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Ms Sharon Bryant  
Inquiry Secretary  
House of Representatives Standing Committee on Tax and Revenue  
Parliament House  
Canberra ACT 2600

By email:

### **Employing a ‘regulatory philosophy’ at the Australian Taxation Office (ATO)**

Dear Ms Bryant

I refer to your correspondence of 14 June and thank you for the invitation to participate in the Committee’s hearing on 29 June. I’m pleased to hear about the Committee’s work on taxpayer engagement with the tax system, particularly in light of the ATO’s Reinvention process. Due to existing commitments, I am not in a position to accept your invitation. In lieu of participating, however, I have taken the opportunity to set out some comments in this letter on the subject of regulatory philosophy and the ATO especially as it relates to taxpayer engagement.

#### **Regulatory Philosophy**

The idea of regulators adopting an approach, or philosophy that guides their work interactions with those they regulate is an interesting one. It is a practice which does not appear to have wide usage among Australian regulators, although it is common for regulators to have guiding policies which sit underneath their governing legislation.

#### **Taxpayers’ Charter**

I note in your email of 14 June that there is no reference to the ATO Taxpayers’ Charter.<sup>1</sup> The Charter sets out the rights and obligations of taxpayers and the ATO, and would appear to achieve many of the aims of a regulatory philosophy statement. The Charter commits the ATO to treating taxpayers fairly and reasonably; offering professional service; explaining the decisions it makes about a taxpayer; and respecting the right of a taxpayer to make a complaint. The Charter establishes an overarching framework for ATO dealings with taxpayers. I note that it does not specifically establish a framework for interpretation or consultation, or other aspects of “regulation” by the ATO. However, the ATO does have a broad consultative framework and these goals are set to some extent in its existing mission and strategy statements.

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<sup>1</sup> <https://www.ato.gov.au/About-ATO/About-us/In-detail/Taxpayers-charter/>

Under the Charter, taxpayers have six important obligations that apply to their dealings with the ATO: honesty; record-keeping; reasonable care; timely lodgement; prompt payment; compliance and cooperation. The Taxpayers' Charter does not, however, have the force of law. Due process and the rights to a review and reasons for decisions made by the ATO are conferred under the tax and administrative law. The Inspector-General of Taxation also receives taxpayer complaints in his role as Taxation Ombudsman.

### **Inspector General of Taxation (IGT)'s Review into the Taxpayers' Charter and Taxpayer Protections**

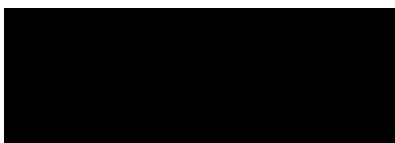
In November 2015 the IGT published its Review into the Taxpayers' Charter and Taxpayer Protections.<sup>2</sup> The Review noted that there were conflicting perceptions about the status of the Charter between taxpayers and the ATO, giving rise to a lack of stakeholder confidence in the Charter. The IGT critiqued the ATO for setting out 'taxpayer rights' in the Charter, on the one hand, while arguing against the conferral of any rights under the Charter in litigation. The IGT recommended, among other things, that the Charter be updated to reflect the higher standards of the Reinvention program. To the extent that the standards in the Reinvention program were higher than those in the Charter, the IGT went on to say that 'the ATO cannot be in a perpetual state of 'Reinvention' and such higher standards should be captured in an enduring and fundamental document such as the Charter.'

Given this state of flux regarding the existing Taxpayers' Charter, I would recommend against the adoption of any new statement of regulatory philosophy by the ATO, which would be layered on top of existing mission and strategy documents as well as the Charter. If, however, the Committee was minded to recommend the ATO adopt such a statement, it would need to fit within the existing regulatory framework of the ATO that includes those documents and ATO statements.

### **ANU-ATO Joint Project: Applying Behavioural Insights to the Tax System in Australia**

The ANU is engaged in an ARC-funded joint project with the ATO to investigate ways to improve tax compliance through the use of behavioural insights. The project team is carrying out randomised controlled trials of different approaches to taxpayer compliance and debt, to support the ATO goal of making this easier, more transparent and user-friendly. TTPI research fellow Emily Millane and I are preparing an academic paper to be published in the second half of this year on the legal and regulatory aspects of this project, and we would be happy to forward this to the Committee or provide other information, if this would be of interest.

Sincerely



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<sup>2</sup> <http://igt.gov.au/news-and-media/igt-review-into-the-taxpayers-charter-and-taxpayer-protections/>