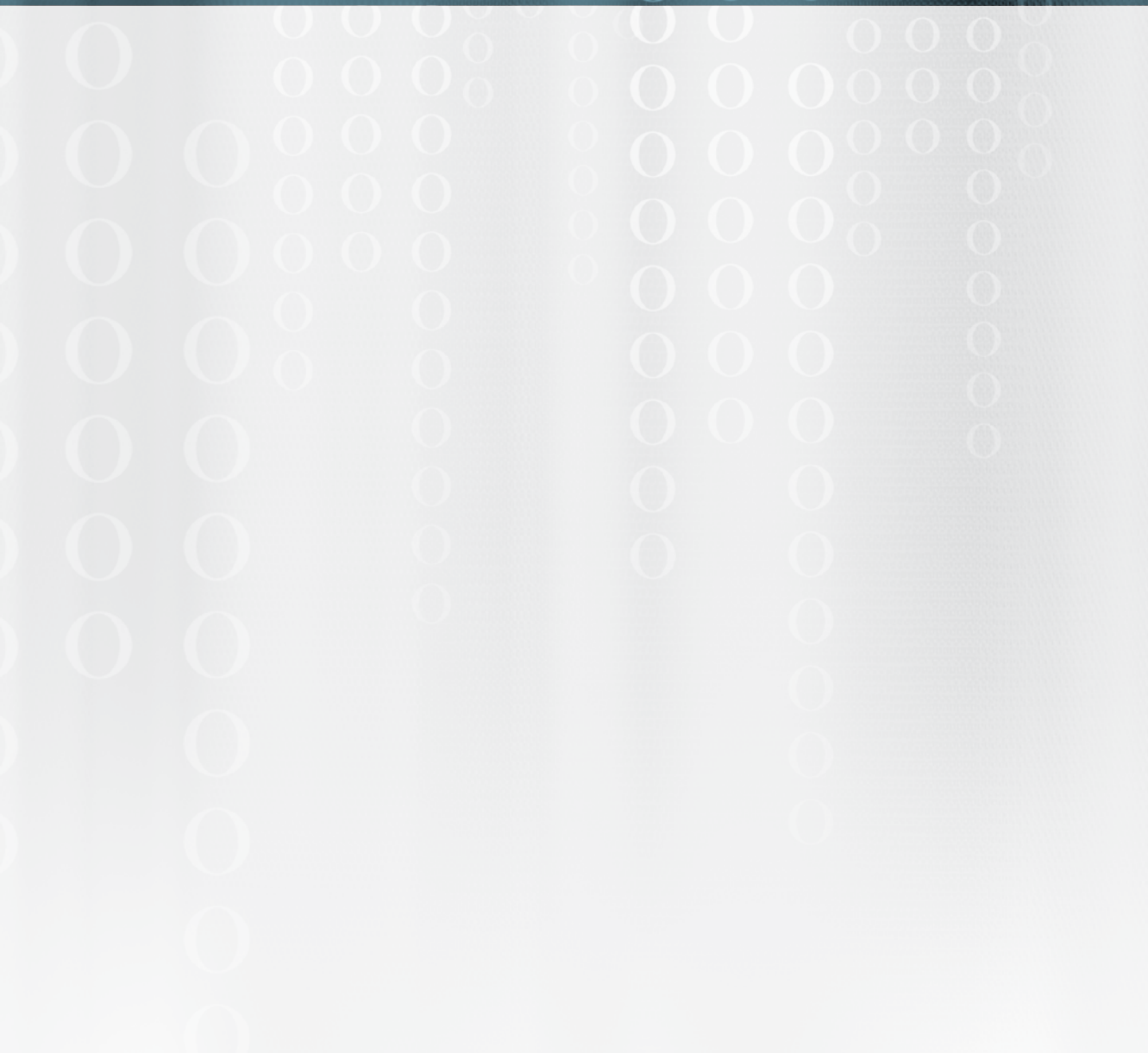


taxation ombudsman activities 2006



© Commonwealth of Australia 2007

ISSN 1449-5538

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Australian Government, available from the Attorney-General's Department.

Requests and enquiries concerning reproduction and rights should be addressed to the Commonwealth Copyright Administration, Copyright Law Branch, Attorney-General's Department, National Circuit, Barton ACT 2601, or posted at <http://www.ag.gov.au/cca>.

CONTACTING THE COMMONWEALTH AND TAXATION OMBUDSMAN

Enquiries about this report, or any other information contained within, should be directed to the Director of Public Affairs:

If you would like to make a complaint, or obtain further information about the Ombudsman:

Visit: Ground Floor, 1 Farrell Place, Canberra ACT 2600

Write to: GPO Box 442, Canberra ACT 2601

Phone: 1300 362 072 (local call charge)

Fax: 02 6249 7829

Website: www.ombudsman.gov.au

Produced by the Commonwealth Ombudsman, Canberra

Designed by RTM Design, Canberra

Printed by Goanna Print, Canberra

CONTENTS

Introduction	1
Chapter 1—Overview	2
Chapter 2—How the Ombudsman helped people	3
Identifying the problem in dispute	3
Case management	3
Surmounting barriers	4
Update on referral survey project	6
Individual circumstances	6
Dealing with urgent and pressing issues	7
Detoxifying the relationship	8
Assurance	8
Chapter 3—Promoting good tax administration	9
Complexity	9
General communication	10
Providing reasons	11
Administrative drift	11
Administrative irritants	12
Consistency	12
Falling through the cracks	13
Limits of government responsibility	13
Placing an item on the legislative or policy agenda	14
Chapter 4—Health of the tax system	15
Superannuation co-contribution	15
Compromise of tax debts	16
Garnishee action	16
Administration of the GIC	17
Tax relief	18
Payment arrangements	18
Other projects	19
Chapter 5—The taxation ombudsman in the framework of tax administration	20
Australian National Audit Office	20
Inspector-General of Taxation	20
Parliamentary inquiries	21
Tax agents' boards	21

Chapter 6—Challenges in tax complaint handling	22
New work practices	22
Internal projects	23
Liaison with the ATO	23
Tax outreach	24
Chapter 7—Future directions	25
Internal projects	25
External projects	25
Consultation and liaison	25
Appendix A—General tax advices	26
Superannuation	26
Assessment related	26
Debt	26
Other	26
Future advices	27
Glossary	28

introduction

The Commonwealth Ombudsman has been investigating complaints about the Australian Taxation Office (ATO) since 1977, and in 1995 was also given the title of Taxation Ombudsman following recommendations of the Joint Committee of Public Accounts and Audit (JCPAA) to give a special focus to the office's handling of complaints about the ATO. The Committee's recommendations recognised the imbalance that exists between the powers of the ATO and the rights of taxpayers.

The Ombudsman is assisted by a Senior Assistant Ombudsman (Taxation) and a specialist Tax Team of four full-time staff, as well as generalist complaint investigation teams located in our state offices. Flowing on from changes to the office's work practices during 2006, the Tax Team gave a greater emphasis to addressing a range of general tax administration issues, providing advice to our investigation officers on tax complaints and issues, and maintaining a productive working relationship with the ATO.

This report covers the Taxation Ombudsman's activities during the twelve months ending 31 December 2006. It provides a more detailed

account of activities than in the Commonwealth Ombudsman annual reports, which are based on a financial year reporting period. This helps us to follow up themes contained in the annual reports, and provides a more balanced reporting and publishing schedule across the year.

I am pleased to say that the 2006 year continues to build on our previous efforts to encourage review and improvement to ATO tax administration, as well as our own. A particular highlight is that this year we have initiated an ongoing program of project work focusing on aspects of tax administration. We hope this will encourage the ATO to review its own processes where this is not already being done. We also trust this will provide some assurance about the health of the tax system.

Dr Vivienne Thom

Acting Commonwealth and Taxation Ombudsman

In 2006, the Ombudsman received 1,415 complaints about the ATO, compared with 1,548 in 2005. This suggests a trend in the last few years of a levelling off in ATO complaint numbers in contrast to the period comprising the introduction of the new tax system and the difficulties over the tax treatment of mass-marketed investment schemes. The office finalised 1,459 complaints, of which 328 (22%) were investigated, a drop of 1% on the previous year. Figure 1 provides a ten-year overview of ATO complaint trends from 1996–97 to 2005–06.

During 2006, we received complaints about a range of ATO activities and products, including debt recovery, superannuation co-contribution, superannuation surcharge, lodgement and processing, and interest and penalty remission decisions. Complaints about ATO debt recovery action, and accuracy, clarity and timeliness of ATO advice continue to feature. There was a reduction in mass-marketed scheme complaints from previous years as the ATO nears finalisation of outstanding scheme settlement cases.

The Ombudsman’s Tax Team continues to monitor complaints to identify emerging complaint trends that may warrant more active intervention by our office. As is mentioned later in this report, work practice changes within the Ombudsman’s office

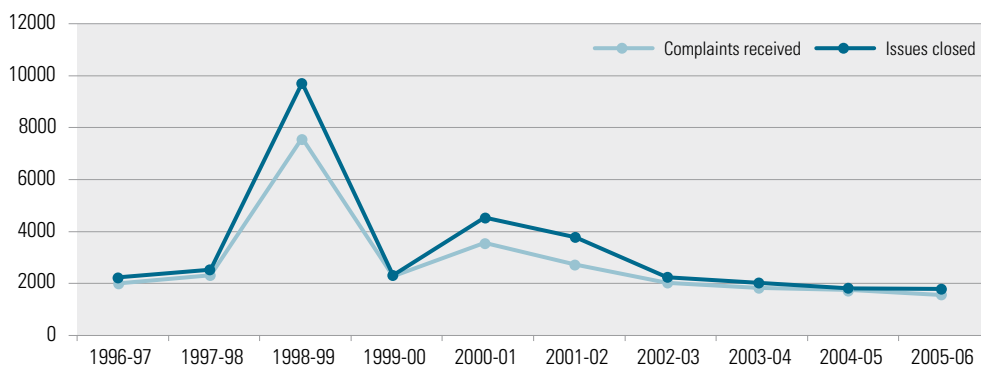
commenced at the beginning of 2006. This enabled the Tax Team to focus its attention increasingly on providing advice to our generalist investigation officers regarding emerging issues that could give rise to complaints, and give greater focus to specific areas of tax administration, particularly those covered by our general advice to staff and external projects schedule.

For example, given the significant number of debt recovery related complaints we receive, 2006 has seen a focus on different aspects of ATO debt collection activities.

During the year, we also made a submission to the Joint Committee of Public Accounts and Audit (JCPAA) inquiry into taxation matters. We focused our comments on a number of themes impacting on contemporary tax administration including:

- striking a balance between legislative complexity and administrative simplicity
- education and understanding as key components to the ATO’s compliance regime
- addressing individual taxpayer circumstances through responsive complaint and review processes
- facilitating common standards and practices across the ATO.

FIGURE 1 AUSTRALIAN TAXATION OFFICE COMPLAINT TRENDS, 1996–97 TO 2005–06



how the ombudsman helped people

2

The main function of the Ombudsman's office is to deal with complaints from the public about Australian government departments and agencies. The Taxation Ombudsman aims to help people by impartially examining their complaints about the ATO, providing them with our views and some form of resolution.

Where our investigation identifies administrative deficiency, we will focus on what remedy is appropriate. In other cases, we can provide a measure of assurance to both the complainant and the ATO that the matter has been handled fairly and appropriately. In either case, there is a demonstrable public benefit—correcting administrative deficiency in one instance and, in the other, allaying any concerns by an independent and objective examination of a grievance against government.

In a significant number of cases, we are able to help people resolve their complaints without the need for an investigation or without any criticism of ATO action. In many cases, people will have a tax problem, but are unsure about how to take the matter further. We can assist by advising them about the various options available to them, whether it be about their objection or appeal rights arising from an assessment, or assisting them to contact ATO Complaints, the internal complaint-handling area within the ATO, which aims to resolve taxpayer concerns in the first instance. In other cases, we can advise taxpayers about options such as applying for remission of interest or for release from a tax debt on grounds of serious hardship.

In this chapter, we have outlined some of the varied ways we interact with people to assist them to resolve their concerns about the ATO.

IDENTIFYING THE PROBLEM IN DISPUTE

For many complainants who approach our office, the tax system is complex and daunting. Where they experience difficulty in an aspect of their interaction with the ATO, they are not always in a position to know how to resolve it or how to best articulate the problem.

Part of our role in dealing with complainants, by phone, in person or in writing, is to ascertain their main concerns. Emotion and other peripheral matters can sometimes cloud the issues. By speaking to them about their complaints, we can help them focus on what are their main concerns, and what remedy they seek.

Our experience and understanding of government and complaint-handling processes can be useful in advising complainants about how best to advance their complaint and what remedy options may be applicable. For example, sometimes complainants will raise issues about an amended assessment and present reasons why the ATO made the wrong decision. In such a case we can advise them that their problem is one which is best resolved by lodging an objection with the ATO and, if unsuccessful, this gives them further rights of review.

CASE MANAGEMENT

One of the challenges for a taxpayer can be dealing with different areas of the ATO when managing their tax affairs and compliance obligations, particularly where they may be facing several problems simultaneously. For example, a small business person might be subject to a Goods and Services Tax (GST) audit, be behind with some related lodgements and payments, have difficulties in meeting superannuation guarantee contributions, and find dealing with all of these issues overwhelming. Many taxpayers find it difficult to understand the tax system and how they might best resolve their problems.

In these circumstances, we may suggest that the ATO take a case management approach to a particular complaint. This means that one ATO officer will coordinate different areas of the ATO in seeking to resolve a complaint that has different components. We have found the ATO agreeable to such an approach and have generally found it to be effective, as the *Remedy found* and *Helping hand* case studies illustrate.

SURMOUNTING BARRIERS

One of the more satisfying experiences in ombudsman work is when our intervention helps to resolve a long-standing dispute or problem. The causes vary—a person simply did not understand the decision or government program, they felt they were not getting through to the agency, or the

agency told them that their case had been given a lower priority than other pressing issues.

Sometimes a taxpayer's dispute with the ATO can reach an impasse, particularly where the matter has not been able to be resolved with the usual internal review mechanisms. Normally we would hope that all complaint review avenues have been exhausted, including that a case manager be assigned to the case. Other times, we may take up the matter to provide an independent examination of the issue and to provide assurance to both parties. Our involvement can often help clarify the issues, put fresh evidence before the decision maker, or encourage an agency to take another look at a matter, as in the *Breaking an impasse*, *Confused retiree* and *Persistence provides remedy* case studies.

CASE STUDY

remedy found

Mr A complained about the burden of an ATO debt of \$32,000 relating to self-assessed tax liabilities, GST and general interest charges (GIC) while employed as a bricklayer. Mr A argued that he had been wrongly advised about registering for GST at its introduction and as a consequence established a poor compliance history with lodgement of activity statements and payment of GST.

Mr A became unemployed, relying on income from limited casual work and welfare payments. Given his changed circumstances he was unlikely to repay his outstanding debt, which had subsequently grown to \$44,000 because of daily compounding GIC.

Following our enquiries with the ATO, we advised Mr A to lodge all outstanding tax returns and activity statements and contact the ATO to cancel his registration for GST. At our request, ATO Complaints appointed a case officer who was able to monitor progress of this matter. Mr A was also advised to apply to the ATO for release from his income debts on hardship grounds. Mr A was advised by the ATO that on receipt of his application for release his debt amount would be frozen and no GIC would be added while the application was considered.

The ATO notified us that Mr A has obtained full release from his eligible debt of \$32,000 and had entered into a payment arrangement for the remainder of his debt.

CASE STUDY

helping hand

Mr B, an elderly taxpayer, was having difficulty in comprehending his Pay As You Go instalments and was confusing these with the former provisional tax system. The ATO had previously explained the Pay As You Go instalments to Mr B and this had initially resolved his problems. However, due to past experience, Mr B was resistant to accepting that his own actions impacted on the problems he was having.

Following our examination of the case, the ATO agreed with our suggestion that an experienced ATO case officer work through Mr B's accounts with him to sort out his problems and also help him to avoid such problems in future.

One of our aims in the coming year is to encourage the ATO to take a more systematic approach to using case managers to help people through these kinds of issues.

CASE STUDY**breaking an impasse**

Ms C (an accountant) complained on behalf of three superannuation funds about the application of late lodgement fees by the ATO, as it was her understanding that these fees had been waived. This matter, which had been ongoing since 1997, had already been through ATO Complaints and a Relationship Manager at the ATO without successful resolution.

Our investigation showed that ATO accounts did not reflect the remission of Australian Prudential Regulation Authority late lodgement penalties for two of the funds in question, and as a result the amounts were remitted and the account balances set to nil. The ATO undertook to provide a written apology to Ms C for this error.

We also clarified that Ms C needed to make a written request for remittance of fees in relation to the third superannuation fund. Ms C was pleased with the outcome of our investigation.

CASE STUDY**confused retiree**

Mr D, a retiree, was distressed about the ATO's failure to issue an amended assessment relating to his income from a ComSuper pension. Mr D wrote to the ATO business line requesting an amended assessment.

The ATO advised Mr D that it would not issue an amended assessment as his 2006 assessment was correct. The ATO did not inform Mr D of his right to a review of its decision, which he could pursue by lodging an objection against that decision. Mr D continued to be frustrated with what he saw was ATO inaction on his request and continued to exchange letters with the ATO before approaching the Ombudsman's office.

We approached ATO Complaints and asked if it would treat an earlier letter from Mr D as an objection request. The ATO agreed.

We wrote to Mr D explaining what had occurred and outlined his appeal rights if his objection was unsuccessful.

CASE STUDY**persistence provides remedy**

Mr E had received workers' compensation payments from his employer over two income years following a workplace accident and complained that the ATO had assessed him as liable for the withholding tax on the payments. Mr E produced evidence, which indicated that his employer had withheld tax on the payments. Mr E's employer denied that tax was withheld and provided the ATO with payment summaries indicating that Mr E had received the gross amount of the payments.

Mr E lodged objections against his assessments and the ATO subsequently allowed him credits for the withholding tax. The ATO accepted that the payment summaries provided by his employer were correct and included the gross income with the other taxable income he had received, which resulted in a combined tax debt of \$4,734.

We wrote to the ATO asking for information about the debt and how Mr E's liability had arisen. We questioned why the ATO had accepted the employer's payment summaries showing nil tax withheld but had also accepted that it was likely that the employer had withheld tax from the payments and had allowed Mr E withholding tax credits. The ATO initially maintained that Mr E had received a remedy by being allowed the tax credits and that the tax debt was correct.

As a result of our enquiries, the ATO arranged for a senior officer not previously involved in the case to conduct a further review and recommended that the ATO issue amended assessments for both income years resulting in Mr E receiving a refund of \$3,728 plus interest.

UPDATE ON REFERRAL SURVEY PROJECT

Our usual practice is to suggest to complainants that they first attempt to resolve their concerns directly with the ATO as we consider the agency should first have the opportunity to correct any perceived problems. In the 2005 Taxation Ombudsman Activities Report, we reported that we had commenced a pilot project to test the effectiveness of our complaint-referral process. The area of greatest concern arising from the pilot was the low rate of take-up when we advised complainants to contact ATO Complaints directly.

During 2006, we made further enquiries of the ATO about the effectiveness of our referral advice. As part of our project regarding payment arrangements (see page 18), we sought advice from the ATO as to whether complainants had taken our advice and pursued their concerns about payment arrangements with ATO Complaints. As with our earlier project, there was no record of a significant proportion of complainants having made further contact with the ATO.

In view of the above, we decided to undertake a pilot project, commencing in January 2007, where we will offer to directly transfer to the ATO those complaints that would better be handled by ATO Complaints in the first instance. In doing this we hope not to lose complainants who may be uncertain or uncomfortable about complaining directly to the ATO and will ensure that their concerns are raised with the ATO in the most effective and efficient way possible. We will also reassure complainants that they can come back to our office if dissatisfied with the outcome.

We will be reporting on the outcome of our referral pilot in the Commonwealth Ombudsman 2006–07 annual report. We are confident that the pilot project will provide a more effective complaint service for many of our tax complainants.

INDIVIDUAL CIRCUMSTANCES

Part of our focus in handling tax complaints is to help ensure that individual circumstances are taken into account in decision making. As we advised the JCPAA inquiry into a range of taxation issues in Australia, one of the ways to ensure this occurs is to have an effective appeal and review mechanism, along with an effective complaint-handling system. The Ombudsman's office has therefore spent considerable time and resources working with the ATO over many years to help it develop an effective internal complaint-handling process. We regard this as an essential complement to the role played by our office in protecting the rights of individuals.

A key focus of our complaint work is to ensure that taxation law and ATO policies are applied appropriately to the individual circumstances of taxpayers. Although we rarely find problems with ATO decisions in this respect, we sometimes need to remind the ATO of the importance of connecting the law or policy to the individual's circumstances in the explanation that decision makers provide, as the *Reasons provided* case study shows.

In some cases, the possible failure to take into account individual circumstances can be a broader systemic problem, as the *Considered on merit* case study on page 7 reveals.

CASE STUDY

reasons provided

Mr F complained that the ATO failed to explain why his application for compromise of a taxation debt was not approved, as he believed his application satisfied the general criteria for eligibility.

Our investigation found the ATO's decision to reject Mr F's application for compromise was based primarily on his poor compliance history and because he had disposed of his interest in a number of real estate assets over the preceding three years.

Following our suggestion, the ATO provided a more detailed statement of reasons to Mr F, linking his particular circumstances to the policy basis for the decision. We were also able to reassure Mr F that the ATO decision to refuse his application was a reasonable one in all the circumstances.

DEALING WITH URGENT AND PRESSING ISSUES

In dealing with tax complaints, it is not unusual for complainants to contact us about impending legal action being taken against them—generally as the result of alleged non-compliance with either lodgement or payment obligations—and ask that we intervene or request that such action be suspended while we consider their complaint.

The Ombudsman does not have the power to stay administrative action or judicial proceedings. We do not ordinarily recommend that the ATO put legal action on hold or apply to the courts to have judicial proceedings put on hold. We may, if there is clear prima facie evidence supporting

the complaint, if the action would impede any investigation and produce a result that would not otherwise be reviewable, or if some other exceptional or unusual circumstances suggest that a stay would be appropriate. The ATO is generally accommodating if we do feel that action should be stayed until the outcome of our consideration.

In most cases, complaints about administrative action that is in some way connected to ongoing or impending legal proceedings are generally best left to the courts to address. In such cases, our advice to complainants is that they would be better focusing their attention on their current legal dispute, as they can always come back to this office if any administrative issues remain outstanding once any litigation has been finalised.

CASE STUDY

considered on merit

Mr G complained that the ATO had provided misleading advice to the fishing industry about employment arrangements for deck hands. Mr G considered it was inconsistent with the ATO's previous position on the matter.

While we noted that the ATO was confident in its position, we considered its communications indicated its position was settled, and did not sufficiently provide for those who wished to put forward a case based on their individual circumstances.

We are continuing to liaise with the ATO about how processes might better address this issue.

CASE STUDY

improved communication

Mr H complained about inappropriate and excessive ATO debt recovery action against his client. The debt was substantial and his client was seeking partial relief from the debt on hardship grounds and for the ATO to cease legal recovery action while negotiations continued. Mr H indicated that he had reached an impasse in negotiations with the ATO business line staff.

We decided not to investigate this complaint. However, we referred Mr H to an ATO Complaints case manager because we believed they were in the best position to facilitate more effective communication between Mr H and the ATO business line.

Mr H subsequently contacted our office to provide positive feedback from his ATO complaint experience including:

- ATO Complaints staff dealt with him and his client in a sensitive, considerate and open manner
- ATO Complaints staff facilitated more effective communication between both the parties
- ATO business line staff accepted a different view on Mr H's position put to them by the ATO Complaints case manager and accepted further representations from Mr H, which had previously been difficult to achieve because of the ongoing communication difficulties
- ATO business line provided a remedy by remitting a substantial portion of the General Interest Charge.

DETOXIFYING THE RELATIONSHIP

Many people have an ongoing relationship with a particular agency. In the case of the ATO, this relationship can run for almost a lifetime, and generally exists whether the taxpayer wants it to or not. Sometimes a particular incident can taint a person's relationship with an agency and colour their subsequent interaction. A person may then distrust the agency and assume that standard administrative requirements are ill-intentioned.

The Ombudsman's office can sometimes detoxify the relationship, by isolating the issue that led to the difficulty, assuring the person (or the person's agent) that there are systems in place to ensure that their concerns are dealt with fairly and appropriately, and so ensuring better understanding and communication in the future. This is demonstrated in the *Improved communication* case study on page 7, where interaction between the person and the ATO had deteriorated to the point that the person was so suspicious of the ATO that he was reluctant to continue to deal directly with them.

Not all such cases have the same positive outcome.

For some taxpayers, their distrust and perceptions of unfair treatment cannot be undone, and they will generally have to learn to live with the situation as best they can. When faced with such cases, this office can at least try to help the person better understand the relative positions and the other avenues available should they wish to continue to pursue their dispute.

ASSURANCE

An important part of the Taxation Ombudsman's work is providing assurance to complainants, the ATO and the community, that the administrative actions of the ATO with respect to both individual taxpayers and the taxpaying community are fair and reasonable. This is particularly relevant to tax administration because of the nature of the ATO's powers and the operation of the various secrecy provisions within tax law. In such cases, the independent analysis and oversight we provide will assure most complainants that their matter has been handled fairly and appropriately, as the *Reasonable agency action* case study demonstrates.

CASE STUDY

reasonable agency action

Mr J complained about the failure of the ATO to recover unpaid superannuation guarantee (SG) from his former employer dating back to late 2003.

We investigated Mr J's complaint and formed the view that the ATO had acted in accordance with its usual procedures for recovery of unpaid SG and was prevented by legislation from disclosing the particulars of any action it had taken against the defaulting employer.

While acknowledging Mr J's frustration at the delay, we were able to reassure Mr J that the ATO was taking all the action it reasonably could to recover the outstanding SG.

Through our complaint handling and investigation work, we come into contact with many aspects of Australian Government administration. We are therefore well placed to comment on problem areas in government decision making and options for improvement.

The Ombudsman aims to encourage good administration by contributing to discussion on administrative law and public administration and by fostering good public administration that is accountable, lawful, fair, transparent and responsive. This chapter looks at some of the ways in which the Taxation Ombudsman has pursued these aims during 2006.

COMPLEXITY

The Ombudsman's office often receives complaints from taxpayers that clearly illustrate the complexity of Australian tax laws. Taxpayers, tax professionals, academics and commentators often decry complexity as it can adversely affect individuals. In previous Ombudsman annual reports, we noted that one of the challenges for those working in the tax field is the complexity of tax law and the tax system.

One of the more useful roles for the Taxation Ombudsman is to assist taxpayers to navigate through the system, while suggesting to the ATO ways in which its processes might usefully be simplified. Our focus has not been on broad based legislative or systemic reform; instead it has been directed towards identifying practical administrative solutions to individual complaints and specific problems.

In our view, where complexity is necessary in tax legislation it must be accompanied or matched by administrative oversight and remedial options that strive for simplification from the perspective of individual taxpayers navigating their way through

the tax system. This was a key theme taken up in the Ombudsman's March 2006 submission to the JCPAA inquiry into a range of taxation matters.

The potential of legislative reform to decrease complexity must be considered against the utility of other options to address some key aspects of tax administration, such as voluntary compliance. For the Ombudsman's office, this means identifying options for the ATO that can improve and enhance levels of taxpayer and tax professional knowledge, and foster community attitudes and values that support tax administration. For example, this has been an issue we raised in our examination of the ATO's administration of Superannuation Co-contribution (see page 15) and different aspects of ATO debt recovery activity (see page 16).

We generally try to address complaints relating to, or involving, complexity by attempting to explain to the complainant the broader legislative context to the ATO's actions and its relevant administrative processes. As part of this, we clarify with the complainant his or her own responsibilities and obligations as a taxpayer, drawing to the complainant's attention relevant complaints mechanisms and review options, and where appropriate, making recommendations to the ATO to improve its processes. The latter may involve suggestions for making ATO processes simpler and ensuring that the ATO provides adequate information to taxpayers so that they can better understand the taxation process.

In our submission to the JCPAA we argued that complexity in the tax system places an additional responsibility on the ATO to ensure that the underpinning administrative processes are as simple as possible. Further, it is important that effective review and complaint mechanisms are available to aggrieved taxpayers and that the ATO recognises its responsibility to educate taxpayers to navigate this complexity.

We have worked closely with the ATO over the last five years to help the ATO build a more effective and responsive complaints system. While there remains room for improvement, the ATO's progress in this area is acknowledged. For example, we understand that approximately 66% of complaints resolved in ATO business lines were upheld or partially upheld as a result of ATO complaints-processing action. This suggests that the ATO does not always get it right initially. However, it also suggests that the ATO has mechanisms in place that provide appropriate remedial processes.

While it may be impossible to create a perfect system, the ATO has worked hard to provide for fair and responsive remedial mechanisms to improve upon any mistakes that do occur. The bulk of complaints we see now about the ATO are perhaps best described as 'low level' or 'modest' in nature. Few complaints raise concerns of broader systemic or other significance to this office. We see very few complaints that reveal issues of institutional bias or bad faith. Most of the complaints we receive relate to 'simple errors', such as concerns about delay or ambiguity in ATO correspondence or accounting errors, or relatively straightforward disputes about tax assessments or a taxpayer's level of debt. Often, these illustrate the difficulties people have understanding ATO processes and their own obligations; in this regard, tax complaints are no different to many other types of complaints we receive.

GENERAL COMMUNICATION

As noted above, a key issue arising from a complex tax system concerns the role of ATO communications in helping taxpayers better understand their entitlements and obligations under tax law.

One way in which agencies inform the public of their entitlements and obligations is through general publicity, policy statements and guidelines. A good example of this in the context of tax administration is the ATO Receivables Policy, which provides a comprehensive guide to the ATO's position on the administration of payments, debt collection, lodgement and related penalties. The ATO Receivables Policy is set out in a long and detailed document and is publicly available on the ATO website. Our complaint and more systemic

investigation work indicates that many taxpayers and tax practitioners appear to be unaware of the policy's existence, despite its fairly straightforward accessibility on the ATO's website and its clear relevance to many of the issues that are raised with this office.

During the year, the ATO approached us seeking feedback on its Receivables Policy. We passed on our concerns about the apparently limited levels of taxpayer and tax practitioner awareness and understanding of the policy, suggesting that greater awareness of the policy might well in some cases have prevented tax complaints to this office.

We further indicated that the challenge for the ATO was not so much how to improve the policy, but how to raise awareness of it with taxpayers and practitioners. We said that translating the policy into 'plain English' appeared to be largely successful and if in the course of our work we identify any sections of the policy that appear difficult to read, we will bring them to the ATO's attention. We also suggested the ATO consider publications targeted to different sectors of the community, such as small business, and to particular issues, such as what parts of the policy are relevant when a debtor is unable to pay. We suggested that the ATO consider a comprehensive suite of practice statements that flow from the policy providing more examples of how the policy operates in practice.

This year we also noted that some improvements in simplifying the delivery of entitlements to taxpayers can create challenges in effectively communicating with taxpayers. In March 2006, we published a report into the ATO's administration of the Superannuation Co-contribution Scheme. We welcomed the ATO's innovations in reducing the administrative burden on taxpayers who benefit from this scheme by automatically assessing entitlement to the co-contribution when a taxpayer, who makes a contribution and satisfies all the eligibility criteria, lodges their tax return.

We noted that limiting the interaction between the ATO and the taxpayer also limits the ATO's opportunities to communicate with taxpayers. This increases the burden on the ATO to ensure that taxpayer expectations are adequately managed through publicity campaigns. Our report on the co-contribution scheme was based on complaints we

had received, and suggested that the ATO might need to explore new ways of encouraging taxpayers to clarify their understanding and seek additional information where necessary.

As the new 30% childcare rebate also operates via an automatic process, we have decided to look more closely at the ATO's communication strategy behind this new scheme and will report on the outcome of that investigation next year.

We will continue to retain our broader interest in how efficiently and effectively the ATO communicates its messages to taxpayers.

PROVIDING REASONS

Since its inception, the Ombudsman's office has expressed concern about inadequate reasons being provided for administrative decisions, and has consistently encouraged agencies to provide reasons as a matter of fairness, transparency and accountability. In our view, it is appropriate that administrative decisions are explained, particularly where those decisions impact on individuals.

Providing reasons gives the person affected by a decision an opportunity to have the decision properly explained. That person can then decide whether to exercise their rights of review or appeal, and can do so in an informed manner.

Disclosure of the reasoning process not only helps the taxpayer understand the facts underpinning the ATO decision, it can also assist decision makers reflect more carefully on their task and to be more diligent and careful in decision making. The availability of reasons can assist agencies to identify relevant principles and create standards to govern future decision making.

The ATO's commitment to providing reasoned decisions is set out in the Taxpayers' Charter. The charter states that the ATO will provide a clear explanation of decisions except in very limited circumstances, for example, if explaining a decision would involve a breach of another person's privacy. Members of the public are more likely to have confidence in how and why government decisions are made if a satisfactory explanation is provided.

Both our individual complaint handling and systemic work provide us with an excellent opportunity to assess the adequacy and effectiveness of the

ATO's provision of reasons. Although we have rarely had cause to criticise the actual decision, we find cases where ATO officers have failed to adequately link an individual's circumstances to the relevant law and policy in their explanation of a decision. In these instances, we encourage the ATO to provide a more expansive explanation, explicitly addressing the taxpayer's circumstances so that they will better understand why the law or policy is being applied to them in the way that it is. For example, the need for better linking of individual circumstances to the legislation and ATO policies was identified as an issue in our scoping study of complaints about the GIC.

We have observed significant improvements in the last few years to ATO objection decision letters and some remission decision letters, and continue to encourage the ATO to further develop its training and guidelines to ensure that ATO staff better understand how to set out reasons that address an individual's circumstances.

ADMINISTRATIVE DRIFT

A common cause of complaint to the Ombudsman across all areas of jurisdiction is agency delay in making a decision or resolving a matter. The label 'administrative drift' appropriately describes what occurs, because delay often results from a matter drifting far beyond anyone's expectation. Some of the reasons are familiar and pervasive—a file being given a lower priority than other matters or being put aside in the 'too hard' basket to be looked at later; responsibility for a decision passing from one officer to another; or one aspect of a case being reconsidered or referred for advice before a final decision on the whole case is made.

We have noted in previous reports that the ATO has service standards in its Taxpayers' Charter that aim to ensure ATO actions will occur in accordance with those standards. Delay is still a source of complaint to our office. In 2006, 163 (or 12% of all tax complaints) involved some concern about delay. Where we investigate such complaints, we endeavour to determine the reason for delay (if any), whether the matter can be expedited, and whether any systemic or more general administrative changes are required. The ATO and the community should take some comfort in the knowledge that of the 65 complaints concerning

delay that we investigated this year, only four (or 6%) were substantiated.

ADMINISTRATIVE IRRITANTS

Many of the problems that people experience with government are not major in themselves, but cause irritation as they can add to the stress of daily life and often seem avoidable. Examples are delay in being served at a government counter or in having a telephone call answered; being sent the wrong form by a government agency; calling an agency and being told that the contact person has now left or has changed; or receiving a government letter that is not easy to understand, has a harsh tone or is outdated because of some other development. Problems of this kind will possibly increase over time, because of the frequency and variety of ways that people now interact with government, the growth in size of government agencies and the pressures on people's time.

We do not always investigate these irritations, because they usually pass or can be taken up directly with an agency. However, complaint letters and telephone calls to the office are sprinkled with administrative irritations that arise during people's interaction with government.

We first came across the term 'administrative irritants' in an internal ATO project, designed to identify small problem areas that might be easily resolved. One area relates to ATO correspondence, as confirmed by our own complaint-handling experience. For example, we have seen cases where a taxpayer has received multiple notices with the same date, containing different and seemingly conflicting information relating to superannuation surcharge. The difficulties around the superannuation surcharge system have been a consistent theme of the Ombudsman's last few reports. Although the abolition of the surcharge was welcome news, we envisage that we will continue to see problems into the years ahead, as surcharge assessments and information will continue to be issued for those earlier periods.

Other sources of irritation with ATO correspondence include clarity of advice, provision of reasons and addressing individual circumstances. As we envisage that this will continue to be a source of complaint, towards the end of 2006 we initiated a

project focused on ATO correspondence, examining how the ATO is currently dealing with these issues and what it hopes to achieve. We will report on the outcome of the project next year.

ATO accounting can also cause irritation to taxpayers, particularly resulting from the different accounts that a person may have with the ATO. We understand that the ATO's Change Program, designed to make the taxpayer experience 'easier, cheaper and more personalised', is being progressively rolled out over the next two years and should transform the way the ATO does business by integrating all ATO systems to obtain a single view of all the interactions taxpayers have with the ATO. An early example of the success of this program is the positive feedback we have received about the Tax Agents' Portal, which enables tax agents to directly access and manage their clients' ATO accounts.

In an example of the ATO pro-actively managing potential 'administrative irritants', the ATO contacted our office before implementing its strategy to contact small business debtors at home in the early evening, when other attempted contact had been unsuccessful. The ATO recognised that this method of contact may increase complaints, and therefore briefed our office on the reasons behind the strategy so that we could respond to any contacts from this group. The planning that went into this strategy seems to have been successful, with very few complaints received either by our office or the ATO, and some positive feedback received about the effectiveness and efficiency of the strategy.

CONSISTENCY

An important feature of tax administration is that individual cases are considered on their merits. It is also important that there be reasonable consistency in decision making, for reasons of fairness and equity.

In the last ten years, we have observed a growing commitment to common standards of practice across the ATO. For example, the ATO has a comprehensive suite of Practice Statements to guide its own officers in the handling of specific matters across the full range of its activities. We have also seen the development of more systems within the ATO for the consistent management of its operations. A further helpful development

involves the Taxpayers' Charter and its service standards. These provide an excellent framework within which tax officers can act, and taxpayers and offices like ours can hold them accountable.

During the year, we provided comments to the ATO regarding its draft settlement code of practice. This is an area of tax administration that sometimes attracts criticism for alleged inconsistency, most notably concerns that some taxpayers appear to receive settlements that are more 'generous' than others. While such comments are mostly speculative—the terms of settlement are invariably subject to privacy restrictions—we did encourage the ATO to undertake monitoring of consistency of settlements across business lines as well as within them, together with appropriate staff guidance and training. We also supported the recording of reasons for settlement in the ATO's settlement register, where all settlements are recorded. To provide public transparency and accountability, we suggested the ATO explore including general statistical information about settlements in its annual report, perhaps in the same way that reference is currently made to payments under Act of Grace and the Compensation for Detriment caused by Defective Administration scheme.

FALLING THROUGH THE CRACKS

We have commented several times in this report on the importance of having formal review and appeal options alongside effective internal complaint mechanisms. During the year, the ATO sought our feedback on a draft practice statement dealing with informal reviews—that is, a review process for dealing with those situations where formal review mechanisms may not be available and the complaints process may not be appropriate. These tend to be in relation to what ATO Complaints describe as tax technical decisions. For example, a taxpayer does not have the right to object against an ATO decision not to remit failure to lodge penalties of \$110 as it carries less than two penalty points. However, the ATO would 'informally' review the decision if asked. Similarly, in the case of taxpayer dissatisfaction with a GST private ruling, although the taxpayer does not have the right to object, on request the ATO would review the decision in the interests of good administration.

The development of this practice statement reassures us that the ATO is keen to ensure that taxpayers are advised of their review rights, appropriate to the circumstances at the time, and that tax officers will be properly equipped to respond to any resulting requests for review. In particular, we were pleased to note that this appeared to be the first time the ATO was documenting its approach to informal review.

As part of our feedback to the ATO, we suggested the ATO ensure that this practice statement is effectively cross-referenced with practice statements on complaint handling and formal reviews, to ensure that all possibilities are covered and effective guidance is provided to cover all situations that might arise. If this is done, we are confident that the informal review practice statement will fill the current gap and should mean it is unlikely that those taxpayers with concerns about ATO actions will fall through the cracks.

Until now taxpayers and tax officers have not had clear guidance about their options when no formal review mechanism existed.

LIMITS OF GOVERNMENT RESPONSIBILITY

Sometimes complainants will come to us with a complaint about the ATO, which after enquiry turns out to be about something that is beyond the ATO's responsibility. In dealing with such complaints, we aim to explain the situation to the taxpayer and to advise what further options may be available to them.

In past years we have reported on this situation with respect to employees chasing unpaid superannuation contributions from non-compliant employers. Another common example arises in relation to superannuation, where taxpayers challenge superannuation surcharge assessments that are a result of incorrect reporting to the ATO by superannuation funds. These problems persist, notwithstanding the abolition of the surcharge. The legislation provides little discretion for the ATO to do other than act on the information as it is reported to it by the superannuation fund.

In most cases, we will explain the error to the taxpayer, suggest that they approach their fund to resolve the matter, and provide referral information about where to go if they receive no effective outcome from their funds.

PLACING AN ITEM ON THE LEGISLATIVE OR POLICY AGENDA

Some complaints are substantially about the wisdom of a legislative or administrative rule that is being applied by an agency. It can be difficult for a person to argue from their individual case that a general reform is required to relieve the harsh or impractical consequence of a law or policy. Sometimes, the Ombudsman's office is better placed to take up those issues. We can point to other complaints that raise the same problem or persuade an agency to see that an individual complaint raises a larger or potentially systemic issue that should be addressed.

An example concerned an academic who sought ABN information from the ATO for research purposes and the request was refused. Our investigation concluded that although the decision was discretionary, it was reasonable for the ATO to have regard to the relevant legislation, including offence provisions for unlawful release of protected ABN information and the relatively narrow terms of the disclosure provisions of the *A New Tax System (Australian Business Number) Act 1999*.

We recognised that ABN information may be useful for research that, while not for the purposes of the ABN Act, may be of public interest and value. We wrote to the ATO suggesting it explore with Treasury the possibilities for either broadening the existing policy with respect to release of ABN information or amending legislation to explicitly recognise the possibility of release of protected ABN information for research purposes.

Towards the end of 2005, the Taxation Ombudsman implemented a forward work program of internal and external tax projects. In 2006 most of these projects were completed and new projects identified and initiated.

Internal projects look at ways in which the Ombudsman's office can improve its own policy, procedures and decision making to more effectively manage tax complaints and to provide a more streamlined, efficient and effective complaint experience for complainants. These are discussed in more detail in Chapter 6—Challenges in tax complaint handling.

External projects generally examine individual tax complaints to assess the health of specific areas of tax administration, identifying any potential problem areas in the ATO's administration and making recommendations where appropriate. This chapter outlines progress of these projects during 2006.

In designing the project program, we were conscious of the work of the Inspector-General of Taxation and the Australian National Audit Office and have attempted to avoid or minimise overlap by identifying instead areas that complement their work. We aim to work closely with other oversight bodies in feeding into improvements to tax administration. The unique perspective that we can bring to these broader projects, gained primarily through handling individual complaints, is a balanced consideration of the impact that government administration can have on individuals.

By using complaints as a window to tax administration, and with almost thirty years' experience in handling complaints both about the ATO and across Australian Government administration, we hope to provide useful observations and commentary on the health of the system of tax administration and to identify improvements that should benefit all taxpayers.

We also hope that the projects will improve our own understanding of tax administration, to the benefit of individual taxpayers who come to us with their problems. We are also continuing to engage more with the tax profession and staff in our State and Territory offices to identify possible topics for future projects.

External projects initiated or reported on by the office in 2006 included:

- superannuation co-contribution payments
- compromise of tax debts
- use of garnishee powers
- aspects of the general interest charge
- release from tax debts on the basis of serious hardship
- debt repayment arrangements.

Not surprisingly, debt recovery leads to a significant proportion of complaints received about the ATO with 331 (23% of all complaints) in 2006. For this reason, our external project work this year has had a particular focus on aspects of the ATO's debt collection.

The Taxation Ombudsman also has an ongoing outreach project focused on tax agents, to help and encourage them to raise issues of concern with this office. The objective of this project is to analyse the issues they raise and identify areas that we consider merit further examination.

Issues relating to some of the external projects the Taxation Ombudsman undertook during the year are outlined in more detail below.

SUPERANNUATION CO-CONTRIBUTION

The Superannuation Co-contribution Scheme (Super Co-contribution) was introduced from 1 July 2003 to assist eligible individuals to save for their retirement by providing matching government contributions for personal superannuation

contributions. In March 2006, we issued a report on the ATO's administration of this scheme. Our review of complaints did not disclose any major concerns with, or systemic problems arising from, ATO administration of this scheme. We were, however, able to offer some suggestions for those areas where we saw more significant complaint numbers.

For example, some of the complaints about Super Co-contribution related to concerns that the information about the scheme in ATO advertising was not sufficient for a person to make an informed decision on whether they met the requirements. This did not marry with our own observations. We found that the advertising was clear in outlining the purpose of the scheme and basic eligibility criteria, and in all cases the advertisements clearly advised people about how and where they could seek further information. While we concluded that the ATO advertising achieved an appropriate balance between simplicity and sufficiency, we also acknowledged that all government agencies grapple with the perennial problem of how much information is enough. We suggested the ATO review its own complaints profile in relation to Super Co-contribution to see if similar problems were identified. We also suggested that communication strategies were an area we might focus on in relation to other aspects of tax administration in future, and may revisit our review of the Super Co-contribution at some future stage to see if there have been any changes of significance.

COMPROMISE OF TAX DEBTS

The ATO defines 'compromise' to mean the permanent agreement not to pursue recovery of the balance of a tax debt. As the Commissioner of Taxation's power to compromise is implied from his general responsibilities for administering tax law, and as we receive occasional complaints from taxpayers who consider that the ATO has unreasonably refused to compromise their debts, we felt that this was an area worthy of closer examination.

On the whole, we were satisfied that the ATO's processes and guidelines around compromise were appropriate, but made two general suggestions for improvement.

We suggested that there might be scope for the ATO to include more and/or better explanations in its publicly available information about the nature and limits of compromise, including those circumstances where it may be considered appropriate for the Commissioner to exercise his compromise power. We flagged that appropriately edited examples of successful compromise cases might provide useful assistance to taxpayers contemplating applying for compromise.

We also suggested that the ATO might be able to provide more detailed reasons or explanations in response to applications for compromise, noting particularly that there was more scope for ATO decision makers to elaborate their views on how law and policy apply to an individual taxpayer's circumstances. As we noted above in Chapter 3 —Promoting good tax administration, we will continue to focus on the provision of reasons across the full range of tax administration over coming years.

On compromise, we concluded that the small numbers of applications meant that the complaint system was probably sufficient for us to continue to monitor any issues arising. We will also monitor trends to see if a different approach becomes necessary in the future.

GARNISHEE ACTION

Where a tax-related liability is payable, the Commissioner of Taxation may issue a notice requiring a person who owes money to the taxpayer to pay that money to the Commissioner instead. A third party is treated as owing money in various circumstances, including where that person holds money for or on account of the taxpayer, for example a bank or similar institution.

Although only a small number of our complaints relate to ATO garnishee action, we recognise that the impact of garnishee action on an individual can be significant. Taxpayers often see garnishee action as being premature, intrusive and generally unwelcome. Given that the Commissioner is targeting outstanding debt, and garnishee action could be expected to feature as part of any debt recovery strategy, we felt it timely to examine the ATO's approach to garnishee action.

We examined the ATO's approach taken to garnishee action as reflected in approximately 60 complaints received between July 2003 and June 2006. In each case, we generally found the ATO had acted reasonably in taking garnishee action, only acting after other attempts to recover the debt had been unsuccessful. This is in line with the ATO's advice to us and its policy guidelines.

We suggested to the ATO that it might be opportune to review its policy and practices, paying particular attention to:

- development of a specific practice statement about garnishee action
- better documentation of reasons for taking garnishee action
- adequacy of reasons provided to debtors at the warning and notice issue stages
- adequacy of guidance to ensure the issue of garnishee notices does not affect the taxpayer's ability to appeal
- better statistical data
- complaints about garnishee action.

As we provided the report to the ATO in late December 2006, the ATO's response to the suggestions were not expected until early in 2007 and accordingly we are not in a position to report the outcome of our enquiry. We anticipate our report will be published in the first half of 2007 taking into account any comments we receive from the ATO. We will also be reporting on this issue further in the Commonwealth Ombudsman's Annual Report 2006–07.

ADMINISTRATION OF THE GIC

The administration of the General Interest Charge (GIC) was selected as a project because it generates a significant number of complaints to our office each year and involves the discretionary remission of the GIC upon application by a taxpayer following its mandatory imposition by statute. It also plays a significant role across a wide range of the ATO's activities, particularly its compliance and debt recovery programs.

The primary focus of this project was to assess our complaints data to identify key issues arising about the ATO's administration of the GIC. We identified

three discrete themes during our review of this complaints data.

- *The level of GIC and its imposition*—Some taxpayers consider the level of GIC imposed to be unfair or unjust. We accept that this is a matter of settled law and government policy, and as such, is a matter more for Parliament than the ATO. However, the ATO might wish to consider whether there is any educational work that might flow from this, or some means of forwarding this feedback to government and the Treasury.
- *The 'adequacy of reasons' in communicating remission decisions*—In some instances the ATO's reasons for decision were notable for their brevity. We observed that the ATO's decision notices on reconsideration were generally more detailed and considered than those provided initially. It may be that there are some benefits for both the ATO and taxpayers if primary remission decisions provided more detailed reasons—such an approach might lead to a reduction in requests for reconsideration and a reduction in complaints to both the ATO and this office.
- *The provision of advice*—We observed that attempts to provide for summarised, truncated or abbreviated statements of policy create potentially misleading statements. Consequently, this can result in errors in remission decision making and the ATO unintentionally deterring or discouraging remission requests by taxpayers. A key example is where an ATO decision maker attributes the decision not to remit to the absence of a payment arrangement, incorrectly treating a payment arrangement as a condition precedent to a remission decision. Although we did not observe many instances of this problem, that it appeared at all was a matter of some concern.

In providing feedback to the ATO, we acknowledged that it has a difficult task administering a penalty that some taxpayers consider is punitive and unjust. We also acknowledged that the ATO has established clear policies on GIC remission to guide its decision makers in the exercise of the Commissioner's discretion to remit the GIC, and generally appears to do so fairly and reasonably.

We noted that there might be more the ATO can do to help taxpayers better understand how GIC operates, how it is imposed, and how taxpayers might usefully and meaningfully seek its early remission. The knowledge that a taxpayer can seek remission at an earlier stage in his or her dealings with the ATO might go some way to improving community confidence in the ATO, as well as leading to a reduction in complaint numbers. We also encouraged the ATO to continue to develop quality assurance processes and training within the ATO to ensure decision makers properly understand the law and policy with respect to remission of GIC.

We will continue to work with the ATO to address some of the issues identified in our review and may revisit this issue in the future.

TAX RELIEF

A taxpayer who is unable to pay a debt can apply to the ATO for whole or partial release from the debt due to serious hardship. Hardship in these circumstances is considered to be where payment of the debt would mean that a person would be unable to provide food, accommodation, clothing, medical treatment, education or other necessities for themselves, their family or other dependants.

Up until September 2003, the former Tax Relief Board decided hardship applications, with the Ombudsman's office the only practical avenue for dissatisfied applicants. The primary cause of complaints about hardship applications prior to September 2003 was delay.

Since September 2003, the Commissioner of Taxation has made tax relief decisions, with a simple and practical right of review to the Small Taxation Claims Tribunal for dissatisfied applicants. We decided to review the current arrangements to test whether the changes had led to any improvements in the administration of release decisions.

Our examination of the ATO's handling of release applications suggested a considerably more efficient and effective system for handling release applications, a position confirmed by the falling number of complaints to this office. Of the objections pursued through to the Small Taxation Claims Tribunal, only a small percentage have been partially or fully upheld, which tends

to provide some measure of confidence in the primary decisions. We also noted an improvement in the timeliness of decision making since the Commissioner took responsibility for deciding hardship applications.

PAYMENT ARRANGEMENTS

This project examined the ATO's approach to administering arrangements to pay tax-related liabilities by instalments. In the context of overall ATO debt activities, our office receives relatively few complaints about payment arrangements. The profile of complaints to our office about payment arrangements from 1 July 2003 indicated taxpayer concerns about ATO communications (including delay) and ATO inflexibility where default on a payment arrangement had occurred and the taxpayer was seeking to negotiate a new agreement. This reflects the ATO's experience.

The ATO considers that it is improving the contact experience for taxpayers through its new call management capability and delivery program. It indicated its commitment to providing taxpayers with improved phone service, more personalised and accurate information, and quicker responses.

We also examined whether ATO staff were provided with adequate guidance to assist with decisions about payment arrangements. We were satisfied that staff have access to all relevant decision-making materials such as legislation, policy, practice statements and guidelines, as well as on-line access to taxpayer compliance histories. Our review did not identify any instances of demonstrable inconsistency in decision making.

In the complaints we examined, some taxpayers perceived that the ATO was inflexible, particularly in regard to agreement to new arrangements following taxpayer default, and where there were changes to a taxpayer's circumstances—including those involving compassionate or compelling personal matters. While we considered it was reasonable for the ATO to have regard to factors such as compliance history and risk to revenue, we consider it appropriate that careful consideration be given to changed circumstances, particularly where default has occurred due to factors beyond a taxpayer's control or because of matters of a compassionate or personal nature.

Although there are no formal objection or appeal rights associated with ATO payment arrangement decisions, we suggested the ATO might consider administrative arrangements for review.

Following on from our referrals project (see Chapter 2 — How the Ombudsman helped people), we checked whether the complainants we had referred to ATO Complaints about payment arrangement concerns had actually followed through with their complaints. Consistent with that project, we found relatively few followed through with their complaint. See page 6 for action we are taking to address this issue.

OTHER PROJECTS

During the year, we initiated a number of other projects into aspects of tax administration that were ongoing as at the end of 2006. As these will be reported on in more detail in the Ombudsman's annual report and next year's Taxation Ombudsman activities report, we only list the projects here.

- Administration of the Superannuation Guarantee
- Taxing issues for indigenous communities
- Aspects of ATO correspondence
- The ATO's communication strategy for the 30% child care rebate.

We expect that reports on some of these projects may be made public during 2007. Those interested in further details might wish to make contact with the Senior Assistant Ombudsman (Taxation).

the taxation ombudsman in the framework of tax administration

5

The ATO is the main administrator of Australia's taxation system. The Taxation Ombudsman handles complaints about the ATO and also monitors and comments on tax issues and aspects of tax administration. The Ombudsman's office, along with other agencies such as the Australian National Audit Office and the Inspector-General of Taxation have review functions, each approached from differing perspectives, but with the common aim of improving tax administration.

In the same vein, we also provide input into parliamentary inquiries. In particular, this year we provided submissions to the JCPAA regarding its inquiry into a range of taxation issues in Australia.

AUSTRALIAN NATIONAL AUDIT OFFICE

Each year we liaise with the Australian National Audit Office (ANAO) regarding its forward work program, with respect to particular performance audits conducted by the ANAO about specific aspects of tax administration. We work to avoid any unnecessary overlap or duplication, but also acknowledge that we approach our work from different perspectives. This also means that we each have something to contribute to the work of the other.

In 2006, we met with ANAO officers to discuss a range of tax administration matters, focusing mostly around our different debt projects, to feed into ANAO's audit of ATO debt collection activities. We indicated that the Tax Team's project schedule will always have a particular focus on specific ATO debt collection activities, given the volume of tax debt complaints received by our office. We felt that the ANAO's proposal neatly complemented our own work and therefore welcomed ANAO's interest in ATO debt management.

The ANAO also identified that it would be conducting a performance audit of the ATO's administration of Superannuation Co-contribution.

We indicated to the ANAO that we expected it would usefully take into account what we have already done in this area, and focus either on subsequent developments following our report or on areas not otherwise covered by the report.

We also flagged a potential project next year about ATO data matching of bank interest records, and noted that the ANAO intends to examine the issue of data matching more generally. As it is likely these projects will be complementary, we agreed to liaise in more detail once our project is underway.

INSPECTOR-GENERAL OF TAXATION

The Inspector-General of Taxation is an independent statutory office, whose role is to review systemic tax administration issues and to report to the government with recommendations for improving tax administration for the benefit of all taxpayers. In reviewing Australian tax systems and ATO administrative action, the Inspector-General has dual roles—advocating for reform from the perspective of the ordinary taxpayer while also providing independent advice to the government. In so doing he must balance the individual benefits that might flow to a particular taxpayer or group of taxpayers from administrative reform, with the need to protect the integrity of the tax system for the benefit of Australian taxpayers as a whole.

The Inspector-General's focus on tax systems rather than individual taxpayer matters complements the role of the Taxation Ombudsman and our handling of individual complaints about tax administration. The Inspector-General consults with the Taxation Ombudsman about his forward work program and on his specific reviews. Again, the objective is to avoid any unnecessary duplication, and to share our experiences and perspectives.

We also closely follow the work of the Inspector-General, analysing his reports to note areas he has identified for improvement. We keep these in mind

when following developments in tax administration and examining complaint trends.

PARLIAMENTARY INQUIRIES

During the year, we made two submissions to, and the Taxation Ombudsman appeared before, the Joint Committee of Public Accounts and Audit regarding its inquiry into a range of taxation issues in Australia. The inquiry was broadly based, covering issues such as the interaction between self-assessment and complex legislation and rulings, the application of common standards of practice by the ATO across Australia, the level and application of penalties and interest, the Pay As You Go (PAYG) system, and the fringe benefits tax regime.

The key issues identified in our submissions arising from our tax complaint handling included:

- inevitable complexity of tax legislation
- need for administrative and review systems to offset that legislative complexity
- need for continuing improvement in ATO processes, particularly its educational and information strategies and programs.

Our comments to the JCPAA addressed these issues through a few themes:

- striking the right balance between complexity and simplification
- education and understanding advances in this area, particularly in relation to the ATO's Compliance Program
- addressing individual taxpayer circumstances
- the application of common standards of practice across the ATO.

Copies of our submissions are available on our website (www.ombudsman.gov.au).

We were also involved in the Standing Committee for the Scrutiny of Bills ongoing review into Entry, Search and Seizure Provisions in Commonwealth Legislation. Our submission to the Committee detailed the Ombudsman's earlier own motion investigation into the ATO's use of its entry and search powers. That investigation and report had been initiated by the Standing Committee recommendation in 2000 that the Commonwealth Ombudsman undertake a regular, random 'sample

audit' of the exercise by the ATO of its entry and search powers to ensure that those powers had been exercised appropriately. As noted in our 2003–2004 Taxation Ombudsman Activities Report, the audit we subsequently undertook did not bring to notice any significant difficulty with the ATO's use of these powers. We were satisfied that the ATO complaints process provided an effective mechanism to ensure any issues of concern would come to our attention.

On 4 December 2006, the Committee tabled its report, recommending that the Ombudsman evaluate the feasibility of establishing a register of entry, search and seizure powers in Commonwealth legislation and the ongoing monitoring and audit of the application of such powers. This is something we will consider and report on in 2007.

TAX AGENTS' BOARDS

The specific role of Taxation Ombudsman is limited to handling complaints about the ATO. Under the Commonwealth Ombudsman's jurisdiction, we pick up complaints about tax agents' boards and recognise they play an important role in the framework of tax administration.

During the year, the Senior Assistant Ombudsman (Taxation) attended one of the regular meetings of the chairs of the various boards to talk through a range of issues, including:

- the scope and limits of the tax agents' boards role
- the scope and limits of our role with respect to tax agents' boards
- good practice issues around complaint handling.

The meeting also gave us an opportunity to talk about some processing improvements the boards might implement to reduce the likelihood of our office needing to investigate their actions, particularly around the provision of information to complainants and contact arrangements between this office and the boards.

We received a briefing from the Treasury about proposed reform of the administration of these boards, including the creation of a single Tax Agents' Board. We will continue to monitor these developments.

challenges in tax complaint handling

6

In an increasingly complex tax environment, there will always be a need for effective review and complaint-handling mechanisms to assist individuals who consider they have been wronged in some way by the ATO. In addition to statutory objection and appeal rights regarding assessment and related decisions, it is important to have an effective system for handling complaints about the ATO to provide assurance about the health of the tax system, and to indicate where possible problems may exist or arise.

Under current arrangements, tax complainants are encouraged in the first instance to pursue any concerns they might have with the ATO's internal complaint-handling unit, ATO Complaints, and then approach the Ombudsman if dissatisfied with the outcome. We have reported previously on our own motion investigation into ATO complaint handling, which led to various improvements and culminated in the introduction of a centralised ATO complaint-management system.

A key challenge for our office is to consider how we can continue to improve our own complaint-handling performance. We will continue to work with the ATO on improving complaint handling generally, to ensure that our respective complaint systems work effectively, and complement each other. This chapter is largely devoted to examining factors relevant to improving our own tax complaint handling.

One of the strengths of the Ombudsman's office is that we maintain a national presence by having offices located in each Australian capital city. This means that we are geographically accessible to a significant proportion of complainants in each state. Our national presence also brings with it some challenges, such as ensuring that our staff throughout the country are trained and able to provide a consistent and professional service in dealing with complaints about Australian departments and agencies, including the ATO.

These challenges and the ways we are addressing them are also covered in this chapter.

NEW WORK PRACTICES

In 2006, we introduced a range of measures aimed at improving complaint handling by our staff throughout Australia and across all aspects of the Ombudsman's jurisdiction. These included:

- issuing revised work practices, to provide staff with detailed guidance on our general approach, guiding principles and core work practices for dealing with approaches from the public
- introducing a new computerised complaint management system to record all complaints we receive and to assist staff to handle complaints in accordance with these work practices
- substantially updating our intranet site, providing our staff with guidance for handling complaints about specific agencies, such as the ATO
- creating the public contact team based in Canberra, responsible for dealing with all initial complaint contacts to the office, and giving appropriate advice on further action, including review options available
- quality assurance mechanisms to ensure that complaints are being appropriately handled by investigation staff in accordance with office work practices.

The above changes have had an impact on the way my office dealt with tax complaints. This year, in keeping with the confidence in which we hold the ATO Complaints process, most tax complaints have been handled by our Public Contact Team and referred back to the ATO. Those not finalised in this manner—generally more complex or intractable tax complaints—have been transferred to our State offices for further action. While our State

investigation officers have always handled tax complaints, the recent changes have meant that they are now handling less routine complaints and a higher volume of more complex cases.

To support this change, our specialist Tax Team has given greater emphasis to providing training, guidance and assistance to our state offices in the handling of tax complaints, including:

- providing guidance and advice in response to enquiries by investigation officers about specific complaints
- developing general advice on a range of tax matters (listed in Appendix A)
- posting regular updates and complaint alerts to our intranet
- regular national telephone hook-ups to discuss issues arising
- conducting tax training sessions for investigation officers
- undertaking quality assurance on tax complaints.

The Tax Team has also continued to be the specialist team on tax matters, focusing on strategic and systemic tax issues, outreach, and developing effective liaison with and feedback to the ATO.

INTERNAL PROJECTS

Internal projects look at ways in which the Ombudsman's office can improve its own policy, procedures and decision-making to more effectively manage tax complaints and to provide a more streamlined, efficient and effective complaint experience for complainants.

One of the internal projects initiated by the office during the year was construction of a revised list of 'issue strings'. These are an internal device for classifying the different issues and sub-issues that are identified in complaints. The issue strings support investigation officers in analysing and investigating issues in individual tax complaints, and provide for more effective statistical reporting and systemic trend analysis. Our revised issue strings better reflect the chronology of a taxpayer's involvement with the ATO, from registration into the system, through

the assessment process, onto potential disputes over audits, assessments and penalties, and finally through to debt collection.

Another internal project involved analysis of the way we have exercised the statutory powers in the *Ombudsman Act 1976* to decline to investigate tax complaints received by the office. The aim of this project was to ensure the appropriate exercise of those statutory discretions, by developing instructional material to assist investigation officers, particularly where taxation legislation provides for formal and informal review rights.

We also carried out further work on our 'referrals project', looking at the take-up rates for those complainants who are referred back to the ATO. In the face of relatively low take-up rates and to better streamline the complaint-referral process, we have designed a process by which we transfer relevant complaint details to ATO Complaints, which then follows up directly with the complainant. This process should cut out duplication and delay for the complainant, and ideally help bring about more effective and efficient resolution of complaints for both complainants and the ATO. The pilot for this new process will run for the first half of 2007 and we will report on its outcomes in next year's annual report and Taxation Ombudsman Activities report.

LIAISON WITH THE ATO

To ensure that our tax complaint handling and investigations work smoothly, we have regular liaison meetings with ATO Complaints to discuss issues such as work practice.

To ensure that our tax expertise is maintained, we also seek out briefings from the ATO on specific topics. During the year, we sought or were offered briefings from the ATO on various tax matters including:

- review of the Taxpayer's Charter
- ATO debt recovery strategies and planning
- Operation Wickenby
- administration of the Superannuation Guarantee
- superannuation simplification initiative.

We continue to be involved in more strategic roles within the ATO, with the Senior Assistant Ombudsman (Taxation) sitting on the ATO Integrity Advisory Committee and regularly contributing to the ATO Complaints SES sponsors forum.

TAX OUTREACH

We mentioned earlier that one of the advantages of our national presence is that we are reasonably accessible to complainants, particularly in the capital cities. An ongoing challenge for the office is to effectively communicate our message to taxpayers outside of capital city areas.

As part of our tax outreach program, we visit taxpayers in regional and rural Australia to raise awareness about our services and the assistance we can provide to taxpayers doing business with the ATO. Our tax outreach visits target organisations representing the interests of small business, such as Small Business Answers Offices and Chambers of Commerce and Industry. We are also available to talk to tax professional groups and organisations—such as Chartered Practising Accountants Australia, Taxpayers Australia and the Taxation Institute of Australia—about current tax issues and encourage those who are interested to contact us.

During 2006, our outreach visits included Albury, Mornington, Perth, Toowoomba and South East Queensland.

The aim of our outreach program is both to raise awareness and understanding of the role of Taxation Ombudsman, and also to obtain feedback from people in rural and regional Australia about our work and the tax issues of concern to them. These issues are then fed into our consideration of what tax projects we might pursue in future.

After our visits, we generally pass on feedback to the ATO. For example, following our visit to South East Queensland, we passed on positive feedback about the ATO's Tax Agent Portal, and some negative feedback about difficulties tax agents encounter when seeking technical advice via the ATO's call centres and the ATO's practice of holding credit balances in running balance accounts. In some cases, the feedback goes beyond tax matters—such as the effect of the drought on businesses and communities—but is a powerful reminder for both this office and the ATO of the context in which taxpayers are working and living.

In 2007, the Taxation Ombudsman looks forward to expanding and developing the future directions initiatives we implemented towards the end of 2005 and carried over through 2006. We have proposed a second forward work program of internal and external projects to improve our handling and understanding of tax complaints, and our knowledge of tax administration by the ATO.

INTERNAL PROJECTS

A key internal project milestone this year will be the completion of our ATO Referrals project. We look forward to completing our review of the utility and effectiveness of the Ombudsman's practice of referring some complainants to the agency about which they are complaining, using tax complaints as a pilot. Our aim is to develop a streamlined process to provide complainants with early access to ATO remedial processes, and ensure that the ATO has an early opportunity to resolve these complaints.

EXTERNAL PROJECTS

Key milestones in our external projects in 2007 will be the completion of our reviews of the ATO's administration of garnishee action and Superannuation Guarantee.

We intend publishing these reports on our website, with a view to increasing public understanding of the ATO's administration in these areas, as well as identifying possible areas for administrative improvement and enhancement.

We will also continue our Tax Agents' Issues project as an adjunct to the Tax Team's outreach activities. Our purpose is to facilitate and encourage tax agents to raise issues of concern with us. We look forward to our ongoing dialogue and discussions with tax professionals, and hope to rely on their knowledge and expertise to assist us in identifying areas of tax administration that might benefit from further examination or an external project focus.

CONSULTATION AND LIAISON

We will continue to liaise and consult with key stakeholders such as the Inspector-General of Taxation and the ANAO to ensure that our complaint handling and project efforts complement their work and focus. Our aim is to ensure that our respective offices work effectively and efficiently together to provide comprehensive accountability coverage of tax administration in Australia.

In pursuing these matters with fellow accountability 'watchdogs' and tax professionals, our priorities will continue to be the resolution of tax complaints from members of the Australian community, and the improvement of tax administration for the benefit of all Australians. We remain conscious of the unique perspective and focus that tax complaints to our office provide on the overall health of the tax system and the impact of government administrative action on individuals.

We are confident that we will continue to be able to maintain a constructive dialogue with the ATO to ensure that we can continue to improve our understanding of tax administration in Australia. In doing this, we can better provide useful observations and commentary on issues that affect taxpayers, and identify and suggest improvements to tax administration to benefit all taxpayers.

appendix a – general tax advices

The following are tax advices prepared by the Tax Team during 2006 to assist Ombudsman staff effectively handle a wide range of tax complaints.

SUPERANNUATION

Superannuation system

General overview of the superannuation system and the role of the ATO.

Super Co-contribution

Overview drawing on our 2006 project and report.

Superannuation Guarantee issues

Separate advices for staff were developed for specific superannuation guarantee issues, including

- dissatisfaction with the ATO regarding the recovery of unpaid employer contributions
- disclosure and privacy issues regarding third party enquiries about ATO actions to recover unpaid employer superannuation contributions
- double payment—complaints from employers asserting that they were required to pay the superannuation guarantee twice following late payment.

ASSESSMENT RELATED

Audits of individual taxpayers and businesses

Background on the ATO's conduct of audits of individual taxpayers and businesses.

Administrative penalties—shortfall penalties

Advice on ATO imposition of penalties for income shortfall amounts.

DEBT

ATO debt recovery process

Including categories of debt, debt recovery options (such as garnishee action, statutory demands, bankruptcy action), review and appeal rights, and the ATO's Compliance Model.

Release from debt due to serious hardship

An overview of the ATO administration of release due to serious hardship.

Arrangements to pay tax-related liabilities by instalments

Complaint issues regarding payment of tax-related liabilities by instalments.

OTHER

ATO Compliance Program 2006–07

Briefing on the ATO Compliance Program 2006–07, which details the ATO's approach to addressing risks to revenue collection. It also refers to how the compliance program impacts on individuals and micro-business.

Employee benefit arrangements—outcome of remission applications

Background to complaints about the outcome of remission applications to the ATO in connection with employment benefit arrangements.

Fraud or serious misconduct

Guidance to investigation officers for handling complaints about ATO fraud or serious misconduct.

Refunds of overcharged interest

Guidance to investigation officers for handling complaints about the ATO, the imposition of overcharged interest in error, and the ATO's actions to refund the overcharged interest.

Tax agents

Approaches from taxpayers about the conduct of tax agents, which may raise issues of professional negligence or misconduct by the agent.

Tax agents' boards

Examines complaints about the conduct of tax agents that may relate to the actions of a tax agents' board in its capacity as professional regulator.

Tax file numbers—storage, security and disposal issues (under review)

Briefing on the provision, use and purpose of tax file numbers (TFNs) and concerns relating to TFNs including privacy and identity theft.

FUTURE ADVICES

The Tax team will be providing tax advices to staff on the following areas in 2007:

- Garnishee action
- Part IVA anti-avoidance provisions
- ATO entry and search powers
- ATO objection and appeal processes
- Pay as you go instalments
- Compromise of taxation debt
- ATO mass communication strategy—child care rebate
- Review of ATO correspondence
- Tax issues for indigenous communities.

glossary

ADR	Alternative Dispute Resolution
ANAO	Australian National Audit Office
ATO	Australian Taxation Office
DoFA	Department of Finance and Administration
GIC	General Interest Charge
GST	Goods and Services Tax
HECS	Higher Education Contribution Scheme
IGT	Inspector-General of Taxation
ITR	Income Tax Returns
JCPAA	Joint Committee of Public Accounts and Audit
MP	Member of Parliament
Super Co-contribution	Superannuation Co-contribution Scheme
SG	Superannuation Guarantee