

December 2002

Senator Andrew Murray: Australian Democrats

## **Supplementary Report on the Provisions of the Inspector-General of Taxation Bill 2002**

1.1 The Australian Democrats recognise that the proposed new Office of the Inspector-General fulfills a Coalition election 2001 promise. Generally speaking, we take the view that a Government is entitled to create such new bodies as it believes will meet a particular need. Any Government is entitled to try new concepts out. So, although we have serious reservations about the potential effectiveness of this new agency, the Democrats will not oppose its creation.

1.2 There is a danger it will end in tears. The expectations of tax professionals and other tax activists concerning the new office seem extravagant, and bound to be disappointed. Funding is low, competition and even confusion as to roles is apparent, and unless amended, the design of the legislation will result in the Inspector-General's independence being compromised. There is also a danger that this position will be used as yet another opportunity for business to exercise special influence, as is the case in the heavily business oriented Board of Taxation.

1.3 Turning to the Report, the Democrats support the substance and the conclusions of the majority, but find that the recommendations do not adequately address the flaws that have been exposed in the proposed legislation. Legitimate concerns were raised prior to drafting, but even after this inquiry most of these outstanding issues remain unresolved.

1.4 A submission to the inquiry from the Australian Institute of Company Directors saw the Inspector-General of Taxation (IGT) having the 'potential to secure significant and lasting improvements in the administration of taxation in Australia'<sup>1</sup>. Yet at the same time they put forward the view that the powers of the IGT are too narrow. The difficulty for the Government is avoiding a conflict with existing oversight and other taxation bodies, but leaving enough scope to make a real contribution to better tax governance. The IGT needs to have a clear direction and sufficient powers to be effective from the start.

1.5 Submissions to the Inquiry have quite clearly demonstrated that the proposed IG has substantial support. While witnesses held common concerns about some of the provisions they were prepared to see the Bill proceed rather than to jettison the legislation altogether. Mr. Sheppard captured this general attitude when he told the Committee:

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<sup>1</sup> AICD submission to the Economic Legislation Committee Inquiry into the Inspector-General of Taxation Bill 2002

We think it has the potential to make a difference, and we are happy to give it the benefit of the doubt at this stage and, hopefully, make the position work.<sup>2</sup>

1.6 The Australian Democrats agree that this proposed legislation should be allowed every opportunity to succeed - but provisions need to be strengthened or changed to safeguard the independence of the IGT. In my view, the Committee was too timid in merely seeking government undertakings or assurances that measures would be taken to protect the independence of the IGT.

1.7 The Australian Democrats will seek to put statutory safeguards in place that will ensure that the IG is indeed an advocate for all taxpayers, that this advocacy role will not be compromised in any way, nor the IG's independent status eroded. Independence must actually be independence if it is going to meet expectations even halfway. While I appreciate that there is strong support for the establishment of the IGT, as a response to systemic problems in taxation administration, it is essential that the office has the capacity, and independence, to enable it to deliver the results taxpayers expect.

1.8 In particular, I am concerned to ensure that the new office is able to attend properly to issues across the Australian Taxation Office – that means all the major ATO avenues of revenue generation, of prudential control and supervision, and across the ATO business lines.

1.9 My concerns with the proposal as it stands centre around three aspects:

- the independence of the office and its work program;
- the breadth of its remit; and
- the adequacy of its funding.

## **Independence**

1.10 Clause 8 (2) of the Bill requires that the IG may be *directed* by the Minister to conduct a review. The conduct of a review may also be formally *requested* by the Commissioner of Taxation, or by a resolution of one or both houses of the Parliament or by a resolution of a Parliamentary Committee. However these parties may not direct that a review be carried out. I agree with the request mechanism. In contrast the IGT must comply with directions given to the office under section 8.2 by the Minister, and yet it is supposed to be an independent body. This issue was raised by almost all of those that put submissions into the Economics Committee inquiry.

1.11 During the committee hearing on this Bill I raised a comparison with the Australian Federal Police, in that they have a body of resources and list of tasks to do. These tasks are done on priority, and considering the funding level of IGT is a mere

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2 *Committee Hansard*, p. E7.

\$2 million, I remain concerned that action and activities will be done on those things that have the loudest supporters. The strength of advocacy will be greatest and most articulate within the business community and this will have to have some effect, even if this is only perception, on what activities are pursued. Safeguards are necessary to ensure that a broad range of systemic issues may be addressed, and I feel that the current arrangements are not strong enough in this regard.

1.12 The capacity of the Minister to direct a review has the potential to undermine the independence of the office. It also poses the risk that the resources of the IG will be absorbed by ministerially directed work to the extent that other issues cannot be adequately addressed.

### **Recommendation 1**

**I recommend that Clause 8 (2) of the Bill, which requires the Inspector-General to comply with a direction of the minister that a review be conducted, be deleted.**

1.13 In determining his or her work program, it would be appropriate for the IG to consult widely with taxpayers, tax professionals, Treasury, and the Board of Taxation, as well as the relevant Parliamentary standing committees. Currently the Bill includes only the requirement that the IG consult with the Commonwealth Auditor-General and the Commonwealth Ombudsman in setting his or her work program.

### **Recommendation 2**

**I recommend that Clause 9 of the Bill be amended to include that a requirement that in setting his or her work program, for the IG to consult with those the IG sees fit, particularly tax professionals, taxpayer groups, the Board of Taxation and relevant Parliamentary committees.**

1.14 I also strongly endorse the Committee's view that the Bill should include merit based selection criteria for the office of IG.

### **Recommendation 3**

**I recommend that the Bill be amended to insist on merit-based appointment.**

1.15 A further issue in relation to the independence of the Inspector-General arises in regard to the reporting framework included in the Bill. The Australian Democrats believe that if the role of the IG is to carry conviction in the minds of taxpayers and is to be an effective means of identifying and remedying systemic problems in the administration of the tax system, the reporting process must be open and transparent.

1.16 Clause 11 of the Bill enables the Minister to cause a review report to be tabled in each House of the Parliament, but does not require that this be done. It is essential for the credibility and independence of the office that review reports are publicly released in a timely manner. The only exceptions to this principle should be in regard to matters of public interest, or the protection of individuals. Such exemptions are already more than adequately provided for in the Bill in clauses 22 to 27. For

example, clause 23 is clearly intended to protect the privacy of any taxpayer. Also clause 26 stipulates that:

If a person who makes a submission under section 13 has told the Inspector-General, or a member of the Inspector-General's staff, that the submission is to be kept confidential, then: ...

- (b) information contained in the submission must not be included in a report under section 10 or 41.

#### **Recommendation 4**

**I recommend that Clause 11 of the Bill be amended to require the Minister to cause a copy of each review report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.**

#### **Recommendation 5**

**The Minister should provide a copy of all review reports to the Commonwealth Auditor-General.**

#### **Functions of the office**

1.17 The office of IG should enhance the advocacy of taxpayers concerns, and this role is not adequately expressed in the Bill as drafted. The office should also be able to examine the legislative or policy issues, which underlie systemic administrative problems, and to consider the administrative systems of other government agencies where these result in problems for taxation administration.

#### **Recommendation 6**

**The object of the Act should contain a clear statement that the purpose of the IGT is to improve the administration of taxation for the benefit of all taxpayers, provide independent advice to government on taxation administration, and enhance the advocacy of broad (but not individual) taxpayer concerns in regard to systemic taxation administration matters.**

1.18 The office should also be a useful source of advice in the consideration by government of new proposals, bringing to selected issues a special expertise in administrative issues.

#### **Recommendation 7**

**The functions of the Inspector-General should include the ability to review taxation policy and legislation to the extent that it has been identified as the source of systemic taxation administration problems. The office should also be able to advise the Government concerning potential administrative problems which may arise from the implementation of new proposals, or which have arisen**

**as a consequence of administrative systems utilised by other government agencies.**

### **Funding**

1.21 The Ombudsman made an important point that the investigations that are being proposed to be undertaken by the office of IG are heavily resource intensive. This further reinforces the concern that this may very well only end in tears as a consequence of there not being sufficient resources to get any real level of effectiveness out of the IG. This is especially the case considering the level of expectation that has been placed upon this office by the stakeholders who have been involved to date.

1.22 I share the concerns expressed in a number of submissions to the inquiry that the level of funding proposed for the office of \$2 million per annum is likely to be inadequate to enable its functions to be effectively discharged. However, should the capacity of the Minister to direct the IG be deleted as recommended above I would be a little more reassured in this regard. Should this recommendation not be adopted, I would urge the Minister to ensure that any direction to conduct a review which is likely to require a significant proportion of the budget of the office to fulfil, be accompanied by a commensurate allocation of new funding.

1.23 I also endorse the recommendation of the majority that the efficiency and effectiveness of the office of IG be independently reviewed within five years of its establishment, and that the adequacy of its funding be considered at that time

**Senator Andrew Murray**

