

IGTO-ATO Review Operational Guidelines

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ABOUT THIS DOCUMENT

- 1.1. This document provides operational guidelines between the office of the Inspector-General of Taxation and Taxation Ombudsman (IGTO) and the Australian Taxation Office (ATO) for the conduct of IGTO reviews. It should be read as part of the IGTO's suite of communication and education products to assist IGTO and ATO officers to understand the role of the IGTO within the tax system and the broader Australian Public Service in relation to the review process.
- 1.2. This document has been endorsed by the Deputy Commissioner of Taxation, ATO Corporate and the Deputy IGTO. Ongoing material updates to the document will be approved by the Deputy Commissioner of Taxation, ATO Corporate and the Deputy IGTO. Any updates that are not material in nature will be approved by the IGTO General Manager and the Assistant Commissioner, External Engagement & Governance, ATO Corporate (ATO Assistant Commissioner, Corporate). Any alterations to this document must be mutually agreed in writing.
- 1.3. Any reference to the IGTO includes IGTO staff and any reference to the ATO includes the Commissioner of Taxation (Commissioner) and ATO officers unless otherwise stated.

FRAMEWORK

- 1.4. The IGTO's legislative aim is to improve tax administration for the benefit of all taxpayers, tax practitioners and other entities. The IGTO achieves this through conducting independent investigations.
- 1.5. The IGTO is empowered to independently investigate:
 - actions taken by tax officials which relate to administrative matters under a taxation law¹;
 - systems established by the taxation laws to the extent those laws deal with administrative matters²; and
 - systems established by the ATO to administer the taxation laws.³
- 1.6. These types of investigations are generally called 'reviews'.
- 1.7. The IGTO may conduct such reviews on the IGTO's own initiative⁴ or if requested to do so by the Minister, Parliament, the Commissioner or Chair of the Tax Practitioners Board⁵. The IGTO must conduct a review if directed to do so by the Minister.⁶
- 1.8. To identify issues early, the IGTO and ATO officers involved in the review will communicate openly and proactively. By providing information and evidence in this way, the parties will agree and understand the issues being examined. This allows the IGTO to provide assurance to the community and/or develop practical recommendations for improvements in the administration of the tax system.
- 1.9. In addition, the involvement of the Deputy IGTO and the responsible ATO Second Commissioner (or equivalent) at the outset of the review process as well the preliminary and final draft report stages

¹ s. 7(1)(b) of the *Inspector-General of Taxation Act 2003*.

² s. 7(1)(c) of the *Inspector-General of Taxation Act 2003*.

³ s. 7(1)(d) of the *Inspector-General of Taxation Act 2003*.

⁴ s. 8(1) of the *Inspector-General of Taxation Act 2003*.

⁵ s. 8(3) of the *Inspector-General of Taxation Act 2003*.

⁶ s. 8(2) of the *Inspector-General of Taxation Act 2003*.

ensures early and regular discussions of issues being examined and allows all parties to be progressively and fully informed at a senior management level.

- 1.10. The IGTO supports and encourages the ATO to take early action to give effect to improvement opportunities where they have been identified throughout the review process. This enables improvements to be effected without being reliant on the completion of a review. Where such action is initiated by the ATO after the announcement of a review or publication of the terms of reference, the IGTO may express views on the issue and the ATO's action(s). The IGTO may also provide supporting commentary and/ or make further recommendations to bolster the effectiveness of the action(s) already taken.

ROLES AND RESPONSIBILITIES

- 1.11. The IGTO and the Commissioner provide authorisation to key personnel to conduct the operational processes involved in the review. The IGTO and the ATO inform each other of the identity of these authorised key personnel at the beginning of the review process. These key personnel of the IGTO and the ATO are respectively set out in further detail in this section.

IGTO COORDINATION AND REVIEW TEAM

- 1.12. The IGTO has formal responsibility for IGTO reviews. The IGTO may delegate this responsibility to the Deputy IGTO.
- 1.13. The IGTO General Manager is the IGTO SES Coordinator for each review and is responsible for keeping the ATO SES Coordinator abreast of the direction and progress of the review.
- 1.14. The day-to-day conduct of an IGTO review is led by an IGTO Director who may be supported by other IGTO staff (collectively the IGTO review team).
- 1.15. The IGTO review team works with their counterparts in the ATO (as notified to the IGTO SES Coordinator by the Assistant Commissioner, ATO Corporate) to ensure that the review progresses efficiently.
- 1.16. The IGTO Director briefs the IGTO, Deputy IGTO and IGTO SES Coordinator on the issues examined and the progress of the review. This will ensure that the review is progressing on the basis of the IGTO's views.
- 1.17. The IGTO General Manager identifies the IGTO review team members to the Assistant Commissioner, ATO Corporate and the External Scrutineers Unit via the ATOScrutineersGateway@ato.gov.au, before the opening meeting with the ATO.

ATO COORDINATION AND REVIEW TEAM

- 1.18. The Commissioner has formal responsibility for the ATO's involvement in, and response to, each review. The Commissioner notifies the IGTO if this responsibility is delegated to an ATO Second Commissioner (or equivalent) ('the responsible Second Commissioner').
- 1.19. The responsible Second Commissioner appoints an SES Band 1 officer (the ATO SES Coordinator), under the leadership of a Band 2 SES officer (or equivalent), as the formal point of contact for each IGTO review. The ATO SES Coordinator is responsible for the business area that is most directly affected by the issues under review. The ATO SES Coordinator is authorised to marshal needed resources within the ATO to assist with the review.
- 1.20. The ATO SES Coordinator ensures that the responsible Second Commissioner, as well as senior ATO officers with responsibility for business areas that are affected by issues under review, are fully briefed

on the progress of the examination of issues in the review. This ensures that the responsible Second Commissioner has opportunity to provide views that may be appropriately considered and conveyed to the IGTO review team early.

- 1.21. The ATO SES Coordinator appoints an Executive Level ATO officer ('the ATO contact officer') to be the primary day-to-day contact for the IGTO review team. The ATO contact officer provides proactive assistance to the IGT review team, including access to relevant information and arranging meetings with relevant ATO officers.
- 1.22. The Assistant Commissioner, ATO Corporate, identifies to the IGTO General Manager, the responsible Second Commissioner, ATO SES Coordinator and ATO contact officers before the opening meeting with the ATO.
- 1.23. The ATO and IGTO SES Coordinators establish regular meetings to discuss the progress of the review and ensure that any issues are quickly and appropriately addressed.

MANAGEMENT OF PROCESS ISSUES

- 1.24. Where the ATO review team wish to clarify and address certain areas or issues regarding the review process such as the conduct of a review, the ATO SES Coordinator raises such queries with the Assistant Commissioner, ATO Corporate. The ATO Corporate area is responsible for managing the ATO's relationship with the IGTO. The Assistant Commissioner, ATO Corporate, may escalate such points to the IGTO SES Coordinator. This could include dealing with jurisdictional identification including 'power' to conduct to authority and boundary. This ensures that queries are raised and addressed early through the delegated, responsible officers.
- 1.25. The ATO External Scrutineers Unit also assists the ATO review team in their interactions with the IGTO review team. Such assistance may include providing advice on queries with IGTO processes and act as a point of escalation for any concerns with the conduct of the review.
- 1.26. If the IGTO review team has significant concerns with the ATO's participation in a review, the IGTO SES Coordinator raises these with the ATO SES Coordinator and the Assistant Commissioner, ATO Corporate.
- 1.27. The Assistant Commissioner, ATO Corporate and IGTO SES Coordinator may raise unresolved significant concerns with the responsible Second Commissioner and Deputy IGTO respectively. This ensures that escalated issues are addressed early and that direction is given to staff from senior levels.
- 1.28. As appropriate, the Commissioner, the responsible Second Commissioner, IGTO and Deputy IGTO may raise matters directly with each other.

REVIEW PROCESS

- 1.29. The key milestones of the review process are shown in the attachments to these guidelines. This section provides additional direction on these milestones. A more detailed process map which the ATO provides to its officers for guidance is also attached.

TOPIC SELECTION AND REVIEW SCOPE

- 1.30. The IGTO may identify potential topics for review from a range of sources. These sources include the IGTO's complaints handling service, consultation with external stakeholders, media reports and Ministerial direction as well as requests from the Minister, Parliament, Chair of the TPB and Commissioner. The IGTO prioritises potential review topics and conducts preliminary scoping.

- 1.31. The IGTO may commence a review before publicly announcing it due to overriding factors, for example the urgency of the issues needing to be examined and/or as a result of Ministerial direction.

REVIEW COMMENCEMENT

- 1.32. When a decision is made to commence a review, the IGTO develops the Terms of Reference (TORs). TORs set out the scope of issues that are examined in the review.
- 1.33. The IGTO may also consult with a range of stakeholders on the development of the TORs, including other government agencies, taxpayers, tax professionals and their representative bodies.
- 1.34. The IGTO also consults with the ATO, amongst other parties, unless a formal or legislative direction to the IGTO to undertake a review effectively precludes this step. The IGTO provides the ATO with opportunity to comment on factual matters in the TORs before publication to promote a shared understanding of issues to be examined. As an independent scrutineer, the TORs are ultimately the responsibility of the IGTO.
- 1.35. As part of the process, the Commissioner will also provide formal authority to current and former staff to disclose information to the IGTO that is relevant to the review before the publication of the terms of reference.⁷ The Deputy IGTO and the responsible Second Commissioner or Band 2 SES officer, depending on the nature of the review, will also agree on the communication and assurance to be given to current and former staff regarding this authority. Such an approach promotes integrity and transparency and ensures independent provision of information by current and former ATO officers. This provides current and former ATO officers with the opportunity to inform the process.
- 1.36. The IGTO publishes the TORs and may call for submissions. Submissions assist the IGTO in identifying issues of most concern to the community. The IGTO maintains confidentiality regarding the identity of the submitter.⁸

OPENING MEETING AND INFORMATION ACCESS

- 1.37. Lead time and flexibility is afforded when arranging opening and other required meetings between the IGTO and the ATO involving SES officers.
- 1.38. At the opening meeting, the IGTO (or Deputy IGTO, if delegated), IGT SES coordinator and the IGTO review team meet with the Commissioner (or responsible Second Commissioner if delegated), relevant Deputy Commissioner(s), ATO SES coordinator, Assistant Commissioner, ATO Corporate and the ATO review team. The IGTO review team outlines their role and the review process. The IGTO review team also share observations on the issues that will be examined and ATO processes and/or initiatives affecting those issues. The IGTO review team distinguishes issues which have been tested through the IGTO complaint handling processes and those which were raised in submissions. The responsible Second Commissioner may agree in principle to proposed resolution actions which could address the issues. Such agreement allows the ATO and the IGTO review teams to explore mutually agreeable resolutions without being required to gather further evidence to prove the existence of such issues as an area for improvement.
- 1.39. The ATO review team works to assist the IGTO review team in the access of information including providing timely access to buildings and staff. The IGTO review team ensures that the ATO External Scrutineers Unit is aware of all arrangements to meet with ATO officers. This allows the ATO External

⁷ s. 8(2A) of the *Ombudsman Act 1976* which operates by virtue of s. 15 of the *Inspector-General of Taxation Act 2003*.

⁸ s. 37 of the *Inspector-General of Taxation Act 2003*.

Scrutineers Unit to proactively assure these ATO officers of their role in assisting the IGTO review team.

- 1.40. Importantly, to ensure independence of process, the IGTO review team has direct access to ATO systems (via ATO provided terminals) to facilitate quick access to information that is relevant to the issues examined. Such access allows IGTO review teams to provide independent assurance of the evidence examined. It also reduces the demand on ATO resources.
- 1.41. All the members of the IGTO review team have baseline security clearances and are subject to the same security and accessibility legislation and policy requirements as ATO officers. IGTO review team members are also subject to the same fraud control measures as ATO officers, for example, accessing information on a 'need to know' basis and monitoring of staff access to information. The Assistant Commissioner, ATO Corporate, assists the IGTO General Manager to ensure that the IGTO review team are provided with mandatory fraud awareness and ethical conduct training consistent with that provided to ATO officers pursuant to ATO policy. IGTO General Manager will ensure their staff complete all required training.

SHARING OF INFORMATION AND VIEWS

- 1.42. The IGTO review team are authorised to seek information relevant to the issues examined in the review.⁹ The IGTO review team may ask any ATO officer (including external contractors¹⁰) to provide information which is relevant to the review. ATO officers are authorised to provide information in response to such requests without offending the tax law secrecy provisions or privacy law.¹¹
- 1.43. ATO officers are also authorised to proactively provide information to the IGTO review team that they reasonably believe is relevant to the review.¹² Legal professional privilege is also maintained where information is provided to the IGTO by the ATO and third parties.¹³
- 1.44. The IGTO review team may request information regarding active cases. Where such requests are made, the IGTO review team will do so in a manner which minimises the impact that it may have on the ATO's independent role to administer the taxation and superannuation laws.
- 1.45. The IGTO review team generally obtains relevant information without the need to invoke the compulsory information gathering powers.¹⁴ This reflects the independent, professional relationship between the IGTO and the ATO and assists the IGTO to quickly reach independent views based on the available, relevant evidence.
- 1.46. The IGTO review team may request information at meetings or during other interactions with ATO officers. Such requests would be confirmed in writing. The IGTO review team explains the reasons for information requests at the time of making the request. ATO officers may also engage with the IGTO review team to obtain a shared understanding of the purpose for the IGTO's request.
- 1.47. The IGTO and the ATO review teams agree on reasonable timeframes for provision of information, including response to requests made orally during interviews that are later confirmed in writing. ATO officers exercise their best endeavours to provide such information in a timely manner. Information is also made available to the IGTO review team as it becomes available. ATO officers may consider that

⁹ s.8(3) of the *Ombudsman Act 1976* which operates by virtue of s.15 of the *Inspector-General of Taxation Act 2003*.

¹⁰ s.8(2A) of the *Ombudsman Act 1976* which operates by virtue of s.15 of the *Inspector-General of Taxation Act 2003*.

¹¹ s.8(2A)(ii) of the *Ombudsman Act 1976* which operates by virtue of s.15 of the *Inspector-General of Taxation Act 2003*.

¹² ss.8(2A)(ii) and 8(2B) – (2D) of the *Ombudsman Act 1976* which operates by virtue of s.15 of the *Inspector-General of Taxation Act 2003*.

¹³ s.8(2E) of the *Ombudsman Act 1976* which operates by virtue of s.15 of the *Inspector-General of Taxation Act 2003*.

¹⁴ s.9 of the *Ombudsman Act 1976* which operates by virtue of s.15 of the *Inspector-General of Taxation Act 2003*. Where the IGT invokes the compulsory information gathering powers, the exercise of the power is reported in the IGT's Annual Report as required by section 15 of the *Ombudsman Act 1976*.

additional contextual or clarifying information is needed to assist the IGTO review team to accurately interpret the information provided. In such a case, additional information may be provided. However, this additional information must not delay the provision of the information which is immediately available.

- 1.48. Where the IGTO review team requests information, pre-existing ATO documents are provided to satisfy the request in order to minimise the resourcing impact on the ATO and the IGT. Where pre-existing documents are not available, the ATO review team, in conjunction with other relevant ATO business areas, proactively identifies alternative pre-existing documents that may satisfy the purpose of the request. The IGTO review team may accept such alternative documents where it considered that it satisfies the request. ATO officers must not create documents without first seeking confirmation from the IGTO review team that such creation is needed.
- 1.49. Where the IGTO review team accesses confidential ATO documents which have particularly high levels of sensitivity, the IGTO review team and the ATO review team mutually agree on the terms of access as well as any limits to subsequent internal and external on-disclosure.
- 1.50. ATO officers who provide information to the IGTO review team provide a copy or summary of that information to the ATO External Scrutineers Unit's dedicated mailbox. This process assists the Unit to maintain integrity and visibility of all information that is provided. The IGTO review team sends to the ATO External Scrutineers Unit's dedicated mailbox a copy of all requests made for information.

REGULAR MEETINGS AND WORKSHOPS

- 1.51. The IGTO and ATO review teams establish regular meetings to discuss the progress of the review and openly share observations and perspectives. Such discussions facilitate open discussion of ideas and options for resolution and improvement.
- 1.52. At the request of either agency, workshops may be convened to improve shared understanding of issues and identify issues needing to be discussed. Such workshops allow the IGTO review team to refine the scope of information requested, increase efficiency and effectiveness as well as reduce the resourcing impact on the IGTO and the ATO.

EXTERNAL WORKING GROUP

- 1.53. The IGTO may convene a working group to improve understanding of the issues examined in the review and identify practicable options for improvement. Such working groups may comprise external stakeholders as well as senior representatives from the ATO and other government organisations.
- 1.54. External working groups are conducted on a 'Chatham House Rules' basis¹⁵.

SANDBOX MEETING

- 1.55. Before issuing the preliminary draft report, the IGTO review team convenes a 'sandbox' meeting in which the IGTO's preliminary observations and potential recommendations are discussed. This meeting is attended by the IGTO SES Coordinator and IGTO review team who discuss the issues, preliminary observations and potential recommendations with the ATO SES Coordinator, ATO review team, Assistant Commissioner, ATO Corporate and other relevant ATO stakeholders. The IGTO (or Deputy IGTO if delegated) approves the preliminary observations and potential recommendations before they are presented by the IGTO review team at the meeting.
- 1.56. The 'sandbox' provides the ATO and IGTO review teams with opportunity to share understanding of the issues and test the basis for the IGTO's preliminary observations and potential recommendations

¹⁵ <https://www.chathamhouse.org/chatham-house-rule>

before a preliminary draft report is provided to the responsible Second Commissioner for comments. The IGTO review team provides the ATO review team with a summary of the IGTO's preliminary observations and potential recommendations before the 'sandbox' meeting. This allows the ATO to better prepare for the 'sandbox' meeting by ensuring that appropriate ATO officers are present and identifying the need for additional relevant information to be made available. A further 'sandbox' meeting may be convened where there is a need to further refine issues for discussion to promote better understanding of issues and insights.

PRELIMINARY DRAFT REPORT

- 1.57. Prior to the preliminary draft stage of the review process, all relevant information would have been provided to the IGTO. However, in the event that further relevant information could improve understanding or may have been inadvertently missed, that information may be provided during the preliminary draft review process in an efficient and effective manner. The IGTO and the ATO will minimise the need to make information requests at the preliminary report stage as a general rule.
- 1.58. The IGTO (or Deputy IGTO, if delegated) provides the responsible Second Commissioner with opportunity to comment on the preliminary draft report. The preliminary draft report includes a description of the issues examined in the review, relevant ATO policies, procedures and views as well as the IGTO's preliminary observations and potential recommendations. Relevant facts and evidence are separately presented from the IGTO's observations to provide a clear distinction between the evidence based analysis and the commentary on the issues examined. This allows the IGTO and the ATO review teams to reach a shared understanding of the factual accuracy of the materials relevant to the issues examined, provide transparency to third party readers and enhance confidence on the insights obtained from those facts.
- 1.59. If the IGTO proposes to make recommendation(s) for Government's consideration, a copy of the preliminary draft report is also sent to Treasury's nominated liaison officer to provide Treasury with opportunity to comment. The IGTO review team may then consider issues in a holistic manner before issuing the final draft report.
- 1.60. The ATO SES Coordinator provides the IGTO SES Coordinator, a separate communication, comments relating to any actual or potential factual issues in the body of the report. This ensures that the IGTO review team are notified at the preliminary draft stage of any further need to verify relevant facts and reconsider views.
- 1.61. The responsible Second Commissioner is provided with up to 20 business days to respond to the preliminary draft report, or as otherwise agreed with the IGTO. The count for the 20 days begins on the first business day after the day the preliminary draft report is received by the ATO. This draft ATO response includes consideration of each potential recommendation and the nature of related commentary. For any response which is not in full agreement with the potential recommendation and commentary. The IGTO review teams then has the opportunity to reflect upon the response and consider how the recommendations and related commentary or observations may be improved.
- 1.62. The IGTO also provides the responsible Second Commissioner with the opportunity to meet and discuss the preliminary draft report and related potential recommendations. This discussion will be convened at an agreed time during the response period (see paragraph 1.61). In advance of such meeting, the responsible Second Commissioner will send a draft of the ATO response to the IGTO to consider. This process is intended to facilitate a fulsome understanding of the opportunities for improvement, finalise these and promote a clear basis for views adopted.
- 1.63. As an independent scrutineer, the final report is ultimately the responsibility of the IGTO. Accordingly, the views and opinions expressed in the final report are those of the IGTO.

FINAL DRAFT REPORT

- 1.64. The IGTO (or Deputy IGTO, if delegated) provides the responsible Second Commissioner with an opportunity to comment on the final draft report of the review. This process facilitates the identification of any unresolved concerns that require further consideration. The IGTO also provides a copy to Treasury to assist them in preparing their brief to the Minister.
- 1.65. The responsible Second Commissioner provides the formal ATO response to the IGTO within 15 business days from receiving the final draft report, or as otherwise agreed in writing with the IGTO. The count for the 15 days begins on the first business day after the day the final draft report is received by the ATO.
- 1.66. The IGTO provides the responsible Second Commissioner with the opportunity to discuss and respond to the final draft report and recommendations before the report is finalised. This discussion will be convened at an agreed time during the response period (see paragraph 1.65). In advance of such discussion, the responsible Second Commissioner will send a draft of the formal ATO response to the IGTO.
- 1.67. Once the final version of the formal ATO response is provided, the IGTO includes, within the body of the final report, the ATO responses to each recommendation for ease of reference. The Commissioner's letter in response is included as an appendix.
- 1.68. Before the public release of the report, the IGTO provides the ATO's responsible Second Commissioner with a courtesy copy of the executive summary to the report, any letter of transmittal to the Minister (where a report is required to be provided to the Minister) and any media releases that are proposed to be issued. The text of these documents is generally drawn directly from the text of the final report. Such an approach ensures the IGTO uses text on which the responsible Second Commissioner has already had reasonable opportunity to comment.¹⁶
- 1.69. The IGTO SES coordinator also advises the Assistant Commissioner, ATO Corporate, of the proposed date for publication or if the report contains recommendations to Government, the date that the report will be delivered to the Minister. This allows time for relevant agencies to prepare for external inquiries and schedule work relevant to the publication of the final report.

ATO FEEDBACK ON THE IGTO REVIEW PROCESS

- 1.70. Following the finalisation of the report, the IGTO SES coordinator invites key ATO officers involved in the review to provide feedback on the process. The aim is to improve the IGTO's review process by identifying what worked well and the opportunities for improvement. The IGTO welcomes and encourages such ATO feedback.

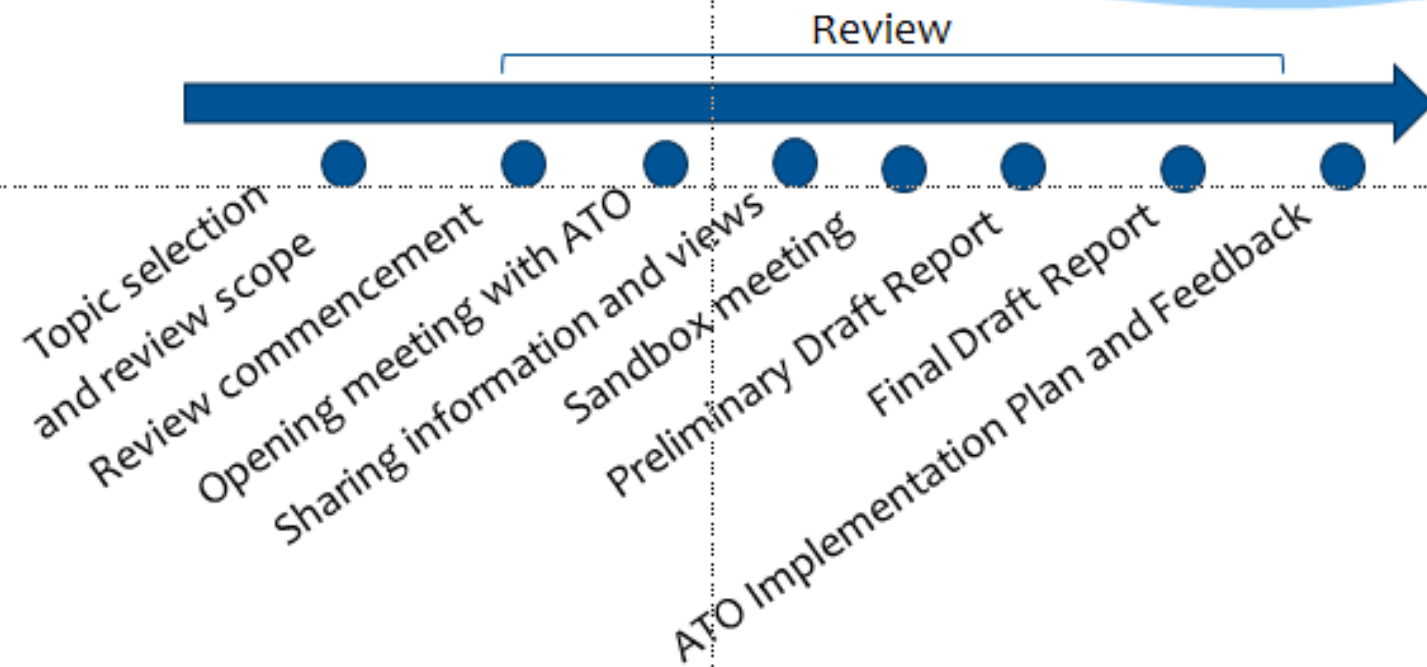
ATO'S IMPLEMENTATION OF RECOMMENDATIONS

- 1.71. In addition to the ATO providing feedback to the IGTO on the review process, the Assistant Commissioner, ATO Corporate, provides the IGTO SES Coordinator with the proposed implementation plans approved by the ATO SES Coordinator. The implementation plans outline the ATO's proposed actions to implement the agreed recommendations.
- 1.72. The Assistant Commissioner, ATO Corporate may request feedback from the IGTO SES Coordinator regarding the proposed implementation plans. This IGTO feedback is based on the assumption that the actions are carried out as described in the plans.

¹⁶ s.12 of the *Ombudsman Act 1976* which operates by virtue of s.15 of the *Inspector-General of Taxation Act 2003*.

1.73. As the ATO implements the agreed recommendations, they may seek to recalibrate the planned actions where they would no longer address the issues to which the agreed recommendations were directed. This assists the ATO to address tax administration issues of concern where previously agreed actions would be rendered ineffective due to broader external changes, for example, significant changes in law, technology, ATO internal structures or the legal/economic environment. In such cases, the Assistant Commissioner, ATO Corporate, proactively informs the IGTO SES Coordinator. The IGTO SES coordinator may assist the ATO by providing feedback on the proposed recalibration.

Key review milestones



IGTO review process map

SES 3 = Second Commissioner or equivalent
SES 2 = Deputy Commissioner or equivalent

IGTO = Inspector-General of Taxation & Taxation Ombudsman
ESU = External Scrutineers Unit

