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Australian Government

Department of Home Affairs

Submission

For decision

PDMS Ref. Number: MS23-001856

Date of Clearance: 3/11/2023

To Minister for Immigration, Citizenship and Multicultural Affairs

Subject Compensation for Detriment caused by Defective Administration (CDDA) – s. 47F(1)

Timing At your convenience

Recommendations

That you:

1. **approve** compensation in the amount of s. 47F(1) (AUD) under the Scheme for Compensation for Detriment caused by Defective Administration (CDDA Scheme) on the basis that the Department's defective administration caused detriment to the Applicant; compensation approved / compensation not approved / please discuss
2. **do not approve** compensation for s. 47F(1) (AUD), as this component of the claim is not compensable under the CDDA Scheme; and compensation not approved / Compensation approved / please discuss
3. **sign** the attached Decision Record (**Attachment B**) so that the Applicant may have an adequate explanation of the reasons for your decision (once made) as specified in paragraph 78 of the CDDA guidelines. signed / not signed / please discuss

Minister for Immigration, Citizenship and Multicultural Affairs

Signature.....

Date: 4/1/2023

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Minister's Comments

Purpose

Authority to consider CDDA claims

1. The CDDA Scheme as set out under the CDDA guidelines, issued by the Department of Finance in *Resource Management Guide No. 409*, operates on the basis of the authority provided to individual portfolio ministers under the executive power of sections 61 and 64 of the Constitution.
2. The CDDA Scheme enables Commonwealth agencies to compensate persons who have been adversely affected by defective actions or inactions of such agencies, where the Applicant has no other avenue to seek redress. A payment of compensation is made where it is fair and reasonable in the circumstances, rather than where there is a legal obligation on the part of the Commonwealth to pay the Applicant.
3. On 23 August 2022, the Hon Clare O'Neil MP, Minister of Home Affairs, signed an Instrument of Authorisation (see **Attachment A**) authorising a range of Departmental officers to exercise, for and on her behalf, the authority to approve payments for compensation under the CDDA Scheme, subject to specific monetary limits (ADMIN22/084).

4.

s. 47E(d)

5. We seek your decision on whether to pay the Applicant compensation under the CDDA Scheme.

The claim

6. It is claimed that the Department of Home Affairs (the Department) Visa Entitlement Verification Online (VEVO) system incorrectly displayed that the Applicant did not hold a visa to travel to Australia. As a result, the Applicant was refused boarding of s. 47F(1) flight and s. 47F(1) remained five nights in s. 47F(1). The Applicant is seeking compensation for rebooking s. 47F(1) flights, five nights' accommodation and "associated expenses" totalling s. 47F(1). The Applicant has only provided receipts for the replacement flights totalling s. 47F(1).
7. The Applicant is represented by s. 47F(1) in this matter.

Summary and Recommendation

8.

S. 47C(1)

The CDDA Scheme

9. Pursuant to the CDDA guidelines, defective administration can arise where there was:

- a specific and unreasonable lapse in complying with existing administrative procedures that would normally have applied to the Applicant's circumstances; or
- an unreasonable failure to institute appropriate administrative procedures to cover an Applicant's circumstances; or
- advice given that was, in all the circumstances, incorrect or ambiguous; or
- an unreasonable failure to give to (or for) an Applicant, the proper advice that was within the official's power and knowledge to give (or reasonably capable of being obtained by the official to give).

10. Under the CDDA guidelines, any detriment found to have been suffered by an Applicant must have arisen as a direct result of defective administration. "Detriment" is considered to be the amount of quantifiable financial loss, including opportunity costs, that an Applicant can demonstrate was suffered despite having taken reasonable steps to minimise or contain the loss. If, for some reason, it is impractical for an Applicant to demonstrate all or part of the quantifiable financial loss, you may still find that a reasonable amount of compensation is payable taking into account all the relevant circumstances.

Background

The Facts

S. 47F(1)

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S. 47F(1)

Was the defective administration?

19. We confirm the Applicant was the holder of a valid SHEV and was authorised to travel. The lodgement of a subsequent SHEV application should not have caused the application to be recorded as invalid or cease the on hand SHEV application. s. 47C(1)

Detriment

20. The Applicant was required to stay in s. 47F(1) until s. 47F(1) visa status was resolved with s. 47F(1) SHEV being re-instated and flights to return to Australia becoming available. The overarching principle of the CDDA Scheme to be applied in determining an appropriate level of compensation for an Applicant is to restore them to the financial position they would have been in, had the defective administration not occurred.

21. The CDDA guidelines provide that 'detriment' is considered as the amount of quantifiable loss that an Applicant can demonstrate they have suffered. s. 47C(1)

22. The Applicant is seeking for compensation of a combined quantum of s. 47F(1) for rebooking s. 47F(1) flight, five days of accommodation and 'associated expenses'. The Applicant has provided evidence for costs s. 47F(1) incurred for s. 47F(1) flights s. 47F(1). However, after the Department sending emails on s. 47F(1) requesting evidence of s. 47F(1) accommodation and associated expenses, the Applicant has not provided any documentary evidence of these costs. The Applicant has indicated that s. 47F(1) is unable to produce evidence of the claimed accommodation and associated costs.

Flights

23. s. 47C(1) These cost have been substantiated by the Applicant.

Accommodation

24. The Applicant is seeking compensation for five nights' accommodation in s. 47F(1). s. 47C(1)

25. Research on the internet shows, on average, four star accommodation in s. 47F(1) is \$124 per night. s. 47C(1)

Other expenses

26. s. 47C(1)

Conclusion

27. s. 47C(1)

Consultation – internal/external

28. The Humanitarian Program Operations Branch, has been consulted in relation to this claim

**Consultation – Acting Secretary / Acting Deputy Secretary Immigration /
ABF Commissioner**

29. The Acting Secretary was not consulted on this submission.
30. The Acting Deputy Secretary Immigration was not consulted on this submission.
31. The ABF Commissioner was not consulted on this submission.

Client service implications

32. From Visa and Travel Business Systems Support's (VTBSS) perspective, when the SHEV was implemented in Departmental systems, it did not consider the scenario of a client lodging multiple applications. Investigation were undertaken into the system settings that caused the visa to cease incorrectly, and appropriate changes in system rules are being undertaken. However, addressing the multiple application issue is complicated with some major technical challenges that will take some time to be resolved.

33. s. 47E(d)

Risks and Sensitivities

34. This claim for compensation under the CDDA Scheme engages the sensitivity protocol, which requires Ministerial approval for the amount of compensation to be paid.
35. We do not consider there to be any immediate risks or further sensitivities at this stage.

Financial/systems/legal/deregulation/media implications

36. The outcome of this claim is not expected to have Financial, systems, legal, deregulation or media implications.

Attachments

Attachment A Signed an Instrument of Authorisation

Attachment B Decision Record

Authorising Officer Cleared by: Clare Sharp General Manager Legal Group Date: 3 November 2023 Mob: S. 22(1)(a)(ii)
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Contact Officer Alicia Wright, Position, Deputy General Counsel/Assistant Secretary, Legal Strategy and Services
Branch, Ph: **S. 22(1)(a)(ii)**
CC Acting Secretary
ABF Commissioner

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Australian Government
Department of Home Affairs

Submission

For decision

PDMS Ref. Number: MS22-001162

Date of Clearance: 08/07/2022

To Minister for Home Affairs
 Minister for Cyber Security

Subject Authorisation of officers to decide applications under the Scheme for Compensation for Detriment caused by Defective Administration (CDDA)

Timing At your convenience.

Recommendations

That you:

1. authorise those officials listed in the Instrument of Authorisation (ADMIN 22/084) at **Attachment A** to consider and decide applications made under the CDDA Scheme up to the amount specified in the instrument by signing said instrument; and
2. note the sensitivity protocol at paragraph 16 which sets out the categories of applications made under the CDDA Scheme which will be raised with your office.

agreed / not agreed

noted / please discuss

Minister for Home Affairs
 Minister for Cyber Security

Signature.....

Date: 27/7/2022

RECEIVED

14 JUL 2022

Minister for Home Affairs

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Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance ☐ Highly relevant ☐ Significantly relevant ☐ Not relevant	Length ☐ Too long ☐ Right length ☐ Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Background

CDDA Scheme

1. The CDDA Scheme enables Commonwealth agencies to compensate persons who have been adversely affected by defective actions or inactions of such agencies, where the applicant has no other avenue to seek redress. A payment of compensation is made where it is fair and reasonable in the circumstances. Payments cannot be made under the CDDA Scheme where there is a legal obligation on the part of the Commonwealth to pay the applicant as applications of this kind must be managed in accordance with the *Legal Services Directions* (LSDs).
2. The CDDA Scheme was established on 23 October 1995 and operates on the basis of the authority provided to individual portfolio Ministers under the executive power of Sections 61 and 64 of the Constitution.
3. Portfolio ministers decide applications made under the CDDA Scheme. A portfolio minister may authorise an official in a portfolio entity to consider and decide applications made under the CDDA Scheme. Within Home Affairs, applications are managed in Legal Group, and more specifically, within a branch that reports to Deputy General Counsel.
4. The former Minister for Home Affairs, the Hon Karen Andrews MP, signed an Instrument of Authorisation on 18 May 2021 (ADMIN 21-044) authorising officers of the Department of Home Affairs (the Department) to decide applications under the CDDA Scheme.
5. This instrument expired on 23 May 2022 when the Hon Anthony Albanese MP was sworn in as the 31st Prime Minister of Australia. With your appointment as the Minister for Home Affairs, you are currently the only public office holder who can make decisions on CDDA applications raised against the Department.

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6. In order to redistribute CDDA decisions within the Department, you may authorise officials within the Legal Group to consider and decide applications made under the CDDA Scheme. However, your authority must be conferred expressly by an Instrument of Authorisation (Attachment A).
7. Where a decision-maker is a person other than yourself, the decision-maker acts for and on behalf of you, that is, the decision-maker is an agent of the minister and not a delegate.
8. The appropriate level of authorisation is based on the application amount, not the amount found compensable under the CDDA Scheme. The authorisation required to make a decision not to pay compensation is the same as required to make a decision to pay compensation.
9. Decision-makers must consider an application under the CDDA Scheme in accordance with the Department of Finance *Scheme for Compensation Caused by Defective Administration - Resource Management Guide 409* to either approve or not approve payment of an application.
10. Decisions may be subject to external review, including for example the Commonwealth Ombudsman and more recently, judicial review (*Sil v Commonwealth* SAD155/2021) although this is novel and Counsel Advice is that it has limited prospects of success.

CDDA applications within Home Affairs

11. In the financial year 1 July 2020 to 30 June 2021, 106 CDDA applications were received. There was a noticeable reduction in applications received during this period due to the pandemic, specifically as a result of the closure of Australia's borders to a majority of travellers. It is expected that the number of applications received will increase as travelling returns to pre-pandemic levels.

12. s. 47E(d)

13. The table below shows the:

- sum of compensation claimed;
- number of compensation applications paid; and
- sum of compensation paid by the Department under the CDDA Scheme over the past five financial years.

14. You will see that when a decision is made to compensate under the CDDA Scheme, it is usually significantly less than what has been claimed.
15. The Department regularly reviews claims to see if they highlight recurring problems that need to be addressed. Most claims relate to one-off instances of defective administration (actual or perceived) with the exception of:

s. 47E(d)

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CDDA compensation payments financial year 2018-21:

Historical compensation claimed and paid in AUD under the CDDA Scheme by financial year				
EFY	2018	2019	2020	2021
Sum of compensation claimed	6,120,2787	4,414,339	6,093,222	6,479,718
Number of applications paid	90	48	82	35
Sum of compensation paid	372,918	103,774	176,589	111,306

Sensitivity protocol

s. 47E(d)

Consultation – internal/external

19. Nil consultation required.

Consultation – Secretary

20. The Secretary was not consulted on the Instrument of Authorisation at Attachment A.

Client service implications

21. Your authorisation will enable decision makers within Legal Group to make timely decisions on claims for compensation under the Scheme.

Sensitivities

22. Nil sensitivities.

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Financial/systems/legislation/deregulation/media implications

23. The authorisations are not expected to have any financial, systems, legislative, deregulation or media implications.

Attachments

Attachment A Instrument of Authorisation (ADMIN 22/084)

Authorising Officer
Cleared by: Pip de Veau General Counsel/Group Manager Legal Legal Group Date: 08/07/ 2022 Phone: s. 22(1)(a)(ii)

Contact Officer Alicia Wright, Deputy General Counsel/Assistant Secretary, Legal Strategy and Services Branch,
Ph: s. 22(1)(a)(ii)

Through

CC Secretary
ABF Commissioner

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ADMIN 22/084

Compensation for detriment caused by defective administration (Home Affairs) Authorisation 2022

I, Clare O'Neil, Minister for Home Affairs:

- (a) authorise each officer mentioned in the following table to approve payments, up to and including the monetary limit mentioned in the table for the officer, for compensation for detriment caused by defective administration in accordance with the *Scheme for Compensation for Detriment caused by Defective Administration* (Resource Management Guide 409); and

Note Terms used in the table are used consistently with the *Public Service Classification Rules 2000*.

Item	Position	Monetary limit
1	Secretary	Unlimited
2	Senior Executive Band 3, Chief Operating Officer	Unlimited
3	Senior Executive Band 2, Legal	Unlimited
4	Senior Executive Band 1, Legal Strategy and Services Branch	\$200,000
5	Executive Level 2, Legal Strategy and Services Branch	\$30,000
6	Executive Level 1, Legal Strategy and Services Branch	\$5,000

- (b) repeal *Compensation for Detriment Caused by Defective Administration (Home Affairs) Authorisation 2021* (ADMIN 21/044).

This instrument commences the day after it is signed.

Dated 23 / 8 / 2022

Minister for Home Affairs



Australian Government

Department of Home Affairs

OFFICIAL: Sensitive**DECISION RECORD**

MS23-001856

s. 47F(1)

By Email: s. 47F(1)

Dear s. 47F(1),

1. Thank you for applying for compensation under the Scheme for Compensation for Detriment caused by Defective Administration (CDDA Scheme) on behalf of s. 47F(1) (the Applicant). I am the Minister for Immigration, Citizenship and Multicultural Affairs.
2. The application has been referred to me for decision as the authorised decision maker.
3. In reaching my decision, I had regard to a submission provided to me by the Department of Home Affairs (the Department). The submission takes into account the following:
 - a. The compensation claim application dated 9 February 2023
 - b. Information provided by the responsible business area within the Department; and
 - c. CDDA Scheme *Resource Management Guide 409* (CDDA Guidelines).

Your claim

4. It is claimed that the Department's Visa Entitlement Verification Online (VEVO) system incorrectly displayed that the Applicant did not hold a visa to travel to Australia. As a result, the Applicant was prevented from boarding s. 47F(1) flight back to Australia. The Applicant's claimed financial detriment is for flights, accommodation and "associated expenses" totalling s. 47F(1) (AUD).

My decision

5. I approve compensation in the amount of s. 47F(1) (AUD) under the CDDA Scheme on the basis that the Department's conduct amounted to defective administration directly causing financial detriment to the Applicant as a result.
6. I do not approve the remaining amount for "associated expenses" being s. 47F(1) (AUD).

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Reasons for my decision

7. I have found that a departmental system error, resulting from a subsequent Safe Haven Enterprise Visa (SHEV) application being lodged and causing the Applicant's on-hand SHEV to cease incorrectly, was an unreasonable failure to institute appropriate administrative procedures to cover the Applicant's circumstances.
8. I accept that, had the defective administration not occurred, the Applicant would have been able to travel on ^{s. 47F(1)} planned flight to Australia. As a result of the defective administration, the Applicant was required to remain overseas for a further five days, incurring costs, while ^{s. 47F(1)} visa status was rectified.
9. In determining the quantum, I considered the overarching principle of compensation under the CDDA Scheme, that is, to put the Applicant back in the financial position they would have been in had the defective administration not occurred.
10. The compensation I am able to approve is ^{s. 47F(1)} (AUD) for the Applicant's flights, based on the written evidence provided by the applicant. The applicant has claimed expenses for five nights of accommodation. Despite written requests by the Department, the Applicant has not provided any evidence or explanation to show the cost of this accommodation. Accordingly, I have approved ^{s. 47F(1)} (AUD) for this expense, based on research that the average cost of four star accommodation per night in ^{s. 47F(1)} is ^{s. 47F(1)}.
11. If my offer of compensation is agreeable to the Applicant, my Department will be in contact to arrange payment. Please note that payment is conditional upon the Applicant executing a Deed of Release and Indemnity.

Review of Decision

12. There are no review options available for personal decisions made by Ministers. However, the Applicant may approach the Commonwealth Ombudsman if there are any concerns relating to the process leading up to my personal decision.
13. The Applicant can find more information about how to lodge a complaint on the Commonwealth Ombudsman's website at www.ombudsman.gov.au

Yours sincerely



Andrew Giles MP

Minister for Immigration, Citizenship and Multicultural Affairs

4 / 1 / 2024

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