

The Senate

---

Economics Legislation Committee

---

Inspector-General of Taxation Bill 2002

December 2002

© Commonwealth of Australia 2002

ISSN 1324-2830

Printed by the Senate Printing Unit, Parliament House, Canberra.

# Senate Economics Legislation Committee

## Core Members

Senator George Brandis, Chairman	(Queensland, LP)
Senator Jacinta Collins, Deputy Chair	(Victoria, ALP)
Senator Grant Chapman	(South Australia, LP)
Senator Andrew Murray	(Western Australia, AD)
Senator John Watson	(Tasmania, LP)
Senator Ruth Webber	(Western Australia, ALP)

## Substitute Members

Senator Allison replaces Senator Murray for matters relating to the Resources portfolio.

## Participating Members

Senator the Hon Eric Abetz	(Tasmania, LP)
Senator the Hon Ronald Boswell	(Queensland, NPA)
Senator Geoffrey Buckland	(South Australia, ALP)
Senator George Campbell	(New South Wales, ALP)
Senator Kim Carr	(Victoria, ALP)
Senator John Cherry	(Queensland AD)
Senator Stephen Conroy	(Victoria, ALP)
Senator the Hon Peter Cook	(Western Australia, ALP)
Senator the Hon Helen Coonan	(New South Wales, LP)
Senator Alan Eggleston	(Western Australia, LP)
Senator Christopher Evans	(Western Australia, ALP)
Senator the Hon John Faulkner	(New South Wales, ALP)
Senator Alan Ferguson	(South Australia, LP)
Senator Jeannie Ferris	(South Australia, LP)
Senator Michael Forshaw	(New South Wales, ALP)
Senator Brian Harradine	(Tasmania, Ind)
Senator Leonard Harris	(Queensland, PHON)
Senator Linda Kirk	(South Australia, ALP)
Senator Susan Knowles	(Western Australia, LP)
Senator Meg Lees	(South Australia, Ind)
Senator Ross Lightfoot	(Western Australia, LP)
Senator Joseph Ludwig	(Queensland, ALP)
Senator Kate Lundy	(Australian Capital Territory, ALP)
Senator Brett Mason	(Queensland, LP)
Senator Julian McGauran	(Victoria, NPA)
Senator Shayne Murphy	(Tasmania, Ind)
Senator Marise Payne	(New South Wales, LP)
Senator Aden Ridgeway	(New South Wales, AD)
Senator the Hon Nick Sherry	(Tasmania, ALP)
Senator Natasha Stott Despoja	(South Australia, AD)
Senator Tsebin Tchen	(Victoria, LP)
Senator John Tierney	(New South Wales, LP)

**Secretariat**

Kerry Olsson, Principal Research Officer

Kathleen Dermody (Dr), Secretary

Angela Lancsar, Executive Assistant

Suite SG.64

Parliament House

Canberra ACT 2600

Ph: 02 6277 3540

Fax: 02 6277 5719

E-mail: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

Internet: [http://www.aph.gov.au/senate/committee/economics\\_ctte/index.htm](http://www.aph.gov.au/senate/committee/economics_ctte/index.htm)

# Contents

<b>Membership of the Committee</b>	iii
<b>CHAPTER 1</b>	
<b>Inquiry into Inspector-General of Taxation Bill 2002</b>	1
Background	1
Purpose of the Bill	1
Reference of the Bill	1
Submissions	1
Hearing and Evidence	2
Acknowledgment	2
<b>CHAPTER 2</b>	
<b>The Provisions of the Bill</b>	3
Background	3
The concept of an Inspector-General of Taxation	4
The object of the Bill	5
Establishment of the office	7
The functions of the office	8
<b>CHAPTER 3</b>	
<b>Duplication and Relationships</b>	13
Introduction	13
Powers in respect to the Commissioner of Taxation	13
The Inspector-General and the Board of Taxation	14
The Inspector-General and the Ombudsman	15
<b>CHAPTER 4</b>	
<b>Independence, Transparency and Resourcing</b>	19
Introduction	19
Work program	19
Information gathering powers	21
Legal professional privilege	21
Reporting and publication	22

Budget	27
Review of the office	28
<b>CHAPTER 5</b>	
<b>Conclusion</b>	29
<b>SUPPLEMENTARY REPORT BY SENATOR ANDREW MURRAY: AUSTRALIAN DEMOCRATS</b>	31
<b>LABOR MEMBERS MINORITY REPORT</b>	37
<b>APPENDIX 1</b>	
<b>List of Public Submissions</b>	43
<b>APPENDIX 2</b>	
<b>Public Hearing and Witnesses</b>	45
<b>APPENDIX 3</b>	
<b>Recommendations made by the Board of Taxation     and the Government's response</b>	47

# CHAPTER 1

## **Inquiry into Inspector-General of Taxation Bill 2002**

### **Background**

1.1 The Inspector-General of Taxation Bill 2002 (the Bill) was presented to the House of Representatives on 19 September 2002 by the Hon Peter Costello MP, Treasurer. The Bill was passed in the House of Representatives on 16 October 2002 and introduced in the Senate on 17 October 2002.

### **Purpose of the Bill**

1.2 The Bill proposes the establishment of a statutory office to review tax administration and to report to the Government with recommendations for improving tax administration for the benefit of all taxpayers.

1.3 The provisions of the Bill:

- provide for the appointment of an independent Inspector-General of Taxation (the Inspector-General) by the Governor-General for a fixed term of up to five years;
- set out the functions and powers of the Inspector-General;
- set out protection for people who provide the Inspector-General with information; and
- contain measures to ensure that information obtained during the course of the Inspector-General's activities is not improperly disclosed or used.

### **Reference of the Bill**

1.4 On 23 October 2002, the Senate adopted an amendment to Selection of Bills Committee report No.11 of 2002 and referred the Bill to the Committee for report by 3 December 2002.

### **Submissions**

1.5 The Committee advertised the inquiry in the *Financial Review* on 30 October, in the *Australian* on 6 November, and on its web site. It also wrote to relevant government departments and agencies and to a number of organisations interested in tax administration. The Committee contacted over 30 organisations about the inquiry, and received eighteen submissions. These are listed in Appendix 1.

## **Hearing and Evidence**

1.6 The Committee held one public hearing on this inquiry in Parliament House, Canberra, on Tuesday 19 November. It took evidence from the Commonwealth Ombudsman, officers from the Department of the Treasury, and representatives of a number of business and accountancy bodies. Witnesses who presented evidence before the Committee are listed in Appendix 2.

1.7 Copies of the Hansard transcript are tabled for the information of the Senate. They are also available through the internet at <http://www.aph.gov.au/hansard>

## **Acknowledgment**

1.8 The Committee wishes to thank all those who assisted with its inquiry.

# 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.<sup>1</sup>

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.<sup>2</sup>

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*.<sup>3</sup> 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.<sup>4</sup> 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](http://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.<sup>5</sup>

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.<sup>6</sup>

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.<sup>7</sup>

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.’<sup>8</sup>

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.’<sup>9</sup>

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 statement<sup>10</sup> or the second reading speeches.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup>

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.<sup>15</sup> 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.'<sup>16</sup>

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.<sup>17</sup>

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.<sup>18</sup>

---

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.<sup>19</sup> 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...<sup>20</sup>

**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.<sup>21</sup> 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.<sup>22</sup>

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,<sup>23</sup> 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.<sup>24</sup>

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.<sup>25</sup>

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.<sup>26</sup>

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.<sup>27</sup> 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.<sup>28</sup>

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.<sup>29</sup>

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.<sup>30</sup>

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.<sup>31</sup>

---

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.**



# 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.<sup>1</sup> 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.<sup>2</sup>

---

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.<sup>3</sup>

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.'<sup>4</sup>

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.<sup>5</sup>

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](http://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.<sup>6</sup>

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.'<sup>7</sup>

## 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.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup>

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.'<sup>11</sup>

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.<sup>12</sup>

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.'<sup>13</sup>

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.<sup>14</sup>

---

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.<sup>15</sup> 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,<sup>16</sup> a better outcome could be achieved by combining the resources and taxation roles of the two offices.<sup>17</sup> 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.



# CHAPTER 4

## Independence, Transparency and Resourcing

### Introduction

4.1 The independence of the office of Inspector-General, its ability to respond to issues raised by taxpayers and tax professionals, and the transparency of its operations were issues which recurred frequently in the submissions received by the inquiry.

4.2 There was a general consensus in evidence to the Committee that, to fulfil its proposed function effectively, it was critical that the office must be able to determine its own work priorities, and that its reports be made public.

### Work program

4.3 The Bill provides the Inspector-General with discretion to set the office's work program, with at least annual consultation with the Commonwealth Auditor-General and Commonwealth Ombudsman.

4.4 This discretion is not absolute, however, as the Inspector-General must comply with any direction by the Minister to conduct a review.

4.5 The conduct of a review may also be formally requested by the Commissioner of Taxation, a resolution of one or both houses of the Parliament or a resolution of a Parliamentary Committee, however, they may not direct the Inspector-General to conduct a review.

4.6 The Inspector-General may also initiate a review on his or her own initiative, including where a systemic tax administration issue has been raised with the office by taxpayers, tax professionals, the Ombudsman, or any other party.<sup>1</sup> The Bill contains no requirement that the Inspector-General consult with taxpayers or tax professions, or any party other than the Ombudsman and Auditor-General, in the course of setting his or her work program.

4.7 Ms Susan Johnston, Department of the Treasury, told the Committee that;

The bill makes it clear that the inspector-general allocates his time and resources, including to inquiries that are initiated at the direction of the minister. Basically, the inspector-general prioritises all the things he has to do. Obviously, a direction from the minister to conduct a particular inquiry is going to carry weight.<sup>2</sup>

---

1 *Explanatory Memorandum*, p. 9.

2 *Committee Hansard*, p. E14.

4.8 A submission from CPA Australia commented on the appropriate balance between reviews directed by the Minister, and those arising from issues put forward from the tax payer perspective:

The main issue is to ensure that an appropriate balance is obtained between issues raised by the Government through the Treasury Ministers and issues raised by taxpayers and their advisers either directly or indirectly. Our view is that priority should be given, in the short-term at least, to genuine and legitimate concerns raised by taxpayers and their representatives given that the existence of such concerns is the primary reason behind the establishment of the IGT in the first place.<sup>3</sup>

4.9 A number of witnesses, however, were concerned that the discretion allowed to the Inspector-General was illusory—that such discretion could be undermined by the demands placed on resources by a ministerial direction.

4.10 In evidence to the Committee, Professor Cynthia Coleman, representing the Australian Institute of Company Directors, noted that:

Currently, the minister can direct the inspector-general to undertake a report into something. The holder of that office has no choice. That could tie up resources on what they perceive as a frivolous irrelevant issue. So we think that clause should go. They should always have a choice on what they do and direct their own work flow.<sup>4</sup>

4.11 Ms Johanna Lowry, Institute of Chartered Accountants in Australia, also agreed that a potential exists for a direction from the Minister ‘to tie up the efforts of the inspector-general so that he is not able to address other things that both houses of parliament, for example, may have thought worthy.’<sup>5</sup>

4.12 Mr Marks-Isaacs, Australian Institute of Company Directors, wanted the necessity for the inspector-general to follow a ministerial direction removed. He stated:

Whilst the inspector-general is established so that the minister can direct it, it is always a question and the inspector-general is always potentially compromised by it.<sup>6</sup>

4.13 The Committee notes, firstly, that the \$2 million budget per annum is small in relation to other bodies such as the Auditor-General, Australian Competition and Consumer Commission and Ombudsman. Secondly, it notes concerns that directions

---

3 Submission No. 8, p. 7.

4 *Committee Hansard*, p. E9.

5 *Committee Hansard*, p. E9.

6 *Committee Hansard*, p. E16.

by the Minister to undertake reviews could potentially ‘tie up the efforts of the inspector-general so that he is not be able to address other things.’<sup>7</sup>

**4.14 The Committee, nevertheless, considers that there is little risk of the Government monopolising the Inspector-General’s resources.**

### **Information gathering powers**

4.15 The Inspector-General will have statutory information gathering powers able to be exercised for the purposes of conducting a review into tax systems or, where necessary, to obtain particular information for the purposes of deciding whether a review may be required.

4.16 The Inspector-General may also invite submissions or hold meetings, and otherwise consult with members of the public, particular people or organisations, in the course of a review.

4.17 The Inspector-General may also publish submissions or records of meetings held in the course of a review, except where publication would be prejudicial to the public interest, reveal confidential information, or allow identification of an individual taxpayer or tax official other than the Commissioner of Taxation.

4.18 Voluntary disclosures of information held by the Commissioner of Taxation and requested by the Inspector-General for the purposes of a review would be authorised disclosures for the purposes of secrecy and privacy laws.<sup>8</sup>

4.19 The Inspector-General will be empowered to compel the production of information and documents by a tax official, or to require a tax official to attend before the Inspector-General or a member of staff to answer questions. This power extends to circumstances where it is necessary to obtain information from a former tax official.

4.20 If the disclosure of information requested by the Inspector-General would be prejudicial to the national interest, the Minister may give a certificate to the Inspector-General with the effect that the information or documents covered by the certificate need not be disclosed.

4.21 There is no provision for the Inspector-General to compel the disclosure of information by any persons other than tax officials or former tax officials.

### **Legal professional privilege**

4.22 The Bill provides that the Inspector-General has access to legal advice obtained by the Commissioner of Taxation that is relevant to an inquiry into a

---

7 *Committee Hansard*, p. E9.

8 *Explanatory Memorandum*, p. 1.

systemic tax administration issue, and can see legal advice obtained by parties in the private sector which is relevant to matters under consideration.

4.23 The Bill contains measures to protect client legal privilege, which is not waived by disclosure to the Inspector-General. The Bill states that information or a document does not cease to be the subject of legal professional privilege merely because it is included or referred to in a submission to the Inspector-General, or provided by the Commissioner of Taxation or a tax official in response to a request or requirement made by the Inspector-General under the provisions of the Act.

4.24 The Bill also limits the ability of the Inspector-General to refer to privileged legal advice in a report, including an annual report to Parliament.

4.25 The submission from the Australian Institute of Company Directors recommended that those sections of the Bill dealing with legal professional privilege be amended to ensure they do not provide an opportunity for a challenge in the courts that legal professional privilege has been specifically abrogated in relation to taxation matters.

4.26 The Taxation Institute was also concerned by the provisions of the Bill in respect to legal privilege, and suggested that Clause 27(2) of the Bill should be removed.<sup>9</sup>

4.27 The Committee notes that the provisions of the Bill are not intended to abrogate professional legal privilege in regard to taxation matters and proposes that the Government give consideration to including in the Bill an explicit statement to that effect.

4.28 The Committee also notes that a recent decision of the High Court (*Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission*) may have implications for the application of clause 27 and suggests that the Government seek advice from the Attorney-General on this matter.

## **Reporting and publication**

4.29 The Bill provides that after completing a review, the Inspector-General must make a written report to the Minister setting out the subject and outcome of the review, and any recommendations concerning how the system could be improved.

4.30 Reports may not include:

- information that would be prejudicial to the public interest where the Minister has given the Inspector-General a certificate to this effect;
- information about the tax affairs of an individual taxpayer that would allow the identification of that taxpayer;

---

9 Submission No. 11.

- the names or specific identifying information of tax officials other than the Commissioner;
- information that has been provided to the Inspector-General in confidence; or
- commentary on legal advice disclosed to the Inspector-General that would result in the waiver of legal professional privilege held by the client.<sup>10</sup>

4.31 The Bill also requires the Inspector-General to provide the Commissioner of Taxation with an opportunity to address criticisms of tax officials where the Inspector-General proposes to include such criticisms in a report, and the report cannot be finalised unless the Commissioner has been given this opportunity.

4.32 Taxpayers Australia, in a submission to the inquiry, supported this latter clause but felt it did not go far enough, preferring that the Inspector-General be required to seek the ATO's input or commitment on recommendations prior to the report being submitted to the Minister.<sup>11</sup>

4.33 Both the Taxation Institute of Australia and the Australian Institute of Company Directors expressed a concern that there was not a stipulated time period within which the Commissioner must respond to such criticism, and suggested that a time period of 21,<sup>12</sup> or 30 days with the option of a mutually agreed extension of time,<sup>13</sup> be imposed. The Committee concurs with these views and suggests that the Bill be amended to impose a time period for response by the Commissioner of Taxation.

**4.34 The Committee is of the view that the Government should consider amending Clause 25 of the Bill to replace the reference to 'a reasonable opportunity' with a time limit of within 30 days of being invited to do so by the Inspector-General, or within such longer period as is mutually agreed.**

4.35 The Bill authorises the Minister to publicly release or table reports by the Inspector-General, and the action of releasing reports attracts statutory protection against legal action. The Minister may publish part of a report where there is concern about the reporting of sensitive or confidential information.<sup>14</sup>

4.36 A number of submissions commented on this reporting framework, contending that leaving the publication of the Inspector-General's reports to the discretion of the Minister detracted from the authority and accountability of the office.

4.37 The Explanatory Memorandum for the Bill states that the Inspector-General is required to prepare written reports on reviews 'to facilitate public dissemination of the

---

10 *Explanatory Memorandum*, p. 10.

11 Submission No. 4, p. 3.

12 Submission No. 11.

13 Submission No. 13, p. 7.

14 *Explanatory Memorandum*, p. 11.

findings of the review.’<sup>15</sup> Witnesses to the inquiry referred to this point as indicating a general intention to publicly release review reports.<sup>16</sup>

4.38 The recommendation of the Board of Taxation in this regard was that:

The Inspector-General should be able to publish reports of reviews of the systems used by the Australian Taxation Office to administer the tax system, and recommendations to the Government about where these systems could be improved (but not advice to the Government), but only after giving the Minister a reasonable opportunity to comment. A person whose interests would be adversely affected by the publication should be given a reasonable opportunity to comment, and to have their comments included in the publication. The Inspector-General should not be liable to be sued for an act done in good faith in exercise of any power conferred by the legislation, including the power to publish.<sup>17</sup>

4.39 In arriving at this position the Board considered at length the possible impact of allowing the Inspector-General as an adviser to Government to independently release reports, and on the relationship that should exist between the Inspector-General and the Minister. It also acknowledged that the weight of submissions to the inquiry was strongly in favour of the power to publish.

4.40 The Government’s response to the Board of Taxation recommendation agreed that it was important that the Inspector-General’s reports become public. It concluded, however, that:

A key function of the Inspector-General of Taxation will be to advocate the concerns of taxpayers to the Treasury Ministers to enable fast resolution of any systemic problems in the tax system. For this reason, the Inspector-General will report to the Treasury Ministers.

The Inspector-General’s inquiries and reports may include recommendations for legislative amendments or changes in administrative processes. It is desirable for recommendations involving changes to the tax system to be released simultaneously with the Government’s decision on such changes to avoid speculation and uncertainty about the taxation system. Accordingly, it is proposed that the Treasury Ministers would have the responsibility for releasing reports by the Inspector-General.<sup>18</sup>

4.41 The Government response also noted that the Inspector-General of Taxation is not intended to duplicate the roles of the Auditor-General nor the Ombudsman, both of whom have a continuing public reporting role on tax administration.

---

15 *Explanatory Memorandum*, p. 10.

16 *Committee Hansard*, p. E10.

17 Board of Taxation, p. 30.

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

4.42 Submissions to the Committee which argued that the new office should report to the Parliament also generally argued that the model outlined in the Bill was substantially flawed in not incorporating the taxation functions of the Ombudsman in the new office, and in serving too much as an adviser to government rather than an independent taxpayer advocate.

4.43 Whether the Inspector-General reports to the Treasury Ministers or to Parliament, and whether the Inspector-General has the authority or requirement to publish or table its reports, are key and recurring themes in submissions to the Committee. A number strongly urged that the Inspector-General be authorised to report to the Parliament rather than to the Minister, who has discretion to either make the report public or not.

4.44 Even when reporting to the Minister was accepted as the preferred model, concerns remained that reporting be as open and transparent as possible, as indicated by Mr Mitch Hooke, Business Coalition for Tax Reform, in evidence:

In terms of reporting, again our submission to the Board of Taxation and subsequently to this committee said that we want to see the public reporting quite broad—obviously, to the Treasurer then back to parliament. It has to be open, accountable and transparent if it is going to be effective and of course qualified by any commercial sensitivities.<sup>19</sup>

4.45 The International Banks and Securities Association of Australia also remained concerned at the control exercised by the Minister over the release of reports:

[T]he purpose of the Ministerial control over the public release of the Inspector-General's review reports is not clear and it could detract from the transparency and independence of the review process. We would favour a process that would make public the Inspector-General's review reports on a timely basis, subject to the limitations contemplated in Division 4 of the Bill.<sup>20</sup>

4.46 The submission from Mr John Morgan proposed a solution to concerns that this Ministerial control over publication diminished the independence of the office. The submission supported the Inspector-General reporting to the Minister, noting that mandatory reporting to the Parliament might have cramped the advice and the effectiveness of the Office in identifying systemic problems with tax administration and then precipitating remedial action, but suggested that the Inspector-General be able to report to the Parliament when he or she considered it necessary to do so.<sup>21</sup>

4.47 The Institute of Chartered Accountants in Australia suggested, in its submission, a similar option:

---

19 *Committee Hansard*, p. E4.

20 Submission No. 14.

21 Submission No. 3.

Given that the detailed provisions of Sections 22 to 27 [of the Bill] limit any adverse effects that may occur on making the report public, the ICAA believes that the Bill should give the Inspector-General of Taxation the specific authority to make any report public, after consulting with the Minister as to whether the Minister wishes to exercise his or her powers under Section 22.

The ICAA strongly recommends that where the Minister does exercise his or her discretion under Section 22 to disallow the public release of any part of the Inspector-General's report, that the Minister is required to publicly state under which sub-section they are exercising that discretion.<sup>22</sup>

4.48 The Inspector-General is also required to provide an Annual Report to the Minister, to be tabled in the Parliament, which will include details of any directions given by the Minister during the year to conduct a review. Ms Johanna Lowry, noted, however, that 'there is no requirement for the annual report to say why certain reports were not publicly released.'<sup>23</sup>

4.49 The Australian Chamber of Commerce and Industry recommended that the annual report be a detailed report of the issues lodged with the Inspector-General, matters which have been addressed, and the outcomes of those matters.<sup>24</sup> A supplementary submission from the Department of the Treasury provides some advice in this regard:

There are annual reporting requirements and conventions that apply to all Commonwealth agencies. These include statutory requirements in the *Financial Management and Accountability Act 1997* and annual reporting guidelines approved by the Joint Committee of Public Accounts and Audit under subsections 63(2) and 70(2) of the *Public Service Act 1999*. The Inspector-General's annual report would need to conform to such requirements and, in practice, this would involve reporting on reports prepared and submitted to the Minister.<sup>25</sup>

4.50 The Committee accepts that there may be occasions when the tabling of a review report, or parts of a report, is not appropriate. For example, where information is in the form of advice to Government, and where the disclosure of such material would be prejudicial to the public interest. Nonetheless, the Committee has noted the views expressed in evidence to the inquiry in regard to the publication of reports and considers that the independence of the Inspector-General as well the transparency of his reviews could be enhanced by tightening the reporting obligations contained in the Bill. The Committee accepts that there are already certain limitations placed on information that can be included in an Inspector-General's report to safeguard the public interest, individual privacy and confidentiality.

---

22 Submission No. 10, p. 2.

23 *Committee Hansard*, p. E7.

24 Submission No. 16, p. 4.

25 Submission No. 7 (a), Attachment A p. 2.

**4.51** The Committee recommends that the Government give consideration to amending the Bill 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, except where the Minister determines that the disclosure of the report would be prejudicial to the public interest or would breach the privacy of a taxpayer.

**4.52** Where the Minister does not table a report, or part of a report, the Minister should cause 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 an explanation outlining the reasons for not releasing the report.

## **Budget**

4.53 Funding of \$2 million per year for four years for the office of Inspector-General of Taxation, commencing in 2002-03, was included in the 2002-03 Budget.<sup>26</sup>

4.54 Although not a provision of the Bill as such, a significant proportion of the submissions received by the Committee expressed concern at the proposed budget for the new office.<sup>27</sup>

4.55 A number of submissions contended that the proposed level of resourcing was insufficient to enable the Inspector-General to fulfil the functions of the office to a satisfactory degree.

4.56 Taxpayers Australia Inc considered that the budget was most unlikely to be sufficient to ‘enable the Inspector-General to attract sufficient experienced and knowledgeable staff to fulfil the required statutory role.’<sup>28</sup>

4.57 The Institute of Chartered Accountants in Australia submitted that the proposed budget suggests either that:

- the Inspector-General would have to restrict the number of projects that are undertaken, in which case important issues may never be addressed; or
- the Inspector-General’s core role would become merely an instrument for raising potential issues, leaving it up to the ATO or government to fund further investigation, which detracts from the independence and transparency of the role.<sup>29</sup>

4.58 The Institute considered both propositions unacceptable, making the role of the Inspector-General a token position.

---

26 *Explanatory Memorandum*, p. 3.

27 See Submissions No. 2, 4, 6, 8, 9 and 10.

28 Submission No. 4. p. 3.

29 Submission No. 10, pp. 3-4.

4.59 A different view, however, was taken by the Australian Chamber of Commerce and Industry:

The new position, despite being limited in resources, should be able to make a significant addition to taxation oversight. In spite of being limited in funds, the Inspector General should be able to perform the role of objectively monitoring and examining taxation administration within the allocated funding.<sup>30</sup>

4.60 The Committee also appreciates the evidence provided by the Taxation Ombudsman that his office has the equivalent of about ten full-time resources devoted to taxation matters, at a cost of about \$1.6 million.<sup>31</sup>

4.61 The Committee notes that concerns about the level of funding are linked with those about the ability of the Minister to direct that reviews be undertaken, and the potential that this could curtail the capacity of the office to address issues raised by parties other than the Minister.

4.62 The Committee believes that this matter of funding requires close monitoring and should be covered in detail in the annual report.

### **Review of the office**

4.63 The Board of Taxation recommended that the efficiency and effectiveness of the new office should be reviewed within five years of the appointment of the first Inspector-General of Taxation, and this recommendation was subsequently agreed to by the Government. The desirability of an independent review of the effectiveness of the office after a period of operation was also endorsed by submissions received by the Committee.<sup>32</sup> This review commitment, however, is not included in the Bill.

**4.64 The Committee recommends that the Government consider amending the Bill to require an independent review of the efficiency and effectiveness of the office of Inspector-General of Taxation within a period of five years from the appointment of the first Inspector-General. The review is also to include consideration of the scope of the functions of the Inspector-General and the adequacy of its budget.**

---

30 Submission No. 15, p .2.

31 *Committee Hansard*, p. E19.

32 Submission No. 9, Submission No. 14.

# CHAPTER 5

## Conclusion

5.1 Evidence presented to the inquiry indicates strong support for the creation of a new statutory office of Inspector-General of Taxation to review tax administration and to report to the Government with recommendations for improving tax administration for the benefit of all taxpayers.

5.2 The proposal is viewed as a valuable addition to the taxation governance framework, complementing the existing functions of the Board of Taxation, the Commonwealth Ombudsman and the Auditor-General.

5.3 While a number of commonly held concerns with the current Bill were expressed in submissions and evidence to Committee, most witnesses wanted to give the proposed legislation a chance to succeed. Mr Sheppard reflected the general attitude of witnesses when he told the Committee:

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>1</sup>

5.4 Although the problems identified in the Bill were not generally considered to be sufficient to prevent the proposal proceeding, the Committee considers that if not remedied they have the potential to undermine the credibility of the Office of the Inspector-General. In particular, the Committee is mindful of the need to protect the independence of the office. Thus, the Committee believes it would be remiss to disregard concerns held so widely by those providing evidence to the inquiry.

5.5 Significant issues which have been raised include the ability of the Inspector-General to review taxation policy and law, the public release of reports, the setting of work priorities, and the resourcing of the office.

5.6 The Committee has made several recommendations and suggestions in regard to these issues, and other points raised in evidence, and urges the Government to consider amending the Bill in the manner recommended.

### Recommendation 1

**The Committee recommends that before the Bill proceeds to its final stages the Government consider addressing the following issues raised in this report:**

---

1 *Committee Hansard*, p. E7.

- **including in 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;**
- **specific merit based selection criteria for the Inspector-General;**
- **the breadth of the scope of the Inspector-General's functions in relation to review of tax policy and law and proposed changes to the system;**
- **ensuring that professional privilege is protected;**
- **imposing a time limit for response from the Commissioner of Taxation to criticisms of the ATO in draft reports;**
- **the timely release of review reports, except where public interest, privacy or confidentiality matters are concerned in which case reasons should be shown for not making the document public; and**
- **providing for an independent review within five years of the operation of the Office of the Inspector-General including the effectiveness and functions of the office, its funding and reporting obligations.**

5.7 While considering that the Bill requires amendment in these areas, the Committee acknowledges the support expressed for the creation of the Office of Inspector-General of Taxation and recommends that it should proceed.

## **Recommendation 2**

**The Committee reports to the Senate that it has considered the Inspector-General of Taxation Bill 2002 and recommends that it proceed.**

SENATOR GEORGE BRANDIS  
CHAIRMAN

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:

---

<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

---

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**



# **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’<sup>1</sup> and ‘hopefully make the position work’<sup>2</sup> 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.’<sup>3</sup>

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:

---

<sup>1</sup> Chapter 5, Conclusion, Inquiry into Inspector-General of Taxation Bill 2002.

<sup>2</sup> Mr Shephard, Committee Hansard, p. E7.

<sup>3</sup> 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 .....’<sup>4</sup>

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.

---

<sup>4</sup> 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.’<sup>5</sup>

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.’<sup>6</sup>

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.’<sup>7</sup>

---

<sup>5</sup> Submission No. 10, p. 2.

<sup>6</sup> 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.’<sup>8</sup>

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;

---

<sup>7</sup> Submission No. 13, p. 4.

<sup>8</sup> 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.

SENATOR JACINTA COLLINS

SENATOR RUTH WEBBER



# **APPENDIX 1**

## **List of Public Submissions**

Submission No 1: Corporate Tax Association

Submission No 2: Resolutions Holdings Pty Ltd

Submission No 3: Mr John Morgan

Submission No 4: Taxpayers Australia Inc.

Submission No 5: Council of Small Business Organisations of Australia Ltd.

Submission No 6: Taxation Ombudsman

Submission No 7: Department of the Treasury

Submission No 8: CPA Australia

Submission No 9: Financial Planning Association of Australia Limited

Submission No 10: The Institute of Chartered Accountants in Australia

Submission No 11: Taxation Institute of Australia

Submission No 12: National Institute of Accountants

Submission No 13: Australian Institute of Company Directors

Submission No 14: International Banks and Securities Association of Australia

Submission No 15: Australian Chamber of Commerce and Industry

Submission No 16: Business Coalition for Tax Reform

Submission No 17: Administrative Review Council

Submission No 18: Mr Gerald Jaworski



# **APPENDIX 2**

## **Public Hearing and Witnesses**

Tuesday, 19 November 2002 - Canberra

### **CPA Australia**

Addison, Mr Garry John, Senior Taxation Consultant

Drum, Mr Paul, Senior Tax Counsel, CPA Australia

### **Australian Institute of Company Directors**

Coleman, Professor Cynthia, Member, Taxation and Economics Committee

Marks-Isaacs, Mr Simon, Chairman, Taxation and Economics Committee

### **Department of the Treasury**

Foster, Mr Ron, Manager, Integrated Tax Design Division, Revenue Group

Johnston, Ms Susan, Analyst, Tax Design Division, Revenue Group

### **Business Coalition for Tax Reform**

Hooke, Mr Mitch, Executive member

McClusky, Ms Su

### **The Institute of Chartered Accountants in Australia**

Lowry, Ms Johanna Eleanor, Taxation Manager

Sheppard, Mr Brian Kenneth, Tax Counsel

### **Commonwealth Ombudsman and Taxation Ombudsman**

McLeod, Mr Ronald Neville, Commonwealth Ombudsman and Taxation Ombudsman

### **National Institute of Accountants**

Ord, Mr Gavan Russell, Technical Policy Manager



## APPENDIX 3

### Recommendations made by the Board of Taxation and the Government's response<sup>1</sup>

#### SPECIFIC RECOMMENDATIONS AND OUTCOMES

##### *Recommendation 1*

The legislation establishing the Inspector-General should include an object clause stating that the object of the legislation is to improve the way in which the Australian Taxation Office administers the Australian taxation system from the perspective of taxpayers.

**Response: Agreed in principle.**

##### *Recommendation 2*

In achieving this objective, the functions of the Inspector-General of Taxation should be broadly defined to include providing advice to the Government, reviewing the systems used by the Australian Taxation Office to administer the tax system, and making recommendations to the Government about how these systems could be improved.

**Response: Agreed in principle.**

##### *Recommendation 3*

The Inspector-General of Taxation should be established outside the Ombudsman's office, with the Ombudsman retaining its existing functions.

**Response: Agreed.**

##### *Recommendation 4*

The efficiency and effectiveness of the new office should be reviewed within five years of the appointment of the first Inspector-General of Taxation.

**Response: Agreed.**

---

<sup>1</sup> Taken from Press Release, Minister for Revenue and the Assistant Treasurer, Senator the Hon Helen Coonan, *Minister Responds to Inspector-General Report*, 16 September 2002

***Recommendation 5***

The Inspector-General of Taxation should have a right of access to individual taxpayer information held by the Australian Taxation Office, but only to the extent necessary to carry out its functions, and should be under an obligation comparable to that of the Ombudsman to maintain the confidentiality of any such information.

**Response: Agreed.**

***Recommendation 6***

The Inspector-General of Taxation should be appointed by the Governor-General.

**Response: Agreed.**

***Recommendation 7***

The Governor-General should be able to remove the Inspector-General of Taxation from office only for misbehaviour or physical or mental incapacity.

**Response: Agreed.**

***Recommendation 8***

The Inspector-General of Taxation should be able to undertake work on both an "own motion" basis and in response to a direction given by a Minister. The legislation should not prescribe how the Inspector-General of Taxation's work priorities would be established.

**Response: Agreed in principle. The Inspector-General will be able to undertake reviews on an 'own motion' basis and will have a high degree of discretion in prioritising work.**

**However, the Inspector-General will be obliged to respond to directions from Treasury Ministers, to reinforce the Inspector-General's role in providing a new source of advice to the Government on matters of tax administration, independent of the Australian Taxation Office and the Treasury.**

***Recommendation 9***

The Inspector-General of Taxation should be required to report annually to the Parliament. The legislation should require that the annual report outline the matters on which advice has been provided to the Minister, and list the formal reports given to the Minister, in the reporting period.

**Response: Agreed in principle. The Inspector-General's enabling legislation will impose a special annual reporting requirement on the Inspector-General to ensure transparency.**

**Recommendation 10**

The Inspector-General should be able to publish reports of reviews of the systems used by the Australian Taxation Office to administer the tax system, and recommendations to the Government about where these systems could be improved (but not advice to the Government), but only after giving the Minister a reasonable opportunity to comment. A person whose interests would be adversely affected by the publication should be given a reasonable opportunity to comment, and to have their comments included in the publication. The Inspector-General should not be liable to be sued for an act done in good faith in exercise of any power conferred by the legislation, including the power to publish.

**Response: Agreed in part and in principle.**

**The Government agrees that it will be important for the Inspector-General's reports to be made public. It will be important for the Inspector-General to be accountable to taxpayers, their advisers and representatives, for the way in which taxpayers' concerns are addressed. It follows that the operations of the office of Inspector-General must be transparent and that the Inspector-General must maintain the respect and cooperation of taxpayers.**

**However, the Inspector-General of Taxation is not intended to duplicate the roles of the Auditor-General nor the Ombudsman, both of whom have a continuing public reporting role on tax administration.**

**A key function of the Inspector-General of Taxation will be to advocate the concerns of taxpayers to the Treasury Ministers to enable fast resolution of any systemic problems in the tax system. For this reason, the Inspector-General will report to the Treasury Ministers.**

**The Inspector-General's inquiries and reports may include recommendations for legislative amendments or changes in administrative processes. It is desirable for recommendations involving changes to the tax system to be released simultaneously with the Government's decision on such changes to avoid speculation and uncertainty about the taxation system. Accordingly, it is proposed that the Treasury Ministers would have the responsibility for releasing reports by the Inspector-General.**

**The Government agrees that, if there is criticism of the Commissioner or any other tax official arising from a review by the Inspector-General, then the Commissioner should have an opportunity to address such criticisms prior to completion of the report.**

**The Inspector-General of Taxation will be given appropriate immunity from being sued.**

***Recommendation 11***

The Ombudsman's role in reviewing administrative action taken by the Australian Taxation Office, both in response to a complaint and on an "own motion" basis, should not be affected by the establishment of the Inspector-General of Taxation.

**Response: Agreed.**

***Recommendation 12***

The Inspector-General of Taxation should be obliged to consult with the Ombudsman and the Auditor-General in establishing a work program and priorities.

**Response: Agreed. However, it is not intended that such a consultation arrangement would impinge on the independence of any of the statutory office-holders involved.**

***Recommendation 13***

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

- (a) has a strong capacity to understand 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.

**Response: Agreed.**

***Recommendation 14***

The establishment of the Inspector-General of Taxation should not affect the functions of the Board of Taxation.

**Response: Agreed.**

***Recommendation 15***

The Inspector-General of Taxation should not be an ex-officio member of the Board of Taxation.

**Response: Agreed.**