



Centrelink

THE RIGHT OF REVIEW – HAVING CHOICES, MAKING CHOICES

March 2011

Report by the Commonwealth Ombudsman,
Allan Asher, under the *Ombudsman Act 1976*

REPORT NO. **04|2011**

Reports by the Ombudsman

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ISBN 978 0 9870657 4 2

Date of publication: March 2011

Publisher: Commonwealth Ombudsman, Canberra Australia

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EXECUTIVE SUMMARY

Centrelink's conduct of internal review has been a subject of concern and close attention from the Ombudsman's office,¹ the Australian National Audit Office² (ANAO) and Centrelink³ itself. In response to a draft of this report, Centrelink has advised this office that it has commenced the staged implementation of an enhanced review of decision framework.

Centrelink has made improvements to its internal review processes. Nonetheless the Ombudsman has identified several administrative deficiencies which delay reviews and have in some cases resulted in a failure to act on a request for review.

The right of review is important. When the process is working effectively, internal reviews resolve problems which inevitably arise daily in a large and complex organisation like Centrelink. It reduces the demands on tribunals such as the Social Security Appeals Tribunal (SSAT). It engenders community confidence in the guardianship of public monies. It is a form of quality assurance for administrative decision making, and provides an opportunity for organisational learning.

But the primary function of any system of review must focus on those directly affected by the process, the applicants themselves. The case studies presented here are from complaints made to this office between 2008 and 2010. They give an insight into the difficulties that can result for an individual who questions a Centrelink decision.

The objective of this report is to highlight some of these complaints and the way they are reviewed, and to provide recommendations to improve the administration of internal reviews for the benefit of all concerned.

Centrelink's customers have a right to review by Authorised Review Officers (AROs), senior staff whose chief role is decision review.⁴ The Original Decision Maker (ODM) can also review a decision. Centrelink's review model currently relies heavily on review by staff that are not AROs and an assumption that applicants accepting one of these reviews have withdrawn their application for review by an ARO.

Centrelink's current practice is to cancel a request for an ARO review if the customer agrees to allow the ODM to review the decision. This can leave customers without the level of review they expected or deserve. Our investigation found that, as Centrelink's processes stand, review applicants are not able to make an informed choice to have something other than the ARO review they are entitled to, and that in those circumstances it is wrong to deem that a request for ARO review has been withdrawn.

¹ Annual Report 2004-05, page 35; Annual Report 2005-06, pages 68-69; Annual Report 2006-07, page 69; Annual Report 2007-08, page 69; Annual Report 2008-09, pages 64-65.

² ANAO Audit Report No. 35 2004-05, *Centrelink's Review and Appeals System*; ANAO Audit Report No. 40 2006-07, *Centrelink's Review and Appeals System Follow-up Audit*, ANAO Audit Report No.16, 2010-11, *Centrelink's Role in the Process of Appeal to the Social Security Appeals Tribunal and to the Administrative Appeals Tribunal*

³ For example, Tongue report.

⁴ AROs are authorised by the Secretary under s109(c) of the *A New Tax System (Family Assistance) (Administration) Act 1999 (the FAA Act)*, and s235 of the *Social Security (Administration) Act 1999 (SSA Act)*.

This report describes some of the problems Centrelink customers encounter in having requests for review recognised and acted on in a timely way. It also draws attention to some of the causes of confusion and delay, including administrative breakdown and administrative drift.

Approaching Centrelink with (what one believes is) a wrong decision can be daunting. Therefore negative aspects of a review should be mitigated with model communication practices. While a review is underway, steps should be taken to avoid the possible harsh consequences of a decision whose merits are in question.

Internal reviews require significant human and financial resources. The investment is worthwhile however because of the results they deliver to the individual and the agency. This report considers some of the obstacles which undermine the review process. It suggests some solutions to administrative problems, draws attention to issues of staff training and recommends some areas where further analysis and reform may generate more improvements.

PART 1 – THE VALUE OF REVIEW

1.1 Centrelink’s review process allows its decisions to be reconsidered on their merits. The Ombudsman’s office agrees with the Administrative Review Council (ARC) view that ‘a good system of internal review is one which is transparent in process and affords a quick, inexpensive and independent review of decisions’.⁵

1.2 Most Australians, at some time in their lives, will have contact with the nation’s social security system. The Australian government and its citizens are well served when they can look to service delivery agencies such as Centrelink with confidence, knowing that there is a process of review whereby mistakes can be corrected efficiently.

1.3 In 2009–10 Centrelink paid its seven million customers \$84.2 billion in social security payments.⁶ In the same year it received 207,871 requests for review. Many of Centrelink’s customers are primarily dependent on Centrelink payments for their livelihood. It is critically important for this group to have an avenue available for an efficient review process. This cannot be overstated.

1.4 There are other drivers behind review requests, including the desire for reassurance through a second opinion, or a better explanation for a decision. Other motivations might include a desire to have a suspended payment restored or debt recovery action put on hold.⁷ Although a review may not be successful in all respects, receiving a thorough explanation can be a satisfying outcome of review, as in the case below.

Case Study Ms A: At last, a good and clear outcome

Ms A complained about the delay in finalising a request for ARO review of a decision to cancel her payment and raise a debt of nearly \$50,000. The ODM referred the review to an ARO the day after receiving the request but the review took six months to complete. Ultimately the debt was reduced by about 25%. In the meantime, both Ms A’s local member of parliament and the Ombudsman’s office had interceded on her behalf.

Centrelink’s explanation for the delay was the large number of cases referred to the Fraud Investigation team. Ms A commented that ‘finally I got confirmation and a clear understanding of what has happened’.

1.5 There are some Centrelink customers who are loathe to complain even if they believe a decision is wrong. This is a distinct at-risk group from which no request for review will be forthcoming. They may be customers with a limited capacity to ‘jump through the hoops’ of a protracted review process. They may be confused by contact with a variety of reviewing officers. They may simply wish to avoid possible conflict, or have a fear of retribution. They may be at odds with the ODM or believe that review is futile.⁸

1.6 Centrelink must be given credit for the significant effort it has put into developing effective review processes and the significant gains it has made. At the

⁵ Administrative Review Council Report to the Attorney General, *Internal Review of Agency Decision Making: Report No. 44*, November 2000, foreword

⁶ Centrelink Annual Report 2009-10, page 8.

⁷ Many complainants to this office express a mistaken view that their payment will automatically be continued or debt recovered suspended while a review of decision is being conducted.

⁸ Centrelink’s procedures manual, e-Reference, makes it clear customers should not be discouraged from seeking review. However, an ANAO Report supports anecdotal evidence to this office that some customers are dissuaded from doing so, or have a fear that if they ask for review there will be negative consequences for them (paragraph 15, page 15, ANAO Audit Report No.35 2004-05, *Centrelink’s Review and Appeals System*).

same time, the Ombudsman's investigations of complaints about Centrelink suggest that the internal review system falls short of the ideal of being a legally sound, efficient and effective system that serves the interests of the Australian people, the Government, and Centrelink itself. Although much work has been done in recent years, some problems appear intractable. Chief among these, in our view, are issues of access and delay leading to a lack of confidence in the review system.

1.7 The case of Mr B below highlights a variety of problems. The issues raised in this case—the role of the ODM review, recognition of a request for review, the consequences of reviews delayed, and the consequences of administrative breakdown and drift — are some of the issues discussed in this report.

Case study Mr B: Lost letters, crashed systems and heavy workloads add up to five month delay

Mr B is a disability pensioner. He was advised by Centrelink that he was not qualified for a Disability Support Pension (DSP), and that he owed a debt of more than \$15,000 for payments received. Mr B's attempt to question that decision continued for more than five months.

During that time:

Mr B's nominee telephoned to question the ODM about the debt, and Centrelink records show that the system went down during the call. The Customer Service Adviser (CSA) undertook to call the nominee back but was unsuccessful in doing so despite several attempts. No request for review was recorded.

He wrote to request a review by someone other than the ODM, and his letter was forwarded to a Customer Service Centre (CSC) to an officer who had not worked there for three months. A central processing area record showed that the letter was received, but it was not acted upon and could not be found.

Mr B says he repeatedly enquired by phone about the review, but was not able to get any information. Centrelink has no record of these calls.

He said he spoke to a Debt Recovery officer who undertook to find out who was looking after his case and call back the next day. Centrelink's advice is that, due to heavy workloads, this did not happen.

Mr B was contacted by a private debt recovery agency, which told him it was commencing debt recovery action against him.

After Mr B complained to the Ombudsman's office his request for review was considered by an ARO who determined that he had been qualified for DSP, but that he had been overpaid. A debt of a lesser amount was raised against him.

1.8 It is the belief of this office that review and appeal cases should be systematically reviewed for opportunities to improve and address common areas of misunderstanding on the part of customers or staff.

PART 2 – REVIEW: FOUNDATIONS AND PRACTICE

Legislative basis of review

2.1 Through our investigations and in annual reports, this office has been critical of the way in which Centrelink interprets the law applicable to reviews, and the case studies in this report demonstrate the practical implications of that construction for Centrelink’s customers.

2.2 The *Social Security (Administration) Act 1999* (SSA Act) and *A New Tax System (Family Assistance) (Administration) Act 1999* (FAA Act) are the primary legislative bases for review of Centrelink decisions. Key elements of these acts are:

- they empower the Secretaries of the Departments of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and Education, Employment and Workplace Relations (DEEWR) to administer systems of internal review
- they allow a person affected by a decision made under the law to apply for a review of that decision
- where a review is applied for, the Secretary, Chief Executive Officer (CEO) or an ARO must review and affirm it, vary it, or set it aside and substitute a new decision
- Secretaries can review a decision of their own motion if they are satisfied that there is sufficient reason to do so, regardless of whether a review of decision has been applied for. However, under the FAA Act, the Secretary may not review certain decisions where a review is already under way (under s109A)⁹
- a person who has applied for a review may withdraw the application; and if withdrawn, the request is taken never to have been made
- generally, a decision which has been reviewed by an ARO, the CEO or the Secretary can be reviewed by the SSAT.¹⁰

Centrelink’s approach

2.3 Working from its interpretation of this legislative base, Centrelink’s review process establishes three types of officer who may review decisions and change or affirm them:

- Customer Service Advisers (CSAs) who have had no previous involvement with the decision under review
- Original Decision Makers (ODMs), who are the CSAs who made the particular decisions under review
- Authorised Review Officers (AROs), who are more senior and experienced officers not previously involved with the decision in question.

⁹ SSA Act 1999 s 126; FAA Acts ss104 and 105.

¹⁰ FAA Act s 111(1); SSA Act Social s 142(1); s 111(2) of the FAA Act lists categories of decision to which s 111(1) does not apply.

It combines them in three distinct processes of review:

- standard ODM reconsideration
- abbreviated ODM reconsideration
- ARO review.

2.4 The most common model of review in Centrelink today is the ODM reconsideration. The role of the ODM may be taken by another CSA where the ODM is unavailable, but for the purposes of this report we will refer to the reviewing officers only as ODMs. ODM reconsiderations rely on the delegation of the legislative power of the Secretary to initiate a review, as there is no legislative review role for ODMs.

2.5 Compared to ARO reviews, ODM reviews do not offer the same level of independence from the original decision, seniority of reviewing officer, subsequent access rights to external review,¹¹ or in some cases, consideration of further information.¹²

2.6 In a standard ODM reconsideration the ODM will consider further information where the customer provides it, and will make reasonable attempts to contact the customer by telephone. The customer is notified of the ODM's decision in writing, and advised that if they are unhappy with the outcome, they have a right of review to an ARO.

2.7 An abbreviated ODM review is conducted where a customer has insisted on having an ARO conduct a review, but consented to having the ODM have a 'quick check' of the case first. The ODM is not permitted to contact the customer and therefore is likely to have limited information about why the customer thinks the decision is wrong.¹³ If the ODM does not change the decision, it is escalated to the ARO without further request from the customer.

2.8 An ARO review is a review by a more senior, experienced officer whose job is to conduct reviews. An ARO review may or may not be preceded by an ODM review. As noted, under legislation any review by the SSAT must always be preceded by an ARO review.

2.9 According to the Family Assistance Guide,¹⁴ 'applicants/recipients seeking a review of a decision should begin with the original decision maker and progress to the next level if a satisfactory solution cannot be reached.'¹⁴ The implication that a review must go to an ODM prior to being considered by an ARO is reinforced in the guidance that 'if an applicant/recipient has asked the original decision maker to review a decision, and the FAO [Family Assistance Office] officer affirms that decision but the applicant/recipient is still not satisfied with the outcome, then they have the right to request a review by an ARO'. Centrelink should initiate discussions with the policy department responsible for the Guide to clarify or correct its interpretation of the provision.

¹¹ Although on this point, note the discussion under paragraph 2.15

¹² See following description of abbreviated ODM process.

¹³ Original Decision Maker (ODM) e-Reference 109.11100.

¹⁴ Family Assistance Guide, 6.1, FAO Review & Appeals Process.

2.10 Centrelink has trialled, but other than in limited circumstances,¹⁵ is not using what it refers to as an 'alternative model' of review, the same model which was put to the ANAO as Centrelink's 'proposed model'.¹⁶ This model involves a CSA making a quick check of the decision, during which they may also consider new information. The CSA then explains their reasons for affirming or changing the decision to the customer, and depending on the customer's response, refers the review on to the ARO or treats it as withdrawn.

Legality

2.11 Centrelink's approach to directing requests for review amongst these three types of officer rests on a legal construction which Centrelink explains as follows:

When a customer requests a review under s129 of the SSA Act, they are informed of their legal right to a review by an ARO and also of the option to talk to the ODM first. S130 provides that an application for review under s129 can be withdrawn in any manner approved by the Secretary, so where the customer chooses to talk to the ODM first, the customer is taken to have withdrawn the application. When informing the customer of the outcome of the reconsideration, the ODM reminds the customers they can still request an ARO review.¹⁷

2.12 Applying the legislation to support the use of ODM reviews does create some further problems in the legislative basis for the abbreviated ODM review model in that:

- a review which is withdrawn is taken never to have been made (that is, a withdrawn review cannot be put 'on hold' while a Secretary-initiated (ODM) review is conducted)
- the Secretary cannot review a decision while another review is on foot (that is, a Secretary-initiated/ODM review would have to be completed before an ARO review can be carried out)
- completion of a review requires an outcome to have been communicated to the applicant in writing.

2.13 This office considers it desirable that a review which is unsuccessful at one level can be subject to further review without the intervention of the customer. However, as outlined, we do not believe that it is possible under the law without the first review being completed and a subsequent review being requested. This shortcoming should be addressed or the issue clarified through legislative change.

2.14 Such legislative change can only be made by the responsible policy department and Centrelink should work with the appropriate policy department to effect changes to legislative guides or legislation itself.

2.15 Given that Centrelink conducts ODM reviews using the Secretary's delegated power to conduct reviews, it could be argued that on the completion of an ODM

¹⁵ Reviews related to eight week non-payment periods and arising from decisions under the Economic Security Strategy Payment (ESSP) use initial review by a CSA and may escalate the review without customer request. While Centrelink advises that 'overall, new initiatives are trending towards incorporating an abbreviated reconsideration model', implementation of this model has been limited due to cost.

¹⁶ ANAO Audit Report No.40, 2006-07, *Centrelink's Review and Appeals System Follow-up Audit*, page 38.

¹⁷ Centrelink correspondence to Ombudsman's office, 11 January 2008.

review a customer has the same rights to appeal to the SSAT they would have had that review been conducted by an ARO. This approach would address one limitation of the ODM review. However it is preferable, and appears to have been the legislative intention, that an internal review should be conducted by a senior officer before access to the SSAT is allowed. This is another issue which should be clarified through legislative amendment.

2.16 Although under the legislation the Secretary can approve those circumstances in which a request for review may be withdrawn, Centrelink deems a request to be withdrawn where the customer has consented to a standard ODM review regardless of whether the customer:

- actually receives an explanation about their options
- understands the difference between the types of review, that is, both the benefits of an ARO review, as well as those of an ODM review
- makes an informed consent to having something other than an ARO review.

2.17 It is the Ombudsman's view that a customer who has sought to exercise their legislative right to review cannot be deemed to have withdrawn their request unless and until all those factors are present.

2.18 The legislation and guides should be reviewed to ensure that customers are able to access an ARO review from the outset, or without further request, following an unsuccessful ODM review.

2.19 Any action to substitute an ODM review for an ARO review must have the informed consent of the customer.

PART 3 – ACCESS TO REVIEW

3.1 The right to have decisions reviewed, even if not accessed, is an important contributor to customer, citizen and government confidence in the system of administrative decision making. It follows that awareness of that right is valuable in itself.

3.2 Centrelink's customers have a more specific need to be aware of their right to have decisions reviewed. Centrelink advises its customers of this right through its customer service charter, on the reverse of its decision letters, on its internet site and in a variety of customer-oriented publications. In our experience the right of review appears to be well-known.

3.3 Centrelink's procedures manual, e-Reference, says that where a customer expresses dissatisfaction with a decision, a CSA should provide an explanation of that decision and then seek clarification about whether the person is seeking a review.¹⁸

3.4 There is no single method or avenue by which a customer must seek review, nor any form of 'magic words' which must be used. Centrelink's customers can access the agency through a large variety of channels. Some of these are particularly targeted at 'doing business' with Centrelink, such as call centres, and CSCs. Others provide an avenue for feedback, such as the 'email Hank', 'send a message to the CEO' or Customer Relations Unit facilities. Centrelink's anecdotal view is that most review requests are made verbally either by phone or in person, but customers can also seek review by sending a message via the internet-accessible 'secure messaging service', by completing the review request form, by letter or by email.

3.5 This 'no wrong door' approach means that staff in contact with customers need to be aware of the review process. Moreover they must be alert to the fact that a comment or complaint may be a request for review and should be acted upon. Despite this, many Centrelink customers complain to this office about their difficulties in having a request for review recognised. We have seen cases where a customer has clearly expressed their dissatisfaction, often on several occasions. Nonetheless, their objections were not responded to appropriately, as the cases below show:

Case study Mrs C: When is a complaint a request for review?

It took five months for Mr C's case to be reviewed and a debt (which had been referred to a collection agency) reduced to nil. During this time, Mr C was without income support.

In this case Mr C's mother complained that Centrelink's cancellation of her son's youth allowance on the basis of his not having provided her new partner's income details was unfair, as her son had never lived with her new partner.

Mrs C wrote to Centrelink explaining her son's living arrangements. According to Mrs C, she followed up with a visit to a CSC and two telephone enquiries on the same issue and two months later she wrote again.

¹⁸ 'Definition of a request for a review', e-Reference 109.11000

'A request for review can be any statement, inquiry or question in which a customer, or their representative, expresses dissatisfaction with a decision or its effect upon them. If they express dissatisfaction, always ask if they are simply seeking an explanation or whether they want the decision reviewed. The customer should not be discouraged from requesting a review or be allowed to think a review has occurred if the decision has only been explained'.

Following intervention from the Ombudsman, Centrelink decided that Mrs B's first letter should have been treated as a request for review. The ODM set aside the cancellation and the decision to raise the debt.

Case study Mr D: Getting the message across one-way channels

Mr D lived outside Australia. In February 2009 he was advised through the secure online messaging system that his age pension had been suspended. He told the Ombudsman's office that he contacted Centrelink using the online messaging service on 23 February asking for the decision to be reviewed. Centrelink had no record of receiving this contact. Mr D emailed his review request, and a request for continued payment pending that review, on 5 March and 9 March. (The 5 March email was not opened until 9 April). Centrelink did respond however to the 9 March email with general advice about review rights and a request that Mr D contact them if he needed more assistance. Ultimately Centrelink agreed that Mr D's request for review should have been acted on at his initial contact. Following a further call by Mr D to a call centre, an ODM review was commenced on 27 March, and an ARO review was completed on 22 April.

Case study Mr E: Finding the right words

Mr E was receiving partnered parenting payment and contacted Centrelink to advise them of his wife's income. This income was noted and taken into account for the family's Family Tax Benefit, but not Mr E's parenting payment.

In September Centrelink raised a debt against Mr E for the parenting payment he had received for the previous four months. Centrelink records confirm that approximately a week later Mr E contacted on two consecutive days advising that he did not agree with the debt, and that he was considering taking his complaint to his local member of parliament or the Ombudsman. There is no record that his right of review was discussed, although Mr E's recollection is that he asked for a review.

Later that month Mr E agreed to repay the debt through the minimum rate of withholdings. The following January (some four months later) he called to enquire about the progress of his review. At that point, Centrelink advised that no review had been actioned, and offered to refer the matter to an ARO.

Case study Ms F: Poor advice

Ms F approached this office about a debt of more than \$13,000 which was raised in 2007. Centrelink contact records showed that Ms F repeatedly stated that she disagreed with the debt, and had asked for a review of it in early 2008, mid 2008, and late 2009. Centrelink did not record these approaches as requests for an ARO review. In response to her 2009 request, the Centrelink officer she spoke to noted "cust believes no debt should exist and that isufficeient [sic] advice and incorrect advice was given to her – the matter is still causing upset and anxiety cus advised the appeal could be made but no gtere [sic guarantee] of outcome is given as more than 3mths from original decisions etc. has occurred".

This advice was incorrect, because there is no time limit on review of debts. After an approach by the Ombudsman's office in April 2010, Centrelink initiated an ARO review.

3.6 Although Centrelink has conducted extensive staff training in review practices, it is clear from cases such as Ms P's that more training is needed to assist staff to distinguish between complaint and request for review. Training should ensure all staff act on any possible request for review and provide clear advice on review options in the event of any doubt. From the case studies, it appears that more emphasis is needed on ensuring compliance with the requirement to record requests for review on the APL (mandated by internal procedures since 2001) to support active monitoring of reviews.

Prioritising requests for review

3.7 Centrelink's multi-layered, multi-model review process has distinct benefits for the agency, in that it allows the more numerous and less senior ODM staff to carry the bulk of the internal review load. Sometimes a specialist team of CSAs conducts all reviews of a particular type. Wherever ODMs and CSAs are used for reviews there will be greater capacity for the more experienced (and more expensive) AROs to focus on the cases which require specialised attention.

3.8 It is our view that reviews should be conducted by AROs in the first instance, and the cases in which this does not occur should be an exception based on a benefit to and informed consent of the customer, not solely on administrative expedience. However as not all review cases are seen by an ARO in the first instance - or at all - access to ARO consideration must be guided by some form of 'review triage'. Therefore Centrelink must consider how to prioritise reviews.

3.9 Centrelink already prioritises some reviews. 'No income' cases have a 14 day (95%) timeliness standard, but the countdown commences only when the case is with an ARO, not at the point at which the review request is received and possibly considered initially by an ODM. In cases where possible eight week non-payment penalties may result, the case is reviewed by a CSA in a specialist team. To deal with the large volume of appeal requests arising from the Economic Security Strategy Payment (ESSP) scheme and the fact that the payment was granted automatically based on eligibility for another payment, specialist CSA review teams were created to consider each request and explain the decisions to their customers. This also provided an opportunity to establish whether the customer wanted further review by an ARO.

3.10 Priority for and access to ARO reviews should be determined by factors which consider the nature of the review and potential impacts on customers as well as administrative efficiency. This office suggests that Centrelink develop criteria against which a request for review should be assessed by an ARO in the first instance. These should include:

- vulnerability: cases where a customer is known to be vulnerable – due to no income, being homeless, or suffering from a mental illness
- complexity: where it is clear from the outset that a case is complex
- consequences: taking into account the significance to a customer of decisions being reconsidered, and the capacity or otherwise to mitigate the impact of those decisions while under review, for example, payment pending review (PPR), discussed at 6.6
- consent: cases in which the customer has not given, or been in a position to give, informed consent to something other than an ARO review.

PART 4 – INFORMED CHOICE WITHIN THE REVIEW MODEL

Opportunity to make a choice

4.1 Where there is a system of conducting reviews without the involvement of an ARO, this office believes that the customer must be given an opportunity to make an informed choice between the types of review available. Further, we believe that, even where a customer has consented to a non-ARO review, if the customer's preferred outcome is not achieved by that non-ARO review, it is preferable that the review is referred to an ARO for their consideration without further request from the customer. The Ombudsman takes this view both because of the characteristics of ARO review referred to at 2.8, and because of the delays implicit in a multi-layered model. As discussed, any legislative or policy impediments to this approach should be addressed with the relevant policy department.

4.2 Options under Centrelink's current review processes are set out for customers in the request for review form, the Reviews and Appeals Factsheet, and should be described by a CSA registering a request for review received verbally. However, there are important differences in the way the various levels of review and the means of accessing them are described. Decision letters vary in describing the sequence of review, in highlighting of possible options within that sequence, and explanation of what an ARO is. In its recent report into Centrelink's 'Role in the Process of Appeal to the Social Security Appeals Tribunal and to the Administrative Appeals Tribunal' the ANAO noted that notification letters, 'which are Centrelink's key communication tool for advising customers of their entitlements, could be improved to better describe the internal review mechanisms and the respective roles of the Original Decision Maker and the Authorised Review Officer'.¹⁹ Some examples are set out below.

4.3 Centrelink's Reviews and Appeals factsheet highlights the value of an ODM, but notes that it is optional:

If you are unhappy with a Centrelink decision, you can discuss it with the person who made the original decision. You don't have to do this, but many people find it a useful first step. It gives you a chance to correct misunderstandings, present new information or evidence, and get an incorrect decision changed quickly.

It also describes access to AROs, and some of the AROs benefits:

If you think a decision is wrong, you have the right to ask for a review by an Authorised Review Officer (ARO). You do not have to talk to the person who made the decision before asking for an ARO review. AROs are senior and experienced people in Centrelink who will have had no involvement in your case.

4.4 In contrast, a notice of decision letter assumes an initial form of review which sounds like an ODM reconsideration and is not explicit about ARO reviews:

If you do not agree with this decision, please contact us and we will explain it. We will reconsider your case and change the decision if appropriate. If you still do not agree, we will tell you about other avenues of review that may be available to you and how you can apply for them.

¹⁹ ANAO, Audit Report No.16, *Centrelink's Role in the Process of Appeal to the Social Security Appeals Tribunal and to the Administrative Appeals Tribunal*, 2010/2011, p19.

It describes an ODM/ARO sequence, but says the ODM is optional:

If you do not agree with a decision Centrelink has made:

- Contact us so we can explain the decision and change it if appropriate (this step is optional)
- Contact us and ask for an independent [ARO] to look at your case.
- Go to the [SSAT] if you disagree with the [ARO]'s decision
- Go to the [AAT] if you disagree with the [SSAT]'s decision.

4.5 CSAs who are asked for a review must work through an automated workflow which notes that 'referral of a decision for ARO review should be undertaken by the ODM only'. It gives three options:

- Register a request for reconsideration to transfer to the ODM
- Register and proceed with an ODM reconsideration and/or referral to an ARO
- Register an ARO review request 'because the customer clearly stated the ODM should not check the decision'.

The next screen asks the CSA to choose between ODM and ARO reconsiderations, and has a link to the e-Reference which, if followed, outlines some of the differences between them. There is no explicit prompt about those differences, or how they might apply to the customer's circumstances in the context of the decision which is in dispute.²⁰ It is clear from the case studies in this report that the customer does not uniformly receive advice sufficient to make an informed consent to a non-ARO review.

4.6 Even where customers have made an explicit choice to have one form of review over another, this office sees instances of those choices being overlooked or ignored.

Case study Mr G: a clear request—a slow and incorrect response

Mr G complained to the Ombudsman's office about advice that was given to him that his wife was ineligible for family tax benefit for the 2006/07 year. Our investigation revealed that, despite having clearly expressed his dissatisfaction with this advice to Centrelink, staff failed to advise Mr G of his review rights or treat his contact as a request for review. It was only when contacted by this office that Centrelink acknowledged it should have treated Mr G's initial contact as a review request. It proceeded to do so, with the result that Mr G's review was upheld and arrears were paid to his wife.

²⁰ For example explaining payment pending review, as discussed at paragraph 6.4.

Case study Ms H: That's not what I asked for—ODM instead of ARO

Ms H told the Ombudsman's office that she got notification of a debt of more than \$10,000 in 2003, disputed it, and asked Centrelink to look into it. In 2006 she received a letter saying that the debt was still outstanding. Ms H wrote to Centrelink and asked for an ARO review, outlining the reasons why she thought there was an error. Again she heard nothing, and assumed that the further information had settled the matter in her favour. In 2007 she received a telephone call advising her that legal action would be taken if the debt – which had increased by \$2000 - was not paid.

Centrelink advised this office that the 2006 letter was treated as a request for an ODM review, but it was inexplicably ignored when it was referred to the team leader of the debt management team. Nothing was done with the request until contact from our office in 2008, after which the ODM wrote to Ms H and affirmed the original decision. Centrelink's letter advised Ms H that she could request an ARO review of the decision if she disagreed and she did so.

It took 28 months for Ms H to receive the ARO review she requested.

Case study Mr J: Tired and unhappy

Mr J called Centrelink and asked for an ARO review of an ODM's affirmation of a decision on an overpayment. The call centre recorded this as an action for the ODM to commence the ARO process, however the ODM did not run the ARO script²¹ and, as the ARO coordination unit remained unaware of the request, no action was taken.

Mr J made three further calls before the error was detected and further action by the ODM requested. Again the ODM failed to run the ARO script. Mr J contacted Centrelink four more times, including speaking with the ODM directly, and was told he needed to allow 6-8 weeks for the review to be completed. Some 3 ½ months after his initial request, Mr J was notified that the ARO had upheld the decision. Although disappointed with the decision, Mr J told this office he didn't know if he 'had the strength' to go to the SSAT.

4.7 Centrelink has advised this office that where a customer asks for a review but does not say who should conduct it, they will be given a standard ODM reconsideration. Where customers write and ask for an ARO review but do not say explicitly that the ODM should have no involvement in the process, Centrelink gives them an abbreviated ODM reconsideration, followed by an ARO review.

4.8 These approaches are questionable both in relation to the capacity to escalate reviews where the first review is not complete, as discussed at paragraph 2.12, but also because they ignore the rights of those who request a review in person, or in writing, other than by using the review request form. Further, in doing so it creates a disadvantage for those who prefer one channel over another, and creates a systemic failing in an internal review scheme which is intended to give equal access through all channels.

4.9 As noted in paragraph 2.14, Centrelink should work with the appropriate policy departments to support review and possible amendment of relevant legislation and guides where they create an obstacle to the escalation of non-ARO reviews to AROs. This escalation should occur without further request from the customer.

²¹ A script is a workflow template which assists Centrelink staff with processing applications.

Informing the choice: advantages and disadvantages of review processes

4.10 Knowing that there are different options for review is important. Furthermore, understanding the implications of those choices can be critical, and the election of one form of review over another can have significant ramifications. Differences between the review models include:

- seniority of the person conducting the review
- specialist knowledge of the person conducting the review
- quality of review decision advice
- independence of the person in relation to the decision
- capacity for further appeal to the SSAT
- capacity to have new information considered
- capacity to discuss the case with the reviewer
- time taken and allowed for completion
- eligibility for payment pending review or suspension of debt recovery pending review
- likelihood of a decision being changed.

4.11 Even where these differences are embedded in the review model, their significance is not always clear. Centrelink was not able to advise this office, for instance:

- how many 'ODM reviews' are conducted by a CSA, rather than the ODM who has some familiarity with the case
- what proportion of review requests were made by phone, face-to-face, or in writing using the form, by email, by letter, or otherwise
- what proportion of ODM reviews resulted in a change because they identified a 'basic administrative error' and arguably were best dealt with by an ODM
- what proportion of ODM decisions were overturned as a result of more information coming to hand, or in how many cases further information was sought from a customer.

4.12 Information on these differences is not routinely made available to Centrelink's customers. Staff using the step-by-step instructions in e-Reference where a customer has asked for a review are told:

Advise a customer that the decision can be reconsidered by the ODM or reviewed by an ARO. Explain that talking to the ODM is a quick and easy way to get an incorrect decision changed and that, if they are still dissatisfied, they can then have an ARO review.²²

²² Original Decision Maker (ODM) Customer requests review, detailed instructions, e-Reference 109.11100.

4.13 This implies that an ODM review is a necessary precedent to ARO review.

4.14 There is limited reference to any benefits an ARO review might have over an ODM: AROs are described as ‘senior and experienced officers who have not been involved in making the original decision’. The guidance on the ‘Review of a Centrelink Decision’ form extracted below promotes the concept of an ARO review as a possible follow on from an ODM review. Note the highlighted wording ‘you can then’:

The quickest and easiest way to have a decision reviewed is to talk with the person who made it, although you do not have to do this. That person will tell you the reasons for the decision, explain any issues and clear up any problems. You can also give him or her any new information which may be helpful. If that person thinks the original decision is not correct, he or she can change it immediately. If the person who made the decision looks at it again and you are still not satisfied **you can then** ask for an ARO review. If you choose to go directly to an ARO review the person who made the decision may still have a brief look at your case as part of referring it to the ARO [emphasis added].

4.15 This pro-ODM presentation of the review choice is also implicit in the advice in e-Reference 109.11100 which we believe could be improved by rewording. The e-Reference reads ‘ODM reconsideration of a decision is not **legally** required before an ARO level review can be conducted, but it is up to the customer to decide whether it should be **bypassed**’ [emphasis added]. Small changes would achieve a more balanced instruction: ‘ODM reconsideration of a decision is not **necessary** before an ARO level review can be conducted, **and** it is up to the customer to decide which type of review they prefer’.

4.16 Information available to customers on the benefits and limitations of the various review options - either through printed material or advice from CSAs - should include:

- time typically taken
- where relevant, effects on availability of relief, such as payment pending review (PPR)
- effect on external appeal rights
- any significant differences in outcomes.

4.17 We suggest that Centrelink clearly identifies the differences between review models and which models are appropriate to employ in different circumstances and further, to inform customers of available choices where they exist.

4.18 With a view to providing more complete information to a customer so they can make an informed choice, Centrelink should conduct further research on trends within its review types in relation to duration and outcome. Staff training should emphasise and scripts should better support an informed discussion between staff and customers about the best form of review for the customer’s needs and circumstances.

4.19 In the absence of data on this point, Centrelink’s anecdotal view is that most changes to decisions occur as a result of additional information being provided at the time of review.²³ Data from the SSAT supports this, with almost half the decisions

²³ Prior to September 2009 AROs were not required to record the reasons for overturning an ODM decision.

changed on the basis of new information.²⁴ Therefore the opportunity to provide additional information to a reviewing officer, although possibly time consuming, is essential to the process of review.

4.20 We have already seen that during an abbreviated ODM, Centrelink does not allow the ODM to discuss the information already at hand with the customer, nor to seek new information from them.²⁵ Therefore, if new information is key to a change of decision, then time the review spends in the hands of the ODM in the abbreviated process prior to referral to the ARO inevitably delays the possibility of the customer's desired review outcome.

4.21 For those customers who are hoping not only for a change of decision, but for a better understanding of the decision made, this direct contact prior to the review decision being made is vital. For that customer it is a chance to discuss, and possibly accept the earlier decision. This may lead to withdrawal of the review request.²⁶ For Centrelink, it represents an opportunity to elicit more information or clarify the case.

4.22 If a customer knows what information is needed in order to make an original decision and has the opportunity to provide it, they are less likely to end up becoming involved in a review the outcome of which turns on new information. Although provision of initial information by customers occurs outside the review process itself, improvements in this area this would have a positive flow on effect to internal reviews. There are benefits to be gained with a greater emphasis on:

- ensuring information about the content and form of information required is clearly accessible
- providing assistance where possible in gathering the information, including obtaining additional information on the customer's behalf where practicable
- allowing sufficient time for information to be provided to the original decision maker, rather than making a decision in the absence of relevant data.

4.23 Keeping the customer informed about whether more information is required and whether additional information provided is sufficient can minimise situations like that which occurred in the case below.

²⁴ Data from the SSAT shows that the reasons for a Centrelink decision being changed were a result of additional information being provided in 45.6% of cases. Other reasons for change were errors of fact (31.8%), errors of law (13.3%). (SSAT Annual Report, 2009/10, page 15).

²⁵ In contrast with the 7 day timeframe in which more information can be provided in a standard ODM, on abbreviated ODMs, e- Reference says 'There must be no contact between the ODM and the customer unless the ODM concludes that the decision should be changed, and then only to explain the effect of the new decision and to ask if the customer still requires an ARO review' 109.11100 - Original Decision Maker (ODM).

²⁶ Centrelink advises that some 25% of customers seeking review of ESSP decisions withdrew their request after discussing the decision by phone as part of an outbound call strategy instigated to address the large volume of requests.

Case study Ms K: More information

Ms K complained to the Ombudsman's office about delays on the part of Centrelink in processing a review request, which she said caused her unnecessary financial hardship.

Ms K lodged a claim for parenting payment at the single rate, and was asked by Centrelink to complete a living arrangements questionnaire to establish that she was no longer partnered. The following month Centrelink rejected Ms K's claim because she had not returned the questionnaire.

Two weeks later Ms K's lawyer faxed a letter to Centrelink, requesting a review of the rejection decision and providing information about Ms K's previous partner's new living arrangements. This letter was not treated as a request for review, and in turn was not forwarded to the ODM for review for more than three weeks.

When questioned by the Ombudsman's office about this delay Centrelink advised that it had been waiting for Ms K to return the living arrangements questionnaire, and that it had referred the review to an ODM immediately after receiving the completed questionnaire. Centrelink advised that Ms K and her lawyer were aware of the need to return the questionnaire, and explained that the ODM made the decision to affirm the rejection within a day of the additional information being provided. However, our investigation found no indication in Centrelink's records that Ms K or her lawyer was advised that the questionnaire would need to be submitted before a review could be processed. It is our view that, upon receiving Ms K's lawyer's letter, Centrelink ought to have immediately initiated the review process, and advised Ms K that the information provided by her lawyer was insufficient and that she would need to provide the completed questionnaire. If Centrelink had done this, it would likely have avoided the unnecessary delay in processing Ms K's review.

4.24 ODMs and AROs are required to contact customers to discuss their review requests unless they can make a fully favourable decision without further contact. That opportunity for discussion may have prevented the misunderstanding illustrated in the case above.

4.25 Centrelink data from 2008-09 shows that in 67% of cases AROs were able to make contact with customers by phone. In 22% of cases they were unable to contact the customer, despite contact requirements which prescribe that two attempts must be made to contact by phone on different days and at different times. Given the importance of the opportunity to provide new information and to discuss a decision under review, all efforts should be made to support the ARO in making contact with the customer by a means and at a time when the customer is in a position to discuss their case.

4.26 When taking a request for review, staff should explain to the customer that the reviewing officer may need to discuss the review with them, and arrange for an appropriate time and way in which the discussion is to occur. Scripts used to record reviews should support this discussion and the recording of this information.

4.27 As soon as possible in the review process, a reviewing officer should make an assessment of the information to hand, and advise the customer what information is crucial to the decision, how it may be provided and whether any further information provided is sufficient for a reconsideration to commence.

4.28 Centrelink should analyse the role of further information in decisions changed on review and, depending on the result of this analysis, should consider options for improving the collection of relevant information at first instance.

Likelihood of a successful outcome

4.29 While customers may have many motivations for seeking review, the most obvious is that they want the original decision changed. Centrelink refers to the rate at which decisions are either set aside or varied as the 'change rate'. Some cases are also simply withdrawn. Change rates²⁷ for 2009-10 were as follows:

- of the decisions reviewed in an ODM review of any type, 55% were affirmed by the ODM, and 39% changed²⁸
- in abbreviated ODMs, the change rate was 69%
- 21% of ODM reviews went on to be considered by an ARO, during which 38% were changed
- 34% of decisions were changed by AROs in direct-to-ARO reviews
- at the SSAT, some 26% of appeals resulted in a change to Centrelink's decision.²⁹

4.30 While it is clear from this data that many customers are having decisions changed at each level of review, there are also significant, but unexplained trends in this data which raise questions about how reviews are conducted under each model. These trends include the:

- relatively high number of decisions being varied or set aside at ODM stage
- relatively constant and significant percentage of decisions being changed at the ARO stage, regardless of whether the case had been through ODM review
- much greater proportion of abbreviated ODMs compared to standard ODMs being overturned (although the number of abbreviated ODMs is itself small)
- significant proportion of those who have received an ODM review going on to request an ARO review.

4.31 As a rough guide, using these 2009-10 figures, if 100 appeals were conducted through an ODM review, 39 would result in a changed decision. Twenty-one of the original group would go on to have an ARO review, and the ARO would change the decision under review in about eight of those cases. In all, 47 of the original 100 decisions would be changed in the internal review process.³⁰ This figure is significant. While a change does not necessarily indicate that a previous decision was wrong, the ultimate change rate again reinforces the importance of supporting quality decision making at first instance, and having ready access to an efficient and effective internal review process.

²⁷ Percentages above 0.5 are rounded up, and below 0.5 are rounded down.

²⁸ 6% were withdrawn.

²⁹ SSAT Annual Report 2009-10 notes 26.5% of applications for review of Centrelink decisions resulted in a change, p.15.

³⁰ This does not consider the number of decisions also changed by the SSAT on review.

PART 5 – CAUSES OF DELAY

Time allowed, and time taken, to complete reviews

5.1 Complaints to the Ombudsman frequently involve delays in the review process, and at the extreme, we have investigated one case of a two year delay.

5.2 The Administrative Review Council (ARC) has noted that an agency that chooses to make internal review mandatory should ensure the review system is as worthwhile as possible for the applicant and does not operate as a potential barrier to effective merits review.³¹

5.3 In practice, review by an ARO is mandatory prior to a customer being able to appeal to the SSAT. Where customers are not going to be satisfied until they have had an independent review, an internal process is likely to be perceived as an obstacle on the path to independent review.

5.4 Even where a customer might otherwise be content to have a decision reviewed internally, the time taken to conduct an internal review can undermine confidence in the internal process such that the applicant will not be content to accept the result. Conversely, the customer may become a victim of ‘appellant fatigue’, as in the case of Mr P in ‘Tired and unhappy’ and may lack the emotional resources to continue to fight their case.

5.5 Centrelink commits to advising customers of the outcomes of their reviews, in writing, within 28 days. It sets an internal goal for standard ODM reconsideration completion within seven calendar days, and a target of 75% of cases meeting that standard. The figures in the table below show the results for the 2009-10 year.

% of reviews completed within time frames 2009-10							
	Review type	within 7 days	8-14 days	15-28 days	Total % within 28 days	29-60 days	61+ days
1	ODM Reviews (abbreviated or standard)	79	10	7	96	3	1
2	ODM + ARO (Either standard or abbreviated ODM + ARO, less time taken by customer to request escalation to ARO)	4	13	46	63	31	6
3	Direct to ARO	21	16	50	87	10	3

Source: Centrelink data

5.6 In these figures ‘ODM Reviews’ includes standard ODM reviews and only those abbreviated ODMs which do not go on to AROs.³² ‘Direct to ARO’ figures include decisions not previously considered by any ODM.

5.7 It is possible that a customer who has been given a standard ODM reconsideration will not ask for further review, even where the decision is unchanged. There are many reasons for not seeking review, for instance, they may be content

³¹ Administrative Review Council, op.cit., page 18.

³² Presumably they have not gone on to ARO because in doing a quick check, the ODM has been able to make the change sought by the customer.

that they have had a second consideration; understand the decision better; not see any value in pursuing it further; not feel that they have the strength or willingness to persist; or even have failed to understand that further review is possible. They may wish to avoid the possibility that a further review decision would worsen, rather than improve, the outcome for them.

5.8 Reviews which go directly to an ARO generally take longer than those that go only to an ODM. Centrelink's intention that the ODM process be a quick check may explain this.

5.9 It needs to be stressed that the customer is often quite vulnerable and that an adverse administrative decision, or delays in making a review, can impact greatly on their livelihood. The cases below are instructive, but more needs to be understood about the causes of delay.

Case study Mr L: Acting on a request

Mr L contacted the Ombudsman's Office in July 2010 regarding delays in the processing of his request for an ARO review. Our investigation revealed that Mr L had lodged a review request in June 2010, and that a Centrelink officer had subsequently decided not to accept the review request for consideration by an ARO as Mr L had departed the CSC without providing all of the necessary information. The decision not to submit the review request was not communicated to Mr L, even when he contacted Centrelink a month later to seek an update on the progress of his review.

When Mr L contacted Centrelink again a week later, he was advised that he was required to provide additional information in order for his review to be progressed to an ARO. Under social security law, there is no requirement that a customer provide supporting evidence in order for their review to proceed, but in any event Mr L had provided evidence with his original request. Despite his two contacts to obtain an update on the progress of the review and his advice to Centrelink that he was in financial hardship, Mr L's review was not forwarded to an ARO for a further three weeks – some eight weeks after his original request was made.

Case study Mr and Mrs N: Living on air

Mr and Mrs N both made complaints to this office about delays in relation to their payments. Mrs N was receiving partnered parenting payment, but it was suspended following a Centrelink field operation in July 2007 during which it was found Mr N was employed. Mrs N had not been reporting income for him. Centrelink started an investigation into Mr N's employment history, but that investigation was hampered by slow responses from third parties.

Mrs N said she contacted Centrelink about eight times after her payment was suspended, expressing her dissatisfaction with the time taken to finalise the investigation. None of these complaints were taken as a request for review. After we contacted Centrelink it initiated an ODM review and restored Mrs N's payment some seven months after it was suspended, and paid her arrears.

Meanwhile, Mr N had made a claim for Newstart allowance in June 2007. Following the field operation, the processing of his claim was suspended. In March 2008, after the investigation was finalised, Mr N lodged another claim for Newstart allowance, which was granted. No action was taken to process his earlier claim. In response to our further enquiries, Centrelink considered his earlier claim, and granted the payment in September 2008 with arrears from the date of his 2007 claim.

Some of the delays in these cases were the result of a failure to advise when an investigation was completed. Those procedures have now been addressed.

5.10 Further analysis needs to be conducted to identify the reasons underpinning the timeframes for the various combinations of review as an important factor

informing the triage of reviews (as discussed at paragraph 3.8), and informing customers of the impacts of choosing one form of review over another.

Administrative breakdown

5.11 The ARC has noted:

It is preferable to have a simplified structure consisting of one layer of review by a senior officer uninvolved in the primary decision. Agencies should concentrate on making this single layer of review as effective as possible; to ensure that in most cases it is the final.³³

5.12 The complexity of a multi-layered review process can trigger a variety of delays which might be considered under the twin headings of 'administrative breakdown' and 'administrative drift'. Risks increase with complexity, for example the risks and consequences of documents going astray while being moved from one reviewing officer to another as illustrated in case studies in this report. Centrelink has advised that to address these pitfalls it is increasing its use of electronic file transfer and workload management.

5.13 The Ombudsman's office sees many delays caused by administrative breakdowns which are not unique to the review process, such as lost documents, delays in gathering documents, inadequate handover procedures for staff on leave, flawed or non-existent follow-up procedures and failure to manage workloads. Three cases succinctly illustrate administrative breakdowns in the review context.

Case study Mr O: Lost in transit?

Mr O was told that his payment had been stopped because of a 'systems error'. He sent an appeal form to his local office by registered post, and contacted the Ombudsman's office five weeks later when he had had no response.

Centrelink advised this office that while his letter was received at the central mail processing unit and had been transferred to his local CSC for action, it had not arrived. There are, according to Centrelink, 'no prompts generated by the system if correspondence is not actioned', and no process for following up on whether mail which has been received and scanned into a customer's record has ever been actioned.

Case study Mr P: Poor form

Mr P's age pension was cancelled. He lodged three separate forms with Centrelink over three months: a *Review of Centrelink decision* form, and two *Claim for consideration under hardship* forms, none of which were actioned over that time. At the time of our enquiries, two of the forms could not be located. Online records indicated that the review form had been forwarded to a central processing team, but that team claimed not to have received it.

5.14 We have investigated complaints where the review request has not been recorded, or recorded incorrectly, on the APL. As a consequence, no review proceeded, sometimes after many contacts by the customer, and it has taken the intervention of this office for the review to commence. Although guidelines and procedures exist for following up *outstanding* ODM and ARO reviews, those practices do not address this issue. It is our experience that if a review request is not correctly recorded, there is no way for Centrelink to monitor the progress of the review, and without this mechanism, the risk of delay is higher. Like the 'Waiting by the fax' case

³³ ARC op.cit. page 24, paragraph 3.49.

study of a failed trigger process below, the following case study indicates the risks inherent in a 'single point of failure' of process.

Case study Ms Q: The link that breaks the chain

In January 2009, Ms Q called Centrelink requesting review of a family tax benefit debt. The CSA recorded the details of Ms Q's calls, closed the record and did not create a document requesting a review.

The following month, Ms Q called Centrelink to obtain a detailed explanation of the debt. The CSA recorded that Ms Q has reading and writing problems, but did not offer to place a 'Display on Access' note to this effect on her record.

Ms Q's request was referred to the Manual Intervention Team, whose practice was to annotate the customer's electronic record to indicate where the explanation of the debt could be found, and refer it to a CSA for action. However, on this occasion, the document was completed rather than forwarded to an appropriate CSA .

In June 2009, Ms Q called Centrelink again about the delay in the review. The CSA noted at the time that she considered initiating an appeal script, but on the basis of an online document from January believed that this had already been done. There is no record of the CSA making any further enquiries about the delay in progressing the January review request.

The review was initiated in July only after the intervention of the Ombudsman's office. Centrelink offered to put a 'display on access' note in relation to Mrs Q's literacy problems on her record, and subsequently contacted her and apologised for the delay in processing her review.

5.15 Review process models should be analysed to detect single points of failure which may result in cases stalling and falling outside current APL monitoring processes.

Administrative drift

5.16 Some delays are caused by what this office has labelled 'administrative drift'.

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.³⁴

Case study Ms R: No action, no explanation

Ms R complained to the Ombudsman in May that she had requested an ARO review the previous October and December, and that the review had not been completed. When we investigated we found that the two requests had been sent to the office where the ODM worked, and no further action had been taken. The team leader in the office could not explain the delay, but was frank in response:

'I have not come up with a concrete reason as to why this occurred. I can't really say if it was a lack of responsibility on part of the CSA or the leadership team here...all I can offer is a sincere apology and to speed up the review process'.

A month after intervention by our office and advice that the review was being followed up as a matter of priority, two 'urgent requests' had been made to the Centrelink Records Management Unit for the file, but it had still not been received.

³⁴ Commonwealth Ombudsman, Annual Report 2005-06, p.115.

Case study Mr S: Mysterious delay

Centrelink rejected Mr S's application for disability support pension in June 2008, and he asked for a review of the decision. For two months no action was taken on his request despite repeated contacts from Mr and Mrs S. In September Mr S attended a job capacity assessment (JCA) in relation to his appeal, and submitted a further medical certificate. It was not until November that the ODM wrote to Mr S affirming the original decision and advising him that, as previously requested, a review by an ARO was underway. In November 2008 the ARO upheld the ODM's decision, and notified Mr S in writing nearly three weeks later. By that time Mr S had already lodged an appeal with the Social Security Appeals Tribunal, presumably on the basis of verbal advice of the review outcome.

On investigation Centrelink acknowledged that the delays were unacceptable, and that, rather than waiting for the JCA and medical information, the ODM should have completed the review on the information available, and referred it to an ARO without delay if the outcome were not favourable to the customer.

Case study Ms T: Adrift for nearly two years and two complaints to the Ombudsman

In 2007 Ms T made two complaints to our office about Centrelink's inaction in reviewing decisions to raise two debts against her. She had requested an ARO review of the decision in May of that year. The office made enquiries and finalised both investigations on the basis that Centrelink undertook to contact Ms T to progress the review.

In August 2008 Mrs T approached our office in relation to the same complaint, as her case still had not been reviewed by an ARO.

In response to this investigation Centrelink advised that the review of the debts had required input from a Complex Assessment Officer (CAO). Although the CAO's report was completed in November 2007, the file was referred back to the ODM instead of the ARO. In October 2008 Centrelink advised that it decided to vary the amount of one of the debts. The ARO review was completed in March 2009, some 23 months after Mrs T had originally sought ARO review of the decisions.

5.17 The importance of being able to provide further information for a review was discussed above at 4.18. This office understands that, ultimately, the need for certainty in decision making dictates that there must be a cut-off date for providing information.³⁵ The following cases illustrate the lengthy delays which can result when a process is designed such that if a particular trigger event does not occur, or does not appear to have occurred (in this case the receipt of a fax) the workflow will cease indefinitely.

Case study Mr U: Waiting by the fax?

As a result of a data matching exercise, Mr U received a notice in March 2008 advising a youth allowance debt as he was not enrolled at an educational institution in 2007. Mr U contacted Centrelink by phone to dispute this, saying he had a letter from his University proving his attendance. He undertook to fax that information.

Centrelink's own records confirmed that Mr U had called on 17 March, 21 April, twice on 29 April and on 5 May 2008, and that during these calls the debt was discussed, as well as his evidence, and his attempts to fax it to them. For each of these occasions, the Centrelink record showed that the relevant CSA was to call Mr U when the fax was received. Centrelink records show that it was not until 12 May that it called Mr U to let him know the fax had been received. Centrelink also advised that on 19 May a decision had been made by the ODM to set the debt aside.

³⁵ Centrelink advises that since June 2010 it has told customers that they have 7 days to provide new information for ODM reconsideration.

5.18 Increasingly, Centrelink is collecting and analysing data on the timeliness of the component steps of its review process. Further analysis of this data is essential to support and achieve targeted improvements to the review process and better information to customers.

Excessive workload

5.19 As in the case study '*Lost letters, crashed systems and heavy workloads*', above, work backlogs have often been blamed for delays in taking review action. The following case highlights the importance of having an appropriately resourced review functions at whatever level.

Case study Mr V: No hardship, no progress

Mr V advised this office that on 5 December 2008 he faxed a copy of his tax notice of assessment to Centrelink with a request that it reactivate his seniors health card. Centrelink did reactivate his seniors health card, but at the same time advised that he would not be qualified for payment of the economic security strategy payment. Mr V disagreed with this decision, and on 31 December 2008 requested a review by an ARO.

The following March Mr V complained to this office that he was yet to receive an outcome from the ARO as to his appeal. In its response to our investigation, Centrelink advised that there was a large backlog of review requests and, as at 23 April 2009, this matter had not yet been examined by an ARO. Centrelink further advised that, as this matter did not appear to involve an issue of hardship, it would not be given priority. In its final response to this office on this complaint, Centrelink apologised for the delay, and noted that it would be increasing staff numbers in the relevant area and improving processes for transferring cases between sites and staff.

PART 6 – IMPACTS OF DELAY

6.1 Centrelink has acknowledged the criticisms which have been made of the ODM/ARO models and its observation on ‘appeal fatigue’ is instructive:

...where customers are required or requested to have an ODM reconsideration, and are then required to see a further review to access their statutory rights of review, they can be less inclined to seek an ARO review for a number of reasons, including appeal fatigue.³⁶

6.2 Delays can be serious and their impacts are many. Long delays can extinguish a customer’s capacity to have a decision reviewed as the recognised phenomenon of ‘appeal fatigue’ sets in. In this state, as in Mr J’s case above (on page 14), the resolve of the potential appellant is worn down to the point where they abandon their claim. The ARC notes:

...opponents of mandatory internal review criticise it as a barrier to access to external review rights. The additional number of steps the applicant must proceed through in order to reach finally external review may mean that persons with meritorious cases will fall victim to ‘appeal fatigue’.³⁷

6.3 Long reviews mean that adverse decisions take longer to be righted. As we saw at 4.30, a significant proportion of reviews and appeals result in decisions being varied or set aside, and the majority of these in the customer’s favour. Regardless of the outcome of a review, it can be very stressful to the claimant, and difficulties encountered during the process might preclude them ever being able to accept the correctness of the outcome of the review once complete.

Payment pending review

6.4 In some circumstances applicants for review of a decision to suspend or reduce a payment are entitled to or can request ‘payment pending review’ (PPR) that is, continued payment while a review is being considered. PPR has the capacity to significantly mitigate the negative experience of review, particularly where delays occur. Its use must be balanced by the risk to both agency and customer that continuing payment to a customer who is found on review not to have been entitled to it may make the payment recovery process more difficult. PPR decisions are themselves subject to ARO review.

6.5 Guidelines³⁸ for Centrelink staff very clearly indicate situations in which PPR *must* be granted, *must* be considered, and *may* be considered and granted:

- during a review relating to an eight week non payment period, PPR must be granted
- where a person receiving a payment at the single rate is alleged to be a member of a couple, PPR must be considered.

Other than those situations, in cases where the decision complained of relates to a matter of opinion rather than fact, and the review is being conducted by an ARO or

³⁶ ANAO Audit Report No. 40 2006-07, *Centrelink’s Review and Appeals System Follow-up Audit*, page 56. Centrelink advises that the Abbreviated ODM process was introduced in June 2007 to address this issue.

³⁷ ARC op.cit. page 16, paragraph 3.10.

³⁸ Centrelink e-References 001.41810 - 001.70180 Payment Pending Review.

the SSAT, PPR *may* be considered at the request of the customer or on the initiative of the reviewing officer. The guidelines also list some ‘obvious situations in which payment might continue’.³⁹

6.6 Centrelink’s guidelines are that ‘a verbal request from the customer is sufficient’ to consider PPR, and ‘the delegate may make the decision to continue payment on their own initiative’.⁴⁰ However, this office has concerns that PPR may falter at the first step because the customer does not have the knowledge or understanding to instigate a PPR consideration, and the reviewing officer does not always take that initiative. The e-Reference on ARO reviews requires an ARO to consider whether PPR is required or appropriate, but the e-Reference on Standard ODM reviews is silent on this issue. There are no prompts for a CSA receiving a request for review to consider whether PPR may be an issue and whether, therefore, a review should be considered by an ARO at first instance.

6.7 Centrelink provides clear guidelines about what are, and are not, relevant considerations in making decisions on PPR. Whether the decision under review will ‘create financial hardship for the customer and their family and/or significantly affect the customer or their family adversely in other ways’ are relevant. ‘Whether payments made pending review can be recovered from the customer if the decision is affirmed’ is not a relevant consideration.⁴¹ e-Reference also says:

There will be cases where the appeal has absolutely no merit (with no evidence or legal argument on which to base a favourable decision) where it may be appropriate to refuse payment pending review on that basis. Customer Service Advisers (CSAs) must not refuse if there is any doubt, however.

6.8 Contrary to these instructions, the experience of this office is that even in some of these mandated cases, staff do not always consider PPR. Even where PPR is considered, as in the case below, inappropriate assumptions can lead to it being rejected and have the effect of exacerbating the applicant’s situation.

Case study Ms W: Working on assumptions

Centrelink cancelled Ms W’s disability support pension on the basis it believed she was living in a marriage-like relationship (MLR). Ms W subsequently requested the decision to be reviewed by an ARO. Shortly thereafter Ms W requested PPR while the decision was being considered by the ARO. Centrelink declined to grant PPR. Centrelink’s decision to decline PPR resulted in Ms W having to depend, in part, on the person she was accused of being in an MLR with, which, on the face of it, may have weakened her position that she was not in an MLR with that person.

We investigated Centrelink’s decision not to grant PPR. In the course of investigation it came to light that Centrelink did not grant Ms W PPR because it strongly believed the ARO’s decision would not go in her favour. In response to this, we referred Centrelink to its own internal procedures regarding PPR in decisions concerning MLRs. These procedures explicitly indicated that the chance of success upon review of a MLR decision is usually not a consideration when deciding whether or not to grant PPR. As a result of drawing this to Centrelink’s attention, it decided to grant PPR to Ms W.

³⁹ e-Reference 109.12100 Continuing payments pending review.

⁴⁰ *ibid.*

⁴¹ *ibid.*

Case study Ms X: Payment pending review?

Ms X's parenting payment single (PPS) was cancelled because Centrelink decided that she was in an MLR. Ms X appealed this decision, but was not granted PPR even though she was experiencing financial hardship. We contacted Centrelink to enquire why Ms X was not offered PPR. Centrelink advised us that as it had strong evidence that Ms X was in an MLR, it was confident its cancellation decision was correct and that granting PPR would cause Ms X to incur a further debt.

After we suggested to Centrelink that it have regard to Ms X's financial circumstances, it reconsidered its decision and restored Ms X's PPS while an ARO reviewed the original cancellation decision.

6.9 Information for customers in relation to reviews should explain the payment pending review mechanisms and the circumstances in which they may apply

6.10 Work practice guidelines should be modified to ensure that in cases where PPR might apply, customers are made aware of PPR prior to choosing their review type, because it is available only during an ARO or SSAT review. Where customers have requested or consented to an ODM review but have not had the opportunity to have PPR explained to them, the review should be escalated to an ARO and PPR should be considered by the reviewing staff and offered to the customer. Staff training should be conducted in support of an informed approach to this discretion.

6.11 Further staff training and auditing of staff practices should be conducted in support of informed consideration of PPR by customers and staff.

Debt recovery pending review

6.12 The Ombudsman considers that Centrelink's approach to debt recovery pending review should be re-examined in light of the rate at which decisions under review are changed, the administrative and others costs of debt recovery action, and the capacity under legislation to 'write off' debts, that is, temporarily suspend debts and their recovery.

6.13 Although Centrelink is obliged to pursue debts owed to the Commonwealth, it has the capacity to write off debts where the customer has no capacity to repay the debt, or it is not cost effective to pursue recovery.⁴² Neither the legislation nor the Guide to Social Security Law refer to the fact of a decision being under review as being a relevant factor in deciding whether recovery should be written off. However, this office queries the cost effectiveness of recovery of debts at least during the 28 days following a request for review, during which period most reviews are completed.⁴³

6.14 As it stands, Centrelink gives its staff clear instructions that:

Just as a customer may request their payment continue pending review, a customer may also request that debt recovery cease while a decision to raise or recover a debt is reviewed. Where a customer has requested a review of a debt, normal recovery action should continue, unless a decision is made to temporarily write off recovery of the debt.⁴⁴

6.15 The experience of this office is that complainants who request a review of an overpayment decision often expect that debt recovery will stop while the review is

⁴² s1236 ss1(a) Social Security Act.

⁴³ In 2009-10, 96% of ODM reviews were completed within 28 days.

⁴⁴ e-Reference 109.12200 Recovering debts pending review.

being carried out.⁴⁵ This is particularly the case where they believe they have given information which casts serious doubt on the correctness of the decision.

6.16 This confusion suggests that those complainants at least have not had the possibility of temporary write off explained to them at the commencement of or during the review process. If this discussion were had, Centrelink staff would be in a position to explain the conditions under which write off can occur, consider any evidence the customer might have in support of their claim for write off, and clarify misunderstandings.

6.17 In deciding whether a debtor has capacity to repay a debt, consideration must be given to whether repayments will put the debtor into severe financial hardship. In considering cost effectiveness of write off, the Guide to Social Security Law says

administrative and legal costs associated with garnishee action or civil action and the application of penalty interest should be taken into account in deciding whether to pursue recovery.⁴⁶

6.18 This office believes that the information given in e-Reference under 'Appeals', which refers both to 'reviews' and 'appeals' has the potential to confuse Centrelink staff in light of the opening advice in the paragraph:

With debts under appeal at the Administrative Appeals Tribunal (AAT), Centrelink will apply a temporary write off if the AAT issue a "Stay Order". This is the only time temporary write off would be applied during an appeal process, see Recovering debts pending review [emphasis added]. If a customer contacts Centrelink to discuss repayment of a debt under appeal, staff should consider the customer's circumstances. If appropriate, a reduced repayment amount may be negotiated, or consider whether a customer's request for a review highlights other issues which indicate write off for another reason is appropriate (e.g. if repayment would place the customer in hardship, temporary write off due to short term hardship may be considered).⁴⁷

That information should be revised to reflect the capacity to write off debts under review, as well as appeal.

6.19 Centrelink guidelines should be amended so customers seeking review of debts are explicitly informed that, where debt write-off pending review is not approved, debt recovery processes will continue. Customer information should explain the debt write-off pending review mechanisms and the circumstances in which they may apply, and customers should be given the opportunity to present information which would support write off of debts during reviews.

6.20 Particular consideration should be given to the cost effectiveness of writing off debts while the decisions that created them are under review.

Implementation of a decision

6.21 Delay also occurs at the implementation of review decision stage. e-Reference states that an ARO decision in the customer's favour must be

⁴⁵ If a request for review is coded on the APL system a debt arising from the decision under review is not transferred to a mercantile agent for three months from the date of the review's finalisation. In the case studies '*Lost letters, crashed systems and heavy workloads add up to five month delay*' and '*When is a complaint a request for review*' debts were referred to mercantile agents because the review requests had not been recognised and acted on as such.

⁴⁶ 6.7.3.10 Guide to Social Security Law, Cost Effectiveness Issues.

⁴⁷ e-Reference 107.12510 – Temporary write off of debts.

implemented by the ODM within seven calendar days.⁴⁸ However unexplained delays occur, as in Mr Y's case below. Also of note is a practice often cited to this office by Centrelink of its waiting until the expiration of the time allowed for it to review a tribunal decision (28 days) before it implements that decision. The implementation of decisions varied or overturned by tribunals has recently been the subject of an audit by the ANAO.⁴⁹ It recommended streamlining the identification of cases which might be subject to further appeal and establishing clear timeliness standards for the implementation of decisions in order to minimise the financial impact on vulnerable customers. The Ombudsman's office contributed to that audit and supports those findings.

Case study Mr Y: Acting on a new decision

Mr Y approached our office and complained about the delay in processing his Newstart allowance claim which was rejected on 10 February 2009, but overturned by an ARO on 6 March. The ARO substituted a new decision that Mr Y's claim for allowance be assessed from 6 January 2009 without the need to provide a form Mr Y had successfully argued was not relevant. Despite this, Mr Y's claim was not processed until 21 April. Centrelink was unable to explain this delay.

⁴⁸ e-Reference 109.11200 Authorised Review Officer (ARO).

⁴⁹ ANAO, 'Centrelink's Role in the Process of Appeal to the Social Security Appeals Tribunal and to the Administrative Appeals Tribunal', Report No 16, 2010-2011, pages 21-22.

PART 7 – KEY FINDINGS, RECOMMENDATIONS AND AGENCY RESPONSE

7.1 This investigation looked at Centrelink’s internal review model. Through our investigations into complaints to this office some recurring themes emerged and specific recommendations have been made as a result. Key findings of this report are that:

- customers have a right to ARO review
- any internal review model which channels or persuades customers to one form of review over another should be based on achieving the best outcome for the customer with least effort required on their part
- ARO reviews are distinct from ODM reviews (particularly abbreviated ODM reviews) in a number of ways, and while some of those differences are clear, further analysis is required to establish the extent of those differences and how they impact on the customer experience of internal review
- the differences between types of review is not sufficiently explained to or understood by customers
- customers who request reviews through different channels are potentially disadvantaged by different levels of information about the review process and the choices open to them
- the legal basis for Centrelink’s approaches to deemed withdrawal of request for ARO review and escalation of reviews from abbreviated ODM to AROs require further examination
- legislative and procedural changes should be effected such that any non-ARO review which does not deliver the outcome sought by a customer is escalated to an ARO without further request from the customer
- prioritisation of reviews exists in some instances, but does not uniformly consider the complexity of the case, vulnerability of the customer, and severity of the decision consequence for the customer
- the role of additional information in changed decision making is potentially significant but not known. As a corollary to this, systemic weaknesses which allow reviews to stall indefinitely while further information is sought or considered should be identified and addressed. Staff and customers should be aware of:
 - exactly what information is essential
 - whether information provided is adequate
- the complexity of Centrelink’s review model contributes to administrative breakdown and administrative drift which are both significant causes of review delay
- customers are not routinely made aware of the options of payment pending review and debt recovery suspension pending review, and in the majority of cases, there is no compulsion or encouragement for staff to consider whether these mechanisms are appropriate.

7.2 I make the following recommendations for action by Centrelink. These recommendations arise from, and should be considered within the context of the report’s detailed discussion and conclusions.

Recommendation 1: Access to appropriate review

- a. Ensure that customers' seeking review are given timely access to experienced, independent and knowledgeable review officers.
- b. Ensure that reviews are referred in the first instance to reviewing officers with the authority and capability to:
 - review the decision about which the complaint was made
 - make decisions on issues which will minimise the impact of decisions under review, such as payment pending review, and debt write-off pending review.
- c. Ensure that any prioritisation of immediate access to ARO review is determined by factors relevant to the customer's circumstances, as well as administrative efficiency.
- d. Where a review is not conducted by an ARO and does not result in the outcome sought by the customer, it should be escalated to an ARO without further request from the customer.

Recommendation 2: Improving timeliness of reviews

Conduct further and ongoing analysis to identify and remedy causes of delay in all review models, including obstacles to requests for review being recognised, acted on, and monitored within existing review monitoring systems.

Recommendation 3: Limit negative consequences of incorrect decisions pending review outcomes.

In addition to appropriate allocation of reviews to appropriately authorised reviewing officers (Recommendation 1):

In debt cases:

- a. analyse cost effectiveness of suspending debt recovery action through write off during reviews
- b. where this does not occur, clearly advise customers that a request for a review of a decision giving rise to a debt does not, in itself, suspend debt recovery

In all appropriate cases:

- c. provide customers with information about mechanisms such as debt write-off, and payment pending review and the circumstances in which they may apply, and the opportunity to present relevant information to inform decision making relevant to those mechanisms

Recommendation 4: Improving original decisions

- a. Analyse the role of further information in decisions changed on review and:
 - consider options for improving the collection of relevant information at first instance
 - as early as possible within the review process, clearly communicate information requirements to the customer
- b. Conduct ongoing analysis of the circumstances, processes and outcomes of review cases to identify opportunities for business improvement including addressing common areas of misunderstanding by customers and staff.

Recommendation 5: Legislation, policy, and procedural alignment

Work with relevant policy departments to ensure that legislation, policy guides and Centrelink procedures align to support the implementation of these recommendations

Agency Response

7.3 Centrelink was given an opportunity to review and comment on a draft of this report. In response, it agrees to recommendations 2 to 5. In relation to recommendation 1, it notes that it has undertaken considerable work to improve the customer experience and outcomes in internal review, and specifically, that 'Centrelink has commenced the design and testing of an enhanced and affordable internal review process aiming to replace the current ODM checking process'. More information on that trial, as provided by Centrelink, is at Attachment A: Centrelink's Internal Review Trial.

ABBREVIATIONS AND ACRONYMS

APL	Appeals Database
AAT	Administrative Appeals Tribunal
ANAO	Australian National Audit Office
ARC	Administrative Review Council
ARO	Authorised Review Officer
CAO	Complex Assessment Officer
CSA	Customer Service Adviser
CSC	Customer Service Centre
DEEWR	Department of Education, Employment and Workplace Relations
DSP	Disability Supported Payment
ESSP	Economic Security Strategy Payment
FAA Act	Family Assistance Administration Act
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
FTB	Family Tax Benefit
HSP	Household Stimulus payment
MLR	Marriage-Like Relationship
ODM	Original Decision Maker
PBS	Pensioner Bonus Scheme
PPR	Payment Pending Review
PPS	Parenting Payment Single
SSA Act	Social Security Administration Act
SSAT	Social Security Appeals Tribunal
FAO	Family Assistance Office

ATTACHMENT A: INTERNAL REVIEW TRIAL

The new framework will reform the current two tiered internal review structure and replace it with a new process that facilitates quality referrals to Authorised Review Officers (ARO) and increased engagement with the customer throughout the decision and review process.

A trial is under way to test elements of the enhanced internal review framework. The key principles underpinning the development of the new framework are designed to ensure;

- It is consistent with the current legislative framework and the requirements of administrative law principles.
- The customer receives the correct information about their review rights.
- A single point of entry for review of decisions to improve ease of access.
- Removal of the current Original Decision Maker checking process.
- Increased transparency for customers about the process.
- Improved timeliness for customers in achieving an outcome.
- The framework is tailored to the individual circumstances of the customer, using a triage approach.
- Feedback mechanisms to improve the quality of decision making.

This model encompasses suggestions and recommendations from key bodies such as the Commonwealth Ombudsman, Australian National Audit Office and the Social Security Appeals Tribunal.

Centrelink has extended an invitation to the Commonwealth Ombudsman to work with the design and review of the new process.

As previous Budget submissions (in 2003 and 2007) seeking funding for additional AROs were unsuccessful, this model is designed to be affordable and within current funding arrangements.