

Labor Members Minority Report on the Inspector-General of Taxation Bill 2002

1. Introduction

Labor members do not support the establishment of the Inspector-General of Tax on the basis that it does not fulfil its purpose of being an advocate for tax payers and nor does it have the capacity to significantly improve tax administration.

The suggestion that the office should be set up regardless of its deficiencies in order to give the office ‘a chance to succeed’¹ and ‘hopefully make the position work’² is not considered to be sufficient reason to warrant passage of the Bill.

The Institute of Chartered Accountants in Australia (ICAA) submission states that they are concerned that the position:

‘will not have the necessary authority, independence and resources to make a real difference to the quality of taxation administration in Australia.’³

Labor members believe that whilst improvements in tax administration are essential, establishing an Inspector-General of Taxation is not the most effective means to achieve change.

By using the existing structures such as the Taxation Ombudsman and the Auditor-General as the foundation for identifying systemic issues and giving these offices the resources they require, tax administration could be significantly improved.

Labor therefore opposes the Bill.

The Labor members wish to note the following issues in particular.

2. Failure to fulfil its purpose

Following the Committee’s investigations, it became clear that the purpose of the Inspector-General of Tax was as an advocate for taxpayers as well as a source of advice to government.

The Labor members note that during his Second Reading Speech, Mr Costello noted that the purpose of the Bill is to:

¹ Chapter 5, Conclusion, Inquiry into Inspector-General of Taxation Bill 2002.

² Mr Shephard, Committee Hansard, p. E7.

³ Submission No. 10, p. 1.

‘provide a new source of independent advice to the government. The role will act as an advocate for all taxpayers, including Australian business’⁴

The Bill fails to achieve its purpose of being an advocate for all taxpayers.

The recommendation by the Committee for the Government to consider including a statement that the Inspector-General’s role is to ‘promote the advocacy of taxpayer concerns’ is a superficial response to this problem.

As noted by Labor during the debate of this Bill, the lack of independence and transparency afforded to the Inspector-General renders the office ineffectual in advocating the needs of all taxpayers.

The problem arises from the structure of the Inspector-General not how its purpose is defined.

3. Lack of independence

General

The Inspector-General cannot be an effective advocate for taxpayers as it lacks independence.

This is a fundamental flaw of the Bill.

The role is not independent as:

- The Inspector-General is required to report direct to the Minister (clause 10).
- The Minister has a discretion as to whether to release the Inspector-General’s report (clause 11).
- The Minister can set the Inspector-General’s work program by directing them to conduct a review (clause 8(2)). The Inspector-General will be required to act on the directions of the Minister as a priority over their own work program. Given the limited resources available to the Inspector-General, this is a significant constraint on the independence of the office.

⁴ Peter Costello, Second Reading, Inspector-General of Taxation Bill 2002, 19 September 2002, House Hansard, page 6675.

Reporting to the Minister

The Labor Members are of the view that to be an effective advocate for taxpayers, the Inspector-General would need to have the power to review and report on problems in tax administration including those problems that may cause embarrassment to the Government.

As the role is currently drafted, the Treasury Minister has the power to withhold such reports.

This concern was reflected by the ICAA in their submission which noted that the Minister's discretion whether to make reports public:

‘could be used inappropriately and limit the transparency of the Inspector-General's role. For example, the Minister could decide not to make public a report by the Inspector-General, to avoid embarrassment to the Government or the ATO.’⁵

The Business Coalition for Tax Reform noted in their submission that:

‘..taxpayer confidence in, and the overall effectiveness of, the Inspector-General will depend critically on the ability of the public to examine its reports.’⁶

In addition, submissions from the following organisations stated that the Inspector-General should be able to report publicly: the Corporate Tax Association (CTA), International Banks and Securities Association of Australia (IBSA), Australian Institute of Company Directors (AICD), Taxpayers Australia and the National Institute of Accountants.

The Labor Members note that the Committee recommends that the Inspector-General's reports are tabled in Parliament and supports this recommendation.

Power to direct a review

The Labor Members are concerned that the Minister's power to direct the Inspector-general to investigate particular issues has the potential to monopolise the limited resources of the office.

These concerns were raised in various submissions including the AICD. The AICD submission stated that the Minister's power to direct the Inspector-General's work program:

‘has the potential to overload limited resources and compromise other independent work that the Inspector-General wishes to undertake.’⁷

⁵ Submission No. 10, p. 2.

⁶ Submission No. 16, p. 2.

The Business Coalition for Tax Reform (BCTR) submission notes that:

‘A perception of a conflict of interest could arise if the Minister responsible to the Parliament for the administration of taxation could influence the reporting of the Inspector-General in this way.’⁸

The Labor members believe that the independence of the Inspector-General is fundamentally compromised by the Minister’s power to direct the Inspector-General’s work program.

4. Access to the Inspector-General

The Labor Members also query whether the Inspector-General would be an advocate for ‘all taxpayers’.

In contrast to the Auditor-General, there is no formal consultation process to provide taxpayers with an opportunity to access the Inspector-General.

The lack of a formal consultation mechanism impedes the general public’s ability to access the Inspector-General.

Following the Committee’s investigations it became clear that access to the Inspector-General had not been thoroughly considered. The Bill does not address this issue.

Big business has the resources to advise the Inspector-General of their concerns whereas small investors, with fewer resources, have less ability to access the Inspector-General.

In light of the limited resources available to the Inspector-General, there is the potential for big business to dominate the Inspector-General’s agenda.

5. Scope of the Inspector-General’s functions

Following the Committee’s investigations it became clear that the functions of the Inspector-General were seriously limited in scope.

The Labor members support the recommendation that the scope of the Inspector-General’s functions are widened.

6. Conclusion

In spite of the recommendations of the Committee to improve the role of the Inspector-General, the capacity of the Inspector-General to improve tax administration remains fundamentally compromised by:

- the failure of the Inspector-General to be an advocate for all taxpayers;

⁷ Submission No. 13, p. 4.

⁸ Submission No. 16, p. 2.

- the ability of the Minister to direct the Inspector-General's work program;
- the lack of funding; and
- the lack of a mechanism to provide for formal consultation with the general public.

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