

Centrelink and Department of Agriculture, Fisheries and Forestry

**CLAIM AND REVIEW PROCESSES IN ADMINISTERING
THE EQUINE INFLUENZA BUSINESS
ASSISTANCE GRANT (THIRD PAYMENT)**

November 2008

This is an abridged version of the report 13/2008

Report by the Commonwealth Ombudsman,
Prof. John McMillan, under the *Ombudsman Act 1976*

REPORT NO. **13|2008**

Reports by the Ombudsman

Under the *Ombudsman Act 1976* (Cth), the Commonwealth Ombudsman investigates the administrative actions of Australian Government agencies and officers. An investigation can be conducted as a result of a complaint or on the initiative (or own motion) of the Ombudsman.

The *Ombudsman Act 1976* confers five other roles on the Commonwealth Ombudsman—the role of Defence Force Ombudsman, to investigate action arising from the service of a member of the Australian Defence Force; the role of Immigration Ombudsman, to investigate action taken in relation to immigration (including immigration detention); the role of Postal Industry Ombudsman, to investigate complaints against private postal operators; the role of Taxation Ombudsman, to investigate action taken by the Australian Taxation Office; and the role of Law Enforcement Ombudsman, to investigate conduct and practices of the Australian Federal Police (AFP) and its members. There are special procedures applying to complaints about AFP officers contained in the *Australian Federal Police Act 1979*. Complaints about the conduct of AFP officers prior to 2007 are dealt with under the *Complaints (Australian Federal Police) Act 1981* (Cth).

Most complaints to the Ombudsman are resolved without the need for a formal report. The Ombudsman can, however, culminate an investigation by preparing a report that contains the opinions and recommendations of the Ombudsman. A report can be prepared if the Ombudsman is of the opinion that the administrative action under investigation was unlawful, unreasonable, unjust, oppressive, improperly discriminatory, or otherwise wrong or unsupported by the facts; was not properly explained by an agency; or was based on a law that was unreasonable, unjust, oppressive or improperly discriminatory.

A report by the Ombudsman is forwarded to the agency concerned and the responsible minister. If the recommendations in the report are not accepted, the Ombudsman can choose to furnish the report to the Prime Minister or Parliament.

These reports are not always made publicly available. The Ombudsman is subject to statutory secrecy provisions, and for reasons of privacy, confidentiality or privilege it may be inappropriate to publish all or part of a report. Nevertheless, to the extent possible, reports by the Ombudsman are published in full or in an abridged version.

Copies or summaries of the reports are usually made available on the Ombudsman website at www.ombudsman.gov.au. Commencing in 2004, the reports prepared by the Ombudsman (in each of the roles mentioned above) are sequenced into a single annual series of reports.

ISBN 978 0 9805344 8 1

Date of publication: November 2008

Publisher: Commonwealth Ombudsman, Canberra Australia

© Commonwealth of Australia 2008

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Australian Government, available from the Attorney-General's Department.

Requests and enquiries concerning reproduction and rights should be addressed to the Commonwealth Copyright Administration, Copyright Law Branch, Attorney-General's Department, National Circuit, Barton ACT 2601, or posted at <http://www.ag.gov.au/cca>.

Requests and enquiries can be directed to the Director Public Affairs, Commonwealth Ombudsman, GPO Box 442, Canberra ACT 2601; email ombudsman@ombudsman.gov.au or phone 1300 362 072 (local call charge). This report is available on the Commonwealth Ombudsman's website <http://www.ombudsman.gov.au>.

Background

The Commonwealth Ombudsman's office received complaints from five businesses regarding decisions made by Centrelink and the Department of Agriculture, Fisheries and Forestry (DAFF) on their claims for the third Equine Influenza Business Assistance Grant (EIBAG). Each claimant had been advised that their business did not qualify for payment under the government's policy.

An investigation by the Ombudsman's office identified that it was possible that each claimant could have been granted the third EIBAG under the existing guidelines. The claimants had been prevented from submitting proper applications for the third EIBAG as a result of incorrect decision making and advice on the part of Centrelink, and by inaction on the part of DAFF.

Equine influenza outbreak and the EIBAG

On 25 August 2007 the Australian Government declared an outbreak of equine influenza. The departments of primary industries in New South Wales and Queensland subsequently implemented a zoning system of movement restrictions for horses in certain areas. Recognising that the movement restrictions would impact on horse owners and horse-reliant businesses, the government announced a financial assistance package for affected individuals and businesses. This package included the first and second EIBAGs.

The EIBAGs were ex-gratia payments made according to qualification criteria set out in a series of policy guidelines published by DAFF. These policy guidelines arose from Ministerial Directions regarding the assistance package.

Applicants for the third EIBAG announced on 9 February 2008 had to demonstrate, among other criteria, that their business was located in, or derived the majority of its income from a restricted movement zone.

Centrelink administered the EIBAGs on behalf of DAFF, receiving, processing and deciding claims in accordance with the policy guidelines. Where a claimant indicated they were dissatisfied, Centrelink could also conduct an internal review of its original decision.

DAFF was responsible for drafting and maintaining the EIBAG policy guidelines. It also operated a 'special case' review process, through which it could consider whether a claimant's circumstances were sufficiently special to warrant the EIBAG being paid, even though their business may not strictly have met the qualification criteria. A claimant could request a special case review if they remained dissatisfied following Centrelink's internal review process.

Conclusions

In the five cases investigated by the Ombudsman's office, Centrelink had decided that the claim could not be granted, and had sent a decision letter to each claimant stating that they did not meet the qualifying conditions.

In each case, Centrelink upheld its decision on review. The decision letters issued used words to the effect that the claim was not successful because the 'applicant must have a business located in a restricted zone ... or must conduct the majority of business activities in a restricted zone'.

Following a special review of each case, DAFF decided that each claim could not be granted. The decision letter (written by Centrelink, but based on DAFF's decision) stated that the customer 'had not provided any evidence to demonstrate that the majority of their income is derived from the restricted movement zones. The application specifically states that it has to be demonstrated not declared.'

Analysis

The investigation by the Ombudsman's office identified two flaws in the way these five claims were handled.

First, Centrelink's decisions appeared to be inconsistent with the language used in the policy guidelines, which required that 'an enterprise must be located in, or demonstrate that a majority of income is derived from, a restricted movement zone'. Centrelink, on the other hand, made its decisions on the basis that a claimant's business must be located in or conduct its business activities in a restricted movement zone.

Second, DAFF's conduct of the special review process was faulty. DAFF acknowledged that Centrelink had wrongly applied the EIBAG criteria, but did not act to rectify this error. In conducting a special review DAFF did not invite evidence from any claimants and used only information that the client provided to Centrelink, which Centrelink then provided to DAFF.

DAFF initially declined the suggestion of the Ombudsman's office that it reconsider the claims lodged by the five claimants. In DAFF's view:

- the qualification criteria were written on the front of the application form, thereby making it obvious to claimants that they must demonstrate (rather than simply declare) that their business earned the majority of its income from an affected area
- revisiting the claims might have a flow-on effect, in that DAFF may be obliged to revisit the claims of other, similarly affected customers
- claimants who contacted DAFF regarding a special review had been advised by staff of the need to provide evidence in support of their claim, and were not therefore disadvantaged as a result of Centrelink's error.

The Ombudsman disagreed with DAFF's approach, for the following reasons.

- Each of the claimants lodged their initial claim by phone.
- Claimants were not prompted to provide evidence DAFF considered essential to their application. The form for the third EIBAG suggested that those who are neither located nor conducting business in a restricted zone should answer 'no' to questions 8 and 9 and proceed to complete question 10. It is question 10 which asks 'Please describe how your business derives the majority of its income from a restricted zone but is not located in a restricted zone'.
- Had Centrelink advised the claimants that their claims were rejected due to a lack of evidence that their businesses derived the majority of their income from a restricted zone, the claimants may have been able to address this deficiency in their applications for special review.
- There is a responsibility on a government agency to give individual consideration to a complaint or application for review submitted by a person,

independently of any flow-on effects of the reconsideration. Equally, where a person has gone to the trouble of seeking review of or complaining about a decision, there is a special responsibility owed to that person to decide their case correctly, even if the decision might be inconsistent with earlier decisions (that may have been wrongly decided).

- The financial or administrative burden of reviewing the claims that were affected by Centrelink's error is the same as the burden that would have been met had the policy been properly administered in the first instance.

Recommendations

The Ombudsman made two recommendations that:

- DAFF contact each of the five claimants to advise of Centrelink's error, explain the qualification criteria for the third EIBAG, advise the types of evidence that might be accepted as adequate proof, invite the claimants to submit evidence in support of their claim for the third EIBAG, and reconsider each claim
- DAFF and Centrelink review whether other applications for the third EIBAG may have been unsuccessful for the same reason, how those applications were handled, and whether it would be appropriate to invite the claimants to submit further evidence to enable reconsideration of their claim.

In response, Centrelink and DAFF acknowledged that the policy guidelines had been incorrectly applied and accepted the Ombudsman's recommendations. DAFF later advised that both agencies had undertaken an internal review of activity surrounding the administration of the third EBAIG and had agreed a strategy to ensure that no customers would be disadvantaged. Under that strategy Centrelink will:

- review all rejected third EBAIG claims (799) to identify any applications that may have been incorrectly processed
- send a letter to the applicants whose applications warrant a review to advise of the potential error in the assessment of their claim, and to advise that Centrelink will contact them during a specified time period and provide a Centrelink contact number the customer can use if no contact has been successful
- contact the applicants whose applications warrant a review advising that there may have been an error in the assessment of their claim and offering the customer the opportunity to provide additional evidence to support their claim if they wish to pursue their claim—where attempts to contact by telephone are unsuccessful, a second letter will be sent providing a number via which the customer can call Centrelink
- provide written confirmation to a customer where they indicate they do not wish their claim to be reviewed
- send a letter to each customer contacted by telephone, confirming details of the evidence to be provided and advising that there is a timeframe of 28 days to provide this
- if no evidence is received from a customer after 14 days, Centrelink will attempt to call the customer to remind them of the need to provide evidence within the following 14 days

- if no evidence is received after 28 days Centrelink will telephone the customer and explain the reason for the rejection—if the applicant makes no contact, Centrelink will close the claim and send a letter confirming closure
- if evidence is provided an assessment based on the new information will be undertaken in a Centrelink Processing Centre
- all assessments will be subject to independent quality reviews
- the customer will be notified of the decision and reasons for that decision (successful claims will be paid via direct credit).