



# IGoT News!

Edition 24 | November 2023

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## An update from the IGTO



The end of year rush is here again ... already! In the first quarter of FY24 we relocated our office, completed our Corporate Plan (FY24 – FY27) and completed our audited financial statements and Annual Report FY23 (which was tabled in October 2023).

Additionally, we published two public investigation reports as follows:

- *Improving the operation of the [Small Business Litigation Funding Program](#);*
- *The Exercise of the Commissioner’s General Powers of [Administration](#)*

Both reports are discussed in more detail below.

We progressed our investigation of *The Exercise of the Commissioner’s Remedial Power* and the report is now in its final stages. We will publish the report before the end of this calendar year. We continue to progress our report into the ATO’s Administration and Management of Objections. We will aim to finalise and publish the report in the first half of the next calendar year.

In October 2023, we were delighted that representatives from the tax community could join us to mark the 20<sup>th</sup> Anniversary of the Inspector-General of Taxation.

## Study Visit from the Indonesian Ministry of Finance Inspectorate-General



In early November, our office hosted delegates from the Indonesian Ministry of Finance Inspectorate-General (MOF-IG) as part of their study visit to Australia. The purpose of the study visit was to share ideas and discuss similarities and differences in oversight of the tax administration system. We discussed and shared a range of insights with the MOF-IG delegates, drawing upon our experience in providing oversight of the tax administration system for the past 20 years as well as initiatives we are implementing to improve our case management and service delivery.

We exchanged gifts to commemorate the meeting and event. The photo above shows the IGTO, Ms Karen Payne, presenting the leader of the MOF-IG delegation, Ibu Tiur, with an indigenous artwork to commemorate their visit to our office and to Australia. The MOF-IG presented the IGTO with an engraved wooden tablet.

## Improving the operation of the small business litigation funding program

This report shares insights, observations and makes four (4) recommendations to improve the ATO's administration of the [Small Business Litigation Funding Program](#), informed by input from an external costs assessor. The report follows the first two intensive IGTO investigations of unresolved complaints (disputes) that were lodged by small businesses and legal practitioners – in or around November 2020. The issues raised in these disputes concern the correctness of the ATO's administration of the Small Business Litigation Funding Program.

In these disputes, concerns were expressed that the ATO had attempted to cap the funding to levels below that necessary to run their matter, had calculated reimbursements on a basis which they had not been made aware of when entering the arrangement, and had sent numerous emails questioning the bills which imposed considerable administration and unbillable time in responding to them and detracted from case preparation.

The Small Business Litigation Funding Program was initiated by a 2019 Government measure. It was aimed at levelling the playing field for unrepresented small businesses in the Small Business Tax Division of the Administrative Appeals Tribunal in cases where the ATO chose to engage a barrister to represent it.

It is important to note that the IGTO has no role to formally assess the funding provided under the Program. The IGTO does not perform the role of a costs assessor. However, the IGTO does have a role to observe the fairness of the process and make recommendations to improve the Program for the benefit of both the complainants and the tax system overall. With the agreement of both parties, we engaged an external cost assessor or consultant to assist us in resolving the disputes and in distilling guiding principles for future dispute resolution.

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## The exercise of the Commissioner's General Powers of Administration - report released

Our report of the investigation into [The Exercise of the Commissioner's General Powers of Administration](#) was publicly released on 18 October 2023. The report examines an important area of tax administration. Although many unremarkable decisions and actions are made or taken every day by Tax Officials in reliance on the Commissioner's general powers of administration (GPA), a number of significant decisions and actions are also made by the Commissioner (or his delegate, or duly authorised tax official) in reliance on the GPA as part of his administration of the tax system.

The report examines the exercise of the GPA through five case studies including:

- Early release of superannuation
- Military superannuation and the impacts of the Full Federal Court decision in *Douglas*
- Practical compliance guidelines
- Settlement of tax disputes
- Implementation of the short-cut Work-From-Home deduction method during the COVID-19 pandemic.

The IGTO made a key observation in the report and a total of six recommendations – three to the ATO and three for the Government’s consideration. The recommendations are aimed at enhancing transparency and decision making in relation to the exercise of the GPA.

### Observation

The Inspector-General of Taxation and Taxation Ombudsman observes that it is not clear whether the Commissioner’s GPA is simply a duty (which carries no administrative discretion) or if it is a power.

Consistent with the Australian Administrative Law Policy Guide, it would be useful to clarify if the Commissioner’s GPA is simply a duty (which carries no administrative discretion) or if it is a power and if a power, the limits of that power to administer the tax and superannuation laws practically and pragmatically.

Accordingly, the recommendations made in this report would be supported and enhanced by clarification about the nature and intended purpose of the Commissioner’s GPA.

Whilst several means of clarification are available, Executive clarification (e.g., via a Statement of Expectation) or Legislative clarification would provide the highest levels of certainty for the community.

### Recommendation 1

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.

## Recommendation 2

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.

## Recommendation 3

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.

This recommendation is related to Recommendation 6.

## Recommendation 4

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 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.

For example:

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:

- 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.

## Recommendation 5

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:

- 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).

## Recommendation 6

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.

The full report, recommendations, the ATO's response to those recommendations and a summary slide deck are available on the [IGTO website](#).

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## Our Annual Report FY23

The IGTO's [Annual Report FY23](#) was tabled on 18 October 2023. This year's Annual Report is particularly significant as it reflects upon the IGTO's 20th anniversary and our achievements not only in FY23, but also throughout our agency's history in supporting the integrity of the tax administration system. Some of our achievements over the past two decades include:

- Completing and publishing 52 review investigation reports, containing 555 recommendations, where over 90% of our recommendations were accepted;
- Assisting over 11,000 individuals, businesses and tax practitioners resolve their disputes; and
- Achieving a range of outcomes which include 3,500 better explanations, various apologies, 1,000 assurances and changes to more than 3,200 Australian Taxation Office (ATO) and Tax Practitioners Board

(TPB) actions and decisions, and 95 business improvements to systems and processes that impact taxpayers more broadly.

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## Our Corporate Plan FY24 – FY27

In August 2023, we published our [Corporate Plan 2024 – 2027](#). The Corporate Plan sets out our vision, purpose, key activities and strategic priorities over the next four years. Our strategic priorities over the next four years are to:

- Deliver an **accessible** and **efficient** dispute investigation service that is independent, relevant and timely
- Support the **integrity** of the tax and superannuation systems and our own **accountability** as an Integrity Agency within those systems
- Identify, through **consultation** and **engagement with stakeholders**, improvements to taxation administration decisions, actions and systems
- Improve community **awareness** of our independent services
- **Communicate with Influence** to effect improvements to tax and superannuation administration
- Provide **evidence-based** and **trusted advice** to Government
- Develop relevant expertise, capability and resilience for **our people**

Our Corporate Plan highlights the key internal and external factors that contribute to us achieving our vision and purpose. It also highlights the breadth of the tax and superannuation systems in Australia and the key stakeholders with whom we interact.

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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 Commissioner’s Remedial Power (CRP)

We are currently working through final aspects of the report into *The Exercise of the Commissioner’s Remedial Power* and will aim to finalise and publish the report before the end of the 2023 calendar year.

### Administration and Management of Objections – Phase 2

We are currently working through a large amount of information provided by the ATO in relation to its administration of objections and will be undertaking some case sampling and analysis to inform our report of the ATO’s approach to objections which will focus on areas such as resourcing, independence and impartiality, and timeliness. We are exploring improvements to lodgement, triage and allocation of cases including ensuring that

cases which are not genuine objections are directed to the most appropriate areas of the ATO for action as soon as possible.

We anticipate finalising and publishing the report in the first half of next calendar year.

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## Tax Disputes – update

As at the end of Q4 FY23, we have received 1,460 (within jurisdiction) complaints which represents an increase of 20% (1,219) compared to FY22.

The increase in demand for our services is consistent with the ATO recommencing or increasing certain activities, including debt collection, and ongoing themes of financial distress post-COVID, such as employees raising concerns regarding unpaid superannuation.

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 ten months.

Our project to introduce a new case management system is progressing well. We aim to deploy the new system in early 2024. The system will support more efficient investigation processes and enable complainants to see the progress of their matter if they lodge online.

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## Quarterly Reporting Pack Q4 FY23

The IGTO's Quarterly Reporting Pack for [Q4 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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## Case Study – Veteran Gold Card Holders

The complainant held a Department of Veterans' Affairs (DVA) Gold Card which entitled him to Medicare Levy Exemption. However, each year (over the last 4 years) he had to contact a specialist team within the ATO to request that the ATO apply the exemption. This was because the ATO systems only recorded the complainant's Gold card status for a single year only, and not the entire period up until the card's expiry date. The complainant



previously lodged 2 complaints with the ATO Complaints area about this issue which resulted in the ATO applying the exemption for one year only. The complainant subsequently lodged a dispute with the IGTO on this issue.

The IGTO commenced an investigation and found that there was no compelling reason to require the complainant to call the ATO each year in order to claim the Medicare Levy Exemption. As a result of the investigation, the IGTO arranged for the ATO to amend their procedures to ensure that where a taxpayer (for whom the ATO does not hold DVA status information) provides substantiation of their DVA Gold Card status, the ATO will exclude them from Medicare Levy Exemption compliance activities for the relevant period – i.e. for the period of issue for the Gold Card.

The ATO also undertook to work with Services Australia to automate their Medicare entitlement data exchange process, to improve the overall quality and timeliness of data received by the ATO.

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## Case Study – Disclosure of Business Tax Debts

A representative raised concerns with our office that their client was in the process of selling his business and intends to use the funds from the sale of the business to pay his outstanding tax debts. The representative explained that their client had been negotiating for 22 months with the ATO and had offered his residential property and his business as security whilst the business sale process was progressing. However, the ATO had not accepted their client's proposed assets as security for his outstanding tax debts.

The original outcome that the representative had sought was for their client's case to be reassigned to a new ATO case officer in the interest of ongoing procedural fairness. We explained to the representative that it is unlikely the ATO would agree to reallocate their client's case to a new ATO case officer if no specific reason for the request can be identified. Instead, the representative and our office agreed that the new outcome we would investigate was to better understand the reasons why the ATO declined to accept their client's proposed assets as security and the options that may be available to refrain the ATO from referring their client's business tax debts to the credit reporting bureaus.

During discussions with the ATO, we acknowledged the events that had led the ATO to the disclosure of the business tax debt warning letter. However, we explained to the ATO that the client's proposed assets as security sufficiently covers the outstanding tax debt and it would be reasonable for the ATO to defer referral of the debt to credit reporting bureaus whilst the client was in the midst of selling their business. The ATO provided the IGTO with its reasons for declining the security offer. We discussed with the ATO the remaining reasons why the ATO did not accept the client's proposal and identified reasons, including the missing information, supporting documents that the ATO required and its concerns about the progress in the realisation of assets.

We shared our investigation findings with the representative and encouraged the representative to continue discussions with the ATO. The representative confirmed that they have since provided the ATO with the supporting documents the ATO required to evidence the progress of the sale of the business. As a result, the ATO has agreed to place a hold on referring their client’s business tax debt to credit reporting bureaus and granted a deferral of recovery action whilst further information was to be provided by the representative.

## The Royal Commission into the Robodebt Scheme

The [Government response to the Robodebt Royal Commission recommendations](#) was tabled on 13 November 2023. The Government has agreed, or agreed in principle, to all 56 of the Royal Commission’s recommendations. The investigation services of the IGTO are assisted by two of the recommendations and Government response as follows:

**Recommendation 21.1: Statutory duty to assist**

A statutory duty be imposed on departmental secretaries and agency chief executive officers to ensure that their department or agency use its best endeavours to assist the Ombudsman in any investigation concerning it, with a corresponding statutory duty on the part of Commonwealth public servants within a department or agency being investigated to use their best endeavours to assist the Ombudsman in the investigation.

The Government **accepts** this recommendation.

The Government recognises the importance of ensuring agencies and departments are accountable and act in a manner that is lawful, fair and transparent. A properly resourced, independent, impartial and robust Ombudsman is vital to safeguarding the community in their dealings with government agencies.

The Government agrees that a clearly stated statutory duty, imposed on departmental secretaries and agency chief executive officers, to ensure that their department or agency use its best endeavours to assist the Ombudsman would reinforce the responsibility on heads of agencies to ensure their agency engages in good faith and proactively assists the Commonwealth Ombudsman.

The Government agrees that a corresponding statutory duty on Commonwealth public servants within a department or agency being investigated to use their best endeavours to assist the Commonwealth Ombudsman would ensure the responsibility to assist is clearly individually borne by each of those responsible.

The Government also recognises the importance of the Inspector-General of Taxation and Taxation Ombudsman (IGTO) in providing assurance to the community that taxation laws are being administered with integrity. The Government supports also introducing equivalent statutory duties to investigations conducted by the IGTO.

The Government will progress amendments to relevant legislation to introduce these statutory duties.

**Recommendation 21.2: Another power to obtain information**

The Ombudsman Act be amended to confer on the Ombudsman a power in equivalent terms to that in s 33(3) of the Auditor-General Act.

The Government **accepts** this recommendation.

The Government recognises the importance of ensuring that the Office of the Commonwealth Ombudsman has the legislative powers to undertake full, independent and transparent investigations. The Government also recognises that in order to provide assurance that an Ombudsman investigation is independent, the Ombudsman needs powers to obtain full, free and direct access to agency records as part of an investigation.

The Government will introduce legislation to establish a statutory power equivalent to that of subsection 33(3) of the *Auditor-General Act 1997* (Cth). This would ensure the Ombudsman is not dependent upon agencies to undertake searches and provide documents and information, and will complement the Ombudsman's existing powers to request and compel agencies to provide information.

The Government will also seek to introduce an equivalent power for the Inspector-General of Taxation and Taxation Ombudsman.

The IGTO welcomes the Government's response on these matters and believes that these recommendations will support and enhance the integrity of our current investigations for the benefit of the community.

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## Recent ATO correspondence about “on hold” debts

The IGTO is aware of community concern and recent media surrounding the ATO's issuing of correspondence about “on hold” debts to tax agents and to taxpayers themselves.

The ATO has advised (28 November 2023) that in response to community feedback, it has [paused the campaign](#) and will review its overall approach in relation to communication of “on hold” tax debts.

The IGTO has made further enquiries with the ATO about this debt campaign and will receive a briefing about it shortly. The IGTO will issue further information to assist the community after the briefing.

ATO debt collection, generally, has consistently featured as a top 5 complaint issue for the Taxation Ombudsman service and we continue to actively monitor the ATO's administration of debt collection actions and decisions.

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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.*