

9th December 2019

Committee Secretariat
Senate Standing Committees on Economics

Only by email: economics.sen@aph.gov.au

Cc: [REDACTED]

Submission to the Senate Economics Legislation Committee Performance of the Inspector-General of Taxation

Thank you for the opportunity to provide my input into the Senate Economics Legislation Committee's Inquiry into the performance of the Inspector-General of Taxation (IGT).

I have had extensive experience with the IGT from 2013 to 2019 in relation to serious complaints regarding the actions and behaviour of the ATO over more than ten years that wrongfully destroyed my businesses and my superfund.

In 2013 the IGT advised they did not have the power to investigate individual complaints regarding the ATO. I then filed a complaint directly with the ATO in 2014. This complaint is currently still on-foot with the ATO after six years.

By 2015 it was apparent that the ATO was not responding appropriately to the serious issues I had raised and I filed a series of complaints with the IGT in 2015 and 2016 after the IGT was granted additional powers to investigate individual tax-payer complaints.

COMPLAINTS FILED WITH IGT

1. 15-07-2015 Interhealth Super Fund – Federal Court litigation [REDACTED]
2. 17-05-2016 Interhealth Super Fund - GST Audit [REDACTED]
3. 17-05-2016 Interhealth Energies - Income Tax Audit [REDACTED]
4. 17-05-2016 Kunfooda Cartilage Australia - Income Tax Audit [REDACTED]
5. 20-06-2016 Interhealth Investments - Income Tax Audit [REDACTED]

In 2016 the ATO admitted to defective administration and offered \$10,000 compensation to a super fund that the ATO had wrongfully destroyed through litigation however the IGT advised it was unable to investigate the ATO's behaviour within the litigation in the Federal Court and AAT as this was outside the IGT's jurisdiction.

Essentially, I have been denied general procedural fairness by both the ATO and the IGT.

My serious complaints were never properly investigated or addressed by the IGT and it appeared to me that the IGT allowed itself to get 'captured' by the ATO as it allowed the ATO to carve out information and re-frame issues that are problems for the ATO.

Even though the IGT initially raised concerns regarding the seriousness of my complaints, it was unable to bring the ATO to a meeting so that the issues could be dealt with in an open, transparent and timely manner. Instead the ATO was allowed to 'game' the system, confuse and complicate the issues and frustrate the process by dragging it out for more than four years. This was an unnecessary and deliberate drain on my time, finances and mental health as well as a total waste of commonwealth resources.

The IGT was unable to hold the ATO to account for serious breaches of the APS code of conduct, mal-administration and in some instances misfeasance in public office. Some of my complaints related to criminal conduct where the ATO destroyed my retirement benefits when no money was owed to the Commonwealth. This was not only illegal but a malicious abuse of the ATO's power as regulator of self-managed superfunds. The ATO misled the court with false information in order to obtain wrongful orders designed to unjustly enrich a former member of the fund who owed tax in his personal capacity. My retirement benefits were destroyed and the fund was made insolvent by the ATO's illegal actions.

The ATO has not been held to account for these actions. The IGT has advised me on many occasions that it does not have the power to force the ATO to do anything or change an amount of money offered as a settlement of a CDDA claim.

In my case, a disingenuous offer of \$10,00 was made to a non-existent superfund, destroyed by the ATO, when the amount of loss and damage caused to my retirement benefits was at least five hundred thousand dollars (\$500,000) back in 2010 when the ATO illegally intervened in the trustee's ability to control the fund.

Additional costs above the destroyed assets of the fund included all the legal costs I paid personally to try to protect the fund from ATO's wrongful attacks.

I am now 67 and need to retire soon due to health concerns but I cannot retire until the ATO pays proper compensation to bring closure to this unfortunate chapter in my life.

I have attached documents that demonstrate the seriousness of the ATO's abuse of power resulting in substantial damages to my companies and total destruction of my super fund and my retirement benefits.

It is concerning that the IGT could investigate my complaints and not find any wrongdoing either with the superfund matter or where the ATO fabricated assessments in excess of \$2.2 million dollars and pursued my companies with wind-up orders through the Federal Court resulting in the ATO losing its wind-up applications and finally admitting that no tax whatsoever was owed.

Apparently the ATO can make up debts of \$2.2 million and when you prove to the Federal Court the tax is NIL the ATO cannot be held accountable for the wrongful damage it caused. Fabricating assessments is a criminal offence yet the ATO has not been held accountable and the IGT advised it has no power to interfere with the way the ATO raises assessments.

This begs the question - who can investigate this type of criminal behaviour if not the IGT as the so-called external scrutineer of the ATO?

I have also attached an email from my lawyer which explains the failings of the IGT in the way the IGT conducted its investigation into the superfund matter.

6th December 2019 – Email from lawyer to me

Below, I've summarised some of the difficulties experienced with the IGT in your matter.

On 17 October 2017 the IGT issued you with a closure letter after reviewing a complaint made regarding the ATO's handling of the matter regarding your superannuation fund. The correspondence contained a chronology of events over the course of the superannuation matter. Despite receiving information and details from you, it appears the IGT based its review on information provided by the ATO. It appears that way because the chronology of events does not reveal the issues your raised, and indeed, they're not addressed in the letter you received.

The IGT summarised the issues concerning the superannuation matter into two trigger events. The trigger events were said to be (1) calculating super entitlements prior to asset realisation, and (2) joining your legal representatives to the legal proceedings. Whilst these are issues, the IGT's focus appears to have been led by ATO input into the review, and the numerous problems/issues arising from the superannuation matter were not identified or addressed at all.

On 14 February 2019 we wrote to the IGT outlining the issues not addressed in the IGT's October 2017 letter. We listed at least 13 matters not acknowledged in the IGT's report. Together with that correspondence we provided the IGT with a copy of our own chronology of events that included also a discussion regarding instances of defective administration. We also provided the IGT with a copy of the October 2017 letter with our comments correcting and clarifying certain matters in the IGT's chronology.

██████████ Director, Taxation Complaints and Review, from the IGT was allocated the matter. In March 2019 I spoke with Grace who acknowledged that the matters raised in our 2019 correspondence had not been addressed in the IGT's 2017 correspondence. We then began discussing what outcome you seek from this further review. I followed up with an email on 29 March 2019 explaining that firstly we would like acknowledgement of the ATO's failings, and ultimately, that you seek to be compensated for the losses to your retirement funds resulting from the ATO's action against your super fund.

Next, on 18 April 2019, we received correspondence from ██████████, Manager, Tax Complaints and Review (who we had never spoken to), stating that the IGT would not "reconsider" your complaint, and that, actually, we had not raised anything new. This is clearly false.

To reply to ██████████ we would now need to cross-reference in more detail the IGT's October 2017 correspondence with our outline to highlight, again, that your complaint has still not been addressed. Alternatively, someone else from the IGT could review our submissions and correspondence.

In my experience the main problem with how the IGT conducts its investigations into complaints made against the ATO is that the IGT defers to the ATO and allows the ATO to re-frame serious issues and carve out issues that the ATO does not want to address.

The IGT claims it does not have powers to force the ATO to change its view and when the ATO re-frames the complaints as a 'CDDA claim', the IGT agrees with the ATO that the CDDA scheme is a 'discretionary' one and therefore the IGT has no power to change any decision that the ATO has made.

OUTCOME OF IGT REVIEW

The IGT accepted the ATO's position that these complaints should be reviewed under the CDDA scheme which is a discretionary scheme. Both the ATO and IGT seem to interpret this to mean the ATO has the discretion to decide whether or not to pay compensation and the quantum of that payment regardless of the seriousness of the ATO's actions and behaviour or the loss and damage suffered by the complainant.

This interpretation does not align with the intent of the CDDA scheme but again the ATO is answerable only to itself.

The IGT has stated it has no power to force the ATO to change its position. Accordingly, there has been no proper investigation of my complaints to date as supported by my lawyers attached letter.

This is extremely disappointing as I have persevered with the IGT over the past four years believing that it had the power to properly investigate the ATO's bad behaviour and resolve serious issues raised by taxpayers who have suffered abuse and financial loss due to the actions of the ATO, and this is not the case.

RECOMMENDATIONS:

- The IGT needs additional powers and resources to prevent the ATO from 'gaming' the system.
- The IGT needs more experienced staff with real investigative skills to navigate the complexity that the ATO creates.
- The IGT needs to be more independent to avoid capture by the ATO.
- The IGT needs a support board of retired judges, lawyers and experienced business people to assist it to prevent the ATO using legal smoke screens to avoid accountability.
- The IGT needs to have the power and the will to refer serious complaints that provide evidence of criminal malfeasance to the Australian Federal Police for criminal investigation of the ATO.

Thank you for the opportunity to provide this submission.

If you wish to discuss this matter, please do not hesitate to contact me.

Yours sincerely,
Joanne Hambrook

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