



Australian Government  
Inspector-General of Taxation  
Taxation Ombudsman

# IGoT News

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## An update from the IGTO



Welcome to the first edition of our newsletter for 2022. I hope everyone enjoyed a well-earned break over the Holidays, and returned to 2022 feeling refreshed and ready to tackle the many and varied challenges of the year.

The team at the IGTO have begun transitioning back to the office as we continue to:

- manage our tax complaint investigation function, with priority attention to time-sensitive JobKeeper matters;
- undertake our own-motion investigation on release of tax debts on grounds of serious hardship;
- progress the three review investigations that we announced in December 2021; and
- re-establish connection with stakeholders (locally and internationally) through face-to-face workshops, conferences and other forums.

We are very much looking forward to re-engaging with our stakeholders this year to discuss and identify opportunities for improvement in the administration of the tax system.

## Review Investigation update

We are progressing the three review investigations that were announced in December 2021. We wanted to thank everyone who has contributed to a submission. A brief update for each is provided below.

### Administration and Management of Objections

The IGTO formally requested information from the ATO to compile our interim data report on 27 January 2022. Initial tranches of data have been provided by the ATO and we are making good progress in analysing the data provided.

The purpose of the interim report is to understand what Objections arise in the system and some statistics to demonstrate how they are administered. This can inform stakeholders, practitioners and the community at large about the scope and breadth of Objections to promote public debate and discussion, and assist the IGTO to focus areas for further inquiry in relation to the Terms of Reference.

Submissions for this investigation closed on 28 March 2022. We have received a number of submissions and received requests for extensions of time to lodge submissions from some stakeholders. Extension requests have been granted and we expect to receive these submissions before the end of April 2022. Following the release of our interim report, we will invite stakeholders and other interested parties to provide any further input or supplementary submissions. The terms of reference for this investigation are available on the [IGTO website](#).

### The Exercise of the General Powers of Administration (GPA)

A formal information request was sent to the ATO on 15 February 2022 with some information already provided and further information expected to be provided within the next few weeks. The IGTO has sought details relating to the ATO's internal policies, procedures and guidance materials in relation to the exercise of GPA in a number of areas including the development of Practical Compliance Guidelines and its approach to settlements.

The IGTO recognises that GPA canvasses a broad spectrum of decisions and is engaging with the ATO to identify and examine those areas and exercises of the GPA that affect a broader group of taxpayers.

Submissions for this review investigation closed on 28 February 2022. However, a number of extensions of time have been granted. Other interested stakeholders who wish to lodge a submission may contact the investigation team at [gpa@igt.gov.au](mailto:gpa@igt.gov.au). The terms of reference for this investigation are available on the [IGTO website](#).

### The Exercise of the Commissioner's Remedial Power (CRP)

A formal information request was sent to the ATO on 15 February 2022 with some information already provided and further information expected to be provided within the next few weeks. The IGTO has sought details relating to the ATO's internal policies, procedures and guidance materials in relation to how potential CRP candidates are identified and escalated for consideration, consultation with internal and external subject-matter experts and how decisions to exercise the CRP are made.

In addition, the IGTO is also consulting with external stakeholders including tax and legal practitioners who engage with, and provide advice on, the CRP process and academics who have undertaken research in this area.

Submissions for this review investigation closed on 28 February 2022. However, a number of extensions of time have been granted. Other interested stakeholders who wish to lodge a submission may contact the investigation team at [crp@igt.gov.au](mailto:crp@igt.gov.au). Terms of reference for this investigation are available on the [IGTO website](#).

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## JobKeeper Payment Scheme ending

The JobKeeper Payment scheme was a subsidy for businesses significantly affected by Coronavirus (the COVID-19 pandemic).

Whilst the JobKeeper Payment scheme concluded on 28 March 2021, the final date for any payment is 31 March 2022. There are very limited circumstances where payments may be made after this date. These include where the taxpayer has lodged an objection with the ATO to its JobKeeper eligibility decision **on or before 30 November 2021**, and either:

- the ATO's objection decision is that the taxpayer is entitled to a JobKeeper payment; or
- a Court or the Administrative Appeals Tribunal determines that the taxpayer is entitled to a JobKeeper payment.

The ATO cannot make a JobKeeper payment after 31 March 2022 to any entity that did not lodge an objection to its JobKeeper eligibility decision **on or before 30 November 2021**.

Please refer to the [ATO website](#) for more information about the scheme.

## If you have a new dispute about JobKeeper, we may decline to investigate

We may be unable to resolve your JobKeeper Payment scheme dispute before the final payment date of 31 March 2022 due to the timeframe required to conduct an IGTO investigation.

Accordingly, we may decline to investigate your JobKeeper Payment scheme dispute unless you have lodged an objection to the ATO's JobKeeper decision **on or before 30 November 2021**.

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## Quarterly Reporting Pack Q2 FY22

The IGTO's [Quarterly Reporting Pack \(QRP\) for Q2 FY22](#) has now been published. The QRP presents a range of data and information against certain Key Performance Indicators in our Corporate Plan for FY22. QRPs for prior periods are also available on our [website](#).

The Q2 FY22 QRP includes some high-level data in relation to our tax complaints investigation service. An overview of the Q2 complaint receipts is set out later in this newsletter and full year results will be included in the FY22 Annual Report, once published.

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## Tax Complaint Investigation Service update

As at the end of Q2, we have received 648 complaints. Overall, this is a reduction compared to the same periods in prior years. The COVID-19 pandemic continues to impact complaints for a number of reasons, including:

- The ATO debt recovery actions eased during the COVID-19 pandemic;
- The IGTO's call centre is currently operating as a call-back centre due to the need for IGTO staff to work from home. This means that members of the public may only leave a voicemail message to request a call back. The IGTO acknowledges that this may also be contributing to the lower number of complaints received;
- IGTO website communications have been updated to clearly explain the process to lodge a formal complaint with the ATO; and
- The IGTO is actively encouraging complainants to resolve their taxation complaints directly with the ATO in the first instance by lodging a formal complaint with ATO Complaints.

The IGTO continues to triage and prioritise cases demonstrating exceptional circumstances. All other complaints are placed in a queue to be allocated on a 'first in, first out' basis. Taxpayers are advised that the current wait time is several months.

Further details about our tax complaint investigation service including complaint investigations closed, top 5 issues and agreed business improvements are set out in our Quarterly Reporting Packs.

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## Case Study – Australian Taxation Office – JobKeeper

The complainant is an 81-year-old taxpayer who operated a travel agency with his wife. The complainant had not enrolled for JobKeeper until July 2020 as he had initially been unaware that JobKeeper payments were available to support businesses without employees.

But for his late enrolment, the complainant had satisfied all other eligibility criteria for JobKeeper.

When he approached the ATO for an extension of time to enrol (and to backdate relevant JobKeeper payments), the ATO refused on the basis that the business had not been affected by 'exceptional circumstances' to warrant

the grant of extension of time. As a result, the ATO would only commence making JobKeeper payments to the complainant from July 2020 onwards.

Following our investigation, the IGTO found that the ATO had applied a narrow test when deciding whether or not to grant an extension of time. The IGTO observed that the relevant test, as set out in the ATO's practice statement PSLA 2011/15 (the PSLA), was whether it would be 'fair and reasonable' to grant an extension of time having regard to the factors listed in paragraphs 45 and 46 of the PSLA and not the subset of 'exceptional circumstances' listed in paragraphs 47 and 48 of the PSLA.

As a result of the IGTO investigation, the ATO reconsidered the complainant's case and reversed its initial decision and allowed the backdating of JobKeeper payments to the complainant. The IGTO noticed a pattern in similar complaint cases managed by our office and published a report setting out our findings in detail. The full IGTO report containing the ATO's formal response is available on our [website](#).

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## Case Study – Australian Taxation Office – Boosting Cash Flow

The taxpayers had, for 10 years, managed a successful restaurant. In October 2019, the taxpayers incorporated a company and registered for an Australian Business Number (ABN) and purchased the restaurant from the former owners with ownership to commence on 31 January 2020. In December 2019, the company executed a lease for the restaurant's premises to commence when it took over the business. The restaurant's operations continued seamlessly and the company registered to report GST on a quarterly basis as had always been done.

In 2020, the company applied for access to Boosting Cash Flow (BCF) payments to support it through the COVID-19 pandemic. The ATO initially rejected the company's eligibility to BCF on the grounds that the company could not have lodged a GST return for the quarter ended 31 December 2019 as its business commenced operation after 1 January 2020.

The IGTO commenced an investigation and, as a result of which, the ATO agreed to undertake an internal review of the matter. The internal review found that in November 2019, the company had opened a bank account for the new business, which constituted a taxable supply for consideration for the purposes of the BCF. Accordingly, the Commissioner's discretion was exercised in this case to allow the company later time to provide notice of a taxable supply, resulting in the company obtaining access to BCF.

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## Our upcoming activities

In addition to continuing to deliver our tax complaint investigation service and progressing our own-motion and review investigations, over the next few months we will also:

- Prioritising resolution of time-sensitive JobKeeper investigations
- Progressing our three review investigations
- Continuing to re-establish and re-engage with our stakeholders, both in Australia and overseas
- Working through other complaint investigations that we have on foot and preparing our team and office to assist taxpayers as we approach TaxTime 2022.

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*The Inspector-General of Taxation and Taxation Ombudsman acknowledges the traditional owners and their ongoing cultural connection to Country, throughout Australia. We pay our respects to their Elders past, present and future.*