



**ASIC**  
Australian Securities &  
Investments Commission

## Grant Program: Assetless Administration Fund Grant Opportunity: Matters other than Director Banning Grant

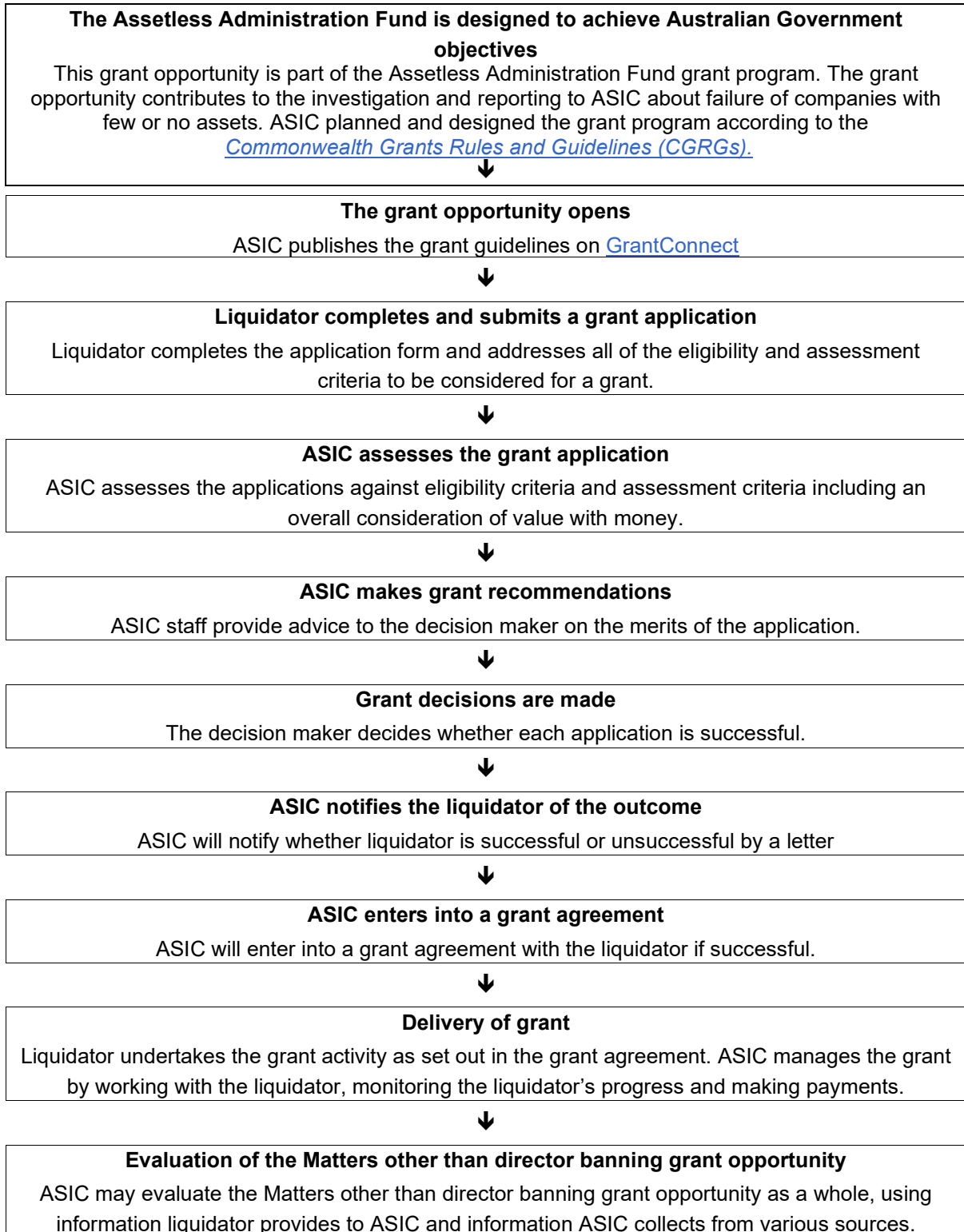
<b>Opening date:</b>	<b>23 July 2020 in continuation from existing Grant Program</b>
<b>Closing date and time:</b>	<b>On-going. Australian Securities and Investments Commission (ASIC) will announce the end of the Grant Program or Grant Opportunity</b>
<b>Commonwealth policy entity:</b>	<b>ASIC</b>
<b>Enquiries:</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: Matters other than director banning grant opportunity processes



## Introduction

- 1.1 These guidelines contain information for Matters other than Director Banning 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 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<sup>1</sup>.
- 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:

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<sup>1</sup> See information in the Asset Recovery grant opportunity guidelines

- (a) director banning report (administrative by ASIC) under the Corporations Act;
  - (b) other than director banning matters (**Other Matters grant opportunity**);
  - (c) liquidator recovery action (where a liquidator is funded to undertake legal action to recover assets);
  - (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>2</sup> (refer to GO 894 where a panel of registered liquidators has been established to accept appointments as liquidators).
- 2.7 ASIC administers AA Fund according to the [Commonwealth Grants Rules and Guidelines \(CGRGs\)](#)<sup>3</sup>.
- 2.8 These grant guidelines are for the Other Matters grant opportunity.

### About the Other Matters grant opportunity

- 2.9 The Other Matters grant opportunity provides funding to a liquidator of an assetless company to investigate and prepare a report under section 533(2) of the Corporations Act (**Supplementary Report**), where possible offences or misconduct had occurred that may warrant ASIC commencing its own investigation or taking enforcement action.
- 2.10 The intended outcome of the Other Matters grant opportunity, and together with the other types of funding under the AA Fund, is to assist ASIC to fulfil the Government/ASIC's objectives under the *Australian Securities and Investments Commission Act 2001*, including to:
- (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 Government has made the following allocation of funding to the AA Fund:

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

<sup>2</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>3</sup> <https://www.finance.gov.au/sites/default/files/2019-11/commonwealth-grants-rules-and-guidelines.pdf>

- 3.2 There is no pre-determined portion allocated to the Other Matters 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 Other Matters 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 investigation and completing the Supplementary Report under the grant agreement (see paragraphs 5.2 and 11.5 below). It will not be available to meet any remuneration and disbursements already incurred by the liquidator before the grant activity commences under the grant agreement.
- 3.5 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 the matters requiring investigation by the liquidator subject to the complexity of the matter and the work required by the liquidator. The funding approved will be determined after an assessment of the initial facts of a particular case and after consultation with the liquidator.
- 3.6 ASIC recognises that there may be instances where the liquidator does not have sufficient available information to enable a fully informed assessment to be made of the merits of a funding application. In these circumstances, ASIC may consider funding the liquidator to conduct preliminary investigations and prepare a preliminary Supplementary Report to enable ASIC to decide whether to provide further funding.

## Grant period

- 3.7 The grant agreement will set out the due date of the Supplementary Report, which in turn will be subject to various matters including the amount of investigations required, the complexity of the investigation and whether legal proceedings are involved.
- 3.8 If the liquidator requires further time to submit the Supplementary Report, the liquidator should contact ASIC in to seek an extension of time under the grant agreement.

## 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 Other Matters grant opportunity to investigate and prepare a Supplementary Report.

### 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 Other Matters grant opportunity to investigate and prepare a Supplementary Report.
- 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 investigation that they are able to undertake and report.

### Additional eligibility criteria

- 4.4 An application for funding under the Other Matters 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:
    - (i) there has been misconduct in relation to the company;
    - (ii) there is, or will be on completion of the investigation, sufficient admissible evidence to prove allegation of misconduct; and
    - (iii) the concerns raised may warrant ASIC taking legal proceedings taking into account the age and history of the relevant conduct; (see 4.8 – 4.11 below) and
  - (d) sufficient evidence is or is likely to become available (see 4.12 – 4.18 below).

### The liquidation must be 'assetless'

- 4.5 The company in liquidation must be an 'assetless' administration. For the purposes of the Other Matters 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 resources to enable a liquidator to conduct proper investigations into possible misconduct and prepare a Supplementary Report 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 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), 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 Other Matters 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 estimated 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 requirement to lodge an initial statutory report report is not dependent on whether or not a company is assetless.

### **Enforcement action by ASIC may be appropriate**

4.8 ASIC has the power to investigate and undertake enforcement action for misconduct under the Corporations Act.

4.9 ASIC will consider funding the liquidator under the Other Matters grant opportunity where circumstances may warrant court proceedings for misconduct under the Corporations Act.

4.10 The most common types of misconduct that ASIC expects to consider for funding are:

- (a) breaches of directors' and officers' duties (s180–184). Of particular interest to ASIC are breaches arising out of fraudulent or unlawful phoenix activity;
- (b) continuing to take part in the management of a company while disqualified (s206A);
- (c) failure by a director to take reasonable steps to ensure that the company maintains adequate books and records (Pts 2M.2 and 2M.3, and s344);
- (d) unauthorised exercise of powers while company under external administration (s198G);
- (e) insolvent trading (s588G);
- (f) fraud, misrepresentation or theft of property (s590);
- (g) entering into agreements or transactions to avoid employee entitlements (s596AB);
- (h) complicity by a former external administrator in a breach of duty;
- (i) falsification of books (s1307);
- (j) giving or authorising false or misleading statements in documents (s1308);
- (k) giving or authorising false or misleading information relating to the affairs of a corporation (s1309); and
- (l) misconduct relating to managed investment schemes under Chapter 5C of the Corporations Act (for example: s601FD, 601FE).

4.11 The liquidator must have formed a reasonable belief that the matter warrant ASIC undertaking enforcement action having regard to the misconduct involved. Before lodging an application, the liquidator can contact ASIC to discuss whether ASIC may consider funding further investigation and reporting.

Note 1: for the purposes of this section, ‘external administrator’ means receiver, receiver and manager, administrator, deed administrator, provisional liquidator and liquidator.

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

- 4.12 In seeking funding for further investigations, the liquidator should take into account the extent of the material they may need to gather or consider to establish their belief that an offence or other misconduct may have been committed. This must be sufficient to enable ASIC to bring enforcement action. The liquidator should be aware that this material might form evidence that will establish the offence or misconduct in subsequent legal proceedings.
- 4.13 The liquidator should be aware that the application for funding from the AA Fund and related correspondence with ASIC may be required to be disclosed in subsequent court proceedings. References to person who may be responsible for misconduct should be neutral and factually based.
- 4.14 **Annexure A** to these grant guidelines outlines the types of information and supporting documents a liquidator could consider investigating possible misconduct and reporting to ASIC in a Supplementary Report.

### Request Assistance for External Administration

- 4.15 Where a liquidator experiences difficulties in obtaining relevant information, for example, where:
- (a) the director(s) 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 deliver the books and records of the company to assist the liquidator,
- the liquidator should consider exercising their powers or seek ASIC’s assistance to compel the directors’ compliance.
- 4.16 The liquidator should seek ASIC’s assistance before making an application for a grant, and before raising allegations of non-compliance with the statutory obligation to assist the liquidator in a Supplementary Report, as it may produce further information or evidence relevant to the application for funding under the Other Matters grant guidelines or relevant to allegations of non-compliance. However, please see paragraph 4.18 below in cases where other avenues of obtaining books and records may be more appropriate.
- 4.17 To request assistance from ASIC, please go to: <https://regulatoryportal.asic.gov.au/>.
- 4.18 If the liquidator believes that:
- (a) a person has concealed, destroyed or removed books of the company or **is about to do so**, and consider that applying for a warrant under section 530C of the Corporations Act is more appropriate than seeking ASIC assistance; or
  - (b) the books of the company are more appropriately obtained via examinations under sections 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 to:

- (a) conduct additional investigation, and
- (b) prepare and provide to ASIC a Supplementary Report.

The additional investigation and Supplementary Report should aim at helping ASIC decide whether to commence its own investigation or enforcement action.

5.2 The investigations that the liquidator is funded to carry out may include undertaking examinations of relevant persons under sections 596A and/or 596B, applying for a warrant under section 530C and assisting with the preservation of books and records for ASIC investigations.

### Eligible expenditure

5.3 The grant can only be used for remuneration and actual disbursement that are reasonably incurred after the commencement of the grant activity, and directly related to the additional investigation and preparation of the Supplementary Report.

### 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 Other Matters grant guideline;
- (c) any work related to seeking further funding from ASIC under this grant;
- (d) any work related to seeking further time to submit the Supplementary Report;
- (e) other work performed by the liquidator relating to conducting 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

### Assessment criteria

6.1 The assessment criteria for ASIC's decision on whether to fund a liquidator to conduct investigations and prepare a Supplementary Report are set out in Table 1 below.

**Table 1**

<p><b>Strategic significance</b></p>	<p>ASIC assesses the seriousness of the matter, particularly its market impact. ASIC also examines the consequences of the misconduct, and of providing funding to the liquidator, for creditors and others. For instance, ASIC considers the amount of the detriment, including the number and value of creditors impacted; and whether the outcome will contribute to the Government's/ASIC's objectives under the ASIC Act, for example, by preventing fraud, reducing the scope for illegal phoenix activity, and improving corporate conduct generally.</p> <p>ASIC will have regard to its strategic priorities published on ASIC's website at the time of the assessment.</p>
<p><b>Benefits of pursuing misconduct</b></p>	<p>ASIC considers whether:</p> <ul style="list-style-type: none"> <li>• the misconduct suspected or alleged by the liquidator is widespread or part of a growing trend;</li> <li>• funding an action by the liquidator will send an appropriate message to the market; or</li> <li>• an alternative course of action is more appropriate.</li> </ul>
<p><b>Issues specific to the case</b></p>	<p>A variety of factors can influence a decision about whether to fund a matter from the AA Fund, and these will vary according to circumstances. They include:</p> <ul style="list-style-type: none"> <li>• the seriousness of the misconduct;</li> <li>• the time that has lapsed since the misconduct occurred;</li> <li>• whether it was an isolated instance of misconduct or whether it is continuing; and</li> <li>• whether the liquidator has admissible evidence to prove allegations of misconduct, or whether such evidence is known to be available and is likely to be obtained.</li> </ul>
<p><b>Alternatives available</b></p>	<p>ASIC is unlikely to fund matters where other enforcement or regulatory outcomes might appropriately address the concerns. ASIC will have regard to its policy set out in ASIC Information Sheet 151 <i>ASIC's approach to enforcement</i> when assessing the application.</p> <p>This may include a possible class action (though not a possible ASIC representative action) or the availability of litigation funding.</p> <p>In some cases there may be an alternative, and more appropriate, source of ASIC assistance available—for example, the Request Assistance for External Administration, which can help liquidators to obtain information compulsorily from directors or officers.</p>

6.2 ASIC will consider each application on a case-by-case basis, consistently with ASIC's general approach to selecting matters for formal investigation and enforcement.

6.3 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 Other Matters. Therefore, an application that meets the eligibility and assessment criteria may still be refused.

## 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>4</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:
- (a) use the online application form on <https://regulatoryportal.asic.gov.au/>; ;
  - (b) provide the information and documents requested in the online application form; and
  - (c) submit the application on <https://regulatoryportal.asic.gov.au/>.

## 8. The grant selection process

### Assessment of grant applications

- 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 Other Matters 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 his/her 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 write to the liquidator detailing those aspects of the investigation ASIC is interested in pursuing, and 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.

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<sup>4</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

## 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>5</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>6</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 the 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 this decision in writing. ASIC 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 staff member assessing the 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 dissatisfied with the outcome of ASIC's decision about the funding application, the liquidator can request ASIC to review the decision. The liquidator should

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<sup>5</sup> ASIC will nominate a senior ASIC staff for each grant approval based on the level of financial delegation required to approve the funding. For the Other Matters Grant Opportunity, the staff member approving the grant can be a Senior Manager, the Senior Executive Leader for the Insolvency Practitioners Stakeholder Team, the Executive Director Markets or a Commissioner subject to the level of funding to be approved.

<sup>6</sup> See above.

submit a written request for Review within 28 calendar days of the date of ASIC notification of the decision. If the liquidator 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 their complaint, they may complain to the [Commonwealth Ombudsman](#). The Ombudsman will not usually look into a complaint unless the matter has first been raised directly with the ASIC.

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 Other Matters grant opportunity is attached as **Annexure B**.

### Grant agreement variations

- 11.3 The grant agreement sets out circumstances where the liquidator can request further funding or further time to submit the Supplementary Report. 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 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, at such times and to the person specified in the grant agreement, a correctly rendered tax invoice(s) and detailed fee account(s) for the agreed investigation and the Supplementary Report.
- 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 employee (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 liquidator must pay all grant monies received 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'.

11.10 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.

11.11 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 within 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 ASIC 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 investigate and prepare the Supplementary Report.

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 ASIC may request progress report(s) or ad hoc report(s) on the grant expenditure or the liquidator's progress towards completion of the investigation or the Supplementary Report. The liquidator must discuss any delays or difficulty in completing the investigation and report.



## Record keeping

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

## Evaluation

13.5 From time to time, ASIC may evaluate the Other Matters grant to:

- (a) review the asset level specified in **Item 1 of the Schedule**;
- (b) review the quality of the Supplementary Reports received, including what information is included, and if further information is needed to assist ASIC to use the Supplementary Reports; 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 the Supplementary Report 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, the Supplementary Report template and the application form.

## 14. Supplementary Report

### Lodgement

- 14.1 The liquidator should only start their investigation and preparation of the Supplementary Report after they receive the fully signed grant agreement from ASIC. ASIC officers will discuss with the liquidator any issues involved in preparing the report.
- 14.2 Liquidators should contact ASIC as soon as possible if they are unable to lodge the report within the agreed time under the grant agreement.
- 14.3 For ASIC to bring proceedings in relation to possible offences or other misconduct, there must be sufficient evidence that is both credible and relevant to establish the offence or misconduct to the standard required for either civil or criminal proceedings.
- 14.4 To streamline the preparation of these Supplementary Reports and ensure they are of a suitable standard, the liquidators must lodge the Supplementary Reports via the ASIC Regulatory Portal unless agreed with ASIC to lodge differently.
- 14.5 The liquidator should also be aware that, if ASIC commences proceedings arising from allegations made in the Supplementary Reports, the subject matter of that report may be used to form the basis of an affidavit from the liquidator and that the liquidator may be called to attend court as a witness. Accordingly, the liquidator should ensure that any material relied on in the report to support an allegation is credible and relevant.

### Progress report

14.6 Under the terms of the grant agreement, the liquidator may be required to provide regular status reports (either orally or in writing) to ASIC concerning their investigation and progress in completing the Supplementary Report. The liquidator may also be required to meet with ASIC from time to time to discuss the progress of the matter.

## Disclosure

- 14.7 Supplementary Reports attract qualified privilege in accordance with s535: see s89 of the Corporations Act. Supplementary Reports are not public documents and are confidential: see s1274(2) of the Corporations Act.
- 14.8 If ASIC commences proceedings in relation to any of the matters alleged in the Supplementary Report, the report may be discoverable in those proceedings or ASIC may be required to produce it under a subpoena or other court process.

## 15. Post report assistance

- 15.1 ASIC anticipates that there may be a requirement for further information and assistance from a liquidator after the funded Supplementary Report has been lodged.
- 15.2 After receiving the Supplementary Report, ASIC will assess the evidence and determine what further action, if any, ASIC will take.
- 15.3 If ASIC commences enforcement action after receiving the funded supplementary s533 report, the liquidator may be asked to prepare an affidavit or sworn statement in support of those proceedings. The liquidator may also be required to attend the court proceedings to give evidence relating to the content of their affidavit or sworn statement.
- 15.4 If ASIC requires a liquidator to undertake additional work in relation to criminal proceedings, then any further payment to the liquidator will need the prior approval of the Commonwealth Director of Public Prosecutions (which may be withheld). Liquidators should note that ordinarily witnesses of fact cannot be paid for the purposes of giving evidence. Otherwise, and in relation to civil proceedings, any payments (including any disbursements directly relevant to undertaking the additional work) will be based on the same hourly rates as those agreed in the original grant agreement or as expressly agreed in writing with ASIC.
- 15.5 The grant agreement will outline the process to be followed where ASIC requires further work from the liquidator.

## 16. Probity

- 16.1 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](#).
- 16.2 ASIC may change these guidelines from time-to-time. When this happens, ASIC will cause the revised guidelines to be published on GrantConnect.

## 17. Other matters

### Conflicts of interest

- 17.1 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

- 17.2 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.
- 17.3 Each Other Matters 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/>.
- 17.4 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.
- 17.5 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.
- 17.6 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.
- 17.7 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,
- 17.8 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

- 17.9 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).

17.10 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.

17.11 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 the Supplementary Report**

17.12 The grant agreement sets out confidentiality obligations on the liquidator and ASIC in relation to the grant agreement and the Supplementary Report.

### **Freedom of information**

17.13 All documents in the possession of the Government, including those about this grant opportunity, are subject to the [Freedom of Information Act 1982](#) (**FOI Act**).

17.14 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.

17.15 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)

## 18. Glossary

Term	Definition
assessment criteria	are the specified principles or standards, against which applications will be assessed. 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 <a href="#"><u>CGRGs</u></a> , a 'grant' is an arrangement for the provision of financial assistance by the Commonwealth or on behalf of the Commonwealth: <ol style="list-style-type: none"> <li>a. under which relevant money<sup>7</sup> or <a href="#"><u>other Consolidated Revenue Fund (CRF) money</u></a><sup>8</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> </ol>
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

<sup>7</sup> Relevant money is defined in the PGPA Act. See section 8, Dictionary.

<sup>8</sup> Other CRF money is defined in the PGPA Act. See section 105, Rules in relation to other CRF money.

Term	Definition
<a href="#">GrantConnect</a>	is the Government's whole-of-government grants information system, which centralises the publication and reporting of Commonwealth grants in accordance with the <a href="#">CGRGs</a>
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;</li> <li>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