

taxation
ombudsman



activities 2005

© Commonwealth of Australia 2006

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 inquiries 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>.

Inquiries about this report, or any other information contained within, should be directed to:

Director, Public Affairs
Commonwealth Ombudsman

Phone: 1300 362 072
Fax: 02 6249 7829
Email: ombudsman@ombudsman.gov.au

CONTACTING THE COMMONWEALTH AND TAXATION OMBUDSMAN

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

Ground Floor, 1 Farrell Place
Canberra ACT 2600
(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

TABLE OF CONTENTS

Introduction	1
Chapter 1—Overview	3
Chapter 2—How the Taxation Ombudsman helped people	5
Added value through complaint referral and advice	5
Working around a problem	6
Assurance	8
Working with members of parliament	9
Conciliating and mediating complaints	9
Settlement and dispute resolution	10
Chapter 3—Promoting good tax administration	11
Consistency of decision making	11
Automated processes	12
Unanticipated consequences of complex legislative schemes	13
Falling through the cracks of government programs	14
Poor record keeping	14
Limits of government responsibility	15
Chapter 4—Challenges in tax complaint handling	17
Chapter 5—The Tax Ombudsman in the framework of tax administration	19
Review of CDDA Scheme	19
Liaison with ANAO	19
Submissions to the IGT	20
Contributions to the ATO	20
Chapter 6—Future directions	21
Internal projects	21
External projects	21
Glossary of acronyms	23



introduction



Damien Browne, Special Tax Adviser, and Prof. John McMillan, Commonwealth Ombudsman.

The Commonwealth Ombudsman has always dealt with complaints about the Australian Taxation Office (ATO). In 1995 the Ombudsman was given the title of Taxation Ombudsman to give a special focus to the office's handling of tax complaints in recognition of the fundamental imbalance that exists between the powers of the ATO and the rights of taxpayers. In fulfilling this function, the Taxation Ombudsman is supported by the Special Tax Adviser and a small team dedicated to dealing with tax matters, as well as generalist complaint investigation teams located in the Ombudsman's offices in each State capital city.

The Taxation Ombudsman is the only external complaint-handling agency for taxpayers with

complaints about the ATO. The Taxation Ombudsman also continues to identify systemic issues and remedies arising from individual complaints and works together with other external oversight bodies such as the Inspector-General of Taxation and the Australian National Audit Office to improve aspects of tax administration.

A key role for the Taxation Ombudsman is to ensure that the ATO provides a fair and effective internal complaints service for taxpayers. In 2003, we finalised an own motion investigation into ATO complaint handling, making a number of recommendations and suggestions for improvement. This year, we have seen all of those recommendations come to fruition, most notably

the roll-out of a single electronic complaint management system for the whole ATO and the finalisation of two ATO Practice Statements on complaint handling and dealing with our office. We continue to encourage improvements in ATO complaint handling, and to further streamline the investigation and referral processes between our two offices.

The greatest challenge for all of those working in the tax field is the complexity of tax law and the tax system. The Taxation Ombudsman plays an important role in assisting taxpayers to find their way through this complexity, as well as pointing out to the ATO ways in which processes and information might be usefully simplified. We are also looking to better engage with the tax professional community, to tap into their expertise, pick up on some of their concerns and provide another avenue for their feedback about the health and integrity of the tax system. In the light of this,

and in combination with our office's focus on rural and regional outreach, we have developed a tax-specific outreach package focusing on the needs of small businesses and tax practitioners operating in rural and regional Australia.

This year's Taxation Ombudsman Activities Report is somewhat different than previous reports, which have tended to mirror the Commonwealth Ombudsman's annual report in both themes and reporting periods. This Activities Report continues to pick up on the themes of the Ombudsman's last annual report, but covers the 2005 calendar year rather than the 2004–05 financial year. We have introduced this change to ensure greater currency in our reporting, and to provide a more balanced reporting and publication schedule across the year.

Prof. John McMillan

Commonwealth and Taxation Ombudsman

In 2005, the Ombudsman received 1,548 complaints about the ATO, compared with 1,586 the previous year. This suggests a return to greater stability in ATO complaint numbers comparable with the period prior to the introduction of the new tax system and the difficulties over the tax treatment of mass-marketed investment schemes. The office finalised 1,579 complaints, of which 370 (23%) were investigated, a slight drop (2%) on the previous year. Figure 1 provides a ten-year overview of ATO complaint trends from 1995–96 to 2004–05. Complaints can contain a number of issues, each requiring separate investigation and possibly resulting in different outcomes.

We received complaints across the full range of ATO activities and products, including excise, superannuation, debt recovery, the Goods and Services Tax (GST) and aggressive tax planning. Complaints about ATO debt recovery action and the

accuracy, clarity and timeliness of ATO advice continue to dominate.

Our specialist Tax Team continues to monitor complaints to identify emerging complaint trends that may warrant more active intervention by the Special Tax Adviser or Taxation Ombudsman.

Towards the end of 2005, changes within the Ombudsman's office enabled the Tax Team to focus its attention increasingly on providing tax technical and contextual advice to our generalist investigation officers, and to commence project work on areas of interest in tax administration. For example, during 2005 we identified an increase in complaints about superannuation co-contributions, and initiated a project to analyse such complaints with the aim of reporting in 2006. Further information on our program of tax projects is provided on pages 21 and 22 of this report.

FIGURE 1 AUSTRALIAN TAXATION OFFICE COMPLAINT TRENDS, 1995–96 TO 2004–05





how the taxation ombudsman helped people

The main objective of the Ombudsman's office is to provide a response and some kind of resolution to the thousands of complaints and other approaches that come into the office each year. In 2003–04, we introduced a new chapter into our annual report, drawing together examples of how the Ombudsman's office helped people resolve their complaints without the need for investigation or an adverse finding against an Australian Government agency. As this facilitation of effective complaint resolution accounts for the great bulk of our work each year, we will continue to emphasise the range of our complaint-handling methods and techniques and the varied ways in which we provide assistance to the public.

One of the most common complaints about government and other large organisations is that individuals receive an impersonal service. In an age of automated decision-making and bulk processing, there is an added danger that Australian Government agencies will not remember that at the end of every decision or process is a person. We aim to tailor our responses to the individual case as best we can, but see broad themes and common approaches in the work we handle.

Some of the themes discussed in this chapter, such as our complaint referral work and our work with members of parliament, continue on from similar

themes identified in earlier years. Others, such as our ability to work around a problem and the use of mediation and conciliation in complaint resolution, are new to this year's report, but have long been among the many ways in which the Taxation Ombudsman helps people find practical solutions to tax problems.

ADDED VALUE THROUGH COMPLAINT REFERRAL AND ADVICE

We will usually suggest to complainants that they first try and resolve their concerns directly with the ATO, as generally we consider the agency should first have the opportunity to correct any perceived problems. In most cases, we suggest that the complainant contact the ATO directly and provide advice about making a complaint and information on specific issues such as remission of interest guidelines. We will sometimes offer to transfer the complaint directly to the ATO, with the understanding that the complainant can contact us if dissatisfied with the outcome.

In mid-2005, we commenced a pilot project to test the effectiveness of our complaint referral process. We surveyed a small sample of tax complainants, who we referred back through the ATO Complaints system, to obtain feedback on whether the advice we provided was useful in progressing their

CASE STUDY **obtaining certainty through a ruling**

A retailer was concerned that her supplier, who was also her competitor, sold to both herself and the public without the addition of GST. Ms A was unsure if this action was within the law and wondered if the same situation could apply to her own business. The situation also impacted on Ms A's own GST obligations.

We suggested that the best way for Ms A to obtain certainty about the proper application of GST in her case was to approach the ATO for a private ruling on GST. This would give Ms A guidance about her business affairs and the applicability of GST in her industry. To assist Ms A, we forwarded an application form for her convenience. We also suggested that if she was concerned about her competitor's actions, she could report the matter to the ATO as a possible case of tax evasion.

complaints. Generally, the survey produced a positive result about the service provided by the Ombudsman's office. The results indicated a moderate level of complainant confusion about the advice provided to them and highlighted the need for more work in skilling our people to provide appropriate advice. The survey also indicated that there was a high percentage of complainant satisfaction with the complaint transfer service provided for written complaints.

The area of greatest concern was the low rate of take-up when we advised complainants to contact ATO Complaints directly. We have raised this issue with the ATO, and understand that ATO Complaints is exploring what steps it might take to better encourage complainants to make contact if they have any problems or concerns. We are also considering how to better communicate this message.

We also provided advice and information about the availability of other avenues of action within the ATO that might best address a complainant's concerns, as with the 'Obtaining certainty through a ruling' case study.

This referral and advice process adds value in two ways. Where we transfer the case to the ATO, we are able to clarify the issues that need to be addressed, and can make suggestions about how the ATO might go about this. Similarly, where we advise the complainant to pursue the matter directly, we can make suggestions about how to present their case in a manner and form that will assist the ATO in best resolving the issues. Tax complainants should be especially encouraged to know that between 50 and 66 per cent of all

complaints handled by ATO Complaints are either fully or partially upheld in a complainant's favour.

In other cases, it is clear that there is little the ATO can do to help resolve a complainant's problem. In such cases, we are sometimes able to provide suggestions as to where the complainant might pursue their case outside the ATO, as the 'Advice about other options' case study illustrates.

WORKING AROUND A PROBLEM

The focus of much of the Taxation Ombudsman's work is helping taxpayers and the ATO find practical solutions to tax problems. Many of the people who approach the Ombudsman's office are frustrated that the system is seemingly unable to provide them with the resolution and remedies that they are seeking. This does not necessarily mean that ATO administration is flawed or at fault, or that a solution to the perceived problems cannot be found without needing to attribute blame.

Many complainants struggle with the complexity of the tax system. Some taxpayers are unaware of their tax obligations and the prescriptive nature of some tax law. Others may have unrealistic expectations of what government and the ATO can do, or do not know how best to put their case or to where. On the other hand, there are times when the ATO is not aware of all relevant information about a particular taxpayer's case that might lead them to vary or rescind a decision. This latter problem can be particularly difficult when the taxpayer is facing considerable personal difficulties and pressures, as the 'Compelling personal circumstances' case study on page 7 illustrates.

CASE STUDY **advice about other options**

Mr B was a member of a musical group that had not received payments from its musical agent because the agent's accounts had been frozen by the ATO.

Our investigation indicated that the ATO's actions in freezing the agent's accounts were in keeping with the ATO's obligations to protect the revenue. Although the flow-on effect to the group members was unfortunate, there was no basis on which we could criticise the ATO's action. In essence, the complaint concerned a private dispute between the band and its agent.

We were able to provide information to Mr B about other avenues the band members might pursue to recover money from their agent, including using the mediation services of the New South Wales Community Justice Centre.


In the course of many of our investigations, we are able to identify a way of working around the problem a person may be experiencing, without the need to determine if anybody may have been at fault. In many cases, the most valuable contribution we make is to help identify and clarify precisely what the problem is and what remedy is being sought.

The 'fresh set of eyes' that this office provides through complaint investigation can often enable us to make suggestions to the ATO about alternative ways of dealing with a problem. This can involve escalating a matter within the ATO or encouraging a change of case officer where a

relationship might otherwise have broken down. Another useful suggestion can be the appointment of a case manager where a complaint involves multiple contact points within the ATO. The 'Case managing a resolution' and 'Point of contact' (on page 8) case studies demonstrate how the appointment of a case manager can be beneficial for both the ATO and the complainant.

The usefulness of case managers in complaints work is reflected in the structure of ATO Complaints and is a further reason why we encourage complainants to use the internal ATO Complaints service before coming to this office. The ATO's case management capacity should be further enhanced as it implements

CASE STUDY compelling personal circumstances




Mr C, a sub-contractor carpenter, complained about threatened debt recovery action by the ATO. He advised us that his wife, who kept the books and paid the bills, had been diagnosed with dementia and her memory was impaired. When Mr C checked their records, he found his wife had not paid bills or taxes for some time and they had a significant tax debt, some of which he was able to pay by selling assets. Mr C stated that he was unable to meet his remaining debt.

We wrote to the ATO asking for information about the debt. We also drew the ATO's attention to a similar case we reported on in last year's annual report, where the ATO had taken a more flexible approach to debt recovery. We asked for advice on the options the complainant had for meeting the debt, including seeking interest/penalty remission if appropriate or entering into payment arrangements.

The ATO advised us that it had decided to remit interest based on the information contained in the complainant's letter to our office. Further, a suitable payment arrangement was made with the complainant, taking into account his circumstances and capacity to repay the debt. We considered this to be a satisfactory outcome.

CASE STUDY case managing a resolution



Mr D, a solicitor, complained to the Ombudsman on behalf of a family property business with a range of tax problems. Some tragic personal circumstances had combined with a decade of inattention to their tax affairs and meant the taxpayers were facing prosecutions for non-lodgment, recovery action on outstanding tax debts, ongoing audits, and a series of related objections and appeals. Mr D was struggling to manage the growing tax problems and dealing with multiple contact points within the ATO.

We approached the ATO and suggested that there may be benefits for both the ATO and the taxpayers in taking a more co-ordinated approach to this matter.

The ATO agreed, and appointed a central contact person independent of the existing case officers to manage the various issues. The ATO case manager was able to meet with the taxpayers to get a better understanding of their circumstances, as well as getting a clearer overview of their situation. From this perspective, the central case manager was able to work with the taxpayers and their representatives to move them back towards compliance with their tax obligations.

its Change Program. A central feature of this program is the use of Client Relationship Management systems, which will allow the ATO to access records of a taxpayer's affairs and interactions with the ATO in a more comprehensive and coordinated way than is currently possible. Ready access to such records will effectively mean any tax officer can act as a case manager.

ASSURANCE

An essential component of the Ombudsman's commitment to the values of independence, impartiality and professionalism is the need to listen to both sides of a complaint or disagreement. The first step generally taken after deciding to investigate is to elicit an agency's response to what a complainant has said and then give the complainant a further opportunity to comment. The Ombudsman's office is sometimes the only body that has been independent of the dispute and has heard both sides. The office is not an advocate for either party.

In many cases, a complainant believes the ATO has made a mistake about their tax affairs, and does not accept the ATO's explanation. In providing an independent assessment of the situation, we can reassure the complainant that no mistake has been made and that the explanation the ATO has provided

is correct. The 'Independent reassurance' case study on page 9 provides an example of this kind of reassurance.

In several areas of our tax jurisdiction, we perform a role of providing an independent assessment and assurance where secrecy and privacy considerations preclude disclosure by the ATO about the tax affairs of third parties. We can provide that independent assessment even though we are similarly unable to pass on information to the complainant.

One such area relates to the ATO's actions concerning investigation and recovery activity connected with unpaid superannuation guarantee payments. The relevant legislation prevents the ATO from disclosing to an employee the particulars of any action the ATO has taken with respect to an employer, although the ATO is able to provide information to the Ombudsman. It is inappropriate for us to pass on information that is otherwise protected; however we do seek to satisfy ourselves that action by the ATO is consistent with its guidelines and processes, and to notify the complainant accordingly. This does not satisfy all complainants, and we understand their frustrations. We also understand the importance of maintaining integrity of taxpayer records and the need to comply with the strict secrecy provisions that Parliament has enacted in tax law.

CASE STUDY **point of contact**

Mr E complained about the burden of an ATO debt of \$32,000 relating to self-assessed tax liabilities, GST and General Interest Charge (GIC) while employed as a builder. Mr E had unnecessarily registered for GST in 2000, and had fallen behind with lodgment of activity statements and GST payments. Mr E had been relying on income from limited casual work and welfare payments for some time.

Following our inquiries of the ATO, we advised Mr E to lodge all outstanding tax returns and activity statements and to contact the ATO to cancel his registration for GST and seek release from his debts. At our request, ATO Complaints appointed a case officer to monitor progress in this matter, particularly in regard to Mr E seeking cancellation of his GST registration and his application for release on hardship grounds.

Mr E followed our advice and on receipt of his application for release, the ATO agreed that Mr E's debt amount would be frozen and no GIC would be added while the application was being considered.

If Mr E could prove hardship he would be released from his income tax debt. In the event that Mr E could not prove hardship, the ATO indicated it would consider marking his case as not to be actively pursued, but to use any future credits or refunds against any remaining debt.

The ATO subsequently granted Mr E full release from his original eligible debt of \$32,000 and was negotiating a payment arrangement with Mr E for the remaining balance of \$12,000.

Another area relates to reports of tax evasion, where a complainant is concerned that the ATO has failed to take action in response to a report made by the complainant. In such cases, we make inquiries to check that the matter has been properly logged, prioritised and investigated where appropriate. While we are unable to advise the complainant what, if any, action is being taken, we do seek to satisfy ourselves that the matter has been or is being appropriately handled by the ATO. This independent assurance can be important to complainants.

WORKING WITH MEMBERS OF PARLIAMENT

The representations made by members of parliament (MPs) on behalf of constituents who are struggling with government administration are an important part of our democratic system. We also acknowledge that, like this office, MPs are keen to improve the quality of public administration. Accordingly, over the course of the year, the Ombudsman continued his commitment to giving personal and priority attention to complaints from MPs and their staff.


This more focused approach allows us to quickly and effectively deal with MP's complaints, particularly when they raise an issue of some urgency, as the 'Factors taken into account' case study shows.

We also try to keep MPs informed about the work of the Taxation Ombudsman. Each year, we provide MPs with a copy of this activities report, and we are also engaging with MPs' electorate staff during outreach visits.

CONCILIATING AND MEDIATING COMPLAINTS

It is now well accepted that good complaint handling is one of the most effective alternative dispute resolution (ADR) mechanisms. In turn, ADR processes, especially conciliation and mediation, can usefully be employed in effective complaint handling. Ombudsman staff employ these techniques on a daily basis in their dealings with agencies and complainants. We can also encourage both agencies and complainants to consider more formal uses of ADR as an efficient and often satisfactory means of resolving a dispute, particularly when the only alternative is litigation.


CASE STUDY independent reassurance



Mr and Mrs F complained on behalf of two German backpackers, who had recently returned to Germany following a working holiday in Australia. They were concerned that the backpackers were required to lodge tax returns but were denied access to a tax-free threshold for the wages they received.

We were able to reassure Mr and Mrs F and confirm the ATO's advice that all holders of working holiday visas are required to lodge a tax return declaring their income, and that as non-residents they were excluded from access to the tax-free threshold.

CASE STUDY factors taken into account



A member of parliament came to us with a complaint from one of their constituents facing action to wind-up the constituent's company. The MP was concerned that the decision to take wind-up action may have been made prematurely and on incomplete or incorrect evidence.

Following our inquiries of the ATO, we were able to reassure the MP that the ATO had taken account of all the key relevant factors when deciding to pursue the wind-up action.

Our inquiries did disclose an issue around the ATO sending inconsistent advice to a taxpayer in response to the Ministerial. The ATO agreed to review its processes to ensure that Ministerial correspondence is updated to reflect current case information before being sent to a taxpayer.

Mediation can often provide a mutually acceptable solution to an unresolved dispute. Recent changes to the ATO's policy on compensation include the ATO encouraging its officers to take a pragmatic approach on smaller claims. In some cases, the ATO has chosen to use a mediator to work through compensation claims, and through this process has been able to resolve some long-standing and seemingly intractable disputes. The 'Independent review' case study is one example.

SETTLEMENT AND DISPUTE RESOLUTION

The settlement of disputes between taxpayers and the ATO about taxation liabilities is one area where difficulties arise from time to time. In some cases we have been able to help simply by encouraging discussions between the parties, or suggesting a different perspective for consideration. Other problems have been more complex and have taken considerably longer for the parties to reach settlement, as the 'Way forward' case study shows.

Drawing on our experience of dealing with a wide range of complaints about tax disputes, we discussed a range of settlement issues with the ATO during the year. These included the need for senior level involvement in settlement decisions, the nature and extent of the Commissioner's power to settle disputes, and perceived technical difficulties with specific settlements.

In November 2004, the Commissioner announced the establishment of a panel of senior officers to consider proposed settlement of widely based disputes and to provide guidance to ATO staff. During 2005, the ATO consulted the Ombudsman's office as part of its development of guidelines for the panel. We continue to be available as an independent point of review for complainants concerned about the settlement process.

It is also important to keep in mind that provided the settlement process is reasonably fair, open and equitable, settlement matters involving negotiation are often best left to the parties in dispute.

CASE STUDY **independent review**

Mr G complained about the conduct of an audit and the resulting disallowance of a tax offset claim. As both the original assessment and resulting amendments left Mr G with a nil assessment, he had no right of objection. Mr G had also lodged a compensation claim against the ATO in relation to the same matter.

Following our inquiries, the ATO indicated that as part of its consideration of Mr G's compensation claim it was prepared to have an expert, who was independent of both Mr G and the ATO, review the tax treatment of the offset claim. In our view, this was a reasonable and appropriate way to resolve the issue.

CASE STUDY **way forward**

The Commissioner was in dispute with many taxpayers, who had small jewellery businesses, about sales tax and the valuation of stock that had not sold within a reasonable time ('aged stock'). The Commissioner took the view that the stock had been undervalued, resulting in avoidance of tax, and that heavy tax shortfall penalties were appropriate.

The dispute had been in progress since before the introduction of the GST. The Ombudsman worked with both the taxpayers and the ATO, focusing on a broader perspective than otherwise had been canvassed in the dispute. We suggested the outcome of a recent court case on a similar issue had provided a view on the law that might provide the most effective way forward for both the ATO and the taxpayers.

Following consideration of our submissions on the matter, the ATO was able to work with the taxpayers to achieve a fair settlement of the dispute.

promoting good tax administration

A key objective of the Ombudsman's office is to foster good tax administration that is accountable, lawful, fair, transparent and responsive. We pursue this objective in different ways by:

- looking in depth at an issue arising in a particular agency
- drawing attention to problem areas across government administration
- conducting own motion investigations
- working jointly with agencies to devise solutions to the administrative problems that arise within government
- making submissions to external reviews and inquiries that are examining issues in tax administration.

The problems that people encounter in dealing with government are sometimes unique, but at other times there are common themes. This chapter looks at a few problem areas that were identified in the course of complaint handling and investigation in 2005.

CONSISTENCY OF DECISION MAKING

As a general principle of administrative law, each case should be considered on its own merits. Nevertheless, anyone faced with a handful of similar decisions that must be explained and justified knows how important consistency can be to fairness and public acceptability of decision making.

Where we receive complaints about issues that we have handled previously and we have been satisfied with the ATO's general approach, we are often able to reach a view on the individual complaint without necessarily needing to go back to the ATO. This applies where a complainant's circumstances are sufficiently similar to those we have already investigated.

On the other hand, in the course of handling a significant volume of tax complaints we are well placed to recognise possible inconsistencies in ATO decision making. Where we identify a possible inconsistency, we will examine past cases to test our initial assessment and raise the apparent inconsistency with the ATO, and suggest the case be reconsidered in the light of the ATO's earlier decision. In this way, we can often obtain useful individual remedies for complainants as well as ensuring fairness across the tax system, as the 'Helping to achieve consistency' case study illustrates.

CASE STUDY helping to achieve consistency

Mr H, an accountant, complained the ATO had wrongly reversed a substantial tax credit that had been previously paid by the ATO into a client's account. The problem stemmed from actions of a fraudulent tax agent who had misdirected funds. Mr H's client was an innocent party to the transactions, but the ATO did not accept that it should not have allowed redirection of the client's cheque into another account (being a redirection requested by the fraudulent agent).

We had previously dealt with a similar case, where the ATO had altered its initial position and settled with the taxpayer after our intervention. We put the facts of the case to the ATO and suggested that it reconsider its decision on Mr H's client in light of the earlier case. The ATO conducted a high level review of the matter and agreed to pay the credit into the client's account.

AUTOMATED PROCESSES


Increasingly, the ATO is looking to automate many of its operations to achieve greater efficiency and speed, and in many cases to lower the compliance costs for both the ATO and taxpayers. Nevertheless, automation of processes can lead to a seemingly more impersonal approach, where individual circumstances cannot be addressed as prominently as taxpayers might like.

The Ombudsman's office recognises the benefits of automation, and also acknowledges the problems that can result from automated processes. Our aim is to help agencies like the ATO strike the right balance between the need for organisational efficiency and the interests of individual taxpayers. Often this involves simply encouraging the ATO to be responsive when problems of automation arise, as illustrated in the 'Pro-active response',

'Incomplete processing' and 'Multiple notices' case studies.

In other cases, we encouraged the ATO to explore a more sophisticated approach to its automated processes. For example, we received one complaint about the ATO sending out a standard notice that included wording to cover the circumstance where a refund is applied against another debt. In this case, there had been no offset of the refund, but the complainant believed this had occurred as a result of the wording of the notice. We raised the matter with the ATO, which agreed that the wording might have been confusing. The ATO is addressing this and other issues around the wording of standard notices as part of its Change Program. We will continue to monitor this and other changes as the program is implemented over the next few years.

CASE STUDY pro-active response




Ms J received a letter from the ATO that was for another taxpayer but had been mistakenly addressed to her. She was concerned that her privacy might have similarly been breached and was seeking assurance that this was not the case.

Our inquiries disclosed that the ATO was already aware of the issue—some 4,000 taxpayers were affected by a faulty mail-out. The ATO had already made contact with all of the taxpayers involved and had also alerted the Federal Privacy Commissioner about the problem.

In the circumstances, we were satisfied the ATO's response was appropriate and were able to assure Ms J that her privacy had not been breached.

CASE STUDY incomplete processing



Mr K claimed the ATO had failed to check his client's hard copy income tax return, which contained supporting documentation. As a result, his client was later issued with an amended assessment. This would have been avoided if the original return had been processed correctly.

Our investigation revealed that the correct procedure for processing Income Tax Returns (ITR) with attached documents is to flag the ITR as an 'edit error'. This flag alerts processing staff that the return has attachments that need checking as they may affect the outcome of the assessment.

The ATO accepted that the edit error was overlooked and no action was taken on the attachments. Mr K was invited to lodge an objection against the amended assessment. The ATO undertook to remind all processing staff to take care to action all returns flagged 'edit error', as failure to do so may affect the outcome of the assessment, result in amended assessments being issued or subsequent audit action being initiated.

We also encountered problems arising from the ATO's accounting systems. The move from annual to quarterly superannuation guarantee (SG) reporting created problems for the ATO in aligning aspects of its SG accounting system, which in turn caused delays in processing assessments and making payments to superannuation funds. The steady stream of complaints was a clear indicator of the problem, and would seem to account for the significant increase in superannuation complaints received this year. The ATO provided us with a briefing about the issue and the action it was taking to address the problem. Once the system problem was resolved, the ATO began processing the backlog of cases. The Commissioner also put in place a compensation scheme to ensure that employers and employees affected by the processing delays will not be out of pocket.

UNANTICIPATED CONSEQUENCES OF COMPLEX LEGISLATIVE SCHEMES

We continued to receive a small number of complaints from employers caught by what the ATO has called the 'double jeopardy' effect of the superannuation guarantee legislation. The original legislative scheme did not allow any discretion when an employer made a late payment to an employee's superannuation fund or mistakenly paid the contribution directly to the employee. Such

employers were liable to pay a superannuation guarantee charge (SGC) to the ATO on top of the amounts already outlaid.

Recognising the burden this created for those employers who had genuinely attempted to meet their obligations, the 2005 Budget included an initiative aimed at reducing the incidence of double payment. Contributions made to a superannuation fund within 30 days of the due date for the payment of the quarterly contribution may be used to offset any part of the SGC relating to that quarter. The budget initiative will not assist all complainants, but will go some way to ameliorating the potential for, and impact of, employer double payments. It is expected that this will lead to a reduction in the number of complaints about this issue.

There was also an increase in the number of complaints relating to the superannuation surcharge. In nearly all cases, the complainant's concerns and confusion were exacerbated by the complexity of the surcharge system. This was particularly true for those complainants facing a one-off surcharge liability, generally following their retirement. For this reason, we welcomed the Government's abolition of the surcharge in the 2005 Budget. We anticipate that complaints about the administration of the superannuation surcharge will gradually decrease.

CASE STUDY **multiple notices**

Ms L complained about the ATO's decision to impose interest following late payment of a superannuation surcharge liability. Ms L claimed she had received three notices on the same day relating to her superannuation surcharge: one notice was her account balance statement; the second notice was an account indicating an amount payable in one month; and the final notice titled 'Advice About Cancelled Surcharge Assessment' indicated that no payment was required and the ATO would issue a new assessment. Ms L did nothing in anticipation of a new assessment being issued. The initial ATO response to Ms L's complaint indicated that the paperwork she received was in order and is the normal method in dealing with these matters.

In the course of our inquiries, the ATO advised that it is normal practice for multiple letters to be issued at the same time. We questioned the ATO whether it was good practice to issue multiple letters to taxpayers containing contradictory information, and whether it might be fair and reasonable to remit the interest in view of Ms L's apparent confusion.

The ATO accepted our reasoning and agreed to remit Ms L's interest. The ATO also agreed to review its procedures and systems to ensure that, where possible, notices are issued in a logical sequence to avoid confusing taxpayers.

From early 2005, we received complaints about the Superannuation Co-contribution Scheme. The scheme operates to provide eligible taxpayers with a matching superannuation contribution made by the Australian Government up to a maximum of \$1,500 per annum. The complaints received related to eligibility, retrospective legislative amendments and the quality of ATO advice and publications. We will continue to monitor these complaints and provide feedback about the administration of the scheme to the ATO in 2006.

FALLING THROUGH THE CRACKS OF GOVERNMENT PROGRAMS

In some cases, people find themselves caught between different government programs or areas of responsibility, or between different agencies administering different parts of a program. In such cases, the Ombudsman can assist in identifying where the responsibility for resolving a problem may lie, and how the person could most effectively resolve the matter.


An example is when a government cheque is intercepted and fraudulently cashed by a person other than the intended recipient of the payment. The 'Victims of fraud' case study illustrates how we are sometimes able to assist people who find themselves the victims of such fraud.

In some cases, people can fall through cracks that can exist between state and national government services. An example of this arising is in the administration of the Higher Education Contribution Scheme (HECS), as the 'Cross-jurisdiction issues' case study shows.

POOR RECORD KEEPING

The quality of government record keeping is an ongoing issue for the Ombudsman's office. Lost or inadequate government records can have a detrimental impact on individuals, as well as hindering efficient public administration. Poor record keeping also impacts upon effective complaint handling, often exacerbating any existing problem and reducing our ability to fairly assess the matter.

CASE STUDY victims of fraud




Mr M complained the ATO had unreasonably rejected his claim for compensation following the illegal interception and cashing of a tax refund cheque. When Mr M came to us, he had already dealt with the ATO and the Banking Ombudsman to no avail.

Our investigation established that the ATO was not responsible for the cheque being intercepted and confirmed there was no basis for the ATO to compensate Mr M.

However, we were able to suggest that Mr M contact the Reserve Bank as well as discussing the matter directly with his own bank. Mr M did this and advised us that arrangements had been made to reimburse him.

CASE STUDY cross-jurisdiction issues



Ms N complained about a HECS liability she had incurred for two university courses she did not complete due to emotional difficulties, and the ATO's refusal to waive the resulting debt.

Our investigation confirmed that there was no basis for the ATO to waive the debt.

We did identify that there may have been issues about how Ms N's university had reported her enrolment in the courses, a matter she would need to pursue directly with the university or with the relevant State Ombudsman.

Our experience across Australian Government departments suggests the ATO is no better or worse than many agencies when it comes to record keeping. However, the volume of ATO transactions—internal and external—only adds to the difficulties that poor record keeping otherwise creates. This is particularly evident when a complaint concerns a disputed Income Tax return, as in the ‘Further checking’ case study.

Poor record keeping can also often be linked to delays in responding to correspondence and other approaches from taxpayers, as in the ‘False assumptions’ case study.


LIMITS OF GOVERNMENT RESPONSIBILITY

In many cases we investigate, it becomes clear that the problem facing the complainant goes beyond the

limits of the Australian Government’s responsibility. The tax system imposes some obligations on taxpayers—particularly employers—that are owed not just to the state, but also to other individuals or entities. Similarly, a taxpayer’s interaction with other non-governmental entities can give rise to taxing issues. Even when a dispute may be entirely private, people often feel that government should in some way become involved in resolving the dispute. Similarly, their frustration at not being able to resolve the dispute and their feeling that government has let them down can cause them to seek the intervention and assistance of the Ombudsman.

In most such cases our primary role is to explain to the complainants the limits of government responsibility and to outline their options as we see them, including taking private legal action. This may involve referral to other bodies (such as State-based employee and/or consumer protection agencies) or

CASE STUDY further checking




Mr O, an accountant, complained about recovery action taken against one of his clients. In part, the dispute concerned the accuracy of the client’s tax return from many years before. When Mr O sought to obtain a copy of the return from the ATO, he was advised that it had been destroyed.

On investigating, we urged the ATO to look further into its records to test whether or not the return had in fact been destroyed. As a result of further searches, the ATO was able to uncover a copy of the original return and other key documentation, which confirmed the ATO’s position on the debt.

Although discovery of the records did not assist the taxpayer’s case, the ATO acknowledged that its initial response had been based on an incorrect assumption about the normal treatment of income tax returns, and that better record keeping could have prevented the complaint arising in the first instance.

CASE STUDY false assumptions



Ms P complained on behalf of a client who was concerned the ATO was pursuing an old tax debt that related to a business of the client’s former husband. Several years before, the client had contacted the ATO on numerous occasions to seek clarification of the debt. When she had heard nothing, she assumed the issues had been resolved.

On investigating, we discovered that some of the correspondence had been lost and no responses had ever been prepared by the ATO. We suggested that the ATO consider remission of General Interest Charge for the period since the taxpayer had originally contacted the ATO.

On reviewing the matter further, the ATO indicated that the particular circumstances of the case warranted remission of all penalties and interest and the writing-off of the debt as irrecoverable.

to other sources of advice (such as community legal centres). Where the complaint raises a policy/legislative question about government's powers over third parties, we generally suggest the matter be raised with the relevant Minister or the complainant's local member of parliament, in keeping with our general approach to policy complaints.

In some cases, there is scope for an agency to accommodate a complainant's concerns, as the 'Employer record keeping' case study illustrates.

In other cases, we can help clarify the issues needing to be addressed by the ATO and the issues more usefully pursued privately between the parties, as illustrated in the 'Seeking recovery' and 'Unpaid contributions' case studies.

CASE STUDY employer record keeping

Mr Q was employed by a labour hire firm and missed out on the Superannuation Co-contribution as a result of an error in his employer-prepared payment summary.

In the course of our investigation, we were able to satisfy the ATO that an error had been made by the employer.

In the circumstances, the ATO was able to process Mr Q's Superannuation Co-contribution.

CASE STUDY seeking recovery

Ms R was concerned about the tax and superannuation treatment of lump sum payments made to her by a former employer following a disputed redundancy and an out-of-court settlement. Ms R was concerned that her employer had withheld more tax than was necessary, which would have an impact on her superannuation entitlements.

We clarified the ATO's position and confirmed the dispute was essentially between Ms R, her accountant and her former employer. We advised Ms R these matters would be better addressed directly and privately.

CASE STUDY unpaid contributions

Mr S complained the ATO had failed to properly pursue his former employer for unpaid superannuation contributions.

Our investigation disclosed there were no unpaid superannuation contributions. Mr S had mistakenly included a damages award from the Queensland Industrial Commission as part of his income. Although such awards are assessed as income, they are not included as income for superannuation purposes.

We suggested to the ATO that there may be scope for either the ATO or the Industrial Commission to clarify this for individuals seeking employment-related damages.

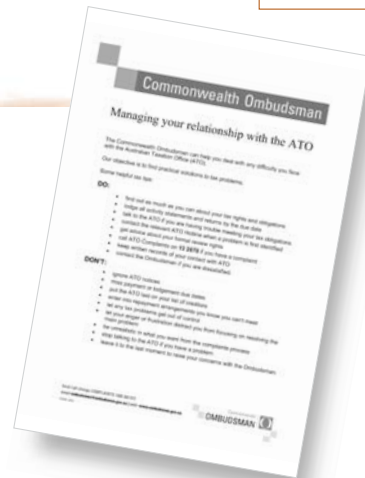
challenges in tax complaint handling

The key challenge for anyone working in tax administration—whether assessing tax returns or handling complaints—is the growing complexity of the tax system. In many ways, the complexity of our tax system mirrors the complexity of modern life. Increasingly, we want a tax system that serves the community's need for fair and equitable collection of revenue while being sufficiently sophisticated and nuanced to recognise an individual's circumstances. This is difficult to achieve in a simple fashion. The challenge then for those working with tax matters, particularly tax professionals, tax administrators and those overseeing tax administration, is not necessarily to reduce complexity but to better manage it.

One consequence of a complex tax system is the complexity of the ATO itself. During the year, the Special Tax Adviser and his Tax Team continued to maintain the effective working relationship that the Ombudsman's office has established with the ATO and its officers. Apart from the usual contact in the course of handling individual complaints, we have been conducting regular liaison meetings with ATO staff involved with handling Ombudsman enquiries and matters such as legal and mass-marketed scheme issues. The purpose of these meetings is to exchange views and information on a range of issues aimed at making the complaint processes work more effectively.

Two critical elements of the complexity of the tax system are the massive volume of information about tax and the rapid rate of change within the tax system. It is vital for our Tax Team to keep abreast of tax developments as they happen, and meetings with ATO staff are arranged to address specific tax issues as they arise. When an administrative problem emerges that could lead to increased complaints, the ATO will notify us and provide advice on what action it is taking to address the problem. Examples included briefings on:

- the superannuation guarantee payment processing delays



- the ATO's response to the Review of Self Assessment as part of the ATO's consultation on the new Shortfall Interest Charge
- the newly established Lodgment Compliance Business Line.

At other times, we specifically asked the ATO to provide us with a general briefing on matters arising out of the individual complaints we investigated; such as we did in June 2005 about the ATO's action on old debts. At this meeting we also received a briefing on the ATO's small business debt initiative and had a broader discussion about related debt issues. The ATO advised that it was creating a new business line for debt related matters, which is indicative of a greater ATO focus on debt recovery. The discussion was very useful for our office and the ATO, allowing each to gain an appreciation of the other's positions, interests and concerns.

We have also sought to better engage with the tax profession, particularly as part of our contribution to the office's rural and regional outreach program. We developed a flyer on 'Managing your relationship with the ATO' for small tax practices and their clients, with a simple checklist of 'do's' and 'don'ts' for taxpayers to keep in mind. The feedback to date has been positive, and we will continue to work with tax agents and accountants to better hone the services we provide to them and their clients.



the tax ombudsman in the framework of tax administration

Along with our work in handling complaints from taxpayers about the ATO, we also continue to monitor and comment on more systemic issues that arise in tax administration. We co-operate closely with the other 'watchdogs' of tax administration: the Australian National Audit Office (ANAO); the Board of Taxation; and the Inspector-General of Taxation (IGT). Each office approaches its role from a different perspective and with a slightly different focus, but all with the aim of improving tax administration. In the same vein, we play a role providing input into Parliamentary inquiries and keeping Parliamentarians informed of the work we are doing.

During 2005, we made submissions on a range of tax administration and tax administrative policy matters to a number of inquiries and reviews across government.

REVIEW OF CDDA SCHEME

The Ombudsman provided a written submission to a review being undertaken by the Department of Finance and Administration (DoFA) of the Compensation for Detriment Caused by Defective Administration (CDDA) Scheme. The submission highlighted that most complaints arose from the administration of the CDDA guidelines, rather than from any problems with the content of the guidelines themselves.

We were able to comment positively on recent changes that we believed would improve the ATO's handling of compensation matters. In particular, we pointed to:

- the ATO encouraging officers to take a pragmatic position on relatively small claims (less than \$10,000), applying a lesser burden of proof than might previously have been the case
- the establishment of service standards for handling compensation claims: three business days to acknowledge receipt of a claim; 28 days to process claims under \$10,000 (once all relevant information is received); and negotiation over longer timeframes for more complex claims or approaches to seek further information within seven days of receipt
- the delegation of the CDDA function to the Commissioner in most cases: where previously claims over \$50,000 had to be referred to the Minister for decision, they can now be decided within the ATO.

The above changes are having a positive impact on the work of our office in dealing with tax complaints about CDDA matters. We hope to see fewer disputes about claims under \$10,000.

Investigation of complaints about delays can be conducted against the ATO's service standards, and, with the Commissioner having delegation, nearly all ATO compensation decisions will now be within the jurisdiction of the Ombudsman.

We will continue to monitor complaint trends about CDDA to check that administration of the scheme is working effectively. Our observations to date suggest that the policy improvements are resulting in a reduced complaint flow.

LIAISON WITH ANAO

During 2005, we met with ANAO staff to discuss the following ATO performance audits:

- Cash economy taskforce
- Superannuation lost members list
- High risk refunds.

The discussions usually involved a brief outline of the complaints profile for the area under audit and an explanation of our experience and understanding drawn from the complaints we received. In the case of the cash economy taskforce and the superannuation lost members list, the very low level of complaint suggested no notable problems with ATO administration of these areas as it impacts on individual taxpayers. We were able to provide more useful feedback about the high risk refund audit, particularly as complaints about delay are often sourced back to issues of the treatment of high risk refunds.

We also provided comments on the relevant sections of ANAO's draft report of its performance audit of the superannuation contributions surcharge, following our initial discussions with ANAO in 2004.

SUBMISSIONS TO THE IGT

In May 2005, we made a detailed submission to the IGT review of the ATO's litigation practices. In summary, our submission indicated that:

- the Ombudsman's office is generally reluctant, because of our statutory provisions and public policy considerations, to investigate a complaint if the issue is properly one for a court or tribunal
- it is generally unwise to comment upon the appropriateness of litigation, alleged inconsistencies between ATO litigation decisions and public rulings or interpretive material, or the efficacy and utility of the use of precedent where the matter remains before a tribunal or court
- the most fruitful area of tax litigation for the Ombudsman's office relates to the effective governance and communication essential to good administration generally and in particular

issues relating to the adequacy of ATO communications practices, the expedition of delays in objection and litigation processes, and reasonable and practical settlement and negotiation protocols

- we are generally comfortable with current ATO settings in relation to the test case funding program in the context of broader ATO compliance and public interest considerations, particularly relating to funding of unsuccessful challenges to avoidance behaviour
- we support the promotion of increased recourse to alternative dispute resolution procedures by the ATO and taxpayers to avoid litigation where appropriate.

We await the finalisation of the IGT litigation review with interest.

The office also made a brief submission to the IGT review of potential bias by the ATO in its Private Binding Rulings (PBRs) in September 2005. Based on the complaints received to date, we reported no evidence of any systemic or systematic bias associated with complex PBRs issued by the ATO.

CONTRIBUTIONS TO THE ATO

As a key external scrutineer of the ATO, the Taxation Ombudsman also plays an important role in assisting and advising the ATO on areas of internal improvement. For example, Ombudsman staff are often involved in internal ATO training programs, educating tax officers about the role of the Ombudsman and the importance of accountability and responsive complaint handling in the framework of tax administration. Similarly, we are involved in more strategic roles within the ATO, with the Special Tax Adviser sitting on the ATO Integrity Advisory Committee and regularly attending the ATO Complaints SES Sponsors forum.

Towards the end of 2005, the Taxation Ombudsman endorsed for the first time a forward work program of internal and external tax projects to carry forward until the end of the 2005–06 financial year. The proposed ‘internal projects’ will look at ways in which the office can improve its own policy, procedures and decision making to more effectively manage tax complaints, such as the ‘Referrals project’ discussed on pages 5 and 6 and noted below. The proposed ‘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.

INTERNAL PROJECTS

- **Referrals project**
Assessment 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.
- **Issues strings**
Construction of a revised list of issues strings to better record tax complaints within the Ombudsman’s office. This is to better support Investigation Officers in the analysis and investigation of issues in individual tax complaints, and provide for more effective statistical reporting and systemic trend analysis.
- **Ombudsman discretions and tax complaints**
Analysis of the application of Ombudsman discretions to decline investigation of tax complaints received by this office. The objective is to facilitate the appropriate exercise of those discretions by developing instructional material to assist Investigation Officers in the context of work practice changes and the introduction of a Public Contact Team in the Ombudsman’s office, particularly where formal and informal review rights exist.

EXTERNAL PROJECTS

- **Garnishee**
Review the ATO’s policy, practices and decision making in its use of garnishee powers to facilitate revenue collection through debt recovery.
- **Compromise**
Review the ATO’s policy, practices and decision making in its administration of the compromise of taxation debts.
- **Super co-contributions**
Review the ATO’s administration of superannuation co-contributions payments, through observation and commentary on issues raised by complaints to the Ombudsman since February 2005.
- **Scoping GIC decision issues**
A two-stage project to review aspects of the ATO’s decision making on the remission of the General Interest Charge (GIC). The objective of the scoping project is to identify possible problem areas for more detailed investigation.
- **Identified GIC decision issues**
The second stage of the project will focus on identified GIC decision-making issues and involve a more detailed analysis of those issues.
- **Hardship decision making**
Review the ATO’s policy, financial practices and decision making relating to release from tax debts on the basis of financial hardship.
- **One plus One**
Review the effectiveness of the ATO’s ‘One plus One’ policy. This policy refers to the ATO’s client service procedure designed to ensure tax officers find the right person if they cannot assist a taxpayer with their problem.

■ Tax agents' issues

This project operates as an adjunct to the Tax Team's outreach activities. Its purpose is to facilitate and encourage tax agents to raise issues of concern with this office. The objective is to analyse those issues and identify areas that we consider merit further examination.

In designing the project program, we have avoided any overlap with the work of the IGT and the ANAO, identifying instead areas that complement their work. As indicated earlier in this report, we work closely with our fellow 'watchdogs' in feeding into improvements to tax administration. We are also hoping to engage more with the tax profession to identify possible topics for future projects.

In pursuing these broader projects we are always conscious of our unique perspective and focus, namely the impact of government administration on individuals as presented to us by their individual complaints.

By using those complaints as a window on 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 our 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, which should also benefit the individual taxpayers who come to us with their problems.

glossary of acronyms

ADR	Alternative Dispute Resolution
ANAO	Australian National Audit Office
ATO	Australian Taxation Office
DoFA	Department of Finance and Administration
CDDA	Compensation for Detriment Caused by Defective Administration
GIC	General Interest Charge
GST	Goods and Services Tax
HECS	Higher Education Contribution Scheme
IGT	Inspector-General of Taxation
ITR	Income Tax Returns
MP	Member of Parliament
SG	Superannuation Guarantee

