



Australian Government  
Inspector-General of Taxation  
Taxation Ombudsman



*Celebrating 20 years of service to the Australian community.*

# IGoT News!

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## Inside this edition

- An update from the IGTO..... 1
- Our new Outcome Statement..... 2
- The IGTO is an Integrity Agency ... 2
- Quarterly Reporting Pack Q3 FY233
- Review Investigations – update ... 3
- Tax Disputes – update..... 3
- Tax complaints assist to improve tax administration ..... 4
- Case Study – Early release of superannuation on compassionate grounds ..... 5
- The Royal Commission into the Robodebt Scheme ..... 7

## An update from the IGTO



Happy new (financial) year! This year marks a significant milestone for the IGTO. It was in 2003 that the office of the Inspector-General of Taxation was created and so this year marks our 20<sup>th</sup> anniversary.

It is appropriate to pause and reflect on the contribution that the office

has made to the community and to improving tax administration generally through investigation of systemic issues and, since 2015, through investigation of taxpayer complaints and disputes.

Tax and superannuation systems impact every Australian and all Australians benefit from a tax and superannuation system that is administered with integrity, transparency, fairness and equitability.

The IGTO has been supporting the integrity of the taxation system for 20 years – as Inspector-General of Taxation since 2003 and as the Taxation Ombudsman since 2015.

Of course, it would not be possible to have made such improvements without the assistance of the tax community. We acknowledge the many stakeholders – tax professionals and their representative organisations, partner Commonwealth and state public service organisations and the broader Australian community who have approached our office to identify issues, raise their concerns and offer suggestions for improvement.

Likewise, I recognise and thank the officers of the Australian Taxation Office and Tax Practitioners Board who have worked with the IGTO over the years

to manage investigations and implement recommendations for improvement.

Finally, I acknowledge my predecessor Inspectors- General, my dedicated and professional team, as well as the alumni of IGTO officers who have worked hard to help taxpayers and to improve the administration of the tax and superannuation system for all Australians. We are extremely proud of our achievements and committed to our purpose.

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## Our new Outcome Statement

In May 2023, the IGTO's Outcome Statement was updated to better capture the role that we perform in the tax and superannuation system. It now reads:

[Fair, accountable and improved administration and integrity of the taxation and superannuation systems for the benefit of the Australian community, through independent investigation and reporting.](#)

Outcome Statements are an important touchstone for Commonwealth agencies as they help:

1. to explain the purposes for which annual appropriations are approved by the Parliament for use by agencies
2. to provide a basis for budgeting and reporting against the use of funds
3. to measure and assess non-financial performance in contributing to Government policy objectives.

We are currently reviewing our internal guidance and procedure documents and updating these where appropriate to align with the new Outcome Statement.

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## The IGTO is an Integrity Agency

From 1 July 2023, the National Anti-Corruption Commission (NACC) commenced its operations. Under the legislative framework establishing the NACC, the IGTO is a named Integrity Agency which brings about a number of obligations.

We are currently working to implement policies and procedures to ensure we are able to meet and discharge our obligations, both as a Commonwealth agency and as an Integrity Agency.

## Quarterly Reporting Pack Q3 FY23

The IGTO's Quarterly Reporting Pack for [Q3 FY23](#) has been published. The QRPs present a range of data and information against certain Key Performance Indicators in our Corporate Plan for FY23. QRPs for prior periods are also available on our [website](#).

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## Review Investigations – update

A brief status update for each of our current Review Investigations is provided below.

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

The IGTO has finalised our investigation into the *Exercise of the General Powers of Administration* and a report of that investigation has been provided to the Minister for consideration before public release in accordance with sub-section 18(2) of the *Inspector-General of Taxation Act 2003*.

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

The IGTO's investigation into the *Exercise of the Commissioner's Remedial Power* is approaching finalisation. The IGTO is providing the ATO with an opportunity to make submissions on any implied or expressed criticisms, in accordance with statutory requirements, before finalising the report.

### Administration and Management of Objections – Phase 2

The ATO has provided the IGTO with a large amount of information relating to its objections function. We are currently reviewing the materials to formulate initial observations and identify potential areas for improvement to explore further with the ATO and with stakeholders.

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## Tax Disputes – update

As at the end of Q3 FY23, we have received 1129 (within jurisdiction) complaints which represents an increase of 24% (908) compared to Q3 FY22.

The increase in demand for our services is consistent with the ATO recommencing or increasing certain activities, including debt collection.

We continue 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 nine months.

We are also taking steps to focus our limited resources on core work, that is, investigating unresolved complaints (or disputes) given our role as an external dispute resolution agency. These steps include messaging about our Dispute Investigation Service, jointly assessing complaints with the ATO to progress them to the appropriate investigation channel or agency as early as possible (see below), as well as reviewing our dispute investigation processes and case management systems to support our investigation service.

The IGTO and ATO have jointly implemented an assessment process which applies to all new cases received by the IGTO since February 2023 (as well as the backlog of cases awaiting potential investigation). The aim of the process is to ensure the complainant accesses assistance at the earliest possibility. That is, by ensuring their case is quickly identified as either a complaint (ATO has no record of a formal complaint) or dispute (ATO has a record of a formal complaint) and directed accordingly to the appropriate investigation channel or agency. The process also allows the IGTO to focus its resources on Complex and Highly Complex Investigations, particularly given the magnitude of disputes received requiring such investigation.

The assessment of the IGTO backlog cases has been completed. Approximately 64% of all cases assessed since February 2023 were found to be complaints (that is, the ATO has no record of the formal complaint) despite updates to improve IGTO website and other messaging about *How to lodge a complaint with the ATO* directly.

This evidences that more needs to be done, including by the ATO, to educate taxpayers about the ATO's formal complaint handling process.

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## Tax complaints assist to improve tax administration

The IGTO has written a [thought leadership article](#) which is available on our website and which is also hosted and distributed by Chartered Accountants Australia and New Zealand ([CAANZ](#)). The Article highlights the important role that tax complaints can play in improving the administration of the tax system. The article also examines some aspects of the Australian Taxation Office's revised Taxpayers' charter – [Our Charter](#). The article draws out some key messages from the new Charter, notably:

- Raising complaints can assist to improve the ATO's service and processes;
- Taxpayers are encouraged to try to resolve the matter directly with the officer dealing with their matter in the first instance and to speak with that officer's manager. Where this does not assist to resolve the matter, taxpayers are invited to lodge a **formal** complaint with the ATO;
- The ATO confirms that making a complaint will not affect your relationship with them; and
- If you are still not satisfied, you can contact the IGTO for an independent investigation.

## Case Study – Early release of superannuation on compassionate grounds

A complainant that had recently been diagnosed with stage four prostate cancer, was advised (by their doctor) to have surgery as soon as possible to remove the cancer. Understandably, the surgery was time critical. The complainant needed to borrow money from a family friend to make the upfront payment for the surgery as well as other medical expenses. The complainant intended to repay their family friend by applying for an early release of their superannuation on compassionate grounds. Applications for compassionate release of superannuation are set out in regulation 6.19A of the *Superannuation Industry (Supervision) Regulations 1994* and are currently administered by the ATO but have previously been administered by the Department of Human Services (DHS) and the Australian Prudential Regulation Authority (APRA).

As per section 4 of the *Superannuation Industry (Supervision) Act 1993* - the Commissioner of Taxation is generally responsible for self-managed superannuation funds, data and payment standards, tax file numbers and the compassionate release of superannuation amounts.

Importantly, there has not been any legislative changes to the eligibility for early release of superannuation on compassionate grounds across the different periods of administration – that is, by the ATO and DHS, and APRA.

Following the ATO's consideration of the complainant's application, the ATO informed the complainant that their application had been rejected on the basis that the surgery and medical expenses had already been paid. The ATO's policy was to only approve compassionate release of superannuation for unpaid expenses. Therefore, if the expense had already been paid, for example by using a loan, a credit card or money borrowed from family or friends, then the applicant would not meet the eligibility requirements for compassionate release of superannuation. The complainant sought an internal review of the ATO's decision which affirmed the ATO's original decision.

The complainant subsequently lodged a dispute with the IGTO. The IGTO's investigation initially focused on the legislative basis that the medical expenses for early release of superannuation on compassionate grounds had to be unpaid. The IGTO also referred the ATO to a 2014 version of the DHS's website which suggested that applications for compassionate release of superannuation to repay a loan, where an applicant borrowed money to pay for their medical expenses, may have been approved. Accordingly, the IGTO recommended that the ATO reconsider the complainant's original application based on the specific circumstances. The ATO responded that further reconsideration of the complainant's original application would not lead to a different outcome.

The IGTO further examined the relevant legislative provisions and identified that it included a specific paragraph which provided the ATO with legislative residual discretion to approve release on grounds that are consistent with

the compassionate grounds of release in the legislation. The IGTO formed the view that this legislative residual discretion could be applied to the complainant's circumstance.

The IGTO also further investigated the circumstances described on the 2014 version of the DHS website. This led the IGTO to locate a publicly available version of APRA's guidelines from 2001. The APRA guidelines stated that when an applicant had incurred debts by borrowing money to pay for expenses that were ordinarily grounds for compassionate release and have difficulties repaying the loan, then a release for the relevant expense can be approved under the legislative residual discretion. Furthermore, the guidelines set out what evidence was required from applicants at the time to approve their applications for early release of superannuation.

The IGTO escalated its investigation to Senior ATO Executives and provided to them the evidence of how previous administrators would consider and approve applications for early release of superannuation on compassionate grounds to repay a loan that was paid for expenses such as medical expenses that were ordinarily grounds for compassionate release. The IGTO also communicated its view to the ATO that if the ATO were to adopt this approach, then further information would be required from the complainant to determine if they were eligible on this basis.

The ATO established that the DHS approach in 2014 would not have resulted in a release of superannuation to the applicant, and that this outcome was also implicit in the guidance materials provided when administration passed to the ATO in 2018.

Following the ATO's further review of the relevant legislation and the policy intent, however, the ATO informed the IGTO that it had determined that a release of superannuation can be granted in certain limited circumstances where:

1. a loan was taken out by an applicant to pay for medical treatment for themselves or their dependant,
2. the applicant would have been eligible for release under the primary compassionate ground if the expense had not been paid, and
3. all or part of that loan remains unpaid, and the applicant is assessed as being unable to repay such a loan.

As a result of the ATO's change in policy, it was agreed for the ATO to directly contact the complainant and request the relevant evidence required to determine whether the complainant was eligible for compassionate release on this basis.

Once the ATO contacted and obtained the relevant evidence from the complainant, the ATO made the decision to approve the complainant's request for early release of superannuation on compassionate grounds to repay the loan that was obtained from a family friend to pay for the complainant's surgery and medical expenses.

As a result of the IGTO's investigation, the ATO has also agreed to review all of its internal guidance material and publicly available information to determine what changes are necessary to reflect this update to the ATO policy.

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## The Royal Commission into the Robodebt Scheme

On 7 July 2023, the report of the [Royal Commission into the Robodebt Scheme](#) was tabled and published. The IGTO is reviewing the Commission's report to identify learnings and opportunities for improvements that we could implement. As the IGTO derives our Taxation Ombudsman powers from the *Ombudsman Act 1976* (the Ombudsman Act), the Commission's discussion about the Commonwealth Ombudsman's role and powers is of particular interest.

We have set out some extracts below, taken from *Chapter 21 – The Commonwealth Ombudsman* (page 574) of the report that provide a useful summary of the role of the Commonwealth Ombudsman and, by extension, the role of the Taxation Ombudsman by reference to powers derived from the Ombudsman Act. The Commission observed that:

*The Ombudsman's Office can investigate as the result of a complaint or on its own initiative (by its "own motion").*

and

*The Ombudsman Act does not specify the considerations to which an Ombudsman is to have regard in exercising the discretion to initiate an own motion investigation or in the investigation's conduct. It may, however, be taken that the discretion should be exercised, and the investigation carried out, with regard to the purpose of the relevant provisions of the Ombudsman Act.*

The Commission discussed certain relevant provisions of the Ombudsman Act that deal with the reports of Ombudsman investigations which apply to the IGTO by virtue of section 15 of the *Inspector-General of Taxation Act 2003*. These provisions include:

**Section 15(1)** lists defects in departmental action – including that it appears to have been contrary to law, was based on an error of law, was unreasonable, or was otherwise, in all the circumstances, wrong – as to which the Ombudsman's positive opinion formed after their investigation can give rise to a requirement for the Ombudsman to make a report to the department under investigation.

**Section 15(2)** empowers the Ombudsman in the report to make recommendations that steps be taken to remedy defective aspects of the department's action. A report is provided to the department concerned but may also be provided to the Prime Minister under s 16 and ultimately to Parliament under s 17, if those recommendations are not implemented. Those provisions indicate that an own motion investigation has as an object the exposure of instances of unlawful, unreasonable or wrong departmental action through a process that is separate from, and independent of, the political and bureaucratic processes of government.

The Commission further observed that:

*A third relevant feature of the Ombudsman Act is to be found in the provisions which secure the Ombudsman's independence and confer the Ombudsman's investigative powers. The Ombudsman may only be removed from office by the Governor-General on grounds of misbehaviour or physical or mental incapacity after an address by both houses of Parliament. The Ombudsman's investigative powers include coercive powers to require the production of documents and information and the attendance of persons, including public servants, at formal interviews. These powers are not inhibited by provisions of other Acts, legal professional privilege, the privilege against self-incrimination or claims of public interest immunity. The Ombudsman is empowered to examine witnesses on oath.*

*These provisions ensure the independence of the Ombudsman. They confer on the Ombudsman sufficient powers to look behind the assertions of departments that are being investigated, rather than merely accepting at face value what those departments have to say. This includes what departments assert about the law. **The Ombudsman is expressly authorised to report on action that appears to have been contrary to law or which was based either wholly or partly on a mistake of law.** [Emphasis added]*

Karen Payne

Inspector-General of Taxation | Taxation Ombudsman

phone: +61 2 8239 2111

email: [igt@igt.gov.au](mailto:igt@igt.gov.au)

[www.igt.gov.au](http://www.igt.gov.au)



*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.*