Submission to New Inquiry on Taxation
Public Accounts and Audit Committee
Federal Parliament
Canberra ACT

Dear Committee,

An enquiry such as this "New inquiry on taxation" is well overdue and it should not limit itself to taxation administration but look at the whole public administration. Similar issues affect other government agencies of a similar nature. The best examples are Immigration and Centrelink. I hope this enquiry will be a model enquiry to fix most of the ailments of the Australian Public Services, at least the Commonwealth public service. This Bill, or any other Bill, introduced under Review of Self assessment (RoSA) will not help unless Acts dealing with the public service are changed.

## Part A

**The administration by the Australian Taxation Office (ATO) of *the Income Tax assessment Act 1936 and 1997 (including the amendments contained in the Tax Laws Amendment (Improvements to Self Assessment) Bill (No 2) 2005:***

This Bill does not go far enough to fix the taxation ailments of the day.

Whether this Bill will fix the taxation mess is doubtful. The problem is with the administration machinery. In this age an analogy is, trying to fix the computer hardware problems with new software. What we have to do is fix the hardware first, before adding more and more laws which are already up to our nostrils.

The hardware is the taxation office which is part of our public service. It is not only the taxation office that is faulty; there are others like Immigration and Centrelink.

Under the old system the Commissioner checked the information before issuing an assessment. Now, under Self Assessment, the Commissioner checks the information after issuing an assessment and this called an audit (an abuse of the word audit). So the actual difference is a **timing difference**. Formerly the Commissioner checked all assessments before issue. The Commissioner with the aid of new office technology should be able to check all issued assessments within half the time of the prescribed period. That is, an annual return should be checked within six months from the date of lodgement. The Commissioner should not be allowed to amend it after that as long as the taxpayer has made a full and true disclosure.

To facilitate this, taxation forms should have space to declare information that does not fit in the Commissioner's straight jacket forms. That is; if certain information does not fit in, there should be space in the forms to declare it. That is, a taxpayer should be allowed to declare incomes and claim deductions that do not fit in with the Commissioner's questions. The Commissioner can issue an assessment as soon as a return is lodged, then

do all the checks within six months and send a notice confirming the self assessment or the amended assessment with the adjustments.

If the Commissioner could manage to do it before, he can do it now, because the Commissioner has more resources now. If the government is prepared to get the taxation office to do a day's work and check assessments within a prescribed time we can do away with the Ruling system.

Some aspects of the Ruling system are unique to Australia. We have seen the problems created by the private binding rulings with the Petrulias's affair and the Western Australian schemes which are not finalised yet. Why not introduce the binding ruling system to the criminal justice system so that one could get a ruling from the Attorney General on a proposed criminal activity before a crime has been committed.

The private binding ruling system is illogical and flawed. One could ask for a ruling for a proposed activity even though the person may not have the capacity to carry out the proposal. The rulings only help a selected few and have lead to taxation avoidance schemes. We do not know how many wrong rulings there are because of the secrecy and privacy provisions. This negates the equity of the taxation system because the persons with resources to ask for binding rulings are advantaged compared to others.

Before self assessment the Commissioner took under three minutes to check (audit) an individual taxpayer's return and around ten minutes to make adjustments as a result of new information after issuing an assessment. Now a simple information matched adjustment takes more than a week. Taxpayers who have been subject to an "audit" should get all the documents used for the audit under Freedom of Information Act and will see that the Commissioner spends more time on housekeeping and having a good time than doing the actual work that takes only a few minutes.

The reason for all this is the sheer inefficiency of the public service. Changes to the Public Service Act were made around the same time as the introduction of self assessment. The public service went from efficiency to meritocracy (the Fabians revolution) and we see the results of that change now.

The Commissioner uses a Compliance model to administer the taxation laws. This model might be suitable for things like social security fraud but not for taxation.

This model is pyramidal and you would expect the taxation office infrastructure to be the same. At present the taxation office has almost three hundred Senior Executive Service (SES) officers and the number of lowest level officers may be less than that. The private sector executives are greedy but in the public service they share the greed.

It was pyramidal before self assessment and the number of SES officers was no more than a dozen and most of the officers were lower level officers. Just imagine how many elected representatives are there if we followed the same path.

So it is time for the government to look at the public service before piling up more and more legislation.

The government can do with the public service what it is doing with the construction industry and the lowest paid workers in Australia under Industrial Relations and other laws. These groups of workers are very efficient and the efficiency exceeds that of most comparable countries.

Reduce the number of SES positions in the taxation office to around a dozen; say one deputy Commissioner for each State and Territory, a few to cover direct and indirect taxes, and one or two computer experts.

Reorganise the taxation office to what it was before self assessment. This does not need new legislation, but the will of a minister like the treasurer, minister of finance, or a renegade member or a senator like the former Honourable Member Pauline Hanson. Something the Honourable senator Bronwyn Bishop failed.

Let us look at the current wicked Wickenby: What was the Commissioner doing without making the necessary adjustments to the taxation returns of these people who are the victims of another arm of the taxation industry? (Taxation industry includes the taxation office). The first thing the Commissioner has done with the $ 160 million is to appoint an accommodation officer costing taxpayers around $ 100,000.00 a year. The cost of a similar job in the private sector is less than a third of this. Before self assessment there were no jobs like that in the taxation office. Well, will there be overseas travel for the taxation “auditors”, as the so called schemes are mainly overseas sourced schemes? These types of schemes are not new and have been there for a long long time, long before the self assessment. Will the overseas institutions cooperate with us? I have my doubts, because of the taxation office’s history of cooperation with them when they ask for information.

Compliance is another word that has come into use after the introduction of self assessment. Subjects of a regime pay the tax due and that should be the end of the matter, whether they comply or not. Now you may pay the proper tax, but you may get into trouble because you did not comply.

If one analyses “compliance and rulings regime”, then one has to wonder whether you comply with the law or you comply with the rulings regime. This is another test that the rulings regime fails. Get rid of the rulings regime and limit the Commissioner to expressing an opinion where the law is doubtful, ambiguous or not clear until the law is applied to issue an assessment. The other parts of the taxation industry, I am sure, are capable of looking after the taxpayers who want to know what to do or how the law will apply to a proposed event that may be subject to tax.

This Bill or other RoSA initiatives will not fix the problems unless public service Acts are included in the initiatives.

- *The Impact of the interaction between self assessment and complex legislation and rulings*.

There are lot of myths regarding this issue which are propagated by the taxation industry that includes the taxation office. Taxpayers are still required to lodge returns or statements and the Commissioner is allowed to check that information later and issue another assessment. So the self assessment is not really self assessment. Furthermore there are other parties involved in assessing a taxpayer's liability. For example if you are an employee, your tax liability is first assessed by the employer and tax is deducted from your wages under the income tax withholding system. So the employer assesses your tax, then you assess your tax and the Commissioner may later assess your tax.

The self assessment regime is the same as the former Commissioner's assessments regime; the only difference is a timing difference. Before self assessment the Commissioner checked the information before issuing an assessment. Now, the Commissioner "audits" [checks (an abuse of the word audit)], the taxpayer's assessment later. The checks are conducted on very minute number of taxpayers, but with today's office technology all taxpayers' affairs can be checked in a very short time.

The legislation is not complex; because it is more and more codified than it used to be, but it is a mess, a maze and is overweight. What we need is tidying up, straightening and trimming. This cannot be achieved by enacting more and more legislation. For example most of the expectations of the Bill could have been achieved by getting the taxation office to do a day's work.

Parts of the taxation ruling system like the private binding rulings are not found in other taxation systems. We have seen the problems that it creates with the Petroulias's affair and the Western Australian schemes.

There are simple solutions to the *Impact of the interaction between self assessment and complex legislation and rulings.*

The tax returns and statements should include provisions (that is blank space) for taxpayers to disclose information (income, deductions, tax liabilities, tax credits and tax offsets) that do not fit in with the questions asked by the Commissioner. This would allow taxpayers to make a full and true disclosure to the best of their ability.

The enquiry should also look at the rulings as well as practice statements, media releases and Commissioner's speeches to selected groups that confuse the public.

Should the government limit the media releases and public announcements to politicians and ban public servants from making them except when proper whistle blowing.

- *The application of common standards of practice by the ATO across Australia*

In actual practice, there is no *application of common standards of practice by the ATO across Australia.*

The Taxpayers Charter, Commissioner's Practice Statements and other documents say that the ATO applies common standards.

The current infrastructure of the taxation office does not cater for this. The structure of the taxation office is in a state of a flux. This could be the same with other government agencies since the changes to the Public Service Act.

A comparison of the structure before and after self assessment will highlight this problem. For example; before self assessment, a team had half a dozen same level workers who were supervised by a worker one level above them. The supervisor could do the work done by the team members and was charged with supervising the team and the work according to standard practices and the interpretation and application of the law. Today a team is headed by a manager and will have two to fifteen workers ranging in level from the lowest rank to the level of the manger. Most of the time the manager has no clue what any of the team members are doing or are capable of doing, and the manager is not capable of doing the work of any of the members. The managers are usually executive level officers and they have their own standards of practice as well as interpretation and application of the law. How did the Petroulias affair and massive frauds (sales tax and income tax withholding) committed by the taxation officers come about?

Another area of concern is the Commissioner's discriminatory practices that are used to frighten the community at large or to publicise that the Commissioner is working, when in fact the work done is minute compared to what should and could be done. The Commissioner should apply the law to all subjects without any prejudice and without any fear or favour. This does not happen. The Commissioner uses this approach for leverage effect and it is bad luck for the ones caught under the lever.

For example in a case I know, an individual's tax liability was increased and he was fined at a higher rate than others who had made the same mistake because he should have known better and should have taken more care even though he had a reasonably arguable position. However the adjustment was incorrect both arithmetically and in law. The tax liability of a lot of persons who were in the same position was not increased nor were they fined. The reasons were that some of them used tax agents, so the taxation office told the agents to be more careful in the future and the others were spared because the tax office did not have enough resources to make the necessary adjustments and impose fines. This type of adjustment (the Commissioner calls them "audits") and the imposition of fines did not take more than five minutes per taxpayer before self assessment. Information obtained under the freedom of information showed that the Commissioner took thirty-five hours to make that particular erroneous adjustment and most of the time was spent on completing internal housekeeping forms and just enjoying the life in the

office.

Some of the publicised “audits” are good examples of the Commissioners behaviour like a thug or mobster. Taxation office “High Wealth” project; there is no wealth tax in Australia and the wealth of a person is no indication that a person has a higher income. “Auditing” 100 largest companies in Australia, again the size (what gauges was used to measure the size, the list from a popular publication) is not an indication that the company may not be paying the correct amount of tax?

The Commissioner penalises some and favours others as the Commissioner feels, but the favoured ones don't complain. The Commissioner should not be given wide discretionary powers and room for negotiation. Subjects should pay the proper tax and it should be collected by the Commissioner, no more and no less. Today a taxpayer with better negotiation skills or resources pays a lesser amount of tax. Something that should not be allowed in a country where the rule of law is supreme.

The Commissioner, under self assessment mainly makes adjustments (audits) to increase the liability. But, before self assessment Commissioner, where appropriate made adjustments to decrease the liability of taxpayers

The recent chasing of judges for lodgement of income tax returns, by the Commissioner and the calling in the media of the chase. When the judge Ronald Sackville, chair of the Judicial Conference of Australia said it is damaging (The Sun Herald “Melbourne” 5 August 2005), this judgement applies to all the administrative practices of the taxation office

Did the Commissioner send demand notices to all taxpayers who had not lodged their tax returns? Before self assessment it was normal for the Commissioner to send demand notices to all taxpayers, and this was done when the Commissioner's other work loads were minimal. Why just chase judges and Magistrates? Because of the leverage effect.

In this case, has the Commissioner complied with the secrecy and privacy provisions, or one arm of the government extending the courtesy to another arm of the government? Will it be the tax affairs of the elected representatives next? This is more important in a self assessment environment because most of the judge’s income will be covered by the ITW system as most of the judges will divest themselves from other income producing activities.

I understand in the old days the judges as well as hard criminals were treated as VIPs by the taxation office because of the secrecy provisions and this kind of calling in the media would not have occurred. Are the hard criminals lodging their tax returns on time let alone paying their taxes?

- *The level and application of penalties, and the application and rate of the General Interest Charge and Shortfall Interest Charge*

These two issues, penalties and interest charges, can be dealt comprehensively by looking at the current Wickenby and the Commissioners current debt collectors' hat and past schemes and the judges lodgement chase.

Looking interest charges first, what was the Commissioner doing while the debts were piling up? He was doing nothing. The debts would ripen with interest charges and would fall into the Commissioner's basket, so there would be no need to waste energy moving the Commissioner's limbs. Most of these debts are years and years old and Commissioner has done nothing to collect them. Any other entity would not chase such old debts simply because since the debt is so old the debtor feels forgiven.

This is the best example of Commissioner's sheer inefficiency. This is something the Director General of Taxation and the Australian National Audit Office have failed to notice in time. This clearly shows that not only the taxation office but most of the public service is lethargic.

Again increasing or decreasing the rates is not going to make a big impact. What is needed is that the Commissioner does a day's work, every day. If the Commissioner was moving his legal and administrative limbs in time and properly, these debts would have been collected without hurting the debtors as it does now.

The Commissioner has woken up after a long nap and seen the pile of debt and in frenzy has tried to collect debts that were not owed. That is trying to collect debts without issuing an assessment, where an assessment should have been issued. The argument I heard was that under "self assessment" the debtor should have known the liability and the Commissioner had the right to collect the debt unknown to the debtor.

This enquiry should look at the amount of taxation penalties collected over the years. You will see a massive increase since the introduction of self assessment.

One reason is the law allows the Commissioner to apply a large number of penalties and allows the Commissioner a wide range of discretions. Sometimes the Commissioner has not issued proper rulings on how these discretions will be exercised. Even where such rulings are in place the because of the structure and the present culture and attitude of the taxation office they may not be applied in a fair and just manner. Who gets fined, and how much, is just the luck of the draw.

The penalties that can be applied by a regulator should be minimal and discretions available to the regulator should be minimal. If higher penalties are warranted they should be applied by the courts or tribunals, so that it is public and is independent of the regulator.

The Committee should also look at tax reduction, remission and write-offs by the

Commissioner.

- *The operation and administration of Pay As You Go (PAYG) system.*

Most of Australia's tax is collected by third parties, employers [income tax withholding (ITW) from payments to employees} and businesses (consumption tax collected from consumers) without much cost to the government. Taxes that are paid by taxpayers come mainly within the instalment system.

Again compare what happened before and after self assessment , because no major changes have taken place other than the name changes.

So we see the inefficiency of the administrator again. Most of the administrative mechanisms have deteriorated over the years since self assessment. Just think that the biggest ITW fraud was carried out by the taxation officers.

The taxation office does not help or recognise the massive contributions from these third parties. How many Commissioners have addressed a meeting of the Payroll Officer's associations in Australia? Will they attend a Hairdressers and Beauty Industry Association gathering? If these people ring a tax officer (maybe as a result of an "audit" or just to get information), they will end up with voice mail. This is the best example of thug behaviour. A business person rings when that person has time to deal with a bureaucrat, but he will have to leave a message and the bureaucrat will ring back at the worst time, blocking a prospective event. The Commissioner loves to address other parties of the taxation industry like the taxation teachers. One wonders whether the taxation office is an academic institution or a public service office. Think of sending a letter to the taxation office, you wonder whether there is a letter box for each officer and still you are asked to send a copy later.

Most of the PAYG problems can be solved by changing the structure of the taxation office to what it was before self assessment and reducing the penalties and charges that can be imposed by the regulator. For example by having deputy Commissioners for each state and territory, the administration will be regionalised and taxpayers will get better service. At least, if they complain to their elected member, the elected member will know who to contact.

Taxes that come within the instalment system should be collected in time. The delays by the Commissioner cost the community as well as the taxpayer.

In concluding my submission to Part A I urge the Committee to look at the efficiency, cost and culture and attitudes of the public service.

**Part B**

***The committee shall examine application of the fringe benefit tax regime, including any "double taxation" consequences arising from the intersection of fringe benefits tax and family tax benefits.***

Family tax benefits should be dependent on the separate net income of a family. That is the money they have to live on. This has been the common denominator in determining any benefits paid to Australian families, but this principle has deteriorated over the years. Not all fringe benefits are reportable and are subject to thresholds. Because of this some families will be entitled to more benefits compared to others. Some reportable benefits may not be of any use to a family and they may be disadvantaged due to this compared to others.

Like the rulings and self assessment, fringe benefits tax (FBT) is another funny bit of tax. This tax should have been abolished during the last Tax Reform. Any income type benefits should be included in the taxpayer's income as it used to be. This way the employer does not have to pay a different rate of tax that would apply to the taxpaying individual

The beneficiaries of the FBT system are the people who are associated with non-tax paying institutions because these institutions are exempt from FBT. The government should abolish FBT or make exempt entities subject to FBT.

**My submission is based on the following.**

In a free, economic, liberal democracy the management decisions are in the hand of the electorate through the elected representatives.
The public service including the taxation office is the processing arm and not the decision maker. The decision maker is the elected representative.
In relation to taxation the old saying death and taxation are certainties, more so in a democracy. And another old saying is tax should be collected like a bee collecting the nectar. Not hurt the host but enhance the host, not discriminate between hosts like the looks or the odour. So following from these statements the elected representatives and the public service should treat the subjects the same as people who look after the health (death) of people and hence will be looking after the free economy at the same time.

Further I wish draw the Committee's attention to the following. The tax money is more sacred than the money left in the community. The current legislation is not complex but is a mess and a maze and is overweight. Commonwealth taxation is almost a century old and, comprising two decades of self assessment and eight of Commissioner's assessments. The difference between self assessment and the other is only a **timing** difference. Under the Commissioner assessments the commissioner checked the return

and issued an assessment. With self assessment an assessment is issued without checking but subject to checking later. The binding ruling system, in particular the private binding ruling system, is illogical and unjust and favours a selected few. The Commissioner's Compliance Model is discriminatory and does not apply to taxation. It may apply to things like social security fraud. The changes made to Public Service Act have made the public service inefficient, self-serving and not the servant but the master. Tax laws should be fair and equitable as far as possible. The tax tool should be used to reward enterprise but at the same time used to help the underprivileged so we have a better society. It should be used to steer a country properly now and into the future.

Name and address supplied.