



Australian Government
Department of Home Affairs

Submission

For decision
PDMS Ref. Number: MS23-001988
Date of Clearance: 12/12/2023

To Minister for Immigration, Citizenship and Multicultural Affairs
Subject Compensation for Detriment caused by Defective Administration (CDDA) s. 47F(1) [redacted] s
Timing Not time critical.

Recommendations

That you:

1. **approve** compensation in the amount of AU[s. 47F(1)3] 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 Claimants;
2. **do not approve** compensation for AU[s. 47F(1)0], as this component of the claim is not compensable under the CDDA Scheme; and
3. **sign** the attached Decision Record (**Attachment D**) so that the Claimants may have an adequate explanation of the reasons for your decision (once made) as specified in paragraph 78 of the CDDA Scheme guidelines.

compensation approved /
compensation not approved /
please discuss

compensation approved /
compensation not approved /
please discuss

signed / not signed /
please discuss

Minister for Immigration, Citizenship and Multicultural Affairs

Signature: [Handwritten Signature]

Date: 11 / 1 / 23

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Minister's Comments

Purpose**Authority to consider CDDA claims**

1. The CDDA Scheme as set out under the CDDA Scheme 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 Claimant has no other avenue to seek redress. The CDDA Scheme is permissive and discretionary. Decisions to pay compensation under the CDDA Scheme are approved on the basis that there is a moral as distinct from a legal obligation to pay compensation to a claimant. You are not obliged to authorise a payment in any particular case, s. 42(1) [REDACTED]. However, the CDDA Guidelines state that a decision to approve or refuse a payment must be *publically defensible*, having regard to all the circumstances of the matter.
3. A payment of compensation is made where it is fair and reasonable in the circumstances.
4. 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 behalf of all three Ministers of the Home Affairs portfolio, the authority to approve payments for compensation under the CDDA Scheme, subject to specific monetary limits (ADMIN22/084).
5. On the same date, Minister O'Neil signed a submission (MS22-001162) establishing a 'sensitivity protocol' whereby certain compensation claims must be referred to a Minister for decision (see page 5 of **Attachment A**). You are being provided this matter for consideration as it relevantly recommends payment of compensation over AUD s. 47F(1) and falls within your responsibilities as the claim relates to a visa issue.
6. We seek your decision on whether to pay s. 47F(1) [REDACTED] (the Claimants) compensation under the CDDA Scheme.

The Claim

7. It is claimed that the Department of Home Affairs (the Department) erroneously carried over a 'Health Insurance' condition onto the Claimants' Bridging visa, requiring them to maintain full overseas health cover between s. 47F(1) [REDACTED].

8. The Claimants state they would have maintained private health insurance through a more affordable health insurance policy had this error not occurred. The quantum claimed is the difference in the cost of health insurance policies. The Claimants requested that the Department calculate what it considers a fair and reasonable amount of compensation that is representative of the financial detriment suffered. We calculate this amount to be AUDs. 47F(1)

Summary and Recommendation

9. It is recommended that you **approve payment**, as we found that the visa processing officer made an error by carrying over the health insurance condition onto the Claimants' new visa. The Claimants suffered financial detriment as a result despite having taken all reasonable steps in the circumstances to alleviate their loss.

The CDDA Scheme

10. Pursuant to the CDDA Scheme 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 claimant's circumstances; or
 - an unreasonable failure to institute appropriate administrative procedures to cover a claimant's circumstances; or
 - advice given that was, in all the circumstances, incorrect or ambiguous; 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 official to give).
11. Under the CDDA Scheme guidelines, any detriment found to have been suffered by a claimant 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 a claimant can demonstrate was suffered despite having taken reasonable steps to minimise or contain the loss. If, for some reason, it is impractical for a claimant 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 relevant circumstances.

Background

12. **S. 47F(1)**

Timeline of facts

13. Between **s. 47F(1)**, the Claimants were holders of Temporary Retirement (subclass 410) visas. The following visa conditions were imposed by law:
- Cannot work more than 20 hours a week (condition 8104); and
 - Must have adequate health insurance (condition 8501).

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14. In s. 47F(1), the Claimants applied for a Permanent Aged Parent (subclass 804) visa. On s. 47F(1), the Department confirmed receipt of the application, and granted an interim (BVA) pending an outcome on the Aged Parent visa. The visa processing officer carried over conditions 8104 and 8501, from the Retirement visa, however the health insurance condition (8501) should *not* have been carried over.
15. On the same day, the Department issued an acknowledgement letter to the Claimants, relevantly advising that:
- the BVA would come into effect after their temporary visa expired (being s. 47F(1));
 - the Department is unable to assist with queries relating to Medicare and Centrelink; and
 - the Department can be contacted via email on 'parents@immi.gov.au' for urgent queries, or by telephone on 1300 652 421.

Advice from External Agencies

16. In s. 47F(1), the Australian Taxation Officer (ATO) and Services Australia gave advice to the Claimants that appeared to be at odds with their visa condition, and is outlined as follows:
- In s. 47F(1), the ATO contacted the Claimants advising that they were required to pay Medicare levies back-dated to s. 47F(1). The Claimants inquired further with Medicare as they considered this was at odds with their visa condition. Medicare relevantly advised the Claimants that they *were in fact eligible for Medicare* as they were applicants for a permanent residency, and must attend a Medicare office if they wish to discuss their concerns further.
 - In s. 47F(1), the Claimants attended a Medicare office. Medicare advised the Claimants that they were entitled to either *Full Interim Medicare* (granted to all applicants of permanent residency), or *Reciprocal Medicare* as they were citizens of the s. 47F(1). Due to technical issues at the time, Medicare was not able to issue a *Full Interim Medicare Card*, but instead issued a *Reciprocal Medicare Card*.
 - Shortly thereafter, the Claimants contacted their health insurer, s. 47F(1), requesting a change of their private health insurance policy on the basis of their Medicare eligibility. s. 47F(1) advised that, although the Claimants have *Reciprocal Medicare*, their visa condition 8501 requires them to maintain their current *Overseas Visitor Health Cover*.
 - On this basis, the Claimants considered visa condition 8501 pre-empted their eligibility for an alternative health cover.

Attempts to contact the Department

17. Between s. 47F(1), the Claimants suffered from health conditions that made it difficult to deal with their ongoing Medicare and health insurance concerns.

18. In **s. 47F(1)** the Claimants became concerned with the exponential increase of their health insurance premiums, and revisited the question of their Medicare coverage. The Claimants initially attempted to contact the Department, but were unsuccessful as a result of the Department's restructure into 'Department of Home Affairs'. We note that:

- The email 'parents@immi.gov.au' was no longer in use, and the Claimants' case officer was no longer reachable;
- The Claimants attempted to make an online immi account to see if it allowed them to communicate their concerns with the Department, to no avail; and
- By phone, each Departmental officer advised the Claimants that they could not assist with their health cover queries, and referred them to Medicare.

19. Based on the above, the Claimant was not successful in obtaining advice from the Department relating to their Medicare and health insurance concerns. The Department is not aware of any correspondence relating to the Claimants' concerns between **s. 47F(1)**.

Ministerial Correspondence

20. In **s. 47F(1)**, the Claimants escalated their concerns to Chris Picton MP, South Australian State Health Minister.

21. On **s. 47F(1)**, Chris Picton MP wrote to Claire O'Neil MP as Minister for Home Affairs, raising concern for the significant increase in monthly premiums, and asked whether there are options to choose alternative and reasonably priced insurance options without the Claimants contravening their visa conditions.

22. On **s. 47F(1)**, the Department's Parent Visa Centre (Family Visa Branch) replied directly to the Claimants by email, advising that condition 8501 should not have been attached to the Claimants BVA, apologised for the error, and suggested the Claimants apply for discretionary compensation. **Attachment B** is a copy of the email. We confirm that the BVA conditions were amended and a new notice was issued to the Claimants.

Was there was Defective Administration?

23. We confirm that there was no **s. 42(1)** or policy basis to impose the health insurance visa condition 8501 on the Claimants' BVA, having regard to the criteria outlined in Schedule 2 of the *Migration Regulations 1994* (Cth). The criteria specifies circumstances where a health insurance (8501) condition is carried over or imposed on an applicant's BVA. In this case, the Claimant did not meet this criteria, and therefore there was no basis for imposing this condition in the first place.

24. The responsible business area, Family Visa Branch, confirms that the decision to impose the health insurance visa condition 8501 was not consistent with Departmental policy and procedure, having regard to the *Procedural Advice Manual 3* which was utilised by all Departmental officers at the time. It is more likely than not that the visa processing officer's decision was affected by human error.

25. Based on the above, we are of the view that the Department's conduct amounts to defective administration under the CDDA Scheme guidelines.

Detriment

- 26. The Claimants confirmed that, had the defective administration not occurred, they would have in any event chosen a more affordable health insurance policy option. As a result of the defective administration, the Claimants maintained their Overseas Visitor Health Insurance Cover which required them to pay excessive premiums from s. 47F(1) [REDACTED]. At all times, the Claimants remained unaware that the Department imposed the visa condition in error.
- 27. The CDDA Scheme guidelines provide that the Department should put the Claimants back in the financial position they would have been in had the defective administration not occurred.

S. 47C(1)

- 29. Please note that payment of compensation by the Department is conditional upon the s. 45(1) [REDACTED]

Consultation – internal/external

- 30. The responsible business area, Family Visa Branch was consulted in relation to this claim. The Branch confirmed that the Department had imposed the visa condition in error and apologised to the Claimants.

Consultation – Secretary / Associate Secretary / ABF Commissioner

- 31. The Secretary was not consulted on this submission.
- 32. The Associated Secretary was not consulted on this submission.
- 33. The ABF Commissioner was not consulted on this submission.

Client service implications

- 34. The error occurred over 13 years ago, and no reports of similar errors have been reported. The error was isolated and a result of human error. The responsible business area confirms their staff are fully trained and Bridging visa training is conducted to a high standard.

Risks and Sensitivities

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

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Financial/systems/legal/deregulation/media implications

37. The outcome of this claim is not expected to have any legal, deregulation or media implications.

38. It should be noted that the recommended compensation **s. 45(1)**
s. 45(1) by the Department of Home Affairs.

Attachments

- Attachment A** Signed Instrument of Authorisation
- Attachment B** Email to the Claimant dated 6 December 2022
- Attachment C** Calculations of Health Insurance Costs
- Attachment D** Decision Record

Authorising Officer
Cleared by: Clare Sharp Group Manager Legal Group Date: 12 December 2023 Mob: 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)**.

CC Minister for Home Affairs, Minister for Cyber Security
Secretary
ABF Commissioner

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DECISION RECORD

MS23-001988

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). I am the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs.
2. Your application has been referred to me for decision. I am authorised to decide your application under sections 61 and 64 of the *Australian Constitution*.
3. In reaching a 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. Your original claim dated **s. 47F(1)**
 - b. The Department's correspondence with your representative, **s. 47F(1)**
 - c. Health insurance documents that you provided in support of your claim;
 - d. Ministerial Correspondence between Chris Picton MP and Clare O'Neil;
 - e. The Department's response to the Ministerial Correspondence;
 - f. Accounts provided by the responsible business area within the Department; and
 - g. CDDA Scheme *Resource Management Guide* (CDDA Guidelines).

Your claim

4. As I understand, you claim that the Department erroneously carried over a 'Health Insurance condition onto your Bridging visa A (BVA), requiring you to maintain full overseas visitor health cover between **s. 47F(1)**. You paid excessive premiums attached to this specific type of cover.
5. You claim that, had the error not occurred, you would have held a more affordable health insurance policy. The total premiums you paid under the relevant period was **s. 47F(1)**. I understand that you requested the Department calculate what premiums were fair and reasonable to pay but for the error. The Department has assessed the quantum of your claim to be AUD **s. 47F(1)**, being the difference between what you actually paid and what you ought

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to have paid had the defective administration not occurred. Attachment A details the calculated amounts and reasoning.

My decision

6. I approve compensation in the amount of AUDs. 47F(1) under the CDDA Scheme on the basis that the Department's conduct amounted to defective administration and that it caused detriment to you as a result.
7. I do not approve the remaining amount of the total health insurance premium you paid, being AUDs. 47F(1)

Reasons for my decision

8. I have found that that the Department's decision to impose a health insurance condition on your BVA was a specific and unreasonable departure from existing procedures.
9. There was no basis to impose a health insurance visa condition on your BVA, having regard to the criteria outlined in Schedule 2 of the *Migration Regulations 1994* (Cth). The criteria specifies circumstances where a health insurance (8501) condition is carried over or imposed on a visa applicant's BVA. In your case, you did not meet the criteria, therefore there was no basis for having this visa condition imposed on you in the first place.
10. I accept that, had the defective administration not occurred, you would have chosen a more affordable health insurance policy. As a result of the defective administration, you maintained your Overseas Visitor Health Insurance cover which required you to pay excessive premiums between s. 47F(1). At all times, you remained unaware that the visa condition was imposed on you in error.
11. In determining the quantum, I considered the overarching principle of compensation under the CDDA Scheme, that is, to put you in the financial position you would have been in had the defective administration not occurred. The amount you paid has been calculated as s. 47F(1). The amount you ought to have paid had the defective administration not occurred is calculated to be AUDs. 47F(1). This amount was arrived at by cumulatively subtracting the rate rises from preceding years from your new monthly premium of AUDs. 47F(1).
12. Therefore, I approve the difference between those two amounts, being AUDs. 47F(1), as the amount in excess of what you ought to have paid. It follows that AUDs. 47F(1) of the total cost of premiums should not be paid, as this is not a loss you would have suffered had the defective administration not occurred.
13. If my offer of compensation is agreeable to you, my Department will be in contact to arrange payment. Please note that payment is conditional upon you s. 45(1)

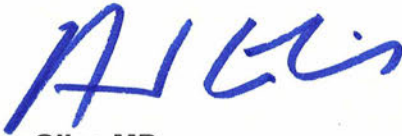
Review of Decision

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

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Yours sincerely



Andrew Giles MP
Minister for Immigration, Citizenship and Multicultural Affairs

11 January 2024

Attachment A: *Calculations of Health Insurance Costs*

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OFFICIAL: Sensitive**Attachment A - Calculations of Health Insurance Costs***The amount the Claimants actually paid*

1. The Claimants had paid AUDs. 47F(1) between s. 47F(1) (see **Table 1**). We calculated this amount based on the following:
 - a) The Claimants' BVA came into effect in s. 47F(1) (at the expiry of their Retirement visa), and therefore considered this as the starting point of detriment suffered; and
 - b) The sum of all the premiums paid between s. 47F(1) based on rate rise letters provided by the Claimants.

The amount the Claimants ought to have paid

2. Had the Department's defective administration not occurred, we calculate that the Claimants were likely to pay a ballpark figure of AUDs. 47F(1) in premiums (see **Table 2**). We arrived at this amount by considering the following:
 - a) The Claimants confirmed that they now pay s. 47F(1) in health insurance premiums per month;
 - b) We deducted s. 47F(1) yearly rate rises cumulatively against AUDs. 47F(1) to estimate the likely monthly premium from year to year; and
 - c) Multiplied the likely monthly premium by the number of months between s. 47F(1)
3. In assessing the amount of premiums the Claimant *ought* to have paid had the defective administration not occurred, we considered that it is not possible to determine an exact figure. However, the CDDA guidelines provides that offers of compensation are calculated on the basis of what the decision maker considers is fair and reasonable in the circumstances.
4. Based on the above, we calculate the amount payable to be AUDs. 47F(1) (being the difference of the underlined values above).

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Table 1 – Amount the Claimants actually paid

The amount paid as a result of holding an *Overseas Visitor Health Insurance* policy.

Start date	End date	Month Count	Monthly Premium (AUD)	Total for the Year (AUD)	Cumulative Total (AUD)
s. 47F(1)					

Table 2 – Amount the Claimants likely ought to have paid

We calculated the 'likely amount' by cumulatively subtracting the rate rise from the preceding year, working backwards from 2022.

Year	Rate rise Increase* (%)	Likely Amount (AUD)	Months	Total (AUD)
s. 47F(1)				

TOTAL: s. 47F(1)

*Rate rises as found on the *Australian Government Department of Health and Aged Care* website, extracted from: <https://www.health.gov.au/resources/foi-disclosure-log/foi-3870-release-of-documents-hospitals-contribution-fund-hcf-private-health-insurance-premium-increases>

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s. 22(1)(a)(ii)

From: WA Parents <parents@homeaffairs.gov.au>
Sent: Tuesday, 6 December 2022 11:43 AM
To: s. 47F(1)
Subject: Department of Home Affairs - s.22(1)(a)(ii) - s. 47F(1)
 [SEC=OFFICIAL]

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Dear s. 47F(1)

CLF2010/155691 - 575537896 - s. 47F(1)

I refer to our telephone conversation earlier today regarding the Aged Parent (subclass 804) visa application lodged by your parents, s. 47F(1), on s. 47F(1).

As you are aware, two conditions were attached to the bridging visas granted to your parents to allow them to remain in Australia until their parent visa application is finalised:

8104 Work restriction
 8501 Maintain adequate health insurance

Information about the visa conditions is available on the Department's website at [Check visa details and conditions \(homeaffairs.gov.au\)](https://www.homeaffairs.gov.au).

The conditions, applicable to the subclass 410 visas previously granted to your parents, were carried across to the bridging visas.

I can confirm the 8501 visa condition should not have been attached to the bridging visas and it has now been removed. A letter will be sent confirming the current conditions of the bridging visas.

I apologise for the error.

If the Department has caused a financial loss or some other detriment, your parents might be able to apply for compensation. For information on the process, please see [Claiming compensation from us \(homeaffairs.gov.au\)](https://www.homeaffairs.gov.au)

Thank you for bringing this matter to our attention.

Regards

s. 22(1)(a)(ii)

Assistant Manager, Parent Visa Centre
 Family Visa Branch | Immigration Programs Division
 Immigration and Settlement Services Group
 Department of Home Affairs
 www.homeaffairs.gov.au

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Attachment C - Calculations of Health Insurance Costs

The amount the Claimants actually paid

1. The Claimants had paid AUDS. 47F(1) between s. 47F(1) (see **Table 1**). We calculated this amount based on the following:
 - a) The Claimants' BVA came into effect in s. 47F(1) (at the expiry of their Retirement visa), and therefore considered this as the starting point of detriment suffered; and
 - b) The sum of all the premiums paid between s. 47F(1) based on rate rise letters provided by the Claimants.

The amount the Claimants ought to have paid

2. Had the Department's defective administration not occurred, we calculate that the Claimants were likely to pay a ballpark figure of AUDS. 47F(1) in premiums (see **Table 2**). We arrived at this amount by considering the following:
 - a) The Claimants confirmed that they now pay AUDS. 47F(1) in health insurance premiums per month;
 - b) We deducted s. 47F(1) yearly rate rises cumulatively against AUD s. 47F(1) to estimate the likely monthly premium from year to year; and
 - c) Multiplied the likely monthly premium by the number of months between s. 47F(1)
3. s. 47C(1)
 However, the CDDA guidelines provides that offers of compensation are calculated on the basis of what the decision maker considers is fair and reasonable in the circumstances.
4. Based on the above, we calculate the amount payable to be AUDS. 47F(1) (being the difference of the underlined values above).

Table 1 – Amount the Claimants actually paid

The amount paid as a result of holding an *Overseas Visitor Health Insurance* policy.

Start date	End date	Month Count	Monthly Premium (AUD)	Total for the Year (AUD)	Cumulative Total (AUD)
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S. 47F(1)

Table 2 – Amount the Claimants likely ought to have paid

We calculated the 'likely amount' by cumulatively subtracting the rate rise from the preceding year, working backwards from 2022.

Year	Rate rise Increase* (%)	Likely Amount (AUD)	Months	Total (AUD)
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S. 47F(1)

*Rate rises as found on the *Australian Government Department of Health and Aged Care* website, extracted from: <https://www.health.gov.au/resources/foi-disclosure-log/foi-3870-release-of-documents-hospitals-contribution-fund-hcf-private-health-insurance-premium-increases>