

Container holds - Compensation

Spring 2018



Recommendation 6

In cases where the ABF has not been able to process containers efficiently, consideration should be given to advising complainants of compensation schemes available under the *Public Governance, Performance and Accountability Act 2013*

Comments on the recommendation

- Very weak – not that the ABF should advise of compensation – “consideration be given”
- Advice only given to complainants – if you don’t complain you will not be advised on compensation
- Recommendation is not to pay compensation – only to advise of rights

Recommendation is supported by the ABF

Compensation schemes

- Apply where the ABF is not legally obliged to make payment
- Would not apply where there is:
 - negligence
 - breach of statutory duty of care
- Legislation provides the right to make payment
- Legislation needed, otherwise it would be the unauthorized payment of money by a Government department

Types of schemes

1. Waiver of debt – not relevant (remember for duty claims)
2. Compensation for detriment caused by defective administration
3. Act of grace payment

There must be defective administration. This 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) an applicant, the proper advice that was within the officer's power and knowledge to give (or reasonably capable of being obtained by the officer to give); or
- giving advice to (or for) an applicant that was, in all the circumstances, incorrect or ambiguous.

CDDA

- Need to identify a specific and unreasonable lapse in complying with existing administrative procedures or an unreasonable failure to institute appropriate administrative procedures.
- The support for these claims could be found in the other recommendations of the Report relating to the cause of the delays and what the ABF/DAW should be doing better.
- In 2016/17 the Report noted 28 claims for compensation, of which only 8 (totalling \$11K) were approved.

Act of grace payment

Even less precise than a payment under the CDDA scheme. An act of grace payment is simply a payment made in special circumstances where there is no legal obligation to do so.

Special circumstances are not defined but may apply where a decision maker is satisfied that:

- an act of Government has caused an unintended and inequitable result to the individual or organisation seeking the payment;
- Commonwealth legislation or policy has had an unintended, anomalous, inequitable or otherwise unacceptable impact on the claimant's circumstances; or
- the matter is not covered by legislation or specific policy, but the Commonwealth Government intends to introduce such legislation or policy.

Making claims

The key with both types of claims is to:

- identify the right applicant;
- be specific about what the defective action is;
- describe how it impacted you uniquely as opposed to every other importer;
- provide clear evidence of the loss and the steps taken to reduce the loss;
- demonstrate that there is no other avenue to recover the payment; and
- explain why the loss suffered is unfair in the circumstances.

No complaint, no compensation

Questions



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