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## **Submission by the Commonwealth Ombudsman**

# **HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON TAX AND REVENUE**

**INQUIRY INTO THE AUSTRALIAN TAXATION OFFICE  
ANNUAL REPORT 2012-13**

Submission by the Commonwealth Ombudsman, Colin Neave

**January 2014**

## INTRODUCTION

The Commonwealth Ombudsman is also the Taxation Ombudsman and, in that role, focuses on investigating complaints from taxpayers and tax professionals about the administrative actions of the Australian Taxation Office (ATO).

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 may also investigate matters of his own motion and draws on complaints to identify potentially systemic problems in government administration.

In the area of taxation, the Ombudsman works cooperatively with the Inspector-General of Taxation and the Auditor-General to avoid duplication of oversight activity and ensure the most efficient use of resources.

## RESPONSE TO TERMS OF REFERENCE

The Tax and Revenue Committee has invited a submission from the Ombudsman to its inquiry into the ATO's Annual Report 2012-13. This submission reflects the Ombudsman's experience gained through dealing with complaints about the ATO in 2012-13 and in the first half of the 2013-14 financial year. It sets out complaint trends and patterns, including common issues, and describes the interaction and work done by the Ombudsman with the ATO over the period to address and resolve some of the key issues.

### **Complaints received by the Commonwealth Ombudsman regarding the Australian Taxation Office**

From 1 July 2012 to 30 June 2013 the Ombudsman received a total of 1795 complaints about the ATO, which represents a decrease of almost 34% on complaints received in 2011-12. While the number of complaints received by the Commonwealth Ombudsman in 2012-13 has reduced across the board, the decrease in complaints about the ATO is larger than for other comparable agencies.

Table 1: Commonwealth Ombudsman – Complaints about the ATO received, finalised and investigated - three year trend

Received and finalised	2012-13	% change	2011-12	% change	2010-11
Total received	1795	-34%	2717	5%	2589
Total finalised	1821	-34%	2755	6%	2604
Investigated	528	-9%	579	-26%	787
% investigated (finalised)	29%		21%		30%

## Remedies

Where in the course of an investigation the Ombudsman identifies a problem or a deficiency with an action taken by an agency, an important part of resolving the complaint is identifying what outcome or remedy might be available for the complainant. The following table sets out the most common types of remedies achieved following the investigation of a complaint about the ATO.

Table 2: Commonwealth Ombudsman – Top five remedies (investigation outcomes) for complaints about the ATO – three year trend

Rank	Remedy provided	2012-13	2011-12	2010-11
1	Explanation e.g. <i>better explanation provided to complainant</i>	55%	48%	34%
2	Action expedited	12%	13%	10%
3	Financial remedy e.g. <i>refund issued</i>	11%	17%	28%
4	Apology	10%	10%	9%
5	Other – e.g. <i>changed decision, independently resolved by agency, changed procedure.</i>	12%	12%	19%

In 2012-13, there was a significant change to the number of recorded explanation and financial remedies:

**Explanation** - Consultations between the Ombudsman and the ATO revealed that the majority of complaints were resolved following the provision of a better explanation to the complainant. This led to the trial of a program of referral back to the ATO of complaints previously considered finalised by the ATO but, following an approach to the Ombudsman by the taxpayer, later assessed by the Ombudsman as containing an issue that could easily be resolved by the ATO, given a second chance.

The process allowed the ATO a further opportunity to review complaint issues, potentially alleviating the need for an investigation by the Ombudsman. This typically provided a quicker resolution of the issue(s) for a taxpayer than if the Ombudsman conducted an investigation. It also provided the ATO an opportunity to learn from these complaints and further improve its complaint handling practices.

This trial program was named the Ombudsman Review Request and as a result of the referral, the ATO took the opportunity to address the issue and to provide a more detailed or better explanation to the complainant.

Following the success of this trial, the Ombudsman and the ATO agreed to formalise the referral program and the Second Chance Transfer program (discussed later) commenced 1 July 2013.

**Financial remedy** – The percentage of complaints investigated by the Ombudsman in 2012-13 concerning income tax refund delay has reduced from the previous years (see common complaint issues below).

### Common complaint issues

Complaints to the Ombudsman regarding the ATO in 2012- 13 were most commonly about:

1. income tax refund delay - *lodgement and processing, pre-issue integrity checks*
2. debt collection actions – *payment arrangements, bank account garnishee, bankruptcy proceedings*
3. audit actions – *selection, outcome, auditor behaviour*
4. superannuation - *unpaid superannuation entitlements owed to employees, excess contributions tax*
5. other matters – *complaints about the ATO's handling of complaints, registration actions (Tax file number (TFN) and Australian Business Number (ABN)), penalties.*

Chart 1: Commonwealth Ombudsman - Common ATO complaint issues 2012-13

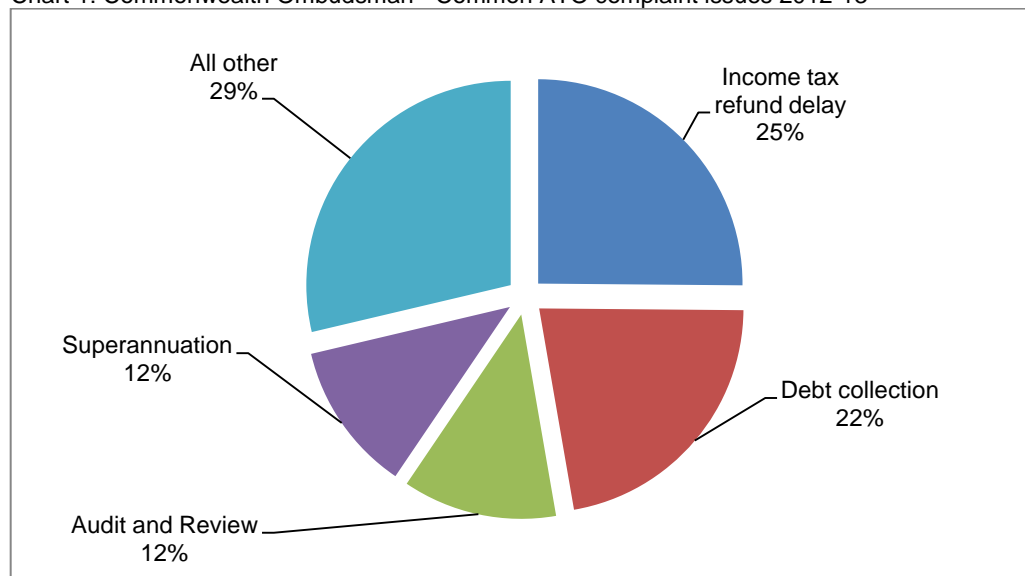


Table 3: Commonwealth Ombudsman – Common issues in finalized complaints about the ATO – three year trend.

Issue	2012-13	2011-12	2010-11
Lodgement and Processing	25%	39%	47%
Debt collection	22%	16%	14%
Audit and Review	12%	12%	6%
Superannuation	12%	8%	7%
Other	29%	25%	26%

■ Decreasing 
 ■ Maintaining 
 ■ Increasing

### **Income tax refund delay**

The annual lodgement of income tax returns and the impact of the ATO's income tax return integrity (ITRI) checking activity remain significant factors in complaints about the ATO.

The effect of ITRI first came to our attention in 2011 following an influx of complaints concerning delay. In response to investigations by, and meetings with the Ombudsman's office, the ATO undertook to improve its service delivery by, among other things, improving its communication with taxpayers and tax agents.

We are pleased to note that the ATO took into account the feedback provided by this office and has improved its communication with taxpayers.

The percentage of complaints investigated by the Ombudsman in 2012-13 concerning income tax refund delay has reduced from the previous years.

### **Debt collection**

Debt collection remains a persistent cause of complaints to the Ombudsman. A common theme we identified involved complainants who said that the ATO had garnisheed their bank account to pay a debt and/or would not agree to a payment arrangement proposed by the complainant.

The Ombudsman recognizes that the ATO has an obligation to ensure that taxpayers pay the correct amount of tax under the law. We acknowledge that the decision to use garnishee action as a means of collection is open to the ATO to make. The ATO has demonstrated that it has continued to improve its response to cases involving hardship and exceptional or unusual circumstances.

The Ombudsman does not usually investigate ATO's decisions on debt payment arrangements. However, where the complaint involves exceptional or unusual circumstances relating to hardship, the Ombudsman may refer the matter back to the ATO through the Second Chance Transfer program (discussed below), for reconsideration.

### **Audit and Review**

Complaints about ATO audit activity commonly relate to case selection, substantiation or a delay in finalizing the audit.

Each year, the ATO uses specialist technology to identify and review income tax returns and Goods and Services Tax (GST) claims which may contain incorrect or inadequate information. Claims outside normal occupation or industry ranges are subject to a thorough review either before a refund is issued or as part of a post-refund data matching exercise.

Complainants typically contact the Ombudsman when they:

- do not understand why they or their business have been selected for an audit
- are concerned at the amount of documentation the ATO has asked them to provide to substantiate their claims
- believe the audit is taking too long to finalize
- disagree with the ATO's decision to extend the audit beyond the terms initially advised, to include earlier periods/years.

Generally, the Ombudsman does not investigate complaints regarding the ATO's case selection decisions and compliance check processes unless there are exceptional or unusual circumstances. The Ombudsman recognizes the ATO's responsibility to ensure that taxpayers pay the correct amount of tax under the law and considers that case selection and compliance check processes are consistent with the ATO's role and responsibilities.

The law provides taxpayers with the explicit right to object and to seek review of ATO's decisions, including a review by the Administrative Appeal Tribunal. We encourage taxpayers who disagree with an assessment made by the ATO to exercise their objection and review rights.

### **Superannuation**

Complaints about unpaid superannuation contributions are typically made by employees who are unhappy with the ATO's response to their enquiry. Concerns often focus on delay, lack of information or uncertainty about the ATO's progress towards collecting unpaid superannuation.

Investigations conducted by the Ombudsman revealed that the ATO treats enquiries about unpaid superannuation seriously but privacy and taxpayer confidentiality provisions restrict it from providing information concerning the tax affairs of a party (the employer) to anyone other than that party or an authorised representative.

Overall, we found that the ATO follows due process in dealing with superannuation enquiries. In consultation with the Ombudsman, the ATO reviewed its advice letters to improve their clarity.

### **Other issues**

Three other complaint issues were the subject of discussion and feedback provided by the Ombudsman to the ATO during the year:

- Australian Business Number (ABN) deregistration
- access issues (digital initiative)
- non-lodgement by individuals which affects others.

**ABN deregistration** – In December 2012 the ATO informed the Ombudsman about its work to improve the currency and accuracy of the Australian Business Register (ABR).

The ATO's Registrar Initiated Cancellation program aimed to remove from the Register the estimated 25% of ABNs which were inactive or no longer valid. The anticipated rise in the number of complaints to the Ombudsman concerning the deregistration action did not occur. We did receive a steady number of complaints relating to registration as well as deregistration, however, ATO complaints reporting<sup>1</sup> indicates that the ATO received a substantial number of complaints. It appears that the ATO managed the complaints it received well and, as a result, taxpayers did not escalate their complaints to the Ombudsman.

The same ATO report indicates that approximately 80% of complaints concerning ABN registration were resolved by the ATO in favour of the complainant and that many ABNs were automatically reinstated. This suggests that the ATO gives

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<sup>1</sup> ATO Complaints and Community Feedback Report – October 2013

reasonable and fair consideration to the complaints. However, the 80% upheld rate could also indicate that the original registration/deregistration decision may have been made in haste or without adequately considering all relevant facts. We have asked the ATO to consider this matter and to examine the reasons for the high rate of upheld complaints in this area.

**Access issues** – On 26 June 2013 the ATO advised the Ombudsman that, in line with the whole-of-government ‘digital first’ initiative, the ATO will transition taxpayers who are able to transact electronically, to lodge online rather than via paper returns. For the 2012-13 income tax lodgement period, based on research and results of trials conducted in the previous tax year, the ATO reduced the availability of some of its paper products and allowed online lodgement only for some types of returns.

The most significant changes are:

- Individual Tax Return Instructions (previously referred to as Tax Pack) are no longer available through newsagents; instead paper products are only available by order from the ATO (phone, online or shopfront). The ATO launched a Tax Time magazine, a digital publication which contains the Individual Tax Return Instructions and made available an application for tablet devices
- business and professionals items users must lodge via e-tax or a tax agent
- the telephone lodgement option has been removed for the short tax return (simpler income tax returns).

ATO advised that paper lodgers who require more complex information but who are unable to go online continue to be supported by:

- resolution of taxpayer queries by telephone
- if not resolved by telephone, paper instructions are provided to the taxpayer.

The Ombudsman received a small number of complaints about the ATO’s decision to limit or remove paper products. A common theme was that the move was seen as discriminatory against older Australians and those who did not have access to a computer or were in a remote location with limited access to support.

Some complainants expressed concern that, in light of frequent public warnings about computer safety and the need to protect personal information, the move to on-line lodgment increased their exposure to cybercrime.

The Ombudsman referred these complaints back to the ATO under the Second Chance Transfer arrangement (see below) to allow the ATO to provide direct assistance to resolve the issue and a more detailed explanation of the reason for the change in service arrangement.

Whilst the Ombudsman recognizes the ATO’s decision was in line with Government initiative, access issues arising from the ‘digital first’ initiative are not unique to the ATO. The Ombudsman has received similar complaints concerning other agencies and new measures (like the online renewal requirements of the Business Name Register), and the Ombudsman will continue to provide feedback to agencies to help ensure the negative effects of such changes are limited as much as possible.

**Non-lodgement by individuals which affects others** – a regular source of complaints to the Ombudsman is from Child Support payees concerned that their former partner (the payer) has not lodged one or more tax returns. This, in turn, means that the payee may not receive the correct amount of Child Support payment, which is assessed according to the taxable income of the parents

Complaints made to the Ombudsman are typically that the ATO did not take adequate action following a call to its Tax Evasion Referral Centre, and that the ATO did not provide the complainant with information about what action the ATO took in response to the call. Callers often also complain about the actions of Child Support in pursuing the matter with the payer and report the perception that they are caught between the ATO and Child Support and are powerless to resolve the matter.

A similar but less common complaint received by the Ombudsman relates to non-lodgement and Family Tax Benefit (FTB) recipients.

Many families receive FTB as a fortnightly payment rather than as a single payment at the end of the year. The fortnightly payment is calculated according to their estimate of their taxable income for the financial year.

After a person lodges their tax return, Centrelink reconciles the FTB already paid (fortnightly) by comparing the person's income estimate with the ATO's assessment and either tops-up the payment or raises a debt for overpayment. If the person (and/or their partner) fails to lodge a tax return within two years of the end of the financial year, Centrelink raises a debt for the full amount of FTB paid for that financial year. Since 1 July 2013, this period has reduced to 1 year.

We have received complaints from FTB recipients who were asked to repay the FTB they received because, although they had met their own tax obligations, their partner (or former partner) had not. As a result, Centrelink required the recipients to repay money that they were entitled to receive, in circumstances where they could not influence their partner (or former partner) to lodge the tax returns that would allow the ATO to confirm their family income.

Past Ombudsman investigations concerning action taken by the ATO in response to calls made to its Tax Evasion line, revealed that the ATO generally took appropriate action in response, even though the outcome may not have been obvious to the caller. We recognize that privacy and secrecy provisions limit what the ATO may disclose about the taxation details of the person and accept that the ATO is unable to provide specific details of the outcome of its investigation or actions.

The Inspector-General of Taxation conducted a review into the ATO's management of non-lodgement of individual income tax returns<sup>2</sup> and found that *'Overall...the Tax Office is managing the non-lodgement of individual returns well and with sophistication within the current legislative framework'*, and recommended that *"The Tax Office should progressively increase, where appropriate, the use of default assessments to further support lodgement compliance."*<sup>3</sup>

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<sup>2</sup> Inspector-General of Taxation - Review into the non-lodgement of individual income tax returns, 11 June 2009.

<sup>3</sup> Key recommendation 6



On 22 May 2013 the ATO informed the Ombudsman that it had initiated a project trial involving the use of external collection agencies to follow up on non-lodgment. The pilot involved 18,700 taxpayers (mostly individual and micro-business entities) who had multiple overdue income tax returns and who had failed to respond to previous ATO requests for lodgment. The trial did not specifically target non-lodgment by Child Support payers.

On 28 November 2013 the ATO briefed the Ombudsman on the outcome of the trial, reporting that almost 50% of those targeted lodged outstanding returns and further action was being considered, including firmer measures like the use of the default assessment provisions of Section 167 of the *Income Tax Assessment Act 1936* (which allows the Commissioner to make an assessment of the amount of taxable income).

The Ombudsman is satisfied that the ATO is taking appropriate action to address non-lodgment. However, challenges remain for some Child Support payees and FTB recipients who, through no fault of their own, suffer adverse financial consequences because of the reluctance, refusal or inability of their partner or former partner to lodge one or more tax returns.

We will continue to work with the ATO and other agencies to identify how these issues may be addressed.

## **Complaints not investigated - Second Chance Transfer – referral back to the ATO**

Where we consider that, having regard to all the circumstances and information available to us, the ATO is well placed to offer a better outcome to the complainant relatively quickly, we typically do not investigate but instead transfer the complaint back to the ATO to give it another chance to resolve the issue. This arrangement, which commenced 1 July 2013, is referred to as 'Second Chance' Transfer and usually occurs when:

- the complainant has attempted to resolve the issue through the ATO's complaints process but remains dissatisfied; and
- the complaint is relatively straightforward; and
- we assess that the ATO is capable of offering a better outcome relatively quickly.

In many cases, the outcome may be a better explanation of its action or decision or of the applicable legislation. In other cases, the outcome may be the ATO making a greater effort to expedite an action or a decision.

We have entered into this arrangement with the ATO because we consider that; overall, the ATO has a sound, well established complaints management process. It works because it places the onus on the agency to identify what it could have done better and to contact the complainant within agreed timeframes. This changes the dynamic from the complainant feeling that they have to pursue the agency to persuade it about the validity of their concerns.

Table 4: Commonwealth Ombudsman – complaints about the ATO referred to the ATO under Second Chance Transfer program 1 July to 31 December 2013

Reason for referral	Number	%
Advice/better explanation	44	51%
Deficient action / outcome	21	21%
Delay	20	20%
Inconsistent / unfair	2	2%
Total	87	

## Feedback to the ATO

A key objective of the Ombudsman role is to provide feedback to agencies with a view of improving public administration. For several years, one of the ways we have done this is to advise the agency of our proposal to record administrative deficiency where, having investigated a complaint, we identified problems in the agency's decision or process.

Following a review of our internal processes, the Ombudsman wrote to the Taxation Commissioner in June 2013 to advise that, from 1 July 2013, at the conclusion of an investigation, where we consider that our investigation has revealed something that warrants comment or the making of a suggestion, the Ombudsman will send a notice of finalisation of the investigation and include comments and/or suggestions (section 12 of the *Ombudsman Act 1976*). The ATO occasionally provides comment or further information in response to the Ombudsman's feedback and, as appropriate, we follow-up on the ATO's implementation of suggestions.

Table 5: Commonwealth Ombudsman – s12 feedback to the ATO 2012-13

Causal topic	%	Subject matter
Deficient advice	57%	<ul style="list-style-type: none"> <li>Running balance account – notification of credit amounts</li> <li>Need for better communication with taxpayer and unnecessary delay</li> <li>Bankruptcy suppression indicators</li> <li>Garnishee – advice to taxpayer</li> <li>Delayed explanation</li> </ul>
Deficient action	43%	<ul style="list-style-type: none"> <li>Explanation- evidence rules</li> <li>Excess contributions Tax - Compulsory Release Authority (CRA)</li> <li>System issue – address update delay</li> <li>Education Tax Refund – clarity of taxpayer guide</li> <li>Debt case classification – guidance to staff</li> </ul>

During the year, the Ombudsman provided feedback to the ATO regarding the need for better communication where the ATO identifies an issue that will impact on taxpayers, a point acknowledged by the ATO in its annual report.<sup>4</sup>

It remains the Ombudsman's view that better information provided earlier, will generally reduce the need for a taxpayer to call the ATO to complain or query the ATO's actions. If there is a problem, providing an update on the ATO website, with a link to what to expect and what to do next, would avoid taxpayers having to call the ATO, especially in peak times like lodgement time.

<sup>4</sup> ATO Annual Report 2012-13, Part 3 - External scrutiny and governance

## **Reducing the need to complain – better communication**

We continue to provide feedback to the ATO in relation to its letters and other communication with taxpayers.

The ATO undertook a special project to identify and review the top ten letters that generate contact with its call centres or complaints. The ATO continues to inform the Ombudsman on the progress of the project which is well advanced and covers a cross section of topics.

During the year we raised with the ATO the issue of providing prompt advice to taxpayers about system errors or outages, particularly those which the ATO considers may lead to processing backlogs or unavoidable delays. For example, a problem with the tax file number (TFN) registration system led to a backlog in registrations work, resulting in applicants experiencing a delay in receiving their TFN.

The Ombudsman received a small but not insignificant number of complaints regarding this delay. We suggested to the ATO that providing early advice of the delay on its website would likely reduce the need for applicants to contact its call centres and may prevent subsequent complaints.

We note that the ATO has successfully applied the early advice principle particularly in the Income Tax Return Integrity (ITRI) program, where communication has improved overall. The ATO also reported a reduction of 32% in Tax Time complaints received in 2013, compared to the same period the previous year.