



Australian Government
Inspector-General of Taxation

Valedictory Speech

Melbourne, 4 October 2018

Thank you for those kind words and for generously hosting this event, Mark. It means a great deal to me. Mark has provided me with sage advice at times and has been an advocate of the office even though he has never required our assistance during my tenure.

It is wonderful to be surrounded by all of you tonight — dear colleagues many of whom have also become close friends. To thank you individually would make this speech even longer than it already is — hopefully, I can do it over drinks afterwards.

There are a few that cannot be here and I would like to acknowledge them, including former Federal Court Justice, the Hon Tony Pagone, and former Second Commissioner, Bruce Quigley. I take this opportunity to also pay tribute to my staff some of whom are here this evening. My EA, Naomi, deserves special mention because she represents the best of the public service — always being of service to others.

I would also like to acknowledge current and former public servants, including those from the Australian Taxation Office (ATO), who are here tonight. Much has been said about the tension between my office and the ATO but the truth is we work together cooperatively and agree far more often than we disagree. This is evidenced by the many positive initiatives that have been implemented as well as the attendance of former and current ATO officers this evening.

Of course, I am not saying that there is no tension between the ATO and the IGT. A degree of tension between the scrutineer and the subject of the scrutiny, if professionally managed, is entirely appropriate and is indicative of their independence. As a parliamentarian once said, my job is not to have cosy cups of tea with the Commissioner. Whilst independence is paramount, co-operation is necessary to deliver reform and improvements to the community. It is also important to transparently report our findings but in a way that does not unnecessarily undermine confidence in the system. These are some of the factors that have weighed heavily on me as I have sought to strike the right balance in discharging my duties over the past 10 years.

In an ever-changing world, where the community is losing faith in well-established and previously well-respected institutions, the role of those who scrutinise them, as well as appropriate governance arrangements, has never been more important to regain and maintain trust in our democracy. The Banking Royal Commission and the ABC saga are illustrations of this verity. Let us bear that in mind, as I briefly reflect on my time in office and share some measures that I believe should be considered for the betterment of our tax system.

Reflections

When I took the reins in 2008, the IGT was becoming established amongst tax professionals as an independent advocate for improvements to the tax system, but in the wake of the 2007 election uncertainty hung over its future. The agency was very young and the concept of a specialist, independent scrutineer was not well-appreciated. Since that time, the IGT has become a mainstay in the tax landscape, both domestically and internationally, and has played a major role in delivering improvements and reshaping the administration of the Australian tax system. The office has grown over four times in size and the role has become that of an ombudsman with respect to tax administration. The most significant legacies that I leave behind are the establishment of an efficient and effective complaints handling function within the IGT, the move to creating a separate appeals area within the ATO and a large volume of high quality reports into many aspects of tax administration.

Comprehensive IGT reviews over the last 10 years have been a major force in prompting significant improvements. During my tenure, we have completed almost 35 reviews canvassing a broad range of issues, including ATO 'U-turns', debt collection, tax disputes, rulings, audits, transfer pricing, services and support for tax practitioners, alternative dispute resolution, penalties and taxpayer rights.

Our reviews have also become a source of evidence-based assurance regarding ATO actions. It has sometimes been likened to a 'safety valve' as it promotes fairness, assuages concerns and builds confidence in the administration of the tax system — critical factors for the efficient and effective operation of a self-assessment regime. A recent example includes the request from the Senate Economics References Committee for the IGT to investigate the ATO's fraud control management following public concerns relating to allegations of tax fraud, Operation Elbrus, which may have been linked to abuse of position by a public official.

Although our reviews have been delivering systemic improvements and fulfilling an assurance role effectively, we were unable to address specific taxpayer issues on a real time basis until 1 May 2015 when the Government transferred the tax complaints handling function to the IGT. I had publicly advocated for such a measure since 2011. The IGT's remit was also broadened to include the administrative actions of the Tax Practitioners Board (TPB).

To date, we have handled almost 8,000 complaints from a range of tax professionals and taxpayers including vulnerable individuals and small businesses. In the 2017–18 financial year, the number of complaints rose by 7 per cent and 12 per cent compared with the prior two financial years. Notwithstanding such increase, we have acknowledged the vast majority of complaints within two business days and finalised them within 15 business days. We have consistently achieved a satisfaction rating of 80 per cent.

The co-location of the complaints handling and review functions in one agency has delivered critical synergies. In the last financial year, insights from complaints data led to two reviews and an own initiative investigation being conducted. Analyses of complaints data have also resulted in the ATO and the TPB agreeing to implement certain improvements without the need to conduct reviews.

There is growing recognition of the importance of the IGT's role in improving tax administration. For example, in 2016, the House of Representatives Standing Committee on Tax and Revenue asserted that the quality of IGT work had improved ATO operations, generated strong support amongst stakeholders and provided 'a good return on investment for Australia' which 'flows directly to the ATO, and indirectly to Government, the Parliament, and Australian businesses and individuals'.

The future of the IGT

The structure and powers of the IGT compare well with those in other jurisdictions. However, its resources need to be significantly increased, its independence further enhanced and its profile raised particularly amongst those who need its assistance most.

We are increasingly asked to do more with less and complaints continue to grow each year. We have sought to maintain high service standards by developing innovative solutions and ensuring that our staff are operating at optimal levels. However, we are now at a point where, without further resources, not only do we risk degradation in our service standards but also a diminishing capacity to conduct other important functions such as undertaking systemic reviews.

The IGT is dependent on attracting and maintaining a highly specialist team. Our staff have to be capable and experienced in the administration of tax and superannuation systems as well as possess well-developed people skills given that, on a daily basis, they deal with the rich tapestry that is the Australian public.

It is no secret that the IGT was originally created due to a failure of the systems that were previously in place. Do not underestimate the challenges of seeking to establish an office of this nature from scratch. Building up brand identity, awareness and service support takes time and effort. It has taken 15 years for us to establish and overcome these challenges progressively as part of an evolution. To paraphrase one evolution expert, if you had to evolve all over again and hope for the same outcome, you may not be so lucky.

It is now important to significantly grow the IGT but in a measured way such that its current culture, brand and level of service are not compromised.

Turning to the independence of the IGT, I have consistently asserted that it is paramount to the identity and work of a scrutineer. If a scrutineer lacks or is perceived to lack independence, it becomes ineffective. It loses the trust of the community and those who require its help the most will not use its services. It will not be able to protect the subject of the scrutiny either when unsubstantiated allegations are made against it. In brief, the scrutineer can no longer act as a safety valve and the system may suffer undue pressure with irreparable damage.

I believe the independence of the IGT may be bolstered by making his or her appointment for a non-renewable term of 10 years, as is the case with the Auditor-General, and moving the agency out of the Treasury portfolio and having it report directly to Parliament like the Australian National Audit Office. An inherent conflict exists in having both the IGT and the ATO within the same portfolio.

I also believe that the IGT should be renamed the Taxation Ombudsman to make it more identifiable amongst those who most need assistance in their disputes with the ATO. Whilst the IGT is well-known in the tax profession, awareness of its services needs to be better promoted amongst small

businesses and individuals including the most vulnerable. As the Chief Justice of New South Wales, the Hon Tom Bathurst, has recently remarked:

The worth of any society can be found in the extent to which the rights of its citizens are protected regardless of whether they are rich, poor, powerful or vulnerable, and especially when they are subject to disability or disadvantage, and unable to enforce it themselves.

Broader observations on administration of the tax system

It is pleasing that the vast majority of the IGT's recommendations have been adopted. Foremost amongst these is the transfer of the tax complaints handling function to the IGT.

Of the few outstanding recommendations, the creation of a separate and dedicated appeals group within the ATO led by a new Second Commissioner is critical. It would be consistent with practices in comparable jurisdictions and views of the International Monetary Fund. I believe that it will inevitably be implemented — the Opposition has already adopted it in its entirety. Hopefully, this will occur with bi-partisan support given that it was also a recommendation of the House of Representatives Standing Committee on Tax and Revenue.

It is acknowledged that the ATO has sought to partially implement this IGT recommendation but it falls short of what is required. The appeals function has been moved from the compliance group to the legal advisory group. One of the issues with this structure is that it gives rise to a conflict. Precedential views are developed and finalised within the legal advisory group and taxpayers, who wish to object to ATO decisions, may have to also challenge an ATO precedential view. The appeals function must be truly separate, and be perceived to be so, from both the compliance and legal advisory functions to facilitate a fresh and impartial review of the taxpayer's case.

I note that some stakeholders have suggested the need for a separate agency to manage tax disputes particularly for small businesses. There are challenges associated with this option, including increased costs, potential delays and overlap with existing external review bodies, such as the Administrative Appeals Tribunal. I believe this option should only be considered if significant concerns persist after the proposed appeals group has been established and its performance assessed. I would also caution against creating any particular process for only one group of taxpayers. There should be equal access to justice for all.

Another IGT recommendation to bolster the governance arrangements of the ATO, that remains outstanding, is the establishment of a management board. The implementation of this recommendation would align Australia with a number of comparable jurisdictions, such as the United States, Canada and the United Kingdom.

In my view, the Board should be headed by an independent Chair and its membership should include the Commissioner and Second Commissioners as well as private sector experts in such areas as Information Technology, Communications, Human Resources and Finance. In addition to introducing external talent to the ATO, such a board would address concerns regarding too much power being concentrated in one individual, i.e. the Commissioner.

The role of the Board would include the development of the ATO's overall strategy and performance but would not include the day-to-day operations or access to taxpayer information. Having regard to

good governance and independence, the IGT should not be on the Board but he or she should meet with the Board periodically to provide insights drawn from interactions with taxpayers and tax professionals as well as his or her own observations on matters requiring the Board's attention.

The Board would report to the Government, via the Minister, and would be able to provide a frank assessment of the ATO's performance in addition to that provided by the Commissioner.

Some final words

Before I wrap up this evening, I have some final words which I hope will be received in the spirit that they are given.

First, I believe that the ATO should focus on its independent interpretation, application and enforcement of tax and superannuation laws without being distracted by policy or political debate.

Secondly, many have asked me for my views on the ATO's performance in recent years. I believe that there have been benefits from the shake up that the ATO has received and, could only have received, from a leader brought in from the outside. However, now that the dust has settled, the organisation needs to be steered steadily towards new frontiers.

Thirdly, I have often been asked about the state of the relationship between my office and the ATO. In asking this question, it is assumed that the scrutineer needs to have a good relationship with the subject of the scrutiny, rather than both parties being responsible for fostering a good relationship. I posit that the question need not be asked but, if it must, then it should be directed at the subject of the scrutiny.

Fourthly, while there have been benefits to having private sector expertise injected into the ATO, it is necessary to give due recognition to those who have dedicated their careers to the ATO and regard given to the public service values such as the need to respect taxpayer privacy. ATO officers, who are recruited from the private sector, should be inducted in these values to ensure they are appropriately maintained and applied.

Lastly, this is our tax system and we are all guardians of it. I am proud to leave the IGT in a very strong position. Perhaps, my greatest achievement is the firm establishment of the IGT as a trusted, independent and specialist scrutineer who is integral to the tax system. These accomplishments would not have been possible without the support and confidence of the tax profession and I urge all of you to support my, yet to be named, successor as you have supported me. We must all work to ensure that fairness and transparency prevail in all things and to raise concerns where they do not. We are living in a time when untruths are easily and widely disseminated and where silence is taken to be acquiescence. Sitting on the sidelines is not helpful. Anything that is worthy of maintaining requires constant vigilance from everyone within the tax system.

To finish on a lighter note and to answer the question that has already been asked many times about my future, let me tell you that I am available for weddings, funerals and bar mitzvahs. I am opening myself to all possibilities and considering all options that are being put to me. Whilst I have a plan, I am also allowing the universe to work its magic. To quote a Persian saying, one should say one's prayers but also tie one's camel.