



Australian Government
Inspector-General of Taxation
Taxation Ombudsman

Opening Statement to the Senate Economics Legislation Committee Budget Estimates

By the Inspector-General of Taxation and Taxation Ombudsman

9 November 2022

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Opening Statement to the Senate Economics Legislation Committee Budget Estimates

Thank you Chair and Senators for the opportunity to make some brief introductory remarks before responding to the Committee's questions.

As you may be aware, my agency comprises myself and 27 staff who assist me. I was appointed as the Inspector-General of Taxation and Taxation Ombudsman (**IGTO**) on 6 May 2019 for a five (5) year term.

I would like to provide a brief introduction to my agency and the important role and function we play in ensuring high standards of tax administration for Australian taxpayers.

Australia has had a statutory Taxation Ombudsman function since 1995 but I suspect that most Australians are unaware of our existence and the services and assistance we provide. In 2015 the Taxation Ombudsman function was transferred from the Commonwealth Ombudsman to the Inspector-General of Taxation with bi-partisan support. Even today amongst specialist tax practitioners¹ there is still a low level of awareness of our existence and our services. This is a work in progress for me and my team.

Fundamentally, the IGTO is an integrity institution. It has been described as a valuable addition to the taxation governance framework and is integral to the tax administration accountability framework. It has a dual role:

- As Inspector-General of Taxation (**IGT**) we independently investigate systemic issues with tax administration and the operation of its laws to identify and recommend improvements, after consulting with the community.
- As the Taxation Ombudsman we independently investigate unresolved complaints (**disputes**) that individual members of the community have with administrative decisions, actions, systems and laws of the Australian Taxation Office (**ATO**) and Tax Practitioners Board (**TPB**). That is complaints that the ATO or TPB has not resolved satisfactorily themselves.

¹ 52% of an audience polled at the Tax Institute National Tax Summit on 20 October 2022 either did not know Australia had a Taxation Ombudsman or were unaware of what services we provide.

Australia's tax system is complex and relies on taxpayers' voluntary compliance and so independent investigation is ultimately important for two main reasons:

1. protecting the integrity of the tax system² – that is, ensuring fair administration – since administration which is perceived to be or is in fact unfair can undermine net tax collections and add to the tax burden of otherwise compliant taxpayers.
2. protecting the rights of Australian taxpayers – by ensuring high standards of tax administration are applied in their individual circumstances.

Simply put, the Australian community expects and benefits from a tax system that is administered fairly, equitably and transparently ... since people are more willing to engage with the system where they trust in its integrity.

The IGTO performs an important role in this respect.

The IGTO can also assist Parliamentary Committees in their oversight and accountability role. Tax secrecy and confidentiality of taxpayer information is an important feature of the Australian tax system. The IGTO has specific exclusions to ATO tax secrecy and confidentiality, as well as the requisite tax technical expertise to investigate for the purposes of providing independent assurance on specific areas of tax administration and identify practicable options for resolution. We can draw on insights gained from almost 20 years of independent investigation.

In terms of operations, the IGTO is an independent, Commonwealth statutory agency with 27 staff that operates out of a single office location in Sydney, but with national responsibilities and obligations.

If it would assist the Committee, I am happy to provide a document that I have prepared which gives a brief chronology of historical events that relate to the establishment of the IGTO's dual roles and the recent Senate committee's review of the IGTO' performance.

Thank you for the opportunity to share these remarks. I look forward to assisting the Committee.

Karen Payne, Inspector-General of Taxation and Taxation Ombudsman

9 November 2022

² 93% of an audience polled at the Tax Institute National Tax Summit on 20 October 2022 agreed that independent assurance and investigation of taxation complaints and disputes is important to uphold the integrity of the tax system.

Some Historical Background and Context

Senate Economics Legislation Committee Inquiry into the performance of the Inspector-General of Taxation

On Thursday 1st August 2019, a previously constituted Senate Economics Legislation Committee resolved to conduct an Inquiry into the performance of the Inspector-General of Taxation. This was less than 3 months into my term. The terms of reference for that Inquiry included:

- a. whether the accountability framework the IGT operates within needs to be amended or strengthened;
- b. how the IGT conducts its investigations into the Australian Taxation Office (ATO);
- c. what safeguards exist to ensure the independence of the IGT;
- d. the complaints management policies and practices of the IGT;
- e. the protections afforded to whistle-blowers who disclose information to the IGT; and
- f. any related matters.

The Committee tabled their report in Parliament on 17 June 2020. The Committee made 16 recommendations, all of which were welcomed by the IGTO. The recommendations were:

Recommendation 1

2.87 The committee recommends the Australian Government assess whether the IGTO is adequately resourced, both now and into the foreseeable future, to effectively discharge its dual role as the Inspector-General of Taxation and the Taxation Ombudsman.

Recommendation 2

2.88 The committee recommends the Australian Government consider whether the IGTO's current portfolio arrangements are appropriate, and whether alternative arrangements could improve actual, or perceived, independence.

Recommendation 3

2.89 The committee recommends the Australian Government review the IGTO's current access to the ATO and Tax Practitioners Board's systems, data, and records and considers improving access, where necessary, to further enable it to perform its legislative functions.

Recommendation 4

2.90 The committee recommends the Australian Government consider whether the IGTO should have a formal role to independently advise the minister on the administrative aspects of new tax laws and amendments to existing tax laws.

Recommendation 5

3.87 The committee recommends the Australian Government better publicise the IGTO's ombudsman function through the development of a marketing campaign. Such a campaign should, amongst other things, clarify how the IGTO's role interacts with other ombudsmen, such as the Small Business and Family Enterprise Ombudsman.

Recommendation 6

3.88 The committee recommends the Australian Government consider strengthening protections available to individuals who disclose information to the IGTO, regardless of whether the disclosure is in relation to a complaint investigation or systemic review.

Recommendation 7

3.89 The committee recommends the rights of tax officials who are interviewed during investigations undertaken by the IGTO be clarified, and that protections afforded to them be strengthened. This includes providing officials the legal right to choose whether or not they have other persons present when providing information.

Recommendation 8

3.90 The committee recommends the Australian Government ensure that non-binding recommendations made by the IGTO, in respect of a complaint, be formally responded to within a reasonable time frame and, where a recommendation is not accepted, rationale for the non-acceptance be provided.

Recommendation 9

3.91 The committee recommends the Australian Government clarify which entities are responsible for investigating and prosecuting offences under the IGT Act, such as those created under section 39.

Recommendation 10

3.92 The committee recommends the Australian Government review the IGT Act and its interactions with the Ombudsman Act, with the objective of improving the IGT Act's clarity. Such a review would also include an assessment of the necessity of the exclusion in subsection 7(2) of the IGT Act regarding rules and quantification.

Recommendation 11

3.93 The committee recommends the Australian Government consider the benefits of introducing more formal arrangements between the IGTO and Australian Tax Clinics, as well as improving the model for inter-agency collaboration to permit joint investigations.

Recommendation 12

4.79 The committee recommends an independent review of the PID Act be undertaken in 2021, which includes consideration of establishing a single whistleblower authority.

Recommendation 13

4.80 The committee recommends the IGTO be made an 'investigative agency' under the PID Act.

Recommendation 14

4.81 The committee recommends the IGTO be made an 'eligible recipient' under the TAA 1953.

Recommendation 15

4.82 The committee recommends the Australian Government resolve the inconsistencies between the TAA 1953 and the IGT Act regarding taxation officers who make unauthorised disclosures to the IGTO.

Recommendation 16

4.83 The committee recommends the Australian Government remove the requirement for the Tax Commissioner to authorise disclosures by tax officers if an IGTO review has either commenced or is being contemplated.

Taxation Ombudsman in Australia

Australia first established a statutory Taxation Ombudsman in 1995 following a recommendation³ by the Joint Committee of Public Accounts (JCPA) in their *Report No. 326 An Assessment of Tax - A Report on an Inquiry into the Australian Taxation Office*. That same Parliamentary Committee recommended the introduction of a Taxpayers' Charter. The Taxation Ombudsman function was transferred from the Commonwealth Ombudsman to the IGTO in May 2015 with bi-partisan support. The Assistant Treasurer at the time commented that:

³ 13.42 Therefore, the Committee recommends that:

- a statutory position of Commonwealth Taxation Ombudsman be created within the current Commonwealth Ombudsman's Office;
- resources be provided to the Commonwealth Taxation Ombudsman to allow the Ombudsman to adequately investigate all complaints;
- the role of the Problem Resolution Units in the Australian Taxation Office be amended such that the staff of those Units work directly to a Commonwealth Taxation Ombudsman;
- reports by the Commonwealth Taxation Ombudsman on taxpayer complaints be provided both to the taxpayer and the Commissioner of Taxation; and
- a report on the activities of the Commonwealth Taxation Ombudsman be incorporated in the Annual Report to Parliament of the Commonwealth Ombudsman.

the transfer would concentrate scarce tax expertise in a single agency, enabling more efficient use of that expertise and improved customer focus. The change will also simplify the scrutiny landscape.

The IGTO contributes to the overall integrity and transparency of the tax system, by independently investigating taxation administrative decisions, actions, systems and laws of the Australian Taxation Office (ATO) and the Tax Practitioners Board (TPB).

We investigate taxation complaints raised with us by individual members of the community and investigate systemic issues to identify and recommend improvements, after consulting with the community. The dual roles of the Inspector-General of Taxation (IGT) and the Taxation Ombudsman complement each other.

Independent investigation provides assurance to the community that taxation laws are being administered consistently, fairly, transparently and in accordance with community expectations.

This is important because the Australian community expects and benefits from a tax system that is administered fairly, equitably and transparently ... since people are more willing to engage with the system where they trust in its integrity.



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SOME HISTORICAL BACKGROUND AND CONTEXT

SENATE ECONOMICS LEGISLATION COMMITTEE INQUIRY INTO THE PERFORMANCE OF THE INSPECTOR-GENERAL OF TAXATION

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- b. how the IGT conducts its investigations into the Australian Taxation Office (ATO);
- c. what safeguards exist to ensure the independence of the IGT;
- d. the complaints management policies and practices of the IGT;
- e. the protections afforded to whistle-blowers who disclose information to the IGT; and
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TAXATION OMBUDSMAN IN AUSTRALIA

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the transfer would concentrate scarce tax expertise in a single agency, enabling more efficient use of that expertise and improved customer focus. The change will also simplify the scrutiny landscape.

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- resources be provided to the Commonwealth Taxation Ombudsman to allow the Ombudsman to adequately investigate all complaints;
- the role of the Problem Resolution Units in the Australian Taxation Office be amended such that the staff of those Units work directly to a Commonwealth Taxation Ombudsman;
- reports by the Commonwealth Taxation Ombudsman on taxpayer complaints be provided both to the taxpayer and the Commissioner of Taxation; and
- a report on the activities of the Commonwealth Taxation Ombudsman be incorporated in the Annual Report to Parliament of the Commonwealth Ombudsman.



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Attachment B Inspector-General and Taxation Ombudsman models for improved Tax Integrity, Fairness and Voluntary Compliance

The financial sustainability of the Inspector-General of Taxation and Taxation Ombudsman has been a matter of concern for some years and has been raised in various Parliamentary Committees including the following:

1995 – The Joint Committee of Public Accounts (JCPA)

In 1995 a statutory position of Commonwealth Taxation Ombudsman was created, following a recommendation by the Joint Committee of Public Accounts¹ (JCPA). The JCPA recommended the establishment of a Commonwealth Taxation Ombudsman in their 1995 Report No. 326 *An Assessment of Tax - A Report on an Inquiry into the Australian Taxation Office*. The specific recommendations are made in Chapter 13 – Taxpayers Charter which begins on page 307. An extract from the report is set out below for context and background to the arrangements existing at that time

13.30 The Committee considered that the recommendation for a Charter of Rights would be of little practical effect unless the current administrative procedures for reviewing taxpayers' complaints were reformed. The capacity for taxpayers to have administrative issues, not necessarily involving a decision of the Commissioner, reviewed and explained was of paramount importance. Moreover, where taxpayers consider the ATO has acted illegally or unconscionably, an avenue of redress was necessary.

13.31 At present the taxpayer can approach the Commonwealth Ombudsman for an external review of the problem or obtain an internal review through one of the ATO's Problem Resolution Units (PRU). These units, which have been established in every ATO branch office, consist of a small number of officers who are expected to act on behalf of taxpayers within the ATO. The principal function of the PRUs is to seek to resolve within 10 working days those problems of an administrative character where taxpayers have no formal avenue of review or redress.

13.32 Evidence from taxpayers and their representatives urged the creation of a dedicated Taxation Ombudsman for the purpose of providing a remedy to administrative impropriety or inefficiency which impacts upon taxpayers.

¹ Commonwealth Ombudsman Annual Report 2010-11 page 134

13.33 In a submission to the Committee the current Commonwealth Ombudsman set out the general characteristics of an Ombudsman's office:

- actual and perceived independence from the subject of scrutiny and complaint;
- impartiality conducting independent investigations rather than acting as an advocate on behalf of any party;
- having the power to make recommendations regarding remedial action but not to make determinations which are binding on any party; and
- being appointed by statute, and usually reporting to the Parliament.

13.34 The Committee considered a number of options for the development of a Taxation Ombudsman including:

- the creation of an independent Taxation Ombudsman's office outside the current Commonwealth Ombudsman's Office;
- the extension and expansion of the current reference for the Commonwealth Ombudsman's Office in respect of taxation matters; and
- improved administrative access by the Commonwealth Ombudsman's Office to the ATO.

13.35 The Committee concluded that the most effective approach to securing an adequate review of complaints was to expand the existing review mechanisms of the PRU and link them with a Taxation Ombudsman. Such an approach would present an ideal opportunity to link internal administrative review and external independence.

13.36 Resources allocated to the PRUs to manage both current workloads and work arising from review of complaints to an ombudsman would need to be increased. However, the Committee considered that the resources required for cost effective operations would be small and could be managed within current allocations.

...

13.42 Therefore, the Committee recommends that:

- a statutory position of Commonwealth Taxation Ombudsman be created within the current Commonwealth Ombudsman's Office;
- resources be provided to the Commonwealth Taxation Ombudsman to allow the Ombudsman to adequately investigate all complaints;
- the role of the Problem Resolution Units in the Australian Taxation Office be amended such that the staff of those Units work directly to a Commonwealth Taxation Ombudsman;
- reports by the Commonwealth Taxation Ombudsman on taxpayer complaints be provided both to the taxpayer and the Commissioner of Taxation; and
- a report on the activities of the Commonwealth Taxation Ombudsman be incorporated in the Annual Report to Parliament of the Commonwealth Ombudsman.

Not all of the recommendations of the JCPA were implemented. For example, the Taxation Ombudsman was not supported by a Problem Resolution Unit (or equivalent) within the Australian Taxation Office and although, in 2002, the Taxation Ombudsman function comprised 10 FTE at a cost of approx. \$1.6 million², by 2014, it comprised 3.5m FTE (full time equivalent) staff at a cost of under \$0.5 million.

Between 2010 and 2014 (five financial years prior to the transfer of the Taxation Ombudsman to the Inspector-General of Taxation and Taxation Ombudsman) the Commonwealth Ombudsman received 10,280 taxation complaints as follows:

	Total Received	Category 1	Category 2	Category 3	Category 4	Category 5	Total Finalised
FY14	1,369	570	689	96	56	0	1,411
FY13	1,795	787	634	273	126	1	1,821
FY12	2,717	1,125	1,193	242	195	0	2,755
FY11	2,589	996	1,020	342	241	5	2,604
FY10	1,810	504	942	114	202	0	1,762
Total	10,280	3,982	4,478	1,067	820	6	10,353

Source: Commonwealth Ombudsman annual reports, FY10 to FY14 (inclusive).

2002–03 – the Inspector-General of Taxation function was created with an annual budget of \$2 million

The IGT was created in the wake of the ATO's handling of mass marketed schemes which were entered by thousands of taxpayers in the late 1990s. Whilst the ATO ultimately reached settlement in these matters, concerns of the impact on the system and diminished confidence on the tax administration led the Howard Government to commit to the creation of the IGT 'to identify systemic problems in tax administration, such as mass marketed schemes, and deal with those problems as they emerge.'³

² Senate Legislation Committee on Economics, *Inquiry into the Inspector-General of Taxation Bill 2002* (2002), p 28.

³ Commonwealth, *Parliamentary Debates*, Senate, 15 May 2002, p 1579.

Commented [DP1]: May have to compile this manually. I have hard copy Ombudsman Annual Reports going all the way back to about 2000 on the back shelf in my office.

Commented [DD2R1]: Completed,

The proposal was reviewed by the Board of Taxation and the proposed legislation was reviewed by the Senate Legislation Committee on Economics.

The latter observed broader concerns with the IGT's budget, amongst other things, which at that time was \$2 million/ year. It recommended:⁴

...4.64 The Committee recommends that the Government consider amending the Bill to require an independent review of the efficiency and effectiveness of the office of Inspector-General of Taxation within a period of five years from the appointment of the first Inspector-General. The review is also to include consideration of the scope of the functions of the Inspector-General and the adequacy of its budget":

Overall, the Committee concluded that:

5.2 The proposal is viewed as a valuable addition to the taxation governance framework, complementing the existing functions of the Board of Taxation, the Commonwealth Ombudsman and the Auditor-General.

... 5.4 Although the problems identified in the [Inspector-General of Taxation] Bill were not generally considered to be sufficient to prevent the proposal proceeding, the Committee considers that if not remedied they have the potential to undermine the credibility of the Office of the Inspector-General. In particular, the Committee is mindful of the need to protect the independence of the office. Thus, the Committee believes it would be remiss to disregard concerns held so widely by those providing evidence to the inquiry.

5.5 Significant issues which have been raised include the ability of the Inspector-General to review taxation policy and law, the public release of reports, the setting of work priorities, and the resourcing of the office.

5.6 The Committee has made several recommendations and suggestions in regard to these issues, and other points raised in evidence, and urges the Government to consider amending the Bill in the manner recommended.

Amendments were moved on behalf of the Government in the Senate that included clearer identification of the role and responsibilities of the IGT and to require that the IGT's reports to be tabled or publicly released within a specified timeframe of their completion.

⁴ 2002 Eco Bill Inq, p 28

2007–08 – Labor election policy to amalgamate the IGT within Commonwealth Ombudsman was reversed after consultation with stakeholders

In 2007, Labor announced its election policy of a \$3 Billion Savings Plan which included the amalgamation of the IGT within the Commonwealth Ombudsman to save on overhead costs. However, following broader consultation, the then Assistant Treasurer, the Hon Chris Bowen MP, stated:⁵

The Inspector-General of Taxation plays an important role in ensuring high standards of tax administration for Australian taxpayers. The best way to ensure the Inspector-General's work is not hampered in any way is to retain the Inspector-General's status as a separate stand alone body.

2009 Henry Review finds that the effectiveness of the scrutiny of ATO is dependent on scrutineers' resourcing and other responsibilities

With respect to the accountability of the ATO, the Henry review found and recommended:⁶

The ATO is scrutinised by many bodies, including the Parliament, the Commonwealth Ombudsman, the ANAO and the Inspector-General of Taxation. However, the effectiveness of this scrutiny is dependent to some extent on the resources and other responsibilities of these institutions.

... While the Commissioner of Taxation is ultimately responsible to Parliament, the complexity of the tax system makes it difficult for parliamentarians to perform an active role in the cycle of public accountability of the ATO.

...Recommendation 117:

The government should ensure that sufficient resources are devoted to the functions of the Inspector-General of Taxation, the Australian National Audit Office and the Commonwealth Ombudsman, recognising their importance in maintaining a fair and efficient tax system.

⁵ Chris Bowen MP, 'Inspector-General of Taxation to be retained as a stand alone office' (Media Release 22, 9 April 2008).

⁶ *Australia's future tax system: Report to the Treasurer (the Henry Report): Part Two Detailed Analysis*, pp 663–664.

2015 – the Taxation Ombudsman function was transferred from the Commonwealth Ombudsman to the Inspector-General of Taxation

The transfer of the Taxation Ombudsman was accompanied by an increase in Budget appropriations from \$2.8 million to \$6.5 million.

As the then Assistant Treasurer stated:⁷

...the transfer would concentrate scarce tax expertise in a single agency, enabling more efficient use of that expertise and improved customer focus. The change will also simplify the scrutiny landscape.

2016 – Tax and Revenue Committee’s Inquiry ‘External Scrutiny of the Australian Taxation Office’ finds that the IGTO had proven its worth

The House of Representatives’ Standing Committee on Tax and Revenue report relevantly states:⁸

Duplication and overlap

... The Committee concluded that the extent of any duplication [of the ATO’s scrutineers], if it does occur, is minimal. The Committee supports the ability of scrutineers to select the reviews they think are the most valuable, within their mandate. The Committee also concluded that their co-ordination process is sound.

However, the Committee did find opportunity for the scrutineers to improve the transparency of the co-ordination. The Committee recommended that the scrutineers improve the profile of their co-ordination activities and that they improve the explanation in their reports of why each review was conducted and how it fits in with other reviews.

... Cost to government of scrutiny

... The Committee supports the view that external scrutiny is an investment in the tax system and that the benefits of the scrutiny accrue more widely than the ATO. The Parliament, Australian businesses and individuals also benefit. The costs of external scrutiny also need to be kept in perspective relative to the size of the ATO and its importance to the economy.

⁷ Commonwealth, Parliamentary Debates, House of Representatives, 25 February 2015, p 1253 (Josh Frydenberg MP).

⁸ House of Representatives Standing Committee on Tax and Revenue, *External scrutiny of the Australian Taxation Office* (2016) Executive Summary – Evidence and Findings, pp xvii–xix.

There is also scope for the ATO to manage its costs during a review. This includes how it engages with scrutineers....

...The position and role of the Inspector-General of Taxation

...A majority of submissions supported the position of the Inspector-General, often suggesting that his role be widened, either through greater resources or powers. A small number of submissions suggested that the position be abolished. The Commonwealth Ombudsman noted that an oversight body that covered a small number of agencies ran the risk of being either captured by them, or becoming antagonistic towards them.

The Committee is of the view that the office of Inspector-General should continue. This office has proven its worth through quality reviews that have improved the ATO's operations and the position of taxpayers. It also has strong support among almost all stakeholders.

The Inspector-General has taken on a new role in handling complaints about tax administration. There is now the opportunity for the Inspector-General to conduct shorter, timelier reviews based on complaints data. Not only did some stakeholders suggest this, but both the ATO and Inspector-General did as well. The Committee has made a recommendation to this effect.

2020 - Senate Economics Legislation Committee's Inquiry, 'Performance of the Inspector-General of Taxation' (June 2020)

The Senate Economics Legislation Committee (which included the late Senator Alex Gallagher) tabled a report on the Performance of the Inspector-General of Taxation in Parliament on 17 June 2020. The Senate Committee's report stated:

2.80 The committee notes the large increase in the I'TO's workload since the Taxation Ombudsman function was transferred in 2015, and calls by numerous submitters that the government augment the I'TO's funding. The committee agrees that it is vital for the IGTO to be adequately resourced now, and into the future, to ensure it can discharge its two disparate roles in an independent and timely manner.

... 2.85 The committee notes that the IGTO would prefer unobstructed access to records, data, and systems held and maintained by the ATO and the Tax Practitioners Board. The committee understands this may improve the I'TO's ability to effectively undertake its dual roles as inspector and ombudsman.

... Recommendation 1

2.87 The committee recommends the Australian Government assess whether the IGTO is adequately resourced, both now and into the foreseeable future, to effectively discharge its dual role as the Inspector-General of Taxation and the Taxation Ombudsman.

... Recommendation 3

2.89 The committee recommends the Australian Government review the I'TO's current access to the ATO and Tax Practitioners Board's systems, data, and records and considers improving access, where necessary, to further enable it to perform its legislative functions.

Similarly the statutory framework and operational efficiency available for the IGTO to carry out its objectives has been a matter of concern in the Committee's recommendations, including

- Recommendations 2,3,5,6,7, 8,9,10,13,14,15,16

October 2021 - House of Representatives Standing Committee on Tax and Revenue – Inquiry into the 2018-19 Commissioner of Taxation Annual Report

The House of Representatives recommended that the IGTO is renamed the Taxpayer Advocate and more closely aligned with the USA model.

3.74 The Committee believes that a Taxpayer Advocate would provide the Australian tax system with meaningful checks and balances that would better protect taxpayers' rights.

... Recommendation 19

3.85 The Committee recommends the Inspector General of Taxation be renamed the 'Taxpayer Advocate', and that the role aligns more closely with the powers and structure of the United States Taxpayer Advocate, based on the needs of the Australian tax system.

3.86 The Taxpayer Advocate must continue to have the freedom and independence enjoyed by the current Inspector General of Taxation.

IGTO Departmental funding, ASL, Investigations and complaints 2004 - 2019

IGTO

Fiscal Year	Appropriations (\$m)	ASL (a)	Reviews (b)		Complaints	
			Finalised	Received	Received	Finalised
2004	\$2.01	4	0	N/A	N/A	N/A
2005	\$2.18	7	4	N/A	N/A	N/A
2006	\$2.15	6	2	N/A	N/A	N/A
2007	\$2.17	7	3	N/A	N/A	N/A
2008	\$2.18	7	3	N/A	N/A	N/A
2009	\$2.17	7	4	N/A	N/A	N/A
2010	\$2.18	7	3	N/A	N/A	N/A
2011	\$2.13	7	4	N/A	N/A	N/A
2012	\$2.69	11	3	N/A	N/A	N/A
2013	\$2.62	10	2	N/A	N/A	N/A
2014	\$2.63	10	6	N/A	N/A	N/A
2015 (c)	\$2.79	14	4	340	262	262
2016	\$6.50	34	2	2,148	2,133	2,133
2017	\$6.57	35	2	2,251	2,196	2,196
2018	\$6.48	35	3	2,405	2,263	2,263
2019	\$6.45	35	2	2,712	2,827	2,827

Source: IGTO annual reports and Portfolio Budget Statements - Treasury Portfolio

(a) - ASL numbers are sourced from the Portfolio Budget Statements - Treasury Portfolio, for the relevant year. All other data is sourced from relevant IGTO annual report

Notes:

(b) - Reviews are allocated to the financial year in which they were finalised and therefore may not reflect work undertaken in previous years

(c) - The complaints handling function commenced on 1 May 2015

Departmental funding over last 7 years (FY16 – FY22): IGTO's fell slightly, ATO's increased 25%

IGTO Funding FY20 – FY23

2019-20: \$6.449 million, ASL 35 (PBS 2019-20, p 270 Departmental Appropriation)

2020-21: \$6.477 million, ASL 35 (PBS 2019-20, p 270 Departmental Appropriation)

2021-22: \$6.502 million, ASL 28 (PBS 2022-23, p 274 Departmental Appropriation)

2022-23: \$6.484 million, ASL 35 (PBS 2022-23, p 274 Departmental Appropriation)

ATO's Funding FY16 – FY23:

2015-16: \$3.189 billion, ASL 17,781 (PBS 2016-17, p 156 Departmental Appropriation)

2016-17: \$3.191 billion, ASL 18,320 (PBS 2016-17, p 156 Departmental Appropriation)

2017-18: \$3.184 billion, ASL 18,193 (PBS 2018-19, p 171 Departmental Appropriation)

2018-19: \$3.253 billion, ASL 18,234 (PBS 2018-19, p 171 Departmental Appropriation)

2019-20: \$3.461 billion, ASL 16,873 (PBS 2020-21, p 183 Departmental Appropriation)

2020-21: \$3.886 billion, ASL 18,368 (PBS 2020-21, p 183 Departmental Appropriation)

2021-22: \$3.771 billion, ASL: 18,445 (PBS 2022-23, p 201 Departmental Appropriation)

2022-23: \$3.979 billion, ASL 19,693 (PBS 2022-23, p 201 Departmental Appropriation)

2022 - The Inspector-General of Taxation and the Taxation Ombudsman

The IGTO contributes to the overall integrity and transparency of the tax system, by independently investigating taxation administrative actions and decisions of the Australian Taxation Office (ATO) and the Tax Practitioners Board (TPB), as well as systems and laws relating to tax administration. The dual roles of the Inspector-General of Taxation and the Taxation Ombudsman (IGTO) complement each other.

- As Inspector-General of Taxation (IGT) we independently investigate systemic issues with tax administration to identify and recommend improvements, after consulting with the community.
- As the Taxation Ombudsman we independently investigate unresolved complaints (**disputes**) that individual members of the community have with the decisions, actions and systems of the ATO and TPB.

Australia's tax system is complex and relies on taxpayers' voluntary compliance and so independent investigation is ultimately important for two main reasons:

1. protecting the integrity of the tax system⁹ – that is, ensuring fair administration – since administration which is perceived to be or is in fact unfair can undermine net tax collections and add to the tax burden of otherwise compliant taxpayers.
2. protecting the rights of Australian taxpayers – by ensuring high standards of tax administration are applied in their individual circumstances.

Independent investigation provides assurance to the community that taxation laws are being administered consistently, fairly, transparently and in accordance with community expectations. This includes determining whether taxation laws are administered in accordance with ATO or TPB policies, procedures and guidelines and publicly communicated commitments (including those set out in the *Taxpayers' Charter*), and also consistent with community expectations of fairness.

This is fundamental to the health of Australia's self-assessment system of taxation. Voluntary compliance ultimately determines the efficiency and effectiveness of the tax administration system itself – including tax revenues raised, the timeliness of tax lodgements and the resources necessary to administer the system.

⁹ 93% of an audience polled at the Tax Institute National Tax Summit on 20 October 2022 agreed that independent assurance and investigation of taxation complaints and disputes is important to uphold the integrity of the tax system.

The IGTO's investigations are conducted by suitably experienced and qualified staff who transparently investigate issues with a view to recommend practicable options for resolution. This provides assurance to the government regarding the operation of the tax administration laws and the community that the taxation laws are being administered consistently, fairly, transparently and in accordance with community expectations. It also helps to reduce non-compliance which can reduce revenue collection and add to the tax burden of compliant taxpayers.

The IGTO can also assist Parliamentary Committees with their oversight and accountability role. Tax secrecy and confidentiality of taxpayer information is an important feature of the Australian tax system. The IGTO has specific exclusions to ATO tax secrecy and confidentiality, as well as the requisite tax technical expertise to investigate for the purposes of providing independent assurance on specific areas of tax administration and identify practicable options for resolution. We can draw on insights gained from almost 20 years of independent investigation.

Comparison of Models

The following Table is a high level summary of various possible models for operating a Taxation Ombudsman function and an assessment as to which model delivers optimal outcomes against each of the criteria noted and the challenges in doing so.

There are at least 3 different models for a tax ombudsman, taxpayers' advocate or equivalent position as follows:

1. A separate independent agency and function — for example, the Taxation Ombudsman in Australia or the Taxpayers' Ombudsperson in Canada
2. A separate function or jurisdiction within a national or Commonwealth ombudsman — for example, the Chief Ombudsman in New Zealand
3. A separate function or jurisdiction within the Tax Authority — for example, the National Taxpayer Advocate and the Taxpayer Advocate Service in the United States of America.

The IBFD Observatory on the Protection of Taxpayers' Rights notes that, in its view, 'Best practice is the establishment of a separate office within the tax authority but independent from the normal operations of that authority'.¹⁰

In Australia, the Taxation Ombudsman functions as Model 1 above, although between 1995 and May 2015 it operated as Model 2.

There are advantages and disadvantages with each model which cannot be fully assessed without understanding the legal framework and powers of access, funding and resourcing arrangements associated with each of the models. However, the independence of the appointed Taxation Ombudsman and agency function is fundamentally important to protect the integrity of the services provided and delivered.

¹⁰ See IBFD Yearbook, 2021, p 207.

Each year, the IBFD's Observatory on the Protection of Taxpayers' Rights (OPTR) publishes a Yearbook on Taxpayers' Rights (IBFD Yearbook). The IBFD Yearbook consolidates and analyses survey responses from a range of participating jurisdictions. In 2021 only 22 of the 48 country reports or 46% answered yes to Question 82 - *Is this person independent from the tax authority?* but this represented 22 out of 28 countries (79%) that answered Yes they have a (tax) ombudsman/taxpayers' advocate or equivalent position in their country (Question 80).

This included Australia, New Zealand, the United States of America and the United Kingdom. Canada did not participate in the 2021 Survey but responded Yes to this same question in 2020, when it did participate. Accordingly, it is critical to identify independence regardless of the legal framework and powers of access, funding and resourcing arrangements associated with each of the models.

This is revealed in the sentiment observed in responses to a polling question posed by the IGTO at the recent (October 2022) National Tax Summit of the Tax Institute¹¹.

Important Features	Separate Independent Agency or function	A separate function or jurisdiction within the Commonwealth Ombudsman	A separate function or jurisdiction within the Australian Taxation Office	Optimal Model, by feature
International Examples	Eg – Australia, Canada	Eg - New Zealand	Eg - USA	
Model	A	B	C	
Independence - Actual	A separate agency is more likely to be actually independent of the revenue authority as it is structurally separate from it. However, its independence is also dependent on the statutory powers, sufficiency	A separate function within a separate agency is more likely to be actually independent as it is structural separate from the revenue authority. However, its independence is also dependent on the statutory framework and the	A separate function within the ATO is unlikely to be actually independent as it is not structurally separate. However, factors impinging on actual independence may be able to be addressed via legislative enshrinement of	A

¹¹ 93% consider that independent assurance and investigation of taxation complaints and disputes is important to uphold the integrity of the tax system.

Important Features	Separate Independent Agency or function	A separate function or jurisdiction within the Commonwealth Ombudsman	A separate function or jurisdiction within the Australian Taxation Office	Optimal Model, by feature
International Examples	Eg – Australia, Canada	Eg - New Zealand	Eg - USA	
Model	A	B	C	
	<p>of funding and resources and its effectiveness.</p>	<p>organisational priority for the tax ombudsman function and allocation of resources, as it will effectively compete with other functions.</p> <p>In the context of an agency with a remit as broad as the Commonwealth Ombudsman, the Taxation Ombudsman’s effectiveness may be diluted.</p>	<p>statutory powers and functions, terms of appointment, funding arrangements and requirement for public reporting on critical interactions with the revenue authority. For example, in the USA, statute establishes the National Taxpayer Advocate position and functions, specifies the terms of appointment and required mandatory qualifications, amongst others. Although the NTA reports directly to the Commissioner of Taxation, the resulting tensions are countered by the requirement for the NTA to report directly to Congress regularly and to provide details of key interactions with the IRS, as well as full and substantive analysis of problems and</p>	

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Important Features	Separate Independent Agency or function	A separate function or jurisdiction within the Commonwealth Ombudsman	A separate function or jurisdiction within the Australian Taxation Office	Optimal Model, by feature
International Examples	Eg – Australia, Canada	Eg - New Zealand	Eg - USA	
Model	A	B	C	
			proposed mitigation actions (26 U.S. Code § 7803(c)).	
Independence – Perceived	<p>A separate agency is more likely to be perceived as independent.</p> <p>However, this is impacted by its public profile and effectiveness, which themselves are dependent on the function's remit, statutory powers, sufficiency of funding and resources.</p>	<p>A separate function within a separate agency is likely to be perceived as independent.</p> <p>However, organisational priorities affecting funding and resources for the Taxation Ombudsman function may impact its public profile where its effectiveness is adversely impacted.</p> <p>For example, by 2014, the Taxation Ombudsman function comprised 2.3 FTE (full time equivalent staff)¹² and the tax profession generally perceived it as ineffective in dealing with</p>	<p>A separate function within the revenue authority is unlikely to be perceived as independent.</p> <p>However, perceptions may be positively influenced by the existence of statutory powers, functions, independence of budget, staff accountability to the Taxation Ombudsman and required transparency of interactions with revenue authority staff as well as its public profile and effectiveness in individual cases.</p>	A

¹² Commonwealth Ombudsman, Communication to the IGTO, 3 October 2014.

Important Features	Separate Independent Agency or function	A separate function or jurisdiction within the Commonwealth Ombudsman	A separate function or jurisdiction within the Australian Taxation Office	Optimal Model, by feature
International Examples	Eg – Australia, Canada	Eg - New Zealand	Eg - USA	
Model	A	B	C	
		<p>all but the most simple procedural or service issues.</p> <p>Between 2010 and 2014 (five financial years prior to the transfer of the Taxation Ombudsman to the Inspector-General of Taxation and Taxation Ombudsman) the Commonwealth Ombudsman received 10,280 taxation complaints.</p>		
Independence – head of agency/function	<p>Independence is strengthened where a dedicated position is enshrined in law, independently appointed for a fixed term and has authority to hire staff and delegate powers.</p> <p>The existing Inspector-General of Taxation position is a statutory position,</p>	<p>The independence of the appointed Taxation Ombudsman will depend on the terms of appointment, whether it is a dedicated full-time role and any statutory amendments.</p> <p>For example, prior to 2015, the Taxation Ombudsman was also</p>	<p>The independence of the head of the separate function/jurisdiction within the revenue authority will largely depend on the structural safeguards to resist cultural absorption and deference – e.g. the powers and accountability of the position, independence of the appointment process, terms</p>	A

Important Features	Separate Independent Agency or function	A separate function or jurisdiction within the Commonwealth Ombudsman	A separate function or jurisdiction within the Australian Taxation Office	Optimal Model, by feature
International Examples	Eg – Australia, Canada	Eg - New Zealand	Eg - USA	
Model	A	B	C	
	appointed by the Governor-General, for a fixed term of no more than 5 years, with a possibility of renewal.	the Commonwealth Ombudsman ¹³ .	and conditions of appointment and tenure.	
Independence - Financial	<p>A separate agency with allocated appropriations is necessarily financially independent.</p> <p>Funding is determined within the Treasury portfolio responsibilities and priorities.</p>	<p>A separate function within Commonwealth Ombudsman has a degree of financial independence. However, competing demands and priorities of other functions within the Commonwealth Ombudsman's remit risks dilution of resourcing and adversely impacting longer-term planning due to uncertainty of allocations.</p> <p>Funding is determined outside the Treasury portfolio responsibilities and priorities –</p>	<p>This is not actually independent.</p> <p>Funding is determined within the Treasury portfolio responsibilities and priorities.</p>	A

¹³ see former s4(3) Ombudsman Act 1976

Important Features	Separate Independent Agency or function	A separate function or jurisdiction within the Commonwealth Ombudsman	A separate function or jurisdiction within the Australian Taxation Office	Optimal Model, by feature
International Examples	Eg – Australia, Canada	Eg - New Zealand	Eg - USA	
Model	A	B	C	
		which may positively affect perceived independence.		
Financial Efficiency	<p>Corporate compliance costs and activities can dilute other core services – e.g. dispute and review investigations – where funding may not be sufficient to meet rising general costs.</p> <p>Financial savings and efficiencies can be achieved under Models B and C in comparison to Model A but the lack of guaranteed funding under these Models poses a significant risk to anticipated savings.</p>	<p>Corporate overheads are shared across a larger agency but there is no guarantee of funding for the tax ombudsman function.</p> <p>Lower transparency of funding and resource allocation decisions can influence perceptions of independence actual and perceived.</p>	<p>Corporate overheads are shared across a larger agency but there is no guarantee of funding for the tax ombudsman function.</p> <p>Unless there is a statutory allocation of funding and resource allocations, there will be poor perceptions of independence and significant challenges to longer-term planning with impact on actual independence.</p>	There are deficiencies with each model
Expertise in Taxation	APS staff are employed with dispute management and tax subject matter expertise which enhances the credibility	APS staff are employed with dispute management expertise but not necessarily enough with tax subject matter	APS staff will be employed with tax subject matter expertise which enhances the credibility	A and C

Important Features	Separate Independent Agency or function	A separate function or jurisdiction within the Commonwealth Ombudsman	A separate function or jurisdiction within the Australian Taxation Office	Optimal Model, by feature
International Examples	Eg – Australia, Canada	Eg - New Zealand	Eg - USA	
Model	A	B	C	
	and effectiveness of the agency in resolving tax disputes.	expertise. This can affect the credibility and effectiveness of the agency in resolving tax disputes.	and effectiveness of the agency in resolving tax disputes. Career paths can be limited where the oversight function is independent from the assessing function.	
Operational efficiency and access to agency information to resolve disputes	The <i>Commonwealth Ombudsman Act 1976</i> currently limits access to information that the head of agency authorises its officers to disclose. This can reduce the efficiency and effectiveness of dispute and review investigations.	The <i>Commonwealth Ombudsman Act 1976</i> currently limits access to information that the head of agency authorises its officers to disclose. This can reduce the efficiency and effectiveness of dispute and review investigations.	Operational efficiency would improve, assuming that all systems and information can be accessed from within the ATO agency.	C
Secrecy and Confidentiality	Separate tax secrecy and confidentiality rules apply	Separate tax secrecy and confidentiality rules apply	Same tax secrecy and confidentiality as applies to the ATO.	C

Important Features	Separate Independent Agency or function	A separate function or jurisdiction within the Commonwealth Ombudsman	A separate function or jurisdiction within the Australian Taxation Office	Optimal Model, by feature
International Examples	Eg – Australia, Canada	Eg - New Zealand	Eg - USA	
Model	A	B	C	
			Statutory safeguards may be required to prohibit unauthorised ATO access to that function's confidential information, so as to improve confidence in the independent operation of that separate function.	
Resource Sharing	The tax career and independent demarcation lines are assumed to be clearer where employees are engaged by an independent agency.	The tax career and independent demarcation lines are assumed to be clearer where employees are engaged by an independent agency.	The tax career and independent demarcation lines are assumed to be clearer where employees are engaged by an independent agency.	A and C
Jurisdiction	Tax administration specialist. There is no jurisdiction to investigate public interest disclosures or provide relevant protections for same– eg ATO whistleblowers	A dilution of services to the taxpayer community may occur where there are other 'competing' human rights to be investigated – prisons, police, detention, migration, social services.	Tax administration specialist There is no jurisdiction to investigate public interest disclosures and provide protections for ATO whistleblowers.	C unless PID reforms are implemented A if PID reforms are implemented

Important Features	Separate Independent Agency or function	A separate function or jurisdiction within the Commonwealth Ombudsman	A separate function or jurisdiction within the Australian Taxation Office	Optimal Model, by feature
International Examples	Eg – Australia, Canada	Eg - New Zealand	Eg - USA	
Model	A	B	C	
		<p>Lower community awareness and complaint numbers were observed before the Taxation Ombudsman was transferred to the IGTO. New Zealand similarly reports low numbers of complaints against Inland Revenue.</p> <p>Although there is jurisdiction to investigate public interest disclosures – eg ATO whistleblowers – and provide related protections, this is typically directed back to the agency – eg the ATO</p>		
Structural Reporting and Portfolio responsibility	<p>Treasury Portfolio</p> <p>Currently reports to the relevant Minister but reports only delivered to the Minister where there are</p>	<p>Attorney General’s Portfolio</p> <p>Currently reports publicly and to Parliamentary Committees.</p>	<p>Treasury Portfolio</p> <p>This would need to be established in the statutory framework.</p>	A and C

Important Features	Separate Independent Agency or function	A separate function or jurisdiction within the Commonwealth Ombudsman	A separate function or jurisdiction within the Australian Taxation Office	Optimal Model, by feature
International Examples	Eg – Australia, Canada	Eg - New Zealand	Eg - USA	
Model	A	B	C	
	recommendations for legislative change.		In the USA the Taxpayer's Advocate reports annually to Congress' oversight Committees on the most serious problems investigated, legislative recommendations that would resolve problems encountered by taxpayers and the most frequently litigated issues. ¹⁴	
Overall Rating of Model	1	3	2	

“The Australian community expects and benefits from a tax system that is administered fairly, equitably and transparently ... since people are more willing to engage with the system where they trust in its integrity.”

¹⁴ Section 7803(c)(2)(B)(ii) of the Internal Revenue Code