



**MINUTE – FOR DECISION**

**TO** Secretary, Department of Agriculture, Fisheries and Forestry

**SUBJECT** APPLICATION FOR CDDA PAYMENT—s. 22(1)(a)(ii)

**PURPOSE**

To seek your approval of the final report (Attachment A) and agreement to pay \$8035.50 to s. 22(1)(a)(ii) s. 22(1)(a)(ii) under the Scheme for Compensation for Detriment caused by Defective Administration (CDDA Scheme).

**KEY ISSUES**

1. On 6 May 2013, we provided you with a preliminary assessment (the minute and preliminary assessment are at Attachment B) of s. 22(1)(a)(ii) application for a payment of \$8035.50 under the CDDA Scheme.
2. You agreed to the findings in the preliminary assessment, including the recommendation to pay s. 22(1)(a)(ii) \$8035.50 and for the department to provide the report to s. 22(1)(a)(ii) for comment.
3. s. 22(1)(a)(ii) has advised that it is happy with the assessment and has no further comments. We have now finalised the report without amendment.
4. We are seeking your approval of the final report and agreement to pay \$8035.50 in compensation to s. 22(1)(a)(ii)

**SENSITIVITY**

Low

**RECOMMENDED ACTION**

<p>1. That you <b>approve</b> the final report on s. 22(1)(a)(ii) CDDA application.</p> <p>2. That you <b>agree</b> to the payment of \$8035.50 to s. 22(1)(a)(ii)</p>	<p><del>Approved/ Not Approved/ Please Discuss</del></p> <p><del>Agreed/ Not Agreed/ Please Discuss</del></p> <p>s. 22(1)(a)(ii)</p>
<p><b>Comments</b></p>	

COPIES

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

FILE NO.

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

## Claim Summary

1. On 6 June 2012, s. 22(1)(a)(ii) wrote to the Department of Agriculture, Fisheries and Forestry (DAFF) requesting compensation under the Scheme for Compensation for Detriment caused by Defective Administration (the CDDA scheme).
2. s. 22(1)(a)(ii)
3. The request relates to an incident in which a consignment of used machinery was imported into s. 22(1)(a)(ii) and then erroneously released from a Quarantine Approved Premises (QAP)—s. 22(1)(a)(ii)—prior to the removal of biosecurity risk material. The machinery was then recalled to the QAP for treatment by DAFF. s. 22(1)(a)(ii) is claiming compensation for the costs incurred in packaging and shipping the machinery back to QAP s. 22(1)(a)(ii)

## Background

Date	Event
2 April 2012	DAFF issued a direction for the machinery to be sent to QAP s. 22(1)(a)(ii) for unpacking and inspection.
1 May 2012	The machinery was imported into s. 22(1)(a)(ii)
7 May 2012	The shipping container was delivered to QAPs s. 22(1)(a)(ii)
9 May 2012	The machinery was inspected by a DAFF Biosecurity Officer (DAFF officer) and biosecurity risk material found. The machinery was taped and an order given to s. 22(1)(a)(ii) (through QAP s. 22(1)(a)(ii) that a valid import permit needed to be presented to the DAFF front counter prior to further inspection and cleaning.
9 May 2012	An expired import permit was presented to DAFF front counter staff.
14 May 2012	A valid import permit was presented to DAFF front counter staff. Front counter staff issued a formal release notice to s. 22(1)(a)(ii) for the machinery.
15 May 2012	The machinery was packed at QAP s. 22(1)(a)(ii) and delivered to the importer's premises at s. 22(1)(a)(ii)
16 May 2012	DAFF contacted s. 22(1)(a)(ii) and the importer and the machinery was ordered back in to quarantine.

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

30. After reviewing the information and documented evidence, it is considered that, given the release notice was provided as part of DAFF's established formal quarantine processes, it was reasonable for <sup>s. 22(1)(a)(ii)</sup> to rely on the advice given. It would be unusual for an importer to question such a notice from DAFF. In providing a direction notice, DAFF should have appreciated that <sup>s. 22(1)(a)(ii)</sup> would act on the direction given and transport the machinery to its intended destination.

## Conclusion

31. The report has outlined the information as presented by the claimant and the information provided by DAFF officers. In coming to a conclusion, careful consideration has been given to identifying both potential defective administration and what, if any detriment has occurred.
32. On the basis of the above analysis, the assessment is that pure economic loss of \$8035.50 suffered by <sup>s. 22(1)(a)(ii)</sup> was a direct result of DAFF's defective administration in providing a notice of release for the machinery rather than a notice of inspection.
33. Compensation of \$8035.50 to <sup>s. 22(1)(a)(ii)</sup> is recommended.



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

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

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

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

**Your application for compensation under the Scheme for Compensation for Detriment caused by Defective Administration**

1. This letter is about your application for compensation from the Department of Agriculture Fisheries and Forestry under the Scheme for Compensation for Detriment caused by Defective Administration (CDDA Scheme), which was originally submitted on 22 November 2009.
2. I am the investigating officer for your application. I have completed my investigation and made recommendations to the secretary, who has now made a decision in relation to the application. This letter describes the secretary's decision and his reasons for it.

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

4. I appreciate the issues that are the subject of your claim have taken place s. 22(1)(a)(ii). I am saddened to read about the experiences you have had but am grateful for the extensive information you have provided. You have clearly had a difficult and stressful time s. 22(1)(a)(ii). In this context particularly, I appreciate the effort you have taken to continue dealing with the department.

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

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

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

6. You claimed that you were incorrectly advised by the Australian Quarantine and Inspection Service (AQIS) that s. 22(1)(a)(ii) met the criteria for acceptance into New Zealand under the s. 22(1)(a)(ii).

7. On 15 June 2010, the then secretary determined that the inaccurate advice provided by AQIS regarding the export of s. 22(1)(a)(ii) to New Zealand amounted to defective administration under the CDDA Scheme and concluded that you had relied on this advice to your detriment.

**Pages 3-5 have been removed as being out of scope**

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

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

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

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

### Decision

12. In coming to a decision about your claim for compensation, the secretary took the following into account:
- your application for compensation;
  - the original decision, including the finding that defective administration occurred;
  - the additional information you provided in support of a claim for personal injury loss; and
  - the CDDA Scheme Guidelines as set out in Attachment A of Finance Circular 2009/09—Discretionary Compensation and Waiver of Debt Mechanisms. (A copy of the circular is available at: <http://www.finance.gov.au/publications/finance-circulars/2009/09.html>.)
13. After carefully considering your application, the secretary has determined that it is appropriate to offer you compensation in the amount of **\$66,649.93**. This amount includes the original offer of compensation (\$11,481.15), an amount of compensation for psychiatric injuries suffered by s. 22(1)(a)(ii) (\$47,450), and compensation for the expenses you incurred in collecting the evidence in support of your claim (\$7,718.78).
14. The reasons for this decision are set out below.

### Reasons for decision

15. The secretary considered your claim in accordance with the guidelines applicable to the CDDA Scheme.
16. As the title implies, the CDDA Scheme is concerned with ‘defective administration’ and its purpose is to enable Commonwealth agencies to compensate people for financial loss or detriment that is the direct result of the ‘defective’ actions or omissions of those agencies, where the claimant has no other avenues of redress. A key feature of the CDDA Scheme is that it is entirely discretionary and a person making a claim under this Scheme does not have a *right* to be compensated. Rather, the CDDA Scheme permits (but does not require) the Commonwealth to make payments of compensation in certain defined circumstances.
17. To succeed in a claim for compensation under the CDDA Scheme, a person must:
- suffer a direct financial loss; and
  - demonstrate that the financial loss was caused by the ‘defective administration’ of the department or its officers.

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financial or other professional services to assist in the preparation of an application are not compensable. As such, the secretary decided that it would not be appropriate to compensate you for these costs.

37. The secretary has therefore determined that it is appropriate in the circumstances of this application to offer you compensation in the total amount of **\$66,649.93**.

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

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

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

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

#### **Review rights**

40. Please be aware that there is no automatic right of review of decisions under the CDDA Scheme.

41. If you are dissatisfied with this decision, then you may wish to request the Commonwealth Ombudsman to review the matter. The Ombudsman has the role of investigating individual complaints about Commonwealth agencies including the Tax Office. You can contact the Ombudsman on Freecall 1300 362 072.

42. The Ombudsman's powers are prescribed by the *Ombudsman Act 1976*. The Ombudsman is empowered to investigate, and if the Ombudsman considers it appropriate to do so, propose that a decision be changed. An agency must consider any proposal or recommendation made by the Ombudsman but is not bound by it. Further, the Ombudsman has no power to overturn or vary an agency's decision.

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

Yours sincerely

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

17 July 2013