



Karen Payne
The Inspector-General of Taxation and Taxation Ombudsman
GPO BOX 551
SYDNEY NSW 2001

Dear Karen,

Re: Review on the Exercise of the Commissioner's General Powers of Administration

We welcome the finalisation of your review of the Exercise of the Commissioner's General Powers of Administration and thank you for the opportunity to provide a response to the final draft of your report.

The general administration provisions in the tax and superannuation laws play a very important role: they identify the Commissioner of Taxation as the individual responsible for administering those laws, to the exclusion of all others. In doing so, the general administration provisions create a duty on the Commissioner to administer the taxation and superannuation laws enacted by Parliament and authorise a broad range of administrative actions for that purpose.

Your review has been helpful in identifying areas in which we can consider continual improvements to process and decision-making in this regard, and to the communication of broad-reaching general administration decisions that affect the ability of people to meet their taxation and superannuation obligations.

In implementing your recommendations, we will maintain our focus on three main areas to ensure that the Commissioner continues to administer the taxation and superannuation laws according to law, and in a manner that fosters trust and confidence in the taxation and superannuation systems:

- Reviewing our existing guidance for the community and our people in relation to the Commissioner's general administration of the taxation and superannuation laws and the processes for making general administration decisions.
- Effective communication of general administration decisions, particularly where this enables and supports taxpayers to meet their taxation and superannuation obligations.
- Processes enabling informed general administration decision-making, including input from stakeholders and advice where appropriate.

We appreciate a review of this nature involves a level of conceptual complexity and understand why you have sought to examine this topic through the use of case studies. We note that case studies 1 and 2 reflect your views of certain ATO action taken in response to the *Douglas* case and in relation to the COVID early release of superannuation program, and that those views were formed during your investigation of complaints made by a small number within the large populations that have engaged with the ATO in its administration of these matters. We acknowledge that there remain differences in our

respective views of the actions taken by the ATO in those matters. In the context of the present review, we also consider that many of the decisions detailed in those case studies were made in the exercise of express statutory powers, and are therefore not necessarily representative of the types of decisions made in the conduct of the Commissioner's general administration.

Our detailed response to the recommendations is attached. In responding to the recommendations we consider that the scope of decisions to which the recommendations apply is a critical threshold issue, and in particular, we note the distinction between decisions made in the general administration of the taxation and superannuation laws, and those made under express statutory powers.

Finally, I would like to acknowledge the efforts of all involved in undertaking this review and thank you and your team for your professional and constructive approach in the conduct of the review.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Kirsten Fish', written over a faint circular stamp or watermark.

Kirsten Fish
Second Commissioner of Taxation

22 May 2023

IGTO Review on the Exercise of the Commissioner's General Powers of Administration

ATO responses to the final draft report recommendations

In responding to the recommendations, a reference to general administration decisions is a reference to decisions made in the general administration of the taxation and superannuation laws, as distinct from decisions made under express statutory powers. In addition, a threshold question for the ATO to consider in implementing Recommendations 1 and 3 is the types of general administration decisions to which the recommendations should apply – for example, it may not be appropriate to include many day-to-day administrative decisions or decisions impacting the integrity of the tax and superannuation systems.

Recommendation	ATO Response
<p>Recommendation 1</p> <p>The IGTO recommends that the ATO consider establishing an advisory or oversight panel to assist and guide broad reaching exercises of the Commissioner's GPA – that is, where such exercises are likely to impact large sections of the taxpayer population.</p>	<p>ATO Response – Agree</p> <p>The ATO agrees that stakeholder input and advice each play an important role in making general administration decisions affecting large sections of the taxpayer population.</p> <p>The ATO's risk management and governance framework includes multiple advisory panels and committees, and many broad-reaching or high-risk general administration decisions are already subject to internal and/or external stakeholder input or advice.</p> <p>Having regard to these existing processes for seeking input or advice, the ATO will consider whether there are categories of general administration decisions affecting large sections of the taxpayer population for which it would be appropriate to establish an advisory or oversight panel.</p>

Recommendation	ATO Response
<p>Recommendation 2</p> <p>The IGTO recommends that the ATO consider ways in which it could raise awareness and understanding of the Commissioner’s general powers of administration, including by considering whether PSLA 2009/4 remains fit for purpose and any additional guidance that may be developed to support greater (public and tax official) understanding of the GPA.</p>	<p>ATO Response – Agree</p> <p>The ATO agrees there are benefits in increasing the awareness and understanding of the principles underlying the nature and scope of general administration decisions.</p> <p>The ATO will review PSLA 2009/4 and consider whether it should be updated. The ATO will also consider whether other forms of guidance, both internal and external, are needed.</p>
<p>Recommendation 3</p> <p>The IGTO recommends that the ATO consider ways in which it could enhance accountability and transparency for broad reaching exercises of the Commissioner’s GPA and to enable taxpayers to more easily identify and track exercises of the GPA that may affect them.</p> <p>This recommendation is related to Recommendation 6.</p>	<p>ATO Response – Agree</p> <p>The ATO agrees that accountability and transparency are critical in maintaining trust and confidence in the tax and superannuation systems, and recognises the value of an appropriate and effective communication strategy for broad-reaching general administration decisions that assist taxpayers to meet their taxation and superannuation obligations.</p> <p>However, the ATO notes that not all general administration decisions affect a taxpayer’s ability to meet their tax and superannuation obligations, and a taxpayer does not need knowledge of all general administration decisions, even those that are broad-reaching, in order to do so. As such, it may not be appropriate in all cases to communicate broad-reaching decisions including where doing so may impact the integrity of the tax and superannuation systems.</p> <p>The ATO will consider whether its existing communication channels enable affected persons to identify relevant decisions where appropriate.</p>
<p>Recommendation 4</p> <p>The IGTO recommends (for the reasons set out in Chapter 5) that the Government consider enacting a framework of guiding principles for the exercise of the Commissioner’s GPA. Without prescribing what principles</p>	<p>ATO Response</p> <p>This is a matter for Government.</p>

Recommendation	ATO Response
<p>or factors should make up that framework, the IGTO provides, by way of example, some principles which may be suitable to be included in the framework.</p> <p>For example:</p> <p>The Commissioner of Taxation shall exercise his powers of general administration in a way that is practicable and in accordance with the law and in furtherance of:</p> <ul style="list-style-type: none"> a) fostering voluntary compliance and willing participation of all taxpayers within the tax and superannuation systems; b) minimising the cost of compliance for taxpayers to participate within the tax and superannuation systems; c) ensure that the resources of the ATO are applied to optimise compliance assurance and revenue collection; d) resolving disputes in a procedurally fair and proportionate manner having regard to the GPA principled framework; e) assisting taxpayers who make honest mistakes to correct their mistake where this assists to achieve outcomes and results as intended by specific measures; f) promoting fairness in all the circumstances; and g) respecting the requirements of procedural fairness. 	
<p>Recommendation 5</p> <p>The IGTO recommends that the Government consider improving tax administration by providing the Commissioner with an express administrative discretion, unless expressly excluded by Parliament (i.e. the legislation may expressly prevent the discretion from applying), to:</p>	<p>ATO Response</p> <p>This is a matter for Government.</p>

Recommendation	ATO Response
<ul style="list-style-type: none"> a) alter any procedural requirement in the interests of reducing compliance costs for taxpayers; b) allow taxpayers to correct an honest and reasonable mistake or error in any lodgement or filing for the purposes of a taxation law or to withdraw an erroneous form or application and resubmit a corrected one; c) extend the time for a taxpayer to exercise their rights, apply for access to support or provide further or additional information in support of such an application; and d) suspend a penalty subject to certain conditions which promotes future voluntary compliance (including for example, a named period of demonstrated compliance). 	
<p>Recommendation 6</p> <p>The IGTO recommends that the Government consider improving tax administration by legislating a requirement for the Commissioner to annually publish and table a record of the exercises of his general powers of administration where it affects a broad class or broad range of taxpayers.</p>	<p>ATO Response</p> <p>This is a matter for Government.</p>