

--- Forwarded by Rashpal Hartmann/Sydney/NSW/ASIC on 27/08/2016 03:18 PM ----

From: Rashpal Hartmann/Sydney/NSW/ASIC  
To: s 22 @treasury.gov.au,  
Cc: s 22 /Sydney/NSW/ASIC@ASIC  
Date: 27/08/2016 03:17 PM  
Subject: CDDA Scheme [DLM=Sensitive:Legal]

Dear s 22

I refer to my email below.

As explained below, until 21 September 2015 certain individuals at ASIC were authorised by the Minister to make decisions under the Compensation for Detriment Caused by Defective Administration (CDDA Scheme).

Since 8 March 2016, ASIC has been in correspondence with Treasury regarding a new authorisation to exercise powers under the CDDA Scheme. On 10 March 2016, ASIC was advised s 42

s 42

s 42

s 42

I appreciate, that you have only recently started looking at this matter but can you please let me know:

(a) which Department s 47F should communicate with if he wishes to raise this issue;

(b) whether there is any other information ASIC can provide to s 47F and

(c) what steps have been taken or are planned to resolve whether a new authorisation can be provided to ASIC.

Also, please let me or my colleague s 22 (who has been copied into this email) know if there is anything ASIC can do to speed up the progress of this matter.

s 22 contact number is s 22.

Regards

Rashpal

Rashpal Hartmann | Commission Counsel – Chief Legal Office| ASIC | s 22  
2279 | s 22 @asic.gov.au

----- Forwarded by Rashpal Hartmann/Sydney/NSW/ASIC on 27/08/2016 02:14 PM -----

From: Rashpal Hartmann/Sydney/NSW/ASIC  
To: s 22 @treasury.gov.au,  
Date: 16/08/2016 12:36 PM  
Subject: CDDA Scheme [DLM=Sensitive:Legal]

Dear s 22

Please see below the email sent to me by s 22 on 23 March 2016 forwarding the AGS advice to s 42

s 42

s 42

I would be grateful if you could advise as a matter of urgency:

s 42

Many thanks for looking at this issue.

Regards

Rashpal,

Rashpal Hartmann | Commission Counsel – Chief Legal Office| ASIC | s 22  
2279 | s 22 @asic.gov.au

----- Forwarded by Rashpal Hartmann/Sydney/NSW/ASIC on 16/08/2016 12:12 PM -----

From: s 22 @TREASURY.GOV.AU>  
To: "Rashpal Hartmann" s 22 @asic.gov.au>,  
Date: 29/03/2016 03:23 PM

Subject: RE: CDDA update [DLM=Sensitive:Legal]

Hi Rashpal,

As discussed, please find below the advice received from AGS re: s 42

Happy to discuss, when you have considered the advice further.

Kind regards,

s 22

s 22

Corporations and Schemes Unit  
Financial System Division  
The Treasury

s 22 | MAIL Langton Crescent Canberra ACT 2600

s 42



s 42



**From:** Rashpal Hartmann s 22 [redacted]@asic.gov.au]

**Sent:** Thursday, 17 March 2016 7:19 PM

**To:** s 22 [redacted]

**Subject:** CDDA update [DLM=Sensitive:Legal]

Dear s 22 [redacted]

I am writing in response to your email of 10 March 2016 to my colleague s 22 [redacted] (please see below) .

s 42



Please do not hesitate to contact me if you wish to discuss this matter further.

Regards

Rashpal

Rashpal Hartmann | Commission Counsel – Chief Legal Office| ASIC | s 22  
2279 | s 22 @asic.gov.au

From: s 22 @TREASURY.GOV.AU>  
To: s 22 @asic.gov.au>,  
Cc: s 22 @asic.gov.au" s 22 @asic.gov.au> s 22  
s 22 @TREASURY.GOV.AU>, "Brown, Diane" @TREASURY.GOV.AU>  
Date: 10/03/2016 10:18 AM  
Subject: RE: CDDA update [DLM=Sensitive]

Hi s 22

As discussed:

- The Minister for Small Business and Assistant Treasurer has not signed a new authorisation for ASIC to exercise powers under the CDDA scheme.
- Treasury has been made aware of questions over the ability of ASIC to properly exercise powers under the CDDA scheme.

s 42

It would be prudent for ASIC to take advice before making any further payment under the CDDA scheme. Following your consideration of these matters we would be happy to discuss it further.

Kind regards,

s 22

s 22

Corporations and Schemes Unit  
Financial System Division  
The Treasury

s 22 MAIL Langton Crescent Canberra ACT 2600

From: s 22 [redacted] @TREASURY.GOV.AU>  
To: s 22 [redacted] @asic.gov.au>,  
Cc: s 22 [redacted] @asic.gov.au>  
Date: 19/03/2015 08:25 AM  
Subject: RE: CDDA update [DLM=Sensitive]

...

This email message has been processed by MIMESweeper

...

s 22 [redacted] please find attached the signed CDDA authorisation by the Assistant Treasurer.

Thanks,

s 22 [redacted]

Corporations and Schemes Unit

**THE ATTACHMENT TO THIS  
EMAIL IS DOCUMENT 1A**

Financial Systems and Services Division  
The Treasury, Langton Crescent, Parkes ACT 2600  
Phone: S 22 [REDACTED]  
Email: S 22 [REDACTED]@treasury.gov.au

s 22



15-0029

## COMMONWEALTH OF AUSTRALIA

*Scheme for Compensation for Detriment Caused by Defective Administration (CDDA Scheme)***AUTHORISATION**

I, Josh Frydenberg, Assistant Treasurer, having responsibility for making decisions and approving payments under the Scheme for Compensation for Detriment Caused by Defective Administration (CDDA Scheme), by this instrument, AUTHORISE each of the persons from time to time holding, occupying, or performing the duties of the offices or positions in the Australian Securities and Investments Commission mentioned in the Schedule below to make decisions and approve payments under the CDDA Scheme on my behalf.

Any act done in pursuance of this authority may be reviewed and altered by me at any time subject to any limitation provided by law.

**Schedule**

POSITION NUMBER	OFFICE
4001	Chief Executive
6100	Chief Financial Officer
6339	Chief of Operations
2589	Financial Controller

Dated

17/3/

2015

Josh Frydenberg  
Assistant Treasurer

**From:** s 22  
**To:** [Zaheed, Mohita](#)  
**Subject:** RE: AGS advice required: s 42 [SEC=OFFICIAL:Sensitive, ACCESS=Legal Privilege]  
**Date:** Tuesday, 2 November 2021 8:28:00 AM

---

~~OFFICIAL.Sensitive~~  
~~Legal Privilege~~

Sorry, but even I don't keep emails that long!

s 22

Consumer Credit Unit  
The Treasury, 1 Langton Cres, Parkes, ACT 2603

s 22

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The Treasury acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, water and community. We pay our respects to them and their cultures and to elders both past and present.

~~OFFICIAL.Sensitive~~  
~~Legal Privilege~~

---

**From:** Zaheed, Mohita s 22 <[redacted]@treasury.gov.au>  
**Sent:** Monday, 1 November 2021 6:30 PM  
**To:** s 22 <[redacted]@TREASURY.GOV.AU>  
**Subject:** FW: AGS advice required: s 42 [SEC=OFFICIAL:Sensitive, ACCESS=Legal Privilege]

~~OFFICIAL.Sensitive~~  
~~Legal Privilege~~

Hi s 22

s 22 By any chance would you still have the advice email (highlighted below) to hand in the depths of your inbox – the issue has resurfaced and there is a parliamentary committee hearing on the 16<sup>th</sup> of November

**Mohita Zaheed**

Assistant Secretary

Regulators, Redress and Insurance Branch

The Treasury|Langton Crescent, Parkes ACT 2600

Ph: s 22 <[redacted]@treasury.gov.au>

s 22

~~OFFICIAL.Sensitive~~  
~~Legal Privilege~~

---

**From:** Sutton, Emilie s 22 <[redacted]@TREASURY.GOV.AU>  
**Sent:** Monday, 1 November 2021 4:15 PM  
**To:** Grimes, Kathryn s 22 <[redacted]@TREASURY.GOV.AU>

**Subject:** FW: AGS advice required: s 42 [SEC=OFFICIAL:Sensitive, ACCESS=Legal Privilege]

**OFFICIAL:Sensitive  
Legal Privilege**

As requested.

Kind regards  
Emilie

**OFFICIAL:Sensitive  
Legal Privilege**

---

**From:** Lukeman, Anna  
**Sent:** Tuesday, 31 March 2015 1:57 PM  
**To:** s 22 <[REDACTED]@TREASURY.GOV.AU>  
**Cc:** s 22 <[REDACTED]@TREASURY.GOV.AU>; s 22 <[REDACTED]@ags.gov.au>; Legal Services s 22 <[REDACTED]@TREASURY.GOV.AU>; s 47E(d) <[REDACTED]@TREASURY.GOV.AU>  
**Subject:** RE: AGS advice required: s 42 [DLM=Sensitive:Legal]

s 22

s 42



s 42

Happy to discuss

**Anna Lukeman**

Senior General Counsel  
Client Counsel for the Treasury  
Australian Government Solicitor

s 22

[\[REDACTED\]@TREASURY.GOV.AU](mailto:[REDACTED]@TREASURY.GOV.AU) o s 22 [\[REDACTED\]@ags.gov.au](mailto:[REDACTED]@ags.gov.au)

**Important:** This message may contain confidential or legally privileged information. If you think it was sent to you by mistake, please delete all copies and advise the sender. For the purposes of the *Spam Act 2003*, this email is authorised by AGS

s 22

---

**From:** s 22

**Sent:** Thursday, 19 March 2015 12:12 PM

**To:** Lukeman, Anna

**Cc:** s 22

**Subject:** AGS advice required: s 42 [DLM=Sensitive]

Hi Anna,

As discussed, we would like to request some advice in your capacity as Australian Government Solicitor on the following issue.

s 42

s 42



As mentioned on the phone, please let me know if at any stage if the advice will be not covered by the general retainer (i.e. if we would be required to get an approval to pay for separate advice).

Also, please contact myself or s 22 (Cc'd into this email) if you have any questions on

any of this.

Kind regards,

s 22

**Analyst, Banking and Capital Markets Regulation Unit**

*Financial Systems and Services Division*

The Treasury, Langton Crescent, Parkes ACT 2600

T: s 22

E s 22 [@TREASURY.GOV.AU](mailto:s22@TREASURY.GOV.AU)



**From:** s 22  
**To:** s 22  
**Subject:** FW: Application of CDDA to ASIC [DLM=Sensitive:Legal] [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]  
**Date:** Monday, 14 December 2020 10:03:33 AM  
**Attachments:** [image001.jpg](#)

---

**SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege**

---

**From:** s 22 @finance.gov.au>  
**Sent:** Monday, 14 December 2020 10:03 AM  
**To:** s 22 @finance.gov.au>  
**Cc:** s 22 @finance.gov.au>  
**Subject:** s 42 [DLM=Sensitive:Legal] [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

**SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege**  
**SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege**

**From:** Lukeman, Anna s 22 @TREASURY.GOV.AU>  
**Sent:** Friday, 4 November 2016 4:36 PM  
**To:** s 22 @TREASURY.GOV.AU>  
**Cc:** s 47F(d) @TREASURY.GOV.AU>; s 22 @ags.gov.au  
**Subject:** s 42 [DLM=Sensitive:Legal]

s 22  
s 42

**Anna Lukeman**  
Senior General Counsel  
Client Counsel for the Treasury  
Australian Government Solicitor  
s 22

s 22 @TREASURY.GOV.AU or s 22 @ags.gov.au

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s 22

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**From:** s 22  
**Sent:** Monday, 31 October 2016 8:57 AM  
**To:** Lukeman, Anna  
**Cc:** Legal Services  
**Subject:** FW: A new legal service request has been submitted [SEC=UNCLASSIFIED]  
Hi Anna,

Below is a new legal request form. The response time for this request is within 2 – 3 days.

Many thanks

s 22

s 22

Parliamentary and Legal Services Unit  
Financial & Parliamentary Division  
The Treasury, Langton Crescent, Parkes ACT 2600



P:s 22  
email:s 22 @treasury.gov.au

**From:** Forms s 47E(d) @treasury.gov.au]  
**Sent:** Friday, 28 October 2016 10:29 AM  
**To:** Legal Services  
**Subject:** A new legal service request has been submitted

[Link to legal service request](#)

**Requesting topic:** Government and Administrative

**Requesting officer:** s 22

**Requesting officer extension** s 22

**Requesting officer group:** Markets Group

**If you are from Revenue Group, have you obtained the approval of the GM-LDP to submit the request:**

**Requesting officer level:** EL1

**Requesting officer division:** Financial System Division

**Matter name:** s 42

**Brief description of advice sought:**

Anna provided advice to s 22 on 31 March 2015 regarding s 42  
s 42

We would like further advice on:

s 42

**Do you believe this request for advice would cost less than \$2,000.00?:** Yes

**Is the advice being requested tied or untied?:** Tied

**Response time required:** 2-3 days

**16 May 2019 – Summary of Draft AGS Advice to Finance**

s 42



**28 October 2020 – Summary of Draft External Counsel Advice to Finance**

s 42



**14 December 2020 – Summary of Further Draft External Counsel Advice to Finance**

s 42



**From:** s 22  
**To:** s 22 <@asic.gov.au>  
**Cc:** s 22 <@asic.gov.au>; Zaheed, Mohita; s 22  
**Subject:** RE: Prime Trust Action Group - CDDA application [SEC - OFFICIAL: Sensitive, ACCESS - Legal-Privilege]  
**Date:** Thursday, 9 September 2021 7:28:00 PM  
**Attachments:** [image001.jpg](#)  
[Question on Notice 11 12 and 13 - Spoken PJG 27 August 2021 - CDDA Scheme.docx](#)  
[image002.jpg](#)

~~OFFICIAL: Sensitive  
Legal-Privilege~~

~~Privileged and confidential~~

Good evening Chris

Thank you for the opportunity to comment on the draft response to the Question on Notice, and apologies for the delay in getting back to you.

We have one suggestion in relation to the response to the second QoN: primarily to limit the response to the specifics of the part of the question taken on notice, relating to ASIC's interactions on the Prime Trust matter. Please see the suggested edit in track mode in the attached word document.

Very happy to discuss if you have any questions or concerns.

regards

s 22

Financial System Division  
The Treasury  
Level 29 201 Kent Street Sydney

s 22

s 22 <@treasury.gov.au>

~~OFFICIAL: Sensitive  
Legal-Privilege~~

**From:** Chris Savundra s 22 <@asic.gov.au>  
**Sent:** Thursday, 2 September 2021 7:57 PM  
**To:** s 22 <@TREASURY.GOV.AU>  
**Cc:** s 22 <@asic.gov.au>; Zaheed, Mohita  
s 22 <@treasury.gov.au>; s 22 <@TREASURY.GOV.AU>;  
s 22 <@TREASURY.GOV.AU>; s 22 <@TREASURY.GOV.AU>;  
s 22 <@TREASURY.GOV.AU>; s 22 <@TREASURY.GOV.AU>;  
s 22 <@TREASURY.GOV.AU>; s 22 <@TREASURY.GOV.AU>;  
s 22 <@asic.gov.au>

**Subject:** RE: Prime Trust Action Group - CDDA application [SEC - OFFICIAL: Sensitive,

~~ACCESS - Legal Privilege~~

~~Privileged and confidential~~

Hi **s 22**

Attached are the following documents:

1. The draft transcript of the PJC hearing on 27 August 2021 (see pages 26 and 27 of the transcript (or 30 and 31 of the pdf) in relation to the Prime Trust matter); and
2. ASIC's draft answers to questions on notice in relation to the Prime Trust Action Group CDDA application.

We would be grateful for any comments Treasury may have in relation to the draft answers. If you have any questions or would like to discuss please let me know.

Kind regards,

**Chris Savundra**  
General Counsel

**Australian Securities and Investments Commission**

Level 5, 100 Market Street, Sydney NSW 2000

**s 22**

**s 22** [@asic.gov.au](mailto:asic.gov.au)

ASIC logo



**s 22**

[@asic.gov.au](mailto:asic.gov.au)

---

**From:** **s 22** [@TREASURY.GOV.AU](mailto:asic.gov.au)>

**Sent:** Wednesday, 25 August 2021 9:03 AM

**To:** **s 22** [@asic.gov.au](mailto:asic.gov.au)>

**Cc:** **s 22** [@asic.gov.au](mailto:asic.gov.au)>; Zaheed, Mohita

**s 22** [@treasury.gov.au](mailto:asic.gov.au)>; **s 22** [@TREASURY.GOV.AU](mailto:asic.gov.au)>;

**s 22** [@TREASURY.GOV.AU](mailto:asic.gov.au)>; **s 22**

**s 22** [@TREASURY.GOV.AU](mailto:asic.gov.au)>; **s 22**

**s 22** [@TREASURY.GOV.AU](mailto:asic.gov.au)>

**Subject:** FW: Prime Trust Action Group - CDDA application [~~SEC - OFFICIAL: Sensitive,~~

~~ACCESS - Legal Privilege~~]

**EXTERNAL EMAIL:** Do not click any links or open any attachments unless you trust the sender and know the content is safe.

~~OFFICIAL: Sensitive~~  
~~Legal Privilege~~

Hi Chris

Thank you for sending through these points. Mohita has asked me to respond on her behalf.

s 42

s 22

Happy to discuss

Kind regards

s 22

s 22

Redress Unit | Regulators Redress and Insurance Branch | Financial System Division | Markets Group

The Treasury, Langton Crescent, Parkes ACT 2600

s 22 [@treasury.gov.au](mailto:s 22@treasury.gov.au)

[www.treasury.gov.au](http://www.treasury.gov.au)

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~~OFFICIAL.Sensitive~~  
~~Legal Privilege~~

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**From:** Zaheed, Mohita s 22 [@treasury.gov.au](mailto:s 22@treasury.gov.au)>

**Sent:** Tuesday, 24 August 2021 6:59 PM

**To:** s 47E(d) [@TREASURY.GOV.AU](mailto:s 47E(d)@TREASURY.GOV.AU)>

**Subject:** Fwd: Prime Trust Action Group - CDDA application [~~SEC OFFICIAL.Sensitive, ACCESS Legal Privilege~~]

Sent from my iPhone

Begin forwarded message:

**From:** Chris Savundra [s 22@asic.gov.au](mailto:s 22@asic.gov.au)>

**Date:** 24 August 2021 at 6:57:41 pm AEST

**To:** "Zaheed, Mohita" s 22 [redacted]@treasury.gov.au>

**Cc:** s 22 [redacted]@asic.gov.au>

**Subject:** Prime Trust Action Group - CDDA application [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

~~Privileged and confidential~~

Hi Mohita,

s 42



Kind regards,

**Chris Savundra**

General Counsel

**Australian Securities and Investments Commission**

Level 5, 100 Market Street, Sydney NSW 2000

s 22 [redacted]

s 22 [redacted]@asic.gov.au .

ASIC logo



s 22 [redacted]

[\[redacted\]@asic.gov.au](mailto:[redacted]@asic.gov.au)

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<b>Committee</b>	Parliamentary Joint Committee on Corporations and Financial Services
<b>Inquiry</b>	Oversight of the ASIC, the Takeovers Panel and the Corporations Legislation No. 1 of the 46th Parliament
<b>Question No.</b>	QoN 011, QoN 012 and QoN 013
<b>Date</b>	27 August 2021
<b>Topic</b>	CDDA Scheme
<b>Reference</b>	Spoken, 27 August 2021, Hansard pages 26-27
<b>Committee member</b>	Mr Julian Hill MP

#### QoN 011

##### Extract – Hansard page 26

**Mr HILL:** In handing over to Chris, can I just seek clarification on the term that you used? The media article in the digging that I've done suggests that Treasury or others are trying to steer people towards the so-called act-of-grace payments, which are the ones that, ultimately, are at the discretion of the government. Usually the finance minister has to sign them off. The investors don't want an act-of-grace payment. They want a determination under this specific scheme. I was under the understanding that this scheme still exists. So I just pulled that up because you've used the words 'act of grace', but that's not what they're pursuing. The media reports were that, for whatever reason, at some point in 2015 ASIC lost the delegation, which they had from the then Assistant Treasurer Josh Frydenberg when he was in his previous role. They had a delegation to make a determination under the CDDA Scheme and for some reason that delegation was lost. Why was the delegation lost? I understood that delegations from ministers to agencies were standing delegations. They can be refreshed or revoked when there's a change of minister but they don't lapse. Why was the delegation lost? Does the scheme still exist? Who can determine things under that scheme? I'd like to understand that before we talk about act of grace payments, if that's okay, Chair.

**CHAIR:** Of course.

**Mr Savundra:** You're correct in that the defective administration, or the CDDA, scheme, remains in place. As I understand, in September 2015 the authorisation for the minister lapsed. I'd like to take on notice just to double check what I'm about to tell you is correct, but as I understood it, it was a personal authorisation. It was when the then acting minister ceased to be the acting minister that the authorisation lapsed. In terms of the chronology of events, if it might assist you, it lapsed in 2015. In February 2019 ASIC received a CDDA application on behalf of 40 investors relating to the client trust. In March 2019 we advised those applicants that we no longer had an authorisation and, therefore, we were unable to consider the application under the CDDA Scheme. I think, as Mr Longo has said, the authorisation was a matter for the minister. So really that's as far as ASIC can take it.

#### Answer

We refer to the evidence provided by Mr Savundra and confirm that:

- Up until September 2015, ASIC officials were authorised by the then Assistant Treasurer, Josh Frydenberg to make decisions and approve payments under the CDDA Scheme. ASIC officials were provided a personal authorisation by the Assistant Treasurer;
- This personal authorisation lapsed when there was a change in the holder of the office of the Assistant Treasurer. ASIC is, therefore, unable to consider applications made to it under the CDDA Scheme; and
- The decision to grant ASIC officials authorisations is a matter for the Minister.

**QoN 012****Extract – Hansard page 27**

**Mr HILL:** I have two supplementary questions, Chair. If you could give us quite a specific answer. Perhaps I'm just arcane and curious, but I would like to understand the delegation issue precisely. I have an email that ASIC sent to a complainant in March 2019 saying very clearly that the authorisation lapsed when there was a change of office holders. I'd like to unpick that a little more. Have there been any discussions or dialogue between ASIC and the Treasury or the Treasurer since receiving the request in 2019? What advice or request for advice has come from the Treasury and the Treasurer's office? What advice has been provided by ASIC in relation to this matter? Have there been discussions with any other ministers or the Department of Finance? I see in the email in 2019 that ASIC referred the complainants to the Department of Finance, not the Treasury. I'm sorry. I'm not trying to be tricky. It says, 'You may wish to contact the Discretionary Payments Section of the Department of Finance,' with an email address.

**Mr Savundra:** I'd need to take that on notice in terms of the interactions that we've had with Treasury in relation to this specific application—that's the Prime Trust investors' application. More generally from time to time over that period since September 2005 there have been a number of interactions with Treasury in relation to the CDDA Scheme and the fact that there is no authorisation for ASIC.

**Answer**

Since September 2015, ASIC has had discussions with Treasury and the Department of Finance in relation to the CDDA Scheme, and since 2019, ASIC has also had discussions with both Departments about the application made under the CDDA Scheme by unitholders of the Prime Retirement and Aged Care Property Trust (**Prime Trust**).

~~We consider that the decision to grant ASIC officials authorisations is a matter for the Minister. Furthermore, these communications may be subject to the legal professional privilege of the Treasury. With regard to the above matters, the Government and Treasury are best placed to respond to questions about authorisations that could be given under the CDDA Scheme and the application to the Minister under the CDDA Scheme submitted by unitholders of the Prime Trust.~~

~~In the absence of an authorisation from the Minister, ASIC has directed members of the public that they can make an application for act-of-grace payment with the Department of Finance. We note that the Department of Finance is also responsible for the publication of guidance regarding the CDDA Scheme in Resource Management Guide 409.~~

**Commented [MK1]:** Suggest deleting this section as the question taken on notice relates specifically to ASIC advice on and interactions about, the Prime Trust matter.

**QoN 013****Extract – Hansard page 27**

**Mr HILL:** Thank you; that's very helpful. My final question on that topic is: have you been asked for any input on an act of grace or a CDDA claim assessment in relation to the Prime property trust collapse?

**Mr Savundra:** I'd like to take that on notice, Mr Hill. I'm not aware of any. If the report in the paper is correct around Treasury's position, I wouldn't have thought that they would, given that they don't feel that they're in a position to make a determination.

**Mr HILL:** The stated reason was that they didn't want to interfere with ASIC's independence, which I think, left the readers, or me at least, to throw my hands up in the air and going, 'Really? Someone's got to be responsible!' If you don't have the delegation, it makes no logical sense to say that the Treasury wouldn't assess it because it would interfere with your independence. But, anyway, we will take that up with Treasury.

**Answer**

ASIC has not been asked to provide input into any assessment of a claim made under the CDDA Scheme by unitholders of the Prime Trust.

At the request of the Department of Finance, ASIC has provided a response to an act of grace payment application made to the Department of Finance by unitholders of the Prime Trust. This matter remains ongoing.

**From:** s 22  
**To:** s 22  
**Subject:** FW: Questions re application by Prime Trust victims under CDDA scheme [~~SEC-OFFICIAL:Sensitive, ACCESS-Legal Privilege~~]  
**Date:** Friday, 29 October 2021 10:20:44 AM  
**Attachments:** [RE Follow-up re CDDA scheme and ASIC SECUNOFFICIAL.msg](#)  
[RE Questions re application by Prime Trust victims under CDDA scheme SECUNOFFICIAL.msg](#)

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Note: Spoke with s 22 29/10 to clarify 'on background'.  
Generally understood to mean the information provided can be used, but not attributed.

s 22  
Financial System Division

s 22  
s 22  
s 22

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**From:** Media <media@treasury.gov.au>  
**Sent:** Tuesday, 12 October 2021 5:04 PM  
**To:** s 22 @TREASURY.GOV.AU>; Media <media@treasury.gov.au>  
**Subject:** RE: Questions re application by Prime Trust victims under CDDA scheme [~~SEC-OFFICIAL:Sensitive, ACCESS-Legal Privilege~~]

~~OFFICIAL:Sensitive~~  
~~Legal Privilege~~

Hi s 22 see attached two responses to The Guardian – happy to discuss.

Thanks,  
s 22

s 22  
s 22 Media and Speeches Unit  
s 22

~~OFFICIAL:Sensitive~~  
~~Legal Privilege~~

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**From:** s 22 @TREASURY.GOV.AU>  
**Sent:** Tuesday, 12 October 2021 4:48 PM  
**To:** Media <[media@treasury.gov.au](mailto:media@treasury.gov.au)>  
**Subject:** FW: Questions re application by Prime Trust victims under CDDA scheme [~~SEC-OFFICIAL:Sensitive, ACCESS-Legal Privilege~~]

~~OFFICIAL:Sensitive~~  
~~Legal Privilege~~

Good afternoon  
Can you please confirm if this was the final response to the Guardian's question re. Prime Trust and the CDDA Scheme?

I am just trying to keep track of exactly what has been said publicly (particularly in relation to the legal privilege issue).

Regards

s 22

s 22

Financial System Division

s 22

s 22

s 22

~~OFFICIAL: Sensitive~~  
~~Legal Privilege~~

**From:** Media <[media@treasury.gov.au](mailto:media@treasury.gov.au)>

**Sent:** Friday, 13 August 2021 12:08 PM

**To:** s 22 <[REDACTED]@TREASURY.GOV.AU>; s 22 <[REDACTED]>

s 22 <[REDACTED]@TREASURY.GOV.AU>

**Cc:** s 22 <[REDACTED]@TREASURY.GOV.AU>; Zaheed, Mohita

s 22 <[REDACTED]@treasury.gov.au>; s 22 <[REDACTED]@TREASURY.GOV.AU>;

Kenna, Shannon s 22 <[REDACTED]@treasury.gov.au>; Media <[media@treasury.gov.au](mailto:media@treasury.gov.au)>

**Subject:** FW: Questions re application by Prime Trust victims under CDDA scheme

[SEC=OFFICIAL:Sensitive, ACCESS=Legal Privilege]

**OFFICIAL: Sensitive**  
**Legal Privilege**

s 42



s 42

We also attach, for information, letters sent to the Prime Trust Action Group in relation to this matter, which are referenced in Mr Butler's request.

The relevant policy unit is happy to discuss.

Thanks,

s 22

s 22

s 22 Media and Speeches Unit

s 22

Media hotline: +61 2 6263 2300

**OFFICIAL: Sensitive  
Legal Privilege**

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**UNOFFICIAL**

---

**From:** s 22 <[s22@TREASURY.GOV.AU](mailto:s22@TREASURY.GOV.AU)>

**Sent:** Wednesday, 11 August 2021 5:18 PM

**To:** Media <[media@treasury.gov.au](mailto:media@treasury.gov.au)>

**Cc:** s 22 <[s22@TREASURY.GOV.AU](mailto:s22@TREASURY.GOV.AU)>; Treasurer Media <[TreasurerMedia@TREASURY.GOV.AU](mailto:TreasurerMedia@TREASURY.GOV.AU)>

**Subject:** Fwd: Questions re application by Prime Trust victims under CDDA scheme [SEC=UNOFFICIAL]

Hi team,

Can the department please draft a response to the inquiry below?

---

Sent from [Workspace ONE Boxer](#)

----- Forwarded message -----

**From:** Ben Butler <[ben.butler@theguardian.com](mailto:ben.butler@theguardian.com)>

**Date:** 10 August 2021 at 4:49:00 pm AEST

**Subject:** Questions re application by Prime Trust victims under CDDA scheme

**To:** Treasurer Media <[TreasurerMedia@TREASURY.GOV.AU](mailto:TreasurerMedia@TREASURY.GOV.AU)>

Hi,

I am working on a piece about an application for compensation made to ASIC by a group of investors in a failed aged care group known as Prime Trust.

This was an extremely large collapse, with investor losses of c\$550m.

ASIC's page on action taken against its directors contains a useful recap of the fallout: <https://asic.gov.au/about-asic/news-centre/key-matters/prime-trust/>

With the legal action at an end, investors in Prime Trust (who have lost their entire investment) applied to ASIC for compensation under the scheme for Compensation for Detriment caused by Defective Administration in February 2019.

The essence of the application, which is for c\$200m, is that there has been defective administration by ASIC over the years, in large part through granting and continuing to grant financial services licenses to an entity associated with Prime Trust principal Bill Lewski in circumstances where ASIC knew or ought to have known that he was not of good character.

However, the merits of the application have never been decided.

This is because ASIC says its authorisation to decide such applications was revoked in 2015 and it is therefore a matter for the minister.

However, assistant minister Jane Hume and Treasury officials have told the investors that the Treasurer will not decide their claim because to do so would interfere with the independence of ASIC in relation to individual cases.

It therefore appears that no-one in government is willing or able to look at the merits of the application.

My questions are:

1. What happened in 2015 that meant that ASIC could no longer decide CDDA applications? Was this a one-off decision, related only to ASIC, or part of a broader policy of bringing CDDA applications up the hierarchy to the relevant minister? Why was this decision made?
2. In 2015, why did the government not put in a place for deciding ASIC claims given the position adopted by the government that the Treasurer could not decide applications against it for the reasons given above?

3. Regarding the claim that deciding the CDDA application lodged by the investors would breach ASIC's independence, the investors tell me this is not the case (and have some fairly detailed legal argument as to why this is so). Can you provide some supporting argument and evidence for your position?

4. The investors feel they are under pressure from the government to abandon their CDDA claim and instead apply for an act of grace payment. They do not want to do so because an act of grace application can be rejected without reason while CDDA applications require detailed reasons that the government has to be able to stand behind. Are you dodging public accountability for refusing the investor claim?

5. Are you concerned that granting a \$200m claim would blow a hole in ASIC's budget and is this a reason why you have refused to consider the claim?

6. Is there anything else you would like to tell me about the investors' CDDA application and your response to it?

Happy to discuss, I am on the mobile.

As there's a bit to this inquiry, could you provide answers by 4pm on Thursday?

Please acknowledge receipt of this inquiry.

Yours,

-----  
**Ben Butler**  
Senior business reporter  
The Guardian | Australia

-----  
S 47F

[ben.butler@theguardian.com](mailto:ben.butler@theguardian.com)



Level 4, 607 Bourke St  
Melbourne VIC 3000  
[theguardian.com/au](http://theguardian.com/au)

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**From:** Media  
**Sent:** Friday, 27 August 2021 5:06 PM  
**To:** ben.butler@theguardian.com  
**Cc:** Media  
**Subject:** RE: Follow-up re CDDA scheme and ASIC [SEC=UNOFFICIAL]

**UNOFFICIAL**

Hi Ben, see response from the Treasury below, on background only:

As previously advised, the Department of Finance, Australian Securities and Investments Commission (ASIC) and Department of Treasury, in previous correspondence with investors of The Prime Retirement and Aged Care Property Trust (Prime Trust), have outlined that the enabling legislation for the ASIC prevents the Minister from making a Compensation for Detriment caused by Defective Administration (CDDA) scheme decision for applications against ASIC. This is because ASIC's enabling legislation provides ASIC with independence from the portfolio Minister's directions on individual cases, which is incompatible with the CDDA Scheme.

However, investors in the Prime Trust are able to seek compensation by making an application to the Department of Finance for an act of grace payment under the Public Governance, Performance and Accountability Act 2013, and are able to achieve the same practical outcome as could have been achieved under the CDDA scheme.

Under both mechanisms an application is: considered on its merits; afforded procedural fairness (including by providing reasons for decision); and subject to review by the Commonwealth Ombudsman. Act of grace claims can also be reviewed by the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977*.

Thank you,  
Angela

**Media Unit**

The Treasury, Langton Crescent, Parkes ACT 2600  
Phone: +61 2 6263 2300

[www.treasury.gov.au](http://www.treasury.gov.au)

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----- Forwarded message -----

**From:** Ben Butler <[ben.butler@theguardian.com](mailto:ben.butler@theguardian.com)>  
**Date:** 27 August 2021 at 1:57:50 pm AEST  
**Subject:** Follow-up re CDDA scheme and ASIC  
**To:** Treasurer Media <[TreasurerMedia@TREASURY.GOV.AU](mailto:TreasurerMedia@TREASURY.GOV.AU)>

Hi,

ASIC was questioned on this issue, which I've previously asked your office about, at PJC this morning.

ASIC's general counsel, Chris Savundra, said: " I think ASIC stands sort of ready, willing and able to deal with CDDA applications if an authorisation is so granted, but obviously that's a matter for the minister."

He said questions as to why the Treasurer or an assistant treasurer cannot resolve such a claim are questions for Treasury. Previously, complainants have been told this was because doing so would somehow infringe on the independence of ASIC.

He also said that he was not sure why ASIC's authorisation to decide CDDA claims lapsed in 2015 but he thought it was because the authorisation was personal to the then assistant treasurer, Josh Frydenberg (who obviously now is treasurer).

Can the treasurer respond to the above statements?

In particular, given ASIC is ready, willing and able to decide CDDA claims, will you restore its authorisation to do so?

If not, why not?

Thanks,

-----

**Ben Butler**  
Senior business reporter  
The Guardian | Australia

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+61 (0) 432 543 978  
+61 (0) 3 8199 8221  
[ben.butler@theguardian.com](mailto:ben.butler@theguardian.com)

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Melbourne VIC 3000  
[theguardian.com/au](http://theguardian.com/au)

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**From:** Media  
**Sent:** Friday, 13 August 2021 1:57 PM  
**To:** ben.butler@theguardian.com  
**Cc:** Media  
**Subject:** RE: Questions re application by Prime Trust victims under CDDA scheme [SEC=UNOFFICIAL]

**UNOFFICIAL**

Hi Ben, see response from the Treasury below, on background only:

The Department of Finance, Australian Securities and Investments Commission (ASIC) and Department of Treasury, in previous correspondence with investors of The Prime Retirement and Aged Care Property Trust (Prime Trust), have outlined that the enabling legislation for the ASIC prevents the Minister from making a Compensation for Detriment caused by Defective Administration (CDDA) scheme decision for applications against ASIC. This is because ASIC's enabling legislation provides ASIC with independence from the portfolio Minister's directions on individual cases, which is incompatible with the CDDA Scheme.

However, investors in the Prime Trust are able to seek compensation by making an application to the Department of Finance for an act of grace payment under the Public Governance, Performance and Accountability Act 2013, and are able to achieve the same practical outcome as could have been achieved under the CDDA scheme.

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Thank you,  
Angela

**Media Unit**

The Treasury, Langton Crescent, Parkes ACT 2600  
Phone: +61 2 6263 2300

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**UNOFFICIAL**

**From:** Ben Butler <[ben.butler@theguardian.com](mailto:ben.butler@theguardian.com)>  
**Date:** 10 August 2021 at 4:49:00 pm AEST  
**Subject:** Questions re application by Prime Trust victims under CDDA scheme  
**To:** Treasurer Media <[TreasurerMedia@TREASURY.GOV.AU](mailto:TreasurerMedia@TREASURY.GOV.AU)>

Hi,

I am working on a piece about an application for compensation made to ASIC by a group of investors in a failed aged care group known as Prime Trust.

This was an extremely large collapse, with investor losses of c\$550m.

ASIC's page on action taken against its directors contains a useful recap of the fallout:

<https://asic.gov.au/about-asic/news-centre/key-matters/prime-trust/>

With the legal action at an end, investors in Prime Trust (who have lost their entire investment) applied to ASIC for compensation under the scheme for Compensation for Detriment caused by Defective Administration in February 2019.

The essence of the application, which is for c\$200m, is that there has been defective administration by ASIC over the years, in large part through granting and continuing to grant financial services licenses to an entity associated with Prime Trust principal Bill Lewski in circumstances where ASIC knew or ought to have known that he was not of good character.

However, the merits of the application have never been decided.

This is because ASIC says its authorisation to decide such applications was revoked in 2015 and it is therefore a matter for the minister.

However, assistant minister Jane Hume and Treasury officials have told the investors that the Treasurer will not decide their claim because to do so would interfere with the independence of ASIC in relation to individual cases.

It therefore appears that no-one in government is willing or able to look at the merits of the application.

My questions are:

1. What happened in 2015 that meant that ASIC could no longer decide CDDA applications? Was this a one-off decision, related only to ASIC, or part of a broader policy of bringing CDDA applications up the hierarchy to the relevant minister? Why was this decision made?

2. In 2015, why did the government not put in a place for deciding ASIC claims given the position adopted by the government that the Treasurer could not decide applications against it for the reasons given above?

3. Regarding the claim that deciding the CDDA application lodged by the investors would breach ASIC's independence, the investors tell me this is not the case (and have some fairly detailed legal argument as to why this is so). Can you provide some supporting argument and evidence for your position?

4. The investors feel they are under pressure from the government to abandon their CDDA claim and instead apply for an act of grace payment. They do not want to do so because an act of grace application can be rejected without reason while CDDA applications require detailed reasons that the government has to be able to stand behind. Are you dodging public accountability for refusing the investor claim?

5. Are you concerned that granting a \$200m claim would blow a hole in ASIC's budget and is this a reason why you have refused to consider the claim?

6. Is there anything else you would like to tell me about the investors' CDDA application and your response to it?

Happy to discuss, I am on the mobile.

As there's a bit to this inquiry, could you provide answers by 4pm on Thursday?

Please acknowledge receipt of this inquiry.

Yours,

-----

**Ben Butler**

Senior business reporter

The Guardian | Australia

-----

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+61 (0) 3 8199 8221

[ben.butler@theguardian.com](mailto:ben.butler@theguardian.com)

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**From:** [Zaheed, Mohita](#)  
**To:** s 22  
**Subject:** FW: FOI 3013 decision letter [SEC=OFFICIAL:Sensitive, ACCESS=Legal Privilege]  
**Date:** Wednesday, 3 November 2021 10:29:14 AM  
**Attachments:** [FOI 3013 decision 25 Oct 2021.pdf](#)

---

**Mohita Zaheed**

Assistant Secretary  
Regulators, Redress and Insurance Branch  
The Treasury|Langton Crescent, Parkes ACT 2600

s 22 @treasury.gov.au

EA Contact: Genevieve Crutchley (6263 4751), Tess Warner (6263 4705)

---

**From:** s 22 @TREASURY.GOV.AU>  
**Sent:** Wednesday, 3 November 2021 10:19 AM  
**To:** s 22 @treasury.gov.au>  
**Cc:** Grimes, Kathryn s 22 @TREASURY.GOV.AU>  
**Subject:** RE: FOI 3013 decision letter [SEC=OFFICIAL:Sensitive, ACCESS=Legal Privilege]

~~OFFICIAL:Sensitive~~  
~~Legal Privilege~~

Dear Mohita

I managed to access SharePoint long enough to pull up the actual decision. I understand Mr O'Reilly is indeed the front man (as it were) for the Prime Trust claimants.

Kind regards

s 22

General Counsel's Branch  
Law Division  
The Treasury, Langton Crescent, Parkes ACT 2600

s 22

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~~Legal Privilege~~

---

**From:** Grimes, Kathryn s 22 @TREASURY.GOV.AU>  
**Sent:** Wednesday, 3 November 2021 10:08 AM  
**To:** Zaheed, Mohita s 22 @treasury.gov.au>  
**Cc:** s 22 @TREASURY.GOV.AU>  
**Subject:** FW: FOI 3013 decision letter [SEC=OFFICIAL:Sensitive, ACCESS=Legal Privilege]

**OFFICIAL:Sensitive**  
**Legal Privilege**

Hi Mohita

FYI This is a draft of the FOI no docs response we provided on 25 Oct to Mr O'Reilly (PT claimant I think) which was seeking copies of delegations, revocations and media releases issued by Treasury re CDDA Scheme between 2013-2021. s 42

s 42

Katy

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Legal Privilege**

---

**From:** s 22 <[REDACTED]@TREASURY.GOV.AU>

**Sent:** Monday, 25 October 2021 4:40 PM

**To:** Grimes, Kathryn s 22 <[REDACTED]@TREASURY.GOV.AU>

**Subject:** RE: FOI 3013 decision letter [SEC=OFFICIAL:Sensitive, ACCESS=Legal Privilege]

**OFFICIAL:Sensitive  
OFFICIAL:Sensitive  
Legal Privilege**

---

**From:** s 22 <[REDACTED]>

**Sent:** Monday, 25 October 2021 4:09 PM

**To:** Grimes, Kathryn s 22 <[REDACTED]@TREASURY.GOV.AU>

**Cc:** FOI <FOI@TREASURY.GOV.AU>

**Subject:** FOI 3013 decision letter [SEC=OFFICIAL:Sensitive, ACCESS=Legal Privilege]

**Importance:** High

**OFFICIAL:Sensitive  
Legal PrivilegeOFFICIAL:Sensitive  
Legal Privilege**

Dear Katy

s 42



We have your electronic signature from your previous decision in FOI 2984, so, subject to any changes you may require, all we need is your approval to send the decision.

Happy to discuss in the meantime, of course.

Kind regards

s 22

General Counsel's Branch  
Law Division  
The Treasury, Langton Crescent, Parkes ACT 2600

s 22

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**OFFICIAL: Sensitive  
Legal Privilege**



25 October 2021

FOI ref: 3013

Mr Steve O'Reilly

By email: [steve.oreilly@internode.on.net](mailto:steve.oreilly@internode.on.net)

Dear Mr O'Reilly

### Freedom of Information Request – Consultation

I refer to your request, dated 24 September 2021, to the Treasury for the following documents under the *Freedom of Information Act 1982 (FOI Act)*:

- "1. All authorisations from the Treasurer or Assistant Treasurer to ASIC, or an official within ASIC, to consider and decide applications made under the Scheme for Compensation for Detriment due to Defective Administration ('CDDA Scheme') issued during the Relevant Period;*
- 2. All revocations of the above authorisations, as issued during the Relevant Period;*
- 3. All delegations of powers and responsibilities held by the Treasurer under the CDDA Scheme to the Assistant Treasurer during the Relevant Period;*
- 4. All revocations of delegations of power under the CDDA Scheme from the Treasurer to the Assistant Treasurer during the Relevant Period; and*
- 5. All Media Releases issued by Treasury or the Treasurer which relate to the CDDA Scheme during the Relevant Period.*

*Please note that the Relevant Period is the period 1 July 2013 to 23 September 2021."*

On 28 September 2021, the Treasury transferred parts 1 and 2 of your request under section 16 of the FOI Act to the Australian Securities and Investments Commission (ASIC), as the agency whose functions have closest connection to the subject matter of those parts. The Treasury has processed parts 3 to 5 of your request.

I am an authorised decision maker under section 23 of the FOI Act.

### Decision

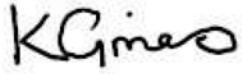
Officers in the Treasury's Parliamentary Unit and the Strategic Coordination and Communications Division searched Treasury records for material relevant to parts 3 to 5 of your request. These searches included email mailboxes and the Treasury's file management system.

I am satisfied that the Treasury holds no documents within scope of your request. I have therefore decided to refuse your request under section 24A(1) of the FOI Act on the ground that the requested documents do not exist.

**Rights of Review**

A statement setting out your rights of review in this matter is attached.

Yours sincerely

A handwritten signature in black ink that reads "KGrimes". The letters are cursive and somewhat stylized, with a large 'K' and 'G'.

Kathryn Grimes  
General Counsel  
Law Division

## **INFORMATION ON RIGHTS OF REVIEW**

### **1. APPLICATION FOR INTERNAL REVIEW OF DECISION**

Section 54 of the FOI Act gives you the right to apply for an internal review of the decision refusing to grant access to documents in accordance with your request.

An application for a review of the decision must be made in writing within 30 days of receipt of this letter.

No particular form is required but it would assist the decision-maker if you could set out in the application the grounds on which you consider that the decision should be reviewed.

An application for a review of the decision should be emailed to [FOI@Treasury.gov.au](mailto:FOI@Treasury.gov.au).

**OR**

### **2. APPLICATION TO AUSTRALIAN INFORMATION COMMISSIONER (INFORMATION COMMISSIONER) FOR REVIEW OF DECISION**

Section 54L of the FOI Act gives you the right to seek a review of the decision from the Information Commissioner. An application for review must be made within 60 days of receiving the decision.

An application for review must be in writing and must:

- give details of how notices must be sent to you; and
- include a copy of the notice of decision.

You should send your application for review to:

The Information Commissioner  
Office of the Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

**AND/OR**

### **3. COMPLAINTS TO THE INFORMATION COMMISSIONER**

Section 70 of the FOI Act provides that a person may complain to the Information Commissioner about action taken by an agency in the exercise of powers or the performance of functions under the FOI Act.

A complaint to the Information Commissioner must be in writing and identify the agency the complaint is about. It should be directed to the following address:

The Information Commissioner  
Office of the Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

The Information Commissioner may decline to investigate the complaint in a number of circumstances, including that you did not exercise your right to ask the agency, the Information Commissioner, a court or tribunal to review the decision.

**From:** s 22  
**To:** s 22  
**Subject:** RE: CDDA and ASIC [SEC=OFFICIAL:Sensitive, ACCESS=Legal Privilege]  
**Date:** Monday, 27 September 2021 1:16:34 PM  
**Attachments:** [image001.png](#)

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Legal Privilege**

Thanks s 22 The background and live notes are handy and will have a read through. Is there a time between say 1030-2 on Thursday that may suit? We have our weekly team meeting at 930.

Thanks again

s 22

**OFFICIAL:Sensitive  
Legal Privilege**

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**From:** s 22 @TREASURY.GOV.AU>  
**Sent:** Monday, 27 September 2021 12:46 PM  
**To:** s 22 @TREASURY.GOV.AU>; s 22  
s 22 @TREASURY.GOV.AU>  
**Subject:** RE: CDDA and ASIC [SEC=OFFICIAL:Sensitive, ACCESS=Legal Privilege]

**OFFICIAL:Sensitive  
Legal Privilege**

Thanks s 22 And hi again s 22

Hopefully this will be something I can deal with without bothering you both too much (it was with s 22 since it's technically 'redress') but I just wanted to make sure that I checked in and didn't perpetuate silos, etc etc.

Would 9.30am on Thursday be OK?

s 22

More background:

The issue came back to light last month because of Min Corro and an ASIC QoN on the [Prime Trust matter](#). The Prime Trust Action Group wanted to lodge a CDDA application against ASIC but were told they couldn't because ASIC didn't have a delegation to consider it, and it was a matter for the Minister. We provided comments on their draft response, but there has been media inquiries and TO interest. Basically the Prime Trust Action Group can seek compensation through an Act of Grace payment (which they've been advised about) so hopefully the urgency of the matter has gone.

So now I am just trying to figure out if there's a better way to manage this in the longer term. I have a live 'file note'/research doc I am putting all my key findings in if you want to take a look before our chat (it has links to various advice docs etc too), but it's all a bit messy at the moment as it's a working document. [About CDDA.docx](#)

Thanks

s 22

Insurance Team, Financial System Division

s 22

s 22

s 22

**OFFICIAL:Sensitive**

**Legal Privilege**

**From:** s 22 [redacted] <[@TREASURY.GOV.AU](mailto:s22@TREASURY.GOV.AU)>  
**Sent:** Monday, 27 September 2021 10:26 AM  
**To:** s 22 [redacted] <[@TREASURY.GOV.AU](mailto:s22@TREASURY.GOV.AU)>  
**Cc:** s 22 [redacted] <[@TREASURY.GOV.AU](mailto:s22@TREASURY.GOV.AU)>  
**Subject:** RE: CDDA and ASIC [SEC=OFFICIAL:Sensitive, ACCESS=Legal Privilege]

Hi s 22 [redacted]  
Thanks for getting in touch about this. This is a new issue for us, but I'm happy to have a chat at some point. I will also involve s 22 [redacted] in my team.  
It might be worth a quick chat this week, so we can understand where you're up to and then go away and do any digging necessary on our end.

Thanks,

s 22 [redacted]

Regulator Oversight and Engagement Unit | Regulators, Redress and Insurance Branch  
Financial System Division | Markets Group

s 22 [redacted]

---

**From:** s 22 [redacted] <[@TREASURY.GOV.AU](mailto:s22@TREASURY.GOV.AU)>  
**Sent:** Monday, 27 September 2021 9:49 AM  
**To:** Sloan, Isobel s 22 [redacted] <[@TREASURY.GOV.AU](mailto:s22@TREASURY.GOV.AU)>  
**Subject:** CDDA and ASIC [SEC=OFFICIAL:Sensitive, ACCESS=Legal Privilege]

**OFFICIAL:Sensitive  
Legal Privilege**

Hi s 22 [redacted]  
I was wondering if you (or someone in your team) had time for a chat about the Compensation for Detriment Caused by Defective Administration Scheme please and how it relates to ASIC? I've taken on the issue of CDDA and ASIC from s 22 [redacted] and I was hoping to talk to you about any background or context you might know about any other implications of the limit on ministerial directions please?

s 42 [redacted]

However it's recently become an issue again so I'm doing some general background research.

Thanks

s 22 [redacted]

Insurance Team, Financial System Division

s 22 [redacted]

s 22 [redacted]

s 22 [redacted]

**OFFICIAL:Sensitive  
Legal Privilege**

SENSITIVE: LEGAL

*Research Note – Application of CDDA to s 22 ASIC*

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    CCA..... 5

Contacts

Finance

s 22

s 22 @finance.gov.au

Significant Matters Taskforce

Department of Finance

s 22

s 22

CC: [s 22 @finance.gov.au](mailto:s 22 @finance.gov.au); s 22 @finance.gov.au

Law Design

s 22

General Counsel’s Branch | Law Division | Revenue Group

Extension: s 22

s 22

General Counsel’s Branch

Law Division

The Treasury, Langton Crescent, Parkes ACT 2600

s 22

[www.treasury.gov.au](http://www.treasury.gov.au)

SENSITIVE: LEGAL

**SENSITIVE: LEGAL**

Key questions to follow up on:

For additional AGS advice

s 42



With ASIC/APRA/ACCC and/or Finance

1. CDDA claims made to ASIC/APRA/ACCC and claims approved
2. Act of Grace claims regarding ASIC/ARPA/ACCC made to Finance and claims approved

With Redress Unit/ Law Design

1. Copy of responses give to Prime Trust action group re CDDA. As cited in Guardian article

**SENSITIVE: LEGAL**

SENSITIVE: LEGAL

Timeline:

s 22

March 2015- Minister makes delegation for ASIC

31 March 2015 – [Advice to Tsy that s 42](#)

- Anna Lukeman provides advice to FSD, s 42

s 22

16 May 2019 – Finance receives [draft AGS advice](#) consistent with Tsy above

- s 42

s 22

13 August and 27 August 2021 – Treasury responds to media request from Ben Butler, Guardian

- [Treasury stated](#), on background, "the enabling legislation for the ASIC prevents the Minister from making a Compensation for Detriment caused by Defective Administration (CDDA) scheme decision for applications against ASIC. This is because ASIC's enabling legislation provides ASIC with independence from the portfolio Minister's directions on individual cases, which is incompatible with the CDDA Scheme."
- Response also notes that Prime Trust investors have been told the same thing.

SENSITIVE: LEGAL

**SENSITIVE: LEGAL**

23 August 2021 – Guardian article, Stuck in limbo: investors blame ASIC for their loss, but no one will hear their \$200m claim

- [The article](#) states that investors have been told CDDA direction would interfere with ASIC independence but not why.

27 August 2021 – QoN to ASIC about CDDA application for Prime Trust Action Group

- ASIC was asked why - [response to QoN](#)

s 22



**SENSITIVE: LEGAL**

**SENSITIVE: LEGAL**

## About CDDA

Discretionary policy-based scheme administered by Finance.

Applies to non-corporate Commonwealth entities

3 entities have a body corporate status but are prescribed in enabling legislation as non-corporate Commonwealth entities for the purpose of Finance law – ASIC, s 22

Advice to agencies considering a CDDA application

[Scheme for Compensation...~https://www.finance.gov.au/publications/resource-management-guides/scheme-compensation-detriment-caused-defective-administration-rmg-409](https://www.finance.gov.au/publications/resource-management-guides/scheme-compensation-detriment-caused-defective-administration-rmg-409)

Summary of CDDA background and structure, from recent review of ATO, CDDA and small business. [https://www.finance.gov.au/sites/default/files/2019-11/cdda\\_review-2019-ato-and-small-business-report.pdf](https://www.finance.gov.au/sites/default/files/2019-11/cdda_review-2019-ato-and-small-business-report.pdf)

The Compensation for Detriment Caused by Defective Administration Scheme was established in 1995 when that category of compensation was separated from the Act of Grace remedy. Cabinet agreed that Ministers were best placed (personally or through their authorised agents) to determine claims of defective administration against their department and agencies in their portfolio. They do so using executive power under section 61 of the Constitution.

From the beginning, it was anticipated that the CDDA Scheme would be used mainly by the small number of agencies which have direct dealings with the public and that has proved to be the case. Today, those agencies include the Australian Taxation Office, the Department of Human Services (Centrelink, Medicare and Child Support programs) and the Department of Home Affairs.

The following statements are taken from the Department of Finance information brochure titled *Act of Grace Payments*:

*Section 65 of the Public Governance, Performance and Accountability Act 2013 allows the Finance Minister to make payments that would not otherwise be authorised by law. The act of grace power has been delegated to officials within the Department of Finance.*

*Act of grace payments are discretionary.*

*They may be made by the Finance Minister or delegate when it is considered appropriate to do so because of special circumstances.*

There are two significant differences between these Act of Grace and debt waiver schemes and the CDDA Scheme:

- act of grace payments and debt waivers are made at the discretion of the Minister for Finance or the Minister's delegates, and
- those discretionary decisions are authorised by statute.

The fact that the CDDA Scheme is an executive (or administrative) scheme is important.

Agencies administering the CDDA Scheme are guided by instructions (if any) from their Minister and policy documents issued by the Department of Finance. That guidance can be changed at any time.

**SENSITIVE: LEGAL**

**SENSITIVE: LEGAL**

**Authority**

Portfolio Ministers have responsibility for decisions made under the CDDA Scheme. [Resource Management Guide No 409](#) says:

*7. Portfolio ministers decide applications made under the CDDA Scheme. A portfolio minister may authorise an official in a portfolio entity to consider and decide applications under the CDDA Scheme.*

*8. The minister's authority is to be conferred expressly and must be given separately from the minister's general authorisation to incur expenditure. This requirement is in recognition of the special and potentially sensitive nature of decisions made under the CDDA Scheme for which the entity and its minister may be held accountable.<sup>21</sup>*

The Review understands that some Ministers have elected to make CDDA decisions personally while most of them authorise officials in their portfolio to investigate claims and make decisions on their behalf.

The Review also understands that management of the CDDA Scheme by Ministers and agencies across the Commonwealth varies considerably. Some Ministers require regular updates on, or information about, CDDA claims and may make some decisions themselves. Other Ministers have little direct involvement. It is a matter of personal preference.

**Agent of the Minister**

The Resource Management Guide states:

*9. Where a decision-maker is a person other than the portfolio minister, the decision-maker acts for and on behalf of the relevant minister, that is, the decision-maker is an agent of the minister and not a delegate. Only the portfolio minister or authorised official can decide claims under the CDDA Scheme.<sup>22</sup>*

The agency relationship between the Minister and the decision maker under the CDDA Scheme is quite different to the delegation of statutory decision making powers. In those cases, the Minister and the relevant department or agency will maintain protocols to ensure there can be no suggestion of ministerial interference in, or inappropriate influence on, a delegated decision.

However, as an agent of the Minister, it can be appropriate and in some cases recommended for an official to consult with the Minister on CDDA matters.

**SENSITIVE: LEGAL**

**From:** s 22  
**To:** s 22  
**Subject:** RE: Re. Prime Investment - ASIC QoN for review [SEC=OFFICIAL:Sensitive, ACCESS=Legal Privilege]  
**Date:** Wednesday, 29 September 2021 9:01:03 PM

~~OFFICIAL:Sensitive~~  
~~Legal Privilege~~

Thank you very much s 22

s 22

Redress Unit | Regulators Redress and Insurance Branch | Financial System Division | Markets Group

The Treasury, Langton Crescent, Parkes ACT 2600

s 22 @treasury.gov.au

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~~OFFICIAL:Sensitive~~  
~~Legal Privilege~~

---

**From:** s 22 @TREASURY.GOV.AU>  
**Sent:** Wednesday, 29 September 2021 4:11 PM  
**To:** s 22 @TREASURY.GOV.AU>  
**Cc:** s 22 @TREASURY.GOV.AU>; Zaheed, Mohita  
s 22 @treasury.gov.au>; s 22 @TREASURY.GOV.AU>;  
s 22 @TREASURY.GOV.AU>; s 22  
s 22 @TREASURY.GOV.AU>  
**Subject:** Re. Prime Investment - ASIC QoN for review [SEC=OFFICIAL:Sensitive, ACCESS=Legal Privilege]

~~OFFICIAL:Sensitive~~  
~~Legal Privilege~~

Good afternoon s 22

In response to the follow-up questions you raised with s 22 about the CDDA Scheme and ASIC:

1. s 42

- o Prior to 2015, Treasury judged ASIC (and APRA) to be subject to the CDDA Scheme as both are considered non-corporate entities for the purposes of finance law. Both APRA and ASIC had been authorised by Ministers to make decisions regarding CDDA applications.

s 22

- o Subsequent legal advice sought in March 2015 concluded that s 42

s 42

2. Was the CDDA delegation used by ASIC when they had it?
- The CDDA delegation was used by ASIC multiple times, most recently in 2015-16, where one payment of \$5935 made and reported in the 2015-16 ASIC Annual Report (exact details of the payment are not disclosed). Earlier payments were also reported in ASIC Annual Reports.
  - The 2015 legal advice concluded that s 42 [REDACTED]  
s 42 [REDACTED]

Regards

s 22 [REDACTED]

Financial System Division

s 22 [REDACTED]

s 22 [REDACTED]

s 22 [REDACTED]

**OFFICIAL**  
**OFFICIAL: Sensitive**  
**Legal Privilege**

---

**From:** s 22 [REDACTED]

**Sent:** Monday, 20 September 2021 12:26 PM

**To:** s 22 [REDACTED] <[s22@treasury.gov.au](mailto:s22@treasury.gov.au)>

**Cc:** s 47E(d) [REDACTED] <[s22@treasury.gov.au](mailto:s22@treasury.gov.au)>; Zaheed, Mohita s 22 [REDACTED] <[s22@treasury.gov.au](mailto:s22@treasury.gov.au)>;

s 22 [REDACTED] <[s22@TREASURY.GOV.AU](mailto:s22@TREASURY.GOV.AU)>; s 22 [REDACTED]

s 22 [REDACTED] <[s22@TREASURY.GOV.AU](mailto:s22@TREASURY.GOV.AU)>; s 22 [REDACTED] <[s22@TREASURY.GOV.AU](mailto:s22@TREASURY.GOV.AU)>; s 22 [REDACTED]

s 22 [REDACTED] <[s22@treasury.gov.au](mailto:s22@treasury.gov.au)>; s 22 [REDACTED] <[s22@treasury.gov.au](mailto:s22@treasury.gov.au)>

**Subject:** FW: Prime Investment - ASIC QoN for review [SEC=OFFICIAL]

**OFFICIAL**

Hi s 22 [REDACTED]

Just confirming that Treasury does not have any comments on ASIC's response to the attached QoNs. ASIC (Chris Savundra, General Counsel) checked the responses with Treasury s 22 [REDACTED] s 22 [REDACTED] previously and took Treasury's changes on board.

Thank you

s 22 [REDACTED]

Redress Unit | Regulators Redress and Insurance Branch | Financial System Division | Markets Group

The Treasury, Langton Crescent, Parkes ACT 2600

Ph: s 22 [REDACTED] <[s22@treasury.gov.au](mailto:s22@treasury.gov.au)>

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**OFFICIAL**

---

**From:** s 22 [REDACTED] <[s22@TREASURY.GOV.AU](mailto:s22@TREASURY.GOV.AU)>

**Sent:** Monday, 20 September 2021 10:46 AM

**To:** s 22 [REDACTED] <[s22@TREASURY.GOV.AU](mailto:s22@TREASURY.GOV.AU)>

**Cc:** Zaheed, Mohita s 22 [REDACTED] <[s22@treasury.gov.au](mailto:s22@treasury.gov.au)>

**Subject:** FW: Prime Investment - ASIC QoN for review [SEC=OFFICIAL]

Hi s 22

See below –s 22 has asked for any comments by **noon today** on an ASIC QoN relating to the CDDA Scheme and Prime Retirement and Aged Care Property Trust.

I vaguely recall you were previously looking at this issue – are you able to review the QoN and let s 22 know if any comments? I have had a quick look and don't have any comments on the response (although am not at all familiar with the issue).

Thanks,

s 22

Regulator Oversight and Engagement Unit | Regulators, Redress and Insurance Branch  
Financial System Division | Markets Group  
Phone: s 22

---

**From:** s 22 <[redacted]@TREASURY.GOV.AU>

**Sent:** Monday, 20 September 2021 10:37 AM

**To:** s 22 <[redacted]@TREASURY.GOV.AU>

**Cc:** s 22 <[redacted]@treasury.gov.au>; s 22 <[redacted]@treasury.gov.au>

**Subject:** FW: Prime Investment - ASIC QoN for review [SEC=OFFICIAL]

**OFFICIAL**

Hi s 22

We received the attached QoN with a request to come back with comments by **noon today**. We think this probably sits with you, so have forwarded on.

Thanks and Kind Regards,

s 22

Corporate Conduct Unit  
Market Conduct Division  
The Treasury, Langton Crescent, Parkes ACT 2600  
Phone: s 22  
Email: s 22 <[redacted]@treasury.gov.au>

**OFFICIAL**

---

**From:** s 22 <[redacted]@treasury.gov.au>

**Sent:** Friday, 17 September 2021 3:18 PM

**To:** s 22 <[redacted]@treasury.gov.au>

**Cc:** s 47E(d) <[redacted]>

s 47E(d) <[redacted]@TREASURY.GOV.AU>

**Subject:** Prime Investment - ASIC QoN for review [SEC=OFFICIAL]

**OFFICIAL**

Hi s 22

I've attached a QoN drafted by ASIC s 22 has asked if your team could run your eye over it and come back with any comments **by noon on Monday**.

Let me know if any issues with this timing!

Cheers

s 22

Senior Departmental Liaison Officer  
Office of the Treasurer, the Hon Josh Frydenberg MP

s 22 <[redacted]@treasury.gov.au>

**OFFICIAL**

**From:** s 22  
**To:** s 22  
**Cc:** [Zaheed, Mohita](#)  
**Subject:** FW: background stuff on CDDA [SEC=OFFICIAL:Sensitive]  
**Date:** Tuesday, 7 September 2021 11:13:42 AM  
**Attachments:** [RE Follow-up re CDDA scheme and ASIC SECUNOFFICIAL.msg](#)  
[FW Questions re application by Prime Trust victims under CDDA scheme SECOFFICIAL Sensitive ACCESSLegal Privilege.msg](#)  
[RE Prime Trust Action Group - CDDA application SECOFFICIAL Sensitive ACCESSLegal-Privilege.msg](#)

Hi s 22

Further to the information that Mohita has provided, this [SharePoint folder](#) holds all the material/communications that I have on the CDDA scheme and its application to ASIC and APRA that I have come across/had in the last 18 months. Please let me know if you have trouble accessing the folder.

In relation to the attached email from Chris Savundra (ASIC General Counsel) with proposed responses to QoNs in relation to Prime Trust, I do not have enough information to verify dates etc. However, I have no reason to think that any of the proposed responses are incorrect.

Please note that relevant contacts in Law Division are s 22 and s 22 and they will likely be able to assist further in factual background on this issue.

I'm grateful to you for taking on this issue

Happy to discuss

s 22

Redress Unit | Regulators Redress and Insurance Branch | Financial System Division | Markets Group

The Treasury, Langton Crescent, Parkes ACT 2600

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**From:** Zaheed, Mohita s 22 @treasury.gov.au>

**Sent:** Tuesday, 7 September 2021 10:20 AM

**To:** s 22 @TREASURY.GOV.AU>

**Cc:** s 22 @TREASURY.GOV.AU>

**Subject:** background stuff on CDDA [SEC=OFFICIAL:Sensitive]

**OFFICIAL:Sensitive**

**Mohita Zaheed**

Assistant Secretary

Regulators, Redress and Insurance Branch

The Treasury | Langton Crescent, Parkes ACT 2600

Ph: s 22 @treasury.gov.au

s 22

**OFFICIAL:Sensitive**

The second attachment to this email is document 7 and the third attachment is document 6

**From:** [Media](#)  
**To:** s 22  
**Cc:** [Zaheed, Mohita](#); [Media](#)  
**Subject:** RE: Follow-up re CDDA scheme and ASIC [SEC=UNOFFICIAL]  
**Date:** Friday, 27 August 2021 3:35:52 PM  
**Attachments:** [senate-transcript.pdf](#)

---

**UNOFFICIAL**

Thanks for looking at this. Here is the relevant transcript if that helps.

s 22

Media Advisor | Media and Speeches Unit  
Communications Branch | Strategic Coordination and Communications Division  
s 22 | Media hotline: +61 2 6263 2300  
The Treasury, Langton Crescent, Parkes ACT 2600

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**UNOFFICIAL**

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**From:** Media <media@treasury.gov.au>  
**Sent:** Friday, 27 August 2021 3:07 PM  
**To:** s 22 @TREASURY.GOV.AU>  
**Cc:** Zaheed, Mohita s 22 @treasury.gov.au>; Media <media@treasury.gov.au>  
**Subject:** FW: Follow-up re CDDA scheme and ASIC [SEC=UNOFFICIAL]

**UNOFFICIAL**

Hello,

The Treasurer's office has sent through the below media query, requesting Treasury draft a response. If you are able to indicate when you might be able to come back on this, I will provide that advice to the TO.

s 22

Media Advisor | Media and Speeches Unit  
Communications Branch | Strategic Coordination and Communications Division  
s 22 | Media hotline: +61 2 6263 2300  
The Treasury, Langton Crescent, Parkes ACT 2600

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**From:** Ben Butler <[ben.butler@theguardian.com](mailto:ben.butler@theguardian.com)>  
**Date:** 27 August 2021 at 1:57:50 pm AEST  
**Subject:** Follow-up re CDDA scheme and ASIC  
**To:** Treasurer Media <[TreasurerMedia@TREASURY.GOV.AU](mailto:TreasurerMedia@TREASURY.GOV.AU)>

Hi,

ASIC was questioned on this issue, which I've previously asked your office about, at PJC this morning.

ASIC's general counsel, Chris Savundra, said: " I think ASIC stands sort of ready, willing and able to deal with CDDA applications if an authorisation is so granted, but obviously that's a matter for the minister."

He said questions as to why the Treasurer or an assistant treasurer cannot resolve such a claim are questions for Treasury. Previously, complainants have been told this was because doing so would somehow infringe on the independence of ASIC.

He also said that he was not sure why ASIC's authorisation to decide CDDA claims lapsed in 2015 but he thought it was because the authorisation was personal to the then assistant treasurer, Josh Frydenberg (who obviously now is treasurer).

Can the treasurer respond to the above statements?

In particular, given ASIC is ready, willing and able to decide CDDA claims, will you restore its authorisation to do so?

If not, why not?

Thanks,

-----  
**Ben Butler**  
Senior business reporter  
The Guardian | Australia

-----  
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**UNOFFICIAL**

**From:** s 22  
**To:** s 47F(d)  
**Subject:** For information - summary of ASIC's Parliamentary Joint Committee on Corporations and Financial Services appearance [SEC=OFFICIAL]  
**Date:** Thursday, 2 September 2021 12:15:23 PM  
**Attachments:** [210830 NFF ASIC Parliamentary Joint Committee Appearance August 2021.docx](#)

---

**OFFICIAL**

Good afternoon,

As you may be aware, ASIC appeared before the Parliamentary Joint Committee on Corporations and Financial Services on Friday 27 August 2021.

Please find **attached** to this email a summary of ASIC's appearance before the Committee.

Happy to discuss if you have any questions.

Kind regards,

s 22

Regulator Oversight and Engagement Unit | Regulators, Redress and Insurance Branch | Financial System Division | Markets Group  
The Treasury, Langton Crescent, Parkes ACT 2600

s 22

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Parliamentary Joint Committee on Corporations and Financial Services – ASIC Appearance

27 August 2021

s 22



s 22



s 22



s 22



s 22



s 22



**The Scheme for Compensation for Detriment caused by Defective Administration (CDDA scheme) and Act of Grace payments**

- The Committee enquired about the Prime Retirement Age Property Trust (Prime Trust) collapse and whether CDDA payments or Act of Grace payments have been made to the victims. ASIC noted it received a CDDA application in relation to Prime Trust. ASIC advised the applicants that ASIC no longer has an authorisation for the CDDA scheme due to the ministerial authorisation elapsing in September 2015. ASIC recommended the applicants contact the Department of Finance about Act of Grace payments.

**From:** [Zaheed, Mohita](#)  
**To:** [Grimes, Kathryn](#)  
**Cc:** [Kelly, James](#); s 22  
s 22 [Writer, Simon](#)  
**Subject:** RE: For Action: PJC CFS - Public Hearing on CDDA - 16 November at 1.15 – 2.45 pm [SEC=OFFICIAL]  
**Date:** Thursday, 28 October 2021 3:05:29 PM  
**Attachments:** [image001.jpg](#)

---

Hi Katy ,

Spoke to Chris Savundra – ASIC is yet to have a commission discussion about this but Chris expects that it will be him that appears (no commissioners). Very keen for ASIC to be in the background and expects to be referring most things to Treasury and Finance (as would be appropriate).

Let me know where you've landed. Would be good to reach out to finance and figure out where they are going and we'll need to give the office a heads up

M

**Mohita Zaheed**

Assistant Secretary

Regulators, Redress and Insurance Branch

The Treasury|Langton Crescent, Parkes ACT 2600

s 22 [@treasury.gov.au](mailto:s 22@treasury.gov.au)

s 22

---

**From:** Zaheed, Mohita

**Sent:** Tuesday, 26 October 2021 3:35 PM

**To:** Grimes, Kathryn s 22 [@TREASURY.GOV.AU](mailto:s 22@TREASURY.GOV.AU)>

**Cc:** Kelly, James s 22 [@TREASURY.GOV.AU](mailto:s 22@TREASURY.GOV.AU)>; Coleman, Paul

s 22 [@TREASURY.GOV.AU](mailto:s 22@TREASURY.GOV.AU)>; s 22

s 22 [@TREASURY.GOV.AU](mailto:s 22@TREASURY.GOV.AU)>; s 22

s 22 [@TREASURY.GOV.AU](mailto:s 22@TREASURY.GOV.AU)>; s 22 [@treasury.gov.au](mailto:s 22@treasury.gov.au)>;

s 22 [@TREASURY.GOV.AU](mailto:s 22@TREASURY.GOV.AU)>; s 22

s 22 [@TREASURY.GOV.AU](mailto:s 22@TREASURY.GOV.AU)>; Writer, Simon s 22 [@TREASURY.GOV.AU](mailto:s 22@TREASURY.GOV.AU)>

**Subject:** FW: For Action: PJC CFS - Public Hearing on CDDA - 16 November at 1.15 – 2.45 pm [SEC=OFFICIAL]

Hi Katy,

As discussed, please see below a request we have had from the PJC regarding an appearance to a hearing on CDDA. ASIC got questions in relation to the CDDA issue in respect of prime trust and we've been working with LD on responses to media queries and also ASIC's QoN.

Given the nature of the issue is a legal one around delegations and powers would be thinking this is lead by LD. Katy I assumes this would fall into your patch. This is not a specific inquiry that the PJC is running rather something they are doing under their general powers it seems.

We will reach out to ASIC to see whether they will be appearing. I expect that they will.

Katy/Simon – for me it comes down to what you would like to do in terms of whether or not Treasury attends – views?

Mohita

**Mohita Zaheed**

Assistant Secretary

Regulators, Redress and Insurance Branch

The Treasury|Langton Crescent, Parkes ACT 2600

s 22 [@treasury.gov.au](mailto:s 22@treasury.gov.au)

s 22

---

**From:** s 47E(d) [redacted] <[\[redacted\]@TREASURY.GOV.AU](mailto:[redacted]@TREASURY.GOV.AU)>  
**Sent:** Tuesday, 26 October 2021 3:06 PM  
**To:** Zaheed, Mohita s 22 [redacted] <[\[redacted\]@treasury.gov.au](mailto:[redacted]@treasury.gov.au)>  
**Cc:** s 47E(d) [redacted] <[\[redacted\]@TREASURY.GOV.AU](mailto:[redacted]@TREASURY.GOV.AU)>; s 22 [redacted] <[\[redacted\]@TREASURY.GOV.AU](mailto:[redacted]@TREASURY.GOV.AU)>; s 22 [redacted] <[\[redacted\]@treasury.gov.au](mailto:[redacted]@treasury.gov.au)>  
**Subject:** For Action: PJC CFS - Public Hearing on CDDA - 16 November at 1.15 – 2.45 pm  
[SEC=OFFICIAL]

**OFFICIAL**

Good afternoon

As discussed, please see below invitation for Treasury to attend a public hearing on **16 November 2021** from the Joint Committee on Corporations and Financial Services for its inquiry into Scheme for Compensation for Detriment caused by Defective Administration (CDDA Scheme).

Treasury representatives are invited to attend at 1.15pm – 2.45pm. The Committee is also inviting representatives from the Department of Finance and ASIC to attend alongside Treasury representatives.

Grateful if you could provide advice who will be available to attend the hearing as representatives for Treasury. If there are other areas that should be included, or are better placed to attend, please let us know.

Please let us know if you have any questions or issues.

Kind regards,

s 22 [redacted]

s 22 [redacted]

[redacted] | Executive Coordination and Governance Branch  
Strategic Coordination and Communications Division | Corporate and Foreign Investment Group  
The Treasury, Langton Crescent, Parkes ACT 2600

s 22 [redacted]

s 47E(d) [redacted] <[\[redacted\]@treasury.gov.au](mailto:[redacted]@treasury.gov.au)> **OFFICIAL**

---

**From:** s 22 [redacted] <[\[redacted\]@aph.gov.au](mailto:[redacted]@aph.gov.au)>  
**Sent:** Tuesday, 26 October 2021 11:25 AM  
**To:** s 47E(d) [redacted] <[\[redacted\]@TREASURY.GOV.AU](mailto:[redacted]@TREASURY.GOV.AU)>  
**Cc:** Committee, Corporations (SEN) s 22 [redacted] <[\[redacted\]@aph.gov.au](mailto:[redacted]@aph.gov.au)>  
**Subject:** PJC CFS - Public Hearing on CDDA - 16 November at 1.15 – 2.45 pm

Dear Treasury Parliamentary Team,

The Parliamentary Joint Committee on Corporations and Financial Services has asked if relevant officials from the Treasury would be available to appear at a public hearing on 16 November at 1.15 – 2.45 pm by video conference regarding the Scheme for Compensation for Detriment caused by Defective Administration (CDDA Scheme).

The committee is also requesting Department of Finance and ASIC officials to attend at the same time.

Kind regards

s 22 [redacted]

---

Committee Office | Department of the Senate

s 22 [redacted]

[www.aph.gov.au/senate](http://www.aph.gov.au/senate)

**From:** s 22  
**To:** s 22  
**Subject:** RE: MC21-028713 [SEC=OFFICIAL]  
**Date:** Tuesday, 12 October 2021 4:42:00 PM  
**Attachments:** [MC21-028713.docx](#)

FOI 3041  
Document 14

**OFFICIAL**

Hi, just FYI, here's the final response, attached.

Cheers

s 22

Insurance Team, Financial System Division

s 22

s 22

s 22

**OFFICIAL**

**From:** s 22 @TREASURY.GOV.AU>  
**Sent:** Tuesday, 12 October 2021 4:33 PM  
**To:** s 22 @TREASURY.GOV.AU>  
**Cc:** s 22 @TREASURY.GOV.AU>  
**Subject:** RE: MC21-028713 [SEC=OFFICIAL]

**OFFICIAL**

s 22 fyi, I've spoken to s 22 about this one. She'll add some wording on Act of Grace payments and send off so no further action required on our end.

Thanks s 22

Kind regards,

s 22

Redress Unit | Financial System Division | Markets Group

s 22

The Treasury, Langton Crescent, Parkes ACT 2600

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**OFFICIAL**

**From:** s 22 @TREASURY.GOV.AU>  
**Sent:** Tuesday, 12 October 2021 4:28 PM  
**To:** s 22 @TREASURY.GOV.AU>  
**Cc:** s 22 @TREASURY.GOV.AU>  
**Subject:** RE: MC21-028713 [SEC=OFFICIAL]

**OFFICIAL**

Hi s 22

I'm drafting something now but am struggling to find the CDDA reference in the original corro.

Could you please point it out to me (probably in neon 76pt font since I can't see it myself!)

Thanks

s 22

Insurance Team, Financial System Division

s 22

s 22

s 22

**OFFICIAL**

---

**From:** s 22 <[REDACTED]@TREASURY.GOV.AU>

**Sent:** Tuesday, 12 October 2021 12:31 PM

**To:** s 22 <[REDACTED]@TREASURY.GOV.AU>

**Cc:** s 22 <[REDACTED]@TREASURY.GOV.AU>

**Subject:** MC21-028713 [SEC=OFFICIAL]

**OFFICIAL**

Hi s 22

I'm emailing about a piece of min corro - MC21-028713 – that I've just allocated to you in relation to Prime Trust Group.

s 22 I think we need something in the response about the CDDA claim mentioned in the original corro. I don't know much about CDDA but I understand you are the expert? Do you have some words that you can provide for the min corro response please?

Happy to discuss if helpful.

Kind regards,

s 22  
[REDACTED]

Redress Unit | Financial System Division | Markets Group

s 22

The Treasury, Langton Crescent, Parkes ACT 2600

[www.treasury.gov.au](http://www.treasury.gov.au)

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**OFFICIAL**



**SENATOR THE HON JANE HUME**  
MINISTER FOR SUPERANNUATION,  
FINANCIAL SERVICES AND THE DIGITAL ECONOMY  
MINISTER FOR WOMEN'S ECONOMIC SECURITY

Ref: MC21-028713

The Hon Ken Wyatt AM MP  
Minister for Indigenous Australians  
Member for Hasluck  
PO Box 325  
FORRESTFIELD WA 6058

Dear Minister

Thank you for your representation on behalf of s 47F [REDACTED] originally directed to the Treasurer, concerning the Prime Retirement and Aged Care Property Trust (Prime Trust) and the Compensation Scheme of Last Resort (CSLR). Your correspondence has been referred to me as I have responsibility for this matter.

I acknowledge the difficulties that s 47F [REDACTED] have faced because of the failure of Prime Trust. The Government understands that failures of this nature can cause financial and emotional distress.

On 4 February 2019 and in response to the Financial Services Royal Commission, the Government committed to establishing a CSLR that would be industry funded, operated by the Australian Financial Complaints Authority (AFCA) and extend beyond personal advice failures. The Government has also decided that the CSLR will only provide compensation for eligible unpaid determinations relating to complaints lodged with AFCA from 1 November 2018.

I confirm that s 47F [REDACTED] and other investors in Prime Trust will not be eligible for compensation through the CSLR because the scheme will not provide compensation for these past disputes. However, investors in Prime Trust may seek compensation by making an application to the Department of Finance for an act of grace payment under the *Public Governance, Performance and Accountability Act 2013*.

The act of grace mechanism is a discretionary power available to the Minister for Finance to authorise payments where appropriate, due to special circumstances. An application is considered on its merits; afforded procedural fairness (including by providing reasons for decision) and subject to review by the Commonwealth Ombudsman. Further information on the act of grace mechanism, including how to apply, is available on the Department of Finance website, at: [www.finance.gov.au/individuals/act-grace-payments-waiver-debts-commonwealth-compensation-detriment-caused-defective-administration-cdda/act-grace-payments](http://www.finance.gov.au/individuals/act-grace-payments-waiver-debts-commonwealth-compensation-detriment-caused-defective-administration-cdda/act-grace-payments).

I trust this information will be of assistance to s 47F [REDACTED]

Yours sincerely

Senator the Hon Jane Hume

**From:** s 47E(d)  
**To:** s 22  
**Cc:** s 47E(d); [Brown, Diane](#); s 22  
**Subject:** FOR INFO: CCPD & FSD SOP for the week beginning 4 February 2019 [SEC-PROTECTED, SLM - Sensitive Subinfo]  
**Date:** Friday, 1 February 2019 1:41:20 PM  
**Attachments:** [04022019-CCPD State of Play.pdf](#)  
[04022019-FSD SOP.pdf](#)

---

Hi s 22

Please see **attached** updated **PDE** CCPD & FSD SOP for the week beginning 4 February 2019.

Kind Regards

Markets Secretariat

**CONSUMER AND CORPORATIONS POLICY DIVISION – State of Play week beginning 4 February 2019**

**Current policy work**

Topic

Ministerial  
Statements

Planning

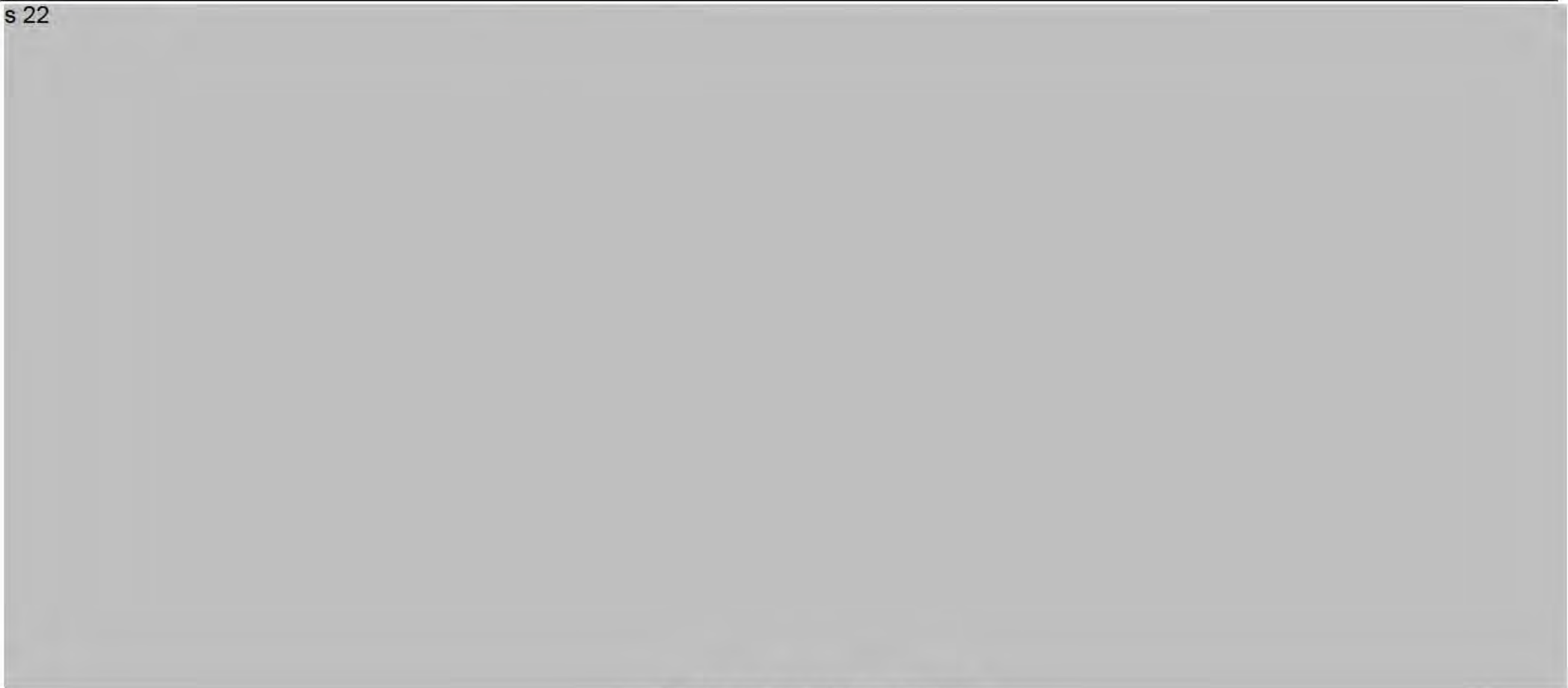
Last Key Action

Next Step

Contacts

**Cross Divisional**

s 22



**Current policy work**

Topic	Ministerial Statements	Planning	Last Key Action	Next Step	Contacts
Compensation for Detriment caused by defective administration		AGS advice indicated that s 42	Consider case for law reform or whether reliance could be placed on Ex Gratia payment regime		EL2 s 22 SES : Diane Brown s 22

s 22

**From:** s 47E(d)  
**To:** s 22  
**Cc:** s 47E(d) s 22  
**Subject:** FOR INFO: CCPD & FSD SOP for the week beginning 25 February 2019 [SEC-PROTECTED, SLM - Sensitive Subinfo]  
**Date:** Monday, 25 February 2019 8:43:01 AM  
**Attachments:** [25022019-CCPD State of Play.pdf](#)  
[25022019-FSD SOP.pdf](#)

---

Hi s 22

Please see **attached** updated **PDE** CCPD & FSD SOP for the week beginning 25 February 2019.

Kind Regards

Markets Secretariat

CONSUMER AND CORPORATIONS POLICY DIVISION – State of Play week beginning 25 February 2019

**Current policy work**

Topic	Ministerial Statements	Planning	Last Key Action	Next Step	Contacts
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s 22



**Current policy work**

Topic	Ministerial Statements	Planning	Last Key Action	Next Step	Contacts
Compensation for Detriment caused by defective administration		AGS advice indicated that s 42	Consider case for law reform or whether reliance could be placed on Ex Gratia payment regime		EL2:s 22 SES : Diane Brown s 22

s 22

**From:** s 47E(d)  
**To:** s 22  
**Cc:** s 47E(d) s 22  
**Subject:** FOR INFO: CCPD & FSD SOP for the week beginning 4 March 2019 [SEC-PROTECTED];  
**Date:** Friday, 1 March 2019 3:41:09 PM  
**Attachments:** [04032019-FSD SOP.pdf](#)  
[04032019-CCPD State of Play.pdf](#)

---

Hi s 22

Please see **attached** updated **PDE** CCPD & FSD SOP for the week beginning **4 March 2019**.

Kind Regards

Markets Secretariat

**CONSUMER AND CORPORATIONS POLICY DIVISION – State of Play week beginning 4 March 2019**

**Current policy work**

Topic	Ministerial Statements	Planning	Last Key Action	Next Step	Contacts
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s 22



**Current policy work**

Topic	Ministerial Statements	Planning	Last Key Action	Next Step	Contacts
			s 22		
Compensation for Detriment caused by defective administration		AGS advice indicated that s 42	Consider case for law reform or whether reliance could be placed on Ex Gratia payment regime		EL2: s 22 SES : Diane Brown s 22
s 22					

**From:** s 47E(d)  
**To:** s 22  
**Cc:** s 47E(d) s 22  
**Subject:** FOR INFO: CCPD & FSD SOP for the week beginning 18 March 2019 [SEC-PROTECTED,  
s 47E(d)]  
**Date:** Friday, 15 March 2019 11:40:51 AM  
**Attachments:** [18032019-CCPD State of Play.pdf](#)  
[18032019-FSD SOP.pdf](#)

---

Hi s 22

Please see **attached** updated **PDE** CCPD & FSD SOP for the week beginning Monday 18 March 2019.

Kind Regards

Markets Secretariat

**CONSUMER AND CORPORATIONS POLICY DIVISION – State of Play week beginning 18 March 2019**

**Current policy work**

Topic	Ministerial Statements	Planning	Last Key Action	Next Step	Contacts
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s 22



**Current policy work**

Topic	Ministerial Statements	Planning	Last Key Action	Next Step	Contacts
Compensation for Detriment caused by defective administration		AGS advice indicated that s 42	Consider case for law reform or whether reliance could be placed on Ex Gratia payment regime		EL2: s 22 SES : Diane Brown s 22

s 22

**From:** s 47E(d)  
**To:** s 22  
**Cc:** s 47E(d) s 22  
**Subject:** FOR INFO: CCPD & FSD SOP for the week beginning 1 April 2019. [SEC-PROTECTED, BLM-Sensitive-Cabinet]  
**Date:** Friday, 29 March 2019 2:10:22 PM  
**Attachments:** [01042019-FSD SOP.pdf](#)  
[01042019-CCPD State of Play.pdf](#)

---

Hi s 22

Please see **attached** updated **PDE** CCPD & FSD SOP for the week beginning 1 April 2019.

Kind Regards  
Markets Secretariat

**CONSUMER AND CORPORATIONS POLICY DIVISION – State of Play week beginning 1 April 2019**

**Current policy work**

Topic	Ministerial Statements	Planning	Last Key Action	Next Step	Contacts
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s 22



**Current policy work**

Topic	Ministerial Statements	Planning	Last Key Action	Next Step	Contacts
			s 22		
<b>Compensation for Detriment caused by defective administration</b>		AGS advice indicated that s 42	Consider case for law reform or whether reliance could be placed on Ex Gratia payment regime		EL2: s 22 SES : Diane Brown s 22
s 22					

**From:** s 47E(d)  
**To:** s 22  
**Cc:** s 47E(d)  
**Subject:** FOR INFO: CCPD & FSD SOP for the week beginning 8 April 2019 [SEC-PROTECTED]  
**Date:** Friday, 5 April 2019 1:42:57 PM  
**Attachments:** [08042019-CCPD State of Play.pdf](#)  
[08042019-FSD SOP.pdf](#)

---

Hi s 22

Please see **attached** updated **PDE** CCPD & FSD SOP for the week beginning **8 April 2019**.

Kind Regards  
Markets Secretariat

**CONSUMER AND CORPORATIONS POLICY DIVISION – State of Play week beginning 8 April 2019**

**Current policy work**

Topic	Ministerial Statements	Planning	Last Key Action	Next Step	Contacts
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s 22



**Current policy work**

Topic

Ministerial  
Statements

Planning

Last Key Action

Next Step

Contacts

s 22

Compensation for Detriment caused by  
defective administration

AGS advice  
indicated that  
s 42

Consider case for law  
reform or whether  
reliance could be placed  
on Ex Gratia payment  
regime

EL2: s 22  
SES : Diane Brown  
s 22

s 22

**From:** s 22  
**To:** s 22  
**Cc:** [Maevsky, Alex](#); s 22  
**Subject:** RE: Ministerial correspondence referral for CDDA Claim Against ASIC by Investors in the Prime Retirement and Aged Care Property Trust [SEC=OFFICIAL]  
**Date:** Wednesday, 2 December 2020 1:13:35 PM  
**Attachments:** [image001.png](#)

---

**OFFICIAL**

Thanks all! 😊

s 22

**OFFICIAL**

---

**From:** s 22 @TREASURY.GOV.AU>  
**Sent:** Wednesday, 2 December 2020 1:11 PM  
**To:** s 22 @treasury.gov.au> s 22  
s 22 @treasury.gov.au>  
**Cc:** Maevsky, Alex s 22 @treasury.gov.au>; s 22  
s 22 @TREASURY.GOV.AU>  
**Subject:** RE: Ministerial correspondence referral for CDDA Claim Against ASIC by Investors in the Prime Retirement and Aged Care Property Trust [SEC=OFFICIAL]

Hi s 22

This is an issue for the redress function in FSD.

The context in brief is that there are two discretionary mechanisms that enable the Commonwealth to compensate in the event of gross maladministration – Act of Grace and CDDA (Scheme for Compensation for Detriment caused by Defective Administration). Over the last 12 months, paid representatives (e.g. SR Group) whose members lost funds in the GFC (e.g. Trio Capital, Prime Trust) have been pursuing compensation using these mechanisms. These groups have been charging their members fees to pursue these actions.

I'll email the letter from AM Hume to Zimmerman MP (thanks s 22 for finding!) to DoF as it will then provide DoF with a more up to date contact (rather than s 22 given he has since moved from FSD to RIPD).

Kind regards

s 22

s 22

Advice, Brokers and Redress Unit | Financial System Division | Markets Group  
The Treasury, Langton Crescent, Parkes ACT 2600

s 22 @treasury.gov.au

[www.treasury.gov.au](http://www.treasury.gov.au)

---

**From:** s 22 <[REDACTED]@treasury.gov.au>

**Sent:** Wednesday, 2 December 2020 12:35 PM

**To:** s 22 <[REDACTED]@treasury.gov.au>

**Cc:** Maevsky, Alex <s 22 [REDACTED]@treasury.gov.au>; s 22 [REDACTED]

s 22 <[REDACTED]@TREASURY.GOV.AU>

**Subject:** FW: Ministerial correspondence referral for CDDA Claim Against ASIC by Investors in the Prime Retirement and Aged Care Property Trust [SEC=OFFICIAL]

**OFFICIAL**

Hi s 22 [REDACTED]

It's all Greek to me. It looks like something s 22 [REDACTED] worked on shortly before he left and PDMS has s 22 [REDACTED] clearing the last corro (MC20-019046). So I guess it's ours not yours, sadly.

s 22 [REDACTED] 'm happy to send the corro to Finance since I've already got it open. Do you remember it enough to be a point of contact if Finance has questions, or should I actually read it myself?

Cheers

s 22 [REDACTED]

**OFFICIAL**

---

**From:** s 22 <[REDACTED]@treasury.gov.au>

**Sent:** Wednesday, 2 December 2020 9:31 AM

**To:** s 22 <[REDACTED]@treasury.gov.au>

**Cc:** Maevsky, Alex <s 22 [REDACTED]@treasury.gov.au>

**Subject:** FW: Ministerial correspondence referral for CDDA Claim Against ASIC by Investors in the Prime Retirement and Aged Care Property Trust [SEC=OFFICIAL]

**OFFICIAL**

This isn't something that's familiar to me. Is this one of your team's bailiwick (or am I showing my ignorance and it's one of ours)?

s 22 [REDACTED]

**OFFICIAL**

---

**From:** s 22 <[REDACTED]@finance.gov.au>

**Sent:** Tuesday, 1 December 2020 4:24 PM

**To:** Maevsky, Alex <s 22 [REDACTED]@treasury.gov.au>; s 22 [REDACTED]

s 22 <[REDACTED]@treasury.gov.au>

**Cc:** s 22 <[REDACTED]@finance.gov.au>; s 22 [REDACTED]

s 22 <[REDACTED]@finance.gov.au>

**Subject:** FW: Ministerial correspondence referral for CDDA Claim Against ASIC by Investors in the

Prime Retirement and Aged Care Property Trust [SEC=OFFICIAL]

SEC=OFFICIAL

Good afternoon Alex and s 22

I am wondering if you able to assist with the below request in s 22 absence?

Look forward to hearing back from you.

Many thanks

s 22

s 22

Significant Matters Taskforce  
Procurement and Insurance Division  
Department of Finance

s 22

[@finance.gov.au](mailto:s 22@finance.gov.au)

A: One Canberra Avenue, FORREST ACT 2603

SEC=OFFICIAL

---

**From:** s 22

**Sent:** Tuesday, 1 December 2020 2:45 PM

**To:** s 22 [@treasury.gov.au](mailto:s 22@treasury.gov.au)>

**Cc:** s 22 [@finance.gov.au](mailto:s 22@finance.gov.au)>; s 22

s 22 [@finance.gov.au](mailto:s 22@finance.gov.au)>

**Subject:** Ministerial correspondence referral for CDDA Claim Against ASIC by Investors in the Prime Retirement and Aged Care Property Trust [SEC=OFFICIAL]

SEC=OFFICIAL

Good afternoon s 22

I hope this finds you well.

My name is s 22 and I work within the Significant Matter Taskforce at the Department of Finance.

Finance has received a ministerial correspondence referral from Treasury for *CDDA Claim Against ASIC by Investors in the Prime Retirement and Aged Care Property Trust*.

In the letter to the Senator the Hon. Jane Hume, Mr Roger Pratt and Mr Steve O'Reilly stated that correspondence was sent to Mr Trent Zimmerman from Ms Hume on 18 September 2020 in

relation to this matter (Letter attached). I understand that s 22 from our area provided input to you in relation to this correspondence.

Before accepting the referral we are hoping to get a copy of the correspondence sent to Mr Trent Zimmerman on 18 September 2020.

If you have any questions feel free to give myself a call, my best contact is s 22

Look forward to hearing back from you.

Many thanks

s 22

[Redacted signature box]

s 22

Significant Matters Taskforce  
Procurement and Insurance Division  
Department of Finance

s 22

@finance.gov.au

A: One Canberra Avenue, FORREST ACT 2603

SEC=OFFICIAL

---

Finance Australian Business Number (ABN): 61 970 632 495  
Finance Web Site: [www.finance.gov.au](http://www.finance.gov.au)

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---



To:  
Cc:  
Bcc:  
Subject: Fw: CDDA Scheme [DLM=Sensitive:Legal]

From: s 22 [REDACTED]@TREASURY.GOV.AU>  
To: "Rashpal Hartmann" s 22 [REDACTED]@asic.gov.au>,  
Date: 29/03/2016 03:23 PM  
Subject: RE: CDDA update [DLM=Sensitive:Legal]

---

Hi Rashpal,

As discussed, please find below the advice received from AGS re: s 42 [REDACTED]

Happy to discuss, when you have considered the advice further.

Kind regards,

s 22 [REDACTED]

s 22 [REDACTED]  
Corporations and Schemes Unit  
Financial System Division  
The Treasury

s 22 [REDACTED] MAIL Langton Crescent Canberra ACT 2600

s 42 [REDACTED]

s 42



**From:** Rashpal Hartmann s 22 [redacted]@asic.gov.au]  
**Sent:** Thursday, 17 March 2016 7:19 PM  
**To:** s 22 [redacted]  
**Subject:** CDDA update [DLM=Sensitive:Legal]

Dear s 22 [redacted]

I am writing in response to your email of 10 March 2016 to my colleague s 22 [redacted] (please see below) .

s 42



s 42

Please do not hesitate to contact me if you wish to discuss this matter further.

Regards

Rashpal

**Rashpal Hartmann** | Commission Counsel – Chief Legal Office| ASIC | s 22

s 22 ✉ [Rashpal.Hartmann@asic.gov.au](mailto:Rashpal.Hartmann@asic.gov.au)

From: s 22 @TREASURY.GOV.AU>

To: s 22 @asic.gov.au>

Cc: s 22 @asic.gov.au>, s 22

s 22 @TREASURY.GOV.AU>, "Brown, Diane" s 22 @TREASURY.GOV.AU>

Date: 10/03/2016 10:18 AM

Subject: RE: CDDA update [DLM=Sensitive]

Hi Michael,

As discussed:

- The Minister for Small Business and Assistant Treasurer has not signed a new authorisation for ASIC to exercise powers under the CDDA scheme.
- Treasury has been made aware of questions over the ability of ASIC to properly exercise powers under the CDDA scheme.

s 42

It would be prudent for ASIC to take advice before making any further payment under the CDDA scheme. Following your consideration of these matters we would be happy to discuss it further.

Kind regards,

s 22

s 22

Corporations and Schemes Unit  
Financial System Division  
The Treasury

s 22

MAIL Langton Crescent Canberra ACT 2600

s 22

\*\*\*

This email message has been processed by MIMESweeper

\*\*\*

s 22 please find attached the signed CDDA authorisation by the Assistant Treasurer.

Thanks,

s 22

s 22

Corporations and Schemes Unit

Financial Systems and Services Division  
The Treasury, Langton Crescent, Parkes ACT 2600

s 22 [REDACTED]

s 22 [REDACTED] [@treasury.gov.au](mailto:[REDACTED]@treasury.gov.au)

s 22

**From:** s 22  
**To:** s 22  
**Cc:** s 22  
**Subject:** Legal advice CDDA [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]  
**Date:** Wednesday, 30 June 2021 2:21:12 PM  
**Attachments:** [20201210 - Internal Summary of CDDA Legal Advice.docx](#)  
[20190516 - AGS DRAFT ADVICE Application of CDDA Scheme to statutory bodies.DOCX](#)

---

SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege

Dear s 22

Thank you for your enquiry regarding whether Finance has received any legal advice on the application of CDDA to ASIC.

We have received draft AGS advice s 42 and external Counsel advice s 42. A copy of the draft AGS advice and an internal summary of our CDDA legal advice is attached. These are not for circulation.

s 22



Kind regards,

s 22

s 22  
Significant Matters Taskforce  
Commercial and Government Services  
Department of Finance

s 22 @finance.gov.au

A: One Canberra Ave, Forrest ACT

s 22

SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege

The attachments to  
this email have  
been removed as  
duplicates of  
documents 4 and 5

**From:** s 22  
**To:** [Kelly, James](mailto:Kelly, James)  
**Cc:** s 22  
**Subject:** FW: CDDA Claim Against ASIC by Investors in the Prime Retirement & Aged Care Property Trust [SEC=UNOFFICIAL]  
**Date:** Friday, 21 May 2021 3:36:00 PM  
**Attachments:** [20201021 Letter to Senator Jane Hume re CDDA Claim.pdf](#)  
[20201105 Letter to Senator Jane Hume re CDDA Claim.pdf](#)  
[20201210 Letter to Senator Jane Hume re CDDA Claim.pdf](#)  
[20210521 PTAG Letter to Mr James Kelly, FAS, FSD, Treasury Department.pdf](#)  
[20200709 PTAG Letter to Hon Mr Josh Frydenburg, Treasurer \(As Signed\).pdf](#)  
[20210412 Letter from Treasury to PTAG re CDDA Claim.pdf](#)

---

Hi James

Yes, it is. I will consult with Mohita in relation to the points made by Mr O'Reilly and the associated risks.

s 22

s 22

Redress Unit | Insurance and Financial Intermediaries Branch  
Financial System Division | Markets Group  
The Treasury, Langton Crescent, Parkes ACT 2600

s 22 [@treasury.gov.au](mailto:s22@treasury.gov.au)

[www.treasury.gov.au](http://www.treasury.gov.au)

---

**From:** Kelly, James <James.Kelly@TREASURY.GOV.AU>  
**Sent:** Friday, 21 May 2021 2:23 PM  
**To:** s 22 <s22@TREASURY.GOV.AU>  
**Subject:** FW: CDDA Claim Against ASIC by Investors in the Prime Retirement & Aged Care Property Trust [SEC=UNOFFICIAL]

**UNOFFICIAL**

Hi s 22 I think this is the one we discussed before?

James

**James Kelly**  
First Assistant Secretary  
Financial System Division  
The Treasury, Langton Crescent, Parkes, ACT 2600  
s 22  
email: [james.kelly@treasury.gov.au](mailto:james.kelly@treasury.gov.au)

**UNOFFICIAL**

---

**From:** Steve O'Reilly <[steve.oreilly@internode.on.net](mailto:steve.oreilly@internode.on.net)>  
**Sent:** Friday, 21 May 2021 2:15 PM  
**To:** Kelly, James <[James.Kelly@TREASURY.GOV.AU](mailto:James.Kelly@TREASURY.GOV.AU)>

**Cc:** [josh.frydenburg.mp@aph.gov.au](mailto:josh.frydenburg.mp@aph.gov.au); [senator.hume@aph.gov.au](mailto:senator.hume@aph.gov.au);  
[Trent.Zimmerman.MP@aph.gov.au](mailto:Trent.Zimmerman.MP@aph.gov.au); [jim.chalmers.mp@aph.gov.au](mailto:jim.chalmers.mp@aph.gov.au); Kennedy, Steven  
<[Steven.Kennedy@TREASURY.GOV.AU](mailto:Steven.Kennedy@TREASURY.GOV.AU)>; [primetrustactiongroup@gmail.com](mailto:primetrustactiongroup@gmail.com)  
**Subject:** CDDA Claim Against ASIC by Investors in the Prime Retirement & Aged Care Property Trust

Dear Mr Kelly

I refer to your letter dated 12 April 2021 (as attached).

In response, please refer to the attached letter from the Prime Trust Action Group dated 21 May 2021, together with attachments.

*Kind regards*  
*Steve O'Reilly*  
*Principal, Prime Trust Action Group*  
*Mobile 0403 894019*

**From:** s 22  
**To:** s 22  
**Cc:** s 22 s 47E(d)  
**Subject:** Ability of Minister to make CDDA in relation to ASIC and APRA [SEC=OFFICIAL:Sensitive]  
**Date:** Wednesday, 30 June 2021 6:20:00 PM  
**Attachments:** [20201210 - Internal Summary of CDDA Legal Advice.docx](#)  
[20190516 - AGS DRAFT ADVICE Application of CDDA Scheme to statutory bodies.DOCX](#)  
[Advice from Treasury re CDDA Scheme.pdf](#)  
[200918 LTR AMSFST to TZ.pdf](#)

**OFFICIAL:Sensitive**

Hi s 22

As discussed with you this afternoon, AGS has advised that s 42

s 42

I look forward to discussing further.

Kind regards

s 22

s 22

Redress Unit | Financial System Division | Markets Group  
The Treasury, Langton Crescent, Parkes ACT 2600

s 22

[www.treasury.gov.au](http://www.treasury.gov.au)

[s 22@treasury.gov.au](mailto:s 22@treasury.gov.au)

The attachments to  
this email are  
documents 1, 4  
and 5 removed as  
duplicates

**From:** [Zaheed, Mohita](#)  
**To:** s 22  
**Cc:** s 47E(d)  
**Subject:** RE: Questions re application by Prime Trust victims under CDDA scheme [SEC=UNOFFICIAL]  
**Date:** Wednesday, 11 August 2021 5:50:07 PM

---

**UNOFFICIAL**

Hey

Had a chat to Angela about this. Reading the questions I think there is a lot of work in this. In particular changes to the CDDA in 2015 would be something we would need to reach out to finance to answer.

I know we've had a few issues of this nature that we have engaged with finance on so question for me is to what extent could we construct a high level response for the TO on this without too much effort. I would not propose to respond to each question but would be a short paragraph response. That picks up primarily around the 2015 CDDA changes etc.

If a lot of effort then Angela and I are comfortable checking priority with the office including to suggest the Tsr does not provide a response.

Let me know in the morning and we can revert.

M

**Mohita Zaheed**

Assistant Secretary

Regulators, Redress and Insurance Branch

The Treasury | Langton Crescent, Parkes ACT 2600

s 22

[@treasury.gov.au](mailto:s 22@treasury.gov.au)

**UNOFFICIAL**

---

**From:** Media <media@treasury.gov.au>  
**Sent:** Wednesday, 11 August 2021 5:32 PM  
**To:** Zaheed, Mohita s 22 @treasury.gov.au; s 22  
s 22 @TREASURY.GOV.AU>  
**Cc:** Media <media@treasury.gov.au>  
**Subject:** FW: Questions re application by Prime Trust victims under CDDA scheme [SEC=UNOFFICIAL]

**UNOFFICIAL**

Hi Mohita, as flagged, grateful for your advice on the below – is this one for Treasury to prepare a response to, or should it be directed elsewhere?

Thanks,

s 22

s 22

s 22 Media and Speeches Unit

s 22

Media hotline: +61 2 6263 2300

**UNOFFICIAL**

---

**From:** s 22 <[s22@TREASURY.GOV.AU](mailto:s22@TREASURY.GOV.AU)>

**Sent:** Wednesday, 11 August 2021 5:18 PM

**To:** Media <[media@treasury.gov.au](mailto:media@treasury.gov.au)>

**Cc:** s 22 <[s22@TREASURY.GOV.AU](mailto:s22@TREASURY.GOV.AU)>; Treasurer Media <[TreasurerMedia@TREASURY.GOV.AU](mailto:TreasurerMedia@TREASURY.GOV.AU)>

**Subject:** Fwd: Questions re application by Prime Trust victims under CDDA scheme [SEC=UNOFFICIAL]

Hi team,

Can the department please draft a response to the inquiry below?

---

Sent from [Workspace ONE Boxer](#)

----- Forwarded message -----

**From:** Ben Butler <[ben.butler@theguardian.com](mailto:ben.butler@theguardian.com)>

**Date:** 10 August 2021 at 4:49:00 pm AEST

**Subject:** Questions re application by Prime Trust victims under CDDA scheme

**To:** Treasurer Media <[TreasurerMedia@TREASURY.GOV.AU](mailto:TreasurerMedia@TREASURY.GOV.AU)>

Hi,

I am working on a piece about an application for compensation made to ASIC by a group of investors in a failed aged care group known as Prime Trust.

This was an extremely large collapse, with investor losses of c\$550m.

ASIC's page on action taken against its directors contains a useful recap of the fallout: <https://asic.gov.au/about-asic/news-centre/key-matters/prime-trust/>

With the legal action at an end, investors in Prime Trust (who have lost their entire investment) applied to ASIC for compensation under the scheme for Compensation for Detriment caused by Defective Administration in February 2019.

The essence of the application, which is for c\$200m, is that there has been defective administration by ASIC over the years, in large part through granting and continuing to grant financial services licenses to an entity associated with Prime Trust principal Bill Lewski in circumstances where ASIC knew or ought to have known that he was not of good character.

However, the merits of the application have never been decided.

This is because ASIC says its authorisation to decide such applications was revoked in 2015 and it is therefore a matter for the minister.

However, assistant minister Jane Hume and Treasury officials have told the investors that the Treasurer will not decide their claim because to do so would interfere with the independence of ASIC in relation to individual cases.

It therefore appears that no-one in government is willing or able to look at the merits of the application.

My questions are:

1. What happened in 2015 that meant that ASIC could no longer decide CDDA applications? Was this a one-off decision, related only to ASIC, or part of a broader policy of bringing CDDA applications up the hierarchy to the relevant minister? Why was this decision made?
2. In 2015, why did the government not put in a place for deciding ASIC claims given the position adopted by the government that the Treasurer could not decide applications against it for the reasons given above?
3. Regarding the claim that deciding the CDDA application lodged by the investors would breach ASIC's independence, the investors tell me this is not the case (and have some fairly detailed legal argument as to why this is so). Can you provide some supporting argument and evidence for your position?
4. The investors feel they are under pressure from the government to abandon their CDDA claim and instead apply for an act of grace payment. They do not want to do so because an act of grace application can be rejected without reason while CDDA applications require detailed reasons that the government has to be able to stand behind. Are you dodging public accountability for refusing the investor claim?
5. Are you concerned that granting a \$200m claim would blow a hole in ASIC's budget and is this a reason why you have refused to consider the claim?
6. Is there anything else you would like to tell me about the investors' CDDA application and your response to it?

Happy to discuss, I am on the mobile.

As there's a bit to this inquiry, could you provide answers by 4pm on Thursday?

Please acknowledge receipt of this inquiry.

Yours,

-----

**Ben Butler**

Senior business reporter  
The Guardian | Australia

-----

+61 (0) 432 543 978

+61 (0) 3 8199 8221

[ben.butler@theguardian.com](mailto:ben.butler@theguardian.com)

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Melbourne VIC 3000  
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**From:** s 22  
**To:** [Zaheed, Mohita](#)  
**Cc:** s 47E(d) s 22  
**Subject:** FW: Questions re application by Prime Trust victims under CDDA scheme [SEC=OFFICIAL]  
**Date:** Thursday, 12 August 2021 8:00:23 PM  
**Attachments:** [200918 LTR AMSESET to TZ.pdf](#)  
[MC21-004664 O'Reilly CDDA Act of Grace Prime Trust Action Group.pdf](#)

---

**OFFICIAL**

Hi Mohita

This is the proposed response to the enquiry from Mr Ben Butler from The Guardian.

As the investors in The Prime Retirement and Aged Care Property Trust (Prime Trust) have been previously advised, they may seek compensation by making an application to the Department of Finance for an act of grace payment under the *Public Governance, Performance and Accountability Act 2013*.

Act of grace payments and the Scheme for Compensation for Detriment caused by Defective Administration (CDDA scheme) are both discretionary mechanisms that permit the payment of compensation by the Commonwealth. Neither mechanism obliges compensation to be paid. Under both mechanisms an application is: considered on its merits; afforded procedural fairness (including by providing reasons for decision); and subject to review by the Commonwealth Ombudsman and judicial review.

The Prime Trust investors can achieve the same practical outcome through either an application for act of grace payment or to the CDDA scheme. The Government therefore rejects the suggest that no-one is willing or able to consider the merits of their application.

Angela and I spoke to s 22 (Media Adviser) and s 22 this morning. We explained the circumstances s 22 wanted the media response to make it clear that the investors were not being disadvantaged by being directed toward act of grace rather than CDDA.

s 22 has also asked that briefing (sensitive: legal privilege) be provided separately proposing a way forward in relation to CDDA. s 22 did not specify the timing of the briefing other than to make it clear that it was not required alongside the media response.

The proposed media response has been prepared based on publicly available information on [act of grace payments](#) and the [CDDA scheme](#) and having regard to letters written to the Prime Trust Action Group (see attached) referenced in the questions from Mr Butler. The supporting AGS legal advice is attached to an [email from DoF](#) and also was inferred from advice [emailed to ASIC](#) about APRA. s 42

s 42

I have not yet run the media response past LD s 22 or the Department of Finance but could do so first thing in the morning.

I have copied s 22 because the application of CDDA to ASIC and APRA is presumably a matter

that her team will also need to be aware of into the future.

Happy to discuss

s 22

s 22

Redress Unit | Regulators Redress and Insurance Branch | Financial System Division | Markets Group

The Treasury, Langton Crescent, Parkes ACT 2600

s 22 @treasury.gov.au

[www.treasury.gov.au](http://www.treasury.gov.au)

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**OFFICIAL**

**From:** Zaheed, Mohita s 22 @treasury.gov.au>

**Sent:** Thursday, 12 August 2021 3:30 PM

**To:** s 22 @TREASURY.GOV.AU>; s 22

s 22 @TREASURY.GOV.AU>

**Subject:** RE: Questions re application by Prime Trust victims under CDDA scheme [SEC=UNOFFICIAL]

**UNOFFICIAL**

Thanks s 22

**Mohita Zaheed**

Assistant Secretary

Regulators, Redress and Insurance Branch

The Treasury | Langton Crescent, Parkes ACT 2600

s 22 @treasury.gov.au

s 22

**UNOFFICIAL**

**From:** s 22 @TREASURY.GOV.AU>

**Sent:** Thursday, 12 August 2021 3:21 PM

**To:** Media <[media@treasury.gov.au](mailto:media@treasury.gov.au)>; s 22 @TREASURY.GOV.AU>

**Cc:** Zaheed, Mohita s 22 @treasury.gov.au>

**Subject:** RE: Questions re application by Prime Trust victims under CDDA scheme [SEC=UNOFFICIAL]

**UNOFFICIAL**

s 22 - As discussed, we should be able to meet that timeframe.

Mohita - I'll be looking to have some draft words with you late today.

s 22

s 22

Redress Unit | Regulators Redress and Insurance Branch | Financial System Division | Markets Group  
The Treasury, Langton Crescent, Parkes ACT 2600

s 22 @treasury.gov.au

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**From:** Media <[media@treasury.gov.au](mailto:media@treasury.gov.au)>

**Sent:** Thursday, 12 August 2021 2:44 PM

**To:** s 22 @TREASURY.GOV.AU>; s 22

s 22 @TREASURY.GOV.AU>

**Cc:** Media <[media@treasury.gov.au](mailto:media@treasury.gov.au)>; Zaheed, Mohita s 22 @treasury.gov.au>

**Subject:** RE: Questions re application by Prime Trust victims under CDDA scheme  
[SEC=UNOFFICIAL]

**UNOFFICIAL**

Hi s 22 the office has requested this response by midday tomorrow – let me know if you see any issues with this timeframe.

Thanks,

s 22

s 22

s 22 Media and Speeches Unit

s 22 Media hotline: +61 2 6263 2300

**UNOFFICIAL**

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**Sent:** Wednesday, 11 August 2021 5:32 PM

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s 22 | Media and Speeches Unit

**UNOFFICIAL**

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**Cc:** s 22 <[REDACTED]@TREASURY.GOV.AU>; Treasurer Media <[TreasurerMedia@TREASURY.GOV.AU](mailto:TreasurerMedia@TREASURY.GOV.AU)>  
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**Date:** 10 August 2021 at 4:49:00 pm AEST  
**Subject:** Questions re application by Prime Trust victims under CDDA scheme  
**To:** Treasurer Media <[TreasurerMedia@TREASURY.GOV.AU](mailto:TreasurerMedia@TREASURY.GOV.AU)>

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This is because ASIC says its authorisation to decide such applications was revoked

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However, assistant minister Jane Hume and Treasury officials have told the investors that the Treasurer will not decide their claim because to do so would interfere with the independence of ASIC in relation to individual cases.

It therefore appears that no-one in government is willing or able to look at the merits of the application.

My questions are:

1. What happened in 2015 that meant that ASIC could no longer decide CDDA applications? Was this a one-off decision, related only to ASIC, or part of a broader policy of bringing CDDA applications up the hierarchy to the relevant minister? Why was this decision made?
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6. Is there anything else you would like to tell me about the investors' CDDA application and your response to it?

Happy to discuss, I am on the mobile.

As there's a bit to this inquiry, could you provide answers by 4pm on Thursday?

Please acknowledge receipt of this inquiry.

Yours,

-----

**Ben Butler**

Senior business reporter  
The Guardian | Australia

-----

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**SENATOR THE HON JANE HUME**  
ASSISTANT MINISTER FOR SUPERANNUATION,  
FINANCIAL SERVICES AND FINANCIAL TECHNOLOGY

Ref: MC20-019046

Mr Trent Zimmerman MP  
Member for North Sydney  
PO Box 1107  
NORTH SYDNEY NSW 2059

18 SEP 2020

Dear Mr Zimmerman

Trent

Thank you for your personal representation on behalf of Mr Steve O'Reilly concerning his application for compensation under the Scheme for Compensation for Detriment caused by Defective Administration (CDDA Scheme) in relation to actions by the Australian Securities and Investments Commission (ASIC). I am grateful for the time you take to ensure that matters important to North Sydney residents are brought to the Government's attention.

I understand that there has previously been correspondence between Mr O'Reilly, the Department of Finance and ASIC on this issue. As outlined in this correspondence, while the CDDA Scheme permits individuals to apply for compensation from non-corporate Commonwealth entities, ASIC has not been authorised by the Minister to consider applications made under the CDDA Scheme. ASIC is therefore unable to consider any application made under the CDDA Scheme. ASIC's enabling legislation provides ASIC with independence from the portfolio Minister's direction on individual cases, which is incompatible with the CDDA Scheme.

However, to ensure that Mr O'Reilly faces no detriment as a consequence of this legislation, the Department of Finance has advised him that claims affected by that issue can be considered by the Department of Finance under the act of grace mechanism. The act of grace mechanism is a discretionary power available to the Minister for Finance to authorise payments where appropriate, due to special circumstances.

In reviewing any act of grace claim, the Department of Finance will seek advice from ASIC addressing the claims made. This could include the question of whether there was defective administration and whether compensation would have been paid had ASIC considered the matter under the CDDA Scheme.

I trust this information will be of assistance to Mr O'Reilly.

Yours sincerely

Senator the Hon Jane Hume



Mr Steve O'Reilly  
Principal  
Prime Trust Action Group  
10 Coonah Parade  
RIVERVIEW NSW 2066

Dear Mr O'Reilly

Thank you for your correspondence of 5 November 2020 to Senator the Hon. Jane Hume, Minister for Superannuation, Financial Services and the Digital Economy, concerning your application for compensation under the Scheme for Compensation for Detriment caused by Defective Administration (CDDA Scheme) in relation to actions by the Australian Securities and Investments Commission (ASIC). The Minister has asked me to respond to you.

As previously advised, including in a letter from the Minister dated 18 September 2020, while the CDDA Scheme permits individuals to apply for compensation from non-corporate Commonwealth entities, ASIC has not been authorised by the Minister to consider applications made under the CDDA Scheme. ASIC is therefore unable to consider any application made under the CDDA Scheme. In addition, as ASIC's enabling legislation provides ASIC with independence from the Minister's direction in individual cases, the Minister is also unable to consider any application.

However, as also previously advised, your claim can be considered by the Department of Finance under the act of grace mechanism. The act of grace mechanism is a discretionary power available to the Minister for Finance to authorise payments where appropriate, due to special circumstances.

In reviewing any act of grace claim, the Department of Finance will seek a submission from ASIC addressing the claims made. This could include whether there was defective administration by ASIC.

When considering an act of grace request, the Department of Finance follows the procedural fairness principles outlined in RMG 401 (<https://www.finance.gov.au/publications/resource-management-guides/requests-discretionary-financial-assistance-under-public-governance-performance-and-accountability-act-2013-rmg-401>). This means you will have the opportunity to comment on any adverse information or inference, your request will be given proper and due consideration, and you will be provided with written reasons for your act of grace decision. You will also have the opportunity to request internal or external review, if you do not agree with the outcome of the decision.

The act of grace mechanism is an independent process whereby the Minister for Finance, or a delegate, considers whether a payment is appropriate in the circumstances. Please note that there is no situation that creates an automatic entitlement to an act of grace payment. As such, there is no guarantee of a favourable outcome; nor is there an opportunity to reach a negotiated outcome.

Further information on the act of grace mechanism, and how to apply, is available at:

<https://www.finance.gov.au/individuals/act-grace-payments-waiver-debts-commonwealth-compensation-detriment-caused-defective-administration-cdda/act-grace-payments>.

Once again, thank you for taking the time to write.

Yours sincerely



James Kelly  
First Assistant Secretary  
Financial System Division

12/4/2021

s 22



s 22



s 22



From: s 22

Sent: Friday, 13 August 2021 2:22 PM

To: s 22 <<redacted>@finance.gov.au>; s 22 <<redacted>>

s 22 <<redacted>@finance.gov.au>

s 47E(d) <<redacted>@finance.gov.au>; s 22 <<redacted>@TREASURY.GOV.AU>

**Subject:** FW: Questions re application by Prime Trust victims under CDDA scheme  
[SEC=UNOFFICIAL]

Hi s 22

FYI, please find below the reply provided by Treasury to Mr Butler from The Guardian. The reply was edited by the Treasurer's Office.

Kind regards

s 22

s 22

Redress Unit | Regulators Redress and Insurance Branch | Financial System Division | Markets Group

The Treasury, Langton Crescent, Parkes ACT 2600

s 22

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**From:** Media <[media@treasury.gov.au](mailto:media@treasury.gov.au)>

**Sent:** Friday, 13 August 2021 1:57 PM

**To:** [ben.butler@theguardian.com](mailto:ben.butler@theguardian.com)

**Cc:** Media <[media@treasury.gov.au](mailto:media@treasury.gov.au)>

**Subject:** RE: Questions re application by Prime Trust victims under CDDA scheme  
[SEC=UNOFFICIAL]

## UNOFFICIAL

Hi Ben, see response from the Treasury below, on background only:

The Department of Finance, Australian Securities and Investments Commission (ASIC) and Department of Treasury, in previous correspondence with investors of The Prime Retirement and Aged Care Property Trust (Prime Trust), have outlined that the enabling legislation for the ASIC prevents the Minister from making a Compensation for Detriment caused by Defective Administration (CDDA) scheme decision for applications against ASIC. This is because ASIC's enabling legislation provides ASIC with independence from the portfolio Minister's directions on individual cases, which is incompatible with the CDDA Scheme.

However, investors in the Prime Trust are able to seek compensation by making an application to the Department of Finance for an act of grace payment under the Public Governance, Performance and Accountability Act 2013, and are able to achieve the same practical outcome as could have been achieved under the CDDA scheme.

Under both mechanisms an application is: considered on its merits; afforded procedural fairness (including by providing reasons for decision); and subject to review by the Commonwealth Ombudsman. Act of grace claims can also be reviewed by the Federal Court under the

*Administrative Decisions (Judicial Review) Act 1977.*

Thank you,

s 22

**Media Unit**

The Treasury, Langton Crescent, Parkes ACT 2600

Phone: +61 2 6263 2300

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**From:** Ben Butler <[ben.butler@theguardian.com](mailto:ben.butler@theguardian.com)>

**Date:** 10 August 2021 at 4:49:00 pm AEST

**Subject:** Questions re application by Prime Trust victims under CDDA scheme

**To:** Treasurer Media <[TreasurerMedia@TREASURY.GOV.AU](mailto:TreasurerMedia@TREASURY.GOV.AU)>

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However, the merits of the application have never been decided.

This is because ASIC says its authorisation to decide such applications was revoked in 2015 and it is therefore a matter for the minister.

However, assistant minister Jane Hume and Treasury officials have told the

investors that the Treasurer will not decide their claim because to do so would interfere with the independence of ASIC in relation to individual cases.

It therefore appears that no-one in government is willing or able to look at the merits of the application.

My questions are:

1. What happened in 2015 that meant that ASIC could no longer decide CDDA applications? Was this a one-off decision, related only to ASIC, or part of a broader policy of bringing CDDA applications up the hierarchy to the relevant minister? Why was this decision made?

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5. Are you concerned that granting a \$200m claim would blow a hole in ASIC's budget and is this a reason why you have refused to consider the claim?

6. Is there anything else you would like to tell me about the investors' CDDA application and your response to it?

Happy to discuss, I am on the mobile.

As there's a bit to this inquiry, could you provide answers by 4pm on Thursday?

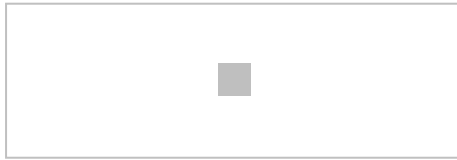
Please acknowledge receipt of this inquiry.

Yours,

-----  
**Ben Butler**  
Senior business reporter  
The Guardian | Australia

-----  
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From: s 22  
To: s 22  
Subject: Chat with S 22  
Date: Saturday, 28 August 2021 9:30:02 PM

27 August 2021

**Acioli, Donna**

Hi s 22, s 22 from media comms here... I wanted to give you a heads up that I'm sending through a media query from Ben Butler. It's a follow up to the last one re CDDA.... 15:00

Ben says: ASIC was questioned on this issue, which I've previously asked your office about, at PJC this morning. 15:01

ASIC's general counsel, Chris Savundra, said: " I think ASIC stands sort of ready, willing and able to deal with CDDA applications if an authorisation is so granted, but obviously that's a matter for the minister."

He said questions as to why the Treasurer or an assistant treasurer cannot resolve such a claim are questions for Treasury. Previously, complainants have been told this was because doing so would somehow infringe on the independence of ASIC.

He also said that he was not sure why ASIC's authorisation to decide CDDA claims lapsed in 2015 but he thought it was because the authorisation was personal to the then assistant treasurer, Josh Frydenberg (who obviously now is treasurer).

Can the treasurer respond to the above statements?

In particular, given ASIC is ready, willing and able to decide CDDA claims, will you restore its authorisation to do so?

If not, why not?

s 22

thanks for the heads up 15:02

we can have a look 15:02

s 22

I'll send email now. Thank you. 15:03

s 22

Hi Donna. I'm consulting Mohita on timing. It certainly won't be today. Thank you. Chris 15:34

s 22

OK no worries. 15:34

I've sent you the relevant transcript if that helps 15:36

s 22

thanks 15:37

we did compare notes with ASIC on this issue earlier in the week 15:37

ready willing and able was not in the script 15:37

**s 22**

Understood. 15:42

**From:** s 22  
**To:** [Zaheed, Mohita](#); s 22  
**Subject:** RE: CDDA and ASIC/APRA - proposed next steps [ ]  
**Date:** Monday, 25 October 2021 8:42:47 AM

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~~Legal Privilege~~

Thanks Mohita. Yes, I'll work with s 22 to get the request in place.

Regards

s 22

s 22

Insurance Team, Financial System Division

s 22

s 22

s 22

~~OFFICIAL:Sensitive~~  
~~Legal Privilege~~

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**From:** Zaheed, Mohita s 22 @treasury.gov.au>

**Sent:** Sunday, 24 October 2021 12:48 PM

**To:** s 22 @TREASURY.GOV.AU>; s 22

s 22 @TREASURY.GOV.AU>; s 22 @TREASURY.GOV.AU>;

s 22 @TREASURY.GOV.AU>; s 22

s 22 @TREASURY.GOV.AU>

**Subject:** RE: CDDA and ASIC/APRA - proposed next steps [SEC=OFFICIAL:Sensitive, ACCESS=Legal Privilege]

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Hi s 22

I think this is a sensible way to progress. It is an issue in the longer term we need to resolve. I am comfortable with us seeking further AGS advice. Are you happy to progress with through s 22 as our LD conduit?

Mohita

**Mohita Zaheed**

Assistant Secretary

Regulators, Redress and Insurance Branch

The Treasury|Langton Crescent, Parkes ACT 2600

s 22 @treasury.gov.au

s 22

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**From:** s 22 @TREASURY.GOV.AU>

**Sent:** Wednesday, 20 October 2021 1:54 PM

**To:** Zaheed, Mohita s 22 @treasury.gov.au>; s 22

s 22 @TREASURY.GOV.AU>; s 22 @TREASURY.GOV.AU>;

s 22 @TREASURY.GOV.AU>; s 22

s 22 @TREASURY.GOV.AU>

**Subject:** CDDA and ASIC/APRA - proposed next steps [SEC=OFFICIAL:Sensitive, ACCESS=Legal Privilege]

**OFFICIAL:Sensitive  
Legal Privilege**

Hi Mohita, s 22

In terms of addressing the longer term issue of the application of CDDA to ASIC (and APRA), I wanted to let you know my proposed next steps, and see if you have any comments/concerns/improvements please.

s 42



I've deliberately kept this short, so please feel free to give me a call with any questions (or feedback).

Regards

s 22

s 22

Insurance Team, Financial System Division

s 22 [redacted]

s 22 [redacted]

s 22 [redacted]

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Legal Privilege**