

Senate Economics Legislation Committee

Inspector-General of Taxation Bill 2002

Submission No. 17

Submittor: Administrative Review Council
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Attachments? No Attachments

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**ADMINISTRATIVE REVIEW COUNCIL**

Our ref: 02/5409

18 November 2002

Dr Kathleen Dermody
Committee Secretary
Senate Economics Committee
Suite SG.64
Parliament House
Canberra ACT 2600

Dear Dr Dermody,

Inquiry into the Inspector-General of Taxation Bill 2002

Thank you for inviting the Administrative Review Council to make a submission to the Senate Economics Committee in relation to the *Inspector-General of Taxation Bill 2002* (the "Bill"). The Council notes that the Bill was introduced into the House of Representatives on 19 September 2002.

The Council has previously provided comments on the proposed establishment of an office of Inspector-General of Taxation in response to the Government's Consultation Paper, *The Inspector-General of Taxation in the Taxation System*. On 2 July 2002, the Council commented on the proposal in a letter to the Board of the Taxation. In summary, in this letter (copy attached), the Council expressed the view that:

- it was important that the existing legislative powers of the Commonwealth Ombudsman should be preserved and that practical working arrangements be made to avoid potential duplication rather than the use of formal procedures which could result in cumbersome and inefficient administration; and
- the information gathering powers proposed for the office of Inspector-General were wider than necessary for identifying and advising upon systemic tax administration issues and should not encompass gaining confidential information concerning individual taxpayers without their consent.

Wayne Martin QC
Ron McLeod AM
Bill Blick PSM
Robert Cornall
Stephen Gageler SC

Justice Garry Downes AM
Professor David Weisbrot
Christine Charles
Professor Robin Creyke
Patricia Ridley

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In relation to the first of these issues, the Council is of the view that the Bill does not modify the existing legislative powers of the Commonwealth Ombudsman. The function of the Inspector-General is to review systems established by the Australian Taxation Office (ATO) to administer tax laws and report on those reviews (clause 7(1)(a) and (b) of the Bill). The focus of such reviews will be on tax systems rather than individual taxpayer matters or the handling of particular cases.

While under the *Ombudsman Act 1976*, the Commonwealth Ombudsman has the power to deal with systemic issues as well as individual taxation complaints, clause 9(2) of the Bill requires the Inspector-General to consult with the Ombudsman (and the Auditor-General) at least once per year to assist the Inspector-General in setting his or her work program. The Council understands that practical arrangements are to be developed between the Ombudsman and the office of the Inspector-General of Taxation in order to avoid duplication in the matters under investigation by either office.

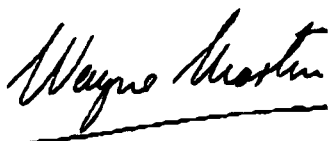
In relation to the second issue, the Council notes that the Bill contains wide information gathering powers. However, as reflected in clause 12, these powers are to be exercised for the purpose of conducting reviews of the tax administration system as set out in clause 7 of the Bill. As a result, while clause 15 provides that the Inspector-General may require the provision of information and documents, this provision is directed at tax officials and former tax officials, not individual taxpayers. There is no provision in the Bill to compel taxpayers to disclose individual information.

The Council also notes the restriction in clause 23 of the Bill on the publication of material provided to the Inspector-General that would allow taxpayers to be identified, and the provision (clause 37) for the protection of the secrecy of individual taxpayer information in the hands of the Inspector-General and his or her staff.

Having regard to the focus of the Bill upon reviews of the tax administration system, to the fact that information relating to individual taxpayers is likely to be incidental to a review of the tax administration system and to the clauses of the Bill identified above, the Council is satisfied that information in relation to individual taxpayers is afforded sufficient protection under the Bill.

The Council trusts that these comments are of assistance to the Committee. Should you have any queries, please do not hesitate to contact Margaret Harrison-Smith of the Council Secretariat in the first instance on telephone number 6250 5800 or by email at margaret.harrison-smith@ag.gov.au.

Yours sincerely,



Wayne Martin QC
President

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**COPY**

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Our ref: 02/5409
Your ref:

2 July 2002

Mr Richard F E Warburton
Chairman
Board of Taxation
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Mr Warburton

INSPECTOR-GENERAL OF TAXATION - CONSULTATION

Thank you for your letter of 29 May 2002 inviting the Administrative Review Council to participate in the Board of Taxation's consultations on the Government's Consultation Paper, *The Inspector-General of Taxation in the Taxation System*. In response to your invitation, the Council offers the following comments on the Consultation Paper.

To the extent that it may supplement existing governance and accountability arrangements in the tax administration area, the Council is supportive of the proposed establishment of the office of Inspector-General of Taxation. However, as recognised in the Consultation Paper, there is the potential for considerable overlap with the role of the Commonwealth Ombudsman.

In the Consultation Paper it is proposed that the major role of the Inspector-General would be as an adviser to the Government on the operation of the tax administration system, and that the Ombudsman would continue to deal with individual taxpayer concerns about particular cases (page 11 of the Consultation Paper). However, as noted in the Consultation Paper, under the *Ombudsman Act 1976*, the Ombudsman also has broad 'own motion' powers enabling the investigation of any administrative matter

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of a Commonwealth Department or prescribed authority, including matters relating to the administration of tax at both individual and systemic levels.

The Council agrees with the suggestion made in the Consultation Paper (page 11) that practical working arrangements would need to be developed between the offices of the Inspector-General and the Ombudsman respectively in relation to systemic tax administration issues and to avoid duplication in the matters under investigation by either office. The Council suggests that this should be possible by agreement between the two offices rather than through formal procedures which could result in cumbersome and inefficient administration.

In saying this, however, the Council would not wish to be considered to be lending its support to a derogation of the Ombudsman's current 'own motion' role with respect to systemic tax administration issues. While it is recognised in the Consultation Paper that 'clear lines of accountability and reporting need to be established between the Inspector-General and the Government' (page 22), as noted above, the major role of the office would be as an adviser to Government. In contrast, the Council considers the role of the Ombudsman to be broader, encompassing also, the oversight and scrutiny of government administration and decision-making, including administration and decision-making in the tax administration area.

In addition, the manner in which the Ombudsman is established emphasises the independence of the office from the Executive Government in the conduct of external reviews of agency decisions and actions. This independence is crucial to the functioning of the office of Ombudsman and to perceptions of that office. The Council would be opposed to any steps which interfered with the standing and role of the Ombudsman in this respect.

Reflecting this distinction, although it is proposed that the Inspector-General would report annually to the Parliament, appear before Parliamentary Committees and table information (page 22), the office would seem primarily to operate by way of report and recommendation to the Minister (page 8). In contrast, in addition to these parliamentary reporting and appearance obligations, the Ombudsman has the capacity pursuant to section 17 of the Ombudsman Act, to report directly to Parliament in circumstances where action requested of a Department or prescribed agency is not taken.

In summary, therefore, the Council is of the view that although it would appear from the Consultation Paper that the role of the Inspector-General in relation to systemic tax administration issues is to be the predominant one, it is important that the existing legislative powers of the Ombudsman should be preserved.

Finally, having regard to the proposed primary focus of the Inspector-General upon identifying and advising upon systemic tax administration issues, the Council is concerned that the information gathering powers proposed for the office (page 22) are wider than necessary for that purpose and should not encompass gaining confidential information concerning individual taxpayers without their consent. That is, it should be possible in our view, for aggregate data relating to complainants to be made available to the Inspector-General without the need to identify personal details.

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The Council trusts that these comments are of assistance. Should you have any queries, please do not hesitate to contact Margaret Harrison-Smith of the Council Secretariat in the first instance on telephone number 6250 5829 or by email at margaret.harrison-smith@ag.gov.au.

Yours sincerely

Wayne Martin

on behalf of the Council