LITIGATION DISPUTE RESOLUTION REPORT

May 2026

s22

[redacted]

As at 31 May 2026, there were seven (7) active claims under the Scheme for Compensation for Detriment caused by Defective Administration (**CDDA Scheme**) reported to Legal Division.

s22

s22

s22

LITIGATION DISPUTE RESOLUTION REPORT

April 2026

s22

[redacted]

As at 30 April 2026, there were seven (7) active claims under the Scheme for Compensation for Detriment caused by Defective Administration (**CDDA Scheme**) reported to Legal Division.

s22

[redacted]

s22

[redacted]

s22

[redacted]

s22

[redacted]

LITIGATION DISPUTE RESOLUTION REPORT

March 2026

s22

[redacted]

As at 31 March 2026, there were six (6) active claims under the Scheme for Compensation for Detriment caused by Defective Administration (**CDDA Scheme**) reported to Legal Division.

s22

[redacted]

s22

[redacted]

s22

[redacted]

LITIGATION DISPUTE RESOLUTION REPORT

February 2026

s22

[redacted]

As at 28 February 2026, there were seven (7) active claims under the Scheme for Compensation for Detriment caused by Defective Administration (**CDDA Scheme**) reported to Legal Division.

s22

[redacted]

s22

[redacted]

s22

[redacted]

LITIGATION DISPUTE RESOLUTION REPORT

December 2025 and January 2026

s22

[redacted]

As at 31 January 2026, there were eight active claims under the Scheme for Compensation for Detriment caused by Defective Administration (**CDDA Scheme**) reported to Legal Division.

s22

[redacted]

s22

[redacted]

s22

[redacted]

s22

s22

LITIGATION DISPUTE RESOLUTION REPORT

October and November 2025

s22

[redacted]

As at **30 November 2025**, there were five active claims under the Scheme for Compensation for Detriment caused by Defective Administration (**CDDA Scheme**) reported to Legal Division.

s22

[redacted]

s22

[redacted]

s22

s22

s22

[redacted]

Australian Government
Department of Health and Aged Care

AAI 6.3 Discretionary compensation mechanisms

About this Accountable Authority Instruction (AAI)

Discretionary compensation mechanisms allow the Australian Government to provide assistance to individuals or other bodies that have no legal automatic entitlement to a payment or other financial relief. A decision under any of these mechanisms is at the discretion of the decision maker.

The absence of any entitlement to payment or relief distinguishes the discretionary compensation mechanisms from other mechanisms such as the settlement of claims for which there is at least a meaningful prospect of liability under the Legal Services Directions 2017, or the payment of compensation arising from a statutory entitlement.

The Scheme for Compensation for Detriment caused by Defective Administration (CDDA Scheme)

The CDDA Scheme allows non-corporate Commonwealth entities under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) (except Departments of the Parliament) to compensate individuals or other bodies who have experienced detriment (i.e. quantifiable financial loss) as a result of an entity's defective administration, and who have no other avenues of redress.

The CDDA Scheme is established under the executive power in section 61 of the Constitution. While Portfolio Ministers have responsibility for decisions made under the CDDA Scheme, they may authorise entity official to approve payments under the CDDA Scheme on their behalf. The Minister has authorised each person holding, or performing the duties of: (a) the Secretary of the Department; or (b) an SES Band 3; or (c) an SES Band 2 in Legal and Assurance Division to exercise his power to decide claims and approve payments under the CDDA Scheme.

Instructions

A. Instructions – All officials

1. Officials must update Litigation Section (on Discretionary Compensation) within the Legal and Assurance Division on all applications and outcomes under the CDDA Scheme.
2. Litigation Section maintains a central register of CDDA claims and is available to provide legal support in responding to a claim.
3. If a CDDA payment has been approved by a Minister, or a person authorised by a Minister, before making the payment the Secretary must ensure that:
   a. the requirements in these instructions for section 18 of the PGPA Rule have been met (see AAI 2.1 – Approving commitment of relevant money and entering into arrangements); or
   b. the Minister has approved the payment under section 71 of the PGPA Act; and
   c. there is an available appropriation for the payment.
4. Officials must ensure that payments made under the CDDA Scheme are consistent with the CDDA decision made by the Minister or authorised person.

Act of grace payments

Section 65 of the PGPA Act enables the Finance Minister to authorise the making of one-off or periodic act of grace payments. This power has been delegated with directions to the Finance Secretary and delegates within Finance.

The role of the Department is to provide a submission to the Department of Finance. The submission should set out the basis for the Department's position on the act of grace application. If the Finance Minister or a delegate decides that an act of grace payment is to be made to a claimant, the Department is responsible for making that payment.

If the Finance Minister or a delegate authorises ongoing act of grace payments or an act of grace payment which is subject to agreed conditions, the accountable authority of the relevant non- corporate Commonwealth entity will derive authority to enter into an arrangement under section 23 of the PGPA Act.

Act of grace payments may be authorised in special circumstances, where a non-corporate Commonwealth entity's conduct or Commonwealth legislation or policy has resulted in an unintended, inequitable, anomalous or otherwise unacceptable impact on the claimant's circumstances subject to some additional requirements for large amounts; (see section 24 of the PGPA Rule).

B. Act of Grace Instructions – All officials

1. Officials are to provide a submission to the Department of Finance setting out the basis for the Department's position on the application.
2. Officials must ensure that all requests for act of grace payments are referred to Litigation Section (on Discretionary Compensation) within the Legal and Assurance Division.
3. Official must update Litigation Section on all act of grace requests and outcomes.
4. Litigation Section maintains a central register of act of grace requests and is available to provide legal support in responding to claim.
5. Officials must ensure when making the act of grace payment authorised by the Finance Minister, or a delegate, under section 65 of the PGPA Act that the payment is consistent with the decision.

References and forms

In applying this AAI, you must consider all relevant Accountable Authority Instructions (AAIs), Finance Business Rules (FBRs), Resource Management Guides (RMGs) and other government and Department of Health and Aged Care policies **including** but not limited to:

Department of Health and Aged Care Requirements

References	Forms and other guidance
• FBR R6.3: Discretionary compensation mechanisms • AAI 6.1 and FBR R6.1: Internal controls for making payment of relevant money, including through third party arrangements • AAI 6.2 and FBR R6.2: Making payments	N/A

References	Forms and other guidance
• AAI 6.4 and FBR R6.4: Taxation obligations	

Commonwealth Guidance and References

Key Guidance	Key References
• Resource Management Guide (RMG) 401: Requests for discretionary financial assistance under the PGPA Act • RMG 409: Scheme for Compensation for Detriment caused by Defective Administration	• PGPA Act 2013: s16, s21, s23, s65, s71 • PGPA Rule 2014: s18, s24

Ownership

The maintenance of this AAI is the responsibility of Financial Governance. If you have any questions about it, please contact that section. If you have suggestions regarding changes to its contents, or recommended changes, please send them in the first instance to Financial Governance, with the Instruction's number in the title of your email.

This AAI was approved by the Secretary on 22 July 2022.

Australian Government
Department of Health and Aged Care

FBR R6.3 Discretionary compensation mechanisms

Introduction

This Finance Business Rule (FBR) is to be read in conjunction with Accountable Authority Instruction (AAI) 6.3: Discretionary Compensation Mechanisms which details the Department's key policies regarding discretionary compensation mechanisms.

FBRs are issued by the Chief Financial Officer on the basis of a direction from the Secretary. All officials are required to act in accordance with this FBR.

The discretionary compensation mechanisms addressed in this business rule are:

- payments made under the Scheme for Compensation for Detriment caused by Defective Administration (CDDA Scheme); and
- act of grace payments.

Definitions

The terms used in this FBR are defined in the *Public Governance, Performance and Accountability* (PGPA) Glossary.

Compensation for Detriment caused by Defective Administration (CDDA)

Where it has been determined that a person has no legal right to compensation and a person has suffered detriment due to the defective actions or inaction of the Commonwealth Government, the CDDA Scheme provides a possible avenue for compensation. When considering a claim under the CDDA scheme, defective administration is defined as:

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

Act of Grace Payments

The act of grace mechanism is a discretionary power which allows payments to be made if a decision maker (in the Department of Finance) considers there are special circumstances and that it is appropriate. An act of grace payment may be appropriate where:

- the direct actions or inactions of the official acting on behalf of the Department has caused an unintended or inequitable result for the individual or entity concerned;
- the application of Commonwealth legislation has produced a result that is unintended, anomalous, inequitable or otherwise unacceptable in a particular case (including in cases where the Department has acted correctly in administering the legislation involved); or
- the matter is not covered by legislation or specific policy, but it is intended to introduce such legislation or policy, and it is considered desirable in a particular case to apply the benefits of the relevant provision prospectively.

Exclusions

The following payments or relief are excluded from this FBR:

- compensation paid by the Department in settling claims for which the Department is likely to be liable under the Attorney General's *Legal Services Directions 2017* on handling monetary claims;
- compensation paid in providing claimants with the statutory entitlement, for example:
    - compensation losses arising from work place injuries under the provision of the *Safety, Rehabilitation and Compensation Act 1988*, and
    - compensation claims covered by the Department's insurance policy (Comcover);
- applications under section 73 of the *Public Service Act 1999*;
- right of review under the *Social Security (Administration) Act 1999*; and
- ex-gratia payments which are essentially gifts of relevant money and generally meet the definition of a grant in paragraph 2.3 of the CGRGs and therefore the CGRGs apply (refer AAI 4.1 and FBR 4.1 – Grants).

Key principles

The discretionary compensation mechanisms are:

- permissive, that is:
    - enable decision makers to approve payments but do not oblige them to do so;
    - there is a moral rather than legal obligation to the person or body concerned; and
    - they are discretionary and therefore there is no automatic entitlement on claim.
- designed to consider circumstances which are specific to individual persons or bodies.

Discretionary compensation mechanisms **Do Not** apply:

- to any claims for monetary compensation where it is reasonable to conclude that the Commonwealth would be found liable if the matter were litigated.
- if the claimant has already received any other form of benefit from the Australian Government which imposes the condition of not having any other supplementary payments.
- to waive, or for the non-recovery (write off) of, debts owed to the Commonwealth, even if the debt originated due to circumstances resulting in the claim. If non-recovery (write off) or debt waivers should be considered instead, refer to AAI and FBR 9.2 Non recovery (write-off) of debts and AAI and FBR 9.3 Waiver of amounts owing to the Commonwealth.

The Authority for payments

CDDA

The CDDA Scheme operates on the basis of authority provided to individual Portfolio Ministers under the executive power of sections 61 and 64 of the Constitution. The Minister for Health and Aged Care has authorised each person holding, or performing the duties of: (a) the Secretary of the Department; or (b) an SES Band 3; or (c) an SES Band 2 in the Legal Division.

The decision makers for CDDA claims are agents of the Minister and not acting in their own right as they would be if this power was delegated. Note: This authority is separate to the delegation to approve expenditure under PGPA framework.

The decision maker decides whether defective administration has taken place based on recommendation from the Department's official(s). The decision maker then may decide to authorise payment however there is no obligation to make one.

Act of Grace Payments

Section 65 of the PGPA Act enables the Finance Minister to authorise the making of act of grace payments if the Minister considers it appropriate to do so because of special circumstances. This power has been delegated to officers within the Department of Finance.

Unlike the CDDA scheme where the agents who make the decisions are from within the Department, the discretion for approving act of grace payments is held externally.

Rules

1. **Officials managing and processing discretionary compensation claims must:**

General

a. Behave honestly and with integrity, care and diligence and treat everyone with respect and courtesy in handling discretionary compensation claims.
b. Deliver services fairly, efficiently and impartially.
c. Ensure the Department's interests are protected and all material evidence is obtained and retained.
d. Deal with claims promptly and not cause unnecessary delays in the handling of claims.
e. Not pre-empt a decision by indicating to claimants that the claim will be supported or approved.
f. Officials must comply with the requirements in:
    a. Resource Management Guide No. 401: Requests for Discretionary Financial Assistance under the PGPA Act; and
    b. Resource Management Guide No. 409: Scheme for Compensation for Detriment caused by Defective Administration.
g. Provide information on discretionary compensation payments to Legal Division and Financial Reporting and Treasury Section, Finance Branch, Financial Management Division as requested for reporting purposes.

CDDA

h. Officials must provide an acknowledgement and advise the claimant that the matter will be considered.
i. Officials must promptly provide all information on the compensation claim to Legal Division and seek confirmation that no legal liability exists.
j. Officials must prepare a recommendation for the decision maker setting out the basis for the recommendation and include sufficient information and evidence.
k. If the decision maker's preliminary assessment is to not approve the application, a procedural fairness letter should be sent to the applicant to provide them an opportunity to respond to the preliminary assessment.

l. Once response to the procedural fairness letter is received, officials must prepare a Minute to the delegate setting out the basis for the recommendation and include sufficient information and evidence.
m. The delegate must decide whether to approve/not approve the claim and sign the Minute.
n. Officials must send a decision letter to the claimant advising them of the outcome of the claim.
o. If the decision maker authorises payment, the Department is responsible for making that payment and officials must ensure payment is consistent with the CDDA decision made by the decision maker.
p. Officials must liaise with their Financial Business Partner to organise/action the payment.
q. Financial Management Division must maintain a record of CDDA payments.
r. Officials must advise Litigation Section (on Discretionary Compensation) within the Legal Division of every application made under the CDDA Scheme and its outcome.
s. Officials must also advise Litigation Section the date when the payment was made.

Act of Grace

t. Act of grace requests are generally submitted directly to the Significant Matters Taskforce within the Department of Finance. If an act of grace application is directly provided to the Department, officials should send the application to the Significant Matters Taskforce.
u. Finance provides a copy of the application to the Department and seeks a submission on whether to approve/not approve payment. Officials are to provide a submission to Finance, cc-ing Litigation Section (Discretionary Compensation), setting out the basis for the Department's position on the application. The submission is to include sufficient information and evidence to support the Department's position.
v. The Finance Minister or a delegate within Finance will make a decision on whether to authorise an act of grace payment. The outcome of the decision will be provided to the applicant and the Department.
w. If the Finance Minister or delegate authorise an act of grace payment, the Department is responsible for making that payment. Officials are to notify Finance, cc-ing Litigation Section, when a payment has been made.
x. Officials are to maintain a register of act of grace payments.
y. Officials must advise Litigation Section within the Legal Division of every act of grace request and its outcome.

2. Legal Division officials must:

a. Respond promptly to requests for legal advice regarding claims.
b. Review the claim to determine if the Department has any legal obligations in relation to the claim.
c. Seek external legal advice where required.
d. Provide information on claims to the Financial Reporting and Treasury Section when requested, including access to excerpts of the central register of CDDA claims.
e. Maintain a central register of CDDA and act of grace claims.

3. Financial Reporting and Treasury Section officials must:

a. Report compensation payments in the annual financial statements.

Claims and payments

CDDA – Limitations / Applications / Dispute Resolution

Limitations

- The CDDA scheme cannot be used as a form of alternative dispute resolution in itself to settle claims which should be settled in accordance with the *Legal Services Directions 2017*.

Applications

- Any individual, company or an organisation can submit a CDDA application. Applications can be submitted directly to the Department or through a third party representing the claimant under appropriate authority.
- The claimant must state their case in writing using the Department's CDDA Claim Form.
- There is no set time frame under which a CDDA application has to be made. However a claimant should be advised that a significant lapse in time between alleged defective administration and the receipt of application may adversely affect the evidence gathering efforts.
- Each claim must be determined on its own merits. There is no financial ceiling on the value of any CDDA claim.
- The CDDA Scheme must not be used to 'top up' compensation received through an alternative avenue of compensation. The overarching principle to be used in determining the level of compensation is to restore the applicant to the position he or she would have been in had defective administration not occurred.
- CDDA payments are funded through departmental appropriations and reported under an appropriate outcome. Only in exceptional circumstances can CDDA payments be made from an administered appropriation, and the departmental official and decision maker will need to document the appropriate reason.

Dispute Resolution

- Applicants can contact the Commonwealth Ombudsman to seek review of a CDDA decision. The Ombudsman has no power to overturn or vary an entity's decision.
- If an applicant provides new evidence, facts or argument to support their application, it is open to the decision-maker to reconsider their decision.
- CDDA decisions are not subject to judicial review under the *Administrative Decisions (Judicial Review) Act 1977* as decisions are not made under an enactment. However, they may be subject to judicial review under section 75 of the Constitution or section 39B(1) of the *Judiciary Act 1903*.

Act of Grace – Limitations / Applications / Dispute Resolution

Limitations

- Act of grace payment is not applicable where the request arises from private circumstances outside the sphere of Commonwealth administration.
- The mechanism cannot be used to compensate a person for loss arising from a judicial decision not involving the executive arm of the Government.
- The mechanism does not apply if it has an effect of establishing a payment scheme to a group of applicants, without considering the merits of their requests on an individual basis.

Applications

- Officials must have regard to the *Legal Services Directions 2017* and Finance Ministers Delegations.
- Any individual, company or an organisation can apply for act of grace payments. Applications can be submitted directly from the applicant or through a third party representing the applicant under appropriate authority. Act of grace applications are submitted to the Department of Finance (the application form is available on Finance's website).
- There is no set time frame under which an application has to be made. However, a claimant should be advised that a significant lapse in time between the circumstances that gave rise to the application and the receipt of application may adversely affect the application.

Dispute Resolution

- Applicants can request reconsideration from the Department of Finance of their decision if relevant new information or serious factual error is identified.
- Applicants can contact the Commonwealth Ombudsman where act of grace payments have been declined. The Ombudsman has no power to overturn or vary the Department of Finance's decision.
- Applicants can ask the Department of Finance for a Statement of Reasons under section 13 of the Administrative Decisions (Judicial Review) Act 1977.
- Applicants may seek judicial review of the decision under the *Administrative Decisions (Judicial Review) Act* 1977. The Department of Finance is responsible for managing such litigation.

References and forms

In applying this FBR, you must consider all relevant Accountable Authority Instructions (AAIs), Finance Business Rules (FBRs), Resource Management Guides (RMGs) and other government and Department of Health and Aged Care policies **including** the reference material and forms listed in the following tables.

Department of Health and Aged Care Requirements

References	Forms and other guidance
• AAI 6.3 – Discretionary compensation Mechanisms	• CDDA Claim form

References	Forms and other guidance
• AAI 9.3 and FBR R9.3 – Waiver of amounts owing to the Commonwealth • AAI 4.1 and FBR R4.1 – Grants • AAI 2.1 and FBR R2.1 – Approving the commitment of relevant money and entering into arrangements • Financial Delegations: ▪ Schedule 1 Table 1 - approve a proposal to commit relevant money	

Commonwealth Guidance and References

Key Guidance	Key References
• Resources Management Guide No. 401: Requests for discretionary financial assistance under the PGPA Act • Resource Management Guide No. 409: Scheme for Compensation for Detriment caused by Defective Administration • Compensation for detriment caused by Defective Administration (CDDA Scheme) • Finance Ministers delegations • PGPA Glossary	• PGPA Act 2013: s65 • PGPA Rule 2014: 24 • Administrative Decisions (Judicial Review) Act 1977 • Attorney General's - Legal Services Directions 2017

Penalties

Failure to comply with this Finance Business Rule may involve a breach of the Code of Conduct, and may lead to disciplinary action. If such a failure includes a breach of finance law it may result in civil or criminal penalties.

Ownership

All FBRs are maintained by Financial Governance section on behalf of the Chief Financial Officer and the business areas which hold the expertise in the relevant subject matter.

If you have suggestions regarding changes to its contents, please provide advice in the first instance to Financial Governance, with the FBR's number in the title of your email. Financial Governance section will consult with relevant business areas.

This FBR was approved on 5 August 2022.

Australian Government
Department of Finance

Scheme for Compensation for Detriment caused by Defective Administration

Resource Management Guide No. 409

Scheme for Compensation for Detriment caused by Defective Administration (RMG 409)

This guide is relevant for staff in non-corporate Commonwealth entities who deal with requests for financial assistance under the CDDA Scheme. It aims to'assist staff of non-corporate Commonwealth entities in managing and determining CDDA Scheme claims.

Audience

This guide is relevant to staff in non-corporate Commonwealth entities who deal with requests for financial assistance under the Scheme for Compensation for Detriment caused by Defective Administration (CDDA Scheme).

Key points

This guide:

- assists staff of non-corporate Commonwealth entities in managing and determining CDDA Scheme claims
- was published in November 2018 and replaces the version published in May 2017.

Resources

This guide is available on the Department of Finance website.

Members of the public who are considering making a claim under the CDDA Scheme against a Commonwealth entity are encouraged to visit that entity's website for information.

Employees of a Commonwealth entity can seek policy advice from the Discretionary Payments Section in the Department of Finance about how to manage a CDDA Scheme claim, at sfc@finance.gov.au or on 1800 227 572.

Other relevant publications include:

- Resource Management Guide No. 401: Requests for discretionary financial assistance under the Public Governance, Performance and Accountability Act.
- A fact sheet about the CDDA Scheme is available on the Finance website.

Introduction

1. The CDDA Scheme is a discretionary mechanism available to non-corporate Commonwealth entities. It allows an entity to pay compensation when a person or organisation has suffered detriment as a result of the entity's defective administration, when there is no legal requirement to make a payment.

2. The non-corporate Commonwealth entity which is the subject of a CDDA Scheme claim is the entity responsible for considering and making a decision on that claim.

3. The Department of Finance does not manage CDDA Scheme claims relating to the actions of another entity, nor does it review CDDA Scheme decisions made by other entities.

4. The Commonwealth Ombudsman reviews complaints about decisions made under the CDDA Scheme.

5. CDDA Scheme claims are one of a number of options available to persons in claiming compensation against non-corporate Commonwealth entities. This Guide provides information about some of these options, including act of grace claims, and the extent to which they interact and/or preclude consideration of CDDA Scheme claims.

Part 1 - The CDDA Scheme

Who decides? Authority of decision-makers

6. The CDDA Scheme operates on the basis of authority provided to individual portfolio ministers under the executive power of sections 61 and 64 of the Constitution.

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

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

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

10. A finding of no defective administration can only be reached by an authorised decision-maker.

11. Where a portfolio minister has responsibility over multiple entities, an authorisation will generally need to be provided by the relevant portfolio minister to a relevant official in each entity.

12. Entities can contact the Discretionary Payments Section in the Department of Finance for advice on drafting an instrument for the relevant portfolio minister to authorise an official to consider matters under the CDDA Scheme.

Coverage of the CDDA Scheme

13. The CDDA Scheme is available in relation to non-corporate Commonwealth entities.

14. The CDDA onlyScheme is not available in relation to:

    - the departments of the Commonwealth Parliament. The act of grace mechanism is used in relation to claims for discretionary compensation from these departments; and

- corporate Commonwealth entities.

15. The CDDA Scheme is not available to an entity to approve a claim for compensation on any matter that relates to the defective administration of functions and performance of another entity or other body. If there is a dispute between entities as to which of them is to take responsibility for making a decision under the CDDA Scheme, the Department of Finance shall determine which entity shall have carriage of the claim.

16. The Commonwealth uses contracted providers for some services. The actions of contracted providers are not within the scope of the CDDA Scheme. Where a person alleges that the actions of a contracted provider may have caused financial detriment to them, the matter may be considered under the act of grace mechanism.

What does the CDDA Scheme do?

17. The CDDA Scheme provides that if a minister or an official authorised by the minister forms an opinion that an official of the entity, acting, or purporting to act, in the course of duty, has directly caused a claimant to suffer detriment, or, conversely, prevented the claimant from avoiding detriment, due to:

    - a specific and unreasonable lapse in complying with existing administrative procedures that would normally have applied to the claimant's circumstances

    - an unreasonable failure to institute appropriate administrative procedures to cover a claimant's circumstances

    - giving advice to (or for) a claimant that was, in all circumstances, incorrect or ambiguous

    - an unreasonable failure to give to (or for) a claimant, the proper advice that was within the official's power and knowledge to give (or was reasonably capable of being obtained by the official to give) the minister or the authorised official may authorise a payment to the claimant.

18. The CDDA Scheme is permissive, in that it does not oblige the decision-maker to approve a payment in any particular case. However, the decision to approve or refuse a payment must be publicly defensible, having regard to all the circumstances of the matter.

Relationship with other types of claim against Commonwealth entities

19. If other avenues exist to remedy the defective administration (such as existing Commonwealth legislation or schemes), those options must be investigated before the matter is considered under the CDDA Scheme.

20. The PGPA Act includes discretionary mechanisms, available to individuals or other entities, that are able to provide discretionary financial redress.

21. Entities may receive applications which seek financial assistance under the CDDA Scheme, as well as the act of grace and waiver of debt mechanisms under the PGPA Act.

22. Entities are encouraged to determine the most appropriate mechanism to consider the claim, noting that in some instances claimants may not have a full understanding of the interaction of the different mechanisms available, or may refer, incorrectly, to the different mechanisms interchangeably.

23. The CDDA Scheme is not to be used in relation to:

    - claims that have previously been determined under the act of grace provisions (see below)

    - claims in which it is reasonable to conclude that the Commonwealth would be found liable, if the matter were litigated. Legal matters are considered under the Legal Services Directions 2017'on the basis of legal liability

    - claims to offset the payment of any recoverable debt owed to the Commonwealth — even if the debt arose because of defective administration (see below)

    - claims to overcome the effects of specific legislative provisions that are found to be flawed. Entities can deal with such matters through statutory remedies, either by seeking amendment of the relevant legislation, with retrospective effect to provide the benefit on the claimant (if appropriate), or submitting the matter to the Department of Finance for consideration under the act of grace mechanism.

24. A payment under the CDDA Scheme may also be inappropriate where the payment would effectively supplement a payment where the relevant legislation caps the amount a beneficiary may receive from the Commonwealth. This is particularly applicable where the legislation expresses the clear intention that particular payment levels cannot be exceeded in any circumstances.

CDDA Scheme claims and act of grace claims

25. While CDDA Scheme claims are managed by the entity to which they relate, act of grace requests are managed by the Department of Finance.

26. The act of grace mechanism and the CDDA Scheme do not have a linear relationship: if there is no claim of defective administration leading to a loss, there is no requirement fora claim to be considered under the CDDA Scheme before it can be considered under the act of grace mechanism.

27. However, if a claim is made for an act of grace payment on the basis that an entity's defective administration has caused a loss, the matter may be considered by the relevant entity under the CDDA Scheme in the first instance. Where the Department of Finance receives act of grace claims of this nature directly from a claimant, these will be forwarded to the relevant entity for consideration under the CDDA Scheme.

28. The act of grace mechanism is not used to review CDDA Scheme decisions. The Commonwealth Ombudsman is the appropriate channel to investigate complaints regarding decisions under the CDDA Scheme.

29. The act of grace mechanism may not be used for 'top-up' payments made under the CDDA Scheme, and vice versa.

30. If a claimant alleges defective administration and also asserts special circumstances, it is most appropriate to consider the claims of defective administration first under the CDDA Scheme. Remaining matters that do not relate to claimed defective administration can then be considered by the Department of Finance under the act of grace mechanism following the finalisation of the CDDA Scheme claim.

CDDA Scheme claims and debts

31. The CDDA Scheme must not to be used to offset debts that are owed to the Commonwealth, even if those debts have arisen due to defective administration.

32. If a person has incurred a debt due to defective administration and does not consider that they should have to repay it, the matter can be forwarded to the Department of Finance for consideration under the waiver of debt mechanism (subsection 63(1) of the PGPA Act).

33. However, the PGPA Act:

    - requires the accountable authority of non-corporate Commonwealth entities to pursue recovery of debts, even if those debts have been incurred due to defective administration

    - does not oblige a decision-maker to waive a debt that has been incurred due to defective administration.

34. Guidance on the waiver of debt mechanism can be found in Resource Management Guide No. 401: *Requests for discretionary financial assistance under the Public Governance, Performance and Accountability Act.*

Part 2 - Considering claims under the CDDA Scheme

Processing a CDDA Scheme application

35. Applications under the CDDA Scheme can be made by individuals, businesses and other bodies.

36. Entities are encouraged to ask each claimant to address the following areas in their CDDA Scheme application:

    - how the entity's actions or inactions were defective

    - details of the detriment being claimed, including an explanation of how the amount claimed is calculated and any relevant documentation in support of the claim; and

    - how the defective administration directly caused the loss.

37. Entities can create application forms to assist potential claimants in setting out their claims.

Procedural fairness, privacy and other principles of administrative decision-making'

38. Each request under the CDDA Scheme must be determined on its own merits.

39. Prior to a decision being made on an application, the entity must ensure that the claimant is afforded procedural fairness. This includes, but is not limited to:

    - providing an opportunity for the claimant to present their claims or allegations in writing
    - providing an opportunity for the claimant to view and comment on adverse material that will be considered by the decision-maker
    - making a decision that is free from bias.

40. For further guidance and best practice advice, entities may wish to refer to the Administrative Review Council's publication relating to natural justice, a term often used interchangeably with procedural fairness (www.arc.ag.gov.au) and the Commonwealth Ombudsman's publication relating to complaint handling (www.ombudsman.gov.au).

41. In accordance with the principles of the Privacy Act 1988, all aspects of an investigation must be treated as confidential to ensure adequate protection of the claimant's privacy.

Obtaining legal advice

42. It is open to an entity to seek legal advice on CDDA Scheme matters. A claim can be decided on a non-legal basis, even if legal advice is sought.

43. The decision-maker must consider relevant legal practice and principle prior to making a payment that relates to non-financial detriment (see Determining detriment below).

44. If a deed of release and indemnity is considered appropriate in the circumstances, entities may consider it appropriate to seek legal advice in drafting such a document.

Determining defective administration

45. An unreasonable lapse or failure is one where the actions of the official(s) involved are considered to be contrary to the standards of diligence that the entity expects to be applied by reasonable officers acting in the same circumstances with the same powers and access to resources.

46. Cases may arise where individual instances of administrative omissions or errors may not be regarded as unreasonable when considered in isolation from each other, but may constitute defective administration when considered in totality and in the context of the combined impact of the omissions or errors on the claimant.

47. Where advice or information given to a claimant was incorrect or ambiguous, it is not necessary for an element of unreasonableness to be present for the action to fall within the definition of defective administration.

Supporting documentation

48. Documentary or incontrovertible proof of defective administration is not an essential requirement. However, there must be sufficient evidence to enable the decision-maker to form the opinion that defective administration has occurred.

49. It is open to an entity to seek further information from a claimant as considered appropriate. There is no obligation on entities to actively seek out information beyond what the claimant has provided.

50. If a document relevant to the claim is found by an entity, it cannot be disregarded simply on the basis that it was not provided by the claimant. Procedural fairness requires that the substance of documents (relevant to the claim) held by the entity but not known to the claimant is shared with the claimant.

51. Where evidence of defective administration is limited, an assessment must seek to balance the plausibility of the claimant's account of their actions and the plausibility of the allegations against the entity, as well as other possible explanations, in order to determine what is more likely than not to have occurred.

52. The following considerations are provided as a guide but must not limit in any way an entity's assessment:

    - the likelihood that wrong advice could have been given in the particular situation, taking into account:
        - the experience of the entity officials involved
        - understanding and knowledge of the relevant statutory provisions, procedures, benefits, or entitlements
        - availability and familiarity of relevant information
    - whether the claimant's subsequent actions were consistent with the advice that the claimant alleges was provided by the entity
    - the consistency of the allegations of defective administration made by the claimant
    - whether the passage of time could have distorted the officer's and/or claimant's recollection of events
    - whether advice has been misinterpreted by a claimant (although some claimant misinterpretations will be caused by poorly constructed advice).

Determining detriment

53. Compensation is only available under the CDDA Scheme where the detriment found to have been suffered by a claimant has arisen as a direct result of the defective administration.

54. 'Detriment' is considered as the amount of quantifiable financial loss, including opportunity costs, that a claimant can demonstrate was suffered despite having taken reasonable steps to minimise or contain the loss. If, for some reason, it is impracticable for a claimant to demonstrate all or part of the quantifiable financial loss, the decision maker may make whatever assumptions as to amount, including with respect to the claimant's actions to minimise or contain the loss, that are necessary and reasonable in all the circumstances.

55. Where compensation is to be approved for non-financial detriment (such as for pain and suffering, inconvenience or other 'qualitative' elements of that nature), the decision maker is not to approve the payment without first having regard to relevant legal principle and practice in arriving at an appropriate amount for such payment.

56. Financial detriment can be distinguished from financial disappointment - for example, where a formal assessment results in the amount of an entitlement being less than a 'ballpark' figure given to a person at the time they made inquiries. A claimant does not suffer financial detriment merely because they were correctly not granted a benefit after being advised that they would receive that benefit, or if a debt was raised due to a benefit being incorrectly paid.

57. If an authorised officer has determined that no defective administration has occurred, it may not be necessary to consider the issue of detriment.

58. It is open to a decision-maker to find that there has been defective administration but that the claimant has not suffered detriment, and therefore that no compensation is payable. That a mistake has been made by an entity or an official of an entity does not automatically mean compensation is payable under the CDDA Scheme.

Economic loss

59. Pure economic loss refers to financial detriment suffered by a claimant that is unrelated to any damage or physical injury to the claimant or their property.

60. If the pure economic loss claimed is directly caused by incorrect or ambiguous advice, compensation will only be payable if the entity loss should have been foreseeable by the entity and it was reasonable in all the circumstances for the claimant to seek and rely upon the advice.

61. Pure economic loss may arise from a lost opportunity. For such matters, compensation will only be payable when the entity could reasonably have foreseen the type of opportunity that, as a result of the entity's defective administration, the claimant lost.

62. Lost opportunity claims can be particularly difficult to determine, both in establishing whether the opportunity was lost at all, and if so, the amount lost. In these cases, it is appropriate to place the onus on the claimant to provide very clear evidence of the lost opportunity (including the quantum).

Non-economic loss

63. 'Non-economic loss claims may relate to personal injury (including psychiatric injury), emotional distress or damage to reputation.

64. Compensation for personal injury loss would be generally limited to the types of personal injury compensable in legal practice and principle. Entities must look to legal principle and practice when determining an appropriate amount to quantify the claimant's loss.

65. Compensation under the CDDA Scheme is not payable solely for grief or anxiety, hurt, humiliation, embarrassment, disappointment, stress or frustration that is unrelated to a personal injury which is being compensated under the CDDA Scheme, no matter how intense the emotion may be.

66. If an individual is entitled to other payments related to their injury, it is unlikely that they would be considered to be suffering detriment. A payment under the CDDA Scheme may not be appropriate if the payment is used to supplement another entitlement related to an injury, on the basis that a person will not be compensated more than once for an injury.

Determining the level of compensation

67. There is no financial limit on the amount of compensation payable under the CDDA Scheme.

68. If an entity's defective administration is found to have resulted in a claimant suffering detriment, the overarching principle to be used in determining an appropriate level of compensation for a claimant is to restore the claimant to the position they would have been in had defective administration not occurred.

69. Offers of compensation to claimants are calculated on the basis of what the decision maker considers is fair and reasonable in the circumstances. The Commonwealth is required not to take advantage of its relative position of strength to minimise payment.

70. Generally, the following amounts are not included in calculating the quantum of a payment under the CDDA Scheme:

    - costs incurred as a result of engaging legal, financial or other professional services to assist in the preparation of the application
    - other incidental costs incurred in the preparation of a CDDA Scheme application, which may include, but are not limited to, the cost of travel, telephone calls, photocopying, or postage and courier services
    - components for interest.

Supporting documentation

71. Claims of financial detriment must be substantiated with appropriate documents. Claimants can be encouraged to provide independent supporting documents with their application.

72. In considering the type and amount of evidence required to substantiate the application, entities can take account of the nature and size of the compensation requested.

73. If, for some reason, it is impractical for a claimant to demonstrate all or part of the detriment suffered, the decision-maker can exercise their judgement to make a reasonable assessment about the level of detriment, taking into account all relevant factors.'

Claimant's own actions

74. The claimant's own actions may be a relevant consideration for the decision-maker in determining the level of detriment that has been suffered, including considering what actions were taken to mitigate a loss. The decision-maker may consider whether the

claimant contributed to, or caused, the detriment suffered and whether it is appropriate to adjust the compensation amount on this basis.

75. In considering a claimant's actions, the decision-maker is required to take into account the claimant's specific circumstances and the factors that influenced their actions, rather than adopting an assumed normative model of 'usual' behaviour.'

76. The following considerations are provided as a guide in deciding if the amount of compensation can be reduced because of the claimant's actions:

   - the claimant's knowledge of dealing with the issues concerned
   - whether the claimant gave false, misleading or incomplete information which the entity could not have been reasonably expected to challenge or clarify
   - whether there was any unreasonable delay between receiving advice and acting on the administrative error. Where repeated delays were experienced because of a claimant's inaction, the cumulative effect can be considered.
   - whether the advice provided to the claimant was informal and no reasonable person would have relied on it due to its informality.

77. 'Where it is evident that there has been defective advice, it is relevant to consider whether the correct information was reasonably available to the claimant from another source, or if it would have been reasonable for the claimant to inquire further.

Part 3 - Following a decision

Information provided to claimants

78. Entities are required to provide claimants with an adequate explanation of the reasons for a decision to accept, partially accept, or reject an application, as well as review options and the right to seek assistance from the Commonwealth Ombudsman (www.ombudsman.gov.au).

79. Entities must note that the act of grace mechanism is not a review mechanism for decisions under the CDDA Scheme.

Making payments

80. In general, CDDA Scheme payments are funded through departmental appropriations and reported under an appropriate entity outcome. Deeds of release and indemnity

81. An entity may request an individual to release the Commonwealth from possible legal action in relation to the circumstances of the CDDA Scheme application. The agreement would normally be in the form of a deed of release.

82. Deeds of release are tailored to the circumstances of the application. If a claimant does not accept a particular offer of compensation, or sign a deed of release, it is open to the entity to withdraw the offer.

83. Where only part of the application is settled by a payment under the CDDA Scheme, an entity may request that a claimant agree to a deed of release for that part of the

application. Department of Finance RMG-409: Scheme for Compensation for Detriment caused by Defective Administration 15

84. Entities are required to advise claimants to seek independent legal advice in cases where a deed of release and indemnity is proposed. Taxation implications

85. Entities are encouraged to ensure the claimant is advised that: tax may be payable on CDDA Scheme payments; it is the claimant's responsibility to declare all taxable income; and the claimant could seek independent financial advice or contact the Australian Taxation Office if they are unsure of their tax obligations.

86. If applicable, compensation would normally be paid on a pre-tax basis, for example, by compensating for the gross income amount in loss-of-earnings cases.

Part 4 - Review of CDDA Scheme decisions

Internal review

87. It is open to entities to determine whether to implement formal internal review mechanisms for decisions made under the CDDA Scheme.

88. Entities may also choose to determine whether reconsideration is warranted on a case by- case basis.

89. If a claimant provides pertinent new evidence, facts or argument to support their application, reconsideration may be appropriate.

Commonwealth Ombudsman

90. Decisions made under the CDDA Scheme are reviewable by the Commonwealth Ombudsman, either following a complaint from a claimant or as an own-motion investigation.

91. An entity must consider any proposal or recommendation made by the Ombudsman but is not bound by it. The Ombudsman has no power to overturn or vary an entity's decision. The Ombudsman may exercise powers to bring the matter to the attention of the accountable authority of the respective entity, the portfolio minister, the Prime Minister and the Parliament.

Judicial review

92. As CDDA Scheme decisions are not made under an enactment or law, decisions are not amenable to judicial review under the Administrative Decisions (Judicial Review) Act 1977. However, they may be subject to judicial review under section 75 of the Constitution or section 39B(1) of the Judiciary Act 1903.