the documentation, check that the titles align with the DPS naming convention e.g.

YYYYMMDD – SURNAME First Name – Act of Grace – Agency Submission or *further descriptor of correspondence*

Do you have any unanswered questions? If so, speak to your supervisor or Registry about sending a further request for information to the Requestor or the NCE.



If you are considering a decline

1. Open the AoG Decline Letter Template ED2019-8808.
2. Save a copy of the template to your desktop using the following naming convention:

YYYYMMDD – SURNAME First name – Act of Grace – Decision letter

1. Drag and drop the saved template into the relevant DPS file in the 'Decision' folder
2. Right click on the saved template in HPE CM and select 'Edit'

Reference:

1. Add the DPS reference number to the template

Contact details:

1. Use the act of grace application form (and any subsequent updates to contact details) fill in the name, address and email address

Introduction:

1. Use the act of grace application form to complete the amount and date of receipt
2. Use the act of grace application form (and any attachments or subsequent communications) to summarise in one sentence the main issue raised in the request

Decision:

Leave the decision details as is for the time being. In the event that you decide to recommend a partial approval you can change the text at a later time

Relevant Legislation and Authority

Leave as standard text

Relevant Information Considered:

1. Add the DPS number of the HPE CM file
2. List all correspondence received in relation to the matter including the original and any subsequent submissions by the Requestor and all submissions by the NCE
3. In relation to the RMG, remove any paragraphs that do not relate to the matter e.g. you may wish to remove 36
4. Add any additional information considered, such as specific legislative provisions that relate to the matter, explanatory memorandums or bills, any other policy, procedure or document considered in making the decision.

Claims:

1. Use the act of grace application form and any attachments or subsequent communications to list the Requestor's claims. The claims should be written as if they are fact. There is no need to use words such as you claim, you believe etc. or to include any emotional language. Ensure you capture all claims made by the person.
2. Use the NCE submissions to list the factual information relating to how the debt arose and to note the opinion of the NCE in relation to whether the request should be approved or declined

Findings of material questions of fact:

1. List the claims and information that you accept to be fact based on the evidence before you
2. If there are any claims or information that is disputed, or there are conflicting views about, discuss these under a sub heading, 'Facts in contention'. Use the evidence before you to make findings in relation to the claims/information, siding with the Requestor or the NCE or coming to a different conclusion, and stating the reason for your conclusion. If there is insufficient evidence to make a finding in relation to claims/information and the claim or information is not material to the decision (material meaning that the claim/information has bearing on the outcome of the decision) you may choose to make no finding, and state that you did not consider this claim/information when making your decision and the grounds for not doing so.

Reasons:

1. Leave the first paragraph as standard text.
2. Begin the reasons by summarising in one paragraph the main claims of the Requestor.
3. Step through the 2 dot points relating to RMG401 discussing the claims of the

Requestor and accepting or refuting these claims

- Whether an act of an NCE caused an unintended and inequitable result
 - Describe how the situation arose
 - Identify any actions/omissions by the Requestor that contributed to the situation
 - Identify any actions/omissions of the Commonwealth that contributed to the situation
 - Identify any actions/omissions of other parties that contributed to the situation
 - Identify any actions/omissions by the Requestor to mitigate the situation
 - Summarise the above, and make a finding on whether the NCE caused an unintended or inequitable result in the Requestor's circumstances (see 4)
 - Whether Commonwealth legislation or policy had an unintended, anomalous, inequitable or otherwise unacceptable impact on the Requestor's circumstances
 - Identify the relevant legislative provisions or policy
 - Explain how the relevant legislative provisions or policy applies to the Requestor's circumstances
 - Identify the intent of the relevant legislative provisions or policy
 - Explain how the intent applies to the Requestor's circumstances

If it appears that that the legislation or policy had an unintended, anomalous, inequitable or otherwise unacceptable impact on the Requestor's circumstances, identify whether the impact was :

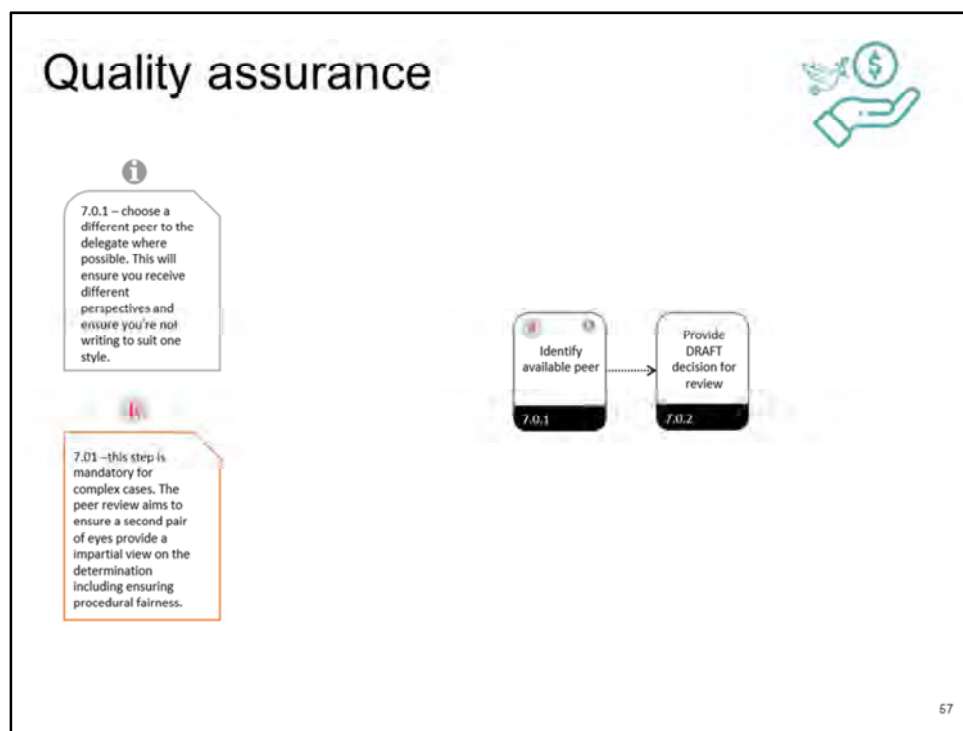
 - specific to the Requestor
 - outside the parameters of events for which they were responsible or had the capacity to control
 - consistent with the broad intention of the relevant legislation
 - Summarise the above, and make a finding on whether the legislation or policy had an unintended, anomalous, inequitable or otherwise unacceptable impact on the Requestor's circumstances (see 4)
 - Address any other claims by the Requestor that could give rise to special circumstances.
 - Summarise your considerations and make a finding as to whether grounds exist to make an act of grace payment (see 4)
1. In the summary at the end of each section (3 dot points above) containing your conclusions, identify the weight you have given to specific information/evidence/claims
 2. At the end of the 'Reasons' section, draft a short summary of your conclusions and findings, clearly articulating the reason you are declining the request.

Conclusion

1. Amend the conclusion text to reflect the main reason for the decline or partial approval. If you have decided on a partial approval, ensure you update the 'Decision' at the begging of the document.

Further information

Leave as standard text



Review your draft:

1. Open the SOP – The DPS Quality Assurance (QA) Process (ED2019-9729)
2. Review your draft in line with the considerations contained under the heading 'Substance (Reasoning)'
3. Review your draft in line with the considerations contained under the heading 'Style (Spelling, grammar, flow and formatting)'
4. Review your draft in line with the considerations contained under the heading 'Accuracy (Accuracy of content)'

Make any necessary amendments.

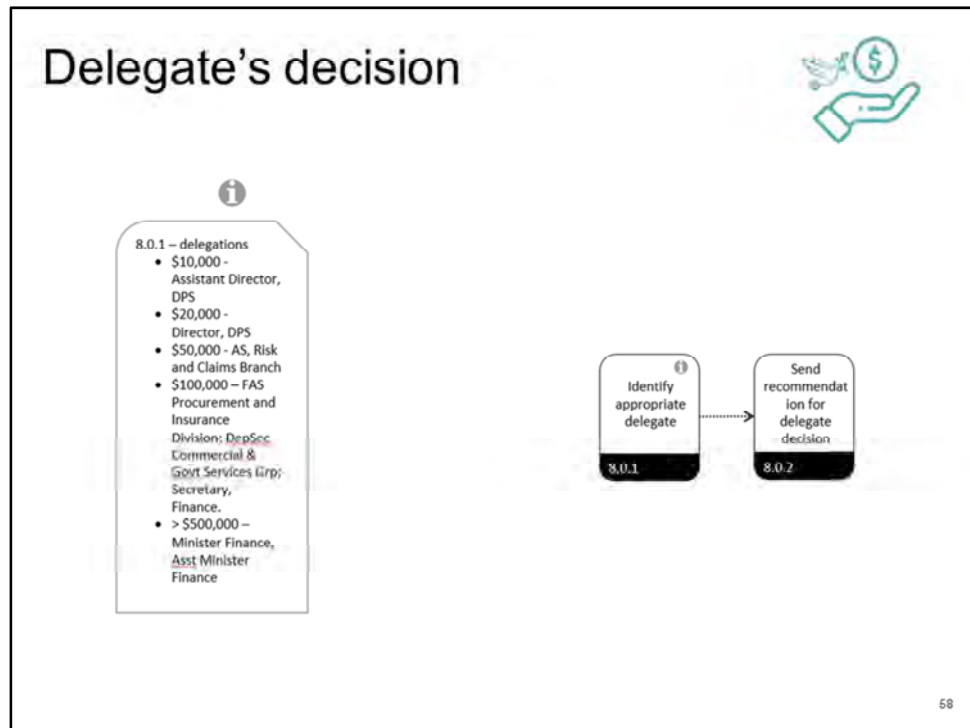
Refer your draft for QA:

1. Open a new email
2. In the subject line add – For QA – SURNAME First Name – Waiver of debt
3. In the body of the email add:

Please find at DPSXXXX (EDXXXXX) a draft decision letter in relation to Surname First Name for QA

Add any additional information relating to sensitivity or that may assist in the QA role

1. Send the email
2. Update the SFC database – Process History – to reflect that the matter is with a peer/assistant manager etc. for QA



When the QA process is complete and all suggested amendments have been completed, you may send the draft decision to a delegate for decision.

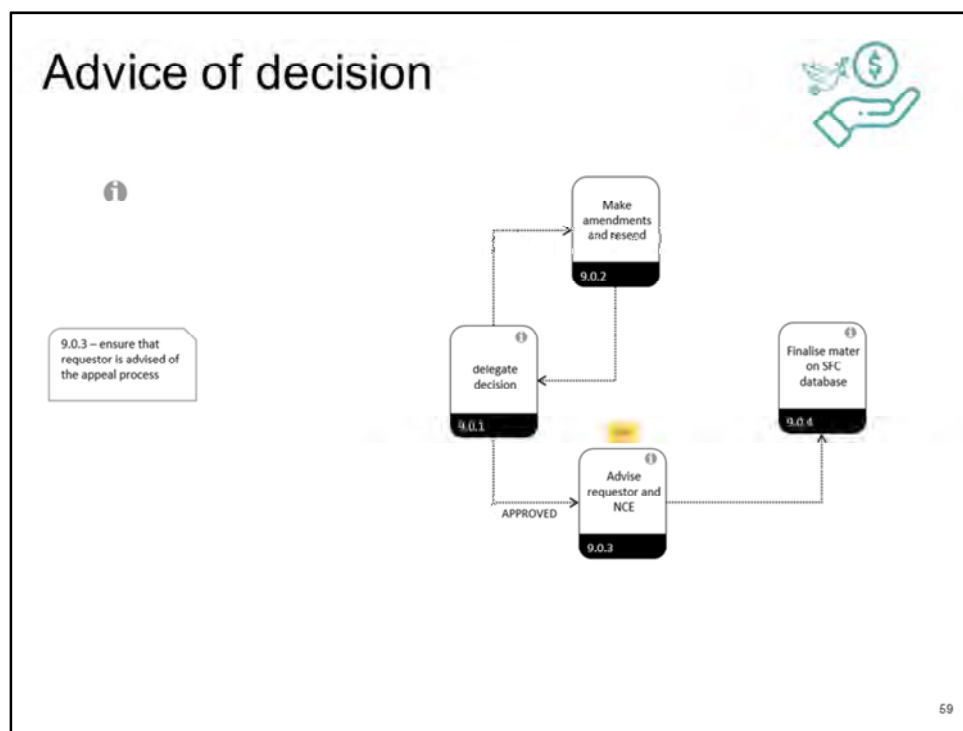
Ensure you have included the Delegate's full name and title in the draft decision. Leave the date blank for the delegate to complete.

1. Open a new email
2. In the subject line add – For decision – SURNAME First Name – Waiver of debt
3. In the body of the email add:

Please find at DPSXXXX (EDXXXXX) a draft decision letter in relation to Surname First Name for your review and decision

Add any additional information relating to sensitivity or that may assist the delegate in reviewing the decision

1. Send the email
2. Update the SFC database – Process History – to reflect that the matter is with a assistant manager etc. for decision



The Delegate may provide feedback or request additional amendments. The Delegate may also decide to make an alternative decision.

1. When all requested amendments by the Delegate have been made to the draft decision, add the date to the decision signature block and send an email to the Delegate to advise that the decision is ready for signing
2. The Delegate will sign the decision, save a PDF version on top of the draft decision in HPE CM, and advise you by return email that the decision is complete

Prepare advice for the Requestor

1. Open a new email
2. Under 'From' select SFC@finance.gov.au
3. Go to the Email Templates folder on the G Drive
4. Open 7. Waiver of Debt – Requestor – Advice of Decision
5. Copy and paste the information from the template into your new email, including the general signature block
6. Drag and drop the PDF decision letter from HPE CM to the email
7. Open the decision letter and check that you have the correct email address and correct decision letter for the person to who you are sending the email
8. Close the attachment
9. Send the email

Prepare advice for the Requestor

1. Open a new email
2. Under 'From' select SFC@finance.gov.au
3. Go to the Email Templates folder on the G Drive
4. Open 7. Waiver of Debt – NCE – Advice of Decision
5. Copy and paste the information from the template into your new email, including the general signature block.
6. Remove any text that does not apply for example – please give effect to the decision in relation to decline decisions
7. Drag and drop the PDF decision letter from HPE CM to the email
8. Open the decision letter and check that you have the correct email address and correct decision letter for the NCE to who you are sending the email
9. Close the attachment
10. Send the email
11. Update the SFC Database with the result of the decision as per the *SOP 4. Task Summary – Approve, Partially Approve or Not Approve* a claim located in the Templates folder on the G Drive



Standard Operating Procedure Requests for reconsideration

INTRODUCTION

All requests for reconsideration will be considered by an authorised delegate. This is a two stage process

- The first stage requires a decision about whether, in light of the information included in the reconsideration request, it is appropriate for a case to be accepted for formal reconsideration.
- The second stage is the conduct of a 'de novo' (starting from the beginning; anew) reconsideration of the matter.

A decision about whether a matter will be reconsidered must be made by an authorised delegate. Case Officers may be asked to assist a delegate in reviewing the request and preparing correspondence.

Under RMG 401 (Paragraphs 15 and 37) and in the information sheet attached to decision letters, claimants are advised that matters will only be reconsidered if there is relevant new information or a serious factual error is identified in the original decision. While taking into account the provisions of RMG 401, delegates are not limited to those reasons, and can decide to reconsider a matter for any reason they consider may be relevant.

STAGE 1

An applicant has asked for a reconsideration – what do I do?

Review the request for reconsideration for whether new/additional information is provided or a serious factual error is claimed:

- New information:
 - Is the information genuinely new? Consider whether it is similar to information already considered.
 - Is the information relevant to the matter? E.g. If it relates to claims considered outside scope then it is not relevant new information.
 - Does it raise issues not previously addressed in the decision?
 - Does the information address/potentially change the basis for the decision?If no to the above, a matter will generally not be accepted for reconsideration.
- Serious Factual Error:
 - Has the applicant clearly identified a factual error in the decision letter? Simply stating there is an error without setting out identifying the particular fact and why it is an error is not sufficient.
 - Is the error serious? I.e. was the fact relied on by the decision maker in making their decision, could it result in a new delegate making a different decision?If no to the above, a matter will generally not be accepted for reconsideration.

- Other reason to reconsider - The delegate is not constrained to the above but can undertake a reconsideration for any other reason they consider appropriate. These may include, but are not limited to:
 - Change in Government policy since the original decision
 - Original decision letter considered to be insufficient to stand-up to external review
 - Applicant has not provided new information but clarified previous information etc.
- Communicate the outcome of the process to the claimant in a letter.
 - If a decision is made that we will reconsider, it is best practice to advise the claimant of that outcome in a letter and give them the opportunity to lodge any other material they wish to have considered.
 - If a decision is made not to reconsider the letter should address the issues identified in the reconsideration request, and advise why the delegate does not consider those issues merit a reconsideration. **NOTE:** this is **not** generally done in 'Statement of Reasons' format, and does not address the merits of the act of grace (AOG)/waiver of debt (WOD) claims. The purpose of the letter is to outline the reasons why further reconsideration is not regarded as appropriate.

Other viable remedies

If the matter does not contain a factual error, or no new information has come to hand, but other factors exist, such as viable remedies that were not identified in the original decision, it would be appropriate to consider using an existing 'Sunset letter' in place of, or incorporated within, a notification letter advising the outcome of a reconsideration request. Some examples include:

- Internal review hasn't been requested, undertaken or finalised
- Financial assistance can be obtained through another means; or
- Legal avenues exist.

STAGE 2

How do I approach preparation of a Statement of Reasons for a reconsideration?

A reconsideration of a claim is taken to be a 'de novo' consideration. This means that:

- You will prepare a full statement of reasons in the same way that any new claim is considered.
- The original claims, agency submissions, claimant correspondence from the initial application along with all the information available as part of the reconsideration process, should be included in the decision letter.
- Your reasoning must reflect your own views of the evidence and reflect your judgement of the totality of the claim.
- You are NOT to defend the initial decision. Except for the caveats listed below, the original decision is not 'relevant' to your consideration of the claims.
- You should note in the introductory paragraph that 'you have sought reconsideration of a decision made on [date]' and 'that you were advised on [date] that a reconsideration would take place', and 'I am conducting that reconsideration'.
- You should consider whether new submissions need to be sought from agencies and natural justice loop completed on new submissions. You should include a paragraph advising whether you have sought updated agency advice (or if not, why not). **NOTE:** If you form a view that the outcome should be different from the original decision, you should ensure that updated agency views are sought.

Where inconsistencies arise in claims between initial lodgement and reconsideration, you should flag these and resolve whether the inconsistency is relevant to your decision (this will normally be in findings of fact or reasons sections).

- You may copy the claims list, agency comments, findings of fact and other relevant paragraphs from the original decision (particularly to quickly summarise issues that are NOT in contention). However it is important to acknowledge these using phrases like “I note that in the original decision, the delegate summarised your claims as follows, and note that you have raised no concerns about that characterisation, I have therefore adopted that summary for the purpose of this consideration”. It is preferable, however that reasons be in your own words and evidence your own thoughts and decisions.

Who will decide the reconsideration?

While any delegate can sign a reconsideration request, DPS practice is that Stage 1 decisions will generally be decided by an authorised delegate who was not involved in the original decision and Stage 2 decisions will generally be made at a level higher than the original decision maker.

What about repeat requests for reconsideration?

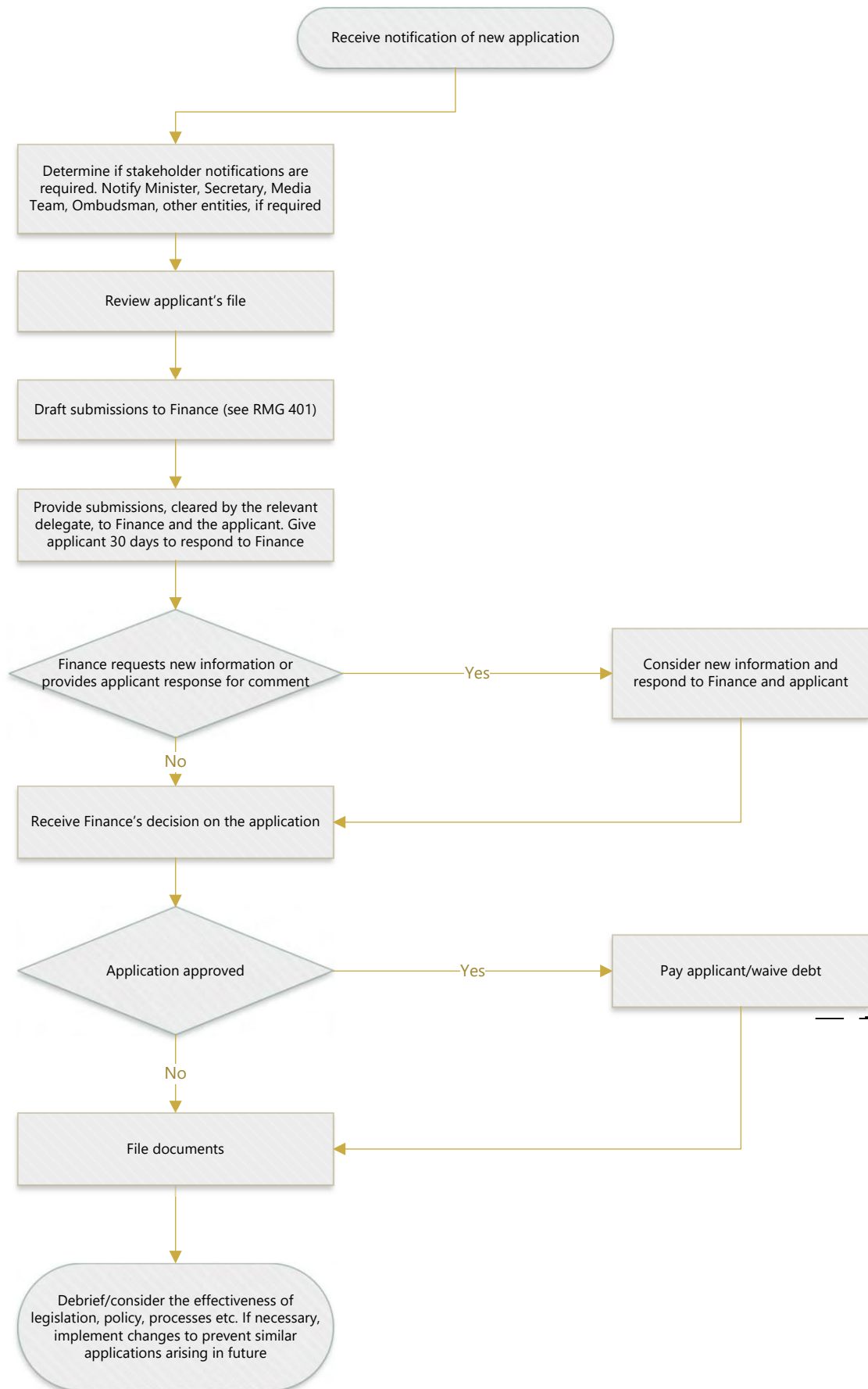
There is no legislative or policy constraint on claimants making multiple requests for reconsideration. Each new request is to be treated on its merits in accordance with the above protocols.

If it is regarded that a claimant is becoming vexatious, the matter is to be referred to the Director, DPS who may decide not to further consider requests for reconsideration, or otherwise determine how to respond to claimant’s requests.

Are there any templates to assist?

Letter and email templates in relation to responding to a request for reconsideration are located [here](#).

Discretionary Financial Assistance – Entity Flowchart





Australian Government
Department of Finance

Entity Checklist – Discretionary Financial Assistance

- Refer to **Resource Management Guide 401 – Requests for Discretionary Financial Assistance under the Public, Governance, Performance and Accountability Act 2013 (RMG 401)** for more detailed information.
- Entities are expected to provide submissions to Finance within 30 days of notification of a request.
- Please contact Finance via sfc@finance.gov.au if an extension is required.

Step	Action	Entity Timeframe	✓
1.	Receive notification of an application for discretionary financial assistance from Finance	As soon as possible	
2.	Determine if further stakeholder notifications are required and notify relevant stakeholders (Minister, Secretary, Media Team, Ombudsman, other entities)	As soon as possible	
3.	Review applicant's file	Within 14 days	
4.	Assess the applicant's submissions in detail and draft submissions to Finance (see RMG 401), seek any additional information from Finance	Within 14 days	
5.	Provide finalised submissions, cleared by the relevant delegate, to: <ul style="list-style-type: none"> (a) Finance via sfc@finance.gov.au; and (b) applicant for procedural fairness. Give applicant 4 weeks to provide further response to Finance.* <i>*Finance has prepared a sample cover letter to assist entities with this step (available on Govdex or by contacting sfc@finance.gov.au).</i>	Within 30 days	
6.	Consider new information if applicant responds. If applicant provides entity with new information, respond to Finance.	Within 30 days	
7.	Notify Finance via sfc@finance.gov.au if an extension is required	As soon as possible	
8.	Upon receipt of Finance's decision on the application: <ul style="list-style-type: none"> (a) if approved, file and pay applicant or waive debt. (b) if declined, file. 	Within 30 days	
9.	Debrief and consider the effectiveness of legislation/policy	Within 45 days	
10.	Implement proactive changes to legislation/policy to prevent similar applications arising in future (if necessary and appropriate)	As required	

<<salutation>> <<firstname>> <<lastname>>
<<title>>
<<organisation>>
<<address>>
<<SUBURB>> <<STATE>> <<postcode>>

Dear <<salutation>> <<lastname>>

REQUEST FOR AN ACT OF GRACE PAYMENT/WAIVER OF DEBT

I refer to your request for an act of grace/waiver of debt.

The Department of Finance (Finance) is responsible for considering requests for act of grace payments/waiver of debt under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). Finance has sought advice from <<insert agency>> in regards to your application.

For your information, please find **attached** a copy of <<insert agency>> submission provided to Finance.

Should you wish to comment on this submission, please provide your comments to Finance at sfc@finance.gov.au on or before <<insert date (4 weeks from date of this letter)>>.

Alternatively, you may provide your response to:

Discretionary Payments Team
Risk & Claims Branch
Department of Finance
One Canberra Avenue
FORREST ACT 2603

Should you not provide any comments by this time, or seek an extension, your case will be determined on the information already held by Finance.

Please note that <<insert agency>> submissions are based on the information available to us and should not be considered as the final decision on your application. The Minister for Finance, or an authorised delegate, will make a decision based on the information that Finance holds, including this submission and any comments you provide.

Yours sincerely

<<Insert Relevant Details>>

<<Insert Date>>

Sensitive: Personal

Insert entity letterhead

Please note this requirement and then delete: For procedural fairness, entities are required to provide a complete copy of their submission to the applicant at the same time as it is sent to Finance. Entities should ask the applicant to respond within four weeks. Please advise applicants to contact SFC@finance.gov.au, should they require an extension. Finance has prepared a sample cover letter to assist entities with this process which is available by contacting sfc@finance.gov.au.

Reference: Insert file reference
Contact: Insert contact
e-mail: Insert email

Discretionary Payments Team
Risk & Claims Branch
Department of Finance

By email: sfc@finance.gov.au

REQUEST FOR INFORMATION – APPLICATION FOR DISCRETIONARY FINANCIAL ASSISTANCE – INSERT NAME OF APPLICANT

We refer to your email, dated insert date, in which you notified insert entity name, of an application for discretionary financial assistance made by insert applicant name (the Applicant) under section 63 and/or 65 Public, Governance, Performance and Accountability Act 2013 (PGPA Act).

You have requested that we provide the Department of Finance (Finance) with further information to assist with your determination of the application.

APPLICATION FOR DISCRETIONARY FINANCIAL ASSISTANCE

The application broadly relates to [insert brief description of the application](#).

Our detailed comments in relation to the application are below.

BACKGROUND

History of the matter

- Please insert relevant facts and background; including:
 - Historical information relating to the applicant's case.
 - Details of the actions of the entity, if any, that directly contributed to the applicant's situation. [Please note: if you identify an error in the entity's handling of the case, you should contact SFC@finance.gov.au for advice on whether the case should be considered under the CDDA scheme. The CDDA scheme can only be used in act of grace claims – refer to [Resource Management Guide 409 – Scheme for Compensation for Detriment Caused by Defective Administration](#).]
 - Any prior consideration of the case under the CDDA scheme.
 - Any relevant decisions of tribunals or other review bodies.
 - Any other claims or complaints from the applicant arising from the same or similar circumstances.
 - If the application relates to waiver:
 - The amount owing to the Commonwealth, including why it was incurred, how it is comprised and when it is due for payment.
 - Any information held by the entity on the assets, income, future earning capacity, other debts, health and family circumstances of the family unit or household to which the debtor belongs.
 - Whether the entity has considered other debt management strategies. [Please note: the entity must consider whether there are other debt management options, which would allow the Commonwealth to maintain the right to recover the debt at some later date and whether they are more appropriate in the circumstances.]

Relevant legislation and policy

- Please provide the relevant sections of legislation and policy references and details of how the applicant's circumstances relate to that legislation/policy; including:
 - Whether the outcome in the applicant's circumstances is "as intended" by the legislation and/or policy, including with reference to supporting information.
 - Whether any other entity may be able to provide additional relevant advice to Finance on the policy or legislation related to the matter.
 - If there is a perceived anomaly in the law or policy. If so, provide an estimate of the likely number of people affected and the likely number of applications.

DISCUSSION

Act of grace considerations

Section 65 of the PGPA Act provides the Minister for Finance and his delegates with a discretion to authorise, in writing, one or more payments to be made to a person if the Minister for Finance and his delegates consider it appropriate to do so because of “special circumstances”.

Resource Management Guide 401 (RMG 401) provides guidance about various factors that officials may consider when dealing with requests for discretionary financial assistance under the PGPA Act.

Please provide submissions/advice to Finance, having regard to paragraphs 7 – 24 of RMG 401, including:

- Whether or not the entity supports the act of grace request and detailed reasons why. [Please note: Finance may seek clarification from the entity as the policy owner, recognising the entity’s expertise.]
- Provide any other information that may be relevant to assist the Finance Minister’s delegate to determine whether “special circumstances” exist. [Please note: such circumstances are not limited to those outlined in RMG 401 and that each case should be considered on its individual merits.]

OR

Waiver of debt considerations

Section 63 of the PGPA Act provides the Minister for Finance and his delegates with a discretion to waive an amount of debt owing to the Commonwealth.

Resource Management Guide 401 (RMG 401) provides guidance about various factors that officials may consider when dealing with requests for discretionary financial assistance under the PGPA Act.

Please provide submissions/advice to Finance, having regard to paragraphs 32 – 45 of RMG 401, including:

- Whether or not the entity supports the waiver of debt request and detailed reasons why. [Please note: Finance may seek clarification from the entity as the policy owner, recognising the entity’s expertise.]
- Whether the debts are unlikely to be waived, including because:
 - Debts have been established by a judicial decision of the court.
 - Debts owed to the Commonwealth that will be paid by third parties.
 - Debts that have arisen through deliberate fraudulent or other illegal actions.
 - Requests submitted by companies on the grounds of financial hardship.
 - Where an amount owing to the Commonwealth is not certain or ascertainable.
- Whether other debt management options exist and whether they would be more appropriate than a waiver of debt in the circumstances. [Please note: the entity must consider whether there are other debt management options, which would allow the

Commonwealth to maintain the right to recover the debt at some later date and whether they are more appropriate in the circumstances.]

WAY FORWARD

- **Please provide a recommendation to Finance.** If no recommendation is provided, Finance will return the submission to the entity, requesting clarification of entity views.
- In your recommendation, indicate whether or not the entity supports the application, including:
 - Whether there is an alternative avenue of redress that could be pursued; and whether that avenue is viable in the applicant's circumstances (such as a statutory review mechanism).
 - Any other options, which may be appropriate in the circumstances (such as a payment plan or write-off).
- If the entity supports payment of an amount, clearly state the total amount and any breakdown [Please note: table format is preferred for complex breakdowns].

FURTHER ASSISTANCE

I trust that this information is of assistance.

Please let [insert entity name, contact name and contact details] know if you wish to discuss or if we can assist further.

Kind regards

[Insert clearance officer's signature block and date cleared]

ATTACHMENTS

- List any attachments to the submission or provide a schedule of documents. Finance has prepared a schedule to assist entities, available on Govdex or by contacting sfc@finance.gov.au.
- Remove this heading if there are no attachments.

Sensitive: Personal

SCHEDULE OF DOCUMENTS CONSIDERED FOR DISCRETIONARY FINANCIAL ASSISTANCE APPLICATION

[Insert name of applicant or file]

Documents Considered	Date of Document	No. of Pages	Author	Addressee	Key Details



Our ref: DPS or RMSxx/xxx

[Name]
[Address]
Via email: [Email Address]

Act of grace request – Decision regarding [Name]

On (date), [you/the (agency)] submitted an application to the Department of Finance, requesting an act of grace payment in the amount of \$(amount). The request relates to an act of grace payment for xxxxx.

I am an authorised delegate for the purposes of section 65 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). I have decided, under subsection 65(1) of the PGPA Act to authorise an act of grace payment in this instance.

I have advised the (agency) of my decision and they will be in contact with you in regards to payment.

Yours sincerely

Authorised Delegate
[Position]
[Position No.]
Discretionary Payments Section
Risk and Claims Branch
[Date2]



Reference: **DPS or RMS[file]**

(Name)

(Address)

Via email only: **(email)**

Dear **(Name)**

Application for an act of grace payment

I refer to your application for **an act of grace payment/a waiver of debt**, received by the Department of Finance (Finance) on **(date)**.

I note that this matter relates to the actions of the **(state or territory eg ACT)** Government. The Commonwealth does not generally make act of grace payments in relation to actions states or territories, particularly where there are review mechanisms or alternate remedies available through the relevant jurisdiction.

I note that this matter is currently being considered by the **(list any state or territory bodies mentioned in the application)**.

I also note that the **(state or territory)** Government has its own act of grace mechanism that would be open to you once the current reviews are finalised. Information about this process can be found:

- ACT - on the ACT Treasury's website <https://apps.treasury.act.gov.au/> or by contacting the ACT Treasurer.
- NSW – <https://www.treasury.nsw.gov.au>
- SA - ?
- WA - ?
- NT - ?
- Victoria - ?
- Tasmania - ?

If you would like to have your application for an act of grace payment considered by the Commonwealth, you should make a request for consideration outlining why you consider the Commonwealth should consider this matter despite the **(state or territory)** Government having jurisdiction and outlining why consideration should occur before the reviews by the **(list any state or territory bodies mentioned in the application)** are completed.

If you wish to make submissions on those matters please send them by email to the Discretionary Payments Section at sfc@finance.gov.au.

Yours sincerely

Assistant Director

Position number:

Discretionary Claims Section

Risk and Claims Branch

Date

s 22

From: SFC
To: [Delegate's email address]
Subject: [SURNAME, First name] - Delegate's decision email

[Hi/Good morning/Good afternoon] [First name]

Please see [below a link to the G-Drive containing documentation/attached documentation] and a draft decision letter in relation to the matter of [Salutation, First name, Surname].

[insert link to G-Drive if referred to above]

Recommendation

On the basis of the reasons provided below, I recommend that you authorise an act of grace payment, pursuant to your delegation under subsection 65(1) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), for [Salutation, Surname] of [\$].

Key issues

Background

Reasons

There are no other apparent avenues of redress for [Salutation, Surname], and it appears [his/her] request for an act of grace payment is a last resort in this instance.

[Signature block]

s 22

From: SFC
Subject: Emailing Agency advice to claimant

Dear [NAME],

The Department of Finance (Finance) Discretionary Payments Team has received advice from the [AGENCY] in regards to your act of grace application. Please note that this is not the final decision.

If you wish to provide comment, please submit your response by [DATE].

Should you require more time to prepare your response please contact Finance on the details below and we will endeavour to accommodate your request.

Kind regards



Discretionary Payments Section
Risk and Claims Branch
Department of Finance
T: 1800 227 572 E: sfc@finance.gov.au
A: One Canberra Avenue, FORREST ACT 2603

UNCLASSIFIED



Reference: DPS or RMS[file]

(Name)

(Address)

Via email only: (email)

Dear (Name)

Application for an act of grace payment/a waiver of debt owed to the Commonwealth

I refer to your application for an act of grace payment/a waiver of debt, received by the Department of Finance (Finance) on (date).

The waiver of debt/act of grace payment mechanism is generally a remedy of last resort and is not used when there is another viable remedy available to provide redress.

The (NCE) have advised your application may be able to be resolved outside of the waiver of debt/act of grace mechanism by (provide details of alt remedy).

As the (NCE) will consider your claim through another viable remedy, I have closed your application for a waiver of a debt/an act of grace payment.

If you do not consider this matter satisfactorily resolved and want to have your application for a waiver of a debt/an act of grace payment considered, you should make a request for consideration to the Discretionary Payments Section by email to sfc@finance.gov.au.

You should also provide details of any alternative remedies that you have pursued.

If you have any questions, please contact the Discretionary Payments Section.

Yours sincerely

Registry Team
Discretionary Claims Section
Risk and Claims Branch
(Date)



Reference: DPS or RMS[file]

(Name)

(Address)

Via email only: (email)

Dear (Name)

Application for an act of grace payment

I refer to your application for an act of grace payment, received by the Department of Finance on (date).

The act of grace payment mechanism is generally a remedy of last resort and is not used when there is another viable remedy available to provide redress.

I consider your application would more appropriately be addressed under the Compensation for Detriment caused by Defective Administration (CDDA) scheme. Applications for consideration under the CDDA scheme should be made directly to the (agency).

As there is still a viable alternative remedy available, I have closed your application for an act of grace payment.

If you are not able to have this matter satisfactorily resolved through the CDDA scheme, you may lodge a complaint with the Commonwealth Ombudsman.

Please refer to <http://www.ombudsman.gov.au/> for assistance in lodging a complaint.

(If making claims beyond CDDA) The remaining matters that do not relate to the claimed defective administration, can be considered by Finance under the act of grace mechanism, following the finalisation of your CDDA consideration.

If you want to have additional matters considered under the act of grace mechanism, once your CDDA consideration is finalised, you should make a request for consideration to the Discretionary Payments Section by email to sfc@finance.gov.au.

You should also provide details of the outcome of the CDDA consideration.

If you have any questions, please contact the Discretionary Payments Section.

Yours sincerely

Registry Team
Discretionary Payments Section
Risk and Claims Branch
(Date)



Australian Government

Department of Finance

Our Ref: DPS##/####

Your Ref: [Delete if not relevant]

[Title] [first name] [last name]

[Postal Address]

[SUBURB] [STATE] [Postcode]

By email only: [example@example.com.au]

Dear [Title] [Last Name]

Act of Grace Request – Decision

Thank you for your request/the request submitted on behalf of [Title] [First Name] [Family Name] for an act of grace payment of \$[amount], received by the Department of Finance (Finance) on [date]. The request relates to [background].

Decision

I have decided, under section 65(1) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), not to authorise an act of grace payment in this instance.

My statement of reasons for this decision is set out below.

Relevant Legislation and Authority

Section 65(1) of the PGPA Act provides that the Finance Minister may, on behalf of the Commonwealth, authorise one or more payments to be made to a person if the Finance Minister considers it appropriate to do so because of special circumstances. I am a delegate for the purposes of section 65(1) of the PGPA Act and have considered your request.

Relevant Information Considered

I have had regard to the full contents of the Finance file that relates to your request (our reference: DPSxx/xxxx), including the following documents, when making my decision:

- Your request, dated [date], together with the attached supporting materials.
- A statement from the [NCE], dated [date].
- Your further response, dated [date].

In making my decision, I also had regard to the guidance provided in Resource Management Guide No. 401, *Requests for discretionary financial assistance under the Public Governance, Performance and Accountability Act 2013* (RMG 401).

Paragraphs 9 – 14 of RMG 401 provide guidance on the act of grace mechanism and state the following:

9. *‘Special circumstances’ and ‘appropriate’ are not defined in the PGPA Act and are for the decision-maker to assess.*
10. *Examples of special circumstances that may make it appropriate to approve an act of grace payment include instances when:*
 - *An act of a non-corporate Commonwealth entity (NCE) has caused an unintended and inequitable result to a person seeking a payment.*
 - *Commonwealth legislation or policy has had an unintended, anomalous, inequitable or otherwise unacceptable impact on the applicant’s circumstances, and those circumstances were:*
 - *Specific to the applicant.*
 - *Outside the parameters of events for which the applicant was responsible or had the capacity to adequately control.*
 - *Consistent with what could be considered to be the broad intention of the relevant legislation.*
 - *The matter is not covered by legislation or specific policy, but the Commonwealth intends to introduce such legislation or policy, and it is considered desirable in a particular case to apply the benefits of the relevant policy prospectively.*
11. *The Commonwealth uses contracted providers for some services. The actions of contracted providers are not within the scope of the CDDA Scheme. Where a person alleges that the actions of a contracted provider may have caused financial detriment to them, the matter may be considered under the act of grace mechanism.*
12. *Act of grace payments may not be approved, for example, when:*
 - a. *The proposed payments would have the effect of supplementing capped payments set by other specific legislation, in circumstances where that legislation expresses the clear intention that particular payment levels cannot be exceeded in any circumstances.*
 - b. *The proposed payments would have the effect of establishing a payment scheme to apply to a group of individuals, without considering the merits of their requests on an individual basis.*
13. *Payments under the act of grace mechanism must be made from money appropriated by the Parliament. Therefore, as a matter of practice, the act of grace mechanism is generally not available:*
 - *When a request has arisen from private circumstances outside the sphere of Commonwealth administration, there has been no involvement of an*

agent or NCE of the Commonwealth and the matter is not related to the impact of any Commonwealth legislation.

- *In respect of a matter that relates solely to the involvement of corporate Commonwealth entities which have a separate legal identity to the Commonwealth.*
- *To compensate a person or body for a debt owed to the Commonwealth.*
- *To compensate a person for a loss arising from a judicial decision not involving the executive arm of the Government.*

14. Act of grace requests are generally not approved in cases where an applicant's sole assertion is that it is unfair that they have been historically ineligible to receive a benefit for which a person in similar contemporary situation would now be eligible. They are also generally not approved in cases where a person was historically eligible for a payment but is now ineligible due to a change in criteria. In many of these cases, the legislative changes simply reflect the evolving nature of the Australian Government policy interpretation and analysis, including incremental legislative amendment.

Claims

As set out in your submissions, I consider your claims can be summarised as follows:

-

In its submission, **NCE** states the following:

- It **supports/does not support** your request for an act of grace payment.

Findings on Material Questions of Fact

The material facts are as follows:

-

Reasons

In considering your request it is necessary for me to examine any special circumstances that may make it appropriate to approve an act of grace payment including (but not limited to):

- Whether an act of an NCE has caused an unintended and inequitable result in your circumstances.
- Whether Commonwealth legislation or policy has had an unintended, anomalous, inequitable or otherwise unacceptable impact on your circumstances which were:
 - Specific to you.
 - Outside the parameters of events for which you were responsible or had the capacity to adequately control.
 - Consistent with the broad intention of the relevant legislation.

Conclusion

Further Information

The attached document outlines your options in relation to this decision.

Yours sincerely

[Delegate Name or Position Number]

[Delegate Title]

Discretionary Payments Section

Procurement and Discretionary Payments Branch

Department of Finance

[Date]

IF YOU DISAGREE WITH THIS DECISION

A decision has been made to refuse your request for an act of grace payment or waiver of debt pursuant to the *Public Governance, Performance and Accountability Act 2013*. These are discretionary mechanisms exercisable by the Finance Minister or a delegated officer (the decision maker). The decision maker considers that your request has now been finalised and that no further consideration of your request is required.

Seeking reconsideration - Internal Review

You may request a reconsideration of your decision. Reconsiderations generally only occur where a serious factual error has been made or where relevant and significant new information is submitted. If you wish to seek a reconsideration by a new decision maker, please contact Finance in writing at sfc@finance.gov.au.

You should clearly identify the aspects of the decision that you disagree with, any mistakes that you consider have been made, any relevant and important new information you have not previously submitted and explain how the new information affects the decision that has been made. It is not necessary to set out facts, claims and evidence previously provided.

Please also contact Finance, preferably via email to sfc@finance.gov.au, if you wish to make any complaints about its administration of your matter.

External Review

You may have the decision reviewed by the Commonwealth Ombudsman; and/or The Federal Circuit Court and the Federal Court.

The Commonwealth Ombudsman

If the decision was made by a delegate, you may make a complaint to the Commonwealth Ombudsman regarding the actions of Finance in deciding your request. The Ombudsman cannot investigate decisions made by the Minister personally.

Information about the processes of the Ombudsman can be found at www.ombudsman.gov.au, by phone 1300 362 072 or mail GPO Box 442, Canberra, ACT, 2601.

The Ombudsman can investigate the actions of non-ministerial decision makers and Finance in administering and deciding your matter and can make recommendations to the decision maker and Finance regarding their actions, including that the matter be reconsidered, but cannot direct the outcome of any reconsideration.

The Federal Circuit Court and the Federal Court

An application for review of the decision may also be made to the Federal Circuit Court or the Federal Court under the *Administrative Decisions Judicial Review Act 1977*. Any such application must be made within 28 days of receiving this decision and statement of reasons. An extension of time may be granted upon application to the Court. The Court can only decide if the decision-maker applied the law correctly and adopted a fair process generally. It is recommended that you seek legal advice if considering judicial review. The Court may order you to pay the decision makers costs.

This letter constitutes a statement of reasons in accordance with the *Administrative Decisions Judicial Review Act 1977* and meets the requirements for an originating application for judicial review in the Federal Court. If you disagree with the reasons provided, Finance may reconsider your request (above) without the need to refer the matter to the Federal Court.

Information about how to apply for judicial review can be found at www.fedcourt.gov.au