

國立中山大學國家賠償事件處理要點

Guidelines on Handling State Compensation Cases

93 年 12 月 24 日本校 93 學年度第 2 次校務會議通過

Amended and approved at the 2nd University Council meeting on December 24, 2004

- 一、國立中山大學（以下簡稱本校）為落實國家賠償法制，保障人民權益，辦理國家賠償事件，依據國家賠償法、國家賠償法施行細則及法務部法律字第 0930700450 號函、教育局台法字第 0930123907 號函訂定本要點。本校處理國家賠償事件，除法令另有規定外，依本要點行之。
 - I. These guidelines are formulated in accordance with *State Compensation Law, Enforcement Rules for State Compensation Law*, the Ministry of Justice's document (ref no. 0930700450), and the Education Bureau's document (ref no. 0930123907) to ensure the implementation of state compensation and safeguard citizens' rights and interests. State compensation cases shall be handled in accordance with these guidelines unless otherwise stipulated by other laws.
- 二、本校為處理國家賠償事件，應組成國家賠償事件處理委員會（以下簡稱國賠會），委員應有二分之一以上具法制專長，其設置如下：
 - II. To address state compensation cases, the University shall establish a State Compensation Handling Committee (hereinafter referred to as the "Committee"), with at least half of the Committee members being legal experts. The Committee shall consist of the following members:
 - (一) 國賠會置委員五人：本校主任秘書為當然委員，並為主任委員兼召集人。
 - (1) The Committee is composed of five members, with the chief secretary being the ex officio member, as well as the chief member and the convenor.
 - (二) 國賠會其餘委員四人，由校長聘（派）兼之。委員任期二年，連選得連任之；任期內出缺時，得補行遴聘（派），其任期至原任期屆滿之日止。
 - (2) Except for the ex officio member, the other four members shall be appointed or assigned by the President. The term of the members shall be two years and may be extended when re-elected. In the event of a vacancy during the term, a substitute shall be appointed or assigned to serve for the remaining term.

(三) 國賠會置執行秘書一人，由主任委員指派之，承主任委員之命，綜理事務；其有關幕僚作業等，由本校秘書室派員兼辦。國賠會委員及其他兼職人員，均為無給職，但校外委員得依規定支給出席費。

(3) General affairs of the Committee shall be supervised by an executive secretary assigned by the chief member, with other related administrative tasks handled by the staff from the Office of the Secretariat. The Committee members and the aforementioned staff shall serve without remuneration; nevertheless, external members may receive an attendance fee in accordance with relevant regulations.

三、 國賠會之職掌如下：

III. Duties of the Committee are as follows:

(一)關於國家賠償請求之審議。

(1) deliberating cases of state compensation

(二)關於國家賠償請求事件證據之蒐集與調查。

(2) collecting and investigating case evidence related to state compensation

(三)關於國家賠償請求事件報告之聽取。

(3) hearing case reports on state compensation

(四)關於國家賠償請求事件之追認。

(4) acknowledging retroactive cases of state compensation

(五)關於國家賠償義務機關之確定事項。

(5) determining liable agencies of state compensation

(六)其他與國家賠償有關事項之審議。

(6) deliberating other matters related to state compensation

四、 國賠會請求國家賠償事件之業務不定時開會，由召集人召集並擔任主席。召集人因故不能出席時，應指定委員一人為代理主席。

IV. The Committee shall convene meetings when necessary to handle state compensation cases. The convenor shall call and chair the meetings and may delegate a member to act as the proxy if unable to attend due to certain reasons.

國賠會於必要時，得依請求權人之請求或依職權，通知求權人、利害關係人、證人或鑑定人列席陳述意見。

When necessary, the Committee may invite the claimant, interested parties, witnesses, or experts to provide opinions, either at the claimant's request or by its authority.

國賠會於必要時，得由召集人指定委員若干人就賠償事件調查之；受指定之委員應就調查之結果，向國賠會報告。

The convenor may designate several members to investigate a case if necessary, and the designated members shall submit a report of findings to the Committee.

國賠會委員對於會議事項有行政程序法第三十二條所規定各款情形之一者，應自行回避，不得參與討論及表決。

Members under one of the conditions stipulated in Article 32 of the *Administrative Procedure Act* shall proactively recuse themselves and not participate in discussions and voting.

五、 請求人請求國家賠償時，本校應請其填具國家賠償請求書；其有代理人者，並應請其提出委任書或法定代理權之證明文件。

V. Claimants seeking state compensation shall complete the State Compensation Claim Form; a proxy may be delegated to do so on their behalf by submitting a letter of authorization or a document proving the statutory agency.

六、 本校收受國家賠償請求書時，應於該請求書加蓋收件章戳，記明收件日期、文號，並付給收據。

VI. Upon receiving the State Compensation Claim Form, the University shall stamp the form with the receipt date and serial number, and issue a receipt to the claimant.

七、 國家賠償案件涉及民事、刑事或行政訴訟之法律關係者，於其程序確定前，國賠會得停止決議程序，並通知請求權人；續開時亦同。

VII. If a state compensation case involves civil, criminal, or administrative litigation, the Committee shall suspend the resolution procedure and notify the claimant until the litigation concludes. The Committee shall also notify the claimant when the resolution procedure resumes.

八、 國賠會於國家賠償法第十條第二項指定協議期日前，應先就賠償請求書調查其請求有無理由。如認非賠償義務機關、或其請求權已因時效而消滅者，得不經協議，於收受前項請求書之日起三十日內，以書面敘明理由拒絕之。

VIII. The Committee shall investigate the claims stated in the State Compensation

Claim Form before scheduling the settlement procedure in accordance with Paragraph 2 of Article 10 of *State Compensation Act*. If the Committee determines that the claim falls outside its jurisdiction or the claimant's right to compensation is expired, the Committee may directly reject the claim and shall provide written reasons within thirty days after receiving the claim form.

九、國賠會除有前點拒絕賠償之情形外，應速指定協議期日，通知請求權人及國家賠償法施行細則第十五條第一項、第十六條之機關、公務員、團體、個人或應負責任之人。

IX. Except for cases rejected in accordance with the preceding Article, the Committee shall promptly schedule the settlement meeting and notify the claimant, as well as relevant agencies, civil servants, organizations, individuals, and liable parties stipulated in Paragraph 1 of Article 15 and Article 16 in *Enforcement Rules for State Compensation Law*.

十、請求權人經合法通知無正當理由於協議其期日不到場者，視為協議不成立；但國賠會得斟酌情形另定協議期日。

X. If the claimant, after being notified following a legal procedure, is absent from the scheduled meeting without valid justification, the settlement shall be deemed invalid. Nevertheless, the Committee may reschedule another settlement meeting based on circumstances.

十一、協議成立時，應依規定作成協議書，由有關人員簽名或蓋章，蓋妥本校校印，於十日內派員或交由郵政機關送達，並作成送達證書。

XI. When a settlement is made, a settlement document shall be drafted in accordance with regulations, signed or stamped by relevant personnel, and affixed with the University's official seal. The document shall be delivered to the claimant by designated personnel or a postal agency within ten days, with successful delivery as a proof of receipt.

十二、國賠會辦理國家賠償事件下列情形之一者，應逐案製作「國家賠償事件專案分析報告」，報告及相關附件資料應函報法務部並副知教育部法規會：

XII. The Committee shall compile an "Analysis Report on State Compensation" for cases under any of the following circumstances. Additionally, the report along with relevant documentation shall be submitted to the Ministry of Justice, with the Ministry of Education notified.

(一) 與單一請求權人協議成立賠錢之金額新台幣一千萬元以上。

(1) The monetary amount of state compensation settlement with a single claimant exceeds TWD 10,000,000.

(二) 拒絕賠償或協議不成立後，經法院判決確定應予賠償者。

(2) After the rejection of compensation or the invalidity of settlement by the Committee, the court concludes that the compensation must be granted instead.

十三、對於辦理國家賠償事件人員，其承辦案件之協議成立比例達當年度賠償件數之二分之一以上者，得衡酌情形給予記功以上之獎勵。

XIII. Staff handling state compensation cases may be rewarded a minor merit or higher if the number of successful settlements exceeds half of the total compensation cases of the current year.

十四、關於依國家賠償法第二條第三項及第三條第二項規定，就損害原因有應負責任之人，其責任歸屬依本校組織規程及分層負責明細表之規定認定之。

XIV. In accordance with Paragraph 3 of Article 2 and Paragraph 2 of Article 3 in *State Compensation Act*, parties liable for compensation shall be determined based on *NSYSU Charter* and *the Chart of Hierarchy in Responsibilities*.

本校依前項規定行使求償權者，應經國賠會之決議；國賠會決議求償者，依國家賠償法施行細則第四十一條之規定行使求償權並依法追究其行政責任。

As per the preceding Paragraph, the University shall seek the resolution of the Committee on the determination of liable parties for compensation. Upon resolution, the University shall exercise its right to claim compensation in accordance with Article 41 of *Enforcement Rules for the State Compensation Act* and pursue administrative liability in accordance with relevant regulations.

十五、本要點經校務會議通過，校長核定後實施，修正時亦同。

XV. These guidelines are approved by the University Council and the President before implementation. Amendments to these guidelines shall follow the same procedure.