



Australian Government
Inspector-General of Taxation
Taxation Ombudsman

17 January 2024

Ms Susan Templeman MP
Chair
House of Representatives Standing Committee on Social Policy and Legal Affairs
Parliament House
CANBERRA ACT 2600

Dear Chair

**INQUIRY INTO ADMINISTRATIVE REVIEW TRIBUNAL BILL 2023 (ART BILL) AND THE ADMINISTRATIVE
REVIEW TRIBUNAL (CONSEQUENTIAL AND TRANSITIONAL PROVISIONS NO 1) BILL 2023
(CONSEQUENTIAL AND TRANSITIONAL BILL)**

The Inspector-General of Taxation and Taxation Ombudsman (**IGTO**) welcomes the opportunity to contribute to the House of Representatives Standing Committee on Social Policy and Legal Affairs' (**Committee**) Inquiry into the Administrative Review Tribunal Bill 2023 (**ART Bill**) and the Administrative Review Tribunal (Consequential and Transitional Provisions No.1) Bill 2023 (**Inquiry**).

About the IGTO

The IGTO is an independent statutory agency that investigates taxation administration systems and laws, as well as the actions and decisions made by Tax Officials - of the Australian Taxation Office (**ATO**) or the Tax Practitioners Board (**TPB**). The IGTO seeks to deliver 'fair, accountable and improved administration of the taxation and superannuation systems for the benefit of the Australian community, through independent investigation and reporting.'¹ We also undertake tax investigations for the purpose of providing independent advice and assurance to Government on taxation administration laws and systems.

The IGTO is also an integrity agency within the framework of the *National Anti-Corruption Commission Act 2023*.²

As the IGTO is not empowered to investigate or advise on policy matters, this submission does not make (or intend to make) comment on any matters relating to policy. This submission seeks to assist the Committee by setting out the separate but complimentary roles of the IGTO and the current tribunal in taxation matters and addresses the importance of re-establishing the Administrative Review Council (**ARC**) and its membership.

¹ Commonwealth of Australia, *Portfolio Budget Statements 2023-24 Budget Related Paper No 1.15 Treasury Portfolio*, p 281 <[Portfolio Budget Statements 2023-24 \(treasury.gov.au\)](https://www.treasury.gov.au/Portals/0/Portfolio%20Budget%20Statements%202023-24)>.

² *National Anti-Corruption Commission Act 2023*, sub-s 15(k).

The separate but complimentary roles of the IGTO and the current Tribunal in taxation matters

Both the IGTO and the current Administrative Appeals Tribunal (AAT), and therefore the incoming ART, assist taxpayers and tax practitioners to resolve their taxation disputes with the Australian Taxation Office (ATO) or the Tax Practitioners Board (TPB) in complimentary but different ways.

The AAT reviews and renders decisions about the merits of a reviewable decision by the ATO or the TPB, as prescribed within the relevant statutes. Alternative Dispute Resolution processes may also be employed by the AAT as part of its processes to assist the parties to resolve the matter in dispute.

Taxation disputes currently account for approximately 2 per cent of applications lodged in the AAT in each year.³

The IGTO, on the other hand, does not undertake a merits review or issue any binding decisions upon the ATO or the TPB. Rather, the IGTO investigates administrative actions and decisions of the ATO and the TPB, and makes findings and recommendations where appropriate. These investigations often relate to matters that do not come within the AAT's jurisdiction, such as debt collection decisions or remission of General Interest Charges. They also relate to processes that precede the making of reviewable decisions, such as audit conduct or TPB investigations of a tax practitioner.

In 2022-23, the IGTO received 1,529 complaints, a 16 per cent increase over the previous year.⁴ Over 90 per cent of complaints received by the IGTO each year relate to the ATO.

The IGTO maintains a strong working relationship with the Taxation and Commercial Division of the AAT, and will continue to do so with the relevant Division in the new ART. Where a dispute is ostensibly about the merits of an ATO or TPB decision, the IGTO would refer a taxpayer to the tribunal and provide relevant information.

The re-establishment of the Administrative Review Council

The IGTO believes that the re-establishment of the ARC, set out in Part 9 of the ART Bill, is an important step to ensuring that administrative decision-making by Commonwealth agencies remains of high quality, achieves the purposes of relevant legislation and minimises disputes.

Functions of the ARC

Clause 249 provides:

249 Functions and powers of Council

(1) The Council has the following functions:

- (a) to monitor the integrity and operation of the Commonwealth administrative law system;*
- (b) to:*
 - (i) inquire into the adequacy of procedures used in relation to the making of administrative decisions and the exercise of administrative discretions; and*
 - (ii) consult and advise in relation to those procedures;*

³ Administrative Appeals Tribunal, *Annual Report 2022-23* (2023) p 28; Administrative Appeals Tribunal, *Annual Report 2021-22* (2022) p 21; Administrative Appeals Tribunal, *Annual Report 2020-21* (2021) p 40.

⁴ Inspector-General of Taxation and Taxation Ombudsman, *Annual Report 2022-23* (2023) p 36.

- (c) *to inquire into systemic issues related to the making of administrative decisions and the exercise of administrative discretions;*
- (d) *to inquire into the availability, accessibility and effectiveness of review of administrative decisions and administrative discretions;*
- (e) *to develop and publish guidance in relation to the making of administrative decisions and the exercise of administrative discretions;*
- (f) *to support education and training for officials of Commonwealth entities in relation to:*
 - (i) *making administrative decisions and exercising administrative discretions; and*
 - (ii) *the Commonwealth administrative law system;*
- (g) *any other function conferred on the Council by this Act or another Act;*
- (h) *to do anything incidental or conducive to the performance of any of the above functions.*

- (2) *The Council may, on its own initiative or at the request of the Minister, do any or all of the following:*
- (a) *inquire into;*
 - (b) *prepare a report relating to;*
 - (c) *make recommendations to the Minister in relation to;*
- a matter relating to any of the Council's functions*

The monitoring, inquiry and educative roles of the ARC in relation to administrative decisions and administrative discretions are particularly important. The IGTO recently undertook a review examining the Commissioner of Taxation's General Powers of Administration (GPA),⁵ which underpins many important administrative decisions made by the Commissioner (or his delegates) including settlement of tax disputes, compromise of taxation debts and issuing of practical compliance guidelines. In that report, the IGTO highlighted, *inter alia*, the importance of a principled governance framework to guide broad administrative decision making to ensure consistency and fairness. The IGTO made recommendations for the Government to consider enacting a framework of guiding principles for the exercise of the Commissioner's GPA.

Membership of the ARC

The membership of the re-established ARC is narrower than that prescribed by section 49 of the *Administrative Appeals Tribunal Act 1975*. The standing members of the ARC as set out in clause 247 of the ART Bill includes the President, the Commonwealth Ombudsman and the Australian Information Commissioner and at least 3 but not more than 10 other members.

In May 2015, the taxation jurisdiction of the Commonwealth Ombudsman was transferred to the IGTO. As a result of this transfer, the proposed standing membership of the ARC does not necessarily include a specialist taxation perspective to inform the ARC's work. The Committee may wish to consider, in light of the significant and broad reaching impact of Australian taxation and superannuation systems and their administration, whether having regard to the transfer of the taxation jurisdiction to the IGTO, that an expansion of the standing membership of the ARC is warranted or whether this can be addressed through the other membership requirements.

⁵ Inspector-General of Taxation and Taxation Ombudsman, *The Exercise of the Commissioner's General Powers of Administration* (2023) <<https://www.igt.gov.au/investigation-reports/the-exercise-of-the-commissioners-general-powers-of-administration/>>.

That is, in the alternative, and noting that taxation matters only account for approximately 2 per cent of the AAT's (and, likely the ART's) workload, it may be sufficient for the ARC to consult with the relevant oversight and integrity bodies in relation to the matters it is examining. A requirement to consult may be included in the Bill, or alternatively adopted as part of the ARC's administrative processes when it is re-established.

I trust this submission is helpful to inform the Committee's consideration of the Bills. If you have any further questions or wish to discuss this submission, please do not hesitate to contact me [REDACTED]

Kind regards

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Karen Payne
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