

Outlook

Tax & Super Australia

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Inspector-General of Taxation and Taxation Ombudsman Karen Payne wants to level-up the tax playing field

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Fair game

As Inspector-General of Taxation and Taxation Ombudsman (IGTO), Karen Payne wants to improve the administration of tax laws and give all Australians – deep pockets or not – a fair go when dealing with the tax system. Karen speaks to Tax & Super Australia’s tax counsel John Jeffreys about how she and her team plan to get the job done.



***JJ:** Karen, thanks for your time. Can you please give us a brief description of your career and how you became the Inspector General of Taxation and Taxation Ombudsman?*

KP: Well, when I was growing up, I wasn't even thinking I'd become a tax lawyer or indeed a tax accountant – so I had no idea that I would one day be the Taxation Ombudsman.

While studying, I got a job as a cadet accountant working in the small business division at Ernst & Whinney [now Ernst & Young] in Sydney, many, many years ago – before the Internet and before home computers! My training was preparing accounts, completing audits and preparing tax returns. I got lots of experience and insights into a really broad range of industries and professional firms.

After my professional year, and a “gap” six months of bumming around overseas, I returned to Australia and decided I wanted to specialise in tax. So, I got my law degree at the University of New South Wales and then took a position back with Ernst & Young, then later on with Minter Ellison.

But I've always been really interested in tax policy. In 2015, I was delighted to be invited by the then chair of the Board of Taxation, the late Dr Michael Andrew AO, to be a member of the board. Andrew was formerly the partner in charge at KPMG internationally and in Australia and

I really admired his work ethic and passion to improve the tax system. So, when he asked me to become the CEO of the board of tax, how could I say no?

And when I started as Inspector-General in 2019, I have to say I didn't fully appreciate the importance of the role. Now, two years into the term, I'm still learning but feel I have a much better idea of what the agency can and should be doing to improve tax administration.

JJ: I think I can just remember the days of Ernst & Whinney myself! You've had a great experience. In brief, what does the IGTO do? How can tax agents and taxpayers benefit from your office's work?

KP: Fundamentally, John, we independently investigate the actions and decisions of either the ATO or the Tax Practitioners Board (TPB). So, we investigate tax complaints from taxpayers, individuals, companies and tax practitioners. We can also investigate on our own motion. Essentially, we're trying to investigate the fairness of tax administration outcomes, actions, decisions and systems and laws. And when we're doing the more systemic review investigations, we are looking for improvements to tax administration.

JJ: How many people work in your office?

KP: There's 28 of us, all located in Sydney. But while we're a Sydney-based agency, we have a national agenda.

JJ: So, two years into the job, what are you finding most rewarding?

KP: I get a lot of opportunity to go out into the community and engage with people and stakeholders and organisations to understand their concerns. I'm really very motivated by results, and having an opportunity to improve the fairness in the tax system is a real bonus.

JJ: Do you think you are making inroads?

KP: I do. I've got a much clearer idea of what we're meant to be doing now and I do think we can bring about an improvement in the tax system and fairness in individual tax outcomes.

JJ: On a day-to-day basis, what does your role involve?

KP: Every day is different. I spend a lot of time engaging with stakeholders through one-on-one calls and consultation. I get out and speak at tax discussion groups and do lots of presentations. I also have three parliamentary committees to which I'm accountable and they are very important stakeholders in their own right.

I have a Complaints team, and that's largely managed by David Pengilly, together with Jarrod Joseph and Helen Fong. I also contribute to the complaints function through my tax, legal and executive insights into cases. I look at letters, final reports and I act as a sounding board and I sit in on ATO discussions. I also work closely with Duy Dam, who looks after our review investigations. I do obviously review any final reports and help prepare, write and direct submissions to parliamentary committees or other agencies.

JJ: That certainly sounds like a very full life, Karen...

KP: [Laughs]...it is!

JJ: I've become aware of how personally you are involved in things and make your presence felt out in the community.

KP: I think that's a really important part of the role because, fundamentally, I am here to represent the community to bring about the kinds of tax administration improvements that it feels are most important.

JJ: Regarding the Australian taxation system – what does it do well, and how can it be improved?

KP: I think the most important improvement would be to deliver a more efficient resolution of disputes in what, by any standard, I think is a very complicated tax system.

When I was in practice, my US clients and the US lawyers I worked with were always very surprised at how complex our system was. Sometimes the complexity is there for good reasons, but I think it's important that the complexity doesn't itself become a reason why the system is unfair. That is, you know, it's only if you've got deep pockets do you get a fair outcome and I think that's really what speaks to the importance of our role.

JJ: That's a valid comment. I often hear about people who gave up on a dispute because it just wasn't worth it.

KP: Yeah, and I think it goes to the community confidence in the system. We all know, and the OECD writes lots of important papers on this, that community confidence in the fairness of the system is vitally important if you're trying to achieve voluntary compliance.

JJ: Do you consider that your office operates with full independence so that it can comment without fear or favour on the issues that come before it?

KP: I do. I think that's exactly what my statute says I should be doing and what we should be doing as an agency. I personally operate, I can tell you, with full independence. I think the previous two Inspectors-General, David Voss and Ali Noroozi, also demonstrated this independence. I would add that even though we are independent, we're very collaborative. You need to have good community outreach and a good network so you work on issues that matter to the community.

JJ: *I consider your work is becoming increasingly important because many people experience difficulty having their concerns heard by the ATO. Would you agree with that assessment?*

KP: Yes, I think I do agree. I think fairness is fundamentally important to all Australians. It doesn't always look the same to everyone, but having a truly independent review of your case, your facts, your circumstances...I think that looks like fairness to a lot of people.

I think the ATO won't always get it right. But even if we assume for a moment that it did, an independent review function is still critical because it provides confidence and assurance to taxpayers if they don't think the ATO is acting consistently in accordance with its own guidance and in accordance with the laws. So even if we review your case and we find no change, that in itself is independent assurance that you've been treated fairly.

I should add that, while we can't compel anyone to do anything, we can make compelling recommendations because they are backed up by reasons.

JJ: *Do you find that people are becoming, let's say, more frustrated with the tax office?*

KP: It's hard for me to answer that question based on our complaint statistics. I mean, we obviously only ever get to see people who are almost at the end of their rope, if you like. So necessarily, I think we're dealing with people who are frustrated, upset, angry, and who are sometimes despairing and ready to give up. So, given this, it's hard for me to comment on the whole system because I do only get to see the kind of pointy end of it.

JJ: *Do you have any views about how efficiently and effectively the tax office deals with tax agents? Have you had many complaints from tax agents about the ATO's overall service?*

KP: I do get anecdotal feedback from tax agents about frustrations in dealing with the tax office. But if we were to do an investigation on that, we would need to do that as an own motion review investigation.

John, in our latest newsletter – *IGoT News!* – we did invite practitioners and professional bodies like yourselves to please share any concerns around the lodgement program in particular. Because we were hearing a bit of noise in that space and there was the Tax & Super Australia survey on that topic that you kindly shared with us, so we can understand this is a big concern.

JJ: *So, an examination of the treatment of tax agents isn't something that you've currently got on the agenda, but it's something that you've got your antenna up about it?*

KP: That's a much better way to say what I said [laughs].

JJ: *Do you consider that you're getting an increase in the number of complaints from tax agents?*

KP: I certainly wouldn't say that the numbers are increasing. But what is really curious is, if you think about the tax system overall, definitely more than 50% of taxpayers have a tax agent or are represented by one, but that doesn't come through in our complaint numbers.

Most of the complaints that we get are self-represented. So only 6% of complaints that we've received have been lodged by tax practitioners on behalf of their clients. Now, it's fair to say that those complaints tend

to be, you know, more complex, but 6% is pretty low when you think about the tax system overall and the number of people who are represented by tax agents. A further 4% of complaints that we receive are by tax practitioners raising their own concerns about the tax office or the TPB. So again, that seems to me to be under-represented.

JJ: *Your agency's vision statement says, quote: "To assure and ensure that there is fair, equitable and transparent administration of the tax system consistent with community expectations." Do you think that the Australian community considers the taxation system is currently fair, equitable and transparent?*

KP: I'm not sure, John. It's a big question. But you know, I'd really love for you to take a poll on this and to find out what your membership thinks because I think that would be a really interesting poll to be available.

JJ: *Yes, we might do that. I have many conversations with tax agents on this topic.*

Now, here's your chance to wave the magic wand, Karen. If you could have whatever you wanted for your offices to make your job easier and to do it better – what would you want?

KP: Well, that's an easy one, John. My number one wish would be to have direct and unrestricted access to ATO records and systems. Now, we currently have these rights in our statute if we choose to execute a Citibank-like raid on the tax office. We have an unfettered power to enter ATO premises for the purposes of any investigation and get exactly what we want. But that would be ridiculous, right? If every time we didn't get the information that we requested or the exact information requested, we had to execute that kind of a raid.

So at the moment, we only get access to information firstly, if the Commissioner has given his approval for us to get access to the information and secondly, if we've commenced an investigation and we've told the tax office that we've commenced that investigation. So, a really big improvement would be if the statute made it clear that we have an unfettered right to get access to whatever information we request.

I advocated for this three months into my term as the Inspector-General of Taxation when the Senate Economics Legislation Committee commenced an inquiry into the performance of the role. One of the first submissions I made to that committee was, "Please fix this. We would love for you to fix this."

JJ: *So, reading between the lines, Karen, is the flow of information from the tax office not quite as free flowing as what you would like?*

KP: Well, not always. I guess the two reasons why having this access is important for me is, one, I think it helps to set up the right dynamic. If you've got an unfettered right of access and somebody says, "Well, I don't think you're entitled to get that information" or "I don't want to give you that information"... unfettered access to the information can change the dynamic. And as well as improving our ability to access information, it would improve the timeliness within which we could complete some investigation.

I don't want to suggest that the tax office is not, you know, giving us information, but it's certainly an observation that it's not always as free flowing as perhaps we would like.

JJ: *I certainly hope that more free-flowing information is coming your way soon. The minister you report to is Michael Sukkar. In general terms, how often would you speak to the minister, what's the sort of things you talk about (if you're allowed to say).*

KP: Sure. First thing, it's important to know that I do report to Minister Sukkar but technically I report to four treasury ministers. They are the Treasurer and Assistant Treasurer, and I also report to Senator Jane Hume, [Minister for Superannuation, Financial Services and the Digital Economy and Minister for Women's Economic Security] and to Minister Stuart Robert [Minister for Employment Workforce Skills Small and Family Business]. On top of that, I report to three parliamentary committees – one in the House of Reps and two in the Senate.

I check in with all the various ministers' offices and parliamentary committees on an as-needed basis. It's not weekly, I wouldn't say it's monthly but it's definitely regularly. For example, if I was going to release a report, I would provide a copy of the report and offer a briefing.

JJ: *Finally, Karen, is there anything else you'd like to contribute or comment on regarding your work or the tax system?*

KP: Thanks, John. I guess if I could just finish on a bit of a plug and encourage your readers to subscribe to our newsletter, *IGoT News!*, which they can do via our website [www.igt.gov.au] and spend a few minutes browsing our website. There's lots of interesting slide decks for published reports that I think might be of interest to your audience. So please stay in touch. 🇺🇸

IGTO's five strategic priorities

Karen shared the five strategic priorities from the IGTO's 2022-2025 Corporate Plan that she says will help it deliver on its vision and purpose – to improve the administration of tax laws to benefit the community.

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1. To communicate clearly, effectively independently and with integrity.
2. To ensure that our tax complaints investigation service is approachable, contactable and responsive to the community's changing needs.
3. To improve the skills, expertise and resilience of our people and organisation – and that's particularly important during this pandemic period.
4. To provide independent thought leadership and expertise.
5. To make sure we engage with stakeholders in the tax administration system.

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You can listen to Karen and John's full conversation on our Tax Wrap podcast.
<https://taxandsupernewsroom.com.au/tax-wraps>