

CHAPTER 3

Duplication and Relationships

Introduction

3.1 The Inspector-General will provide a new source of independent advice to Government on the effectiveness of tax administration and process, and as such is intended to complement existing agency responsibilities and taxation administration review mechanisms. It is expected that the functions of the Inspector-General would interface with the roles of the Commonwealth Auditor-General, the Board of Taxation and the Commonwealth Ombudsman.

3.2 The Bill requires the Inspector-General to consult with the Commonwealth Auditor-General and the Commonwealth Ombudsman at least once a year, to ensure that there is no duplication of the reviews conducted by the three statutory authorities with principle responsibility for reviewing tax administration.¹ The discretion of the three bodies in regard to their work program is not intended to be constrained by this provision.

3.3 Of these existing bodies, the greatest potential for duplication is evident with the Ombudsman. Whilst the Auditor-General may conduct performance audits examining the administrative effectiveness and efficiency of the ATO, submissions to the inquiry have in the main not identified concerns in regard to the relationship between that office and the Inspector-General. Several submissions have, however, raised issues in regard to duplication between the Inspector-General and the taxation functions of the Ombudsman, and these objections are considered later in this chapter.

3.4 Before examining this aspect of the proposed legislation, the Committee looks at the relationship between the Inspector-General and the Commissioner of Taxation and the Inspector-General and the Board of Taxation.

Powers in respect to the Commissioner of Taxation

3.5 The Inspector-General has no power to direct the Commissioner of Taxation, other than to disclose information for a review.

3.6 A minority of submissions to the inquiry considered that the Inspector-General should have greater authority in relation to the ATO. Resolution Holdings held that the Inspector-General must be able to make recommendations to the ATO and give directions if those recommendations are not followed.²

1 *Inspector-General of Taxation Bill 2002 Explanatory Memorandum*, p. 9.

2 Submission No. 2, p. 2.

3.7 The Financial Planning Association of Australia Ltd submitted that the Inspector-General should have the legislative power to suspend the activities of the relevant agency in an area that is subject of an ongoing investigation until such time as that investigation has been completed, the response of the agency received and the Inspector-General's final report delivered.³

3.8 CPA Australia commented in evidence 'that the bill needs to look at giving the Inspector-General some teeth or some power to require the Government or the Commissioner of Taxation to respond to issues that the inspector-general is concerned about.'⁴

3.9 The Committee has no desire to see the power of the Inspector-General increased to the extent that he or she can direct the Commissioner of Taxation to follow a recommendation. It believes that the investigative process itself coupled with the ability of the Inspector-General to report publicly on the administration of taxation laws is sufficient incentive for the Commissioner of Taxation to take appropriate action if required. This raises the important matter of the reporting obligations of the Inspector-General which is dealt with in greater detail in chapter 4.

The Inspector-General and the Board of Taxation

3.10 The Board of Taxation is an independent non-statutory body responsible for providing advice to the Treasurer on the quality and effectiveness of tax legislation and the processes for its development, including the processes of community consultation and other aspects of tax design, improvements to the general integrity and functioning of the taxation system, and other matters referred by the Treasurer.⁵

3.11 In its report to the Minister for Revenue and Assistant Treasurer, the Board examined the potential relationship between the Inspector-General and itself, and concluded that the establishment of the Inspector-General should not impact upon the Taxation Board, nor should the Inspector-General be an *ex officio* member of the Board.

3.12 In reaching these recommendations the Board concluded that, while the Board's functions contemplate a role for it in reviewing tax administration, the establishment of the Inspector-General would imply that the Board would become involved in administrative issues only when it had an additional perspective to offer. It also considered that the effectiveness and efficiency of the Inspector-General, as a key component of the tax system, could itself be a matter on which the Board may provide advice to the Treasury Ministers. Membership of the Board would also involve the Inspector-General as a participant in the development of new policies and legislation, an issue considered in chapter 2.

3 Submission No. 9.

4 *Committee Hansard*, p. E4.

5 Board of Taxation Website (www.taxboard.gov.au).

3.13 In its submission to the Committee, CPA Australia notes that there is merit in the Inspector-General being an *ex officio* member of the Board, as are the Commissioner for Taxation, the Secretary to the Treasury, and the First Parliamentary Counsel. It also notes, however, that the purposes it seeks to achieve through membership can also be achieved by the Inspector-General having regular access to the Board.⁶

3.14 The Committee agrees with the Board of Taxation's recommendation that establishment of the Inspector-General should not affect the functions of the Board and that he or she should not be an *ex-officio* member of that Board. It also agrees with the practical and sensible approach taken by the Board that it would be better for 'the Board to meet with the Inspector-General formally and regularly to discuss matters of mutual interest and work priorities, and to otherwise liaise with the office, principally through the Board's Secretariat, on an as needed basis.'⁷

The Inspector-General and the Ombudsman

3.15 There are similarities in the roles of the Commonwealth Ombudsman and the Inspector-General in the investigation of problems in tax administration. Unlike the Ombudsman, however, the Inspector-General will not investigate complaints concerning the treatment of individual cases.

3.16 As well as handling the investigation of complaints from taxpayers with regard to the administrative actions of the ATO, the Ombudsman is also empowered to conduct own motion investigations, which generally focus on broader questions of administration.⁸ Systemic issues also arise from the investigation of individual complaints. The Ombudsman explained that:

Many of the individual complaints that we receive raise systemic issues affecting more people than the complainant, and many of the investigations of those complaints produce systemic remedies—that is, remedies that can be applied to people in similar circumstances to the complainant. In my view, this is an important—and inevitable—result of effective complaint handling and investigation.⁹

3.17 It is in this area of review of the administration of the tax system more broadly that the potential arises for duplication of effort in the work of the Inspector-General and the Commonwealth Ombudsman. The Bill includes a clause requiring the Inspector-General to consult with the Commonwealth Auditor-General and the Commonwealth Ombudsman at least once a year in recognition of this concern.

6 Submission No. 8, p. 6.

7 The Board of Taxation, *Inspector-General of Taxation: A Report to the Minister for Revenue and Assistant Treasurer*, July 2002, p. 37.

8 Submission No. 6, p. 2.

9 Submission No. 6, p. 2.

3.18 The Ombudsman's own submission to the inquiry notes that while there is clearly some overlap, he is confident that through appropriate liaison between both bodies each will be able to complement the work of the other and cooperate closely, consistent with their respective legislative responsibilities.¹⁰

3.19 The two bodies, although sharing some overlap of functions, have a clearly different focus, with the Inspector-General primarily envisaged as a source of advice to government, while the Ombudsman has 'a relationship separately and equally with Parliament, the Executive and members of the public, individually and collectively.'¹¹

3.20 The Commonwealth Ombudsman told the Committee:

...the concept of an ombudsman is different from the concept of an inspector-general. A distinguishing feature of an ombudsman is that we are a neutral investigative body. We are not there to take up the cudgels of the taxpayer or the citizen, nor are we there to defend the administration. We look at issues on their merits and we make our own judgements as to where the balance lies. So we are not an advocate of citizens per se.¹²

3.21 The focus is also different in that the Inspector-General is to look beyond individual complaints. Ms Johnston from the Department of Treasury explained:

The inspector-general will not be handling individual complaints in the sense of pursuing case management of individual complaints and coming to some sort of recommendation to government about an individual complaint or making a recommendation to an agency. But that is not to say that an individual cannot complain to the inspector-general and say, 'I think that my individual case discloses a broader systemic issue in the tax system and I think you should investigate that broader systemic issue.'¹³

3.22 Along similar lines, Mr Sheppard from the Institute of Chartered Accountants told the Committee that they expect the Inspector-General not to simply address a particular case but to provide project management. He told the Committee:

That is the view we have put to the ATO: 'When we bring a problem to you, don't just fix it up for that particular taxpayer; throw a mini task force at it to understand why that systemic problem arose and fix it once and for all so that over time we will have progressive improvement of the tax system'. We would hope that the role of the inspector-general would offer that better project management to improve the tax system over time.¹⁴

10 Submission No. 6, p. 3.

11 Prof. John McMillan in Board of Taxation, p. 48.

12 *Committee Hansard*, p. E17.

13 *Committee Hansard*, p. E18.

14 *Committee Hansard*, p. E11.

3.23 The majority of submissions to the Committee maintained the importance of the new office not affecting the functions and operation of the Ombudsman, while noting that practical arrangements will need to be worked out between the offices to avoid duplication.

3.24 Some submissions, however, took a different view and favoured one body assuming the role of both investigating individual complaints as well as the broader systemic matters. CPA Australia recommended that the Inspector-General should also take responsibility for the investigation of individual complaints currently handled by the Ombudsman.¹⁵ The submission recognised that there are advantages to keeping the review of the merits of the administrative system separate from review of its application, but gave greater weight to the avoidance of potential duplication, confusion and overlap. The submission also contends that the close link between individual complaints as indicative of more systemic problems argues for one body retaining responsibility for the investigation of both.

3.25 A further argument put forward for combining the functions of the Inspector-General and the Taxation Ombudsman in one office has been the budget proposed for the Inspector-General, which is \$2 million per annum. This proposition holds that, given that the proposed budget is considered insufficient for the new office to fulfil its functions in a meaningful way,¹⁶ a better outcome could be achieved by combining the resources and taxation roles of the two offices.¹⁷ This argument also draws upon the point that the Inspector-General must comply with any direction from the Minister to conduct a review, raising concerns that Ministerially directed reviews could potentially consume the small budget available.

3.26 The setting of work priorities and the relationship of the Inspector-General with the Minister and the Parliament are considered more fully in the next chapter.

3.27 The Committee acknowledges that there is the potential for overlap in the functions between the Inspector-General and the Ombudsman of Taxation. It notes, however, that there is a distinct difference in the focus of each office and rather than duplicate functions, it expects that they would work in close cooperation to keep each other informed and indeed would be well placed to offer each other assistance in the relative areas of investigation.

15 Submission No. 8, pp. 4-5.

16 See submissions No. 2, 4, 6, 8, 9 and 10.

17 Submission No. 2, Submission No. 8.

