

Compensation for defective administration

Members of the public can suffer loss or damage because of a government agency's mistake or poor administrative practice. When that happens, they may not always be able to seek a remedy through administrative appeal, litigation, or another legal mechanism. The Scheme for Compensation for Detriment caused by Defective Administration (CDDA scheme) is an administrative scheme established to allow Australian Government agencies to provide compensation where there is a moral rather than a legal obligation. This means the CDDA scheme does not cover situations where an agency has or is likely to have a legal liability.

Guidance for agencies on how the CDDA scheme operates, the criteria to be applied and the calculation of payments is set out in [The Department of Finance's RMG 409 Guide – Scheme for Compensation for Detriment caused by Defective Administration \(RMG 409\)](#). This fact sheet supplements RMG 409 by setting out best practice principles for agencies when handling CDDA claims, drawn from the Office's experience of handling complaints about CDDA claims.

The CDDA scheme

The CDDA scheme applies to all non-corporate Commonwealth entities under the [Public Governance, Performance and Accountability Act 2013](#), with the exception of the departments of the Commonwealth Parliament. This includes all departments and many of the large statutory agencies that provide services to or deal directly with the public.

The aim of a CDDA payment is to restore a person to the position they would have been in if the defective administration had not occurred.

RMG 409 states 'Defective administration' can include:

- 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.

The decision about whether to pay compensation under the CDDA scheme is at the discretion of the relevant agency.

Contact us
[ombudsman.gov.au](https://www.ombudsman.gov.au)
1300 362 072

GPO Box 442
Canberra ACT 2601

Best practice principles

When dealing with CDDA claims, agencies should keep in mind the following principles.

Visibility and accessibility

Agencies should ensure that comprehensive information on the CDDA scheme is easily accessible to the public. For example, on the agency's website and in its service charter and other publications. All agency staff who deal with members of the public should be aware of how the CDDA scheme operates, including how claims can be made. Claim forms and supporting material should be accessible and easy to use. Agencies should also help applicants to provide relevant and adequate information to support their claim.

Timeliness

Agencies should set standards for dealing with CDDA claims to ensure they are handled in a timely manner. Agencies should regularly monitor progress against these standards to minimise delays and, if a matter is complex and will take longer than normal to resolve, it should regularly update the applicant on the progress of its investigation.

Good communication with applicants

CDDA claims should be acknowledged promptly and should include a likely timeframe for the agency's response. Further information should be sought from the applicant if required, and they should be kept informed of progress in dealing with their matter. The agency's decision letter needs to be comprehensive and easy to understand. If the claim is rejected wholly or in part, the reasons should be clearly explained.

Good decision making

A decision maker should ensure that:

- a CDDA claim is fairly assessed against the criteria set out in RMG 409 and is free from bias
- all relevant and available information is considered
- if there is a gap in the information an applicant provides, they are invited and helped to provide additional material
- information used to support the agency's decision is relevant and accurate
- the applicant is given the opportunity to view and comment on adverse material that will be considered by the decision-maker before the final decision is made.

Record keeping

A decision maker should keep proper records about how they reached their decision, including how they weighed information and assessed the claim against the CDDA scheme criteria. Any contact with the applicant should also be properly recorded. This helps ensure transparency and holds agencies to account for the way they handle CDDA claims.

A common complaint about the CDDA scheme is that an application is refused because an agency has no record of the incorrect advice that a person claims they received and

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acted on. An agency should not presume that advice was not given simply because there is no written record. Nor should an agency presume that an applicant is mistaken because the alleged advice was abnormal. A decision maker should consider the plausibility of the applicant's account, including whether the applicant kept any record or acted consistently with the advice they claim to have received.

Systemic issues

CDDA claims can alert agencies to potential problem areas and opportunities to improve their administrative systems, even in cases where an agency has decided not to grant compensation. Agencies should report to their Executive on trends and issues arising in CDDA claims and inform relevant business areas.

There are steps agencies can take to reduce disputes about the accuracy of oral advice. Some agencies record all calls to telephone advice lines. It is good practice to keep a brief written record of oral advice, particularly in responding to questions about benefits and entitlements.

Avoiding a legalistic approach

A CDDA claim should not be handled in the same way as a legal dispute. Decision makers need to remember:

- in determining a CDDA claim, the decision maker should consider all readily available information, even if the applicant has not provided it.
- if the staff handling CDDA claims are in an agency's legal area or if the agency uses external legal advisers, it should be made clear to all involved, including the applicant, that the matter is not being dealt with as a legal dispute.
- a CDDA claim should ordinarily be granted where the material before the decision maker provides a reasonable and proper basis for compensation to be paid—legal concepts and terms such as 'balance of probabilities', 'contributory negligence' and 'conclusive grounds' should not be applied.

Review of CDDA decisions

An agency decision to refuse a CDDA claim cannot be appealed to an administrative tribunal. This makes it particularly important that dissatisfied applicants are advised of other review mechanisms. If a claim is rejected, the applicant should be advised that internal agency review of the decision is available.

If an applicant is dissatisfied with an agency's decision, or the handling of their claim, they can complain to the Office of the Commonwealth Ombudsman (the Office). In such circumstances, the Office does not conduct a merits review of the decision. Instead, it looks at the agency's handling of the CDDA claim to determine if the outcome was reasonable and the decision was made in accordance with RMG 09. Where the Office considers the outcome or the decision-making process was unreasonable, it may recommend the agency reconsider the CDDA claim.

Support for staff

Staff who deal with CDDA claims need to be skilled and properly trained in investigating claims, assessing information and making decisions, as well as communicating with claimants who may be aggrieved and upset. Training in mediation and other dispute resolution techniques can be useful. Accurate and up to date information and guidance should be readily available in agency manuals, procedural advice and practice statements. Using standardised document templates can also help to foster consistency in analysing claims, determining amounts of compensation and preparing clear reasons for decisions.

Please note: This document is intended as a guide only. For this reason, the information should not be relied on as legal advice or regarded as a substitute for legal advice in individual cases. To the maximum extent permitted by the law, the Commonwealth Ombudsman is not liable to you for any loss or damage suffered as a result of reliance on this document. For the most up-to-date version of cited Acts, please refer to the Federal Register of Legislation.