



**ASIC**  
Australian Securities &  
Investments Commission

## Grant Program: Assetless Administration Fund Grant Opportunity: Asset Recovery Grant

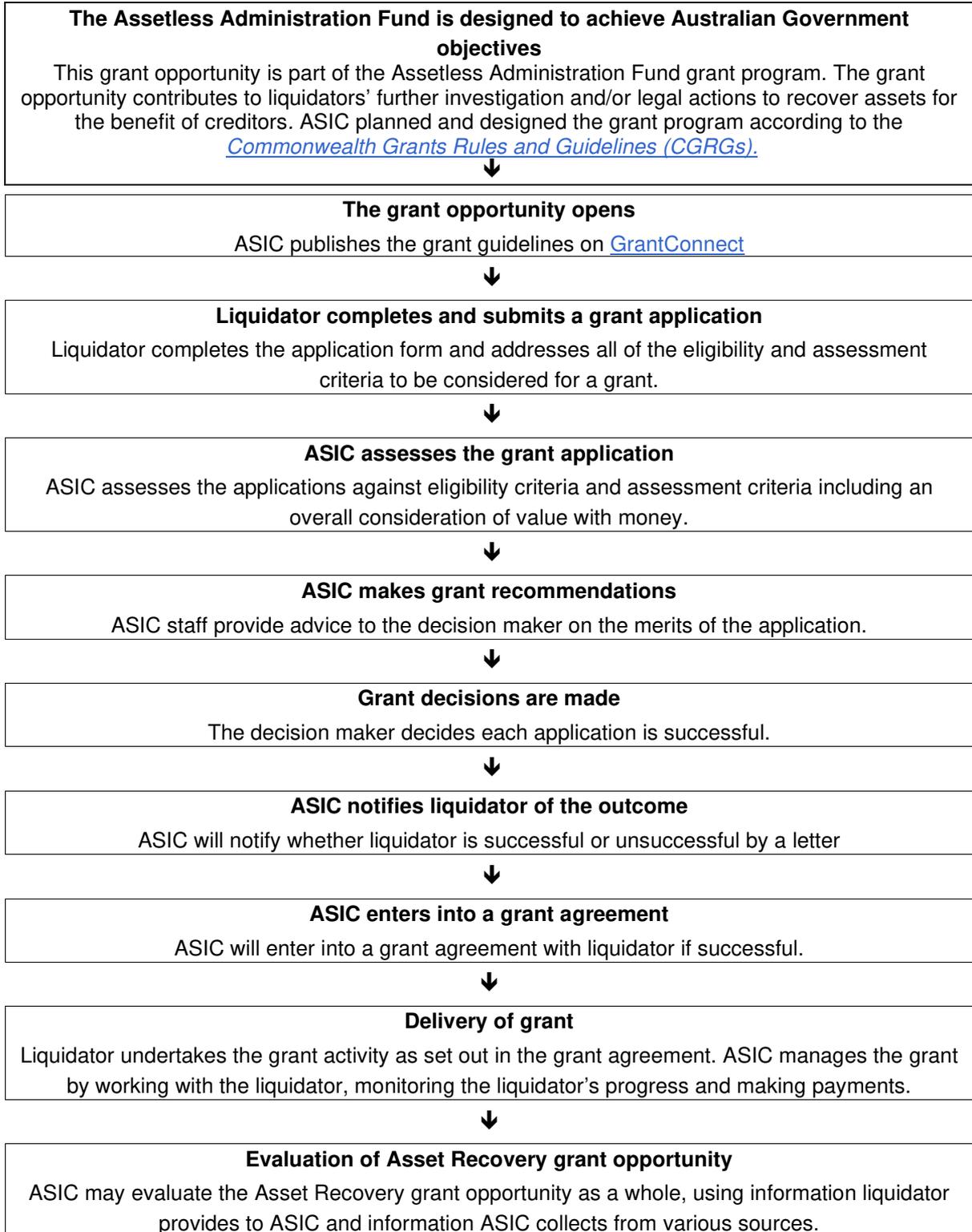
<b>Opening date:</b>	<b>23 July 2020, in continuation from existing Grant Program</b>
<b>Closing date and time:</b>	<b>On-going. Australian Securities and Investments Commission (ASIC) will announce the end of the Grant Program or Grant Opportunity</b>
<b>Commonwealth policy entity:</b>	<b>ASIC</b>
<b>Enquiries:</b>	<b>Contact <a href="mailto:AAF@asic.gov.au">AAF@asic.gov.au</a> with questions.</b>
<b>Date guidelines released:</b>	<b>23 July 2020</b>
<b>Type of grant opportunity:</b>	<b>Open non-competitive</b>

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# 1. Assetless Administration Fund: Asset Recovery grant opportunity processes



## Introduction

- 1.1 These guidelines contain information for Asset Recovery grants from the Assetless Administration Fund (**AA Fund**).
- 1.2 Liquidators must read these guidelines before filling out an application.
- 1.3 This document sets out:
  - (a) the purpose of the grant program and grant opportunity
  - (b) the eligibility and assessment criteria
  - (c) how grant applications are considered and selected
  - (d) how grantees are notified and receive grant payments
  - (e) responsibilities and expectations in relation to the opportunity.

## 2. About the grant program

- 2.1 The Australian Government (**Government**) established the AA Fund to finance preliminary investigations and reports by liquidators into the failure of companies with few or no assets, where it appears to ASIC that enforcement action may result from the investigation and report.
- 2.2 When a company fails with few or no assets, the liquidator may not be able to carry out full investigations into the circumstances of the insolvency, prepare full reports for the Australian Securities and Investments Commission (**ASIC**) or take action to recover assets for the benefit of creditors. As a result, possible offences or other misconduct by company officers may not be brought to ASIC's attention or actions may not be taken to recover assets for the benefit of creditors where directors have breached their duties.
- 2.3 The AA Fund helps close the regulatory gap that arises when a failed company is not properly investigated. This can happen because liquidators are not obliged to incur any expense, other than an expense necessary to comply with their minimum statutory duties, unless the company in liquidation has sufficient available property to fund it. As a result, when a company is left with few or no assets, the liquidator is without funds to bring an action to recover assets for the benefit of creditors and often performs only a perfunctory investigation. This may allow misconduct and asset dissipation in the lead up to a formal insolvency to go undiscovered or without penalty.
- 2.4 The AA Fund enables a liquidator to carry out a proper investigation and put together a liquidator report. The report helps ASIC decide whether to commence its own investigation or enforcement action. Addressing the regulatory gap through more rigorous investigation and reporting will improve corporate conduct generally, improve returns for creditors, and reduce the scope for phoenix activity. A liquidator may also seek funding assistance from the AA Fund to take action to recover assets where misconduct is suspected.
- 2.5 A liquidator in a creditors' voluntary winding up or a court-ordered winding up can apply for assistance from the AA Fund to:
  - (a) carry out preliminary investigations and prepare supplementary s533 reports; and/or
  - (b) bring an action to recover assets for the benefit of creditors.
- 2.6 The AA Fund currently funds the following types of activities:
  - (a) director banning report (administrative by ASIC) under the Corporations Act;
  - (b) other than director banning matters;

- (c) liquidator recovery action where a liquidator is funded to undertake legal action to recover assets. (**Asset Recovery grant opportunity**);
  - (d) reviewing liquidator appointments by ASIC under Sch 2 to the Corporations Act (refer to GO 1622 where a panel of registered liquidators has been established to accept appointments as reviewing liquidators);
  - (e) appointment of liquidators to abandoned companies under the Corporations Act<sup>1</sup> (refer to GO 894 where a panel of registered liquidators has been established to accept appointments as liquidators).
- 2.7 ASIC administers the AA Fund program according to the [Commonwealth Grants Rules and Guidelines](#) (**CGRGs**)<sup>2</sup>.
- 2.8 These grant guidelines are for the Asset Recovery grant opportunity.

### About the Asset Recovery grant opportunity

- 2.9 The Asset Recovery grant opportunity provides funding to a liquidator of an assetless company to take action to recover certain assets, or for compensation for loss, where misconduct in relation to the company has occurred which caused assets of the company to dissipate (**Recovery Action**).
- 2.10 There are two options for funding available under the Asset Recovery grant opportunity:
- (a) funding for the liquidator to undertake preliminary activities (**Preliminary Action**) to determine whether recovery proceedings are appropriate, including but not limited to:
    - (i) obtain books and records of the company, and information relating to the examinable affairs of the company via examinations under section 596A and/or 596B of the Corporations Act;
    - (ii) apply for a warrant under section 530C of the Corporations Act in appropriate circumstances;
    - (iii) determine whether there is a real prospect that assets will be recovered for creditors after the payment of the liquidators' remuneration and disbursements;
    - (iv) obtain written legal advice from a barrister on any proposed legal action to recover assets; and/or
    - (v) conduct public examinations of relevant persons; and/or
  - (b) funding for the liquidator to undertake legal proceedings to recover assets (**Legal Action**). If the results of the Preliminary Action are favourable, then ASIC may fund the liquidator to undertake the Legal Action.
- 2.11 ASIC may request that a supplementary report under section 533(2) of the Corporations Act be lodged based on the misconduct identified in the Recovery Action.
- 2.12 The intended outcome of the Asset Recovery grant opportunity, together with the other types of funding under the AA Fund, is to assist ASIC to fulfil its role under the *Australian Securities and Investments Commission Act 2001* (**ASIC Act**), including to:

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<sup>1</sup> Funding assistance for a liquidator to perform mandatory functions in an insolvency administration where ASIC orders the winding up of the company under Pt 5.4 of the Corporations Act is covered by Regulatory Guide 242 *ASIC's power to wind up abandoned companies*.

<sup>2</sup> <https://www.finance.gov.au/sites/default/files/commonwealth-grants-rules-and-guidelines.pdf>

- (a) maintain, facilitate and improve the performance of the financial system and entities within it;
- (b) promote confident and informed participation by investors and consumers in the financial system; and
- (c) take whatever action ASIC can, and is necessary, to enforce and give effect to the laws of the Commonwealth under the ASIC Act.

### 3. Grant amount and grant period

#### Grants available

3.1 The Australian Government has made the following allocation of funding to the AA Fund:

<b>2019/2020 (\$'000)</b>	<b>2020/2021 (\$'000)</b>	<b>2021/2022 (\$'000)</b>	<b>2022/2023 (\$'000)</b>	<b>2023/2024 (\$'000)</b>
7,083	7,118	7,158	4,691	4,723

- 3.2 There is no pre-determined portion allocated to the Asset Recovery grant opportunity for this period. ASIC will publish addendums to these guidelines when the Government provides further funding for future years or the total funding for the AA Fund changes over time.
- 3.3 This grant opportunity will continue until the date the AA Fund ceases to operate or ceases to fund the Asset Recovery grants, as announced by the Government.
- 3.4 Funding will only be available to meet the liquidator's future remuneration and agreed disbursements, reasonably incurred and directly related to undertaking the Preliminary Action and/or Legal Action. It will not be available to meet remuneration and disbursements already incurred by the liquidator before the grant activity commences under the grant agreement.
- 3.5 ASIC may approve staged funding for the agreed step(s) within each of the Preliminary Action or Legal Action funding options outlined in section 2.10 above. The approval for funding for a stage or step within a particular option does not determine or indicate that further stage(s) or step(s) of that funding option will be approved.
- 3.6 ASIC will consider the level of funding requested in the application form, taking into account the information provided by the liquidator. The total amount of each grant depends on:
- (a) whether any Preliminary Action is required, and what it is;
  - (b) the complexity of the Preliminary Action; and/or
  - (c) the complexity of the Legal Action.
- 3.7 The funding approved will be determined after an assessment of the initial facts of a particular case and after consultation with the liquidator.
- 3.8 Generally, ASIC will only fund the agreed amount which is assessed on a case by case basis, as to whether that amount will cover the entirety of the expected costs of the Preliminary Action and/or Legal Action.
- 3.9 If ASIC funds the liquidator to undertake the Legal Action, and if the defendant(s) obtain a security for costs order, ASIC may decide to fund all, or none, or only a portion of the amount specified in a security for costs order in response to a further application from the liquidator (in the form of a request for further funding under the existing grant agreement) to fund payment of the order. If ASIC decides to fund any such amount, the liquidator should not assume ASIC will decide to fund any revised or further security for costs order(s).

- 3.10 In any event, ASIC will not be liable for any costs ordered against the liquidator as part of the Preliminary Action and/or Legal Action. The grant agreement specifies the maximum extent of ASIC's liability.

### Grant period

- 3.11 The grant agreement will set out the date by which the work required under the grant must be completed, which will generally be at the conclusion of the Preliminary Action and/or the Legal Action.

## 4. Eligibility criteria

### Who is eligible to apply for a grant?

- 4.1 Any liquidator appointed as a liquidator to a company in liquidation in:
- (a) a court-ordered winding up;
  - (b) a creditors' voluntary winding up; or
  - (c) an ASIC-ordered winding up under section 489EA of the Corporations Act,
- excluding a liquidator of a solvent company voluntarily wound up by its members or a special purpose liquidator, may apply for funding under the Asset Recovery grant opportunity to undertake Preliminary Action and/or Legal Action.

### Who is not eligible to apply for a grant?

- 4.2 Controllers, administrators, deed administrators and provisional liquidators are not eligible to apply for funding under the Asset Recovery grant opportunity to undertake the Recovery Action.
- 4.3 A special purpose liquidator may be eligible, but only by exception and with regard to the court appointment orders. Generally, a special purpose liquidator is not eligible as they are appointed for a specific purpose and the scope of the appointment may limit the type of work that they are able to undertake.

### Additional eligibility criteria

- 4.4 An application for funding under the Asset Recovery grant opportunity must meet four eligibility criteria (explained in detail below):
- (a) the company in liquidation must be an 'assetless' administration (see 4.5 – 4.6 below);
  - (b) a report under section 533(1) of the Corporations Act must have been lodged with ASIC (see 4.7 below);
  - (c) the liquidator must have formed a reasonable belief that misconduct has occurred which caused the dissipation of assets (see 4.8 – 4.10 below); and
  - (d) sufficient evidence is available or is likely to become available (see 4.11 – 4.17 below).

### The liquidation must be 'assetless'

- 4.5 The company in liquidation must be an 'assetless' administration. For the purposes of the Asset Recovery grant opportunity within the AA Fund:
- (a) an 'assetless' administration is a liquidation where there is less than the amount specified in **Item 1 of the Schedule** in *net realisable assets*. In such a liquidation,

there are usually insufficient net realisable assets to enable a liquidator to pay the estimated outlays to pursue Recovery Action for assets dissipated as a result of misconduct under the Corporations Act.

- (b) *net realisable assets* are the actual or estimated gross proceeds from the realisation of assets, less:
- (i) actual or estimated direct third-party realisation costs (e.g. auctioneer's fees and real estate agent's commission);
  - (ii) proceeds subject to a claim by a secured creditor;
  - (iii) petitioning creditor's costs paid under s556(1)(b); and
  - (iv) all other costs of the liquidation, including:
    - A. the liquidator's accrued costs at the date of lodgement of the application for funding (for example: liquidator's approved and unbilled remuneration, legal costs); and
    - B. costs directly relating to the liquidator's Preliminary Action and/or Legal Action to recover assets;but excluding any accrued liabilities as a result of any breach of duty, non-compliance with legislative requirements or negligence by the liquidator.

4.6 For the calculation above, *net realisable assets* exclude:

- (a) director or third-party indemnities to the liquidator;
- (b) choses in action which have not been settled or judicially determined;
- (c) assets that are not readily realisable and that will take longer than 12 months from the date of lodgement of the application for funding to realise; and
- (d) specific purpose funding from creditors, directors or third parties (usually for asset recovery purposes).

Note 1: These definitions are only for determining eligibility for grants from the AA Fund, including Asset Recovery grants. They do not apply for the purposes of the Corporations Act (e.g. in determining whether there is sufficient available property under s545(1) or if the company has enough property to cover the costs of obtaining a court order for the company's deregistration under s601AB(2)).

Note 2: While assets that will take longer than 12 months from the date a grant application is lodged to realise are generally excluded from the definition of net realisable assets, ASIC still requires an estimate of the value of such assets to be provided in the application form.

Note 3: Specific purpose funding in 4.6(d) above includes upfront payments received by the liquidator unless the upfront payment is determined to have been an asset of the company.

### **Initial statutory report must have been lodged**

4.7 The liquidator must have lodged an initial statutory report for the company under s533(1) of the Corporations Act (**initial statutory report**) via ASIC Regulatory Portal.

Note 1: The statutory requirement to lodge an initial statutory report is not dependent on whether or not a company is assetless.

### **Misconduct had occurred which caused assets dissipation**

4.8 The liquidator must have formed a reasonable belief that misconduct had occurred which caused the dissipation of assets from the company.

- 4.9 Examples of types of misconduct include, but not limited to:
- (a) breaches of directors' and officers' duties (s180–184), including in particular, fraudulent or unlawful phoenix activity;
  - (b) insolvent trading (s588G);
  - (c) fraud, misrepresentation or theft of property (s590); and
  - (d) entering into agreements or transactions to avoid employee entitlements (s596AB).
- 4.10 Before lodging an application, the liquidator should also refer to the assessment criteria in section 6 of these Grant Guidelines. The liquidator can also contact ASIC to discuss whether ASIC may consider funding any Preliminary Action and/or Legal Action having regard to the alleged misconduct and circumstances of the matter.

### Sufficient evidence is or is likely to be available

- 4.11 When applying for funding to undertake Recovery Action, a liquidator should take into account the extent of evidence:
- (a) currently available or may become available to them to substantiate the alleged misconduct; and
  - (b) that would be sufficient to establish that an order for recovery of assets would be made.
- 4.12 The evidence available or likely to be available must be sufficient to establish to ASIC that there are reasonable prospects of a successful outcome and the defendants have assets that are likely to be available to satisfy a judgment debt or costs order.
- 4.13 As indicated at paragraph 2.10, ASIC may provide grant funding for a liquidator to undertake Preliminary Action which may include to obtain books and records via examinations under section 596A and/or 596B of the Corporations Act, or apply for a warrant under section 530C of the Corporations Act in appropriate circumstances.

### Request Assistance for External Administration

- 4.14 Where a liquidator experiences difficulties in obtaining relevant information, for example, where:
- (a) the directors have failed to:
    - (i) provide a report on company activities and property (**ROCAP**) under the Corporations Act; and/or
    - (ii) deliver the books and records of the company to the liquidator; or
  - (b) a third party failed to assist the liquidator to deliver the books and records of the company,
- the liquidator should consider exercising their powers in this regard, or seek ASIC's assistance to compel the directors' compliance.
- 4.15 The liquidator should seek ASIC's assistance before making an application for a grant, as it may produce further information or evidence relevant to the application for funding under the Asset Recovery grant guidelines. However, in some cases (for example: risk of destruction or removal, where documents need to be obtained quickly or where the documents are stored on remote storage systems known as cloud storage), other avenues of obtaining books and records may be more appropriate, and ASIC may consider provide funding to the

liquidator to undertake the Preliminary Action outlined at paragraph 2.10 to obtain books and records of the company.

4.16 To request assistance from ASIC, please go to: <https://regulatoryportal.asic.gov.au/>.

4.17 If the liquidator believes that:

- (a) a person has concealed, destroyed or removed books of a company or **is about to do so**, and consider that applying for a warrant under section 530C is more appropriate than seeking ASIC assistance; or
- (b) the books of the company are more appropriately obtained via examinations under section 596A and/or 596B of the Corporations Act,

the liquidator should specify this in the application.

## 5. What the grant money can be used for

### Eligible grant activities

5.1 The grant money (also referred to as the funding) may be used to pay for the liquidator's remuneration and disbursements directly associated with undertaking:

- (a) the Preliminary Action described in 2.10(a) above; and/or
- (b) the necessary Legal Action described in 2.10(b) above,

as necessary to allow the liquidators to take action to recover assets or for compensation for the benefit of creditors of the company.

### Eligible expenditure

5.2 The grant can only be used for the liquidator's remuneration and actual disbursements that are reasonably incurred after the commencement of the grant activity, and directly related to the Preliminary Action and/or Legal Action.

5.3 Generally, ASIC will only fund the agreed amount which is assessed on a case by case basis as to whether the agreed amount will cover the entire expected costs of the Preliminary Action and/or Legal Action

### What the grant money cannot be used for

5.4 The grant cannot be used for the following:

- (a) any work carried out by the liquidator and staff before the grant agreement is executed by the liquidator and ASIC;
- (b) any work related to submitting the application under this Asset Recovery grant guidelines;
- (c) any work related to seek further funding from ASIC under this grant;
- (d) any work related to seek further time to submit the Supplementary Report (if required);
- (e) other work performed by the liquidator relating to the liquidation of the company;
- (f) work related to complying with statutory notices issued by ASIC exercising its compulsory powers under the ASIC Act (for example, attendance at examination in compliance with a notice issued under section 19 of the ASIC Act; or production of books in response to notices issued under sections 30, 30B or 33 of the ASIC Act).

## 6. The assessment criteria

- 6.1 ASIC will consider applications for funding under the Asset Recovery grant opportunity on a case-by-case basis.
- 6.2 The assessment criteria for each application will depend on:
- (a) whether the application is for funding for Preliminary Action or Legal Action, or both; and
  - (b) the particular facts and circumstances relevant to each application.
- 6.3 The assessment criteria for ASIC's decision on grant funding for Preliminary Action and Legal Action are set out in Table 1 and Table 2 below, starting with criteria of higher importance.

### Preliminary Action

- 6.4 An application for funding to undertake a Preliminary Action must include information that addresses each of the following assessment criteria, particularly those identified with an asterisk\* to indicate their higher importance.

**Table 1**

<b>Seriousness of Misconduct</b>	<p>ASIC assesses:</p> <ul style="list-style-type: none"> <li>• the nature and seriousness of suspected misconduct associated with the Recovery Action*</li> <li>• the conduct of the person(s) after the suspected misconduct</li> <li>• any mitigating factors affecting the person(s) conduct suspected of being involved in the misconduct.</li> </ul> <p>* ASIC generally will not consider funding a Recovery Action if no serious misconduct is involved.</p>
<b>Potential costs</b>	<p>ASIC will consider:</p> <ul style="list-style-type: none"> <li>• the assets that may exist which can result in a recovery for creditors, after payment of liquidator's remuneration and disbursements*</li> <li>• the reasonableness of all anticipated costs being sufficient to fund the Preliminary Action</li> <li>• whether creditors or other potential litigation funders have been approached to provide funding.</li> </ul> <p>*ASIC generally will not consider funding the Preliminary Action if there are no sufficient assets that may be recovered to provide a more than negligible return to creditors.</p>
<b>Applicable limitation period</b>	<p>The effect of the limitation period on the Legal Action*:</p> <p>A reasonable time should exist before the limitation period expires for:</p> <ul style="list-style-type: none"> <li>• ASIC to assess the application</li> <li>• the Preliminary Action to occur, if relevant</li> <li>• the liquidator to commence the Legal Action.</li> </ul> <p>*ASIC generally will not consider funding the Preliminary Action if the limitation period of any proposed Recovery Action is due to expire and</p>

	there is no reasonable basis for the liquidator to apply to the Court to extend the limitation period.
<b>Liquidator's capacity</b>	ASIC will assess the liquidator's capacity to conduct the Preliminary Action, including their practice capacities and whether they have adequate and appropriate insurance covers.
<b>History of misconduct</b>	The liquidator must provide relevant history of alleged misconduct by the relevant person(s), for assessment by ASIC.
<b>Other relevant factors</b>	The liquidator must identify other relevant factors which may affect ASIC's decision to provide funding for the Preliminary Action.

## Legal Action

6.5 An application for funding for a Legal Action must also address the following assessment criteria in addition to those in Table 1 above, noting in particular those identified with an asterisk\* to indicate their relative importance.

**Table 2**

<b>Prospect of success</b>	<p>ASIC will consider:</p> <ul style="list-style-type: none"> <li>the likelihood of success of the proposed Legal Action*</li> <li>legal advice from independent counsel that indicates good prospect of success for the Legal Action.</li> </ul> <p>*ASIC will not fund a Legal Action without a reasonable prospect of success.</p>
<b>The expected public benefit</b>	<p>ASIC will consider the expected level of public benefit, after payment of the liquidator's remuneration and disbursements*, including:</p> <ul style="list-style-type: none"> <li>the prospects of a more than negligible return to creditors in recovery actions, including the likely availability of assets from the defendants to satisfy a judgment debt or costs order*</li> <li>the reasonableness of all anticipated costs being sufficient to fund the Legal Action.</li> </ul> <p>*ASIC generally will not consider funding the Legal Action if the likelihood of creditors receiving a more than negligible return is minimal or low.</p>
<b>Estimated return to creditors</b>	<p>The estimated return to creditors from the Legal Action after payment of the liquidator's remuneration and disbursements is not negligible*</p> <p>ASIC generally will not consider funding the Legal Action if the estimated return to creditors from the Legal Action is negligible.</p>

<b>Applicable limitation period</b>	<p>The effect of the limitation period on the Legal Action*:</p> <p>A reasonable time should exist before the limitation period expires for:</p> <ul style="list-style-type: none"> <li>• ASIC to assess the application</li> <li>• the Preliminary Action to occur (if relevant)</li> <li>• the liquidator to commence the Legal Action.</li> </ul> <p>*ASIC generally will not consider funding the Legal Action if the limitation period of the Legal Action is due to expire and there is no reasonable basis for the liquidator to apply to the Court to extend the limitation period.</p>
<b>Other sources of funding</b>	<ul style="list-style-type: none"> <li>• Whether creditors or other potential litigation funders have been approached to provide funding.</li> <li>• Whether funding is available from such other sources.</li> </ul>
<b>Likely duration and outcome of Legal Action</b>	<ul style="list-style-type: none"> <li>• The likely duration of Legal Action and likely costs and other implications of prolonged litigation.</li> <li>• Any risks of an adverse outcome in the Legal Action.</li> </ul>
<b>Liquidator's capacity</b>	<p>The capacity of the liquidator to conduct the Legal Action, including their practice capacities and whether they have adequate and appropriate insurance covers.</p>
<b>Other relevant factors</b>	<p>Other factors which may affect ASIC's decision to provide funding for the Legal Action</p>

6.12 The application for funding to undertake any Recovery Action (Preliminary Action and/or Legal Action) should include adequate information addressing the criteria listed above to enable ASIC's assessment of the application.

6.13 ASIC will also take into account the total funds available in the AA Fund and the likely future requirements for funding from the AA Fund when considering a funding application for Recovery Action. Therefore, an application that meets the eligibility and assessment criteria may still be refused.

Note 1: For capacity and insurance requirements of a liquidator, refer to ASIC's RG258 Registered Liquidators: Registration, disciplinary actions and insurance requirements.

## 7. How to apply

7.1 Before applying, the liquidator must read and understand these guidelines, and the terms and conditions in the grant agreement template.

7.2 These documents may be found at [GrantConnect](#). Any alterations and addenda<sup>3</sup> will be published on GrantConnect. By registering on this website, the liquidator will be automatically notified on any changes. GrantConnect is the authoritative source for grants information.

7.3 To apply the liquidator must:

<sup>3</sup> Alterations and addenda include but are not limited to: corrections to currently published documents, changes to close times for applications, Questions and Answers (Q&A) documents and Frequently Asked Questions (FAQ) documents

- (a) use the online application form on <https://regulatoryportal.asic.gov.au/>;
- (b) provide the information and documents required in the online application form; and
- (c) submit the application on <https://regulatoryportal.asic.gov.au/>.

## 8. The grant selection process

- 8.1 ASIC reviews all applications for eligibility for grants against the eligibility criteria.
- 8.2 If eligible, ASIC assesses the application against the assessment criteria (see Section 6) to determine whether the liquidator should receive funding for the Asset Recovery grant. Each application is considered on its merits, based on:
  - (a) how it meets the assessment criteria; and
  - (b) whether it provides value with relevant money.
- 8.3 When assessing the extent to which the application represents value with relevant money, ASIC will have regard to:
  - (a) the objectives to be achieved in providing the grant, including whether funding the application will address one or more of the Government's policy outcomes;
  - (b) assisting the liquidator achieving their objectives;
  - (c) the extent to which the evidence in the application demonstrates that it will contribute to meeting the outcomes/objectives of the AA Fund; and
  - (d) whether funding the matter will add value by achieving something worthwhile that would not have occurred without the grant.
- 8.4 When assessing the application, ASIC may contact the liquidator to:
  - (a) seek clarification regarding the application;
  - (b) obtain a more detailed understanding of the matter; and/or
  - (c) discuss the level of funding sought.
- 8.5 Following the assessment, if ASIC is of the view that the matter should be funded, ASIC will request the liquidator to provide a detailed estimate of anticipated costs based on a draft schedule of the work to be undertaken and the likely timeframe within which the further work will be completed. ASIC may contact the liquidator to discuss the detailed estimate of costs after it has been provided.

### Who will assess applications?

- 8.6 An ASIC staff member will assess each application on its merit against the eligibility and assessment criteria, and make a recommendation regarding whether the application should be awarded a grant. If an application does not meet the eligibility criteria, it will be rejected before any recommendation is made.

### Who will approve grants?

- 8.7 The recommendation will be considered by an ASIC internal committee (**Internal Committee**). The Internal Committee may seek advice from other teams within ASIC to assist it with its decision making.
- 8.8 Generally, the Internal Committee will decide whether an application for a grant should be approved, unless:

- (a) the Internal Committee decides the particular application should be considered by a senior ASIC staff member with the appropriate financial delegation under the *Public Governance Performance and Accountability Act 2013 (PGPA Act)*; or
- (b) the circumstances of the matter require the application to be determined outside the Internal Committee, in which case it will be considered by a senior ASIC staff member with the appropriate financial delegation under the PGPA Act<sup>4</sup>.

8.9 If the Internal Committee decides to approve an application for a grant, an ASIC staff member with appropriate financial delegation under the PGPA Act will approve the grant<sup>5</sup>. In this case and where an application was referred to an ASIC staff member for a decision, the ASIC staff member's decision is final. If the Internal Committee decides to reject an application for a grant, the Internal Committee decision is final.

## 9. Notification of application outcomes

- 9.1 ASIC will advise the liquidator of the outcome of his/her application in writing. If the liquidator is successful, ASIC will send a grant agreement to the liquidator setting out the terms on which the grant is offered.
- 9.2 If the liquidator is unsuccessful, ASIC will notify the liquidator of the decision in writing and may telephone the liquidator to explain the reason(s) for rejecting the application.

## 10. Enquiries, feedback and complaint

- 10.1 The liquidator should contact the relevant ASIC staff member assessing their application regarding:
  - (a) the assessment process and timeframe;
  - (b) the reasons for not approving the application (if relevant); or
  - (c) a review of ASIC's decision.
- 10.2 If the liquidator is dissatisfied with the outcome of ASIC's decision about the funding application, the liquidator can request ASIC to review the decision. The liquidator should submit a written request within 28 calendar days of the date of ASIC notification of the decision. If the liquidator is unable to meet this timeframe, the liquidator should contact the relevant staff member who assessed their application.
- 10.3 If, after the review, the liquidator remains dissatisfied with the decision, the liquidator may make a complaint to ASIC about the handling of the application. Please lodge the complaint at: <https://asic.gov.au/about-asic/contact-us/how-can-we-help-you/complaints-about-asic/>. All complaints about a grant process must be written.
- 10.4 If the liquidator does not agree with the way ASIC has handled his/her complaint, the liquidator may complain to the [Commonwealth Ombudsman](#). The Ombudsman will not usually look into a complaint unless the matter has first been raised directly with ASIC.

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<sup>4</sup> The ASIC staff member approving a grant will be nominated based on the financial delegation required to approve the funding. For the Asset Recovery Grant Opportunity, the staff member approving the grant can be a Senior Manager, the Senior Executive Leader for the Insolvency Practitioners Stakeholder Team, Executive Director Markets or a Commissioner subject to the level of the grant to be approved.

<sup>5</sup> See above.

The Commonwealth Ombudsman can be contacted on:

Phone (Toll free): 1300 362 072

Email: [ombudsman@ombudsman.gov.au](mailto:ombudsman@ombudsman.gov.au)

Website: [www.ombudsman.gov.au](http://www.ombudsman.gov.au)

## 11. Successful grant applications

### The grant agreement

- 11.1 If an application is successful, ASIC will send a grant agreement to the liquidator setting out the terms on which the funding is offered. The liquidator must acknowledge acceptance of the terms by returning a signed and dated copy of the agreement within 5 business days.
- 11.2 A grant agreement template setting out the terms and conditions for a grant under the Asset Recovery grant opportunity is attached as **Annexure A**.

### Grant agreement variations

- 11.3 The grant agreement sets out circumstances where the liquidator can request further funding or further time to submit the progress reports. The liquidator can request a variation to the grant agreement in accordance with the terms and conditions under the grant agreement.
- 11.4 The liquidator should not assume that a variation request will be successful. ASIC (via the Internal Committee or a senior ASIC staff member with appropriate delegation) will consider the request based on the terms and conditions in the grant agreement and the likely impact on achieving outcomes.
- 11.5 ASIC will only consider providing further funding in exceptional and unforeseen circumstances.

### How ASIC pays the grant

- 11.6 ASIC will pay relevant money only if the liquidator has executed the grant agreement and provided it to ASIC with a signed vendor form specified in the agreement, within 5 business days of receiving the grant agreement from ASIC.
- 11.7 The grant agreement sets out the requirements the liquidator must comply with to receive the grant payment. These include to submit a correctly rendered tax invoice and detailed fee account for the agreed work, at such times and to the person specified in the grant agreement.
- 11.8 Each fee account must disclose:
  - (a) a summary of the work or tasks performed with a description of the tasks which were completed by the liquidator and each of the liquidator's employees (which may be in the form of the work-in-progress report showing the time spent by each employee and a narration of tasks performed, as may be generally maintained by the liquidator's firm);
  - (b) the name and title of each person performing the work or task;
  - (c) the amount of time spent by the person performing the work or task;
  - (d) the period during which the liquidator and the liquidator's employees were engaged in performing the work or task;
  - (e) the charge-out-rate of the person performing the work or task;

- (f) the amount charged by the person to perform the work or task;
- (g) details of claimed disbursements, including supporting documentation; and
- (h) any time the liquidator has written off.

11.9 The grant agreement sets out how the liquidator's solicitor invoice and/or counsel invoice needs to be substantiated.

11.10 The liquidator must pay all grant monies from the AA Fund into the administration account maintained for the company under s65-10 of Sch 2 to the Corporations Act. The liquidator must record both the receipt and subsequent payment to the liquidator from the administration account in the Form 5602 Annual administration return and Form 5603 End of administration return, broken down into fees and disbursements, and attributed to the 'Assetless Administration Fund'.

11.11 ASIC considers that s60-5 of Sch 2 to the Corporations Act does not require a liquidator to seek approval from the committee of inspection, the creditors or the court for payment of the liquidator's remuneration and disbursements as a result of funding from the AA Fund. ASIC will administer the law on this basis.

11.12 The grant agreement will outline the circumstances when ASIC will not pay the invoice in full or at all.

## 12. Announcement of grants

12.1 Successful grants will be listed on the GrantConnect website 21 calendar days after the date of effect as required by Section 5.3 of the CGRGs.

## 13. How ASIC monitors the grant activity

### Keeping us informed

13.1 The liquidator should let ASIC know as soon as practicable and in accordance with the terms of the grant agreement if anything is likely to affect their ability to carry out any component of the Preliminary Action and/or Legal Action.

13.2 If the liquidator becomes aware of a breach of terms and conditions under the grant agreement, they must contact ASIC immediately.

### Reporting

13.3 The grant agreement requires the liquidator to provide regular progress reports and ad hoc (on the occurrence of certain events) reports to ASIC regarding the progress or conduct of the Preliminary Action and/or Legal Action.

### Record keeping

13.4 The grant agreement requires the liquidator to keep proper books to comply with with section 70-10 of Schedule 2 of the Corporations Act.

### Evaluation

13.5 From time to time, ASIC may evaluate the Asset Recovery grant to:

- (a) review the asset level specified in **Item 1 of the Schedule**;
- (b) review the types of the matters funded; and
- (c) measure how well the outcomes and objectives of the AA Fund have been achieved.

- 13.6 ASIC may use information from the application and reports including progress reports submitted to ASIC for this purpose. ASIC may also contact the liquidator to evaluate how effective the program is in achieving its outcomes, and to improve the application and funding process, and the application form.

## 14. Probity

- 14.1 The Government requires that the grant opportunity process is fair, according to the published guidelines, incorporates appropriate safeguards against fraud, unlawful activities and other inappropriate conduct and is consistent with the CGRGs.
- 14.2 ASIC may change these guidelines from time-to-time. When this happens, ASIC will cause the revised guidelines will be published on GrantConnect.

### Conflicts of interest

- 14.3 Conflicts of interest for Government staff will be handled as set out in the Australian [Public Service Code of Conduct \(Section 13\(7\)\)](#) of the *Public Service Act 1999*. Committee members and other officials including the decision maker must also declare any conflicts of interest.

### Privacy

- 14.4 ASIC treats personal information according to the *Privacy Act 1988* and the Australian Privacy Principles. The ASIC Privacy Policy contains detailed information on ASIC's personal information handling practices, including:
- (a) what personal information ASIC collects;
  - (b) why ASIC collects personal information; and
  - (c) who ASIC gives personal information to.
- 14.5 Each Asset Recovery grant application will require the liquidator to provide personal information about themselves and any other persons whose personal information may be necessary or relevant to ASIC's decision-making on the application. Before lodging an application, the liquidator must read and familiarise themselves with the ASIC Privacy Policy and information handling practices published at <https://asic.gov.au/about-asic/dealing-with-asic/privacy/>.
- 14.6 Personal information provided by the liquidator about themselves or any other persons can only be disclosed to someone else for the primary purpose for which it was collected, unless an exemption applies.
- 14.7 The Government may also use and disclose information about grant applicants and grant recipients under this grant opportunity in any other Government business or function. This includes disclosing grant information on GrantConnect as required for reporting purposes and giving information to the Australian Taxation Office for compliance purposes.
- 14.8 ASIC may share the information the liquidator gives to ASIC with other Commonwealth entities for purposes including government administration, research or service delivery, according to Australian laws.
- 14.9 As required by the grant agreement, the liquidator must, in respect of any personal information that the liquidator collects, uses, stores or discloses in connection with the investigation and report:

- (a) declare that the liquidator is able to comply with the *Privacy Act 1988* and the Australian Privacy Principles;
- (b) impose the same privacy obligations on officers, employees, agents and subcontractors that the liquidator engages to assist with the investigation and preparation of the Supplementary Report,

14.10 The liquidator must not do anything which, if done by ASIC, would breach an Australian Privacy Principle as defined in the Privacy Act.

## Confidential Information

### Grant application

14.11 Other than information available in the public domain, the liquidator agrees not to disclose to any person, other than ASIC, any confidential information relating to the grant application, without ASIC's prior written approval. The obligation is not breached where the law, Parliament or a stock exchange requires the liquidator to disclose the relevant information or where the relevant information is publicly available (other than through breach of a confidentiality or non-disclosure obligation).

14.12 ASIC may at any time, require the liquidator to arrange for the liquidator or their employees, agents or subcontractors to give a written undertaking relating to nondisclosure of ASIC's confidential information in a form ASIC considers acceptable.

14.13 Section 127 of the *Australian Securities and Investments Commission Act 2001* (**ASIC Act**) requires ASIC to take all reasonable measures to protect from authorised use or disclosure of information given to it in confidence or in connection with the performance of its functions or the exercise of its powers under the ASIC Act and the Corporations Act (**confidential information**). Section 127 of the ASIC Act also sets out circumstances where ASIC is authorised to disclose confidential information.

### Grant agreement and documents subject to legal professional privilege

14.14 The grant agreement sets out confidentiality obligations on the liquidator and ASIC in relation to the grant agreement, and that documents are subject to legal professional privilege.

## Freedom of information

14.15 All documents in the possession of the Government, including those about this grant opportunity (such as the application, any progress reports, court documents), are subject to the [Freedom of Information Act 1982](#) (**FOI Act**).

14.16 The purpose of the FOI Act is to give members of the public rights of access to information held by the Government and its entities. Under the FOI Act, members of the public can seek access to documents held by the Government. This right of access is limited only by the exceptions and exemptions necessary to protect essential public interests and private and business affairs of persons in respect of whom the information relates.

14.17 All Freedom of Information requests must be referred to Senior Manager, FOI Team in writing.

By mail:                   Senior Manager, FOI Team  
                                  Australian Securities and Investments Commission  
                                  GPO Box 9827 Brisbane Qld 4001

By email: [FOIrequest@asic.gov.au](mailto:FOIrequest@asic.gov.au)

## 15. Glossary

Term	Definition
assessment criteria	are the specified principles or standards, against which applications will be judged. These criteria are also used to assess the merits of proposals and, in the case of a competitive grant opportunity, to determine application rankings.
date of effect	can be the date on which a grant agreement is signed or a specified starting date. Where there is no grant agreement, entities must publish information on individual grants as soon as practicable.
decision maker	the person who makes a decision to award a grant
eligibility criteria	refer to the mandatory criteria which must be met to qualify for a grant. Assessment criteria may apply in addition to eligibility criteria.
<a href="#"><u>Commonwealth Grants Rules and Guidelines (CGRGs)</u></a>	establish the overarching Commonwealth grants policy framework and articulate the expectations for all non-corporate Commonwealth entities in relation to grants administration. Under this overarching framework, non-corporate Commonwealth entities undertake grants administration based on the mandatory requirements and key principles of grants administration.
grant	for the purposes of the CGRGs, a 'grant' is an arrangement for the provision of financial assistance by the Commonwealth or on behalf of the Commonwealth: <ul style="list-style-type: none"> <li>a. under which relevant money<sup>6</sup> or other <a href="#"><u>Consolidated Revenue Fund</u></a> (CRF) money<sup>7</sup> is to be paid to a grantee other than the Commonwealth; and</li> <li>b. which is intended to help address one or more of the Government's policy outcomes while assisting the grantee achieve its objectives.</li> </ul>
grant activity/activities	refers to the project/tasks/services that the grantee is required to undertake
grant agreement	sets out the relationship between the parties to the agreement, and specifies the details of the grant
<a href="#"><u>GrantConnect</u></a>	is the Government's whole-of-government grants information system, which centralises the publication and reporting of Commonwealth grants in accordance with the CGRGs

<sup>6</sup> Relevant money is defined in the PGPA Act. See section 8, Dictionary.

<sup>7</sup> Other CRF money is defined in the PGPA Act. See section 105, Rules in relation to other CRF money.

Term	Definition
grant opportunity	refers to the specific grant round or process where a Commonwealth grant is made available to potential grantees. Grant opportunities may be open or targeted, and will reflect the relevant grant selection process.
grant program	a 'program' carries its natural meaning and is intended to cover a potentially wide range of related activities aimed at achieving government policy outcomes. A grant program is a group of one or more grant opportunities under a single ASIC Portfolio Budget Statement Program.
Grantee	the individual/organisation which has been selected to receive a grant
selection process	the method used to select potential grantees. This process may involve comparative assessment of applications or the assessment of applications against the eligibility criteria and/or the assessment criteria.
value with money	<p>value with money in this document refers to 'value with relevant money' which is a judgement based on the grant proposal representing an efficient, effective, economical and ethical use of public resources and determined from a variety of considerations.</p> <p>When administering a grant opportunity, an official should consider the relevant financial and non-financial costs and benefits of each proposal including, but not limited to:</p> <ul style="list-style-type: none"> <li>• the quality of the project proposal and activities;</li> <li>• fitness for purpose of the proposal in contributing to government objectives;</li> <li>• that the absence of a grant is likely to prevent the grantee and government's outcomes being achieved; and</li> <li>• the potential grantee's relevant experience and performance history.</li> </ul>

## Schedule

Item	Description	Amount
<b>Item 1</b>	<i>'net realisable asset'</i> threshold for assetless administration (see paragraph 4.5).	\$10,000