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Taking on government bureaucracy – and winning

The ATO, as Australia's statutory revenue collection agency, is charged with administering our federal taxation system, superannuation legislation and other related matters. Centrelink's stated purpose is to help eligible Australians to become self-sufficient and to support those in need. The Department of Veterans' affairs (DVA) has a charter to "work with veterans and their families to design, implement and deliver improved services and support for those who have served in the Australian Defence Forces."

As Australians, we are all familiar with the role government agencies play in administering legislation on behalf of our federal government. Many of us) have experienced first-hand the aggravation in dealing with their systems – behemoths which have evolved to a point which makes fairness almost impossible to achieve, said Adelaide based financial strategist, Theo Marinis.

My most recent experiences (on a personal level and as a client advocate) have involved appeals to the ATO and the Department of Veterans Affairs (DVA) on the basis of erroneous determinations. The processes and systems of both agencies proved ill equipped to enter into any meaningful dialogue which would allow a shift from their highly specious positions – which, in the case of the DVA, resulted in a protracted and stressful dispute.

Eventually (and begrudgingly) both agencies acknowledged that the positions they had taken were flawed, and were forced to reverse their decisions – but not without wasting tens of thousands of dollars of taxpayer funds over trivial amounts, as well as creating undue mental stress for my client.

In my own case, after receiving the ATO's advice that I had overcontributed to superannuation, owed additional tax, and would be charged an 'Excess Concessional Contributions Charge' of $215, I was faced with a decision. A check of my records satisfied me that the determination was in error and was, in fact, based on incorrect information provided to the ATO by my superannuation fund.

Was it worth trying to rectify the error, or was it simply more expedient to pay the $215 penalty and move on?

In the process of conducting a client review for a retired former ATO employee, it transpired that he too had received a similar Excess Contributions Tax demand, which he paid without argument. Sadly, if an ex ATO employee chose not to question this demand, what chance does the average taxpayer have?

I contacted the ATO and explained their error.

The ATO belligerently stood their ground and so, on principle, I appealed the assessment (as invited by the ATO's own 'amended' Notice of Assessment) only to learn they could not act on my appeal, despite evidence from my superannuation provider which proved their assessment was incorrect.

After a formal complaint to the ATO Ombudsman, the matter was finally resolved in my favour, and eventually, an amount of $215 was refunded. From my perspective as a former public servant with an understanding of the public system, together with the knowledge that I had not breached any rules or thresholds, I was able to actively enter into a debate with the ATO with relative impunity for my personal outcome.

Unfortunately, there are many Australians who do not have the resources to check whether what is being claimed against them is correct, and many may feel that in the case of small amounts, it is not worth paying a professional to check on their behalf.

Which brings me to the second and far more concerning case. It relates to that of my client (a Vietnam veteran with over 20 years' ADF service) who received a notice from the DVA in late 2020

to the effect that he had not advised them of his correct asset position – back in 2014! In conjunction with my office, he had, in fact, supplied the DVA with the information he was required to provide.

The DVA claimed no record of receiving the information, demanding back payment of an 'over-paid' pension amount of $6,000.

The back-story is complex, but put simply, DVA didn't understand its own 'grandfathering' rules relating to the assessment of Account Based Pensions, and secondly, their other financial data was incorrect. DVA were assessing financial assets that my client and his wife didn't have.

Despite our appeal and supporting evidence to prove that an error had been made, DVA ignored our communications and 'recovered' the alleged overpayment, even though we had not exhausted the available appeals processes.

Clearly, the department assumed we would go away and stop bothering them.

My client suffers from PTSD, due to conditions which have been accepted by DVA as service related, and despite recently receiving treatment from medical teams from the same department at the inpatient centres at the Adelaide Repatriation Hospital, DVA had still pursued action to 'recover' the funds they claimed that he and his wife had been overpaid.

When an internal DVA process dismissed the evidence and our appeal, I offered to take the matter to the Administrative Appeals Tribunal (AAT) in an endeavour to reclaim the money which he and his wife did not owe. My offer was made (and accepted) on the basis that there would be no fee involved for the services I would provide to my client in this matter. However, at the AAT hearing, DVA engaged a government solicitor, at a cost of thousands of dollars to Australian taxpayers.

From that point onwards, the Department went to war against its own beneficiary, based on an inability to administer their own rules, and regardless of his mental health (which they were also paying tens of thousands of dollars to maintain).

I debated DVA's lawyer before the AAT mediator on at least three occasions, with the result that the matter was partly resolved, with the DVA finally and belatedly acknowledging that my client's Account Based Pension had indeed been incorrectly assessed. Grudgingly, the department refunded $4,000 of the $6,000 they had 'recovered' from him. This adversarial process would have cost the Government many more tens of thousands of dollars, as it did in time wasted for all parties.

The DVA then assumed we would be satisfied and leave it at that!

Our claim was not about the money. It was about the principle of fairness and having the ability to appeal mistakes without fear of intimidation and heavy handedness.

In the end, justice was finally achieved, but only as the result of a letter to DVA's Minister, Mr Andrew Gee on my client's behalf. With the minister's intervention, and the resulting assistance from a very competent and professional member of the department's Adelaide Debt Management unit, we were able to establish conclusively that the department's assessment of my client's position was completely inaccurate.

The outcome? A refund of the remaining funds, and a formal apology to my client and his wife – all within a period of 48 hours.

This result, which brought great relief, was achieved only with ministerial intervention. It reflects much which is broken within a system seemingly incapable of rectifying a simple mistake. Instead, it became a dispute which dragged on over a period of more than 12 months – at a considerable financial cost to the Australian taxpayer, and with a serious impact on to my client's mental health.

In an ideal world, our bureaucrats would recognise that legislation which is to be administered without confusion should be a prerequisite. Current and successive governments (and their agencies) might also be more willing to understand and accept that mistakes are made, as

demonstrated by the two cases outlined above – and let's not forget the Centrelink Robo-debt fiasco.

In the interim, and the real word, I call on the government to launch a rethink within the public service about the departmental drivers which cause agencies to spend more dollars to chase small amounts.

The adoption of a more corporate approach by writing off small costs where costs are due (particularly where there is any doubt of their validity) governments will actually save money; costs in terms of staff time and legal fees are often more than the recovery amount.

In the case of the DVA and my client, the flow-on costs of medical support (as a result of what he felt crushed his service record, reputation and integrity) has cost the department far more than the amount he is alleged to have owed. Sadly, this is not an isolated case; veterans coming back from being broken should not be treated like criminals – a practice which causes further veteran heartache, and adds unnecessary costs to the department.

No one wants a dispute with the ATO or the DVA or any other government agency, but it is very confronting for law abiding citizens to receive correspondence from their government which is not just officious, but erroneous. Many will just 'cop it on the chin', as they will not have access to the resources and/or the determination to fight it.

Our bureaucratic systems and processes must be reviewed to apply financial logic, and to put a human face on our government agencies." Theo said.

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