

Investigation into the Tourist Refund Scheme and the application of the 30 minute rule

July 2016

Report by the Acting Commonwealth Ombudsman,
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EXECUTIVE SUMMARY

The Ombudsman's office has investigated a number of complaints about the operation of the Tourist Refund Scheme (TRS), in particular the '30 minute rule'. This rule requires departing passengers who wish to claim a refund of GST on goods purchased prior to departing Australia to present themselves at the airport's TRS counter at least 30 minutes prior to their flight's scheduled departure time.

The stated purpose of the rule is to ensure people claiming a refund allow sufficient time to do so, thus ensuring that flight departures are not delayed.

In our investigation of these complaints it became apparent that the 30 minute rule is not supported by legislation and that the department may have refused refunds to people who it claimed had not met the rule, without any lawful basis for its actions.

The department has acknowledged that the 30 minute rule is not supported by legislation and has indicated it is considering how changes to the processes at the TRS facilities can be implemented.

The Ombudsman makes the following recommendations:

Recommendation one:

- As an interim measure the department takes all reasonable steps to ensure that travellers who wish to claim a TRS refund are able to do so in a way that is consistent with the law.

Recommendation two:

- The department consider the permanent use of the drop box facility at TRS facilities at all international points of departure, and takes all necessary steps to ensure the appropriate regulations are in place to give effect to this arrangement.

PART 1— INTRODUCTION

Background

1.1 This report is the result of an investigation into aspects of the TRS, in particular the 30 minute rule. The TRS allows Australian and overseas passengers to claim back the Goods and Services Tax (GST) and the Wine Equalisation Tax (WET) on goods purchased in Australia and taken with them as accompanied baggage overseas on the same plane or ship they are travelling on.¹

1.2 The 30 minute rule requires that people who wish to claim a refund of GST when leaving Australia must present themselves at the airport's TRS counter at least 30 minutes prior to the scheduled departure of their flight. The stated purpose of the 30 minute rule, which was introduced in 2000 in consultation with aviation industry stakeholders, is to ensure that people intending to claim a refund allow sufficient time for their refund to be processed, and to allow flights to meet their scheduled departure times.

1.3 The Ombudsman's office has received a number of complaints from people who felt they were unfairly denied a refund of the GST they had paid on goods purchased in Australia. Such refunds were claimable under the TRS on departure from Australia and had been denied on the basis that the 30 minute rule had not been met.

1.4 Information is provided to departing travellers in the brochure *Tax back for Travellers* which states that 'claims at airports may not be able to be processed within 30 minutes of your aircraft's scheduled departure time'. It also recommends that passengers arrive at the TRS facility at least 90 minutes prior to time of departure to ensure that sufficient time is available to lodge a TRS claim.

1.5 Our investigation of these complaints showed that the application of the 30 minute rule, and in particular the ad hoc arrangements put in place when there was a high volume of passengers to process, were at times inadequate.

1.6 It also became apparent the 30 minute rule was operating as a de facto barrier to making a valid application.

1.7 The legislation creates an obligation on the Commissioner to refund the GST portion of the costs paid of certain goods acquired in Australia and subsequently exported. It does not address the subject of how applications are made or processed.

1.8 This point then became the focus of the Ombudsman's own motion investigation.

¹ This report focusses on the issue of GST refunds at international airports only, reflecting the substance of the complaints made to the Ombudsman's office.

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Legislation

1.9 The legislative basis for the TRS is contained in the *A New Tax System (Goods and Services Tax) Act 1999, Section 168.5*. Specifically the Act states *inter alia*:

Tourist refund scheme

Exporting goods as accompanied baggage

(1) If:

(a) you make an acquisition of goods the supply of which to you is a taxable supply; and

(b) the acquisition is of a kind specified in the regulations; and

(c) you leave the indirect tax zone, and export the goods from Australia as accompanied baggage, in the circumstances specified in the regulations;

the Commissioner must, on behalf of the Commonwealth, pay to you an amount equal to:

(d) the amount of the GST payable on the taxable supply; or

(e) such proportion of that amount of GST as is specified in the regulations.

1.10 It is noted that the Act states the Commissioner **must** (emphasis added) pay the amount of GST to the traveller, and there is no provision in the legislation that makes such an obligation subject to an administrative arrangement such as the 30 minute rule.

PART 2— OMBUDSMAN’S INVESTIGATION

2.1 The Ombudsman formally advised the Hon Peter Dutton MP, Minister for Immigration and Border Protection, and the Secretary of the Department of Immigration and Border Protection, on 23 December 2015 that he was commencing an own motion investigation into this matter under s 8 of the *Ombudsman Act 1976*.

2.2 The focus of this investigation was on the lawfulness of people being refused refunds who were assessed as not having met the 30 minute rule. This report draws on the information provided by the department in its response to this own motion investigation as well as its responses to the investigation of complaints in 2014 and 2015, and to a formal request for information sent to the department in September 2015.

2.3 In the formal request sent in September 2015 we asked the department if it was confident that the administrative arrangements supporting the 30 minute rule are supported by legislation. It advised that the 30 minute rule is not supported by legislation.

Case study one – emerging issue, validity of 30 minute rule

Mr A complained to the Ombudsman that he had been denied a TRS refund ‘due to the legislative and administrative requirements not being met’, as advised in the response to his complaint lodged with the department.

Our office investigated the complaint and as part of this investigation pointed out that the legislation required the Commissioner to pay Mr A the refund and that the department in refusing to process Mr A’s claim was in breach of the legislation.

In its response the department noted that in two previous complaint investigations in 2011 the Ombudsman’s office had accepted the department’s view that passengers had not allowed sufficient time for their claims to be processed. However the department remained silent on the issue of the 30 minute rule’s validity.

The department stated that as CCTV footage showed that as there were no other departing passengers queuing at the TRS facility at the time and that Mr W was able to present his claims to a TRS officer before boarding his flight, it was prepared to reconsider Mr A’s TRS claim on this occasion.

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2.4 Our office also asked for details of the drop box facility that is deployed at some airports during peak periods and allows people to lodge a claim without having to queue. This facility is used in exceptional circumstances, which are defined in regulation 168-5.13 as being:

- 1 *A power outage at a TRS verification facility, making it impossible to verify details by computer.*
- 2 *Passenger congestion that would make it unreasonable to verify each acquirer's claim within the time available.*

2.5 The approval to deploy the drop box, and the appropriate signage advising that the drop box is in operation, can only be authorised by the department's airport Duty Manager once queues become lengthy in the TRS facility. However this is dependent on TRS staff being aware of the queues.

Case study two – failure to implement use of drop box facility

Mr D complained that he had arrived at the TRS facility nearly two hours before his scheduled departure and that the very long queue was moving slowly. He subsequently left the queue as he had to board his aircraft and also stated that a number of other passengers did the same. He asked a TRS officer if there was another way he could lodge a claim and was told that sometimes there was but on that occasion he could not be provided with any further assistance.

In its response to our investigation of Mr D's complaint the department acknowledged that on this occasion there were long queues of which the TRS staff were unaware due to the construction of a new TRS processing area. The department advised that because of the circumstances pertaining at the time of Mr A's attempt to claim a refund, it would consider a request from him for a retrospective claim

2.6 In its response to the Ombudsman's own motion investigation the department confirmed the earlier legal advice that the 30 minute rule is not supported by legislation. It further stated that its position now is that a TRS claim cannot lawfully be rejected on the basis that a passenger has not presented at a TRS verification facility 30 minutes before the scheduled departure of their flight.

2.7 However the department has expressed the view that the 30 minute rule can be supported administratively if it is implemented as a guideline rather than a basis to reject a claim. It states that this may involve, for example, advising passengers lodging a claim within 30 minutes that they are at risk of missing their flight. The department would still process claims for any passengers who decline to follow this advice.

2.8 The Ombudsman is seeking further advice from the department as to how and when this is to be implemented.

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Case study three – incorrect advice to complainant of legality of decision to refuse refund

Mr B, on behalf of Mr C, a relative who lives overseas, complained that Mr C presented at the TRS counter within the time permitted by the 30 minute rule. He was seen by a TRS officer who then told him to wait while that officer, it appeared, took a toilet break. When the officer returned Mr C was told that there was now insufficient time to process his claim and the officer then made a public address announcement to the effect that everyone in the TRS queue, who was boarding the same flight as Mr C, should leave the queue and proceed to the departure point.

Mr C had complained to the department but in its response, which rejected his request that his refund be processed, stated that Mr C had not allowed sufficient time for his claim to be processed. The department referenced advice on its website that advises passengers to allow 90 minutes before their scheduled departure time for their TRS claim to be processed. The department advised Mr C that 'due to the TRS legislative and/or administrative requirements not being met, we are unable to approve a refund of GST. Unfortunately there is no legal avenue available to reverse this decision'.

The department indicated in its response to this office's investigation of Mr B's complaint that it had no CCTV footage of the circumstances relating to Mr C's claimed experience at the TRS counter. On the basis that it was not able to confirm or refute Mr C's version of what happened in this regard the department advised that it would make a retrospective consideration of Mr C's claim for a refund.

2.9 The department also advised that it received 198 complaints about the 30 minute rule in 2014-15 and a proportionally similar number so far in 2015-16. With more than 767,000 TRS claims made in 2014-15 this represents a complaint rate of 0.026%.

PART 3— CONCLUSIONS AND RECOMMENDATIONS

3.1 It is of concern to the Ombudsman that an administrative arrangement such as the 30 minute rule could have been conceived and implemented without regard to the relevant legislation. As implemented, the Commissioner’s obligation to pay the GST refund is not always fulfilled, especially for individuals who would otherwise meet all the criteria in s 168.5.

3.2 It is equally concerning that having acknowledged to the Ombudsman on more than one occasion² in 2015 that the 30 minute rule was not supported by legislation, the department took no action to remedy the situation.

3.3 The fact that few people complain, or that the measure was implemented with the best intentions does not give legitimacy to an arrangement introduced purely on the basis of administrative convenience.

3.4 There is evidence, in the information the department has provided to this office in its various responses, that travellers are being informed that they are not entitled to apply for a refund as they do not comply with the 30 minute rule, which is not accurate.

3.5 The Ombudsman supports both the necessity of having in place arrangements for processing TRS refunds in such a manner that does not put at risk the on-time departures of international flights, and the obligation of passengers to ensure that they allow sufficient time to have their TRS claims processed.

3.6 However it is incumbent on the department to ensure that such arrangements are designed in full accordance with the law. While the percentage of people who have complained to the department about having been denied refunds for not meeting the 30 minute rule is small, as is the number of people who have subsequently complained to the Ombudsman, there is an important principle to be considered – that the department must act in accordance with the law.

Recommendation one

As an interim measure the department takes all reasonable steps to ensure that travellers who wish to claim a TRS refund are able to do so in a way that is consistent with the law.

3.7 The department states that one possible solution is to amend regulation 168-5.10 to provide that a person *must* present themselves at a TRS facility at least 30 minutes before the scheduled departure of their flight.

² 2014-509615 – Department’s response dated 23 March 2015
Department’s response to s 7.1 request for information, dated 18 September 2015

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3.8 While this option may assist in ensuring that flight departures would not be delayed, it would also remove the flexibility of the department to assess individual circumstances on their merits.

3.9 There is already a procedure in place to process claims by the use of a drop box when there are delays caused by unforeseen circumstances such as power outages, allowing people not to have to queue and lodge a claim in person.

3.10 The Ombudsman is of the view that an alternative solution is to amend regulation 168-5.13 to allow for the permanent operation of the drop box facility, giving departing travellers the option of either queuing at the TRS facility to have their refund processed at the time of departure, or lodge their claim in the drop box and to have it processed in due course.

Recommendation two

The department consider the permanent use of the drop box facility at TRS facilities at all international points of departure, and takes all necessary steps to ensure the appropriate regulations are in place to give effect to this arrangement.

3.11 As the department has conceded that the 30 minute rule is not supported by legislation, it follows that there is likewise no legal basis for having refused TRS claims on the grounds that the 30 minute rule had not been met, and that such refusals may constitute defective administration.

3.12 People who have had TRS claims refused because they had not met the 30 minute rule may wish to lodge a claim for compensation under the Compensation for Detriment caused by Defective Administration (CDDA) scheme.

3.13 The CDDA Scheme provides a possible avenue for compensation where a person has suffered detriment due to the defective actions or inaction of the Commonwealth Government.³ Defective administration is defined *inter alia* as an unreasonable failure to institute appropriate administrative procedures.

³ <http://www.finance.gov.au/resource-management/discretionary-financial-assistance/cdda-scheme/>

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3.14 The Ombudsman makes the following recommendations:

Recommendation one:

- As an interim measure the department takes all reasonable steps to ensure that travellers who wish to claim a TRS refund are able to do so in a way that is consistent with the law.

Recommendation two:

- The department consider the permanent use of the drop box facility at TRS facilities at all international points of departure, and takes all necessary steps to ensure the appropriate regulations are in place to give effect to this arrangement.

PART 4— THE DEPARTMENT’S RESPONSE TO THE REPORT AND RECOMMENDATIONS

4.1 We provided this report to the department in draft form for comment.

4.2 In its response, the department acknowledges that the rule is an administrative arrangement. The rule was developed in consultation with airlines and airport operators at the commencement of the scheme in 2000. The arrangement was implemented to minimise delays to flight departures and associated on-costs to airlines and passengers from delayed passengers being off-loaded, rescheduled on later aircraft and other flow on costs.

4.3 The department has commenced discussions with the Australian Taxation Office to remove the rule as part of short term improvements. The department will remove reference to the rule and associated procedures from the department’s internet site within the next three months and from TRS brochures in the next print run once current stocks are depleted. Brochures currently in circulation were reprinted after the portfolio’s integration on 1 July 2015, so current stock levels are still quite high.

4.4 The department has also commenced working with airlines and airport operators to identify options to lawfully process TRS claims to ensure no passenger is disadvantaged when making a TRS claim while at the same time mitigating any adverse effect on airport operations and on-time departures of flights.

Recommendation one

4.5 The department agrees with recommendation one; there are options to comply, some of which will take longer than others. Designing new processes that will be agreed by all stakeholders to deliver full compliance with the law, with no cost to Government and airports, will likely take some time.

Recommendation two

4.6 The department agrees to consider the permanent/ongoing use of a drop box facility and, if that proposal has the support of all affected parties, to support that action with regulations as necessary. Where there is the need for changes to regulations, guidance from Treasury will be sought.