



ACT Department of Treasury

HANDLING OF REVENUE OBJECTIONS

August 2007

Report by the ACT Ombudsman, Prof. John McMillan, under
section 18 of the *Ombudsman Act 1989*

REPORT NO. **01|2007**

Reports by the Ombudsman

Under the *Ombudsman Act 1989* (ACT), the Australian Capital Territory Ombudsman investigates the administrative actions of Australian Capital Territory Government agencies and officers. An investigation can be conducted as a result of a complaint or on the initiative (or own motion) of the Ombudsman.

The Ombudsman also has specific responsibilities under the *Ombudsman Act 1976* (Cth) for matters regarding the Australian Federal Police, the *Freedom of Information Act 1989* (ACT) and is authorised to deal with whistleblower complaints under the *Public Interest Disclosure Act 1994* (ACT).

Most complaints to the Ombudsman are resolved without the need for a formal finding or report. The above Acts provide (in similar terms) that the Ombudsman can culminate an investigation by preparing a report containing the opinions and recommendations of the Ombudsman. A report can be prepared if the Ombudsman is of the opinion that the administrative action under investigation was unlawful, unreasonable, unjust, oppressive, improperly discriminatory, or otherwise wrong or unsupported by the facts; was not properly explained by an agency; or was based on a law that was unreasonable, unjust, oppressive or improperly discriminatory.

A report by the Ombudsman is forwarded to the agency concerned and the responsible minister. If the recommendations in the report are not accepted, the Ombudsman can choose to furnish the report to the ACT Chief Minister or the ACT Legislative Assembly.

These reports are not always made publicly available. The Ombudsman is subject to statutory secrecy provisions, and for reasons of privacy, confidentiality or privilege it may be inappropriate to publish all or part of a report. Nevertheless, to the extent possible, reports by the Ombudsman are published in full or in an abridged version. Copies or summaries of the reports are usually made available on the Ombudsman website at www.ombudsman.act.gov.au. The reports prepared by the Ombudsman are sequenced into a single annual series of reports.

The Commonwealth Ombudsman undertakes the role of the Australian Capital Territory Ombudsman in accordance with s 28 of the *ACT Self-Government (Consequential Provisions) Act 1988* (Cth). Services are provided to the Act Government under a memorandum of understanding. The Ombudsman's office remains independent of the Act Government.

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PART 1—BACKGROUND

1.1 In November 2006, the ACT Ombudsman's office released the report *ACT Department of Treasury—Report on delayed objection decision: Mr A*. The Ombudsman concluded that there was an unreasonable delay of nearly two and a half years in the making of the relevant decision by the ACT Revenue Office¹ (ACTRO), a part of ACT Department of Treasury. Treasury apologised to Mr A for not answering letters and changed its policy on writing to objectors.

1.2 Following that report, the Ombudsman decided to commence an own motion investigation into the handling of objections by ACTRO.

1.3 The Ombudsman's role in considering delays in decision making by ACT Government agencies under s 12 of the *Ombudsman Act 1989* provides for the Ombudsman to give a complainant a certificate of unreasonable delay concerning a decision, allowing the complainant to seek review of the decision in the relevant tribunal. Such a certificate would have been issued to Mr A had the decision on his objection not been made during the course of the above investigation.

1.4 ACTRO issues assessments to ACT taxpayers for unimproved value (UV), rates, dutiable transactions, first home owner grants, home buyer concessions, land tax, and payroll tax. A taxpayer can object to an assessment. However, there are no time limits for a decision to be made by the Objections and Appeals Section (OAS) in ACTRO. If ACTRO disallows an objection, the taxpayer can appeal to the ACT Administrative Appeals Tribunal.

1.5 This investigation examines timeliness, customer service, whether those involved were kept informed of progress and office procedures for handling objections, and does not consider whether or not objection decisions are correct.

¹ In July 2007, ACTRO became the Revenue Management Division of ACT Department of Treasury.

PART 2—INVESTIGATION

2.1 ACT Ombudsman staff met with staff of Treasury, ACTRO and the OAS, reviewed files on 35 decided objections and 73 outstanding ones, and researched relevant Australian legislation. It should be noted that all Treasury staff involved were prompt and cooperative in their responses to our enquiries. The file review concluded in mid-January 2007, and this report is based on the circumstances at that point. Work on objections continues and ACTRO has devoted additional resources to clearance of old cases.

2.2 The following is a discussion of the issues arising out of the file review.

The records management system within OAS

2.3 Division 2.3 of the *Territory Records Act 2002* obliges ACT agencies to create and maintain records management programs. The objection files that were the subject of this review are created and held in OAS. The files are not integrated with the files of Treasury as a whole.

File review

2.4 The review of files revealed a pattern of shortcomings in the records management system used by OAS.

- No file had folio numbers and files were not consistently maintained in an orderly manner to facilitate folioing. Records were often not in date or event order.
- On several files, documents were missing, misplaced or lost, and in some instances had to be obtained again.
- Many files contained poorly recorded information—for example, a telephone conversation recorded on a post-it note. There was no use of forms such as 'record of conversation' or 'note for file'. As a consequence, relevant records were sometimes not readily identifiable and it is possible that all relevant information may not be recorded.
- In a few cases, no paper file for an objection was created. Instead, use was made of a binder in which other documents relevant to the matter were held, and ACTRO documents were added to the binder. In other instances, much file material was held loose or appended to the inside of the file cover.

Analysis

2.5 Our file review suggests that the current records management system is not adequate to ensure that all relevant information is recorded and that records on files are complete, ordered and readily accessible.

Recommendation 1

Practices, procedures and standards for record keeping of objections files should be assessed against best practice and modified to bring them in line with such practice. Consideration should be given to the adequacy of staff training in record-keeping practices.

Treasury response to recommendation 1: Agreed

The ACT Revenue Office will review the record keeping practices of the Objection and Appeals Section and modify those practices where appropriate'

Case management of objections by OAS

2.6 ACTRO carries out its assessment and objection functions under the *Taxation Administration Act 1999* (ACT). The legislation does not contain time limits for the making of a decision on an objection.

2.7 The ACTRO document entitled 'Procedures—Objections and Appeals', last amended on 28 November 2005, specifies a number of the administrative tasks relating to the management of objections and gives timeframes for their completion. For example, it requires preparation of an acknowledgement letter within two working days. The document also details the steps involved in researching and completing objections, but gives no timeframes for doing so. The procedures document also contains the following statement on the provision of interim advice to complainants:

Where objections are 60 days old and no contact has been made with the taxpayer or their representative, the party who has lodged the objection must be advised on the current status of the objection.

File review

2.8 The file review revealed significant problems with case management of objections in the majority of matters.

- In 15 matters (some since decided) no action, or no substantive action, was recorded for periods ranging from two to three and a half years.
- In some matters, draft decisions were prepared but files went into abeyance for long periods. In other matters, objectors were not responded to in a timely way and/or minor matters were finalised only after significant delay.
- A number of matters illustrated inadequacies in the handling of objection fees and acknowledgement of objections. Standards for acknowledgement of objections, as contained in the procedures document, were consistently not met.
- The requirement to provide interim advice was rarely met.
- The forwarding of Australian Valuation Office reports to objectors in UV matters is standard and usually completed quickly. In several cases, however, delays of a year or more occurred before this step was taken.

Analysis

2.9 The current case management system used in OAS is inadequate.

2.10 The file review showed that significant delays, discontinuity of effort and administrative errors are characteristics of the existing system. Aspects of the existing procedures document appear to have been frequently ignored. Objections were not regularly reviewed to check compliance with processing and decision-making standards. Existing procedures appear to have been inadequate to prevent these problems from arising.

2.11 Importantly, the procedures do not set any time frame for decisions on objections to be made.

2.12 As noted above, the Taxation Administration Act does not contain time limits for the making of a decision on an objection. Six of the nine taxing jurisdictions in Australia (including the Commonwealth) have statutory timeframes for the determination of taxation objections and statutory triggers for taxpayer appeals in the event that objections are not determined within specified times.

2.13 For example, in New South Wales the *Taxation Administration Act 1996* (NSW) allows 90 days for the making of objection decisions. The legislation permits the suspension of this timeframe where a person, including an objector, fails to provide relevant information as sought under a taxation law or while there is related litigation underway. In ordinary circumstances, however, once 90 days have passed, the taxpayer is entitled to escalate the objection to the Administrative Decisions Tribunal or the NSW Supreme Court and have the matter treated as an appeal.

2.14 Such deemed decision provisions serve as an incentive for, and adjunct to, effective and timely decision-making processes. They are intended to apply to the small minority of cases that, even given effective processes, cannot be decided in a reasonable time. The provisions give individuals recourse to a remedy if undue delay occurs. Properly viewed, such provisions provide mutual benefit to both agencies and individuals in relation to government decision-making processes. Whether such provisions would be appropriate in the context of the Taxation Administration Act is a matter for the ACT Government and, ultimately, the ACT Legislative Assembly.

2.15 It would not be necessary to change the legislation, however, to substantially improve case management of objections within ACTRO. The system would benefit from the development of timelines for reaching decisions and from greater accountability by ACTRO through the publication of those timelines.

2.16 Some form of ongoing case review would also ensure that individual matters do not fall between the cracks and that a consistent approach is used across all matters.

Recommendation 2

The case management system should be reviewed and improved. Amendments to procedures should include:

- a time period should be specified for the giving of a decision on an objection (with appropriate exceptions), and that period should be publicised
- timelines should be developed for substantive work on objections, such as the researching and drafting of objection decisions
- regular case reviews should be implemented to ensure that performance is consistent across all cases on an ongoing basis
- consideration should be given to the adequacy of staff training in case management.

Treasury response to recommendation 2: Agreed

The ACT Revenue Office will develop time periods for the giving of a decision on an objection and make these timeframes publicly available.

Timelines for substantive work on objections, such as the researching and drafting of objection decisions, will also be developed where it is appropriate to do so.

Regular case reviews will be implemented to ensure that performance is consistent across all cases on an ongoing basis.