



30 August 2019

Senate Economics Legislation Committee
PO Box 6100
Parliament of Australia
CANBERRA ACT 2600

Email: economics.sen@aph.gov.au

Dear Sir/Madam

Senate inquiry – Performance of the Inspector-General of Taxation

Chartered Accountants in Australia and New Zealand (CA ANZ) welcomes the opportunity to provide input to the Senate Economic Legislation Committee for its Inquiry into the performance of the Inspector-General of Taxation (the IGoT).

Our specific responses to the specific Terms of Reference are set out in **Appendix A**.

Insights from the IGoT – Inquiry outcomes

The Committee will be aware that this inquiry occurs very early in the five-year term of the current IGoT, Ms Karen Payne CA.

We mention this for two practical reasons:

1. The previous IGoT, Mr Ali Noroozi CA – who held the office for 10 years – and the Deputy IGoT, Mr Andrew McLoughlin FCA, may also be able to shed light on the issues raised by the Terms of Reference. In the period between Mr Noroozi's departure and the appointment of Ms Payne, Mr McLoughlin was the Interim IGoT.
2. The Committee's findings and recommendations may help inform Ms Payne's thinking about the future direction of her office and the way she should go about her dealings with the ATO.

Should the Committee's recommendations include amendments to the [Inspector-General of Taxation Act 2003](#) however, or suggest a different scrutineer model, it would be helpful to the IGoT and stakeholders if the Committee recommendations enjoyed bipartisan support from Committee members.

We would be concerned if the output of this Inquiry was a range of discordant recommendations which undermined the IGoT and her important role in Australia's tax system, without achieving any meaningful change or improvements.

The background to this inquiry

CA ANZ is aware of a number of events and circumstances on the public record which, when viewed together, appear to have contributed to the Senate's decision to call this inquiry.

The main events and circumstances that we can recall have been listed in Appendix A in chronological order.

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Why do we list all this background?

Because CA ANZ thinks it is fair to all concerned that this Inquiry into the IGoT be put into a broader context.

The clouds swirling around the ATO and its treatment of small business and debt collection processes have lingered far too long.

We have now reached the stage where the IGoT – one of the key ATO scrutineers whose role helps maintain confidence in Australia's tax system¹ – is now being scrutinized.

From the perspective of our members, this Inquiry's Terms of Reference mask broader, important issues:

- The ATO's powers.
- Whether the ATO is discharging its functions fairly.
- What can be done (in both a policy and administrative sense) to address worryingly high (and growing) levels of aged, undisputed tax debt².
- Whether Australia's tax law and administration systems are partly to blame in the sense that it is complex, inefficient and difficult to apply.

With due respect to the Committee, these are not issues which the IGoT can shoulder alone.

Once published by the Committee, this submission will therefore be shared with the Treasurer, Assistant Treasurer Michael Sukkar and senior Treasury and ATO officials in a bid to get engagement on these broader issues.

Can Australia learn from similar tax ombudsman functions overseas?

There are a number of countries which have functions similar to that of the IGoT although the legislative model, role and processes differs from country to country.

Using the Terms of Reference as a guide, the Committee may find it useful to benchmark the IGoT against the following overseas agencies:

- The United Kingdom – The Adjudicator's Office³

¹ According to the IGoT's latest Corporate Plan, its [purpose](#) is: 1. To improve the administration of taxation laws for the benefit of the community; 2. To provide independent advice and assurance (to individual taxpayers, agencies or the community in general) through investigation, review and reporting that Australian taxation administration laws are operating effectively and consistent with community expectations.

² In her address dated 31 May 2019, ATO Deputy Commissioner Deborah Jenkins said: "Small businesses owe \$15 billion in collectable debt, which accounts for almost two thirds of all debts owed. Importantly, the vast bulk of this debt is client initiated and acknowledged, not arising from ATO review activity".

³ This agency provides an independent review of complaints about HM Revenue and Customs and the Valuation Office Agency. Refer [Adjudicator's Office website](#). Taxpayers dissatisfied with the outcome can then refer their complaint to the [Parliamentary and Health Service Ombudsman](#).

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- The United States of America – Taxpayer Advocate Service⁴
- Canada – Office of the Taxpayers' Ombudsman⁵
- South Africa – Office of the Tax Ombud⁶

IGoT's role in helping ATO whistle-blowers – The USA TIGTA model

The Committee may wish to consider whether there are benefits in granting to the IGoT a role which provides greater assistance to public sector whistle-blowers who disclose tax-related matters. The Committee's deliberations on this should of course involve the Commonwealth Ombudsman as well as the IGoT.

In the USA for example, the Treasury Inspector General for Tax Administration (TIGTA) – like the IGoT – provides independent oversight of the tax regulator's⁷ but includes as one of its functions a "Whistle-blower Protection Coordinator"⁸. The Coordinator provides employees of the IRS (and its contractors, subcontractors etc) access to information about whistle-blower protections, rights, and remedies. TIGTA's whistle-blower program carries out a number of functions, including:

- Educating IRS employees
- Ensuring that TIGTA is promptly and thoroughly reviewing complaints that it receives, and that it is getting back to whistle-blowers in a timely fashion, and
- Coordinating with the US Office of Special Counsel⁹ and other agencies on relevant matters.

TIGTA's Office of Investigations appears to operate as a form of "triage" service in that it will review a tax-related disclosure and make a determination as to whether TIGTA will investigate the matter or refer the complaint to another agency. Note however that TIGTA cannot act as a legal representative, agent, or advocate for any individual whistle-blower.

But TIGTA is at least "in the loop" on the disclosure and is a protected channel for whistle-blowers.

⁴ This agency describes itself as "your voice at the IRS" and exists to "help people resolve tax problems with the IRS and recommend changes that will prevent problems". Note that this agency forms part of the IRS but provides an [annual report to Congress](#).

⁵ This agency "works to enhance the CRA's [tax agency's] accountability and improve its service to, and treatment of, people through independent and objective reviews of service-related complaints and systemic issues". It reports to the Minister of National Revenue. Refer [OTO website](#).

⁶ The Office works with taxpayers to resolve service, procedural or administrative complaints. It is independent of, but funded through, the South African Revenue Service. Refer [Ombud website](#).

⁷ Refer [Treasury Inspector General for Tax Administration \(TIGTA\) website](#).

⁸ Refer [TIGTA website](#).

⁹ The Office of Special Counsel (OSC) is the independent agency in the USA which enforces public sector whistle-blower protections. Refer [OSC website](#).

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Should the IGoT report to Parliament?

The Committee will see from Appendix A that both the former IGoT (Mr Noroozi) and the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) have indicated that there should be a direct reporting line to Parliament.

Currently, the Inspector-General of Taxation Act 2003 requires the IGoT to send to the Treasurer any report recommending improvements to the tax law¹⁰. The IGoT also prepares an annual report to the Treasurer, who in turn publishes that report¹¹.

Where the IGoT uncovers breaches of duty or misconduct and “the evidence is of sufficient weight to justify the Inspector-General doing so”, the IGoT must report the evidence to the Treasurer (in the case of misconduct by the Commissioner) or to the Commissioner¹².

The Committee should take note of the historical context here.

The original model for the IGoT function – set out in a Board of Taxation Report¹³ – was that the Inspector-General would be an *adviser to government in the interests of taxpayers*. At the time, it was felt that the IGoT would fill a gap in the scrutineer model, described as follows:

42. The key difference between the Inspector-General and both the Ombudsman¹⁴ and the Auditor-General is that while the Inspector-General would report to the Minister, the Ombudsman and the Auditor-General report through the Parliament to the public at large. The service provided by the Inspector-General to the executive arm of government would be akin to that provided by the internal auditor of a large corporation, while the services provided to the Ombudsman and the Auditor-General are more in the nature of an external auditor. While each office would review systemic issues in tax administration, the different accountability arrangements would provide the distinguishing characteristics for each office.

The Auditor-General regularly scrutinizes the ATO¹⁵ and the development of the IGoT's program of work is, we understand, done in collaboration with the Auditor-General.

Whilst CA ANZ feels there is merit in the Committee exploring the pros and cons of direct Parliamentary reporting by the IGoT, along the lines of the Auditor-General independence and reporting model¹⁶, we would urge the Committee to engage with the Auditor-General, Mr Grant Hehir, to first gain his perspective on:

- The current working relationship with the IGoT,

¹⁰ Refer s18 of the [Inspector-General of Taxation Act 2003](#).

¹¹ Refer s41 of the [Inspector-General of Taxation Act 2003](#).

¹² Refer s38 of the [Inspector-General of Taxation Act 2003](#).

¹³ [The Inspector-General of Taxation in the Taxation System](#), Board of Taxation, July 2002.

¹⁴ At the time, the Commonwealth Ombudsman handled taxpayer complaints against the ATO. The complaints handling function was later transferred to the IGoT on 1 May 2015. “The benefits of such integration include enabling the IGT to be more proactive to emerging issues in tax administration”: refer [IGoT media release](#) 23 April 2015.

¹⁵ Current and recent reports relating to the ATO are listed on the [ATO website](#).

¹⁶ Refer s8 of the [Auditor-General Act 1997 \(C'th\)](#).

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- The different insights, skills and resources which the Australian National Audit Office bring to bear when reviewing the ATO (vis-à-vis the IGoT), and
- Whether there is scope for greater collaborative behaviour between the Auditor-General and the IGoT.

The key issue, as we see it, is whether Parliament considers the IGoT should be legislatively authorised to become an advocate for tax change, bearing in mind that the government is also served by advisers in the Treasury, the ATO, the Board of Taxation and other scrutineers.

Real time IGoT interventions

Now that the IGoT is responsible for handling complaints against the ATO and the Tax Practitioners Board, she enjoys a rich stream of “real time” intelligence of what might be going awry in the administration of the tax system.

As distinct from commencing a formal review resulting in a report to the Treasurer (e.g. the IGoT’s own motion review into the ATO’s use of garnishee notices¹⁷), our members would be interested to learn how the IGoT:

- Uses this intelligence to engage with the ATO quickly and effectively, and importantly
- *Communicates* the initiation and outcomes of these real time interventions to the community.

Should the IGoT (like the ASBFEO) have advocacy powers?

Finally, the Committee may wish to devote some attention to the differences in the statutes governing the IGoT and the ASBFEO (there roles and powers) as well as the working relationship between the two.

There is a perception growing amongst the small business community that the ASBFEO is more likely to “take on” the ATO, other government agencies and private sector organisations, acknowledging that Ms Carnell’s legislation – the [Australian Small Business and Family Enterprise Ombudsman Act 2015](#) – expressly empowers her with an advocacy function¹⁸.

Ms Carnell’s recent decision to investigate the ATO’s actions in clawing-back R&D claims is the latest example¹⁹.

Both scrutineers have done great work on a range of projects, but we sense a lack of clarity about which scrutineer should do what on *tax-related matters*, and how the two agencies collaborate.

CA ANZ consents to the publication of this submission on the Committee’s website.

If you have any queries regarding this submission, please do not hesitate to contact me on [REDACTED]
[REDACTED] or [REDACTED]

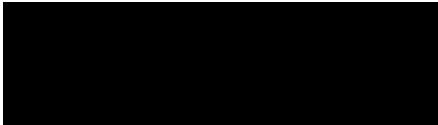
¹⁷ Refer [IGoT media release](#).

¹⁸ Refer s13 of that Act.

¹⁹ [ASBFEO media release](#).

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Yours sincerely



Michael Croker

Tax Leader Australia

Chartered Accountants Australia and New Zealand

Appendix A

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Events and circumstances leading to this Inquiry (in chronological order)

- The ABC Four Corners investigation into ATO treatment of small businesses and debt collection practices which aired on 9 April 2018²⁰.

The Four Corners program included an interview with a former ATO debt collection officer, Mr Richard Boyle, whose employment was terminated in May 2018. Recent ABC News reports indicate that Mr Boyle intends to plead not guilty to offences which include telephone tapping without consent and making a record of protected information²¹. He is currently raising funds for his defence²².

- The resultant investigation of the ATO announced by the then Minister for Revenue and Financial Services, Ms Kelly O'Dwyer on 11 April 2018. The investigation was led by the Treasury and supported by both the Ms Kate Carnell (the ASBFEO)²³ and the IGoT²⁴. The ATO made an unpublished submission to the investigation²⁵.
- The Commissioner of Taxation appeared before Senate Economics Legislation Committee (Estimates hearing) on 30 May 2018 and outlined changes to improve ATO internal review processes²⁶.
- The IGoT Report into the ATO's Use of Garnishee Notices, published 13 March 2019²⁷.

²⁰ [A Mongrel Bunch of Bastards](#), reported by Ms Adele Ferguson. The program was the result of a joint investigation with Fairfax Media. On the day this program aired, the ATO countered by publishing [The Full Picture, How the ATO works with and for small business](#) and [How we manage debt](#). On 10 April 2018, the ATO issued an [Executive statement on ABC/Fairfax coverage](#) stating that it strongly disagreed with the allegations and views put forward in the Four Corners program.

²¹ [ABC News report](#), 4 June 2019.

²² Refer [Mr Boyle's Go Fund Me campaign](#).

²³ Refer ASBFEO [report](#). Ms Carnell made a number of recommendations relevant to the role of the IGoT which the Committee may wish to explore.

²⁴ Investigation into matters reported by the Four Corners program about small business dealings with the Australian Taxation Office – A submission to the Secretary of the Treasury, Inspector-General of Taxation, April 2018. Refer IGoT FOI Disclosure Log, [document reference FOI/18/00005](#).

²⁵ In response to a question of notice from Senator Patrick, the ATO advised that: "The ATO provided departmental input to the investigation. Any questions related to the status of the investigation including reporting are best directed to Treasury and Government". Refer Senate Economics Legislation Committee, [Additional Estimates Hearing, Reference 1 March 2019, Question AET51](#).

²⁶ [Hansard](#).

²⁷ [IGoT media release](#), 13 March 2019.

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- Correspondence in March 2019 from Senator Patrick to the Attorney-General requesting that the prosecution of Mr Boyle be discontinued on public interest grounds. The Attorney-General declined to intervene²⁸.
- An ASBFEO report into ATO debt recovery action against small business, April 2019²⁹. Ms Carnell voiced three key conclusions in the Executive Summary of her report:
 - “Stronger debt recovery action by the ATO kills small businesses”
 - “The ATO debt recovery action needs to be proportionate, fair and consistent”
 - “The ATO does not engage with small business in the same ways that it expects small business to engage”
- In a statement dated 29 April 2019³⁰, the Commissioner of Taxation responded to the release of the ASBFEO report, saying:

“Our primary concern is to ensure that Australian small businesses are not alarmed by this report. Of the 108 small business cases finalised in the AAT in 2017–18 there were only 17 cases identified where some type of debt recovery activity occurred. We took garnishee action in just 4 cases, and pursued debt in other ways (for example a letter or a call) in a further 13 cases”.

- The appearance of the Interim IGoT, Mr McLoughlin, before the Senate Economics Legislation Committee (Estimates hearing) on 10 April 2019³¹. Questions were posed to Mr McLoughlin by Senator Patrick about ATO debt collection practices and the IGoT’s right to public interest immunity³².
- Senator Patrick’s media release dated 29 April 2019³³ was critical of the interview process used by the IGoT in developing the Report into the ATO Use of Garnishee notices, saying:

“What the IGT did was a ‘wet lettuce leaf’ investigation into the ATO, and that’s about it. Amazingly, the IGT thought it was proper to have ATO minders in the room when they were seeking to investigate the purported conduct of senior management,” he said.

“The people they were interviewing, especially at the Adelaide office, had just seen what the ATO machine had done to their colleague, Mr Boyle. Did the IGT seriously think employees would be comfortable revealing the truth with a chaperone looking over their shoulder?”

“This latest report solidifies the need for the Senate Economics Committee to examine the performance of the IGT. How can a situation be allowed to stand where the ATO watchdog’s performance is under question?”

²⁸ Refer Senator Patrick [media release](#), 29 April 2019.

²⁹ Refer [ATO enforcement of debt recovery](#), last updated 24 April 2019. This report includes an ATO submission review on early debt recovery action on a small business disputing a debt at the Administrative Appeals Tribunal.

³⁰ [Commissioner’s statement on ASBFEO review into enforcement of debt recovery](#).

³¹ Mr McLoughlin’s [opening statement](#) refers to the way in which the review of ATO use of garnishee notices was conducted.

³² Refer [Hansard transcript](#).

³³ Refer Senator Patrick [media release](#), 29 April 2019.

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- The Australian National Audit Office report on Management of Small Business Tax Debt, published on 30 May 2019³⁴.

Throughout, there have also been many ATO statements highlighting its efforts to help small business taxpayers³⁵.

1. Whether the accountability framework the IGoT operates within needs to be amended or strengthened

Refer covering letter.

2. How the IGoT conducts its investigations into the ATO

The IGoT's perspective

The IGoT's Annual Reports³⁶ and latest Corporate Plan³⁷ provide the Committee with a rich source of information about the office and the way it goes about its work.

In relation to the specific concerns raised by Senator Patrick about the way the IGoT conducted its investigation into the ATO's use of garnishee notices (refer Appendix 1), the Acting IGoT is already on the record as saying³⁸:

"Our investigation team used the IGTO's strong investigative powers to go to operations sites in Melbourne, Penrith, Parramatta and Adelaide, to see firsthand ATO system operations and personally interview over 50 ATO staff during the investigation, as well as access ATO systems, information and records.

Importantly, we provided ATO staff with opportunity to directly contact our investigation team anonymously or on a disclosed basis. This was without the need for the involvement of any other officers or ATO management. This was notified via email communication to all ATO debt staff which provided a direct personal mobile telephone number for a senior IGTO officer."

³⁴ [Management of small business tax debt](#), Performance Audit Report No 42 of 2018-19, Australian National Audit Office.

³⁵ These statements include: "Taxing times: positioning the ATO as an instrument of democracy", [address](#) by ATO Commissioner Chris Jordan to the *Tax Institute 34th National Convention, 14 March 2019*; "The ATO's current focus areas in the small business market", [address](#) by ATO Deputy Commissioner Deborah Jenkins to the Chartered Accountants Australia New Zealand Strategic Tax Planning Day, 31 May 2019.

³⁶ [IGoT Annual Reports, 2009 to 2018](#).

³⁷ [IGoT Corporate Plan 2019-20 to 2022-23](#).

³⁸ [Opening statement](#) tabled by Mr Andrew McLoughlin at his appearance before the Senate Economics Legislation Committee hearing, Estimates for 2019-20, 10 April 2019.
Opening Statement, Senate Economics Legislation Committee, 10 April 2019 Public hearing- Estimates for 2019-20
Opening Statement

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What may have concerned Senator Patrick was the ATO's response³⁹ to his question on notice about whether ATO debt collections officers were accompanied by ATO colleagues when interviewed by the IGoT team conducting the garnishee investigation:

Senator Patrick: *"When the IGT conducted his investigation he went to various different sites around the country. I want to know whether in any of those locations, when he was interviewing staff were those staff accompanied by another ATO officer."*

ATO answer:

- *"Arrangements for interviews with ATO staff onsite were agreed with the IGoT prior to the site visits commencing."*
- *"Under those arrangements, ATO staff could be accompanied by another ATO officer at the interviews."*
- *"This was to provide support for the ATO staff member (if required) and facilitated the purposes of the review including any necessary logistical support for the IGT."*
- *"Staff were also provided with the name and contact number of an IGT staff member to contact directly if they wished to speak to the IGT anonymously."*

It is impossible for external organisations like CA ANZ to comment on whether the interview process described above caused ATO officers to be less candid with the IGoT than they might otherwise have been.

CA ANZ's external stakeholder perspective

CA ANZ regularly engages with the IGoT by making submissions on topics under review by the IGoT. Our members or their clients also approach the IGoT directly for assistance or to make a complaint about a matter within the scope of the IGoT's authority.

In either case, what happens next in terms of the IGoT's interaction with the ATO is not that visible to external parties.

Our understanding is that, for:

- **Submissions** – The IGoT considers submissions received from organisations such as CA ANZ and discusses with the ATO the contents of those submissions (in the interests of transparency, CA ANZ's practice is to share our IGoT submissions with the ATO). Our sense is that when the IGoT announces the commencement of a formal review, the ATO devotes resources to the particular topic under review in anticipation of interaction with the IGoT. Prior to finalisation of an IGoT report, we gather the IGoT provides a draft of the report to the ATO to:
 - seek final input from the ATO;
 - allow the ATO an opportunity to decide whether it agrees or disagrees with the IGoT's recommendations.

³⁹ Refer [response](#) by Acting Commissioner of Taxation, Ms Jacqui Curtis, to questions taken on notice at the Senate Economics Legislation Committee Budget Estimates hearing on 5 April 2019.

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The IGoT's final report is then forwarded to the Treasurer who determines the timing of the report's publication.

- *Requests for assistance or complaints* – The IGoT first considers whether the request or complaint is within scope (i.e. there are some matters which the IGoT cannot assist with). If the matter is within scope, IGoT staff proceed to research the matter using the IGoT's access to ATO systems and then contact the relevant unit within the ATO if follow-up is required⁴⁰. We gather the ATO is very responsive when contacted by the IGoT, and ATO officers work collaboratively to resolve the matter quickly, one way or the other. The IGoT then communicates the outcome to the complainant.

IGoT feedback to CA ANZ submissions

For submissions lodged by CA ANZ in response to IGoT requests for input into reviews, the IGoT does not:

- Provide feedback to us on the merits or otherwise of our submissions (in some cases we have contacted the IGoT and requested verbal feedback);
- Reference in published IGoT reports how submissions received have been considered.

Along with other stakeholders, we simply await publication of the IGoT's report and from that document we usually gain some insights about how the IGoT went about the task.

The IGoT protocol with the ATO

The IGoT interaction with the ATO is governed by a Protocol⁴¹.

The Protocol is clearly relevant to the Committee's Inquiry, particularly Part (iii) of the Protocol which deals with "information gathering, field work and access".

IGoT Annual Reports, publications and speeches

The IGoT's Annual Reports and latest Corporate Plan provides the Committee with some insights on the IGoT's modus operandi vis-à-vis the ATO.

The IGoT website also contains links to a number of relevant publications and speeches by Mr Ali Noroozi, the former IGoT⁴². In particular, Mr Noroozi's Valedictory Speech dated 4 October 2018 included the following statement⁴³:

Much has been said about the tension between my office and the ATO but the truth is we work together cooperatively and agree far more often than we disagree. This is evidenced by the many positive initiatives that have been implemented as well as the attendance of former and current ATO officers this evening.

⁴⁰ In 2007, the first IGoT (Mr David Vos) signed a [Protocol](#) with the then Commissioner of Taxation (Mr Michael D'Ascenzo) which outlines the nature of the co-operative working relationship between their agencies. The [IGoT website](#) currently states that "a new protocol will be developed in due course to reflect the expansion of the IGT's role to include tax complaints handling".

⁴¹ [Protocol](#).

⁴² Refer [Other Publications](#) on the IGoT website.

⁴³ [Former IGT Valedictory Speech](#).

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Of course, I am not saying that there is no tension between the ATO and the IGT. A degree of tension between the scrutineer and the subject of the scrutiny, if professionally managed, is entirely appropriate and is indicative of their independence. As a parliamentarian once said, my job is not to have cosy cups of tea with the Commissioner. Whilst independence is paramount, co-operation is necessary to deliver reform and improvements to the community. It is also important to transparently report our findings but in a way that does not unnecessarily undermine confidence in the system.

3. What safeguards exist to ensure the independence of the IGoT

What are the hallmarks of independence?

The Ombudsman Association publishes a *Guide to principles of good governance*⁴⁴ which provides a useful listing of the attributes of independence:

- Freedom from interference in decision making on complaints
- Appropriate and proportionate structure and financial arrangements
- Appointment, re-appointment and remuneration of the office holder consistent with ensuring independence
- Governance arrangements which ensure and safeguard the independence of the office holder and the scheme
- Those involved in the governance of the scheme conduct themselves at all times in the best interest of the scheme

Who should the IGoT report to? The former IGoT's views

The IGoT role is critical in a self-assessment environment in which a legislatively empowered ATO interprets and applies complex law and can have a substantial impact on Australians and businesses.

Great trust is placed in the IGoT and community perceptions of independence are almost as important as the actual independence of the IGoT.

In this context, the placement of the IGoT within the Treasury portfolio and reporting lines have attracted comment from the scrutineers themselves.

In his Valedictory Speech on 4 October 2018 the former IGoT Mr Ali Noroozi said:

"I believe the independence of the IGoT may be bolstered by making his or her appointment for a non-renewable term of 10 years, as is the case with the Auditor-General, and moving the agency out of the Treasury portfolio and having it report directly to Parliament like the Australian National Audit Office. An inherent conflict exists in having both the IGoT and the ATO within the same portfolio".

In a quote provided to Smart Company⁴⁵, the office of the ASBFEO said:

⁴⁴ [The Ombudsman Association](#). Formerly known as the British and Irish Ombudsman Association.

⁴⁵ Matthew Elmas, Smart Company, Inspector-General of Taxation calls for oversight of ATO to be improved, amid concerns power is too concentrated, 5 October 2018.

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“Moving the IGoT out of the Treasury portfolio and reporting directly to Parliament will provide increased independence”.

IGoT staffing

The 2018 IGoT Annual Report states that the agency has an average staff level of 35.

Clearly, the way these men and women go about their work has an important bearing on independence.

The Committee may therefore also wish to discuss with the IGoT:

- The manner in which the IGoT is staffed
- How many IGoT personnel formerly worked for the ATO
- The calibre, experience and seniority of IGoT personnel (important in terms of their ability to engage effectively with senior ATO officials)⁴⁶, and
- The training provided to IGoT staff on matters related to independence⁴⁷.

We are not privy to the contractual obligations or codes of conduct governing the independence of the IGoT and her staff.

IGoT not co-located with ATO

In terms of other factors which influence perceptions, it is interesting to note that – unlike the Tax Practitioners Board – the IGoT office in Sydney is *not* located on ATO premises.

IGoT access to ATO systems

The IGoT and her staff have access to ATO systems.

CA ANZ is not aware of any limitations imposed by the ATO on access rights, but the Committee may wish to confirm this with the IGoT and the ATO. For example, we are unclear whether the IGoT can access documents germane to ATO whistle-blower disclosures (relevant in particular to the IGoT's review of the ATO's use of garnishee notices): refer comments below about the IGoT and whistle-blowers.

4. The complaints management policies and practices of the IGoT

The IGoT is best placed to explain in detail the complaints management policies and practices of her office.

We note however that the IGoT website contains *general* information in a Q&A format, such as:

- What happens after I make a complaint?
- What types of complaints can the IGoT help me address?

⁴⁶ In a letter dated 2 May 2018 from Mr Andrew McLoughlin (Acting IGoT) to Treasury Secretary Mr John Fraser, Mr McLoughlin states that: “In order to provide the complaints handling service and review function, all IGT staff are dedicated tax professionals who possess relevant tertiary and higher qualifications as well as professional accreditations and have extensive experience working within the tax and superannuation systems”. Refer IGoT FOI Disclosure Log, [document reference FOI/18/00005](#).

⁴⁷ The interesting point to note here is that an ATO background is no doubt helpful to the IGoT's ability to navigate the ATO structure, systems etc. There are however IGoT specific skills and codes of conduct. For example, the [Ombudsman Association](#) publishes a [Caseworker Competency Framework](#).

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- I am not happy with a decision the IGoT has made in relation to my complaint. What can I do?

CA ANZ feels the IGoT website could be improved to better explain the complaints handling process in layman's terms (e.g. by using easy to understand process diagrams).

5. The protections afforded to whistle-blowers who disclose information to the IGoT

The Privacy Act 1988

The IGoT website says the agency "manages all confidential information in accordance with the Privacy Act 1988" and directs readers to its detailed privacy policy.

The privacy policy highlights obvious, practical difficulties associated with the IGoT's work, namely that in carrying out its investigations etc the IGoT will often, almost inevitably, come into possession of confidential information which could identify individuals who would prefer anonymity.

The Public Interest Disclosure Act 2013 (PID Act) and the IGoT

CA ANZ does not profess to have expertise in the way the IGoT applies the PID Act where its work relates to a disclosure made by a whistle-blower who hails from the ATO or the Tax Practitioner Board.

Managing whistle-blowers in the public sector is no doubt difficult, and these difficulties are accentuated where the particular agency involved (the ATO):

- Has secrecy requirements built into the laws it administers
- Fosters a very strong staff culture of confidentiality, and
- Rightly provides public assurances to taxpayers and the public generally that high standards of confidentiality provide the trusted framework necessary to engage with the agency.

We know that the Moss Review of the PID Act⁴⁸ identified many flaws and areas for reform.

The ATO made a brief submission to the Moss Review highlighting a number of concerns with the way the PID Act operates in practice⁴⁹. More recently, the ATO has expanded upon its process for dealing with internal whistle-blowers in a response by the Acting Commissioner, Ms Jacqui Curtis, to questions on notice posed by Senator Patrick⁵⁰.

Interestingly, the final report of the Moss Review looked closely at the investigative powers of scrutineer agencies such as the IGoT⁵¹ and in Recommendation 2 said:

"...the Australian Public Service Commissioner, the Merit Protection Commissioner, the Integrity Commissioner, the Parliamentary Services Commissioner, the Parliamentary Services Merit Protection Commissioner and the Inspector-General of Taxation be prescribed as investigative agencies to simplify the PID Act's interaction with other investigative and complaint schemes and to strengthen the investigative capacity under the PID Act. [Emphasis added]

In framing and justifying this particular recommendation, Mr Moss said:

⁴⁸ [Review of the Public Interest Disclosure Act 2013](#), Philip Moss AM, July 2016.

⁴⁹ [ATO submission](#), March 2016.

⁵⁰ Refer [response](#) by Acting Commissioner of Taxation - Ms Jacqui Curtis – to questions taken on notice at the Senate Economics Legislation Committee Budget Estimates hearing on 5 April 2019.

⁵¹ Section 7, Inspector-General of Taxation Act 2003.

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52. The Review considers that inclusion of these officeholders as investigative agencies supports a 'no wrong doors' approach for disclosers to come forward, especially for those who may lack detailed understanding of the legislation and jurisdictions. This approach would extend the PID Act protections to a discloser who reported wrongdoing to one of these investigative agencies in the Commonwealth public sector. This approach will also encourage disclosers who lack confidence in an agency's internal investigation processes, or who may fear reprisal, to bring their concerns about wrongdoing to a relevant independent investigative body without altering the existing remit of these agencies beyond their current scope.

53. The Review also considers that the significant coercive or compulsory notice powers granted to potential investigative agencies by their own legislation would be of significant benefit to the oversight of PID-derived information, allowing them to fathom instances of fraud, corrupt conduct and serious misconduct brought forward under the PID Act, and to use their specialist jurisdictional knowledge and expertise to halt further instances of such wrongdoing.

We note that the former IGoT, Mr Ali Noroozi, subsequently responded to whistle-blower related Questions on Notice posed by the Parliamentary Joint Committee on Corporations and Financial Services in a letter dated 24 April 2017⁵².

In that response, Mr Noroozi opined on three matters which the Committee may consider relevant to its deliberations:

- Legislative provisions in place for protecting whistle-blowers who make Public Interest Disclosures to the IGoT
- The limitations of the limited whistle-blower protections enshrined in the *Inspector-General of Taxation Act 2003*⁵³, and
- Areas for reform of whistle-blower protections, particularly in the way whistle-blowers interact with the IGoT.

The Public Interest Disclosure Act 2013 (PID Act) and the Commonwealth Ombudsman

Although the Inquiry focuses on the IGoT, it may be appropriate to seek input from the Commonwealth Ombudsman, Mr Michael Manthorpe PSM, given that he leads the Commonwealth Agency with responsibility for the PID Act.

Mr Manthorpe may have useful insights on the way the PID Act generally applies to protect whistle-blowers in the ATO and in particular, any shortcomings encountered when scrutineers such as the IGoT become involved.

Private sector whistle-blowers and the IGoT

Our understanding is that the IGoT has direct access to ATO systems and we assume that this sometimes makes it possible to investigate a complaint by Citizen X (or a disclosure by Citizen X) without necessarily revealing to the ATO the identity of Citizen X.

⁵² Refer [letter from Mr Noroozi to Parliamentary Joint Committee on Corporations and Financial Services](#), 24 April 2017.

⁵³ Note that this Act incorporates certain aspects of the *Ombudsman Act 1976*.

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Also, the enactment of the *Treasury Laws Amendment (Enhancing Whistle-blower Protections) Act 2019* substantially enhances the protections afforded to whistle-blowers from the private sector. For the first time, tax specific whistle-blower protections are enshrined in the *Taxation Administration Act 1953*.

The ATO website⁵⁴ has been updated to inform tax whistle-blowers about the new protections, with the ATO indicating that:

“Whether or not you are a tax whistle-blower, we will make every effort not to disclose any information we have which would identify you. Alternatively, you may choose to report to us anonymously.”

The IGoT website on the other hand does not currently convey information about the actual steps the agency might take to protect private sector whistle-blowers.

To be fair however, implementation of the new private sector whistle-blower protections is still work in progress, with many affected entities still to implement procedures which address the requirements of the new law⁵⁵.

Again, the IGoT is best placed to explain processes for dealing with private sector whistle-blowers in practice.

CA ANZ fully supports whistle-blower protections, regardless of whether the disclosure comes from the public or private sector.

6. Any related matters

Refer covering letter.

⁵⁴ [ATO website](#).

⁵⁵ For example, the new whistleblower protections in the Corporations Act require affected entities to have a whistleblower policy from 1 January 2020, and ASIC has only recently issued [draft guidance on this topic](#).

Appendix B

Chartered Accountants Australia and New Zealand

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