COMMONWEALTH OMBUDSMAN

Submission by the Commonwealth Ombudsman

Inquiry into the impact of changes to service delivery models on the administration and running of Government programs

Submission by the Commonwealth Ombudsman, Michael Manthorpe PSM

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Introduction and summary

The Office of the Commonwealth Ombudsman received 18,748 complaints about Commonwealth Government agencies in 2018-19. Some of these were about programs administered directly by government agencies and some were about programs which have been outsourced. In our experience, the binary question of whether or not a program is outsourced does not necessarily provide insight into the quality of the administration of the program or the experience of the customer or client.

Our submission offers some insights on the principles which should be brought to bear in considering the design of government programs, whatever service delivery model is adopted. We have also included in this submission a discussion on principles we consider important for good digital service delivery and automated decision-making.

Background

The purpose of the Office of the Commonwealth Ombudsman is to:

- provide assurance that the organisations we oversight act with integrity and treat people fairly
- influence systemic improvement in public administration in Australia and the region.

We seek to achieve our purpose through:

- 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
- providing assurance that Commonwealth, State and Territory law enforcement, integrity and regulatory agencies are complying with statutory requirements and have sound administrative practices in relation to certain covert, intrusive and coercive powers.

In addition to resolving individual complaints, the Office monitors programs to identify systemic issues which raise concerns about public administration. We engage closely with agencies to improve service delivery, with a focus on how administration affects the most vulnerable members of the community. In addition to formal recommendations in published reports, the Office provides suggestions to agencies through mechanisms such as investigation closure letters and liaison activities.

Response to Terms of Reference

Complaint themes

In 2018–19, the Office received 1,824 complaints about the Department of Home Affairs (Home Affairs) and its operational arm, the Australian Border Force. Of these, complaints relating to temporary, bridging and protection visas made up the largest category (606), followed by citizenship and permanent visas (602). Common issues raised by complainants include dissatisfaction with decisions or administrative processes relating to visa and citizenship applications (e.g. lost documents) and delays in processing times.

In December 2017, the Office reported on the outcome of an own motion investigation into delays in processing of applications for Australian citizenship by conferral[1]. This investigation made four recommendations to the department about the need to provide better guidance to support citizenship decision-making, as well as the need for the department to address capability issues that were affecting the management of the citizenship program.

In 2018–19, the Office received 11,653 complaints about the Department of Human Services (DHS), of which 10,300 related to Centrelink payments, programs and services. The Office has been closely monitoring the implementation of Centrelink's online compliance measures since they were introduced in July 2016. In April 2017 we published a report on *Centrelink's Automated Debt Raising and Recovery System[2]* and in April 2019 we published a second report reviewing the implementation of recommendations from our first report[3]. The April 2017 report found there were significant issues with the transparency, usability and fairness of the system, and that many of these problems could have been avoided by better project planning and stakeholder engagement. The follow-up report published in April 2019 identified four further recommendations regarding recovery fees, debt explanations and the information contained in letters.

In 2018–19, the Office received 1,711 complaints about the National Disability Insurance Agency (NDIA). The most common issues raised were about the NDIA's handling of reviews of plans and decisions. In May 2018, we published a report on the *Administration of reviews under the National Disability Insurance Scheme Act 2013[4]*. The report made 20 recommendations aimed at improving review processes, communication with participants and review timeframes.

In 2018–19, the Office received 10 complaints about the Australian Government Security Vetting Agency (AGSVA). Common issues raised related to the time taken to process security clearance applications and dissatisfaction with the outcome of security clearance assessments.

One of the major themes emerging across all of the complaints we receive about Home Affairs, DHS and the NDIA is around delays. This represents between 20 per cent and 37 per cent of issues raised in complaints across those three agencies. Faced with such high complaints about delays, it is perhaps understandable that agencies may consider options around outsourcing and/or increased use of automated decision-making, as means of more efficiently delivering services. In our experience, people who complain to us are more concerned about the quality of the service they receive, rather than whether the service is delivered directly by an agency or by an outsourced service provider.

The principles of good public administration

In our view there are a number of principles which support good public administration. These principles apply irrespective of whether an agency is delivering a program or service directly or whether the programs are delivered through an outsourced arrangement. Importantly,

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[1] A copy of this report is available at
http://www.ombudsman.gov.au/__data/assets/pdf_file/0032/78980/Citizenship-own-motion-investigation-report.pdf
[2] A copy of this report is available at
http://www.ombudsman.gov.au/__data/assets/pdf_file/0022/43528/Report-Centrelinks-automated-debt-raising-and-recovery-system-April-2017.pdf
[3] A copy of this report is available at
http://www.ombudsman.gov.au/__data/assets/pdf_file/0025/98314/April-2019-Centrelinks-Automated-Debt-Raising-and-Recovery-System.pdf
[4] A copy of this report is available at
http://www.ombudsman.gov.au/__data/assets/pdf_file/0029/83981/NDIS-NDIA-Final-report-on-administration-of-reviews-under-the-Act.pdf

government agencies remain responsible for the quality of programs delivered under outsourced arrangements, and should have effective controls in place to monitor and report on these arrangements. Generally, where a government agency outsources program delivery, the administrative actions of the external provider are also subject to oversight from our Office.

The following are principles of good public administration. These principles are not exhaustive and reflect that government programs or services should be designed to support the participation of the customer or client.

- Lawfulness—decisions about access to government programs should be lawful and supported by relevant legislation and/or administrative guidelines.

- Fairness—people accessing government programs should be treated fairly, impartially and with respect. Decisions should be based on facts and evidence. People should be able to complain about their experience and to seek a review of any adverse decision.

- Transparency—information about the program, including information about eligibility and application, complaint and review processes should be publicly available. People should receive information about administrative decisions which affect them, with a clear explanation of the basis for the decision and any review or appeal rights.

- Accessibility—information about government programs should be easily accessible and available in a variety of formats. Programs and services should also be accessible, with no hidden or unintended barriers to participation if eligibility criteria are met.

- Responsiveness—individuals seeking to access a government program should have their application acknowledged and have access to information about the progress of their application.

- Efficiency—administrative decisions should be taken in a timely manner. Where possible, agencies should publish timeliness performance indicators or average waiting times for different services.

- Vulnerability—people who are particularly vulnerable or experience barriers to accessing services should be actively supported to access government programs. Care should be taken in designing programs to ensure vulnerable people are not left behind by changes in technology, particularly where programs are scaled up quickly.

If contracting out of a service is being considered, there are further risks and issues that also need to be considered. A non-exhaustive list would include:

- Whether there is a viable "market" of providers in existence to deliver the service in the target locations, for the target group, and at the level of quality anticipated; and if not, how the services might be provided or how the market might be developed.

- The need to ensure rigorous, timely procurement processes are built into the planning phase, including among other things a focus on achieving value for money.

- The need to ensure that "perverse incentives" are not built into the contracts that result in services not meeting the policy intent or the needs of citizens.

- The need for effective contract management and monitoring of provider performance; balanced with the imperative not to micro-manage providers to such an extent that desirable innovation, flexibility and local adaptation are stifled.

- Care is also needed to consider the extent to which external providers are given decision making powers that might more appropriately reside directly with Government.

The principles of good digital service delivery

Australian government agencies are increasingly relying on technology in the administration of government programs as part of the Australian Government's digital transformation agenda, including the use of automation in fraud and debt investigation, recovery and prevention. The Digital Service Standards, developed by the Digital Transformation Agency, provide 13 best practice principles for agencies to follow in designing and delivering government services, including understanding user needs, having agile and user-centred processes, security, accessibility, and ensuring the availability of other service delivery channels.

The best practice criteria outlined in the Digital Service Standards are also reflected in the key lessons identified from our Office's own motion investigation into the debt raising and recovery system administered by DHS. These lessons include the importance of:

- effective and high-quality communication with users, particularly the initial communication, which needs to outline what is required from the user and the information they will need to provide to successfully navigate the digital system

- the design of the online platform, ensuring that it is clearly providing prompts for information and warnings about consequences

- systems transparency and accountability

- user support, including consideration of the complexity of systems relative to users and the availability of alternative channels and access.

Our view is that digital systems should have the user experience at the core of their design, with extensive user-testing conducted and continually evaluated during the development stages. The perspectives of external stakeholders, including those of oversight bodies, should also be sought in the design and development stages as a means of addressing and mitigating risks to implementation.

Automated decision-making systems

The lessons and principles for digital service delivery can be applied to understanding how automated administrative decision-making systems can be better designed, implemented and enhanced.

The Office notes the increasing use of automated systems and digital service delivery platforms present significant opportunities to achieve:

- better service delivery outcomes, including better interaction with government and more effective, targeted and timely assistance to those who need it

- savings arising from the effective use and deployment of automated systems, particularly with regard to high volume and relatively simple transactions and services

- more accurate, consistent and transparent decision-making where automated systems are appropriately designed, governed, targeted and administered.

The Office considers there are five different layers of complexity to the ways in which automated systems are currently being used for administrative purposes:

- systems that receive information through an online function or portal, such as a web form that enables a person to enter their information and their contact details for further action by staff

- systems that direct the person to the most effective area for their query to be addressed, capturing information and using specific keywords to direct the query

- automated systems to guide a decision-maker by taking them through the relevant facts, legislation and policy, also closing off irrelevant paths as they go

- automated decision-making with the system receiving the data and then applying a set of rules to come up with an outcome which is then communicated to the person affected

- machine intelligence (or machine learning), including machines able to learn from their interactions with people and the environment, and intelligent systems that can analyse the conversations users have with chatbots to anticipate questions and improve services in a dynamic and responsive way, such as currently used by DHS.

We note there is much current discussion, and rapid emergence of technology, in the area of artificial intelligence. This brings with it the potential that machines can apply learnings in new ways based on data that the machine has accessed without human intervention. Considerable care will be needed in deploying artificial learning to administrative decision making to ensure that the underlying laws and rules pertaining to government services are upheld and to avoid unintended or unconscious bias becoming manifest in the decision making.

The interest of the Office in the development and deployment of automated systems is to provide assurance that administration is procedurally fair, accessible, transparent and accountable, and that the needs of vulnerable users are addressed. In particular, the Office is focussed on:

- the importance of having adequate safeguards in automated decision-making, particularly in decision-making involving discretion

- how automated decision-making and digital service delivery affects the quality of decision-making and accessibility of services for vulnerable people.

Automated decision-making is better suited to those processes that have clear and objective criteria with limited scope for discretionary elements. Decision-making that involves the exercise of judgement or statutory discretions are generally not suitable for automation. An assessment of fraud, for example, is unlikely to be fully automatable if it requires a judgement about a person's state of mind at a particular point in time. Any system that automates a discretion may also be exposed to future legal challenges.

The importance of effective complaint handling for good service delivery

Regardless of what model is used to deliver government programs or services, or by what means decisions in relation to those services are made, it is imperative for good service delivery that decisions are supported by an effective complaint handling process.

A strong complaint handling system is an integral part of an agency's performance management and measurement of customer satisfaction. Well managed complaints can:

- improve trust with customers and the perceived integrity of agencies

- lead to better services for customers

- identify systemic issues or areas for improvement within agencies.

An important aspect of the role of our Office is to assist in building complaint-handling capacity across the Australian Public Service (APS). We do this in a number of ways.

The Office has developed mechanisms ('feedback loops') with some agencies to provide assurance that when we refer complaints back to an agency to resolve, the complaint will be handled appropriately.

On our website we publish resources that define best practice guidance and standard procedures for complaint-handling. A contemporary release of the *Better Practice Guide to Complaint Handling* in the near future will reflect our changing environment.

We deliver a one-day complaint handling workshop, supporting frontline staff to be open to complaints, flexible, impartial and willing to assist. We remind participants about the core principles of building a relationship of trust with customers. The Office also delivers an annual Commonwealth Complaint Handling Forum, providing an opportunity for the sharing and discussion of better practices in complaint handling and management across Commonwealth government agencies.

Through our Complaint Assurance Project we assess complaint handling practices within agencies, through a self-assessment tool and an analysis of relevant policies and practices. We also hold ourselves accountable to the same standards we ask from APS agencies. A report on our findings from the trial phase of this project will soon be publicly released.