

The Inspector-General of Taxation
in the Taxation System

Consultation Paper

May 2002

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I am pleased to present this Paper — *The Inspector-General of Taxation in the Taxation System* for public consultation.

The Inspector-General of Taxation (Inspector-General) was a key initiative announced by the Government during the 2001 election campaign.

The Australian taxation system is a necessary part of our economic and social infrastructure. It provides the revenue for the delivery of essential public goods and services such as defence, education, health and social welfare. It is also a means through which governments seek to achieve various economic and social objectives. At present, over 12 million individuals and businesses participate directly in the system.

The Government's ongoing objective is to ensure that the taxation system is fair and efficient, and operates to achieve its various policy roles without undue intrusion into the way individuals and businesses conduct their affairs. Where taxpayers feel that their tax affairs have not been dealt with fairly, there need to be appropriate mechanisms to resolve those concerns within a reasonable time frame. The concerns might range from legal interpretations through to the processes by which the Australian Taxation Office (ATO) engages with taxpayers.

Where genuine problems cannot be solved under existing administrative arrangements, the Government is anxious to ensure that appropriate changes to the system can quickly be developed and implemented to provide an improved operating environment for both the ATO and taxpayers, including business.

At present, a number of mechanisms have the aim of ensuring that taxpayers are treated fairly and in accordance with the law. These mechanisms include the Complaints Resolution Service operated by the ATO, the right to lodge an objection to an assessment with the Commissioner of Taxation, the independent complaint handling provided by the Commonwealth Ombudsman and the appeals system available through courts and tribunals.

However, the Government considers that there is scope to improve the existing taxation arrangements to better ensure that the tax system operates fairly for taxpayers.

The Inspector-General will not replace existing points of review but rather will fill gaps that currently exist and help guide further improvements to them. The objective is to enable the Commissioner to continue to independently administer the tax laws, by strengthening the framework for reviewing systemic issues arising from tax administration. It is also a means of improving the way the Commissioner interacts with, and is perceived to interact with, taxpayers.

The services of the Inspector-General can be activated by a written request from the Treasury Ministers or through 'own motion' action. In establishing work program priorities, the Inspector-General would be expected to consult the community and consider requests that have come from other sources including Parliamentary inquiries, the Commissioner of Taxation or taxpayers.

The Inspector-General will be able to refer findings of investigations and recommendations to the Treasury Ministers and, as appropriate, to the Commissioner of Taxation so that suitable action can be taken. Such action may include a policy decision required to change the tax administration law or changes to administrative arrangements.

At the same time, other initiatives to improve the framework of tax administration are being pursued over the course of the coming year. These include:

- A review of governance arrangements for statutory authorities and office holders, including the ATO.

- Specific initiatives addressing problems in tax administration and compliance, including measures to improve the certainty of the system faced by investors in mass-marketed schemes.

The purpose of this consultation paper is to present the key elements of the proposal for an Inspector-General and to seek public comments on the best ways in which the new Office would operate to improve the fairness, efficiency and integrity of the tax system.

The Government is committed to establishing the Inspector-General by the end of 2002. This will require final decisions to be made on the proposal so that any necessary legislation can be introduced in the Spring sittings 2002.

I have requested the Board of Taxation to gather the views of business, taxpayers, the tax advising professions and the community on the Inspector-General proposals raised in this paper. The Board will consider your views and make its own recommendations to me.

I invite and encourage you to participate in consultations to be held by the Board. The Board will separately publicise details on the public consultations it will hold. The Board of Taxation website is www.taxboard.gov.au

HELEN COONAN

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EXECUTIVE SUMMARY

The Inspector-General of Taxation (Inspector-General), a key election commitment, is to be established to strengthen the advice given to government in respect to matters of tax administration and process.

Key features of the proposed office of the Inspector-General are listed below.

- The Inspector-General would become a new independent adviser to Government on the tax administration system, with a focus on possible improvements to the operation of the system, particularly from the perspective of taxpayer compliance.
 - Under present arrangements, the principal source of official advice to Government on tax administration matters is the Commissioner of Taxation.
- The Inspector-General would investigate tax administration issues and make recommendations that help the Commissioner of Taxation and the Government improve the operation of the tax administration system.
 - In establishing work program priorities the Inspector-General would be expected to consult the community — so as to give priority to the issues that, potentially, would have a positive impact on the largest group of taxpayers.
 - Treasury Ministers would have a power to refer matters to the Inspector-General for consideration and advice.
 - Parliamentary inquiries or committees, the Commissioner of Taxation and taxpayers could request the Inspector-General to consider undertaking a review of tax administration matters.
- To undertake this role, the Inspector-General would need broad investigation powers and access to information, but would be bound by confidentiality in respect to any taxpayer information obtained in the course of an investigation.

- The Inspector-General would be established as a statutory authority in the Treasury portfolio, with independence from the Department of the Treasury and the ATO.
- The Inspector-General would report annually to Parliament through the Treasury Ministers.
- The Inspector-General would not have a direct role in handling complaints from individual taxpayers, which would continue to be dealt with by the Commonwealth Ombudsman.
 - An effective working relationship and information sharing arrangements will need to be developed between the Inspector-General and the Commonwealth Ombudsman.
- The Inspector-General would also need to develop a strong working relationship with the Board of Taxation but would not become an additional ex-officio member of the Board.

Submissions are invited on all aspects of this consultation paper. The Government would particularly welcome community views, including written submissions, on the following aspects of the proposal:

- What should be the functions of the Inspector-General?
 - Should the Inspector-General independently advise the Government on tax system-wide issues exclusively, leaving the Commonwealth Ombudsman to continue to deal with individual taxpayers' concerns?
- How should the work priorities of the Inspector-General be determined and how should those priorities be reviewed?
- How should the services of the Inspector-General be activated?
- Should the Inspector-General have broad investigation powers and access to information—with taxpayer information remaining confidential in the hands of the Inspector-General?
- Are the proposed accountability and reporting arrangements for the Inspector-General appropriate?

- How can the working relationship between the Inspector-General and the Commonwealth Ombudsman be organised to operate effectively?
- Should the Inspector-General develop a working relationship with the Board of Taxation without becoming an ex-officio member?

Timetable

The Board of Taxation will be publishing a consultation plan for this Consultation Paper on its web site: www.taxboard.gov.au

Further copies of this Consultation Paper may be obtained:

- from the Treasury's web site: www.treasury.gov.au;
- from the Board of Taxation web site: www.taxboard.gov.au;
- by email to inspectorgeneral@taxboard.gov.au; or
- by telephone from Jodi Wood on (02) 6263 4366.

The closing date for written submissions to the Board of Taxation is 25 June 2002. Submissions may be sent:

by email to:

inspectorgeneral@taxboard.gov.au

by post to:

Inspector-General Project
Board of Taxation Secretariat
C/- The Treasury
Langton Crescent
PARKES ACT 2600

By 19 July 2002, the Board of Taxation will advise the Government on the views of industry and community groups presented throughout the consultation process. Proposed enabling legislation arising from the Government's consideration of the report from the Board is expected to be introduced into Parliament in the 2002 Spring sittings.

THE INSPECTOR-GENERAL OF TAXATION

1 The policy announcement

In the election statement *Securing Australia's Prosperity* the Prime Minister announced that a re-elected Coalition Government would create an Inspector-General of Taxation (Inspector-General) to strengthen the advice given to government in respect to matters of tax administration and process.

It is expected the Inspector-General will act as an advocate for all taxpayers but not on behalf of individual taxpayers. The Ombudsman already investigates complaints for individual taxpayers.

2 Existing points of review

The Executive Government and the Parliament have established a framework for the administration of the taxation system. Under existing arrangements, this framework comprises the following elements.

- Prime responsibility for the administration of taxation laws and regulations enacted by Parliament is borne by the Commissioner of Taxation. The Commissioner is expected to operate impartially and independently from the Executive Government and Parliament.
- Taxpayers have the right to object to the Commissioner's interpretation and application of taxation law, and to seek an appeal through a range of mechanisms (see **Attachment A**). These include:
 - the Commonwealth Ombudsman, who deals with individual taxpayer complaints and can investigate and recommend to the Commissioner of Taxation a change in the administrative decision. However, the Ombudsman does not have a determinative power. The Ombudsman's recommendations can be cast more broadly to deal with an improvement of administrative arrangements; and

- tribunals and courts, which can review a decision of the Commissioner.
- The Commissioner's administration of the taxation system is subject to formal scrutiny by Parliament (for example, through appearances before Parliamentary Committees and the consideration of the Annual Report) and by the Australian National Audit Office (ANAO) (that is, through financial and performance audits).

In recent times, questions have been raised about whether there should be an additional source of advice to the Government on tax administration, other than the Commissioner of Taxation. Currently, the Commissioner is the primary source of advice on tax administration issues, while concurrently being responsible for the development and administration of the taxation system.

3 Why establish the Inspector-General of Taxation?

In recent years it has become apparent that there is scope to improve the responsiveness of the Australian tax system to legitimate concerns of taxpayers arising from their experience with tax administration. The tax system has been the subject of continuing complaints about matters such as delays in processing, the provision of inconsistent advice (for example, through helplines and oral advice), the lack of certainty in taxation outcomes including the audit and litigation programme, and compliance burdens.

In part, this points to a need to make the tax administration system more receptive and attuned to the needs of taxpayers, particularly those of business, by strengthening the working relationship of the Commissioner of Taxation with the taxpaying community.

To meet this gap in the existing governance and accountability arrangements the Government has taken the initiative to establish the office of Inspector-General to identify the systemic problems in tax administration and raise issues promptly as they emerge. Compared with other governance and accountability mechanisms, which focus on a broad range of Commonwealth

activities and administrative systems, the Inspector-General will focus solely on the taxation administration system.

The Inspector-General will function as an independent authority examining problems in the administrative framework of the tax system and bringing them expeditiously to the attention of Government. The Inspector-General will be an active adviser to Government on administrative policy matters.

This advisory role will be similar to that of the Inspector-General of Intelligence and Security who assists Ministers in the oversight and review of compliance with the law by Australian intelligence and security organisations, including by assessing the effectiveness and appropriateness of their procedures.

3.1 How the Inspector-General of Taxation can improve the administrative policy advising and review mechanisms

The Inspector-General will need to develop high level expertise regarding tax administration systems and have independence from other agencies in the taxation system, including the Commissioner of Taxation. In particular, the Inspector-General will need to become expert in understanding the compliance burden faced by taxpayers.

That expertise would be used to provide to the Government an additional, independent source of advice on how the administration of the tax system was functioning and how improvements could be made. Systemic advice could also be provided at the request of the Government when it considers either new or existing tax policy measures that are likely to have significant implications for taxpayer compliance.

The Inspector-General will undertake research and conduct consultations with the community and business enabling it to provide advice to Government on tax administration policy. The ongoing assessment of the taxation administration system would take account (directly or indirectly) of the views of individual taxpayers who voice specific concerns, and community groups and businesses who voice concerns about the general impact of the taxation system on them. Using these and other sources of input, the Inspector-General could form an independent assessment of parts of the taxation system that

impose unnecessary costs on taxpayers. This would help identify issues that the Government and/or the Commissioner of Taxation need to consider as a matter of priority.

The Inspector-General would need to undertake investigations into significant systems issues in order to form an opinion about whether a problem exists and what possible solutions would be appropriate. Investigations on particular aspects of the tax administration system could be decided upon by the Inspector-General, particularly in response to large-scale community concerns on a particular matter. Provision could also be made for matters to be considered on the basis of a reference or request from the Treasury Ministers on behalf of the Government.

Recommendations of the Inspector-General to Ministers would generally be the subject of further policy advising processes, and consultations, as for other areas of policy. These may involve the existing sources of advice, including the ATO, the Board of Taxation or other bodies.

In addition to advising Government, the Inspector-General will be able to resolve issues by direct representation to the Commissioner of Taxation. That is, an investigation might suggest possible administrative solutions that could be implemented by the Commissioner of Taxation, without legislative amendment. The Treasury Ministers would be advised of any recommendations made directly to the Commissioner of Taxation, particularly as the Inspector-General would not have determinative powers. The Inspector-General would maintain contact with the Commissioner of Taxation on the progress being made to implement such recommendations, and provide follow up reports to the Minister as required.

4 Functions of the Inspector-General of Taxation and setting priorities

The Inspector-General would become a new and additional adviser to Government on the tax administration system. The ATO's role in relation to providing advice on these issues will remain unchanged.

The Government will require the Inspector-General to provide ongoing advice on the fairness and efficiency of the administration of the taxation system as it

applies to taxpayers. The objective of this advisory role will be to find ways to help the Commissioner of Taxation and the Government improve the operation of the tax administration system, particularly its interface with taxpayers.

Priority would need to be given to addressing administration issues that will have a positive impact on the largest group of taxpayers. This process will involve several steps:

- The Inspector-General will develop a work program that prioritises the tax administration issues to be investigated. The types of systemic issues that are likely to be examined are those described in section 4.2.
 - Priorities would be set by an initial assessment of the potential magnitude of the issue for taxpayers, for example, how many taxpayers are affected and the individual and collective impact of inefficiencies in that part of the system.
 - Matters referred to the Inspector-General by the Government, through Treasury Ministers, would provide some of the priority matters to be addressed.
 - Priorities would need to be established for other potential agenda items for review which are likely to be identified through a number of mechanisms including:
 - : an understanding of key taxpayer concerns (input could be obtained directly for example, through ongoing consultation processes with taxpayer groups, or indirectly for example, through concerns expressed by taxpayers to the Ombudsman);
 - : research undertaken by the Inspector-General;
 - : requests for review by the Commissioner of Taxation; and
 - : requests for review by Parliamentary inquiries or committees.
- The Inspector-General will investigate issues to either confirm or refute the existence of difficulties in the part of the tax system that was

reviewed. Where difficulties exist, depending on the nature of the problem, the Inspector-General would explore possible solutions in the following ways:

- discussions with the Commissioner of Taxation in the first instance where the issue appears to be able to be resolved through changes in administrative practice;
 - : some issues might be able to be resolved with relatively simple changes to process;
 - : however, the scale of the problem and the possible timeframe for implementing a solution might require the Treasury Ministers to be advised promptly;
- discussions with the Treasury and Treasury Ministers where the issues appear to require changes in policy and legislation.
- In addition to the discussions with Ministers, the Inspector-General will report in writing to Treasury Ministers on investigations proposed or completed, the processes pursued and the outcomes.
 - Discussions will also take place with Treasury Ministers to determine which written reports should be made public or tabled in Parliament.
- Where recommendations made by the Inspector-General following an investigation require consideration of a policy change, existing policy advising processes would be put in train. That is, other official sources of advice, including the ATO and the Board of Taxation would become involved.

The Inspector-General could also be requested to provide advice when the Government considers new tax policy measures that are likely to have significant implications for taxpayer compliance.

In order to fulfil this role, the Inspector-General would need broad investigation powers and access to information. However, as the confidentiality of taxpayer information needs to be preserved to ensure community trust and independence, secrecy provisions will be required to provide some balance to the information access powers. For example, the

Commonwealth Ombudsman is bound by confidentiality requirements (section 35 of the *Ombudsman Act 1976*) as well as the secrecy provisions of other legislation where information is sought from other agencies eg section 16 of the *Income Tax Assessment Act 1936*.

The office of Inspector-General of Taxation would be established as a statutory authority under its own enabling legislation. Possible appointment arrangements are discussed in Section 6.

4.1 The Inspector-General of Taxation and the Commonwealth Ombudsman as partners in reviewing different dimensions of tax administration

Establishing the Inspector-General also requires a focus on how this new statutory office holder would work alongside the Commonwealth Ombudsman who is currently responsible for investigating complaints into matters of Commonwealth administration, including complaints about tax administration. The Ombudsman also has 'own motion' powers that enable the investigation of any administrative matter of a Commonwealth department or prescribed authority.

The major role of the Inspector-General would be defined as an adviser to the Government on the operation of the tax administration system. In this respect the role would not infringe upon the existing role of the Ombudsman, who would continue to deal with taxpayer concerns about individual cases in tax administration – unless the matter needs to be escalated to the Inspector-General for consideration as a significant systemic issue. This would be consistent with the Inspector-General's role in considering and providing advice on systemic issues arising in tax administration.

However, there will be a need to ensure that there is no duplication in the matters under investigation by the Inspector-General and the Ombudsman.

For example, in dealing with complaints from taxpayers, tax agents or other individuals or entities, the Ombudsman might encounter an issue that relates more to how the administration system operates than to the 'fairness' of the

process or judgements in a particular case. These types of cases could be more appropriately dealt with by the Inspector-General.

As a matter of practice, it is likely that the Inspector-General and the Ombudsman will need to determine (perhaps through a protocol) what significant systemic issues should be addressed by the Inspector-General, as any attempt to define this more precisely in legislation might not be practicable. The Ombudsman might be required to notify the Inspector-General when the Ombudsman considers that an aspect of tax administration raises issues that might be more appropriately dealt with by the Inspector-General. The notification might be undertaken through a formal request to 'transfer' the matter to the Inspector-General. The Inspector-General might then be required to respond formally by determining whether to accept the investigation (that is, a power to remove the investigation from the Ombudsman) or whether to remit the matter (that is, to allow the Ombudsman to continue to deal with the issue).

Consideration might also be given to requiring the Ombudsman to formally advise the Inspector-General what 'own motion' investigations the Ombudsman proposes in respect to tax administration.

From a practical perspective, the two offices would need to develop guidelines for how they work together, including cross referrals of issues that more appropriately fall within the functions of the other agency. Arrangements would be needed to transfer the relevant information to the Inspector-General and vice versa. This would require information-sharing powers for both agencies, possibly embodied in the enabling legislation for each agency.

The Inspector-General clearly needs to be informed and involved in significant systems issues on tax administration, enabling them to be in a position to provide rapid advice to the Government and/or the Commissioner.

Alternative options for delineating the role of the Inspector-General and the Ombudsman in respect to tax administration issues are described in **Attachment B**.

4.2 Scope of the Inspector-General of Taxation's systemic reviews

The Inspector-General would be expected to provide advice on a wide range of matters of tax administration, although not on fundamental taxation policy issues such as tax rates and the tax base. The Inspector-General could take on this role and report findings directly to the Treasury Ministers.

The following provides an indication of the types of issues that the Inspector-General could examine and report on. It is intended to be illustrative, without being exhaustive. Further consideration will need to be given to the means of defining the scope of the matters that could be addressed by the Inspector-General.

(a) The self assessment system

This system involves the issuing of assessments on tax returns before they are examined in detail by the ATO, but subject to amendment within specified review periods. The general period of review available to the Commissioner is two years for individuals with simple tax returns and four years for other taxpayers, except in the case of a tax scheme (a six year review period) or tax avoidance due to fraud or evasion (an indefinite period). Although this system provides advantages for both the Commissioner and taxpayers, a disadvantage is that taxpayers can remain uncertain about their final tax liability on a year's return until the relevant review period has lapsed. During this period, taxpayers must take care to retain records relating to transactions relevant to the calculation of their taxable income, as well as elections and notifications. To ensure high levels of compliance with the self assessment requirements, information provided to taxpayers (for example, TaxPack) and the design of tax return forms, need to make obligations and entitlements clear.

- The operation of the self assessment system, its compliance obligations, and the clarity of information provided to taxpayers about their obligations, could be an area of investigation for the Inspector-General. The Inspector-General might also consider the scope, if any, for alternative approaches to self assessment.

(b) The processing system

This system comprises the ATO's processing of tax returns and other information. Taxpayers could expect the tax returns and other information required of them to minimise their compliance costs, for example, to be compatible with information available with their business operations. They could also expect the ATO to act and respond in a timely manner once returns or information have been lodged. In particular, taxpayers need confirmation that they have met their lodgement requirements and that any entitlements are met (for example, receipt of tax refunds).

- The Inspector-General could review the ATO's processing system to test its efficiency and its compliance costs on taxpayers, as well as the focus of such systems on customer needs.

(c) The rulings system

This system comprises public rulings, private rulings and oral rulings, providing the Commissioner's view of an aspect of the tax law. By providing guidance to taxpayers, rulings are an important part of the self assessment system particularly as they are legally binding on the Commissioner of Taxation if they are favourable to a taxpayer whose circumstances are comparable to those dealt with by the ruling.

- For the rulings system to be an effective aspect of the self assessment system, the development of rulings, including the consultation mechanisms adopted, need to be timely and the products need to be clear to taxpayers. The Inspector-General could consider whether the present rulings system is as effective as it could be.

(d) The audit system

This provides the examination of a taxpayer's affairs to determine whether there has been full compliance with tax laws. The advent of the self assessment system has placed greater reliance on audits by the ATO and consequently, the conduct of audits has impacted on a larger proportion of taxpayers.

- The appropriateness of ATO audit guidelines, their application (including between different branches of the ATO) and timeliness, could be reviewed by the Inspector-General. For example, the Inspector-General could examine whether taxpayers are receiving

adequate and clear information about the audit of their tax affairs and being provided with adequate explanations for amendments.

(e) Penalties and interest

This regime provides for the application of standardised penalties throughout the taxation laws.

- The Inspector-General could consider how the penalties and interest provisions were being administered, for example, the use of appropriate calculations, the treatment of objections to the charges and the use of the discretion to remit penalties.

(f) Complaints handling mechanisms

Within the ATO these arrangements are established in accord with the Taxpayers' Charter.

- Whilst the community has an opportunity to provide their views on the Charter, including these mechanisms, in the course of the review that will take place early in 2002, the Inspector-General could consider the ongoing effectiveness and appropriateness of the mechanisms.

(g) Objections and appeals

These mechanisms provide an avenue for dissatisfied taxpayers to challenge an assessment or other taxation decision through objections, review and appeal mechanisms. Taxpayers need to be able to access easily information about these rights and to have the ATO deal with the 'review' processes in a timely manner. Another possible systemic issue that could be of interest to the Inspector-General is the operation of the 'review' mechanisms.

- The Inspector-General might consider the effectiveness of the ATO's internal review systems and the timeliness of review decisions.

(h) Communication systems

There are a range of communication systems in place to inform taxpayers about their taxation obligations and to respond to taxpayers' queries and complaints. One aspect of the system is written correspondence issued by the ATO to taxpayers, often to fulfil a requirement of the tax law to issue written notices to taxpayers or to inform taxpayers of changes to their obligations. This

can result in an individual taxpayer receiving a number of pieces of correspondence from the ATO, particularly if involved in several aspects of the tax system. Both the volume and form of correspondence might reduce the clarity of the messages for the taxpayer or even create confusion. Another aspect of the communication system is the ATO process for dealing with incoming requests from taxpayers — both oral requests (for example, through telephone helplines) or written requests. These systems need to provide timely and accurate responses to taxpayers. The large scale of both the ongoing and incoming communications system provides scope for some delays or difficulties to emerge.

- The Inspector-General could consider the effectiveness and efficiency of the ATO's correspondence and public information systems, and the accuracy and clarity of information provided. This would assess the application of the taxpayer's right, expressed in the Taxpayers' Charter, to expect the ATO to provide advice and information that they can rely on.

(i) Compliance issues

A wide range of requirements are imposed on taxpayers for the provision of information to the ATO, for record keeping and substantiation of expense claims, and for the completion of forms. These arrangements can account for a very high proportion of the overall compliance cost of the tax system, particularly for small business.

- The Inspector-General could consider whether these requirements appropriately balance the need for integrity in the tax system and the benefits of minimising compliance costs.

(j) System impacts on classes of taxpayers

At times, parts of the tax system might impact on a class of taxpayers. A recent example of such case is the treatment of taxpayers who invested in mass marketed schemes during the mid to late 1990s. These mass marketed schemes involved high up front expenditure by investors often financed by limited recourse lending arrangement. (The schemes were designed to attract high marginal tax rate investors who claimed up front deductions for the costs of the underlying business plus interest costs associated with monies borrowed to finance the scheme.)

Under the self assessment system, taxpayers might claim up front deductions without seeking the assurance of a ruling on their investment. These taxpayers face a risk if the Commissioner of Taxation subsequently reopens their assessments after an audit to deny the up front deductions, particularly as the amended assessment will also attract penalties and interest. Possible systems issues in such a case might relate to the length of time taken by the Commissioner of Taxation to complete the audit, the method of informing the taxpayer of the revised tax position and the calculation of penalties and interest.

Other issues that arose in the mass marketed schemes case that might be of the kind considered by an Inspector-General in future could include:

- dealing with evidence of widespread misunderstanding among taxpayers about how self-assessment works. Many taxpayers assumed that because their deductions had not been questioned at the time that their tax return was submitted, they had the imprimatur of the ATO; and
- dealing more effectively and fairly with the possibility that many investors in these schemes believed that they were acting within the law, but may have been misled by more knowledgeable promoters to defraud the tax system.

5 The Inspector-General of Taxation to provide a seamless interface with existing administrative points of review

Currently, individual taxpayers are able to seek redress through the ATO's internal dispute resolution mechanisms, the Ombudsman, the legal system (comprising the Administrative Appeals Tribunal and the Federal Court and the High Court). Furthermore, the Australian National Audit Office scrutinises ATO systems and processes through formal audits. These existing institutions collectively serve as points of review for ATO administrative decisions and processes. However, many taxpayers feel unable to obtain redress through these points of review and have instead sought redress through Members of Parliament and Ministers.

The Board of Taxation, a non-statutory body, is charged with advising the Government on the development and implementation of taxation legislation and the ongoing operation of the tax system.

The Inspector-General will bridge the existing gap between the points of review on the tax administration system and the more high level advisory role undertaken by the Board of Taxation. The Inspector-General will be uniquely placed to comprehend and act upon existing and emergent systemic problems in tax administration. The role of a system-wide watchdog on tax administration is not performed by any of the existing administrative points of review.

To build upon the work and knowledge of the existing review mechanisms, the Inspector-General will need to develop effective working relationships with other participants (see sections 4.1 and 6.9).

5.1 Should the Inspector-General of Taxation also be able to examine individual taxpayer issues?

A natural question is whether the Inspector-General should also have a role in helping individual taxpayers seek appropriate redress. In general, the Commonwealth Ombudsman has been established to investigate individual taxpayer complaints and therefore there is little to be gained from having the Inspector-General also undertake those tasks. Moreover, there would be needless confusion and additional expense incurred by all parties if the Inspector-General was required to deal with individual taxpayer complaints.

It would not be expected that the Inspector-General would gain a power to override decisions made by the Commissioner of Taxation.

In some cases, the problem or concern identified by a taxpayer or group of taxpayers might not have an immediate solution but exposes a more systemic issue that requires a change in practice or the law. The Inspector-General's investigation and advisory role would draw these problems to the attention of the Commissioner of Taxation and/or Treasury Ministers, as well as advise on the possible solutions that would help taxpayers who might otherwise encounter similar problems in the future.

6 Powers and responsibilities

6.1 The Inspector-General of Taxation will be a statutory office within the Treasury portfolio

As the Government expects the Inspector-General to undertake system-wide investigations into tax administration and provide rapid advice to Treasury Ministers, the office will need to be endowed with sufficient authority and status. Therefore, the Inspector-General should be established as a statutory office within the Treasury portfolio. This is also appropriate since the Inspector-General will be reviewing the administrative practice of the Commissioner of Taxation, who is a statutory office holder.

Formally, the Inspector-General will report through the Treasury Ministers and will be independent of both the Department of the Treasury and the Australian Taxation Office.

While the Inspector-General will have a formal advisory role, the Commonwealth Ombudsman already has many of the same statutory powers and functions as envisaged for the Inspector-General (see **Attachment C**). Under the *Ombudsman Act 1976*, the Commonwealth Ombudsman may adopt the title Taxation Ombudsman. The Commonwealth Ombudsman's functions include the ability to consider the complaints of taxpayers and advising Ministers and agencies on administrative policy matters (in practice, Ministers have seldom requested the Ombudsman to investigate administrative matters).

It is possible therefore that any legislation establishing the Inspector-General may be drawn substantially from the Ombudsman Act. However, it will be necessary for the legislation to also provide for Treasury Ministers to request the Inspector-General to undertake an investigation into a tax administrative matter and to report to the Minister on the findings and recommendations of such investigations. The respective roles of the Inspector-General and the Commonwealth Ombudsman will need to be delineated on the basis described in section 4.1.

6.2 Who could best fill the role of Inspector-General of Taxation and how should the appointment be made?

The person appointed to undertake the role of the Inspector-General would be expected to have an excellent technical knowledge of the taxation system and administrative practices more generally. The person appointed will also need to have a very good first hand appreciation of business practices and government processes. The person appointed would also need to be able to maintain an independent view of the tax administration system.

As the role of the Inspector-General is principally as an administrative policy adviser, appointment of the successful candidate would be for a fixed term with the enabling legislation providing for revocation of the appointment for prescribed reasons. Typically, the grounds for removal of a statutory appointee include misbehaviour, physical or mental incapacity and bankruptcy but might also include poor performance in the position, provided the procedure for dismissal is fair.

6.3 How can the powers of the Inspector-General of Taxation be activated?

The services of the Inspector-General can be activated by a written request from the Treasury Ministers. The Inspector-General may also undertake 'own motion' action.

However, the Inspector-General can consider requests to undertake investigations related to either actual or potential systemic issues confronting the tax administration system. It would be expected that such requests would come from a number of sources, including:

- the Commissioner of Taxation — who might draw attention to an aspect of tax administration that might benefit from intensive independent investigation by the Inspector-General;
 - This will enable the Commissioner of Taxation to properly view actual or potential tax administration issues as opportunities rather

than as threats, and it should promote healthy co-operation between these two key statutory office holders.

- Parliamentary committees — where inquiry processes suggest that further consideration is required of particular tax administration issues; and
- Representations from taxpayers and taxpayer groups.

Such requests would need to be considered as part of the Inspector-General's work programme with prioritisation of resources allocated on the basis described in section 4.

The Ombudsman would also refer matters to the Inspector-General in the manner described in section 4.1.

It is not envisaged that the Board of Taxation be able to directly request the services of the Inspector-General as it is itself an advisory body reporting to the Treasurer. The Board of Taxation would, however, be able to draw the Inspector-General's attention to any matter that it considers appropriate.

6.4 To whom can the Inspector-General of Taxation refer findings and recommendations?

The Inspector-General will be able to refer findings of investigations and recommendations to the Treasury Ministers and the Commissioner of Taxation so that appropriate action can be taken. Such action may include a policy decision required to change the tax administration law or changes to administrative arrangements. Where new policy issues are suggested through the recommendations of the Inspector-General, Treasury Ministers might seek the involvement of other bodies, including the Board of Taxation.

The findings and recommendations would be published in a manner that is consistent with the secrecy provisions of the *Income Tax Assessment Act 1936*. That is, no taxpayer information would be disclosed in a report produced by the Inspector-General, even if the Inspector-General obtained such information in the course of an investigation as the basis for developing an understanding of the tax system.

6.5 Accountability and reporting

Clear lines of accountability and reporting need to be established between the Inspector-General and the Government and to Parliament. The Inspector-General will report annually to Parliament through the Treasury Ministers. The Inspector-General would also appear as necessary before Parliamentary Committees and table information as appropriate, as do other statutory office holders.

The Treasury Ministers may also decide to table other reports prepared by the Inspector-General.

6.6 Powers to obtain information

Information access powers could be based on those of the Commonwealth Ombudsman (see **Attachment C**).

This would entail the Inspector-General gaining confidential access to information from taxpayers and the right to seek and receive information directly from the ATO on administration matters. However, taxpayer information would not be able to be disclosed to Ministers or included in reports. This is consistent with the provision of the *Inspector-General of Intelligence and Security Act 1986* (section 22(3)) that precludes information acquired from the Commissioner of Taxation being disclosed in a report provided to the responsible Minister.

On administrative policy matters, the Inspector-General could act on an 'own motion' basis similar to the Ombudsman or upon references from Ministers.

The Inspector-General would build knowledge on the taxation administration system, including related administration systems, for example, the family assistance system.

6.7 How the Inspector-General of Taxation might gather information

The Inspector-General would be expected to obtain information from specially convened public meetings and in private meetings with taxpayers and their

representatives. Furthermore, the Inspector-General will be able to seek any required information from the Commissioner of Taxation and exchange information with other relevant agencies, including the Commonwealth Ombudsman.

Direct interchange with those affected by tax administration is vital to ensuring the Inspector-General receives a first-hand account of systemic issues.

The legislation will need to provide the Inspector-General, as well as those bringing complaints or information to the Inspector-General, with protection from civil actions, similar to that provided to the Ombudsman (section 37 of the *Ombudsman Act 1976*) and the Inspector-General of Intelligence and Security (section 33 of the *Inspector-General of Intelligence and Security Act 1986*).

6.8 Advisory and investigation capabilities

The Inspector-General would need to have the capacity to undertake research into administrative best practice. This would guide the Inspector-General in making appropriate recommendations on systemic issues and help frame advice provided to the Government on taxation administration issues.

The Office of the Inspector-General would need to recruit staff that are capable of investigating systemic issues arising in tax administration. The powers established in the enabling legislation would need to support this investigation role.

The Inspector-General would also be expected to develop and maintain relationships with industry and community groups that were representative of taxpayers' views on the administrative arrangements. This ongoing consultation process would provide an indicator of some areas of public concern and help shape the priorities for investigation.

6.9 Relationship with the Board of Taxation

Consideration will need to be given as to whether the Inspector-General should be an ex-officio member of the Board of Taxation. The Board of Taxation provides a source of non-official policy advice to Treasury Ministers on a wide range of tax policy and administration matters. The chairman and majority of members of the Board are appointed from business, the tax

advising professions and community organisations. Current ex-officio members are the Secretary to the Treasury, the Commissioner of Taxation and the Chief Parliamentary Counsel.

Were the Inspector-General to be appointed to the Board of Taxation there could be a perceived conflict of interest in having both the Commissioner of Taxation and the Inspector-General as members of the same Board.

Moreover, the Inspector-General's role in the tax system is somewhat distinct from the role of the Board of Taxation. Unlike the Board of Taxation, the Inspector-General will not be focussing on tax policy advice. To preserve these distinct roles and to ensure clarity of purpose and accountability, the Inspector-General should not be appointed to the Board of Taxation.

Nevertheless, a strong working relationship between the Inspector-General and the Board of Taxation would need to be developed so that matters of common interest about the tax system can be pursued.

The creation of the office of Inspector-General also requires consideration to be given to whether the broad charter of the Board of Taxation needs to be recast to remove any potential overlaps in respective roles.

Taxpayers' rights of redress within the tax system

There are a number of channels by which taxpayers can seek to resolve disputes with the ATO. The existing problem resolution and appeals mechanisms within the tax system are described below.

Taxpayers' rights

The rights and obligations and the service and other standards taxpayers can expect from the ATO are outlined in the Taxpayers' Charter. Taxpayers can expect the ATO to:

- treat them fairly and reasonably;
- treat them as being honest in their tax affairs unless they act otherwise;
- be accountable for what it does;
- offer them professional service and assistance to help them to understand and meet their tax obligations;
- respect their privacy;
- keep the information it holds about them confidential, in accordance with the law;
- give them access to information it holds about them, in accordance with the law;
- explain to them decisions it makes about their tax affairs;
- accept that they can be represented by a person of their choice and get advice about their tax affairs;
- give them advice and information they can rely on;
- help them to minimise their costs in complying with the tax laws; and

- if they are not satisfied with the ATO's decisions or actions, they have the right to an independent review from outside the ATO, including the right to complain to the Commonwealth Ombudsman.

The Taxpayers' Charter creates no new rights, but it contains many rights, which are legally enforceable either through existing legislation or through common law principles, which would be applied or upheld by the courts.

Explanation of decisions

Under the *Administrative Decisions (Judicial Review) Act 1977* taxpayers have the right to obtain, free of charge, a written statement detailing the reasons for a range of decisions made by the ATO about their tax affairs. For example, a statement could be obtained regarding reasons for a decision on a taxpayer's application for an extension of time to pay a tax debt. The right to a statement of reasons does not, however, apply to decisions relating to assessments.

In relation to Freedom of Information requests, the *Freedom of Information Act 1982* gives taxpayers the right to be given a written explanation for reasons for ATO decisions.

Taxpayers also have the right to be given an explanation or reasons for decisions that are the subject of an application for review by the Administrative Appeals Tribunal.

Rights of review, objection and appeal

Where taxpayers are not satisfied with an ATO decision or action, for example they believe the ATO has made a mistake, not complied with the law, interpreted or applied the law incorrectly, or otherwise not met the expectations stated above, there are many avenues of review available. The law gives taxpayers the right to obtain a review of most decisions the ATO makes about their tax affairs, including those made about private rulings, assessments, a request for the issue of a tax file number, requests for extensions of time, penalties and requests for information under the *Freedom of Information Act 1982*. Taxpayers also have the right of review of a range of administrative actions by the ATO, including the conduct of audits and debt collection action. A review may be conducted by the ATO and/or by an independent, external body such as the Administrative Appeals Tribunal, the Federal Court or the Commonwealth Ombudsman.

Reviews conducted by the ATO

Internal review by the ATO

As set out in the Taxpayers' Charter, at a taxpayer's request the ATO will review any of its decisions and actions in relation to that taxpayer and try to resolve any problems quickly and informally. To do this, the taxpayer can contact the person or area handling their case.

Complaints

When the ATO makes a decision about a person's tax affairs it will inform the taxpayer about their rights and obligations in relation to that decision. Contact details are also provided in case the taxpayer has any queries or needs more information.

If the taxpayer is still not satisfied they can lodge a complaint. The ATO's complaints handling process conforms with the Complaints Handling standard, the *Client Service Charter Principles* produced by the Department of Finance and Administration and the Commonwealth Ombudsman's Guide to complaints handling.

In the first instance the ATO attempts to have complaints resolved directly by the ATO area concerned. Where the complaint cannot be resolved at this point the ATO offers an internal complaints service, independent of the business areas known as the Problem Resolution Service. When a complaint is escalated to this level, a case manager is assigned to work with the relevant area of the ATO to resolve that complaint.

The provision of this service recognises that whilst complaints should generally be resolved directly by the area involved, an independent review process should also be available when required.

Whilst taxpayers do have the right to an informal review or lodge a complaint, they are also encouraged to pursue and protect their formal review rights.

Complex case resolution

As well as the Problem Resolution Service, the ATO offers Complex Case Resolution. This is an additional resolution service for practitioners, established to resolve administrative or practice issues as opposed to technical

ones. In particular, it is a case management system for difficult and complex issues experienced by practitioners.

Issue resolution program

A complaint resolution service for tax practitioners is also one of the main functions provided through the ATO Issue Resolution Program. The role of the Issue Resolution Program is to assist in managing the relationship of tax practitioners and the ATO. Specifically, it manages the day-to-day issues affecting tax practitioners (mainly the result of a failure in ATO processes) and identifies patterns from issues to provide useful feedback to the ATO.

Review of large case audit issues

In addition to taxpayers' legal rights of review, they can request the ATO to conduct a review of the position adopted on disputed technical issues during an audit. Such a review may be requested where:

- the taxpayer can clearly demonstrate the probability that the creation of the debt arising from the unresolved dispute would have a serious financial or market impact on him; or
- the disputed primary tax, credit or rebate in relation to an individual unresolved issue exceeds \$250,000 or the proposed adjustment to carry forward losses exceeds \$500,000.

Normally this review is undertaken prior to the issue of any assessments as a result of the audit.

Time frames for lodging a request for review apply.

Legal right of review by the ATO

In most circumstances taxpayers also have the right under the law to ask the ATO for a review. There are time limits for applying for such a review.

A review by the ATO is free of charge except in relation to FOI decisions.

The review is conducted by a tax officer who was not involved in the original decision, except where the matter involves the interpretation or application of the law and the ATO's position on the law has been established. In these cases,

officers with special expertise who were involved in determining the ATO's position may also be involved in the review.

The ATO has a practice of publishing edited versions of private rulings. The edited version is first sent to the taxpayer. If the taxpayer does not agree that this version should be published he may request a review. Such a review involves a referral by the ATO to an independent panel called the Publication Advisory Committee for its consideration and recommendation to the ATO.

Where taxpayers believe their assessments are wrong, they may write to the ATO and request an amendment. If taxpayers are not satisfied with the ATO's decision they do not have any rights under the law to dispute this decision. They can, however, lodge an objection against the original assessment or an amended assessment, where one has been issued.

Taxpayers have the right under the law to object against a range of decisions that the ATO makes about their tax affairs. This includes decisions relating to assessments, penalties, private rulings and sales tax refunds. Objections must be in writing and should explain the taxpayer's grounds for objection. The ATO will then conduct a review considering all the available facts.

In most circumstances, taxpayers have the right to request a review by the ATO if they do not agree with the decision it has made on their Freedom of Information request. An internal review is not available in some very limited circumstances, for example if the initial decision was made by the Commissioner of Taxation personally.

[Review from outside the ATO](#)

The law gives taxpayers the right to obtain an independent, external review of most decisions the ATO makes about taxpayers' tax affairs. The law sets fees and time limits for applying for a review by a tribunal or a court.

Taxpayers do not have a legal right of review where the ATO refuses to remit interest imposed in respect of an underpayment of tax.

[Small Taxation Claims Tribunal](#)

The Small Taxation Claims Tribunal, which is part of the Administrative Appeals Tribunal, provides an inexpensive, quick and independent review where the amount of tax in dispute is less than \$5,000.

Taxpayers may apply to the Small Taxation Claims Tribunal for review of decisions by the ATO relating to assessments or penalties, or objections against an assessment or decision.

Administrative Appeals Tribunal

As with the Small Taxation Claims Tribunal, taxpayers may apply to the Administrative Appeals Tribunal for review of decisions by the ATO relating to assessments or penalties, or objections against an assessment or decision.

Taxpayers may also apply to the Administrative Appeals Tribunal for review of Freedom of Information decisions made by the ATO.

Federal Court

As an alternative to a review by the Administrative Appeals Tribunal, it may be possible for taxpayers to appeal directly to the Federal Court. Taxpayers can apply to the Federal Court for a review of decisions by the ATO relating to assessments or penalties, objections against an assessment or decision, or Freedom of Information requests.

In addition, taxpayers may appeal to the Federal Court (on a question of law only) against a Small Taxation Claims Tribunal or an Administrative Appeals Tribunal decision.

A further appeal to the Full Federal Court may be made against a decision of a single judge of the Federal Court.

A wide range of ATO decisions may also be reviewed by the Federal Court under the Administrative Decisions (Judicial Review) Act. The grounds for review of a decision include a breach of the rules of natural justice, an improper exercise of power or an error of law.

The Federal Court can also consider the situation where the ATO has failed to make a decision and direct that the decision be made.

High Court

An appeal against a decision of the Full Federal Court lies to the High Court, but only with special leave of the High Court.

The Commonwealth Ombudsman's Office

Additionally, the law gives taxpayers the right to complain to the Commonwealth Ombudsman about a range of administrative actions taken by the ATO including debt collection action, the conduct of audits and delays in decision making. Taxpayers may also request that the Ombudsman investigate complaints about the ATO's handling of Freedom of Information requests. Also, where taxpayers are dissatisfied with the way the ATO has handled a complaint, the Ombudsman may be able to investigate the problem. The Ombudsman has broad powers to investigate taxpayers' complaints. Investigations are independent, impartial, informal, private and free of charge.

The Ombudsman's office includes a specialist tax team providing focused attention to citizens' complaints about the actions of the ATO. Generally, the Ombudsman will not investigate complaints where he determines that the taxpayer has not given the ATO the opportunity to try to rectify the perceived problem in the first instance.

The role and powers of the Ombudsman are detailed in **Attachment C**.

The Federal Privacy Commissioner

The law also gives taxpayers the right to complain to the Privacy Commissioner if they think that the ATO has breached the Privacy Act in dealing with their personal information. If taxpayers are unable to resolve the matter with the ATO, the Privacy Commissioner may be able to assist, free of charge. The Privacy Commissioner has broad powers to investigate complaints about breaches of privacy. These powers include obtaining information and documents and examining witnesses.

Other options for giving effect to the Inspector-General of Taxation

This Attachment covers alternative ways of delivering the two roles — adviser on tax administration systems and dealing with taxpayer issues. Essentially, these two roles would be delivered by one agency (as canvassed in this Attachment) or divided between two — a new office of Inspector-General and the office of the Commonwealth Ombudsman (as canvassed in the main paper).

This Attachment should be read in conjunction with **Attachment C**: The role and powers of the Commonwealth Ombudsman.

The Inspector-General subsumes the tax role of the Commonwealth Ombudsman

This approach will transfer the existing role of the Ombudsman on taxation matters to the Inspector-General. That is, the Inspector-General would undertake two functions:

- act as a new, independent adviser to the Government on tax administration systems, including through undertaking investigations of significant systemic issues;
 - this role would be undertaken in the manner described in Section 4;
- help individual taxpayers deal with their concerns about the treatment of their tax affairs by the ATO;
 - this would include directing taxpayers to existing dispute resolution mechanisms, raising specific taxpayer concerns with the ATO and undertaking investigations into those complaints that suggest systemic problems.

To undertake this dual role, the Inspector-General would need to be given similar powers and functions as those of the Ombudsman in relation to taxation matters, including access to information that is to be treated as

confidential beyond the investigation. The existing resources of the Ombudsman devoted to this task would also be transferred to the Inspector-General.

The Inspector-General would be established as a statutory authority under its own enabling legislation. Possible powers and appointment arrangements are discussed in Section 6 in the paper.

The main advantages of this option are:

- the combination of roles would provide the Inspector-General with a rich basis for direct understanding of the experience of taxpayers with the administration of taxation laws;
- there would be a single agency for taxpayers to seek an independent non-judicial review of administrative decisions or to consider other concerns with taxation administration matters;
- difficulties arising from the possible overlap in roles between the Inspector-General of Taxation and the Ombudsman would be avoided; and
- the existing staff and other resources of the Ombudsman devoted to taxation matters would provide an immediate pool of expertise as a foundation upon which to build the new office of the Inspector-General.

The main disadvantages of this option are:

- taxpayer confusion arising from the excising of tax matters from a single, well established and well known office of the Ombudsman where all manner of administrative complaints can be taken;
- a perceived loss of independence in reviewing taxpayer complaints, as the Ombudsman is within the portfolio of Prime Minister and Cabinet while the Inspector-General will (in all likelihood) be within the Treasury portfolio (as is the ATO); and
- the role as an adviser and investigator of significant systemic issues envisaged for the Inspector-General may be overwhelmed by the volume of individual complaints that must be handled.

Legislation would be required to establish the Inspector-General and to amend the *Ombudsman Act 1976* to excise the role with respect to taxation administration.

The new Inspector-General role is undertaken by the Ombudsman

The role specified for the Inspector-General could become a part of the office of the Ombudsman, possibly as a specific purpose Deputy Ombudsman. That is, the Ombudsman would become the adviser on tax administration systems and dealing with taxpayer issues.

Under this option the existing role of the Ombudsman would be supplemented with a formal advisory role to the Government on taxation administration. The *Ombudsman Act 1976* would need to be amended to make it clear that Treasury Ministers could request the Inspector-General to investigate, and report on, systemic tax administration issues.

The legislation would also need to be amended to specifically provide for the appointment of the Inspector-General of Taxation as Deputy Ombudsman, with rules on appointment and dismissal consistent with those of the existing Act, that is, appointment by the Governor General and dismissal by Parliament (see **Attachment C**).

Under this option, there would be dual relationship between the Ombudsman's office and the Government:

- The Ombudsman would continue to present an Annual Report to Parliament through the Prime Minister which would report on all activities, including those of the Inspector-General;
- The Inspector-General would take references on tax administration matters from Treasury Ministers and report to those Ministers on the investigations and the path to finding solutions.

The main advantages of this option are:

- efficiencies of scale would be achieved because the Inspector-General would be able to draw on existing facilities, including offices in each capital city and telephone enquiry lines;

- the knowledge and expertise of the taxation system that has been developed by the Ombudsman would be available to the Inspector-General; and
- difficulties arising from the possible overlap in roles between the Inspector-General and the Ombudsman would be avoided.

The main disadvantages of this option are:

- a public perception that there has been no change in the accountability arrangements for the tax administration system, and that there will be little difference in reducing taxpayers' difficulties with the system;
- it would create a dual reporting structure, with the Inspector-General reporting to Treasury Ministers on tax administration issues, and the Ombudsman reporting through the Prime Minister on the full suite of responsibilities of the Office;
- the availability of resources to undertake the advisory role and investigate significant systemic issues might be unavoidably absorbed by having to deal with individual taxpayer concerns; and
- some taxpayers might be concerned about bringing their complaints to the Inspector-General if they perceive the additional role to create a closer relationship with the Government, ie they will see this as a reduction in the independence of the Ombudsman.

International experience with agencies that undertake this type of role is described in **Attachment D**.

The role and powers of the Commonwealth Ombudsman

It seems that the role and powers of an Inspector-General can be based largely on those of the Commonwealth Ombudsman. This is because the Ombudsman's role of investigating complaints from taxpayers¹ and others dealing with Commonwealth agencies.

If the Commonwealth Ombudsman's operating model is found suitable for the Inspector-General in respect to the proposed advocacy role, it could be expanded to provide more completely for the advisory role. A brief description of the powers and operation of the Ombudsman follows, drawn from the *Ombudsman Act 1976*.

Functions of the Ombudsman

- The Ombudsman may investigate a complaint made in relation to a matter of administration about **action** taken by most Commonwealth Departments or prescribed authorities (an agency). An action includes an agency's making of a decision or recommendation, formulation of a proposal and the failure or refusal to do the above;
 - A complaint may be made orally or in writing and the person complaining is protected from civil liability.
 - Where the complaint is in relation to more than one agency or issue, a coordinated investigation may be undertaken.
 - The Act provides discretion not to investigate a complaint for example, if it can and should be subject to some other kind of review by an agency or review body.

¹ The Ombudsman's increased role in dealing with taxation administration issues was sought by the Joint Committee of Public Accounts in 1993. In 2000-01, 3354 tax complaints were received, representing 16 per cent of total complaints received. The Ombudsman can also use the title Taxation Ombudsman.

- The Ombudsman may of his own motion investigate a matter of administration of an agency.
- The Ombudsman is not authorised to investigate certain matters, including action taken by a Minister or a Judge or action taken in respect to employment in the public service.
- The Ombudsman can conduct preliminary inquiries to assess whether a matter can and should be investigated.
- Before commencing to investigate an action, the Ombudsman shall inform the principal officer of the agency of the investigation.
- The Ombudsman shall inform the responsible Minister (that is, the Minister administering the agency being investigated) of the investigation for example, if he wishes to use the compulsive powers to gain information. The Ombudsman must consult the Minister before forming a final opinion if the Minister so requests.
- If the Ombudsman proposes to express a critical opinion, he must give the person or agency concerned the opportunity to make a submission so as to ensure the substance and fairness of the opinion.
- The Ombudsman must disclose information suggesting a breach of duty or misconduct by an official to the head of the responsible agency or Minister.

Powers

- The Ombudsman has information gathering powers that include:
 - Requiring a person whom the Ombudsman believes to be capable of furnishing information or producing documents or relevant records to furnish such information;
 - Requiring an agency to produce documents or records or an officer able to answer questions relevant to the investigation;
 - To take possession, copy or take extracts from documents or records provided; and

- Require a person believed to be capable of giving information relevant to an investigation to answer questions relevant to the investigation;
- The Ombudsman's right to access certain information is blocked if the Attorney-General certifies that it would be contrary to the public interest.
- For the purposes of an investigation, the Ombudsman has the power to enter any place occupied by an agency and inspect any documents;
 - the Act nominates a few exceptions that require approval by the responsible Minister or that can be blocked by the Attorney-General if security or defence is prejudiced.

Relationships with agencies

- The Ombudsman has informal arrangements with agencies to deal with most matters at operational level for preliminary inquiries, notifying an investigation and completing or declining an investigation.
- The Ombudsman has regular dealings with agency heads on substantive matters.
- The Ombudsman can cease an investigation and refer a complaint to another investigative agency such as the Privacy Commissioner or the Public Service Commissioner.

Reporting and disclosure requirements

- After completing an investigation, the Ombudsman **may** report to an agency with recommendations to rectify the error, cancel or vary its decision, issue an apology, provide reasons to the complainant for the decisions or provide compensation. The report must provide reasons for concluding that there has been an administrative error.
 - The report may also recommend that a rule of law, provision or practice be altered.

- Most investigations conclude without formal reports because agencies accept suggestions to rectify a problem or provide an acceptable explanation for their actions.
- The Ombudsman shall provide a copy of the report to the responsible Minister and invite the agency to respond to the report, including on the action it proposes to take.
- If there is not an adequate response from the agency within a reasonable time, the Ombudsman may inform the Prime Minister and report to Parliament.
- The Ombudsman shall submit to Parliament through the Prime Minister an annual report and may submit other operational reports.
- The Ombudsman may disclose information in the public interest and where required for the work of the office but is otherwise subject to secrecy and confidentiality requirements.

Appointment

- The Ombudsman and Deputy Ombudsmen are appointed by the Governor General for fixed renewable terms and can be removed only after a vote by Parliament.
 - Three Deputy Ombudsmen may be appointed (only one position is filled at present).
 - The Prime Minister can designate the Deputy Ombudsman (Defence Force).

International Comparisons

United States

Treasury Inspector-General for Tax Administration (TIGTA)

- In 1999, the US established the Treasury Inspector-General for Tax Administration (TIGTA) to provide independent oversight of Internal Revenue Service (IRS) activities, that is, tax administration. TIGTA recommends policy for activities designed to promote efficiency and effectiveness in the administration of tax laws and to prevent and detect fraud and abuse in IRS programmes and operations. To undertake this role, and oversee the implementation of organisational changes within the IRS designed to enhance taxpayer protection and improve IRS integrity, TIGTA undertakes comprehensive performance and financial audit and investigative programmes.
- Organisationally, TIGTA is part of Treasury but is independent.
- TIGTA is separate to the Treasury Office of Inspector-General which oversees other Treasury bureaus.

United Kingdom

The UK Parliamentary Ombudsman

- The UK also has a Parliamentary Ombudsman founded through the *Parliamentary Commissioner Act 1967*.
- The Ombudsman may investigate any administrative action taken by or on behalf of a government department or other body within the jurisdiction of the Ombudsman (defined in legislation).
- The Ombudsman is independent of Government, is an Officer of Parliament appointed by Her Majesty the Queen, on the recommendation of the Prime Minister, and reports to Parliament.
- Complaints must be referred by Members of Parliament.

- The Ombudsman can consider any complaint that maladministration by central government agencies and certain other bodies that has caused someone to suffer an 'injustice'. This includes: avoidable delay, faulty procedures or failing to follow correct procedures, not informing you of your rights of appeal, unfairness, bias or prejudice, misleading or inadequate advice, discourtesy and failure to apologise for errors, mistakes in handling claims and not offering an adequate remedy where one is due.
- The Ombudsman cannot investigate: complaints about government policy or the content of legislation; the investigation of crime, judges' decisions or matters relating to national security; decisions about whether to begin court proceedings; contractual or commercial transactions; complaints about commercial or contractual transactions; and matters which carry a right of appeal to a tribunal or court of law.

The Adjudicator's Office

- The Adjudicator's Office was established by Inland Revenue to look at complaints about the way things have been handled by that department, including the National Insurance Contributions Office and the Valuation Office Agency. The Adjudicator's Office now also looks at complaints about Customs and Excise and the Public Guardianship Office. The complaints the Adjudicator's Office look at include mistakes, delays, poor or misleading advice, staff attitude or behaviour, how departments have exercised discretion and how requests for information are dealt with.
- The jurisdiction of the Adjudicator's Office is limited to the Inland Revenue, and those bodies that have opted to have their handling of complaints considered impartially by the Adjudicator. The Adjudicator's Office is funded proportionately by each of those bodies and is staffed partly by people on loan from each of those bodies and partly by direct recruitment.
- There is no statutory basis for the Adjudicator's Office and no requirement that complaints be put to the office, in preference to issues being raised with the Member of Parliament for consideration by the Ombudsman.

- The Adjudicator **cannot** look at matters about the law; matters that can be considered by a Tribunal; matters where someone is in dispute with Inland Revenue or Customs and Excise about the amount of tax or VAT which they have to pay; or something that can be dealt with by an appeal. The Adjudicator cannot change or influence a decision about someone's tax affairs made by the General Commissioner, Special Commissioners or the Courts, nor can it look at complaints that have been, or are being, investigated by the Ombudsman. The Adjudicator also does not deal with complaints about Government policy.
- However, there may be 'handling' issues associated with some of these matters, where for example, the taxpayer feels Inland Revenue staff have been rude. The Adjudicator will not usually look at this until the appeal or investigation is concluded.
- When investigating a complaint, the Adjudicator's Office settles complaints either by mediation or by recommendation letter. If it is unable to be resolved through mediation, the Adjudicator will set out in a letter to the complainant his/her opinion and findings about the complaint and what, if anything, she recommends the organisation should do to resolve the matter. This is copied to organisations.
 - Settlement may involve an offer of redress in the form of compensation or an apology.

New Zealand

- New Zealand does not have an equivalent to the Inspector-General.
- It has a Parliamentary Ombudsman.

Canada

- Policy responsibility for tax administration matters lies with the Canadian Customs and Revenue Agency (CCRA), an agency similar to the ATO.
- Canada does not have an equivalent to the Inspector-General. Canada's Ombudsman Offices are set up by Provincial Governments and there is no national Ombudsman

- However, Canada does have a comprehensive dispute resolution system for tax remittances. If a taxpayer wishes to dispute an assessment resulting from an audit, the Appeals Branch of the CCRA will initially review the assessment. If the taxpayer wishes to take the matter further, the taxpayer can appear before the Tax Court of Canada, an independent judicial body who has exclusive original jurisdiction to hear and determine references and appeals on tax matters. The Canadian Federal and Supreme Courts can subsequently hear the matter.