



Including Student Assistance Decisions

Opinion

Balancing the Risks

In August 1998 the Commonwealth Ombudsman's Office released a Discussion Paper — 'Balancing the Risks'.

The Paper states:

'The issue of adequate information is crucial in the context of an increasingly complex, highly targeted welfare system, because it determines not only the degree to which people understand decisions, or potential entitlements, but it also directly affects their ability to seek a remedy for errors through mechanisms such as administrative review.'

'Clients raise a wide variety of issues relating to the information they receive [from Government agencies such as Centrelink]. These include problems with information about potential eligibility for payments, information about decisions that the agencies make, and information about changes to legislation which might affect their payments. Complaints are often made to us in the context of the person discovering, often some time after the relevant event, that they have suffered financial loss because, in their view, the agency failed to give them adequate information about a possible entitlement, or adequate information about a decision on an existing entitlement.'

The Discussion Paper points out that while the issues have arisen most frequently in the context of payments by Centrelink, they are applicable across public administration, particularly where services are provided direct to the public.

The Paper states:

- in the current system, the individual is responsible for inquiring about eligibility and entitlements and indeed for asking the right questions about them;
- the individual is responsible for making a claim, and knowing which form of assistance to claim; and
- the onus is on the individual requesting a review of a decision within a statutory time frame, even though they may have no or insufficient information to suggest that a decision may have been incorrect.'

'Agencies such as Centrelink have argued that they do not have the resources to be more pro-active in determining the eligibility or needs of customers, and that it would be too onerous a responsibility for them to do so.'

'When a person makes enquiries about payments, particularly about pos-

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sible entitlements, it is the person who usually must take the responsibility for asking the right questions about their eligibility or entitlement, in the context of a system where they usually have the least knowledge of the rules governing a particular payment.'

The Ombudsman provides a number of case studies highlighting the problems faced by customers who do not know what questions to ask to elicit the specific answers which would allow them to apply for benefits to which they are, or might be, entitled.

The Discussion Paper points out that there is a problem in the customer bearing the onus of deciding whether to appeal an unfavorable decision in that 'the information about the decision, which may be based on complex legislation, is insufficient for the customer to realistically assess whether they should query the decision'.

Further, 'if a person wishes to appeal against a decision by Centrelink, they must do so within 13 weeks of the decision, in order to obtain any arrears back to the date of the original decision. This statutory limit applies even if a person has no basis for knowing they should seek a review because of inadequate information about the decision.' The issue of what information is necessary for a decision to have been 'notified' has been discussed in a number of AAT decisions — *Sting* (1995) 39 ALD 721 held that it was not necessary to advise a person about how the rate was calculated for the decision to have been validly notified, while *McAllan* (1998) 3(5) SSR 62 held that the notice of decision must include enough information for the recipient to understand the main reason for the decision. The latter decision, if followed, would indicate a major change of procedure is necessary.

Further, 'Centrelink cannot backdate payment before the date of claim, even if a person discovers they received incorrect advice about eligibility, which meant they might have been entitled to payments earlier than when they actually lodged a claim'. This 'contrasts with the provisions for Centrelink to assess and recover debts from its customers. Centrelink can recover debts up to six years old ...'

'In our paper on oral advice, we contrasted the level of safeguards provided to customers of such agencies as Centrelink, with those provided to customers in another self-assessment system based on legislation, such as the tax environment . . . [which] enables taxpayers to lodge objections to their assessments for up to four years past.'

'Centrelink has acknowledged it is currently able to answer only one-third of the calls made to its call centres each day.' In the context of a system where the onus is on the customer accessing information in order to make claims, this is clearly a problem.

'One of the major factors in public sector reforms outlined by Mr Moore-Wilton [Secretary, Prime Minister & Cabinet] is the increasing focus on risk management principles in implementing Government programs . . . the self-assessment system which agencies such as Centrelink are required to operate, unfairly transfers a high level of risks to its customers. [these] include a significant number of people who are least able to reasonably accept or exercise "effect control" over those risks'.

The Ombudsman states: 'In our view there is a need to achieve a greater balance in the responsibilities, taken by the service delivery agency, compared to those taken by its customers, in the system it operates. . . . one of the major factors contributing to the high level of risk borne by customers is the quality of information about decisions and entitlements . . .'

Situations in which there are complex income assessments to be made, for example, the way different forms of superannuation are assessed, unfairly transfer the risk to the customer, if the information provided to the customer does not alert her to the possibility that an error has been made. The Ombudsman states: 'We have commented in previous reports that if the self-assessment system shifts the responsibility or risk to customers to such a degree, then the logical extension of that would be for customers to seek review of every decision made within the three months statutory time frame, in case an error had been made. This would create an unworkable situation in which the administrative review process would grind to a halt.'

The Ombudsman also points to the problems facing clients who ask about one entitlement, for example, Child Disability Allowance which should alert Centrelink staff to the possibility that another payment may be available, for example, Disability Support Pension. If staff do not make that connection, the client may miss out on payments for which they were eligible. Can, and should, Centrelink act to check possible entitlements, other than the specific payment which the customer has asked about? Centrelink has held that it 'does not generally have a strict obligation to provide information about possible entitlements unless specific questions are asked'.

The Ombudsman notes that some of the legislation and the programs are so complex that Centrelink staff may have difficulty understanding how the systems work. How can the Agency act to ensure that customers are not disadvantaged by this?

The closing date for submissions on the issues raised by the Discussion Paper is the end of November, but the Ombudsman's office has indicated that it would be interested in any relevant comments even if received later.

Specifically the Ombudsman is inviting comments on:

- How can information be given to customers in a way which makes their review rights meaningful?
- How can the risks which the customer currently bears be reduced?
- How can Centrelink provide information in a way which makes it easier for customers to understand their rights and responsibilities?
- Is Centrelink's current approach to compensation for financial loss due to defective administration a realistic one, in the context of the environment in which the Agency and its customers operate?

[A.B.]

The Commonwealth Ombudsman's Office can be contacted in each State. For people in country areas and Tasmania call 1 300 362 072 to connect with the nearest Ombudsman's Office. The web site is: www.comb.gov.au