



REVIEW INTO THE ATO'S CHANGE PROGRAM

Submission by the Acting Commonwealth and Taxation Ombudsman,
Mr Ron Brent

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INTRODUCTION AND SUMMARY

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

We have received approximately 220 complaints about the implementation of the ATO's Change Program to the end of May 2010. The majority of these complaints have been about delay in receiving expected refunds. Other main areas of complaint include:

- delay in receiving superannuation co-contribution payments
- delay in receiving a replacement TFN (where the TFN has been compromised)
- government benefits delayed/changed due to information from the ATO not being received by Centrelink
- inadequate communication from the ATO
- inadequate response by the ATO when a complaint has been made.

Our submission provides a number of case studies which illustrate some of these problems. Our office would welcome the opportunity to discuss these cases studies and the outcome of other investigations with the office of Inspector General of Taxation should it require greater detail.

BACKGROUND

All approaches received by the Ombudsman are assessed to determine if we will investigate. The *Ombudsman Act 1976* provides discretion to not investigate complaints under a range of circumstances.

When complaints concern the actions of the ATO, not investigating can include transferring (with the complainant's permission) the complaint to the ATO; advising the complainant that we are aware of specific problems and suggesting the complainant take the matter up with the ATO with a formal complaint; suggesting the complainant use other avenues of review (such as an amendment request or objection) or advising the complainant that we do not consider an investigation is warranted.

The table below provides a summary of the tax approaches we have received over the last three financial years.

Table 1: Complaints received and investigated

	2007–08	2008–09	2009–10 (to 31 May)
Received	1,219	1,422	1,541
Transferred to ATO	292	190	379
Investigations completed	130	321	275

As at 14 June 2010, we had 194 investigations in progress and were assessing 35 new approaches. Fifty-one of these complaints relate to the Change Program.

Table 2 below, lists the top five issues identified in the complaints we have finalised this year (1 July 2009 to 31 May 2010).

Table 2: Top five complaint issues

Topic	Number¹
Lodgement and processing	373
Superannuation	157
Debt collection	149
Change Program	123
Complaint handling	76

RESPONSE TO TERMS OF REFERENCE

Our submission focuses on discussing the errors and delays arising from the Change Program as illustrated by the complaints we have received in the period from January to June 2010.

Identification of any errors and delays

1. Existing backlogs and delays

The impact of delays and problems generated by the Change Program has been exacerbated by the pre-existing delays and backlogs with the ATO's processing prior to the program's income tax deployment in January 2010. As part of the 2008–09 income tax processing, the ATO changed the criteria for checking returns pre-issue. This was referred to as a pre-issue integrity check. The aim of this check was to identify people using unregistered preparers and who may have been making false claims. It was also designed to identify taxpayers who may have been the victims of fraud.

This integrity check identified many more suspect cases than anticipated and the majority of these returns required adjustment prior to issue. The contact with taxpayers and consequent adjustments created an unanticipated delay in processing returns. We were supportive of the integrity measure and worked closely with the ATO on managing complaints about this issue.

Deployment of the superannuation co-contribution and the superannuation holding accounts special account (SHA) in February/March 2009.

We received a significant number of complaints as a result of problems with this earlier Change Program deployment. The effect of which was that the ATO was unable to pay superannuation co-contributions to taxpayers and/or their funds.

This office wrote to the ATO August 2009 noting the inadequacy of some aspects of its management of the problems associated with this release. In particular we noted that:

¹ Note a complaint can have more than one issue

... a full explanation about the extent of the problems encountered as a result of this particular implementation of the Change Program was provided to us in an ATO superannuation brief. However, provision of general advice to taxpayers about the issues encountered was not made available until June 2009, nor was a manual work-around implemented. This has resulted in confusion and frustration for the taxpayers concerned ...

... it appears that the complaint handling processes put in place to handle this systems failure were not fully effective. While I understand the difficulties this situation caused the ATO, I am concerned that ATO might not apply the learning from this situation to future releases of the Change Program, such as the full roll-out of the Integrated Core Processing System ...

We recommended that the ATO carefully consider, in relation to future Change Program releases, how it would:

- identify and implement contingency procedures for possible system failures
- provide timely and adequate advice to taxpayers and ATO staff when such failures occur
- identify and prioritise hardship cases.

The ATO and this office met a number of times in the lead up to the January 2010 deployment. We agreed protocols for ensuring that this office was kept informed of any problems with the system. However, the ATO did not comply with these protocols.

2. Problems identified in January/February 2010

Table 3 below, shows the number of our Change Program related complaints closed in the period January to May 2010.

Table 3: Change Program complaints closed by month

January	February	March	April	May	Total
4	6	20	47	46	123

The complaints we received in January and February about delay were caused by the 'shutdown' of the income tax processing prior to deployment and the staged implementation of full production. We were not concerned at this early stage, the majority of complaints were dealt with by us advising taxpayers that the ATO was undertaking a major system change and that they should be patient.

3. Transfer of data between Centrelink and CSA

In January 2010 Centrelink implemented a change to policy in relation to the payment of family benefits. Clients were required to have their income tax return lodgement up to date by the end of January 2010 to continue to receive their benefits. When this office first started to receive complaints about taxpayers family benefits payments being affected we thought it was due to the backlog created when returns were not processed in January combined with the graduated implementation of full processing.

We had been advised by the ATO that taxpayers could provide a statutory declaration to Centrelink confirming that they had lodged their return with the ATO. We gave this advice to complainants who approached us.

On 19 March 2010, we asked the ATO for advice on problems between it and Centrelink and CSA. We were then advised that there was a data transfer problem and some people's family assistance payments were being affected and that the ATO and Centrelink were working on resolving this problem.

We put in place an escalation process with the ATO where any cases we received where people were claiming financial hardship were escalated for resolution by the ATO's Centrelink Stakeholder manager.

Nevertheless, we continued to receive complaints about this issue. As illustrated in case study 1, it appeared that the process for escalating complaints within the ATO was not always used.

Case study 1

Mr Y complained to us in April 2010 about the delay in receiving his refund. He had lodged his returns before Christmas 2009 and was now claiming financial hardship. Mr Y also complained that he was being denied family tax benefits because his returns had not been processed by the ATO.

When we sought information from the ATO about Mr Y's situation, we were advised that the ATO had not informed Mr Y that he should provide a statutory declaration to Centrelink. Mr Y's complaint had also not been escalated to the appropriate person in the ATO for managing 'hardship' complaints in relation to Centrelink benefits.

We asked the ATO to escalate Mr Y's complaint to the ATO's Centrelink stakeholder manager and his problem with Centrelink was resolved.

4. Delays in receiving refunds/processing returns

Initially we did not investigate cases of delay because we considered the advice from the ATO about what was causing the delays and how it was responding was reasonable given the size of the system change.

Since end of April however we have been investigating all complaints relating to delay. Case studies 2 and 3 illustrate the different types of complaints we have received about delay.

Case study 2

Mr P complained about the delay in receiving his refund. He needed his refund to pay his rent.

He lodged his return in March 2010 and accepted the advice on the ATO website that his return would be processed within fourteen days. On 8 April he called the ATO and advised he was in hardship. He was told processing of his return would be escalated and he would receive his refund in seven days.

On 15 April Mr P called the ATO again and was informed that his claim for financial hardship was started on 14 April, not 8 April, and therefore he had to wait a further fourteen days for processing of his tax return.

Mr P's refund was finally paid to him on 19 May 2010.

Case study 3

Mrs X complained to us about a delay in receiving her 2009 income tax refund. She had lodged her 2009 return through her tax agent in January 2010.

On 12 April 2010 her tax agent contacted the ATO to enquire about Mrs X's refund. Mrs X then lodged a complaint on 12 April 2010 with the ATO about the delay to her refund.

The ATO contacted the tax agent on 13 April 2010 to say that due to technical systems problems some income tax refunds and assessments had been delayed.

On 5 May 2010 the ATO contacted the tax agent to advise her that Mrs X's assessment and refund had issued, and to allow one week for receipt.

On 12 May 2010 the ATO contacted the tax agent to advise her that the refund cheque had been returned due to an incorrect address. The ATO confirmed the correct address details with the tax agent.

On 20 May 2010 the tax agent contacted the ATO to enquire about the non-receipt of the replacement refund cheque.

Mrs X complained to the Ombudsman on 27 May 2010 about the ongoing delay in the ATO issuing her refund after the correct address details were provided. Initial ATO advice on 28 May 2010 to this office indicated that the replacement cheque payment was still pending, and in early June ATO advice was that a cheque was expected to issue by 9 June 2010.

Further enquiries with the ATO on 10 June resulted in advice that on 9 June 2010 the ATO had not issued refunds due to a systems error. No definite date for issue of affected payments could be provided at that time—ATO advice to Mrs X was to allow 3 days for issue.

The above case studies also illustrate that the complaints we have received about delay are affected by a number of factors:

1. The ATO's reluctance to advise taxpayers and other stakeholders about problems until it has identified a solution to the problem. The ATO website update of 15 March 2010 at Attachment 1 illustrates this. The information update was provided when the ATO had stopped processing returns between 9 and 22 March 2010. However it doesn't say that the ATO had stopped processing (because of a problem with displaying the correct taxable income on notices of assessments).

Whilst the ATO could say that it was providing information to taxpayers, this office believes the information provided was very broad and ambiguous. The

communication seems designed for those fluent in 'tax or bureaucratic speak' rather than the average person trying to find out what is happening with their return.

2. Inconsistency of messages between what people are hearing in the public domain and what they hear when they ring up to find out about their return, as demonstrated in case studies 2, 3 and 4.

Case study 4

Mr D, a tax agent, complained to us about a delay in getting a refund for one of his clients. He lodged the return in February 2010 and he was expecting a refund of around \$100,000.

When the tax agent complained to the ATO he was told that 'due to recent technical difficulties some income tax refunds and assessments have been delayed. Advised we are in the process of rectifying technical problems; refunds and notices of assessments are now issuing and will be issuing progressively.' Publicly, the ATO was saying (at the JCPAA hearing of 22 April 2010) that the backlog would be cleared by 30 April 2010.

When we investigated this complaint, it appeared the delay was caused by a high risk refund check unrelated to any Change Program system problems.

Case study 5 also illustrates that because the time taken to resolve complaints has increased² people are becoming less tolerant of any delay especially if it is attributed to the Change Program implementation.

Case study 5

Ms X complained to us in May about the delay in receiving her refund.

Ms X was very angry with the delay in receiving her return and expressed it by saying: 'why do they keep saying it's fixed and putting out press releases saying it's fixed, if it's not?'

We were not able to provide Ms X with a suitable explanation for the delay.

3. Case study 6 illustrates another common complaint situation. A number of our complaints about delay have involved multi-year returns. The ATO has advised that there is no specific Change Program problem which is delaying the processing multi-year returns but they do appear to be taking longer than in the 'old' system. We do not consider this necessarily unreasonable.

Case study 6

Mr T was in financial hardship and complained about the delay in finalising his income tax returns. He lodged multiple returns, for the years 2001-2009, in January 2010 and complained to this office in April that he needed his refund to buy a vehicle so he could travel to work.

² In its March complaint report, the ATO advised that only 73% of its complaints were finalised within its 21 day service standard. By the end of April 2010, this had increased to 75%.

The ATO advised that there were a number of factors contributing to the delay in processing Mr T's returns. Principally it was the lodging of nine years returns at the same time, however other factors such as having Child Support Agency and high risk refund indicators on his account meant that manual processes were required to determine if any amounts were to be withheld. These events happened while the Change Program implementation was occurring, which added further delay.

Mr T received his refund for one year on 14 May 2010 and his other notices of assessment which did not involve a refund were issued on 9 June 2010.

4. Earlier ATO action can also cause delay and in some cases the delay has been exacerbated by the Change Program January deployment, as illustrated by case study 7.

Case study 7

Ms E lodged her 2009 income tax return to the ATO via E-tax during July 2009. The tax return was subject to an ATO pre-issue audit and adjustments to the return were made. The amended notice of assessment (NOA) issued to Ms E during September 2009.

Ms E then lodged an objection to the amended assessment. The objection was allowed in part and the objection decision subsequently issued to Ms E during January 2010. Ms E was then advised of the delay in issuing the amended NOA due to the ATO Change Program system issues. The 2009 notice of amended assessment and a manual refund cheque issued to Ms E during April 2010.

5. The implementation of the ATO's new telephony and data system has also had an impact. In early May we became aware that people were experiencing difficulties in accessing the ATO's phones. Complaints we received indicated that calls would drop out after people had been waiting for some time. This has probably increased people's frustration and lack of tolerance with any other delay from the ATO.

The ATO also advised that this had some impact on systems availability.

6. Understanding by ATO staff of the new system and the subsequent advice they provided to taxpayers was less than adequate. A number of complaints we received indicated that there appeared to be confusion between the dates displayed on the new system in relation to when an assessment was actually processed. The new system has disbursement dates and effective dates so it appeared that at times people were being told that their returns would issue because there was a disbursement date but this was incorrect. Our understanding is that the correct field indicating when an assessment is to issue (that is being sent for printing) is the 'effective date'.

5. Amendment processing

We received a number of complaints about delays in the ATO processing requests for amendments. Case study 8 is a typical complaint about amendment processing.

Case study 8

A tax agent complained to us in May 2010 about a delay his client Mr C was experiencing waiting for an amended notice of assessment (NOA). Mr C was advised on 21 December 2009 that the ATO had accepted his objection to his 2006 notice of assessment, and that an amended assessment, including interest, would be issued "soon". The tax agent queried the progress of the amended assessment on 7 April 2010 and he was told by the ATO that it would be another three months before the amendment issued because the new computer system had some issues and no amended assessments would be issued until the problems were fixed.

However, following the complaint to us the ATO refunded the client an amount of GIC on 21 April 2010.

An ATO Seibel record of 24 May 2010 indicates that an amended NOA had been processed, but the tax agent is still waiting (as at mid June 2010) confirmation from ATO that the amended NOA has been issued.

In his complaint of 8 April 2010 the tax agent wrote:

'... if the problem is the new system installed then we want people outside the Tax Office including the government to be aware from the taxpayer and tax agent's point of view it has caused a great deal of inconvenience and extra work and that the system has obviously not be (sic) successfully installed when it is causing all theses (sic) delays despite high level people in the Tax Office stating in newsletters and the ATO website they think the new system installation has gone well. This is clearly not the case.'

As well as the problems with credit amendments, there is an ongoing problem with ATO initiated amendments and the ATO's inability to calculate shortfall interest charge.

The ATO advised us in early May that to resolve this problem the Commissioner had remitted the shortfall interest charge for the stockpiled amendments. While appreciating the ATO's practical solution to this problem, we have reservations about the equity of this approach. We are not aware of any long term solution to this problem.

6. Resolving tax file number compromise

An unresolved problem with the January implementation is the ATO's inability to rectify taxpayers' accounts where their tax file number has been compromised.

Case studies 9 and 10 are typical examples of this problem.

Case study 9

Mrs B complained to us about a delay her husband, a Disability Support Pensioner, had experienced waiting for a new TFN. Mr B was advised on 2 December 2009 of a possible compromise on his original TFN. As a result of suspected fraud against his TFN, Mr B was assessed as having a level of taxable income in 2009 that caused Centrelink to raise \$2500 debt against his Family Tax Benefit payments. ATO records show Mr B had not lodged an income tax return in either 2008 or 2009.

On 7 December 2009 Mr B applied to the ATO for a new TFN.

On 9 February 2010 Mr B rang the ATO to enquire when his new TFN would be issued. The ATO advised him that due to the Change Program systems upgrade there would be a delay in processing his new TFN. No timeframe for issuing his new TFN was indicated.

Mr B rang the ATO again on 23 February 2010 to enquire on progress of his new TFN. The ATO advised Mr B to call back on 6 April 2010 if he had not received his new TFN before then. Mr B called ATO again on 13 April 2010 and was told that systems delays were continuing. ATO records show that on 4 May in another follow-up call to the ATO, the ATO advised Mr B to "write to registrations".

Mr B complained to the Ombudsman on 4 May 2010 about the ongoing delay in the ATO issuing his new TFN.

The ATO has advised that Mr B was issued a new TFN on 26 May 2010. However, Mr B is still waiting on the ATO to advise Centrelink of his corrected tax record so that his FTB debt is reversed and a refund paid to him.

Case study 10

Ms T complained to us about delay in receiving a replacement TFN. Ms T lodged her 2009 return through her tax agent in July 2009. In early September 2009 the ATO identified that Ms T's TFN had been compromised due to possible identity theft.

On 17 September 2009 the tax agent rang the ATO to enquire on progress of Ms T's return and was told of the delay due to the compromise investigation. The ATO advised an estimated 6 weeks before the matter could be resolved.

On 18 January 2010 a complaint was lodged with ATO re the delay in processing the replacement TFN. On 21 January 2010 the ATO's TFN Compromise Team contacted Ms T to advise her of the delay in processing the new TFN due to systems upgrade.

ATO records show on 10 February 2010 that a new TFN was registered for Ms T but not to be released until all compromised action was completed.

On 19 February 2010 the ATO wrote to Ms T (possibly system generated correspondence) to advise her to lodge her 2009 return but that her new TFN could not yet be provided.

Latest ATO advice provided on 12 May 2010 is that Ms T is receiving weekly updates on the progress of migrating her account information to her new TFN.

The ATO has advised us that the underlying cause of this problem is that the main client register on the ATO's Integrated System (AIS) has not yet been incorporated into the Integrated Core Processing system. Our understanding is that the processes developed by the ATO in the testing environment have not proved suitable in the production environment.

This office is concerned about the long term impacts of this limitation of the Integrated Core Processing system and the integrity of the ATO's client register. We have been receiving regular updates from the ATO on its management of this issue.

CONCLUSION

This office is continuing to receive complaints about the ATO's implementation of the Change Program. Some of these complaints are identifying new issues and we anticipate this situation will continue for the next few months.

We hope that throughout tax time 2010 the ATO will address some of the problems experienced with the January release. This should include:

- providing clearer messages to the community about any delays when they occur, not after the fact
- ensuring that the messages taxpayers receive when they contact the ATO are consistent with public comments being made by the ATO
- ensuring all areas of the ATO and key external stakeholders are aware of problems and identified work-arounds.

ATTACHMENT 1

LATEST UPDATE FROM SECOND COMMISSIONER DAVID BUTLER— 15 MARCH 2010

In brief

We have:

processed more than 1.2 million income tax returns in our new system issued around 440,000 refunds from our new system not released some processed forms where we needed to ensure data integrity, leading to delays issuing some refunds and assessments.

We've been using our new income tax processing system for several weeks now, after stockpiling income tax returns while we prepared to switch from the old system to the new in February.

So far, we have processed more than 1.2 million income tax returns in our new system, including all stockpiled returns and returns received up until the end of February.

We have issued:

- around 440,000 refunds to taxpayers
- around 540,000 notices of assessment, and
- around 380,000 statements of account.

Some of these are still at the printers and will take another few days to be delivered to taxpayers.

At our [last update](#) on 2 March 2010, we were on track to issue the remaining stockpiled refunds and assessments for income tax returns lodged in February by the end of last week.

Last week we experienced some minor problems which have delayed us issuing some of those remaining stockpiled refunds and assessments while we ensure the integrity of our data.

There are approximately 200,000 stockpiled assessments yet to issue (of which we estimate 100,000 are refunds). These include assessments which involve a baby bonus, entrepreneur tax offset, primary production averaging, exempt foreign employment income, special professional averaging, eligible termination payments or superannuation lump sum payments and non-resident withholding tax.

We have fixed these minor problems and can start releasing most of these refunds and assessments from today (with the exception of assessments involving non-resident withholding tax).

We remain committed to ensure the reliability of our processes even if this slows us down.

If you are expecting a refund

For the past two weeks, we have been processing returns within our normal turnaround times.

As usual, some refunds will take longer to issue – for example, if they involve complex tax affairs or we need to check the legitimacy of a claim for a refund.

It can also take a few days from the time we issue a refund for it to reach its destination as it goes through the mailing and distribution process.

If you are expecting a refund and want to check its progress, call us on 13 28 61.

If we take longer than 30 days to process returns, we will pay interest.

Latest on the new look notice of assessment and statement of account

Our new system brings a new look [notice of assessment](#) and [statement of account](#). Following consultation with the community, the new notice of assessment is designed to provide more detailed information about your income tax assessment and is presented in a different format.

The statement of account is designed to keep you up-to-date with your tax account and covers details more broadly than the assessment period covered by the notice of assessment. It provides a summary of payments and transactions made during the statement period and shows any amounts you need to pay or refunds due to you.

We have received feedback about the changes we have made to these forms, which we are carefully considering. As they are in a new format we're closely monitoring their effectiveness to see if we can make any improvements or provide more advice on our website.

Visit our website for [frequently asked questions](#) about the new forms.

Thank you

With the new income tax processing system in place we are confident it will help us provide a better service to the community. However, we recognise that the processing delays have caused problems for some people, and we apologise for any inconvenience. I would like to reiterate our thanks to the tax profession for their input, advice and patience throughout this process. We appreciate their efforts to complete and lodge their clients' 2008–09 returns and look forward to working with them again as the 2010 tax time period fast approaches.

David Butler
Second Commissioner

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