



DEPARTMENT OF
FINANCE AND
ADMINISTRATION

Reference: 03/1967
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The Secretary
Senate Select Committee on Superannuation
Parliament House
CANBERRA ACT 2600

Dear Ms Morton

Inquiry into Financial Assistance Levy Bills

Thank you for giving the Department of Finance and Administration (Finance) the opportunity to make a submission to the inquiry into the Financial Assistance Levy Bills.

Act of grace payments and waiver of debt have their legislative basis in sections 33 and 34 of the *Financial Management and Accountability Act 1997* (FMA Act) respectively (see Attachment A). Section 33 of the FMA Act provides for the approval of act of grace payments for compensation if the decision-maker considers it appropriate because of the existence of special circumstances, and where there is no other viable avenue of redress available to an individual or organisation seeking the assistance. All requests are considered on a case by case basis.

Sub-section 33(1)(a) provides authority for the Minister for Finance and Administration (or his delegates) to approve a payment in special circumstances. The term "special circumstances" is interpreted to refer to situations specified in "Finance Circular 2001/01 – Commonwealth Compensation 'Schemes', Debt Waiver and Write-Offs" (see Attachment B). The existence of special circumstances may lead to the decision-maker concluding that, in such instances, the Commonwealth has a moral obligation, rather than a legal obligation, to make an act of grace payment to an individual or organisation.

The act of grace provision gives discretion to the Commonwealth to make payments for purposes not specifically sanctioned by Parliament. The only statutory requirement is that the payment be made where special circumstances are adjudged by the decision-maker as constituting a moral obligation on the part of the Commonwealth to compensate individuals or organisations. Act of grace payments, and waiver of debt, differ from other compensatory mechanisms provided by the Commonwealth in that they fall outside of any notion of statutory entitlements, government approved schemes such as grants-in-aid, and payments by the Commonwealth under legal liability.

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The decision-maker's powers in relation to providing act of grace assistance, pursuant to section 33 of the FMA Act, will usually only be applied when all other relevant avenues of redress have been exhausted. In the event that a claimant is pursuing other avenues of redress it is usually the case that it is inappropriate for the decision-maker to consider a claimant's request for act of grace assistance.

The Parliamentary Secretary to the Minister for Finance and Administration, Mr Peter Slipper MP, is responsible for exercising sole discretion as the decision-maker in considering requests for act of grace payments from individuals or organisation. Finance has the role of advising the Parliamentary Secretary on all requests for act of grace payments.

Finance is of the view that, as it is responsible for superannuation policy, it is more appropriate that the Department of the Treasury address the proposal that compensation for losses suffered by superannuation funds as a result of fraudulent conduct or theft should be funded from consolidated revenue.

Please contact me on (02) 6215 2555 if you require any further information.

Yours sincerely



Guy Verney
Branch Manager
Grants Branch
10 March 2003

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ATTACHMENTS

- Attachment A Sections 33 and 34 of the *Financial Management and Accountability Act 1997*
- Attachment B 2001/01 Finance Circular – Commonwealth Compensation 'Schemes', Debt Waiver and Write-Offs



[Index](#) [Table](#) [Search](#) [Notes](#) [Noteup](#) [Previous](#) [Next](#) [Download](#) [Help](#)

FINANCIAL MANAGEMENT AND ACCOUNTABILITY ACT 1997 SECT 33

DIVISION 4 Miscellaneous 33 Finance Minister may approve act of grace payments

- 1) If the Finance Minister considers it appropriate to do so because of special circumstances, he or she may authorise the making of any of the following payments to a person (even though the payment or payments would not otherwise be authorised by law or required to meet a legal liability):
 - (a) one or more payments of an amount or amounts specified in the authorisation (or worked out in accordance with the authorisation);
 - (b) periodical payments of an amount specified in the authorisation (or worked out in accordance with the authorisation), during a period specified in the authorisation (or worked out in accordance with the authorisation).
- 2) If a proposed authorisation would involve, or be likely to involve, a total amount of more than \$100,000, the Finance Minister must first consider a report of an Advisory Committee set up under [section 59](#).
- 3) Conditions may be attached to payments under this section. If a condition is breached, the payment may be recovered by the Commonwealth as a debt in a court of competent jurisdiction.
- 4) Payments under this section are to be made out of money appropriated by the Parliament for the purposes of this section.

[Index](#) [Table](#) [Search](#) [Notes](#) [Noteup](#) [Previous](#) [Next](#) [Download](#) [Help](#)

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[Index](#) [Table](#) [Search](#) [Notes](#) [Noteup](#) [Previous](#) [Next](#) [Download](#) [Help](#)

FINANCIAL MANAGEMENT AND ACCOUNTABILITY ACT 1997 SECT 34

34 Finance Minister may waive debts etc.

- 1) The Finance Minister may, on behalf of the Commonwealth:
 - (a) waive the Commonwealth's right to payment of an amount owing to the Commonwealth;
 - (b) postpone any right of the Commonwealth to be paid a debt in priority to another debt or debts;
 - (c) allow the payment by instalments of an amount owing to the Commonwealth;
 - (d) defer the time for payment of an amount owing to the Commonwealth.
- 2) If a proposed waiver under paragraph (1)(a) involves, or is likely to involve, a total amount of more than \$100,000, the Finance Minister must consider a report of an Advisory Committee set up under [section 59](#) before taking action on the waiver.
- 3) A waiver may be made either unconditionally or on the condition that a person agrees to pay an amount to the Commonwealth in specified circumstances.

- 4) In this section:

amount owing to the Commonwealth includes an amount that is owing but not yet due for payment.

[Index](#) [Table](#) [Search](#) [Notes](#) [Noteup](#) [Previous](#) [Next](#) [Download](#) [Help](#)

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DEPARTMENT OF
FINANCE AND
ADMINISTRATION

Reference: 00/3479-03
Contact: Cath Tighe
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All Chief Executive Officers
All Chief Finance Officers
Departments of State, Parliamentary Departments and Prescribed Agencies

Finance Circular 2001/01 - Commonwealth Compensation 'Schemes', Debt Waiver and Write-Offs

The Department of Finance and Administration (Finance) has recently reviewed the policy framework pertaining to the Commonwealth's 'compensatory schemes' and waiver arrangements. The 'compensatory schemes' include the *Scheme for Detriment Caused by Defective Administration* (CDDA scheme), an administrative scheme which has been devolved to each agency head, and act of grace payments as authorised by section 33 of the *Financial Management and Accountability Act 1997* (the FMA Act), which is administered by this Department.

As a result of the review, which involved consultation with key agencies, the attached Finance Circular 2001/01 (Circular) has been developed for the purpose of reiterating the policy framework and clarifying the interrelationship between the various schemes.

Finance Circular 2001/01 replaces the previous Estimates Memorandum 1995/42 which provided advice on the establishment of the CDDA scheme.

There are no changes in the existing policy intent of any of the schemes covered by the Circular.

Arrangements are currently underway to publish the Circular on Finance's website. The brochures published in April 1999 on the act of grace, CDDA, and waiver arrangements are obsolete and will not be updated or replaced.

If you have any queries, please contact Cath Tighe on telephone number (02) 6215 2561 or e-mail address Cath.Tighe@finance.gov.au.

A handwritten signature in black ink, appearing to read 'Mike Cramsie'.

Mike Cramsie
Special Adviser
Legislative Review Branch
26 July 2001

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**FINANCE
CIRCULAR
No: 2001/01**



**DEPARTMENT OF
FINANCE AND
ADMINISTRATION**

To All Departments of State, Parliamentary Departments and Prescribed Agencies

COMMONWEALTH COMPENSATION 'SCHEMES', DEBT WAIVER AND WRITE-OFFS

KEY POINTS

- This Circular provides a consolidated overview of Commonwealth compensatory 'schemes', debt waiver and write-off provisions. It also provides detailed guidelines for agencies on the following schemes for which the Department of Finance and Administration (Finance) has policy responsibility:
 - *Compensation for Detriment Caused by Defective Administration (CDDA scheme);*
 - act of grace payments; and
 - waiver of debts owed to the Commonwealth under the *Financial Management and Accountability Act 1997 (FMA Act)*.
- The Circular updates and replaces the (then) Department of Finance Estimates Memorandum 1995/42 which advised on the original establishment and operation of the CDDA scheme.
- There are no changes in the existing policy intent of any of the schemes covered in this Circular.

BACKGROUND

In December 1995, the (then) Department of Finance issued Estimates Memorandum (EM) 1995/42 providing advice and guidelines for agencies on the establishment and operation of the CDDA scheme. Since that time, two developments have occurred which have necessitated a revision of the guidelines:

- the introduction of the FMA Act and the *Public Service Act 1999 (PS Act)*; and
- the October 1999 Commonwealth Ombudsman's report: *'To compensate or not to compensate'*. The report highlighted that agencies are seeking a more integrated explanation of the existing rules relating to Commonwealth compensatory 'schemes', in order to understand and apply the current arrangements more comprehensively.

CONTENTS

Attachment A to the Circular provides a general overview of the Commonwealth 'schemes' for considering compensation, namely:

- *Legal Services Directions on Handling Monetary Claims against the Commonwealth* (ie for legal liability);

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- *Compensation for Detriment Caused by Defective Administration* (CDDA scheme);
- Act of grace payments; and
- Payments in Special Circumstances (which relate to APS employment).

In addition, Attachment A includes an overview of write-off and waiver provisions which provide two other forms of financial 'relief'.

Attachments B–D provide guidance on the schemes for which Finance has policy responsibility:

- CDDA at Attachment B;
- Act of grace at Attachment C; and
- Waiver of debts at Attachment D.

This Circular will be maintained on the Finance website at:

http://www.finance.gov.au/finframework/discretionary_payments.html.

CONTACTS

Any inquiries on the advice provided in this Circular can be directed to the Special Financial Claims Section, Finance, on (02) 6215 2560 or 6215 2561.



Jonathan Hutson
Group Manager
Financial Framework Group

23 July 2001

**Attachment A to
Finance Circular
2001/01**

Overview of Commonwealth 'Compensatory Schemes'

<p style="text-align: center;">'Scheme' Application/Key criteria</p>	<p style="text-align: center;">Legislation Head of Power Delegate</p>	<p style="text-align: center;">Guidance</p>
<p>Legal Services Directions on Handling Monetary Claims</p> <p>The Directions apply where a claim for monetary compensation is made against the Commonwealth or an agency (other than claims that need to be determined under a legislative mechanism (eg, social security benefits) or under a mechanism provided by contract (eg, an arbitration of a disputed contractual right)).</p> <p>For such claims, agencies in the first instance must consider whether a <u>legal obligation exists</u> to pay the compensation sought. If it does, the claim must be settled in accordance with the Directions (even if the claimant may have initially sought compensation under CDDA or an act of grace payment).</p> <p>Claims covered by the Directions are to be <u>settled in accordance with legal principle and practice</u>. That criterion requires at least a meaningful prospect of liability being established. Settlement is not to be effected simply on the basis of the cost of defending what is clearly a spurious claim. If there is a meaningful prospect of liability, the factors to be taken into account in assessing a fair settlement include: likely success of claim in court; costs of defending the claim; and any prejudice in defending the claim.</p>	<p>s.55ZF <i>Judiciary Act 1903</i></p> <p><i>Agency CEOs or their authorised officers</i></p>	<ul style="list-style-type: none"> • A-G's <i>Legal Services Directions on Handling of Monetary Claims</i> (para 4.4 and Appendix C) • A-G's <i>Legal Services Directions on the Commonwealth's Obligations to Act as a Model Litigant</i> (para 4.2 and Appendix B)
<p>Compensation for Detriment Caused by Defective Administration (CDDA)</p> <p>CDDA is an administrative scheme providing Commonwealth agencies with a <u>discretionary authority</u> to compensate persons who have suffered detriment due to the 'defective' actions or inaction of such agencies and where the claimant has no legal or statutory right of redress. Defective administration refers to:</p> <ul style="list-style-type: none"> • 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 the proper advice that was within the official's power and knowledge to give (or reasonably capable of being obtained by the official); or • the provisions of advice that was, in all the circumstances, incorrect or ambiguous. 	<p>Provided under the Government's inherent Constitutional powers and a specific Government decision, Oct 1995.</p> <p>Portfolio Ministers <i>Agency delegate(s)</i> (<i>ie, as specifically appointed by their Minister</i>)</p>	<ul style="list-style-type: none"> • Finance Circular 2001/01 Attachment B • Agency specific guidelines

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'Scheme' Application/Key criteria	Legislation Head of Power Delegate	Guidance
<p>The four steps in determining a claim for CDDA are:</p> <ul style="list-style-type: none"> • consider whether the scheme applies – that is look at the general limitations on its operation; • consider whether the actions complained of fall within the definition of defective administration; • if there is defective administration in a claim, then determine if the claimant suffered 'detriment' as defined by the scheme (see Attachment B page 4); and • if it is accepted that there was detriment directly caused by defective administration, then quantify that detriment. 		
<p>Act of grace</p> <p>Compensation by way of a special discretionary payment where there is <u>no other viable avenue of redress available and the Minister or delegate considers the payment is appropriate because of 'special circumstances'</u>.</p> <p>Whilst claims are determined on a case by case basis, the conditions under which claims are determined can broadly be characterised as where the decision-maker considers there is a <u>moral rather than a legal obligation</u> to provide redress to an individual or organisation where:</p> <ul style="list-style-type: none"> • the Commonwealth's direct role, act or omission in relation to the particular case has resulted in an unintended, inequitable or unfair effect on the individual or organisation concerned; • the application of Commonwealth legislation has produced an unintended, anomalous, inequitable or otherwise unacceptable result in a particular case; or • the matter is not covered by legislation or a specific program, but it is intended to introduce such legislation or program and it is considered desirable in a particular case to apply the benefits of the relevant provisions prospectively. 	<p>s.33(1-4) FMA Act (& s.59)</p> <p>Minister for Finance and Administration or the Parliamentary Secretary to the Minister for Finance and Administration</p> <p><i>Specified Finance officers</i></p>	<ul style="list-style-type: none"> • Finance Circular 2001/01 Attachment C
<p>Payments in Special Circumstances relating to APS employment</p> <p>Payments authorised in special circumstances that arise out of, or relate to, <u>Commonwealth employment matters</u>. All such cases, should be considered under s.73 of the PS Act rather than under the FMA Act act of grace provision.</p> <p>Payments in Special Circumstances may be specific amounts or periodical payments and may be authorised even though the payments would not otherwise be authorised by law or required to meet a legal liability.</p>	<p>s.73 <i>Public Service Act 1999</i></p> <p>Public Service Minister</p> <p><i>Agency CEOs</i></p>	<ul style="list-style-type: none"> • PSMPC's Advice No.30: <i>Payments in Special Circumstances</i>.
<p>Waiver of debts owing to the Commonwealth and postponement of the right of the Commonwealth to recover a debt in priority to another debt</p> <p>A waiver is a special concession granted to a person or</p>	<p>s.34(1)(a), (2), (3), (4) FMA Act (& s 59)</p> <p>Minister for Finance and Administration and</p>	<ul style="list-style-type: none"> • Finance Circular 2001/01 Attachment D

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'Scheme' Application/Key criteria	Legislation Head of Power Delegate	Guidance
<p>organisation that <u>expunges the debt</u> owed to the Commonwealth. That is, the debt is wiped out so the Commonwealth cannot pursue the debt at a later date should that person's or organisation's financial circumstances improve.</p> <p>There are also specific waiver provisions under some program related legislation (eg s.1237 <i>Social Security Act 1991</i> or s.43A <i>Student Assistance Act 1973</i>) and specific review provisions under the Tax Relief Board arrangements under the <i>Income Tax Assessment Act 1936</i>.</p> <p>These specific provisions have precedence over the more general waiver provision under the FMA Act.</p> <p>Under the FMA Act, the decision-maker has an unfettered discretion to consider each request for waiver on a case by case basis. The most common condition under which a waiver may be granted is where, due to the particular circumstances of the case, the decision-maker concludes that there is a <u>moral obligation</u>, rather than a legal obligation, on the Commonwealth to extinguish the debt due to <u>equity</u> or <u>ongoing financial hardship</u> considerations.</p>	<p>the Parliamentary Secretary to the Minister for Finance and Administration as well as the Chief Executive Officer of certain other bodies in relation to acts they administer</p> <p><i>Specified Finance officers:</i></p> <p>Powers under s.34(1)(b) in relation to postponement of the right to be paid in priority to another debt have not been delegated.</p> <p>s.34(1)(c-d) relates to payments of debts by instalments and deferring payments. These powers have been delegated to all CEOs.</p>	
<p>Write-off of debts owing to the Commonwealth</p> <p>The write-off of a debt owed to the Commonwealth merely <u>defers recovery</u>; it does not wipe out the debt at law. As such, an agency can pursue the debt at a later date should the person's financial circumstances improve.</p> <p>Under s.47 of the FMA Act, an Agency CEO must pursue recovery of a debt unless:</p> <ul style="list-style-type: none"> • the debt can be written off as authorised by an Act; • the CEO considers it is not legally recoverable; or • the CEO considers it is uneconomic to pursue. <p>There are specific write-off provisions under some program related legislation (such as s.1236 <i>Social Security Act 1991</i>, s.43 <i>Student Assistance Act 1973</i>) or the specific relief provisions available under the Tax Relief Board arrangements as a result of the <i>Income Tax Assessment Act 1936</i>. Specific write-off and review provisions have precedence over the FMA Act provision.</p> <p>Write-off of debts should not be seen simply as an alternative remedy to waiver. If there are equity or financial hardship considerations in the recovery of the</p>	<p>s.47 FMA Act</p> <p>Minister for Finance and Administration</p> <p><i>Agency CEOs</i></p>	<ul style="list-style-type: none"> • Individual Agency CEIs

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'Scheme' Application/Key criteria	Legislation Head of Power Delegate	Guidance
debt, an agency should refer the case to Finance for waiver consideration. A decision under s.47 of the FMA Act to defer recovery of a debt must be disclosed in an agency's financial statements as a write-off of a debt.		

**Attachment B to
Finance Circular 2001/01**

**COMPENSATION FOR DETRIMENT CAUSED BY DEFECTIVE
ADMINISTRATION (CDDA): GUIDELINES FOR AGENCIES**

1. Commonwealth agencies have a duty of care to administer legislation and policy responsibly and reasonably and to provide accurate, appropriate and unambiguous information.
2. When a Commonwealth agency has acted unreasonably or provided wrong or ambiguous information which leads to a financial (and sometimes non-financial) loss, it is reasonable to expect that the agency should provide compensation for the loss even if its actions do not amount to a liability to the other party.

What is the CDDA scheme?

3. CDDA is an administrative scheme, established in October 1995, to enable Commonwealth agencies to compensate persons who have been adversely affected by the 'defective' actions or inaction of such agencies, but who have no other avenues to seek redress.
4. These guidelines encompass the Government approved framework (ie definitions, criteria and limitations) for CDDA as originally set out in Estimates Memorandum (EM) 1995/42. As such, these guidelines repeal and replace EM 1995/42 with effect from the date of the covering Finance Circular 2001/01.
5. These guidelines describe the CDDA scheme and set out the steps that a decision maker should take in considering whether to compensate a claimant. Factors described in the guidelines to be taken into account when making a decision are not checklists and each case must be determined on its own merits. Care should be taken to ensure that the principles of natural justice are applied to CDDA matters to ensure that claimants are treated equitably.

Who can apply?

6. Any individual, company or other organisation can submit a claim for CDDA, either directly to the relevant agency or through a third party.

Determining a claim for CDDA

7. There are four steps in determining a claim for compensation for detriment caused by defective administration:
 - consider whether the scheme can apply – that is look at the general limitations on its operation (see below paras 8 to 10);
 - consider whether the actions complained of fall within the definition of defective administration (see below para 11 to 21);
 - if defective administration exists, the next step for the decision-maker to determine is whether the claimant suffered any actual 'detriment' (see below paras 22 to 27); and

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- if it is accepted that detriment directly caused by defective administration exists, the decision-maker should then quantify the extent of the loss involved (see below paras 28 to 41).

Limitations of the scheme

8. The CDDA scheme is available to provide compensation in respect of defective administration in respect of all Commonwealth agencies. It is not available for Commonwealth authorities and companies that have a separate legal identity to the Commonwealth and operate under the *Commonwealth Authorities and Companies Act 1997*.
9. The CDDA scheme does not obligate the decision-maker to approve a payment in any particular case. However the decision – whether to approve or refuse a payment – must be publicly defensible, having regard to all the circumstances of the case.
10. The scheme does not apply:
 - to any claims for monetary compensation where it is reasonable to conclude that the Commonwealth would be found liable if the matter were litigated. Such claims should be settled in accordance with the criteria prescribed by the Attorney General's *Legal Services Directions on Handling Monetary Claims* (para 4.4 and Appendix C); or
 - where it is reasonable to conclude that a legislative mechanism (eg. a right of review under the *Social Security (Administration) Act 1999*) will provide a remedy to the person; or
 - to overcome the effects of specific legislative provisions that are found to be flawed;
 - > Legislative problems or anomalies should be overcome via statutory remedies – either by seeking amendment of the relevant legislation (if appropriate, with retrospective effect to bestow the benefit on the claimant), or by resort to the act of grace powers; or
 - generally, to meet claims which had previously been determined and declined under the act of grace provisions of the FMA Act; or
 - to offset the payment of any recoverable debt owed to the Commonwealth – even if the debt arose because of defective administration. Such claims should either be considered under the relevant specific legislative provisions or, if none apply, be considered by the agency for deferral of recovery (ie write-off) under s.47 of the FMA Act, or be referred to Finance for waiver consideration under s.34 of the FMA Act.

Criteria for defective administration

11. If a Minister or an official authorised by the Minister to approve payments under the scheme, forms an opinion in respect of a claim that an official of the agency, acting, or purporting to act, in the course of duty, has directly caused the claimant to suffer detriment, or, conversely, prevented the claimant from avoiding detriment, by virtue of one of the following reasons:
 - 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) 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); or
- giving advice to (or for) a claimant that was, in all the circumstances, incorrect or ambiguous,

then this scheme applies, subject to the "Limitations" specified above.

When are actions 'unreasonable'?

12. In relation to the first three criteria, a lapse in complying with existing procedures, failure to institute procedures or failure to give advice will only amount to defective administration where that lapse or failure is 'unreasonable'.
13. An unreasonable lapse or failure is one whereby the actions of the officer(s) involved are considered to be contrary to the standards of diligence that the agency expects to be applied by reasonable officers acting in the same circumstances with the same powers and access to resources.
14. Circumstances may arise where instances of administrative omissions or errors may not be regarded as unreasonable when considered in isolation from each other, but may be considered as constituting defective administration when considered in totality in the context of the full impact of these omissions or errors on the client involved. Each assessment of whether there has been defective administration is dependent on the facts of a particular claim.
15. In relation to the fourth criterion, where advice or information given to a claimant was incorrect or ambiguous, it is not necessary for an element of unreasonableness to be present for the action to fall within the definition of defective administration.

Standards of Conduct

16. In assessing whether defective administration has occurred, consideration should be given to compliance with the values and code of conduct as set out in s.10 and s.13 of the *Public Service Act 1999* respectively. The general thrust of s.13 requires Australian Public Service employees to:
 - behave honestly and with integrity, care, and diligence, and treat everyone with respect and courtesy;
 - comply with all applicable Australian Acts;
 - deliver services fairly, efficiently, impartially, and courteously, and
 - use Commonwealth resources in a proper manner.
17. The Public Service and Merit Protection Commission can provide further guidance on standards of conduct.

Evidence of defective administration

18. Determining whether or not defective administration has occurred in individual cases can be difficult because:
 - there may be lengthy delays between the date of the alleged defective administration, the date its effect became apparent, and the date the complaint was lodged;
 - there may be insufficient written evidence available to support or refute the claimant's allegations; and

- the claimant's assessment of financial loss may appear unfounded and unreasonable.
19. Each case must be decided on its own merits. Where insufficient evidence of defective administration exists, a judgement must be made in regard to the plausibility of the claimant's account of his or her actions and allegations against the agency. In making such a judgement the following guidance is offered:
- the likelihood that wrong advice could have been given in the particular situation - taking into account the experience of the staff involved and whether the particular statutory provisions/procedures were well known or new;
 - whether the officer's and claimant's account of events seem plausible (eg. whether the claimant's subsequent actions were consistent with the advice he or she alleges was provided by the agency);
 - the consistency of the allegations made;
 - whether the passage of time could have distorted the officer's and/or claimant's recollection of events; and
 - whether there has been confusion or misinterpretation of advice rather than defective administration per se.
20. Documentary or incontrovertible proof of defective administration should not be an essential requirement: the fact that a record of a telephone or counter inquiry is not present on a claimant's file or payment record, that documents may have been destroyed or misplaced in the normal course of events, or that an officer cannot recall the case, is unlikely in itself to constitute justification to refuse CDDA.

Ombudsman's role

21. Where the circumstances of a case do not clearly fall within the exact criteria for defective administration, but the agency concerned agrees with the Ombudsman that detriment has occurred as a result of defective administration and the agency is inclined to compensate a claimant, a recommendation by the Ombudsman supporting compensation is sufficient basis for payment.

Definition of detriment or loss

22. According to the 1995 Government decision which established the CDDA scheme, "detriment" is defined as:
- the amount of quantifiable financial loss, including opportunity costs, that a claimant can demonstrate would be suffered despite having taken reasonable steps to minimise or contain the loss. If, for some reason, it is impracticable for a claimant to demonstrate all or part of the quantifiable loss, the decision-maker may make whatever assumptions as to amount, including with respect to the actions of the claimant to minimise or contain the loss, that are necessary and reasonable in all circumstances; and
 - non-financial damage (for example, arising from severe stress, pain and suffering, inconvenience or other 'qualitative' elements of that nature).

Is there a loss at all?

23. Financial loss should be distinguished from financial disappointment: eg where a formal assessment results in the amount of an entitlement being less than a 'ballpark' figure given to a person at the time he or she made inquiries.

Has a loss arisen as a result of the defective administration?

- 24. Compensation for loss suffered by a claimant is only available where it arose as a direct consequence of the defective administration. Claims for compensation for loss must be considered on their own merits on a case by case basis.

What sort of losses will give rise to compensation under CDDA?

- 25. There are two categories of losses which are compensable:
 - Quantifiable financial losses; and
 - Non-financial losses payable according to legal principle and practice.

Quantifiable financial losses

- 26. Quantifiable financial loss may be associated with costs incurred such as legal costs, out-of-pocket expenses, travel costs, medical expenses, accrued mortgage interest, or loss of wages for necessary time off work. This is not an exhaustive list.
- 27. If a claimant has relied on incorrect information to alter their circumstances to their detriment, it may be appropriate to consider compensation for financial loss actually suffered. In such cases it would be necessary to consider whether it was, on balance, reasonable for the claimant to have accepted in good faith, and to have acted upon, the incorrect information provided.

Non-financial losses

- 28. Claims for compensation for non-financial loss resulting from defective administration may be associated with;
 - gross inconvenience resulting from persistent error made over a protracted period of time; or
 - gross embarrassment, humiliation or unnecessary personal intrusion; or
 - stress.
- 29. Where compensation is considered for non-financial damage, the decision-maker must have regard to relevant legal principle and practice in arriving at the appropriate amount of payment.
- 30. Legal principle and practice is not static and decision-makers should be careful to ensure that they are applying current principle and practice to the determination of any claim for non-financial loss.
- 31. According to current legal principle, a claim for non-economic loss must be related to other loss, that is, a claimant cannot claim for non-economic loss as the only loss suffered. A claim for stress or irritation which is not a claim for personal injury cannot stand alone. There must be some other loss from which the aggravation or stress flows. For example, where compensation is sought for stress, a claimant must show that the stress flowed from the suffering of the financial loss caused by the defective administration.

Stress as psychological injury

- 32. Note that a legal distinction is drawn between a psychological or psychiatric injury and a 'stress' claim. A 'stress' claim based on an assertion that the claimant suffers from a psychological condition as a result of defective administration, is, in effect, a claim for personal injury and the losses will not be limited to non-economic loss. The law in this

area of psychological damage is not clear, but it would seem that a claimant in such a case must show that he or she suffers from a psychological disease or condition.

33. A stress claim will be treated as a psychological injury if medical evidence supports the existence of such injury.

Stress as personal injury or 'distress'

34. Whilst the terms of the claim made by the claimant may give some indication about whether the claim is for a stress 'injury' or a claim for 'distress' or annoyance, medical evidence will almost always be necessary to identify which claim is being made.

Determining the level of compensation

35. Offers of compensation to claimants should be calculated on the basis of what is fair and reasonable in the circumstances and in consideration of the fact that the Commonwealth should not take advantage of its relative position of strength in an effort to minimise payment.
36. The overarching principle to be used in determining the level of compensation is to restore the claimant to the position he or she would have been in had defective administration not occurred.

Quantifying financial loss

37. In general, financial loss must be substantiated. In considering the type and amount of evidence required to substantiate the claim, the nature and size of the expenses involved should be taken into account. Where expenses are low, then a reasonable estimate may be appropriate; eg routine telephone calls, postage costs, photocopying or travel costs. It may not be necessary for the costs to have been incurred through dealing directly with the agency. It is possible that they may have been incurred as a result of obtaining professional or similar advice (eg. travelling to or from meetings with solicitors, or contacting them by phone).
38. If, for some reason, it is impracticable for a claimant to demonstrate all or part of the loss, the decision-maker should make a reasonable judgement about the level of the loss, taking account of all relevant factors.

Interest payments

39. In some cases interest may be payable where it forms part of the damages suffered (interest as damages), but not in general because of a delay in paying those damages (interest on damages). In regard to the latter, an exception may be where the agency's actions and/or notification of defective administration were unreasonably protracted. In determining this, consideration should be given to any agency service standards on timeliness.
40. The inclusion of any interest in a CDDA payment is a matter for the discretion of the decision-maker, having regard to the specific circumstances of each claim.

Quantifying non-financial loss

41. If it is decided that a claim for non-economic loss is payable, evidence of the distress and inconvenience suffered by the claimant will be needed. Generally, damages payable for non-economic loss should be arrived at by considering the amounts that have been paid in previous cases with similar facts.

Claimant's own actions

42. The actions of a claimant in regard to whether he or she contributed to the detriment suffered may have an impact on determining the appropriate level of compensation.
43. Each case should be considered on its own merits when deciding whether the claimant:
 - acted reasonably in relation to their dealings with the agency; or
 - to what extent, if any, the claimant contributed to the loss; or
 - what steps they took to minimise or contain that loss.
44. The following factors are provided as a guide only in deciding if the amount of compensation for the loss should be reduced because of the actions of the claimant:
 - the claimant's age, health and knowledge of dealing with such issues, including knowledge of English;
 - whether the claimant gave false, misleading, or incomplete, information which the agency could not have been expected reasonably to challenge or clarify;
 - whether there was any unreasonable delay between receiving and acting on the administrative error. Where repeated delays were experienced because of a claimant's inaction, the cumulative effect should be considered.
45. In considering a claimant's actions, it is important to take into account the claimant's specific circumstances and the factors that influenced his or her actions, rather than adopting an assumed normative model of 'usual' behaviour.
46. If it is considered the claimant contributed to his or her situation then, depending on the extent of the claimant's contribution to the loss, this may justify a reduction in the level of compensation.

Taxation implications

47. The taxation implications (if any) of payments should be taken into account when determining the quantum of the payment so as to place the claimant in the position he or she would have been in but for the effect of the defective administration.
48. As a general rule, where any component of a compensation payment relates to loss of an amount that would have been assessable for income tax purposes, that component will be assessable income. The claimant should be advised that he or she is obliged to declare such income. However, in many cases it may be difficult to estimate the taxation impact and it may be advisable to consult the ATO. The ATO contact point for these matters is the Legal Policy and Coordination Unit in National Office.

Settlement of claims

49. Each claimant should be provided with an adequate explanation of the reasons for a decision to accept, partially accept, or reject his or her claims.
50. Advice on the right to review by the Ombudsman should be provided to all claimants.
51. In order to protect the interests of the Commonwealth, compensation under the scheme should only be paid where the claimant agrees in writing not to pursue legal action in relation to the circumstances of the claim. In some circumstances it may be considered necessary to seek an indemnity from the claimant in relation to any legal action by any other person in relation to the circumstances of the claim. This agreement should be in the form of a deed of release. It is recommended that legal advice be sought in relation to the drafting of deeds of indemnity.

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52. Where only part of the claim is settled by a payment under the scheme, claimants should provide a deed of release (and indemnity if appropriate) in relation to that part of the claim.

Decision-makers under the scheme

53. Where an authority is given by a Minister to an agency official to approve payments under this scheme, that authority is to be conferred expressly – ie, separately from the Minister's general authorisations to incur expenditure.
- This requirement is in recognition of the special and potentially sensitive nature of decisions that may be made under the scheme, for which the agency and its Minister may be held accountable.

Funding and reporting

54. In general, CDDA payments should be funded through Departmental Appropriations and reported under an appropriate agency outcome. However, if any part of a CDDA payment can be settled under statutory entitlement provisions, then it should be paid from the relevant Administered Appropriation and reported under the associated outcome.

Contacts

56. The Special Financial Claims Section, Finance, can be contacted for assistance in relation to these guidelines. Advice on specific cases should be directed to the agency concerned.

**Attachment C to
Finance Circular 2001/01**

ACT OF GRACE PAYMENTS: GUIDELINES FOR AGENCIES

1. The authority for act of grace payments is provided by s.33 of the *Financial Management and Accountability Act 1997* (the FMA Act), under which the Minister for Finance and Administration, or the Minister's Parliamentary Secretary, may authorise a payment if he or she considers it appropriate to do so because of special circumstances.
 - The Minister has delegated this power to particular officers of the Department of Finance and Administration (Finance) according to specified financial delegation limits.
2. All act of grace requests received by agencies must be referred to the Special Financial Claims Section, Finance, for consideration.
3. These guidelines provide agencies with an outline of the general act of grace principles and the process for referral, notification, funding and reporting.

What is act of grace?

4. The act of grace power is a unique discretion given to the Minister for Finance and Administration to make payments to persons who may have been unintentionally disadvantaged by the effects of Commonwealth Government legislation, actions or omissions and who have no other viable means of redress.
5. Act of grace payments are not specifically sanctioned by Parliament in an Appropriation Act. For this reason, the act of grace power should not be seen as an alternative to other viable avenues of redress but rather as a remedy that may only be applied in special circumstances to ensure consistency and equity in the impact of Government activities.
6. Section 33(1) of the FMA Act provides:

If the Finance Minister considers it appropriate to do so because of special circumstances, he or she may authorise the making of any of the following payments to a person (even though the payment or payments would not otherwise be authorised by law or required to meet a legal liability):

 - a) *one or more payments of an amount specified in the authorisation (or worked out in accordance with the authorisation);*
 - b) *periodical payments of an amount specified in the authorisation (or worked out in accordance with the authorisation), during the period specified in the authorisation (or worked out in accordance with the authorisation).*

Conditions under which requests for act of grace are considered

7. Act of grace payments can arise from any sphere of Commonwealth administration. As implied by s.33(1) of the FMA Act, the Minister has an unfettered discretion to determine each act of grace request on a case by case basis and as such, it is not appropriate to specifically define special circumstances.
8. However, the conditions under which act of grace claims are determined can broadly be characterised as where the Commonwealth considers it has a moral obligation, as opposed to a legal obligation, to provide redress because:

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- the Commonwealth's direct role, acts or omissions in relation to the particular case has caused an unintended or inequitable result for the individual or entity concerned;
 - the application of Commonwealth legislation has produced a result that is unintended, anomalous, inequitable or otherwise unacceptable in a particular case; or
 - the matter is not covered by legislation or specific policy, but it is intended to introduce such legislation or policy and it is considered desirable in a particular case to apply the benefits of the relevant provisions prospectively.
9. Equity is an important element in consideration of act of grace requests. While an individual's private circumstances may impact on whether the application of a Commonwealth law or policy has produced an inequitable result in his or her case, act of grace payments are not provided where a request has arisen from circumstances outside the sphere of Commonwealth administration or application of Commonwealth law.

Scope of act of grace

10. The act of grace power is available to provide a remedy in respect of all Commonwealth Agencies that operate under the FMA Act. It is not generally available in respect of Commonwealth authorities and companies which have a separate legal identity to the Commonwealth and operate under the *Commonwealth Authorities and Companies Act 1997*. Exceptions to this may be where:
- a Commonwealth Authority administers payments on behalf of the Commonwealth, such as the Health Insurance Commission; or
 - an act of grace request involves a Commonwealth Authority and has broader government policy implications.
11. The act of grace power does not apply:
- to any claims for monetary compensation where it is reasonable to conclude that the Commonwealth would be found liable if the matter were litigated. Such claims should be settled against the criteria in the Attorney General's *Legal Services Directions on Handling Monetary Claims* (para 4.4 and Appendix C);
 - where it is reasonable to conclude that a legislative mechanism (eg. a right of review under the *Social Security (Administration) Act 1999*) will provide a remedy to the person;
 - to a claim for compensation relating to the defective administration of a Commonwealth agency, as defined in the *Compensation for Detriment Caused by Defective Administration (CDDA)* guidelines, which led to the claimant's financial detriment. Such claims should be considered by the agency concerned under the CDDA provisions; or
 - to the write-off or waiver of debts owed to the Commonwealth. As appropriate, such claims should either be considered under the relevant program specific legislative provisions or administrative review mechanisms, or if none apply, be considered by the agency for write-off in accordance with s.47 of the FMA Act, or be referred to Finance for waiver consideration under s.34 of the FMA Act.
12. The act of grace arrangements should not be seen as a means of circumventing legislative or policy provisions that are operating as intended, or establishing a payments scheme to remedy major legislative or major program deficiencies.

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- Act of grace requests will not be considered in cases where legislative changes simply reflect the evolving nature of Commonwealth policy interpretation and analysis, including incremental modifications to the regulatory regime which operates to meet the Government's aims.
13. Where major legislative or program deficiencies are found to exist, agencies should implement procedures to amend the relevant legislation. In such situations, if there is any compensation proposed in the interim that involves a very large number of individuals and significant outlays, it may be more appropriate for it to be considered under ex gratia arrangements. This enables the Government to consider and agree to the payment of compensation for the group as a whole, rather than considering individual claims on a case by case basis for act of grace payments. The Special Financial Claims Section, Finance, can provide further advice on this.

Who can apply?

14. Any individual, company or other organisation can request an act of grace payment, either directly or through a third party.
15. All requests for act of grace payments must be referred to Finance for consideration. Where requests for act of grace come either directly to the Minister for Finance and Administration, the Parliamentary Secretary, or Finance, the relevant agency will be notified and consulted on the case.

Referral of requests to Finance

16. The Special Financial Claims Section, Finance, is responsible for coordinating all act of grace requests to ensure the Minister or delegate has sufficient information and evidence to make an informed decision.
17. In referring a request for act of grace payments to the Special Financial Claims Section, agencies are requested to provide sufficient information to enable an informed and independent assessment of the case, including as appropriate:
- details of the relevant section(s) of legislation to which the claimed disadvantage may relate and details of the claimant's circumstances in relation to that legislation;
 - specific details of the Commonwealth's role, if any, that may have directly contributed to the claimant's situation;
 - any history/background to the case, including any consideration of the case under CDDA or by way of settlement of a legal claim;
 - if there is a perceived anomaly in the law or policy, an estimation of the likely number of people affected and overall cost;
 - whether or not the responsible agency supports the act of grace request and supporting reasons; and
 - any other information that may be relevant to the decision-maker in determining whether special circumstances exist.
18. The Special Financial Claims Section may seek additional information from the relevant agency or elsewhere, including directly from the claimant as appropriate.
19. If a proposed authorisation is likely to involve a total payment of more than \$100,000, s.33(2) of the FMA Act requires that the Minister must first consider a report of an Advisory Committee.

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- In practice, the Committee comprises the Chief Executive Officer, or their delegate, of: the Department of Finance and Administration; the Australian Customs Service (ACS); and the agency that is responsible for the matter on which the Committee has to report. Should the matter relate to Finance or to ACS, the third member of the Advisory Committee should be a delegate of the Attorney-General's Department.

Determining the level of an act of grace payment

20. The Minister or delegate will determine act of grace payments on the basis of what is fair and reasonable in the circumstances. The Commonwealth will not take advantage of its relative position of strength in an effort to minimise payment.
21. The overarching principle in determining the actual level of payment will be based on trying to restore the claimant to the position he or she would have been in had the special circumstances not arisen.
22. Issues that will be taken into account in determining the level of compensation include:
 - any benefit the claimant may have been entitled to had the special circumstances not arisen;
 - any claimed financial loss;
 - the extent, if any, to which the claimant contributed to the loss, or what steps they took to minimise or contain that loss; and
 - any interest and taxation implications.

Loss must have arisen as a direct result of Government actions

23. Compensation for loss suffered by a claimant is only available where it arose as a direct consequence of the actions or decisions of a Government agency. Claims for compensation for loss must be considered on their own merits on a case by case basis.
24. Two categories of losses are compensable:
 - Quantifiable financial losses; and
 - Non-financial losses payable according to legal principle and practice.

Claimant's own actions

25. Each case will be considered on its own merits when deciding whether the claimant acted reasonably in relation to their dealings with the agency or to what extent, if any, the claimant contributed to the loss, or what steps they took to minimise or contain that loss.
26. In considering how reasonable or otherwise the claimant's actions were, the claimant's specific circumstances and the factors that influenced their actions, will be taken into account.

Interest payments

27. In some cases interest may be payable where it forms part of the damages suffered (interest as damages), but not in general because of a delay in paying those damages (interest on damages). However, the inclusion of any interest in an act of grace payment is at the discretion of the decision-maker having regard to the specific circumstances of each claim.

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Taxation implications

28. The taxation implications (if any) of payments will be taken into account when determining the quantum of the payment so as to place the claimant in the position he or she would have been in but for the effect of their special circumstances.
29. As a general rule, where any component of a compensation payment relates to loss of an amount that would have been assessable for income tax purposes, that component will be assessable income. The claimant should be advised of his or her obligations in this regard.

Settlement of claims

30. Claimants will be provided with adequate information on the details of the decision on their claim, including a summary of reasons for the Commonwealth's acceptance, partial acceptance or rejection of their claim.
31. Under s.33(3) of the FMA Act, conditions may be attached to act of grace payments. In circumstances where conditions are specified the claimant may be requested to release the Commonwealth from any legal action in relation to the circumstances of the act of grace claim. In certain circumstances the claimant may also be required to indemnify the Commonwealth from other claims arising out of the circumstances of the claim. A deed may provide that if conditions are breached, the payment may be recovered by the Commonwealth as a debt in a court of competent jurisdiction.

Funding and reporting

32. Although act of grace payments must be authorised by the Minister for Finance and Administration or a delegate, payments are funded and reported under an appropriate appropriation and outcome of the agency to which the act of grace case relates.
33. In general, payments should be made from Departmental Appropriations. However, if any part of an act of grace payment can be settled under statutory entitlement provisions, then it should be paid from the relevant Administered Appropriation and reported under the associated outcome.
34. Once an act of grace payment has been authorised by the Minister or a delegate, the Special Financial Claims Section will notify the relevant agency so that payment can be arranged.

Contacts

35. Inquiries on these act of grace guidelines can be directed to the Special Financial Claims Section.

**Attachment D to
Finance Circular 2001/01**

WAIVER OF DEBTS: GUIDELINES FOR AGENCIES

1. In dealing with the Commonwealth a person or organisation may incur a debt which they are obligated to repay. For example, a debt may arise from:
 - an overpayment of income support; or
 - a customs duty debt on the importation of goods.
2. A waiver is a special concession granted to a person or organisation that "expunges" the debt owed to the Commonwealth. That is, the debt is completely wiped out so the Commonwealth cannot pursue the debt at a later date should that person's or organisation's financial circumstances improve.

Authority for waiver of debts

3. For a limited number of Commonwealth programs, specific waiver provisions are set out in the legislation governing the program. For example:
 - some debts in circumstances specified in s.1237 of the *Social Security Act 1991*, s.43A of the *Student Assistance Act 1973* and s.96 of *A New Tax System (Family Assistance) (Administration) Act 1999*; or
 - some debts waived under the *Income Tax Assessment Act 1936* by the Tax Relief Board to provide relief from a tax liability in specific cases of financial hardship.
4. These specific legislative waiver provisions have precedence over the general waiver provision under s.34 of the *Financial Management and Accountability Act 1997* (the FMA Act).
5. These guidelines relate specifically to the authority to waive debts owed to the Commonwealth under s.34 of the FMA Act. Under this section, a Minister of the Finance and Administration portfolio, including the Parliamentary Secretary, may:
 - waive the Commonwealth's right to payment of an amount owing to the Commonwealth;
 - postpone any right of the Commonwealth to be paid a debt in priority to another debt or debts;
 - allow the payment by instalments of an amount owing to the Commonwealth; or
 - defer the time for payment of an amount owing to the Commonwealth.
6. *Amount owing to the Commonwealth* includes an amount that is owing but not yet due for payment.
7. The Minister has delegated his waiver powers under section 34(1)(a) to particular officers of the Department of Finance and Administration (Finance) according to specified financial delegation limits.
8. If a proposed waiver involves, or is likely to involve, a total amount of more than \$100,000, s.34(2) of the FMA Act requires that the Minister must first consider a report of an Advisory Committee. The Committee comprises Chief Executive Officers of: the Department of Finance and Administration; the Australian Customs Service (ACS); and the agency that is responsible for the matter on which the Committee has to report.

- Should the matter relate to Finance or to ACS, the third member of the Advisory Committee should be a delegate from the Attorney-General's Department.
9. Powers under section 34(1)(c) & (d) have been delegated to all Chief Executive Officers. Powers under section 34(1)(b), however, have not been delegated.

Conditions under which a waiver may be granted

10. Under the FMA Act, the Minister or delegate has an unfettered discretion to consider each request for a waiver on a case by case basis. However, the most common condition under which a waiver is granted is where, due to the particular circumstances of the case, the Minister or delegate concludes that there is a moral obligation, rather than a legal obligation, on the Commonwealth to extinguish the debt.
- A moral obligation may be considered to have arisen due to continuing financial hardship or equity reasons, ie:
 - There are sound reasons supporting the view that the person's financial circumstances will not improve to the point where they could not repay the debt in full by instalments without suffering genuine and significant financial hardship. In determining such cases, a person's assets, future income earning capacity, health and family circumstances will be taken into consideration; or
 - a direct act or omission of a Commonwealth agency, or impact of a Commonwealth law - whether or not it arose from defective administration - has caused a person or entity to incur an unintended debt to the Commonwealth, the recovery of which would result in an overall loss to the person or entity concerned - ie, it would result in an inequity because they would be worse off than if the debt had not arisen.

Scope of waiver powers

11. There must be an amount owing or an amount that is expected to become due in the future for waiver under the FMA Act to operate. An amount which is not liquidated, for example, a court order for costs which has not been taxed, is not an 'amount owing' under s.34 of the FMA Act. Agencies have a general duty to attempt to pursue recovery of an order for costs, however, and may need to show there is a good reason not to (refer Director-General Social Services v Hale 47 ALR 281 at 319-320).
12. The waiver power under the FMA Act relates only to debts owed to Commonwealth Agencies. It does not apply to debts owed to Commonwealth authorities and companies which have a separate legal identity to the Commonwealth and operate under the *Commonwealth Authorities and Companies Act 1997*.
13. The waiver power does not obligate the decision-maker to waive a debt in any particular case.
14. Waiver should not be seen as a means to circumvent legislative or policy provisions that are operating as intended, or to provide remedies for major legislative or program deficiencies.
15. The FMA Act's non-recovery (write-off) and waiver provisions are separate and discrete provisions. As such, non-recovery (write-off) should not be seen simply as an alternative remedy to waiver. If there are equity or ongoing financial hardship considerations in the recovery of the debt, an agency should refer the case to Finance for waiver consideration.

16. Equity is an important element in consideration in waiver requests. The waiver powers are therefore intended to be used in a limited number of cases to ensure equity in the impact of Government activities.

Who may claim?

17. Any individual, company or other organisation can request a waiver, under the FMA Act, either directly or through a third party.
18. All requests for waivers must be referred to Finance
19. Where requests for waiver come direct to the Minister for Finance and Administration or the Parliamentary Secretary or Finance, the Department (Finance) will notify and consult the relevant agency about the case.

Referral of requests to Finance

20. The Special Financial Claims Section, Finance, is responsible for coordinating all waiver requests to ensure the Minister or delegate has sufficient information and evidence to make an informed decision.
21. In referring a request for waiver to the Special Financial Claims Section, agencies are requested to provide sufficient information to enable an informed and independent assessment of the case, including as appropriate:
- details of the relevant section(s) of legislation to which the debt may relate and of the debtor's circumstances in relation to that legislation;
 - specific details of the Commonwealth's role, if any, that may have directly contributed to the debtor's situation;
 - any history/background to the case, including any available information on the person's assets, income, future income earning capacity, other debts, health and family circumstances; and
 - any other information that may be relevant to the decision-maker's consideration of the particular circumstances.
22. The Special Financial Claims Section will seek additional information from the relevant agency or directly from the claimant as appropriate.

Notification of decision

23. Claimants will be provided with adequate information on the details of the decision of their claim, including a summary of reasons for the Commonwealth's acceptance, partial acceptance or rejection of their claim.
24. A copy of the letter advising the claimant of the decision will be forwarded to the relevant agency for information and action.

Reporting

25. Waiver of debts must be reported in the annual report of the agency concerned in accordance with the policy requirements set out in the Finance Minister's Orders: Financial Reporting Requirements for Commonwealth Agencies and Authorities.

Contacts

26. Inquiries on these guidelines can be directed to the Special Financial Claims Section, Finance.