



Submission by the Commonwealth Ombudsman

INQUIRY BY COMMUNITY AFFAIRS COMMITTEE INTO THE FAMILY ASSISTANCE AND OTHER LEGISLATION AMENDMENT (2008 BUDGET AND OTHER MEASURES) BILL 2009

Submission by the Commonwealth Ombudsman, Prof. John McMillan

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INTRODUCTION AND SUMMARY

On 19 March 2009, the Senate referred the provisions of the Family Assistance and Other Legislation Amendment (2008 Budget and Other Measures) Bill 2009 (the Bill) to the Senate Standing Committee Community Affairs. The Committee has invited submissions on the Bill.

The Bill contains amendments to the:

- Payment of family tax benefit (FTB), by removing the Australian Taxation Office from delivery of the FTB
- Review of income management regime decisions by enabling the Social Security Appeals Tribunal (SSAT) to review a decision under Part 3B of that Act relating to a person who is subject to the Northern Territory income management regime.
- Community Development Employment Projects (CDEP) Scheme by implementing the government's announced reforms to the CDEP program.

The Bill provides that all substantive measures are to commence on 1 July 2009.

BACKGROUND

The office of Commonwealth Ombudsman is established by the *Ombudsman Act 1976* to investigate administrative actions by Commonwealth agencies. The Commonwealth Ombudsman safeguards the community in its dealings with Australian Government agencies by:

- correcting administrative deficiencies through independent review of complaints about Australian Government administrative action
- fostering good public administration that is accountable, lawful, fair, transparent and responsive
- assisting people to resolve complaints about government administrative action
- developing policies and principles for accountability, and
- reviewing statutory compliance by law enforcement agencies with record keeping requirements applying to telephone interception, electronic surveillance and like powers.

The Ombudsman's office received about 40,000 approaches and complaints in 2007-08. As well as cases generated by complaints, the Ombudsman's office conducts investigations on an 'own motion' basis into wider systemic issues in public administration. The office has extensive investigation powers, but prefers to investigate with less formality and greater efficiency where possible. Given the nature of the Ombudsman's role, the comments and observations in this submission relate to the issues the office has identified through the complaints it has received. These observations might usefully inform the Committee's considerations of the proposed legislation.

RESPONSE TO TERMS OF REFERENCE

Streamlining payment of family tax benefit

The Commonwealth Ombudsman welcomes the regularisation of arrangements for Family Tax Benefit claimants, and the requirement that Actual Taxable Income (ATI) be verified to determine entitlement.

We note that changes to requirements for a claimant's partner to also provide proof of ATI is likely to result in delayed payment of lump sum FTB for those claimants who are self-employed, and who generally lodge their tax return later in the year than PAYG claimants. This group commonly avoids being paid FTB fortnightly because of the difficulty of estimating income, and the desire to avoid a debt. They may, therefore, feel disadvantaged by the change.

The Ombudsman's remaining concern would be that the changes be clearly communicated, through tax agents and elsewhere, so that those people who have previously had little awareness of FTB as a component of their tax refund or processing are not left unaware of their capacity to claim FTB through Centrelink, both for the current and previous years.

Review of income management regime decisions

Ombudsman's role in the NTER

When the Australian Government's Northern Territory Emergency Response (NTER) commenced in June 2007, the Ombudsman's office set up an Indigenous Unit with a particular focus on handling complaints about the NTER. The purpose of this unit is to:

- conduct outreach to the Indigenous communities in the Northern Territory to provide information about the role of the Commonwealth Ombudsman's office, to take complaints from community residents about the administration of the NTER and to obtain general feedback and information
- investigate complaints about the NTER and provide a resolution to the issues raised
- identify systemic issues and work with government agencies and key stakeholders to improve public administration and resolve complaints. Such improvements include addressing gaps in service delivery and improving policies and procedures to address specific issues that arise.

The Ombudsman's office has played an active role in overseeing the implementation and administration of the NTER measures. This oversight role has been valuable in ensuring accountability and transparency of the NTER measures and, more broadly, for improving service delivery to Indigenous communities.

Since August 2007, the Ombudsman's office has visited approximately 44 of the 73 prescribed communities and 23 town camps in the Northern Territory and effectively engaged with a large number of Indigenous Australians. We have developed cooperative working relationships with government agencies and key stakeholders in the communities and significantly increased awareness of the role of this office. Approximately 650 complaints have been received in relation to the NTER and other

Indigenous programs delivered in the Northern Territory since the establishment of the Indigenous unit.

Merits review of income management

The Commonwealth Ombudsman supports the amendment to allow for people subject to income management decisions to seek merits review by the SSAT. This provides another important avenue for people seeking review of government decisions, and for strengthening accountability and public confidence in the administration of income management.

It should be noted however that whilst the expansion of merits review to income management decisions is important, it will only have limited application for those seeking review of government administration in this area. The majority of income management related complaints and issues reported to the Ombudsman's office are not matters which would be reviewable on their merits by a tribunal. They rather relate to issues of implementation and administration, including:

- the level of communication and provision of information to people about income management and how it works
- the way in which people access their income managed funds, check balances, transfer money and obtain statements
- confusion surrounding what income managed funds can be used for
- the allocation of income managed funds to priority needs
- accessing income managed funds with BasicsCards.

In addition to providing an avenue for investigating the individual complaints, the Ombudsman's office has provided significant feedback to agencies in relation to these issues and has contributed to improvements to the administration of income management.

Even in an area where the SSAT is likely to have jurisdiction, such as exemption from income management, the issues that have come to our attention are unlikely to be matters the SSAT would follow up. Issues that have been raised and that may be of interest to the Committee include:

- people expressed confusion about income management and the criteria used to determine whether someone would be subject to it, this affected people's ability to challenge their inclusion in the income management regime
- there was a lack of information about income management exemptions, the circumstances, which people could apply for an exemption and how they should go about doing this
- the requirement for people to provide evidence of the fact that they reside permanently in an area which is not subject to income management can be difficult. We observed that despite Centrelink's database showing that a person resided within a prescribed community, there were some instances where a person disputed this but had difficulty providing the required evidence.

Complaints to our office highlight that culturally appropriate communication and the provision of clear information is paramount in ensuring that people understand the income management regime, how it affects them and what process they should undertake if they wish to challenge a decision or apply for an exemption. The insights

from complaints to our office may be useful in considering how this expansion of merits review rights for income management decisions will be instituted. In particular, consideration should be given to:

- The way in which people will be provided with information about their review rights and the process. It has been the experience of this office that information needs to be accessible, available in appropriate languages and available through a variety of methods. It is also important that when something changes, ie the introduction of review rights, people are advised of the changes and provided with the opportunity to ask questions and seek further information.
- It has been our experience that outreach visits to the prescribed communities is the main way in which we receive complaints and effectively provide information about the role of the Ombudsman's office. It is envisaged that this would also apply to the tribunal's outreach activities and explanation of its role.
- SSAT processes including hearings, notification of decisions, provision of hearing papers and listing of hearing dates will need to take account of the unique circumstances of people living in remote areas. In particular, access to communication methods, ability to attend hearings, interpreter availability and general understanding of the process and requirements by review applicants are all major factors in ensuring that the service is accessible to people affected by income management.
- The Ombudsman's office has also had to make adjustments to internal timeliness standards when dealing with some complaints relating to the NTER. This is a result of difficulties associated with communicating directly with complainants in remote communities. This may also be an issue for the SSAT.

Community Development Employment Projects Scheme

The Ombudsman's office receives a large number of complaints and feedback about various aspects of the CDEP. Those issues which may be of interest to the committee include:

Communication

When the NTER was implemented and the CDEP was removed and replaced with income support, people complained to this office about the confusion, the lack of understanding as to how they would be affected, what the change meant for the work they were undertaking as part of CDEP and that people had gone without income support payments for several weeks during the transition.

A key element in many of the complaints and issues reported to this office is insufficient communication and access to Centrelink to get further information both about the changes generally and about their individual circumstances. What is clear from these complaints is that important information about CDEP is often not reaching (or not being understood by) the target audience, notwithstanding the existence of formal communication strategies.

The NTER has brought a raft of changes to programs affecting Indigenous people in the Northern Territory; the level of confusion and uncertainty in communities affected by these changes should not be underestimated. Adequate attention must, if these

proposed changes are to be successful, be paid to effective communication strategies including the use of interpreters when visiting communities to explain changes and information brochures produced in local languages. It is also critical to provide follow-up information and ongoing access to further information.

Problems with the welfare model and the two tiered system

The Ombudsman's office has received general feedback and complaints which are relevant to the changes proposed by the bill. These issues include:

- A number of CDEP participants and program support staff have expressed concerns about the psychological effect of reconceptualising CDEP as a welfare program analogous to programs such as work-for-the-dole. Anecdotal information suggests that existing CDEP participants benefit from increased self-esteem as a result of viewing themselves as employed, contributing to their community and not being on 'welfare'. It has been reported that if payments are administered by Centrelink, the psychological benefit of being *employed* may be lost.
- One program supervisor expressed concern about the two-tiered payment regime that will come into effect in July 2009. He believed that such a system will be divisive (there will be those on wages and those in receipt of benefits) and it will be complicated and time consuming for program support staff to administer (in essence they may be required to administer two parallel programs without receiving any additional funding or support to do so).
- Concerns have been expressed that if participants view themselves as ostensibly unemployed they are arguably less likely to view CDEP as a transitional program and are more likely to view it merely as a condition of receiving income support. Viewed in this light the program's underlying transitional focus may be undermined.

Given the multiple barriers to employment faced by this group, the Committee may wish to consider the possible impact of the concerns outlined above. A particular issue is whether recasting CDEP as a welfare program may adversely affect the government's goal of improving employment opportunities for Indigenous Australians. The concern would be that planned changes to this program may have a negative psychological impact upon participants and act to undermine key objectives of the program. In considering these issues, consultation and communication needs to be a key focus when deciding if or how the changes will be implemented.