



ASIC
Australian Securities &
Investments Commission

Grant Program: Assetless Administration Fund Grant Opportunity: Director Banning Grant

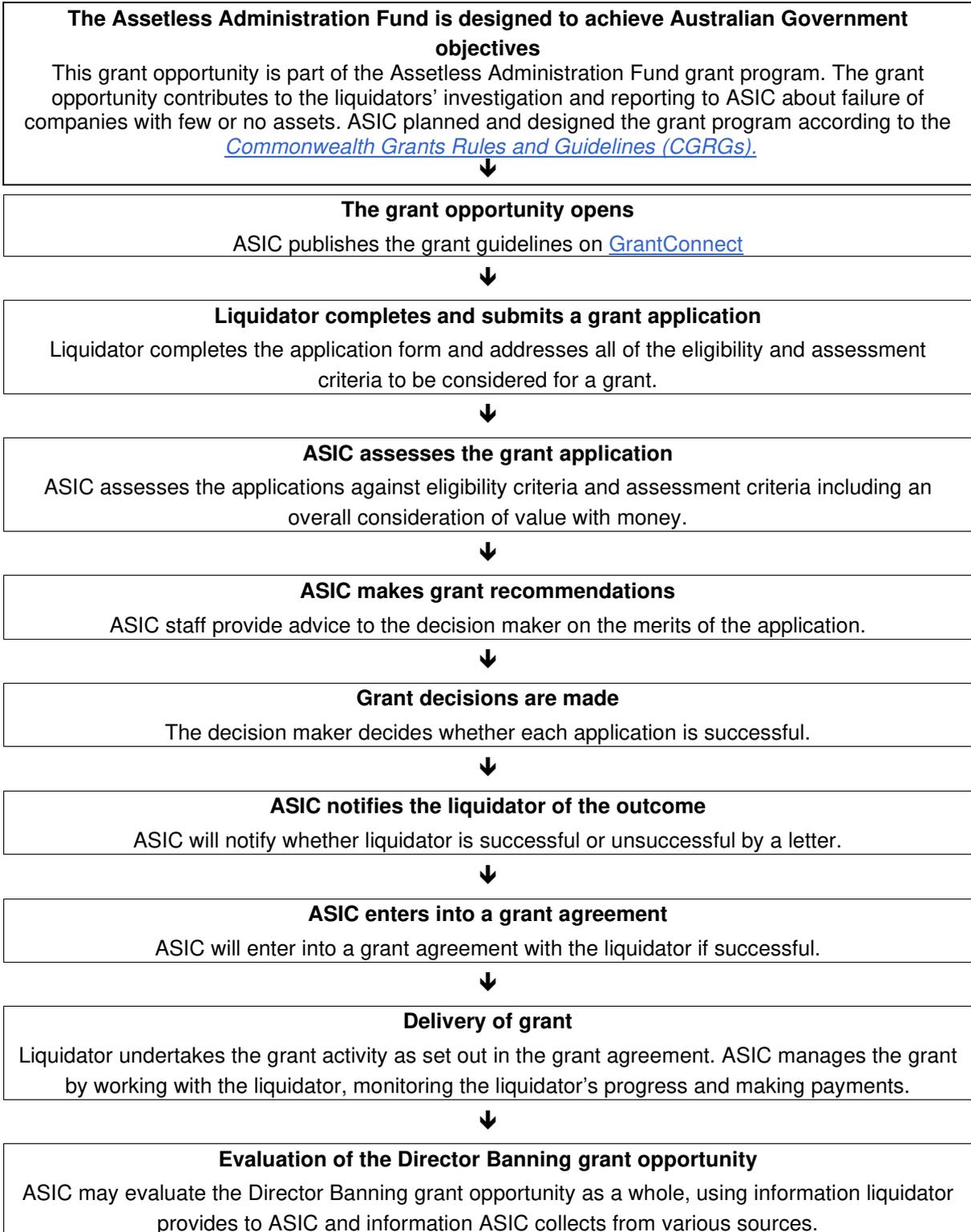
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|------------------------------------|---|
| Opening date: | 23 July 2020 in continuation from existing Grant Program |
| Closing date and time: | On-going. Australian Securities and Investments Commission (ASIC) will announce the end of the Grant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

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1. Assetless Administration Fund: Director Banning grant opportunity processes



Introduction

- 1.1 These guidelines contain information for 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.¹
- 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.

¹ See information in the Asset Recovery grant opportunity guidelines.

- 2.6 The AA Fund currently funds the following types of activities:
- (a) director banning report (administrative by ASIC) under the Corporations Act (**Director Banning**);
 - (b) other than Director Banning matters;
 - (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 Act² (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**)³.
- 2.8 These grant guidelines are for the Director Banning grant opportunity.

About the Director Banning grant opportunity

- 2.9 The Director Banning 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**), primarily to assist ASIC to determine whether to disqualify a person from managing corporations under section 206F or 206GAA of the Corporations Act.
- 2.10 The intended outcome of the Director Banning grant opportunity, 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* (**ASIC Act**), 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) |
|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| | | | | |

² 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*.

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

| | | | | |
|-------|-------|-------|-------|-------|
| 7,083 | 7,118 | 7,158 | 4,691 | 4,723 |
|-------|-------|-------|-------|-------|

- 3.2 There is no pre-determined portion allocated to the Director Banning 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 Director Banning 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 the investigations and completing the Supplementary Report. It will not be available for remuneration and disbursements already incurred by the liquidator before the grant activity commences under the grant agreement.
- 3.5 It is expected that most liquidator investigations and reports for Director Banning grants will be funded up to a capped total amount specified in **Item 1 of the Schedule**, for both disbursements and remuneration charged on an hourly basis.
- 3.6 If a liquidator considers that the cost of the work to be carried out, including disbursements, will be greater than the amount specified in **Item 1 of the Schedule**, this should be stated in the application form and ASIC will contact the liquidator to discuss the estimated cost.

Grant period

- 3.7 The grant agreement will set out the due date of the Supplementary Report. Generally, the liquidator is given six weeks to conduct investigations and prepare the Supplementary Report.
- 3.8 If the liquidator requires further time to submit the Supplementary Report, the liquidator should contact ASIC 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 Director Banning 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 Director Banning 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 their 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 Director Banning 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) elements of sections 206F or 206GAA of the Corporations Act are met (see 4.8 - 4.9 below); and
 - (d) sufficient evidence is or is likely to become available (see 4.10 - 4.15 below).

The liquidation must be ‘assetless’

- 4.5 The company in liquidation must be an ‘assetless’ administration. For the purposes of the Director Banning grant opportunity within the AA Fund:
- (a) an ‘assetless’ administration is a liquidation where there is less than the amount specified in **Item 2 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 Director Banning 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 statutory requirement to lodge an initial statutory report is not dependent on whether or not a company is assetless.

Elements of sections 206F or 206GAA are met

4.8 ASIC has the power to disqualify a person from managing corporations for up to five years under sections 206F or 206GAA of the Corporations Act.

4.9 Sections 206F or 206GAA disqualification proceeding may be appropriate where:

- (a) the liquidator reasonably believes that the person meets the requirements of s206F(1)(a) or s206GAA(2), including that the person has been an officer (including shadow and de facto officer pursuant to the 'officer' definition under section 9 of the Corporations Act) (**director**) for one or more other companies that have gone into liquidation within the last seven years; and
- (b) a liquidator is still appointed to at least one of the companies with which the director has been involved; and
- (c) the liquidator reasonably believes that their concerns may warrant ASIC taking disqualification action under s206F or s206GAA.

Sufficient evidence is, or is likely to be, available

4.10 The liquidator must reasonably believe there is or there will be sufficient evidence, information or material to support their concerns about the director's conduct, taking into account the matters set out at s206F(2)(b) or s206GAA(2)(b)-(d) and s206GAA(4)(b) of the Corporations Act.

4.11 The administrative hearing conducted under s206F or s206GAA should not be equated to a civil, criminal or quasi-judicial process. In conducting the hearing, ASIC is performing an administrative function. ASIC is not bound by the rules of evidence and the traditional rules of procedure of courts or quasi-judicial bodies do not apply: see s59(2) of the ASIC Act.

4.12 A section 206F or section 206GAA hearing is a critical part of ASIC's decision-making process. The hearing is used both in finding the facts about a matter and in considering the significance of those facts to the law.

4.13 While the rules of evidence do not apply, adverse findings ASIC makes must be based on logically probative material. This means that the available information or material must:

- (a) be relevant;
- (b) logically tend to prove or disprove the matters that we must determine; and
- (c) be probative (i.e. have sufficient weight and cogency to be relied on).

- 4.14 For more information on the conduct of administrative hearings, see ASIC Regulatory Guide 8 Hearings practice manual (RG 8) at <https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-8-hearings-practice-manual/>.
- 4.15 **Annexure A** to these grant guidelines outlines the types of information and supporting documents a liquidator may consider when investigating possible misconduct and reporting to ASIC in a Supplementary Report.

Request Assistance for External Administration

- 4.16 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 fails 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' or third party compliance.

- 4.17 The liquidator should seek ASIC's assistance before applying for a grant, and before raising allegations of non-compliance with the statutory obligation to assist the liquidator in an application.
- 4.18 To request assistance from ASIC, please go to: <https://regulatoryportal.asic.gov.au/>.

Locating the director

- 4.19 The liquidator must provide the most current information about:

- (a) the last known, current, and/or alternative addresses where the director may be located; and
- (b) any information the liquidator has that suggests the director has since become uncontactable,

to enable ASIC to provide the director with the requisite notices of an intention to disqualify under sections 206F(1)(b)(i) and 206GAA(1)(b)(i), and of the disqualification decision under sections 206F(3) and 206GAA(6).

5. What the grant money can be used for

Eligible grant activities

- 5.1 The grant money may be used to pay the liquidator to:

- (a) conduct additional investigations; and
- (b) prepare and provide to ASIC a Supplementary Report.

The additional investigations and Supplementary Report should aim at helping ASIC decide whether to disqualify an individual from managing corporations (for up to five years under sections 206F or 206GAA of the Corporations Act) and/or to undertake any other appropriate enforcement action.

Eligible expenditure

5.2 The grant up to the amount specified in **Item 1 of the Schedule** (or a greater amount if it is negotiated between ASIC and the liquidator) 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 additional investigations and preparation of the Supplementary Report.

What the grant money cannot be used for

5.3 The grant cannot be used for:

- (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 Director Banning 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;
- (e) other work performed by the liquidator relating to the liquidation of the company; and
- (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 under the Director Banning grant opportunity are set out in Table 1 below.

Table 1

| | |
|--|--|
| Strategic significance | 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: <ul style="list-style-type: none">• the amount of detriment, including the number and value of creditors impacted; and• whether the outcome will contribute to the Government/ASIC's objectives under the ASIC Act, for example, improving corporate conduct generally. |
| Benefits of pursuing misconduct | ASIC considers whether: <ul style="list-style-type: none">• the alleged misconduct is widespread or part of a growing trend,• funding the liquidator will result in a public outcome and send an appropriate message to the market, or• an alternative course of action is more appropriate. |

Issues specific to the case

A variety of factors can influence a decision about whether to approve a Director Banning grant from the AA Fund, and these will vary according to circumstances.

They include:

- the seriousness of the alleged misconduct;
- the time that has lapsed since the alleged misconduct occurred;
- issues specific to the director. For example, whether the director:
 - is in the country or cannot be located or in jail;
 - is an undischarged bankrupt;
 - holds current directorships;
- 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;
- whether other government departments or agencies are taking criminal action against the director.

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. 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 addenda⁴ 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 as required 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 the Director Banning grant. Each application is considered on its merits, based on:

- (a) how it meets the assessment criteria; and

⁴ 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

- (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 (if the liquidator has indicated in the application form that the capped amount specified at **Item 1 of the Schedule** is insufficient).

Who will assess applications?

- 8.5 An ASIC staff member will assess each application on its merits against the eligibility and assessment criteria, and make a recommendation regarding whether to award a grant to the applicant.

Who will approve grants?

- 8.6 A senior ASIC staff who holds the necessary financial delegation to approve the level of funding to be provided, usually a Specialist Team Leader or Senior Manager, will decide whether to approve an application for a grant.
- 8.7 The decision is final in all matters.

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.

10. Enquiries, feedback and complaint

- 10.1 The liquidator should contact the relevant ASIC staff member assessing the application (or ASIC's Customer Contact Centre on 1300 300 630) regarding:
- (a) the assessment process and timeframe (contact ASIC's Customer Contact Centre);
 - (b) the reasons for not approving the application, if relevant, after receiving the decision from ASIC; 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 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 the application.

- 10.3 If, after the review, the liquidator remains dissatisfied with the decision, they 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, 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 ASIC.

The Commonwealth Ombudsman can be contacted on:

Phone (Toll free): 1300 362 072

Email: ombudsman@ombudsman.gov.au

Website: 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 Director Banning 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 will consider the request based on the terms and conditions in the grant agreement and the likely impact on achieving outcomes.

How ASIC pays the grant

- 11.5 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.
- 11.6 The grant agreement sets out the requirements the liquidator must comply with to receive 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.
- 11.7 A detailed fee account under the grant agreement 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.

11.8 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'.

11.9 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.

11.10 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 Director Banning grant to:
- (a) review the general funding amount specified in **Item 1 of the Schedule**;
 - (b) review the asset level specified in **Item 2 of the Schedule**;
 - (c) 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
 - (d) 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 liquidators 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 are also available to discuss with the liquidator any issues involved in the preparation of the report.
- 14.2 The liquidator 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 To streamline the preparation of these Supplementary Reports and ensure they are of a suitable standard, the liquidator must lodge the Supplementary Reports via the ASIC Regulatory Portal unless agreed with ASIC to lodge differently.
- 14.4 The liquidator should prepare their Supplementary Reports with a view to providing logically probative material to ASIC. When conducting administrative hearings, ASIC can only base adverse findings on such material.
- 14.5 The Supplementary Report must focus on matters that illustrate the person's conduct in relation to the management, business or property of a corporation: see s206F(2)(b)(i) or s206GAA(2) and s206GAA(4).

Disclosure

- 14.6 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.
- 14.7 As part of any s206F or s206GAA disqualification proceedings, ASIC gives the director the opportunity to have access to those documents that are relied upon by ASIC. To meet the requirements of procedural fairness, it will usually be necessary for ASIC to provide the s533 report(s) (including the Supplementary Report) to the director.
- 14.8 ASIC gives access to the s533 reports on the condition that they only be used for the purposes of the preparation for, and conduct of, the s206F or s206GAA hearing and that the reports cannot be copied or disclosed to a third party without ASIC's written consent.

15. Post lodgement assistance

- 15.1 ASIC anticipates that, in most cases, ASIC will require no information or assistance from a liquidator, other than the Supplementary Report.
- 15.2 Occasionally, ASIC may require a liquidator to attend a s206F or s206GAA disqualification hearing to give evidence relating to the content of their report. Should the director appeal the ASIC Delegate's decision, it is possible that a liquidator may be required to attend that hearing. The usual avenue for appeal is to the Administrative Appeals Tribunal.
- 15.3 In the unlikely event that ASIC requires a liquidator to undertake additional work (other than attending the disqualification or appeal hearing), ASIC may negotiate with the liquidator an amount to be paid for this work based on the same hourly rates as those agreed in the original grant agreement or other rates as expressly agreed with ASIC at the time the additional work is required..

16. Probity

- 16.1 The Government will make sure 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 Director Banning 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 Australian 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

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. |
| Commonwealth Grants Rules and Guidelines (CGRGs) | 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: <ol style="list-style-type: none"> a. under which relevant money⁵ or other Consolidated Revenue Fund (CRF) money⁶ is to be paid to a grantee other than the Commonwealth; and b. which is intended to help address one or more of the Government's policy outcomes while assisting the grantee achieve its objectives. |
| 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) ⁵ Relevant money is defined in the PGPA Act. See section 8, Dictionary.

(b) ⁶ Other CRF money is defined in the PGPA Act. See section 105, Rules in relation to other CRF money.

| Term | Definition |
|------------------------------|--|
| GrantConnect | is the Government's whole-of-government grants information system, which centralises the publication and reporting of Commonwealth grants in accordance with the CGRGs |
| 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"> • the quality of the project proposal and activities; • fitness for purpose of the proposal in contributing to government objectives; • that the absence of a grant is likely to prevent the grantee and government's outcomes being achieved; and • the potential grantee's relevant experience and performance history. |

Schedule

| Item | Description | Amount |
|---------------|---|-----------------------------|
| Item 1 | Capped total amount for Director Banning grant opportunity (see paragraph 3.5) | \$10,500 (exclusive of GST) |
| Item 2 | ' <i>net realisable asset</i> ' threshold for assetless administration (see paragraph 4.5). | \$10,000 |