

CHAPTER 2

The Provisions of the Bill

Background

2.1 The proposal to establish an Inspector-General of Taxation was announced by the Prime Minister in the Coalition's election statement *Securing Australia's Prosperity*, 15 October 2001:

As a separate and distinct initiative, in a third term, the Coalition will strengthen the advice given to government in respect to matters of tax administration and process through the creation of a senior office, the Inspector General of Taxation. This position will report to the Parliament through the Treasurer and will provide a new source of independent advice. The role will act as an advocate for all taxpayers, including Australian business, and provide an avenue for more effective conflict resolution than currently exists.¹

2.2 The proposal followed taxpayer concerns about aspects of tax administration such as delays in processing, the provision of inconsistent advice and the lack of certainty surrounding taxation obligations.²

2.3 On 29 May 2002, the Minister for Revenue and Assistant Treasurer, Senator the Hon Helen Coonan, released a Government consultation paper, *the Inspector-General of Taxation in the Taxation System*.³ The consultation paper was presented to the Board of Taxation (the Board) to undertake public consultation on the proposal for an Inspector-General of Taxation before the Government's model was finalised.

2.4 The Board presented its report on the proposal to the Minister for Revenue and Assistant Treasurer in July 2002. It reported that it had found strong support from the community, business taxpayers and the tax advisory professions for the establishment of the office.⁴ It produced fifteen recommendations concerning the implementation of the proposal for an Inspector-General of Taxation which were accepted in principle by the Government (See Appendix 3).

1 *The Howard Government Putting Australia's Interest First: Election 2001*, www.liberal.org.au/policy/securing.pdf

2 Minister for Revenue and Assistant Treasurer, The Hon Helen Coonan, *A New Tax Advocate*, Media Release C62/02, 29 May 2002.

3 *A New Tax Advocate*, 29 May 2002.

4 The Board of Taxation, *Inspector-General of Taxation: a Report to the Minister for Revenue and Assistant Treasurer*, July 2002.

2.5 Recommendations of the Board with which the government concurred included that:

- the functions of the Inspector-General should be broadly defined to include providing advice to government, reviewing the systems used by the Australian Taxation Office (ATO) to administer the tax system, and making recommendations to government concerning how these systems could be improved;
- the Inspector-General should be established outside the Ombudsman's office with the Ombudsman retaining his existing functions, including his role in reviewing administrative action taken by the ATO;
- the Inspector-General should have a right of access to individual taxpayer information held by the ATO, but only to the extent necessary to carry out its functions, with an obligation to maintain the confidentiality for such information; and
- the functions of the Board of Taxation should not be affected by the establishment of the Inspector-General, and the Inspector-General should not be an ex-officio member of the Board.

2.6 The Government differed from the detail of the Board's recommendations in regard to the Inspector-General's ability to publish reports of reviews and recommendations to government, proposing instead that the Treasury Ministers have the responsibility for releasing reports by the Inspector-General.⁵

2.7 In regard to the Inspector-General's work program, the Board recommended that the Inspector-General should be able to undertake work on both an own motion basis and in response to a direction given by a Minister, and that the legislation should not prescribe how work priorities would be established. The Government agreed in principle. However, it indicated that the Inspector-General would be obliged to respond to directions from Treasury Ministers.

2.8 These two points go to issues of transparency and independence which have emerged as recurrent themes in submissions to the Committee's inquiry.

The concept of an Inspector-General of Taxation

2.9 In general the evidence presented to this Committee was strongly supportive of the proposed legislation. For example the Commonwealth Ombudsman and Taxation Ombudsman told the Committee that he was of the view:

5 Senator the Hon Helen Coonan, *Minister Responds to Inspector-General Report*, Media Release C98/02, 16 September 2002.

[T]here was scope and value in increasing the amount of external review of tax administration, and I think the proposal that the government has developed clearly embodies that as one of its major objectives.⁶

2.10 Mr Brian Sheppard from the Institute of Chartered Accountants also strongly supported the concept of the Inspector-General. He informed the Committee:

We feel that it offers more accountability and will be a more tax focused position than the role of the Ombudsman as we see it. We have had to deal with 2½ years of quite serious systemic problems in the tax system. Those flaws crept into the tax system with the current checks and balances, so that if the Inspector-General of Taxation offers the opportunity of greater accountability and greater control over tax administration and a better system in the longer term, we are supporting the position.⁷

2.11 Similarly, CPA Australia believed that the proposed Inspector-General offered some important advantages and provided an opportunity for ‘a significant contribution to be made by the appointment of such a person to the tax administration system in Australia.’⁸

2.12 Nevertheless witnesses expressed some reservations about the effectiveness of particular aspects of the Bill. This chapter considers and assesses the adequacy of the provisions relating to:

- the purpose of the bill;
- the selection of the Inspector-General; and
- the functions of the Inspector-General.

The object of the Bill

2.13 The proposed legislation is intended ‘to improve the administration of the tax laws for the benefit of all taxpayers.’⁹

2.14 This object, as stated in the Bill, does not necessarily fully reflect the advocacy and conflict resolution role of the office proposed in the original policy statement¹⁰ or the second reading speeches.¹¹ As noted earlier, the Prime Minister

6 *Committee Hansard*, p. E2.

7 *Committee Hansard*, p. E3.

8 *Committee Hansard*, p. E3.

9 *Inspector-General of Taxation Bill 2002*, p. 2.

10 *The Howard Government Putting Australia’s Interest First: Election 2001*.

11 Second Reading Speech, *House of Representatives Official Hansard* p. 6775, and *Senate Official Hansard* p. 5360. The House of Representatives Second Reading Speech reflected the wording of the original policy statement. The speech in the Senate contained the following statement, ‘Establishing the Inspector-General will fulfil the government’s commitment in the

made clear that the Inspector-General would provide a new source of independent advice to the Government as well as be an advocate for all taxpayers.¹² This point was raised in a submission from the National Institute of Accountants:

It will be noted that the object of the *Bill* does not make specific reference to acting as ‘an advocate for the ordinary taxpayer’...

An object clause which directly reflected the comments of the Prime Minister would provide more comfort to tax payers about the perceived role of the position.¹³

2.15 The perceived loss of the advocacy role was more forcefully noted in a submission from Resolution Holdings:

The proposal as understood and endorsed by the voting public was to appoint a taxpayer advocate who would represent taxpayers and resolve systemic problems...

In the present proposal, however, there remains a duplication of roles together with an emasculation of the powers of the IGT to the extent that that Office would be nothing more than a puppet to the Minister.¹⁴

2.16 The importance of clear objectives for the office was also commented upon in a submission from CPA Australia, which held that the Bill should state that the objective of the Inspector-General is to ensure that the criteria relating to good tax administration in respect to efficiency, fairness, accountability and transparency are met.¹⁵ Similar criteria are expounded in the Explanatory Memorandum for the Bill, although not included in the Bill itself.

2.17 The Committee considers that the Bill could be enhanced by including in clause 3—Object of the Bill—a clear statement of intention that the proposed legislation is not only to strengthen the advice given to government on tax administration but also to promote the advocacy of taxpayer concerns. This objective is consistent with the commitment given by the Prime Minister during the election campaign in 2001 and with the message conveyed in the second reading speech. The inclusion of such a statement of intention would contribute to increasing public confidence in the legislation.

2001 economic statement, *Securing Australia's Prosperity*, to strengthen the advice given to government on tax administration and to promote the advocacy of taxpayer concerns.’

12 Press Release, Prime Minister, *Securing Australia's Prosperity*, 15 October 2001, p. 16.

13 Submission No. 12, p. 3.

14 Submission No. 2, pp. 1-2.

15 Submission No. 8, p. 4.

Establishment of the office

2.18 The Bill proposes the establishment of a new statutory office of Inspector-General of Taxation, sets out appointment and administrative arrangements, and stipulates grounds for dismissal.

2.19 As noted earlier, the Inspector-General of Taxation is to be appointed by the Governor-General for a fixed term of up to five years. Appointment criteria are not stipulated in the Bill. A number of submissions to the Committee's inquiry considered the attributes and experience of the appointee a significant factor in the success of the office. They recommended that the inaugural appointee should have experience of taxation administration from a business perspective, and an 'understanding of practical taxpayer experiences of dealing with the tax system.'¹⁶

2.20 These views are consistent with the recommendations of the Board of Taxation concerning the desirable characteristics of the inaugural appointee. The Board recommended that :

The Government should appoint as the inaugural Inspector-General of Taxation someone who:

- (a) has a strong capacity to understand both commercial and public sector issues in tax administration;
- (b) is committed to community consultation and building constructive relationships with stakeholders; and
- (c) has earned the trust of both government and external stakeholders.¹⁷

2.21 The Committee strongly endorses the above recommendation.

2.22 Although the Government agreed with this recommendation, there is no reference to the selection process in regard to the qualifications of the proposed Inspector-General in the Bill.¹⁸

16 Submission No. 1, p. 2.

17 The Board of Taxation, pp. 33-34.

18 For example the Trade Practices Act sets down criteria for the selection of Commissioners to the Australian Competition and Consumer Commission. Section 7 reads: Before the Governor-General appoints a person as a member of the Commission or as Chairperson, the Minister must:

- (a) be satisfied that the person qualifies for the appointment because of the person's knowledge of, or experience in, industry, commerce, economics, law, public administration or consumer protection; and
- (b) consider whether the person has knowledge of, or experience in, small business matters; and
- (c) if there is at least one fully-participating jurisdiction—be satisfied that a majority of such jurisdictions support the appointment.

2.23 As noted above, a number of witnesses emphasised the importance of appointing a well-qualified and highly respected person to the position. Mr Sheppard from the Institute of Chartered Accountants was of the opinion that the success of the role would depend on the candidate.¹⁹ The Commonwealth Ombudsman reinforced this view. He told the Committee:

In the final analysis, as with all things, the way organisations like this operate in practice depends very heavily on the calibre and the quality of the individual who is appointed to the office. That is the most significant issue...²⁰

2.24 The Committee is of the view that the Bill could be improved by including a provision that before the Governor-General appoints the Inspector-General the Minister must be satisfied that the nominee meets specified selection criteria and that the choice is based on merit.

2.25 The Inspector-General can only be dismissed by the Governor-General on certain grounds including bankruptcy; extended absences; engaging in outside work; misbehaviour; and physical or mental incapacity. Treasury Ministers do not have the power to unilaterally dismiss the Inspector-General.²¹ These provisions are consistent with provisions in similar legislation such as that concerning the Auditor-General and the Commonwealth Ombudsman.

The functions of the office

2.26 Many submissions to this inquiry expressed concern about the ‘narrowness’ of the Inspector-General’s functions as set out in clause 7 of the Bill. They identified three main limitations—the Bill:

- deals only with the administration of tax laws and not policy matters;
- focuses only on the Australian Taxation Office (ATO); and
- is confined to existing systems and not proposed ones.

2.27 The Bill proposes that the Inspector-General review systems established by the ATO to administer the tax laws, including systems for communicating with people or organisations in relation to tax administration, and review systems established by tax laws, but only to the extent that those systems deal with administrative matters.

2.28 This matter was canvassed in a number of submissions to the Board of Taxation. Some wanted to see the scope of the Inspector-General’s functions extended beyond administrative issues to include broader policy matters. The Board, however,

19 Committee Hansard, p. E3. See also evidence by John Addison, CPA Australia, *Committee Hansard*, p. E13.

20 *Committee Hansard*, p. E21.

21 Submission No. 7, p. 3.

felt that such a role would overlap with existing processes, including its own functions:

The Board considers that the Inspector-General should focus on improving the ATO's existing business. While the Inspector-General may sometimes identify the underlying policy as a source of compliance problems for taxpayers, and recommend that the policy be reconsidered, it would not be appropriate for the Inspector-General to review the policy. A review of existing policy should be undertaken using existing policy processes, including those involving the Treasury Department and, if appropriate, the Board.²²

2.29 Submissions to the Committee raised similar points in regard to the Inspector-General's functions. CPA Australia, for example, felt that the Inspector-General should be able to review and make recommendations on broader tax policy and law design issues in order to deliver improvements to tax administration,²³ a view also expressed by Taxpayers Australia Inc, the Financial Planning Association of Australia Ltd, the National Institute of Accountants and the Australian Institute of Company Directors.²⁴

2.30 A further concern with the functions of the Inspector-General was raised in regard to the ability to review administrative systems that affect tax administration but are implemented by government agencies other than the ATO. Concerns in this respect went largely to the increasing integration of the administration of the social welfare system with that of the tax system.

2.31 Professor Coleman from the Australian Institute of Company Directors maintained that;

If you look at problems the ATO has when it is interacting with other welfare benefits, such as the family tax benefit, then the inspector-general needs to be able to deal with that sort of thing because it is a major systemic issue affecting tax, even though it is a separate organisation.²⁵

2.32 Mr Gavan Ord, National Institute of Accountants, also gave evidence to the inquiry on this point:

If the position is going to be successful, the inspector-general must be able to look at other areas apart from just tax administration. I think they should look at tax administration from the definition of a taxpayer—the taxpayer does their tax return, and what is on the tax return is tax administration. We

22 Board of Taxation, p. 13.

23 Submission No. 8.

24 Submissions 4, 9, 12, 13. See also *Committee Hansard*, pp. E3–E4.

25 *Committee Hansard*, p. E3.

believe that if the role is going to be successful, what is already in the bill in regard to position of the inspector-general has to be expanded.²⁶

2.33 A similar issue arose in respect of the Inspector-General's ability to review or comment on proposed or potential systems, with its functions as defined within the Bill confined to established systems.²⁷ The Institute of Chartered Accountants in Australia argued, in a submission to the inquiry, that prevention of poor administration is clearly preferable to remedying it later, and the Inspector-General should be able to have input to the design of new administrative models.²⁸

2.34 The view that prevention of systemic problems is the preferred course has obvious appeal. Contrary arguments have been raised, however, that involving the body that is to check the tax system in the development of the system creates a potential conflict of interest.²⁹

2.35 The Inspector-General's role in the development of policy would also produce issues of duplication with existing authorities. The Board of Taxation has an existing mission to contribute a business and broader community perspective to improving the design of taxation laws and their operation. Because of the likelihood of duplication of functions, it recommended against having both the Board and the Inspector-General involved in bringing a taxpayer perspective to the consideration of policy initiatives.³⁰

2.36 The avoidance of duplication, and ensuring that the Inspector-General makes a valuable contribution to the existing administrative review framework, is a fundamental issue addressed further in the next chapter.

2.37 The Committee is appreciative of the widespread view expressed in evidence to the inquiry that the roles of the Inspector-General are too narrowly defined in the Bill and notes a response on this point from Ms Susan Johnston, Department of the Treasury, in evidence:

In the submissions there has been a lot of discussion about where the boundary is between what the inspector-general can look at in terms of the law and what the inspector-general cannot look at. The delineation is that the inspector-general cannot look at tax policy and law that imposes taxes or benefits but can look at not only tax administration but also laws that underpin tax administration. So where the law deals with an administrative matter, the inspector-general can look at it.³¹

26 *Committee Hansard*, p. E3.

27 The Bill, section 7.

28 Submission No. 10, p. 3.

29 Board of Taxation, pp. 11ff.

30 Board of Taxation, p. 13.

31 *Committee Hansard*, p. E24.

2.38 The Committee suggests that the Government consider broadening the definition of the functions of the Inspector-General within the Bill to allow him or her to provide advice to government in relation to legislation, or the administration of legislation, which is identified as a source of systemic compliance problems, and to provide advice to government on any potential systemic administration problems which might arise from the implementation of new proposals.

