

Senate Economics Legislation Committee

Inspector-General of Taxation Bill 2002

Submission No. 12

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Attachments? No Attachments



13 November 2002

The Secretary
Senate Economics Committee
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Dear Dr Dermody

Re: Inquiry into the Inspector-General of Taxation Bill 2002

The National Institute of Accountants (NIA), a professional accounting body with over 12,000 members would like to thank the Committee for the opportunity for the NIA to provide comment on this Bill in addition to the comments we provided the Board of Taxation in response to the initial discussion paper.

In short, although the NIA does not believe the objective of the *Inspector-General of Taxation Bill 2002* or its line of authority to the Treasury Ministers is the best model, the NIA do however ask that this Committee positively consider the Bill and in such consideration, take account of the comments and suggestions put forward in the attached submission and in the submission of our fellow professional accounting and taxation bodies.

The problems with the administration of Australia's taxation system needs an "honest broker" and the NIA hopes that the IGT model as detailed in the Bill provides a good way for such problems to be addressed.

If you have any further queries please do not hesitate to contact me on (03) 8665 3114 or by fax on (03) 8665 3130 or by e-mail on gavano@nia.org.au.

Yours sincerely

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INQUIRY INTO THE *INSPECTOR-GENERAL OF TAXATION BILL 2002*

Introduction

The National Institute of Accountants (NIA), a professional accounting body with over 12,000 members working in all areas, particularly in taxation would like to thank the Senate for the opportunity to provide comment on the *Inspector-General of Taxation Bill 2002* to the Senate Economics Legislation Committee.

NIA members, particularly tax agents have been considerably frustrated in dealing with the tax administration system and the extraordinary increase in compliance work (brought about by tax reform) has increased this frustration to a point where many tax agents are considering their future in the profession. The Australian Taxation Office (ATO) itself has gone through a period of considerable pressure brought about by immense change in a compressed period of time, which has meant that work and service has been prioritised, which inevitably has been to the detriment of at least one class of taxpayers, and far too often this has been tax agents.

The question is how can these concerns, whether it be concerns of taxpayers, tax agents, tax professional bodies, industry bodies, the ATO or the Government, be expressed and acted upon in a timely manner?

The ATO already has in place detailed mechanisms for dealing with individual complaints through such avenues as the Problem Resolution Services area and the Complex Case Resolution area for tax agents. These internal complaint

handling procedures are supplemented by the Commonwealth Ombudsman and through complaints direct to Parliamentarians.

Systemic issues are raised through a number of avenues and are either acted upon internally or an external party becomes involved. Such avenues include through tax practitioner consultative forums such as the National Tax Liaison Group and the ATO/Tax Practitioner Forum. Systemic failures or issues are acted upon either by the Commonwealth Ombudsman, the Australian National Audit Office (ANAO) or through Parliamentary inquiries. Both the Commonwealth Ombudsman and the ANAO have specialist areas dealing with the ATO.

All of these external points of review report to the Parliament, therefore it can be said that the Government (that is the Treasury Ministers) lack their own independent source of advice on the tax administration system.

The NIA commends the Government for taking an active interest in the administration of the tax system by seeking to create an independent source of advice for itself on such issues. Although the NIA has expressed "misgivings" about whether a role exists for the proposed Inspector-General of Taxation (IGT), these misgivings should not be seen as the NIA not supporting this *Bill*. Quite the contrary, the NIA wants the IGT proposal to succeed, no matter if we disagree or not with the model, because it will provide an additional avenue to address the substantial tax administration issues we are all collectively facing.

The IGT as proposed represents a new avenue for tax administration issues to be addressed, and that is a reform that must be pursued, even though the effectiveness of the position may not be as great as if it reported to and was accountable to the Parliament. However, as stated previously, the NIA fully understands the Government's desire to seek advice outside of the influence of Treasury and the ATO and therefore the requirement to have the position as a

statutory authority provides the incumbent with the authority to fulfil his or her role fiercely and independently.

This *Bill* before the Committee is the manifestation of the Prime Minister's election promise to create the position of the IGT, even though the original intention of the Prime Minister is not reflected in this *Bill*.

The Prime Minister stated on 15 October 2001 the following:

"We intend therefore to establish a new position that is the position of the Inspector General of Taxation. This person will be an advocate for the ordinary taxpayer. The position will report to Parliament through the Treasurer and will provide a new source of independent advice. His role will be to act as an advocate for all taxpayers, including Australian business. And to provide an avenue for more effective conflict resolution between taxpayers and the ATO than currently exists."

Object of the IGT

It will be noted that the object of the *Bill* does not make specific reference to acting as 'an advocate for the ordinary taxpayer'. Section 3 of the *Bill* states the object being "...to improve the administration of the tax laws for the benefit of all taxpayers." This does not fully articulate the intent as expressed by the Prime Minister.

An object clause which directly reflected the comments of the Prime Minister would provide more comfort to taxpayers about the perceived role of the position. The object section could read as follows:

"The object of this Act is to provide for the establishment of a statutory officer of the Parliament who will be an advocate for all taxpayers in

providing advice to the Parliament that will improve the administration of the tax laws for the benefit of all taxpayers.”

Such an object clause would clearly bring back into the IGT role that of 'an advocate for the ordinary taxpayer', not just merely working to improve the tax system. The value of such an advocacy role is that taxpayers not only have an "honest broker", but someone who will pursue the interests of taxpayers first and foremost.

IGT role in policy formation

Although the NIA does not support the IGT being an *ex-officio* member of the Board of Taxation, we have concerns that the Government will not receive every possible source of advice on whether or not to implement a new tax policy. It would be far more beneficial to the Government if the IGT could undertake independent reviews of the administrative impacts of new policy, for example, the capability of the ATO to create adequate systems to support the new policy and, make recommendations to allow the Government to implement its policies in a way that does not unintentionally harm taxpayers.

The IGT and commenting on existing tax policy

The above paragraph leads to a discussion on whether or not the IGT should be commenting on existing tax policy. The NIA is of the opinion that to be able to improve the administration of tax laws for the benefit of all taxpayers, it is impossible to divorce taxation policy and laws from administration. Many of the administration issues that have caused the most frustration for tax agents have been because of poor law which stems from poor policy. Therefore, for the IGT to be able to complete his or her role properly, they must be able to make comment on existing law and policy where appropriate.

The NIA therefore believes that a redraft of clauses 3.22 and 3.23 of the Explanatory Memorandum are necessary to enable the IGT to carry out their role effectively by providing more clarity over what they can and cannot do. The NIA does not propose its own wording for consideration, however the re-drafting could emphasise that the role remain focussed on improving tax administration and where tax law and policy are reasons contributing to systemic failure, the IGT should comment as such, with recommendations, even if such recommendations remain confidential.

Scope of issues the IGT can review

The issue which follow on from the above is what constitutes tax administration and is therefore within the IGT's proposed powers to investigate and review. Given the increasing move by the Parliament to place more non-revenue collection functions within the Commissioner's responsibility (eg. social security measures) and to have such systems administered through the tax system, it is important that the IGT have the authority to review such systems, including the ability to seek and report on the operations of other government departments and agencies where the systems are "cross-agency" or require considerable support from outside the ATO for the ATO systems to work.

Where a Government policy is implemented through the tax system, even though it is not a tax policy, it affects the tax administration system, taxpayers and their agents. For example, it will be difficult for many to understand that the Family Tax Benefit claim made through a tax return would most likely fall outside the authority of the IGT because administrative authority rests with the Department of Family and Community Services.

The NIA is of the opinion that for the IGT to be effective, consideration must be given to giving the IGT the authority to investigate a wide variety of issues that impact on tax administration including non-tax administration, legislation and

policy. The NIA is therefore encouraged by section 7 and hope that the IGT will take a broad definition of the authority granted by that section and paragraph 3.21 of the Explanatory Memorandum and seek to review issues such as the Family Tax Benefit.

When a review may be conducted

The NIA supports the model proposed in the *Bill* that the IGT can conduct their "own motion" review (such as in consultation with tax professional bodies) in addition to Ministerial direction and also largely have the authority to set his or her own work programme.

Reporting of Reviews

This clause is the fundamental clause upon which the *Bill* rests, that is, is the IGT an advocate for taxpayers or an advisor to the Minister, and therefore where does the IGT report to?

The NIAs preferred option is for the IGT to be an advocate for taxpayers, and hence report to Parliament rather than the Minister. This approach has some significant advantages over the model proposed, namely the independence, both real and perceived of the IGT, the ability to further control their work programme outside Ministerial direction and flowing from that and a greater ability to consult with a wide variety of stakeholders and consider such consultation for further review.

Even though the NIA believes that the role of the IGT would be far more effective if the IGT was an independent officer reporting to the Parliament, the more important issue for the NIA is to have the IGT established and appointed and to work with the IGT to ensure it is as effective as possible given the proposed limitations.

The advantages of working with the Minister will mean that the Minister will have a source of advice independent on tax administration independent of the ATO and Treasury and independent of other vested interests such as industry and professional bodies. The effectiveness of this independence is dependent on the IGT himself or herself and the actions of the Minister.

If the Minister does not act on the recommendations of the IGT or unnecessarily interferes in the work programme of the IGT, the Government risks diminishing the respect and authority the position may create. For example, if taxpayers or their representatives cannot see the work of the IGT being acted upon in a timely manner by the Minister, they would have greater hesitation in working with the IGT and may prefer to continue to go to the Minister or Parliament direct.

Although this Committee, nor the NIA has any authority over how and when a Minister should or should not act, the NIA would like it noted that the interactions between the Minister and the IGT and the Minister's responses to those interactions will ultimately determine if the reporting model proposed in the *Bill* is successful or not. If a fiercely independent and knowledgeable IGT cannot persuade the Minister to act as recommended, then the position will not succeed and taxpayers will go back to the current *ad hoc* system of raising tax administration issues.

If the IGT is to be an independent adviser on tax administration to the Treasury Ministers, then it would be to the detriment of the independence of the Commonwealth Ombudsman to incorporate the IGT into the Commonwealth Ombudsman. It would be against the principals of independence for the Commonwealth Ombudsman to become an advisor to a Minister, instead of the Parliament and hence the IGT as proposed in the *Bill* should not be incorporated with the Commonwealth Ombudsman or the Australian National Audit Organisation.

However, if the preferred NIA model of the IGT being an independent statutory officer of the Parliament (with the role of being a taxpayer advocate) is adopted, then the combining of the IGT and the Commonwealth Ombudsman has considerable merit.

Public Release of Reports

The NIA supports the public release of reports through the Parliament, and this should be practised as the rule by the Minister, therefore the exceptions to this rule must be very limited and clear.

Obtaining information documents etc for the purpose of reviews

The NIA supports giving the IGT broad powers of investigation, including access to taxpayer information held by the ATO and access to current and former tax officials that is necessary to conduct a review. In exercising such broad authority, the NIA would encourage the IGT and the Commissioner of Taxation to come to a Memorandum of Understanding as a cooperative rather than adversarial relationship is a far better way of the IGT meeting the objects of this *Bill* and add value to the tax system.

Conclusion

As stated throughout this submission, the NIA believes that the object of the legislation should be to create an independent statutory officer of the Parliament whose role is to be an advocate for taxpayers for the purpose of improving the administration of Australia's overly complex and burdensome tax system. Having said that, the NIA does not wish to oppose the legislation if the current object and reporting lines remain because it is extremely important to introduce someone urgently who will act to improve the administration of the tax system.



Attachment A

INSPECTOR GENERAL OF TAXATION IN THE TAXATION SYSTEM

Consultation Paper

Submission by the National Institute of Accountants to the Board of Taxation

Introduction

The National Institute of Accountants (NIA), a professional accounting body with over 12,000 members welcomes the opportunity to comment on the "*Inspector General of Taxation in the Taxation System*" consultation paper. The Inspector General of Taxation (IGT) represents a possible significant reform to the monitoring of the tax administration system and therefore could have a significant impact upon NIA members and the community in general.

This consultation paper has been prepared as a result of an election promise by the Prime Minister to create the position of the IGT. Although the NIA is not convinced by the need for such an additional position in the tax administration structure or where the position will "sit", the NIA supports the objective of the Prime Minister in making this announcement is one the NIA supports.

The Prime Minister stated on 15 October 2001:

We intend therefore to establish a new position, that is the position of the Inspector General of Taxation. This person will be an advocate for the ordinary taxpayer. The position will report to the Parliament through the Treasurer and will provide a new source of independent advice. His role will be to act as an advocate for all taxpayers, including Australian business. And

to provide an avenue for more effective conflict resolution between taxpayers and the Australian Taxation Office than currently exists.

However, the role proposed in this consultation paper does not effectively articulate the role envisage by the Prime Minister. Therefore, the NIA remains hesitant to support the establishment of this position, and if it is established, we are concerned that the role will not be that of an independent advocate for taxpayers.

General Comments

The announcement of the proposal to form the IGT stems from the apparent failure of the Australian Taxation Office (ATO) to properly advise the Government on administrative issues, particularly on problems with Business Activity Statements, Ultimate Beneficiary Statements and Mass Marketed Tax Schemes.

While the NIA shared the frustration of many others over those issues, the NIA is still to be convinced that these problems are any more serious than problems the NIA and others encounter with other Government agencies. Government agencies are required to advise their Minister and that includes giving alternative advice to the advice of externals such as the NIA where they believe such advice not be the correct advice. It is the Minister's responsibility to consider all points of view in coming to a decision.

The concern the NIA had with these three issues was the lack of transparency of how the Minister received advice from the ATO and Treasury. People and organizations raising issues were concerned that their issues were not being properly passed on to the Minister. Thus giving them no other option than to place pressure direct to Government rather than through normal channels. Whether the IGT proposal or any other proposal would facilitate greater transparency in the advice given to the Treasury Ministers is debatable. The Government will always seek confidential advice from its agencies to enable it to effectively develop policy. The issue therefore is how can the ATO and the

Government (and therefore the IGT) better manage communication with key stakeholders when issues of concern are raised, to ensure that such key stakeholders are not and do not feel ignored.

Therefore the NIA remains to be convinced that there is a gap that the IGT needs to fill. The NIA also believes that the current structures in place to deal with any individual or systemic problems with the tax administration appear adequate and effective and that the IGT might add an unnecessary level of confusion for taxpayers.

Specific Comments

IGT and his or her staff

The NIA supports the principle that if the IGT is established, that it have a high level of expertise in tax administration from a taxpayer point of view and be independent. That independence and expertise, should as the consultation paper states, be used as the basis for the IGT to becoming expert in understanding the compliance burden faced by taxpayers (and the NIA adds, tax practitioners).

The question is how the IGT could become expert and how does it become and remain independent. The expertise and experience of the IGT and his or her staff is fundamental to both of these questions. Therefore the selection of the IGT and his or her staff is a critical success factor.

In brief, the staff of the office of the IGT should combine both experience in tax administration, both from within the ATO and externals such as tax practitioners. Recruitment to the office of the IGT should not be limited to people with experience in both areas. Instead the entire staff of the IGT should have a balance of internal administrative experience and external administrative experience. Such a balance of experience is essential if the Government and the

ATO are to receive an additional source of independent advice on the administration of the tax system.

Community Consultation by the IGT

The proposed mechanisms by which the IGT can seek community consultation is very important. Such community consultation should involve individual taxpayers, tax practitioners, professional bodies, business groups and community groups. However the NIA is concerned that the IGT does not become the only avenue to raise concerns about tax administration. The Government must clearly state existing avenues of raising issues still exist. The Government must also clearly re-affirm in the role of the IGT that the IGT is to be an effective advocate for taxpayers. Such re-affirmation will partly demonstrate the Prime Minister's commitment to the IGT as independent.

Reporting

Independence and the advocacy role of the IGT would be severely constrained if recommendations of the IGT, whether they be to the Treasury Ministers or the Commissioner of Taxation were only made public at the Minister's discretion. Such reports should be made public as a matter of course (with appropriate modifications to remove any taxpayer information). The question therefore is how such reports should be made public. Releasing such reports can be done through tabling such reports in Parliament or releasing them straight to the public. The NIA favours tabling reports to Parliament (and therefore the accountability of the IGT should be to Parliament). This will not diminish the value of information going to the Treasury Ministers and the ATO as it would be expected that the IGT would follow the procedures already established by the Australian National Audit Office (ANAO) and the Ombudsman of consulting the relevant Department and Minister before release of their reports. This gives the ATO and the Minister the opportunity to respond to the release immediately and appropriately.

Functions of the IGT and setting priorities

The NIA agrees that the role of the IGT should be to find ways to assist the ATO and the Government improve the operation of the taxation system, however how will the IGT interact with other agencies tasked with the same role, such as ANAO and the Ombudsman? Who should organisations like the NIA raise concerns about the tax administration system with?

The NIA welcomes that taxpayer groups through consultation with the IGT will be able to influence the work programme priorities of the IGT, however, tax agents should be stated specifically as a group the IGT must consult with. Tax agents continued to be frustrated by the lack of recognition of their importance to the tax system by the Government and the ATO. The NIA therefore recommends that consultation with tax agents be made an integral part of all the activities of the IGT.

Interaction between the IGT, the Commonwealth Ombudsman and the ANAO

The NIA supports the proposition in the paper that the IGT and Commonwealth Ombudsman should work closely together to ensure there is no duplication. The NIA however recommends that the interaction between the IGT and the ANAO should be discussed in more detail.

However, the NIA remains concerned that the addition of another statutory office to review tax administration will confuse taxpayers. Additional points of review will mean that some taxpayers may perceive that the introduction of the IGT is an attempt by the Government to add another layer of bureaucracy to shield itself from criticism. If the IGT is to be established separately to the Ombudsman, then special attention must be paid to ensuring that taxpayers are not confused as to where they lodge complaints and that procedures are in place to avoid duplication.

These possible problems may be better overcome by combining the office of the IGT with the Special Tax Adviser to the Ombudsman either by having the IGT takeover the role of the Special Tax Adviser independent of the Ombudsman or as part of the office of the Ombudsman. These options are discussed in Attachment B of the consultation paper. The NIA is concerned that these options were not properly discussed, as they have considerable merit and warrant further consideration.

Interaction with the Board of Taxation

Another issue the consultation paper fails to discuss, except in passing, is the interaction between the IGT and the Board of Taxation. Both advisory bodies may fill advisory positions on different issues to Government, however there are a considerable number of issues that are both policy and administration, such as penalties or the self-assessment system. The Government should in its response to this consultation paper establish a possible broad framework for the interaction between both advisory bodies. As they are advisory groups it is the role of Government, as the body seeking advice to delineate their respective roles.

In respect of the recommendation that the IGT be an *ex officio* member of the Board of Taxation, the NIA is concerned that for the IGT to properly advise Government, involvement in the development of tax policy that the IGT may be asked to give advice on in respect of its impact on tax administration, has the potential for a conflict of interest and should be avoided.

In relation to possible areas for systemic reviews, the NIA supports the indicative list of areas that could be subject to such reviews, either on an *ad hoc* basis or as part of periodic reviews. In all such reviews, the IGT should assess the impact, compliance costs and clarity of legislation and be given the authority not just to advocate changes to administrative practices but also legislative fixes.

IGT to provide a seamless interface with existing administrative points of review

If the IGT is to be formed, the NIA supports the aim that there be a "seamless interface with existing administrative points of review". However, such procedures will be difficult to implement especially as there are so many points of review. The Government should seriously consider options that avoid duplication, including combining functions.

The NIA supports the position in the consultation paper that the role of the IGT be that of an advocate and not have the authority to override or amend any decisions of the Commissioner. The Commissioner, may based on the advice of the IGT, amend or revoke a decision he or she has previously made.

Powers and responsibilities of the IGT

Although the NIA understands the arguments for the IGT to be a statutory office within the Treasury portfolio, the NIA is concerned that such an arrangement may open the opportunity for the independence of the IGT to be impaired or at least be perceived to be compromised. It is important that wherever the IGT "sits", that its independence as an advocate for taxpayers is protected and that any risk to that independence (such as reduced funding) be removed, so that the IGT is and is perceived to be independent. Managing the perceptions of taxpayers is extremely important if the Government wishes the role to succeed.

IGT Appointment

As stated previously the success of the IGT will largely depend on who fills the position and the staff he or she appoints. It is important that the IGT and his or her staff overall (rather than individually) have a good mix of experience with tax administration, both from an ATO perspective and a taxpayer perspective. By requiring the IGT to have a mix of both limits the range of potential candidates, therefore these limitations should be removed, however candidates with experience from a taxpayer perspective should be considered more highly than those that do not.

Once again, the accountability and reporting of the IGT are fundamental to the question of independence, both perceived and real. All recommendations of the IGT should be made public (with appropriate editing to protect taxpayer information). The NIA recommends that making of recommendations should be made in Parliament. There should not exist the discretion for the Treasury Ministers to determine whether a report should be made public.

The IGT exercising his or her powers

The NIA supports the proposal as to how the powers of the IGT are to be activated. They are clear and allow for all key stakeholders to have a say. However, tax agents are again not specifically mentioned.

In exercising those powers, the NIA welcomes the statement that the IGT will be expected to obtain information from taxpayers and their representatives through public and private meetings. This is an extremely important process if the IGT is to be an advocate for taxpayers. If the IGT is not to release his or her findings publicly (unless with Ministerial approval), then at least those bringing the complaint or issue to the attention of the IGT should be made aware of the conclusion. It is the NIA's own experience that it is extremely frustrating for a complainant if they are not made aware of the result of their complaint and discourages them from raising issues again.

The NIA supports the expectation that the IGT develop and maintain relationships with industry and community groups. Such regular forums would provide the IGT with deeper understandings of the current issues facing taxpayers and tax agents.

Funding

The roles that this consultation paper sets out for the IGT require considerable funding. Without such funding, it is difficult to see the IGT being an effective

advocate for taxpayers or as an independent source of advice on tax administration issues for the Government. The \$2 million allocated for the 2002/03 financial year is, in the opinion of the NIA, inadequate to meet the roles expected of the position. The NIA recommends that the Government allocate additional funding to the IGT above what was announced in the Federal Budget.

Other issues

As with the lack of discussion of the other options in Attachment B of the consultation paper, the NIA would like to see more discussion on the international comparisons in Attachment D of the consultation paper, particularly the United States model. A more thorough discussion of Attachments B and D would allow the NIA and others to come to a more informed decision about the IGT and how the accountability and reporting lines of the IGT should operate to ensure independence and effectiveness. The NIA also recommends discussion of possible alternative models to the IGT, such as an oversight board of the ATO (see attachment).

Conclusion

The NIA, although not convinced of the need for the IGT, believes that such a role can contribute to the betterment of the tax administration system if:

- It is totally independent of Government, the ATO and Treasury;
- The IGT has the right mix of experience from both an ATO and taxpayer point of view;
- All findings of the IGT should be made public through the Parliament;
- The IGT regularly seeks input on the tax administration system from tax agents;
- Has its funding guaranteed and the IGT can state that its funding is inadequate; and
- The role of the IGT does not duplicate or add to existing points of review.

Attachment B**EXTRACT FROM THE NIA SUBMISSION TO THE REVIEW OF BUSINESS TAXATION "A STRONG FOUNDATION". DECEMBER 1998****BOARD SUPERVISING THE OPERATION OF THE ATO**

A Strong Foundation only recommended the formation of an Advisory Board to review the formation and development of policy. This does not take account of many of the concerns that the ATO lacks accountability and lacks adequate supervision.

The question that has to be asked is "Does the current management and governance structure of the ATO, allow the ATO to meet the needs of the community and the Government in the administration and implementation of tax law?"

Currently, the Commissioner of Taxation is a statutory position, independent and not subject to ministerial direction in respect of the application of taxation legislation to taxpayers. The Commissioner is directly accountable to Parliament through the Annual Report and Parliamentary Committees and accountable to the community through the Taxpayers' Charter. As this accountability is neither regular nor coordinated, it is difficult to see how the ATO is generally accountable for its operations.

There is no reason why a Board of Directors to which the Commissioner of Taxation reports to, would interfere in his statutory role and nor would it compromise his independence. As long as tax administration remains separate and independent of ministerial direction, the management structure established to oversee that administration is irrelevant. This independence from ministerial

direction and other external influences is guaranteed by the strict privacy rules, which any Board of Directors would be subject to.

To ensure responsive administration of the tax law, the ATO needs to be able to adapt to changes in the domestic and global environment. A Board of Directors can ensure that in the current environment of very rapid change, that the ATO is pro-active and is strategically planning to meet future challenges. This accountability of the ATO can therefore only improve the administration of tax law by ensuring that the ATO account for their past, present and future actions, whereas, the current accountability is mainly skewed towards past performance.

The role of the ATO Board is up to the Government but the role of the Internal Revenue Service Oversight Board in the United States provides a good working model. The Board should oversee the ATO's administration, management, conduct, direction and supervision of the execution and application of the laws the Commissioner has responsibility for. This power should also include the authority to recommend to Cabinet the appointment of senior managers of the ATO. Day-to-day control will still remain in the hands of the Commissioner and the role of the Commissioner will be very much the same as a Chief Executive Officer of any company.

The functions, roles, conduct and responsibility of the ATO Board should be based upon the common operational principles of any Board in the private sector. The Board should be constructive and positive in its relationship with the ATO and along with the Commissioner, be responsible to Parliament for the actions of the ATO and itself through an annual report to Parliament and regular review by Parliamentary Committees.

Composition of the Board should follow along similar lines to the composition of the Australian Prudential Regulation Authority (APRA) Board, being the Commissioner, the Second Commissioners and at least five non-government

members coming from a broad range of experiences, not necessarily in the tax field. At all times, the composition should be weighted in favor of the non-government members. Membership of the Board for non-government members should be for a period of five years. The other alternative is to include the Second Commissioners as observers (there are three Second Commissioners) or not include them at all, but in all circumstances, the Commissioner should be an ex-officio member to provide balance and insight.

Proposals for two separate boards may bring the responsibilities of the boards into conflict. This is avoidable where the ATO Board has responsibility for the oversight of corporate governance and the administration of existing law, while the Advisory Board to the Treasurer would be responsible for reviewing the development of new law. The Treasurer should have the authority to resolve conflicts of responsibility.

The APRA Board (an extract of a speech by Geoff Thomson, CEO of APRA to the Monash University Law School Foundation on 27 October 1998)

"The APRA Act establishes us as an independent authority subject to the Commonwealth Authorities and Companies Act. We are not a government department or otherwise part of the Australian Public Service. We are not subject, in the normal course, to ministerial direction.

Ultimately, of course, APRA is accountable to the government of the day. To this end, there is a requirement for the Board of APRA to inform the Government of APRA's policies. Should the Government disagree with those policies, the Treasurer may recommend that the Governor-General, acting with the advice of the Federal Executive Council, issue an order determining the policy to be adopted by APRA. In this event, the Treasurer is required to inform the Board of APRA

that the Government takes full responsibility for the adoption of this policy. The Treasurer must also table the relevant documents in Parliament.

These arrangements provide for transparency and full accountability in any directions given by the Treasurer, and are similar to those which apply to the conduct of monetary policy by the Reserve Bank of Australia."

Obviously, the role of APRA Board can be transposed onto the ATO with modifications to fit the recommendations of *A Strong Foundation* and general community concerns.

JCPA recommendations revisited

The Joint Committee of Public Accounts (JCPA) Report 326: An Assessment of Tax provides recommendations on the establishment of an Australian Taxation Commission that deserves reconsideration. Although the recommendation made in November 1993 may not be appropriate based on the changed circumstances, the concerns expressed at 3.38 on page 37 still exist today and were re-iterated in *A Strong Foundation*. The report stated at 3.38:

"In the Committee's opinion, the administration of the ATO and the taxation system generally would benefit significantly from the injection of opinions and strategies developed externally to the culture of the ATO. Moreover, the Committee recognised a need to expand the base of responsibility for the taxation system's administration. In both the development of administrative policy and in the implementation of specific taxation projects, the Committee considered there was significant advantage in drawing on expertise existing outside the ATO's formal administrative structures. The Committee recognised that advisory committees could provide only limited input into general administration. At the same time, the Committee believed that the

complexity of future taxation administration in an international economy would necessarily require the utilisation to the fullest extent possible of all commercial, strategic and organisational skills available both with Australia and overseas."

The problems identified above by Report 326 persist now and *A Strong Foundation* identified the same environmental concerns. Obviously the then Government's inaction on this recommendation in Report 326 has led to constant calls to Government for a review of the management structure of the ATO. These calls will continue as the systemic problems of tax administration and policy development outlined in *A Strong Foundation* and Report 326 cannot be solved unless the accountability and transparency of the ATO is improved with the introduction of a Board of Directors.

Any proposal to review the accountability of the Commissioner of Taxation and the governance of the ATO must draw on overseas experience of tax administration management and draw upon Board of Directors supervising independent Government agencies such as the Australian Prudential Regulatory Authority (APRA).

The NIA recommends that the Review of Business Taxation team and Treasury investigate the role, structure and operation of the APRA Board, as per Part 3 of the Australian Prudential Regulation Authority Act 1998, the IRS Oversight Board and the United Kingdom Board of Inland Revenue with a view to adapting this information to a Board of Directors for the ATO.

A Board of Directors would bring accountability, continuity and expertise to the management and review of the ATO operations improving the ATO's ability to meet community and Government expectations in the administration and implementation of tax law.