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6 March 2006

Mr Russell Chafer
Committee Secretary
Joint Committee of Public Accounts and Audit
Parliament House
CANBERRA ACT 2600

Dear Mr Chafer

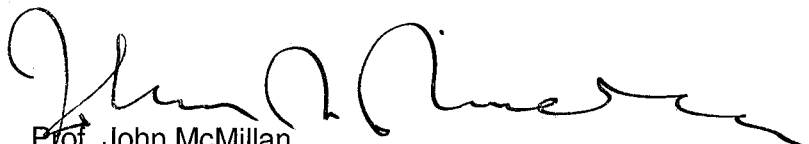
**OMBUDSMAN'S SUBMISSION TO THE JOINT COMMITTEE OF PUBLIC ACCOUNTS
AND AUDIT INQUIRY INTO TAXATION ADMINISTRATION IN AUSTRALIA**

Please find attached my submission to the Joint Committee of Public Accounts and Audit inquiry into taxation administration in Australia.

My submission outlines the views of my office in relation to the subject-matter of the inquiry and notes some general themes that I consider to be of importance in any consideration of tax administration in Australia. The comments and observations outlined in this submission are based on the experience of my office in dealing with tax complaints, and the results of our Own Motion investigations.

Thank you for the opportunity to provide a submission to the Committee. I hope that you will find the submission to be balanced and considered, and that it provides some useful insight into my office's general approach to, and perspectives on, Australian tax administration. I would welcome the opportunity to discuss the submission directly with members, as necessary or appropriate. If you or your staff have any queries about any of the above matters, please do not hesitate to contact Mr Damien Browne on (02) 6276 0156.

Yours sincerely,



Prof. John McMillan
Commonwealth and Taxation Ombudsman

Commonwealth and Taxation Ombudsman

Submission to the Joint Committee of Public Accounts and Audit

Inquiry into Taxation Matters

Outline

Following the 1993 inquiry of the Joint Committee of Public Accounts and Audit (JCPAA), the Taxation Ombudsman was established in 1995 as a key mechanism in correcting perceived imbalances between the powers of the Australian Taxation office (ATO) and taxpayers. The function of Taxation Ombudsman was conferred on the Commonwealth Ombudsman.

Since the establishment of the Taxation Ombudsman, my office has received approximately 22,000 tax complaints. We generally receive between 1,500 to 2,000 tax complaints annually.

We do not investigate all the complaints we receive. Where we do so, we focus upon identifying and facilitating practical remedies and resolutions, with a secondary focus on identifying administrative deficiency.

We sometimes initiate Own Motion investigations on broader questions of administration, and issue public reports and formal recommendations aimed at improving administration.

The comments and observations outlined in this submission are based on the experience of my office in dealing with tax complaints, and the results of our Own Motion investigations.

The following key issues frequently arise in our investigations:

- The inevitable complexity of tax legislation in today's world;
- The need for administrative systems and review processes to curb the consequences of that legislative complexity; and
- The need for continuing improvement in ATO processes, particularly in relation to its educational and information strategies and programs.

This submission addresses these issues through a few themes:

- Striking a balance between legislative complexity and administrative simplicity;
- Education and understanding as key components to the ATO's compliance regime;
- Addressing individual taxpayer circumstances through responsive complaint and review processes; and
- Facilitating common standards and practices across the ATO.

These themes are discussed in the context of specific areas of ATO activity, such as the imposition of penalties, the rulings regime, the Pay As You Go (PAYG) system and the Fringe Benefits Tax (FBT).

Introduction

As Commonwealth and Taxation Ombudsman, I welcome the JCPAA inquiry into a wide range of tax matters. Its inquiry is a valuable addition to the external oversight of the ATO's administration of the tax system by my own and other agencies.

The work of the Taxation Ombudsman focuses on handling and investigating complaints from taxpayers and tax professionals with respect to administrative actions of the ATO. A complaint can be defined as an expression of dissatisfaction by the complainant or a grievance with an organisation's policies, procedures, charges, employees and agents, quality of service or product. Generally, complainants to the Taxation Ombudsman are seeking some specific redress or remedy in response to a specific ATO action. We do not investigate all the complaints that we receive. Where we do so, most of our investigations are relatively informal and often involve negotiating practical solutions to individual problems. This reflects a recent emphasis in our work away from a focus on making findings of administrative deficiency, towards a focus on the practical remedies and assistance that we can provide to people. I am also empowered to conduct Own Motion investigations, which generally focus on broader questions of administration, and which tend to result in the issue of public reports and formal recommendations aimed at improving administrative policies and procedures.

A more detailed description of the Taxation Ombudsman's role and functions is set out in Attachment A.

In the 10 years that the Commonwealth Ombudsman has discharged the Taxation Ombudsman function, we have observed much progress and many improvements in the ATO. These include: the introduction of an effective complaints handling process in the ATO; increased responsiveness to taxpayers and their representatives; improvements in the quality of ATO systems, change management and relationship management practices; and a more sophisticated approach to solving the problems that befall taxpayers, be they individuals or broader demographic and professional groups. We have developed a productive working relationship with the ATO and engage in regular liaison to encourage continuous improvement in these areas.

The experience of my office in dealing with tax complaints forms the basis of my observations and comments. For the sake of convenience and clarity, I have structured my submission along themes that I consider to be of key importance to the effective and fair administration of Australian taxation legislation. This arrangement generally corresponds with the subject matter of the JCPAA inquiry.

I also draw attention in this submission to the broader contextual and thematic aspects of the ATO's activities, so as to assist the JCPAA in reaching a balanced assessment of the ATO's administration of a complex legislative scheme. In evaluating taxation administration, consideration needs to be given to the objectives of the legislation that the ATO administers, the legal, commercial and other administrative realities within which taxation law operates, and the perceptions of tax stakeholders that colour and inform interpretations and assessments of the ATO's administration. Therefore, my submission commences with a general thematic discussion of the notion of complexity and self-assessment before moving to a more detailed discussion of specific areas of the JCPAA's inquiry, drawing from the insights gleaned from complaints to my office.

Striking the right balance between complexity and simplification

An overriding theme I emphasise at the outset is the need to strike a balance in both tax legislation and administration, between notions of complexity and remedial simplification.

Since 1986–87 Australia has operated a system of self-assessment of income tax, under which taxpayers' returns are accepted at face value in the first instance. Following the initial assessment, the ATO may within a prescribed period require the taxpayer to verify the accuracy of the return. The introduction of self-assessment made fundamental changes to the relationship between taxpayers and the ATO. It obliged taxpayers to determine their tax liability and provided for the 'retrospective' imposition by the ATO of penalties for erroneous returns. Among other things, the change to a self-assessment system required that taxpayers have sufficient knowledge of the tax system to accurately complete their returns, if only by necessary implication. This has raised concerns about the difficulties faced by taxpayers in acquiring such knowledge; the difficulty can be compounded by the apparent complexity of the tax system. In turn this has led to criticisms that self-assessment has created an unequal system, subjecting taxpayers to an onerous tax regime that fails to provide certainty, consistency and transparency. Simplification is often seen as the critical solution.

The Ombudsman's office often receives complaints from taxpayers that clearly illustrate the complexity of Australian tax laws. Taxpayers, tax professionals, academics and commentators often decry complexity¹. In my 2004–05 Annual Report I noted that one of the challenges for those working in the tax field is the complexity of tax law and the tax system. I commented that one of the more useful roles for the Tax Ombudsman is to assist taxpayers to navigate through the system, while suggesting to the ATO ways in which its processes might usefully be simplified. In so doing my focus has not been on broad based legislative or systemic reform. Instead it has been directed towards identifying practical administrative solutions to individual complaints and specific problems².

This is significant. While it would be open for my office to comment upon the complexity of tax legislation, we must take care to retain our focus on complaints resolution and improving administrative processes, and not to usurp the role of Parliament or become involved in the broader political dimensions of tax reform. It is for others to decide whether complexity can be reduced, but we are mindful of the difficulties. A salutary warning is provided by one international tax commentator:

*Lots of people talk about simplifying the tax law. And lots of people agree that simplifying the tax law should be a policy priority. But the problem is that simplification is complicated, and it is politically dangerous work.*³

If complexity is inevitable in tax law to some degree, then simplification may be both difficult to achieve and contradictory. In our view, where complexity is necessary in tax legislation, it must be accompanied or matched by administrative oversight and remedial options that strive for simplification from the perspective of individual taxpayers navigating their way through the tax system.

¹ A measure of the complexity of the Australian tax system involving self-assessment is that Australians are more dependant on tax agents than taxpayers in any other comparable country. See M McKerchar "The Impact of Income Tax Complexity on Practitioners in Australia", Australian Tax Reform, Vol 20, Number 4, 2005, p 529.

² Commonwealth Ombudsman Annual Report 2004–05, p 30.

³ G Guttman quoted in J Braithwaite, *Markets in Vice, Markets in Virtue* (Federation Press, 2005) at p 144.

Thus, I believe it is important to note that legislative complexity is not of itself necessarily a bad thing and that legislative simplification is not always an answer. The somewhat satirical observation *'I hold in my hand 1379 pages of tax simplification'*⁴ is an acute reminder that the very process of tax legislative reform can itself be fraught with technical and other difficulties. For example, it is relatively easy to accept the validity of calls for simplification where legislative reform involves the repeal of 'antiquated and superfluous detail'. Legislative provisions that have become redundant or inoperative might readily be excised from current tax law. However, as some tax observers have noted, this *'will not simplify anyone's life'*⁵.

While clarity and simplicity are admirable goals in legislation and administration, the reality of tax reform may be that the complex nature of our modern life – especially insofar as it involves commercial activities and financial transactions – in some senses mandates a degree of complexity. Nuanced and sophisticated legislation may be required if administrators are to be able to adequately deal with the variety of different taxpayer entities and interactions, and to achieve government objectives of ensuring that taxation contributes sufficient revenue to fund necessary social and community services. It can be generally agreed that the complexity of the modern world both informs and reflects tax law, however, this begs questions as to what levels of simplification are desirable, achievable and beneficial.

If tax law is overly prescriptive, it offers little scope for administrators to take into account an individual taxpayer's circumstances, or to address matters unforeseen by law-makers. While prescriptive systems provide for certainty, consistency and equity, this leads often to numerous rules (at the cost of simplicity) and fairly rigid or narrow decision-making. Alternatively, less structured legislative schemes may appear more simple, and provide decision-makers with more discretion and flexibility to accommodate a wider variety of taxpayer circumstances. However, this can be at the expense of certainty, equity and consistency as it often permits the 'intrusion' of individualistic and subjective elements, leading to somewhat 'variable' decision-making. Thus, while complexity has some clear disadvantages, we must acknowledge the factors that have led to it. This in turn should inform appropriate responses. In my view, this is likely to involve administrative processes that are as simple and straightforward as possible, accompanied by adequate and effective complaints and review mechanisms to provide for individual taxpayer redress.

McKerchar's study of the impact of income tax complexity on tax practitioners in Australia is informative and illuminating about the duality of tax complexity⁶. She indicates that complexity is a source of both satisfaction and dissatisfaction. Practitioners were pleased to be able to find solutions to complex issues for their clients. At the same time they feared providing inaccurate or misleading advice. She identified a view that it was not the law that was difficult and problematic, but acquiring knowledge of the 'sheer volume' of law and rulings. Tax practitioners were concerned about the rate of change, but differed in the solutions they would advocate to address the issue. The more serious suggestions included simplification, along with a cessation of constant minor changes (tinkering). Reflecting upon these strands, McKerchar identified that:

*There was a clear pattern emerging ... that reducing the volume of legislation would not be sufficient to address income tax complexity, but that a reduction in terms of tax knowledge (the whole body of technical information) would be more effective.*⁷

⁴ DL Latta quoted in J Braithwaite, *op. cit.*, p 144.

⁵ T Greco, editorial comment, *Taxpayer*, Issue 13, 2005/06, 23 January 2006, p 194.

⁶ M McKerchar, above n1 at p 550

⁷ M McKerchar, *op.cit.*

More significantly, she also acknowledged a duality to the problem. The rulings, determinations and practice statements that added certainty and reduced ambiguity were prompted to a degree by the tax profession. However, subsequently the profession has acknowledged that rulings remain ambiguous, certainty is not always possible, and that ambiguity of itself prompts conservative taxpayer decision-making and increased taxpayer compliance.

Thus, the potential of legislative reform to decrease complexity must be considered against the utility of other options to address some key aspects of tax administration, such as voluntary compliance. For my office, this means identifying options for the ATO that can improve and enhance levels of taxpayer and tax professional knowledge, and foster community attitudes and values that support tax administration – that is, beliefs or perceptions that tax is necessary, equitable, and obligatory.

My office generally tries to address complaints relating to, or involving, complexity by attempting to explain to the complainant the broader legislative context to the ATO's actions and its relevant administrative processes. As part of this, we clarify with the complainant his or her own responsibilities and obligations as a taxpayer, drawing to the complainant's attention relevant complaints mechanisms and review options, and where appropriate, making recommendations to the ATO to improve its processes. The latter may involve suggestions for making ATO processes simpler and ensuring that the ATO provides adequate information to taxpayers so that they can better understand the taxation process.

Compliance issues

Education and understanding

The ATO's compliance activities are an area about which the Ombudsman's office receives a substantial number of complaints – generally over five hundred complaints each year (or about a third of all tax complaints). Most complaints relate to assessment, audit and recovery action. The investigation of complaints is undertaken in a context that acknowledges the purpose and object of the ATO's compliance regime, which is as much about education and deterrence as it is about the collection and protection of government revenue. In a self-assessment environment, voluntary compliance is a vital component. While this depends in part on the taxpaying community having confidence in the ATO, it also rests in large measure upon the taxpayer community being aware of its obligations, and deciding to engage in lawful, ethical and compliant behaviour. In my view, education and deterrence by the ATO have significant roles in facilitating such outcomes.

In the Commonwealth Ombudsman 2000–01 Annual Report, my predecessor noted that an emerging trend from complaints about the ATO's handling of mass-marketed scheme cases was that complainant investors did not appreciate how self-assessment worked, nor had their advisers necessarily properly informed them. The Commissioner was asked to consider how the ATO might promote greater awareness of taxpayer obligations under the self-assessment system⁸. The ATO has regularly consulted with this office over the last few years in relation to this issue, particularly in relation to the ATO's review of the Taxpayers' Charter, the content of each year's *TaxPack*, and in some of the more routine reviews of ATO correspondence, notices and other communications.

⁸ Commonwealth Ombudsman Annual Report 2000–01, p 23.

Although we have seen many improvements in the information the ATO provides to the public about the self-assessment system, it is also fair to say that many of the complaints we receive continue to suggest that many taxpayers remain unaware of what self-assessment means for them. This may reflect both a limited public understanding of government as well as a specific lack of understanding of the tax system.

A particular observation I would make is that taxpayers do not appear to have a good understanding and appreciation of the kinds of compliance action to which they can be subjected by the ATO. It is apparent that taxpayers do not always have a good understanding of ATO processes and government objectives, notwithstanding some important advances in this area, particularly in relation to the ATO's Compliance Program.

The ATO's Compliance Program is an attempt to provide the taxpaying community with more detailed information about the ATO's compliance responsibilities, strategies and actions. There are four prongs to the ATO's approach to compliance – understanding taxpayer behaviour, building community partnerships, increased ATO flexibility to encourage and support compliance, and increased regulatory options to enforce compliance. The ATO's approach to compliance appears nuanced and flexible, and at the same time provides an effective framework for the collection of revenue.

The ATO has made its last four Compliance Programs available to the public. The annual publication of the Compliance Program always generates considerable media attention, and is clearly a significant tool for any tax professionals. A key objective in the ATO's publication of an annual Compliance Program is to educate the taxpaying community and the tax profession about the ATO's perception of current compliance risks and its strategies to address those risks. By sending a clear message to the public and the profession, the ATO hopes that taxpayers will become more aware of the risks associated with non-compliance, leading to greater voluntary compliance. The annual publication of the Compliance Program is a significant development towards transparent, clear and accountable administrative action informed by a graduated and measured approach to non-compliance.

The ATO's commitment to an open and effective voluntary compliance regime is also illustrated in its "Easier, cheaper and more personalised program". The aim of this program is to reduce the burden of compliance and to remove as many of the unnecessary administrative impediments to voluntary compliance as possible. In our experience, one of the most effective elements of this program has been the further development of the ATO's online services, including the Tax Agents Portal. By enabling tax agents and business taxpayers to directly access ATO accounts for lodgments and to make payments, the ATO has cut down on the number of interactions between ATO staff and taxpayers, sped up transaction times, and provided greater information and certainty to taxpayers.

The ATO's Compliance Program is underpinned by the ATO's Compliance Model, the 'enforcement pyramid'⁹. Essentially, recalcitrant or persistent non-compliant taxpayers are located at the top of the pyramid while what may be described as 'petty' or 'one-off' non-compliant taxpayers are placed towards the bottom. Those at the bottom of the pyramid are encouraged to engage in cooperative compliance, while those at the apex are subjected to progressively more severe sanctions in the face of persistent non-compliance.

⁹ Braithwaite describes the model as an example of the incorporation of 'responsive regulation' (J Braithwaite, above n1 at p 71).

The Compliance Model is also publicly available and readily accessible. It involves substantial communication with the taxpaying community to ensure clearer expectations and understandings of compliance obligations.

We often see this model in operation in relation to ATO debt collection activity. In essence, the more a taxpayer is willing to do the right thing in meeting debts and lodgment obligations, the more the ATO will work with the taxpayer to assist compliance. The less cooperative the taxpayer, the more the ATO will resort to using the full force of the law to recover the debt. Individual taxpayers are afforded individual consideration with regard to their tax history and conduct. For example, taxpayers who have poor compliance histories have less chance of generous treatment in relation to payment arrangements. Similarly, if a taxpayer is considered to be a risk to the revenue, the ATO is likely to adopt a more robust approach to debt recovery, including an increased possibility of legal action to recover the debt. This approach appears fair and effective, and balances the needs of the individual against those of the community as a whole.

Getting the balance right – addressing individual taxpayer circumstances through responsive review and complaint mechanisms

The ATO can most effectively address an individual taxpayer's circumstances within the complex legislation it administers, by developing relatively simple or unambiguous administrative processes and practices. Some of these – such as review options - may need a legislative basis. However established, the administrative processes need to be as clear and straightforward as possible.

Taxation law is a mixture of prescriptive rules and discretionary provisions: the former offer certainty but lack flexibility, while the latter provide flexibility but create concerns about arbitrary decision-making and conduct. The tension between prescription and discretion can be lessened by responsive administrative mechanisms that adequately cater for those taxpayers and transactions that might be described as unusual, problematic or extraordinary. That is, taxpayers need to have ready access to information about how they can make a complaint about the ATO's actions and have their complaint considered by the ATO at first instance. If still dissatisfied, taxpayers need clear options by which they may have their concerns addressed by external review and accountability bodies, such as tribunals and courts.

In the debt collection context, ATO procedures and processes provide that every taxpayer subject to ATO debt action receives a 'standard' letter in the first instance, advising of the taxpayer's debt and possible ATO recovery action. Subsequent letters from the ATO generally involve a more detailed consideration of the taxpayer's individual circumstances, which can result in some variation to the standard ATO recovery action. In general terms, it is difficult to be critical of this process in that it deals efficiently with the bulk of cases while also dealing with individual differences. However, my office receives many complaints about the substantive aspects of ATO decision-making and conduct as applied to an individual's circumstances. These complainants often suggest that the ATO has failed to properly consider their circumstances.

It can be accepted that the large number of taxpayers and the sheer volume of taxable transactions favour a relatively prescriptive regulatory system. At the same time fairness requires that appropriate options exist to address individual grievances and provide for fairness and equity. This can be done by an agency being open and responsive to counter arguments, giving them genuine and realistic consideration, and having review and complaints procedures that give aggrieved persons an opportunity to put forward their

case, and have their circumstances addressed, considered and decided. There seems little more that can be done from a structural perspective.

In this regard, the current tax system provides for a number of review options for taxpayers. For example, taxpayers aggrieved by an assessment have the ability to: seek amended assessments; lodge objections to assessments and amended assessments; seek review by the Administrative Appeals Tribunal (AAT) of ATO objection decisions; and appeal AAT decisions to the Federal Court and ultimately, the High Court¹⁰. Taxpayers also have a direct right of review to the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977* in respect of many other ATO decisions. The ATO also has a well-developed internal complaints and informal review process, enabling taxpayers to pursue a wide range of concerns about ATO administrative actions that might not otherwise be subject to formal review or that can more effectively be addressed without the need for formal review. Taxpayers concerned about any aspect of the ATO's administration can also complain to the Ombudsman. Taxpayers therefore have internal and external review options as well as internal and external complaints options.

From where we sit, there do not appear to be any significant problems with the more formal review processes within tax law. It is particularly useful that an increasing number of taxation matters can now be reviewed through the objection and appeal process. In our experience, the objection process provides many taxpayers with a better understanding of how a particular taxation decision has been reached, as well as giving them a better opportunity to put their individual circumstances before the ATO. While my office occasionally deals with complaints about delays in that process, this does not appear to be a significant systemic issue, and any delay can generally be satisfactorily resolved through the complaints process. We do not generally become involved in disputes about objection decisions, given the ready availability of a further right of external review through either the Administrative Appeals Tribunal or the Federal Court. Our anecdotal experience would suggest that many taxpayers are adequately able to resolve their concerns through the objection process without the need to take the matter further.

While I acknowledge that there can be limitations in some taxpayers' ability or capacity to pursue a matter through litigation, I would suggest that this is a problem broader than tax. Where matters do go to litigation, there do not appear to be any problems or issues that can be attributed to unfair, unreasonable or otherwise defective tax administration. One observation my office made in relation to the Inspector-General of Taxation's (I-GT) Review into Aspects of the ATO's Management of Litigation was that, in our experience, the pattern of appeal decisions did not appear to support a view that the ATO has been engaging in 'inappropriate litigation'. Commentators have noted that very few cases involving tax issues have been appealed to the High Court in recent years, and of those that have, the taxpayer has rarely been granted leave to appeal. Moreover, where leave has been granted, the Commissioner has been successful in the great majority of cases¹¹. We believe this pattern is also reflected in the lower courts.

In addition to formal objection and review processes, the ATO has an internal complaints handling service. My office has had substantial interaction with the ATO over many years concerning its development of an effective internal complaints handling process¹². Our

¹⁰ See section Part IVC of the *Taxation Administration Act 1953*, especially ss14ZL to 14ZZS.

¹¹ Allan Myers QC, "Tax Avoidance and the High Court since Sir Garfield Barwick", Inaugural Melbourne Law School Tax Lecture, 12 April 2005.

¹² See Commonwealth Ombudsman Annual Report 2000-2001 at pp 47-48, Annual Report 2001-2002 at pp 62-64, Annual Report 2002-2003 at pp 37-38, Annual Report 2003-2004 at p 34, Annual Report 2004-2005 at p 30.

general expectation is that agencies should have adequate mechanisms in place for handling complaints. If we are to refer a complainant back to an agency for resolution, we must have confidence in the agency's ability to handle the complaint in an appropriately sensitive, considered and effective manner. We therefore must have confidence in the ATO's complaints-handling processes and in the ATO's ability to provide practical remedies where possible. I see an effective internal ATO complaints mechanism as a valuable complement to the role played by my office.

An initial step taken by my office in 1999 was the publication of an Interim Report on the ATO Complaint Handling processes. Its initial focus was on the ATO's Problem Resolution Service, which had been in operation since 1997. The Interim Report identified variability in the handling of complaints by ATO Business Lines and made recommendations to improve consistency and response times. In subsequent years my office developed additional protocols relating to the referral of complaints to the ATO, regular liaison to discuss particular cases and systemic issues, and a series of briefings on topical issues.

In 2001 the Ombudsman initiated an Own Motion investigation into ATO complaint handling, culminating in six main recommendations to the ATO, centred around the development of a single complaint system and the extension of a relationship-management approach to complaint handling. In May 2003, the Commissioner indicated that he had accepted all our recommendations and that the ATO was actively working towards their implementation. A new centralised complaint recording, tracking and reporting system commenced operation in November 2004 with the expectation that it would significantly improve the ATO's complaint handling ability. As part of this, my office introduced new protocols with the ATO designed to improve response times and provide for direct referral by my office to the ATO. In April 2005, the Commissioner wrote to me detailing the measures the ATO had taken since July 2003 to give effect to our recommendations (see Attachment B).

I am pleased to say that the ATO's co-operative approach has resulted in a system reflecting best practice complaint management principles and a consistent approach across the ATO. For example, the new centralised complaint-recording system of November 2004 included an area dedicated to resolving systemic issues. While we will continue to monitor this area, the ATO's responsiveness suggests a cultural commitment to complaints resolution within the agency. This commitment from within the ATO perhaps offers taxpayers better remedial options in some ways than externally imposed rules. While there remains room for improvement, the ATO's progress in this area should be acknowledged. For example, we understand that approximately 66% of all complainants referred to the ATO receive their preferred outcome as a result of ATO complaints processing action. This suggests that the ATO does not always get it right at first instance. However, it also suggests that the ATO has mechanisms in place that provide appropriate remedial processes.

While it may be impossible to create a perfect system, the ATO has worked hard to provide for fair and responsive remedial mechanisms to ameliorate any mistakes that do occur. The bulk of complaints we see now going to the ATO are perhaps best described as 'low level' or 'modest' in nature. Few complaints raise concerns of broader systemic or other significance to this office. We see very few complaints that reveal issues of institutional bias or bad faith. Most of our complaints relate to 'simple errors', such as concerns about delay or ambiguity in ATO correspondence or accounting errors, or relatively straightforward disputes about tax assessments or a taxpayer's level of debt. Often, these illustrate the difficulties people have understanding ATO processes and their own obligations; in this regard, tax complaints are no different to many other types of complaint the office receives.

The rulings regime

The Australian self-assessment system relies in large measure on voluntary compliance – on taxpayers ‘doing the right thing’. This objective is reinforced where the rules are sufficiently clear that they can be understood by taxpayers.

The private and public components of the rulings regime appear to be a significant attempt at getting the balance right between certainty and flexibility, and also between addressing individual circumstances while providing for a generally consistent ‘issues’ based approach. Generally, we receive few complaints about rulings – less than twenty complaints each year (or about 1% of all tax complaints). Where we have more recently examined issues surrounding the rulings regime, we have not discerned any issues of systemic concern.

For example, the I-GT commenced a review into potential revenue bias in large complex private binding rulings in August 2005 and sought input from my office. We advised that the complaints we had received during the relevant review period disclosed no evidence suggesting systemic bias associated with complex Private Binding Rulings (PBRs) issued by the ATO. Our experience indicated that the issues brought to our attention arise more from concerns about the process – most notably delay – than concern about the substance or content of rulings. Further, we noted that one of the more significant issues for our office in this area was that the ATO sometimes chose not to issue rulings. After investigating complaints that the ATO had refused to issue PBRs in a number of cases, the Commissioner accepted the argument that penalties were inappropriate in cases where taxpayers had sought, but been refused, PBRs. The Commissioner agreed to the remission of penalties in these cases.

Tax administration in Australia is currently undergoing a process of significant reform. A prominent reform is to improve the way in which the ATO’s advice systems function by rendering that advice more accessible, timely and certain across a wider range of cases. The reforms, some of which flow from the Treasury Review of Aspects of Income Tax Self-Assessment (ROSA), are intended to improve the ATO advisings framework, reduce the scope for uncertainty in relation to assessments, achieve a more balanced legislative penalty regime, improve the processes associated with the development of tax policy and law, and ensure that taxpayers have a better understanding of their obligations under self-assessment¹³. I am pleased that some of my office’s inquiries and recommendations in relation to individual cases have now been complemented by some of the current structural reforms. These reflect the ATO’s commitment to ongoing improvements to tax legislation that address the kinds of concerns raised with my office.

For example, from the beginning of this year the *Tax Laws Amendment (Improvements to Self-Assessment) Act (No 2) 2005* has attempted to provide for greater availability of rulings to taxpayers on a broad range of matters, including tax administration, procedure and collection. The Act introduced provisions designed to facilitate faster rulings by the Commissioner as well as providing a review option in cases of delay. It also gives taxpayers greater protection from penalties and interest charges where they have acted in reliance on rulings, other advice from the Commissioner or on an ATO general administrative practice. Commentators¹⁴ have applauded the initiatives as restoring ‘some much needed equity in favour of the taxpayer’, being ‘more in line with community

¹³ See Recommendations 2.1–2.25, 3.1–3.10, 4.1–4.6, 5.1–5.6, 6.1–6.4 and 7.1–7.3.

¹⁴ T Greco “Changes to the self-assessment system”, *Taxpayer*, Issue 14 2005/06, 6 February 2006, p 216.

expectations', and providing 'a better balance between protecting taxpayer rights and the integrity of the system'.

The new objection and review rights for the rulings regime allow affected taxpayers the opportunity to have their matters re-considered and reviewed. The reality of modern administration is that 'mistakes' do happen. No administrative system is flawless and no decision-maker is perfect. Acknowledging the inevitability of errors, the appropriate solution appears to be for Parliament to have in place adequate review mechanisms that provide disaffected or aggrieved persons the opportunity to put forward their concerns, have those concerns appropriately addressed and considered, and be advised of the outcomes of that consideration. In our view, the introduction of review options for those dissatisfied with ATO rulings is a good example of structural legislative reform that provides essential protection for individual taxpayers.

The application of common standards of practice across the ATO

Inconsistency in tax administration has been a recurring topic in Ombudsman Annual Reports; we continue to work closely with the ATO to address inconsistencies when we observe them. In many ways, inconsistency is inevitable in an administration involving over 20,000 employees in multiple sites spread across the country, administering thousands of pages of complex law as it relates to over ten million taxpaying entities, involving countless transactions, in an environment of often rapid change and uncertainty. The key is to have a commitment to common standards of practice and a system responsive enough to address inconsistencies when they arise.

In the ten years since the Commonwealth Ombudsman also became the Taxation Ombudsman, we have observed a growing commitment to common standards of practice across the ATO. For example, the ATO has a comprehensive suite of Practice Statements to guide its own officers in the handling of specific matters across the full range of its activities. These guidelines complement the broader public policy documents that guide ATO operations in relation to receivables (predominantly debt and lodgment matters), litigation, prosecution and settlement. These are all available in detail on the ATO website, and form an invaluable resource for taxpayers and tax professionals, as well as for offices such as mine that oversight and review ATO operations.

We have also seen the development of more systems within the ATO for the consistent management of its operations. A good example is the development of a single complaint handling system, to record and track complaints across the ATO. This system has also been connected with a method for managing more systemic issues that might arise from complaints, so that the ATO can both respond effectively to the concerns of an individual taxpayer and explore more systemic solutions that can positively impact on whole groups of taxpayers.

A further helpful development involves the Taxpayers' Charter and the service standards associated with it. These provide an excellent framework within which tax officers can act, and taxpayers and offices like mine can hold them accountable. The Commissioner of Taxation reports on performance against these standards each year, and the reports generally indicate a high level of conformance to the stated targets and standards¹⁵. Where there has been a significant drop in performance, the Taxpayers' Charter provides the ATO and oversight agencies a useful starting point to explore why this might be the case and what can be done to improve performance.

¹⁵ See for example, Commissioner of Taxation, *Annual Report 2004-05*, p 5.

These are just a few examples of the measures we have observed the ATO taking to better deal with issues about common practice. Again, from the perspective of this office, the aim is not to build an administration in which inconsistency is impossible – such a system is likely to be too inflexible to adequately deal with individual circumstances. The aim rather, is to have an administration that works to minimise inconsistency and to act fairly and responsively when inconsistencies are identified.

Settlements and Aggressive Tax Planning

Inconsistency in ATO practices is often alleged in complaints about the ATO's handling of settlements, particularly in cases involving tax avoidance. In our experience, there have been some deficiencies and inconsistencies in the ATO's approach, particularly at the time this office prepared reports into the ATO's administration of the Budplan and Main Camp schemes¹⁶. My office has since observed improvements in ATO practice that have resulted in a more coordinated, consistent and comprehensive approach. Now, the prevailing issue for my office mostly relates to delays in process rather than more 'substantive' concerns such as inequity or arbitrariness in decision-making.

My office has taken a restrained approach in this area. We accept that while settlement proposals and processes fall within our broad jurisdiction, provided the settlement process is reasonably fair, open and equitable, settlement matters involving negotiation are often best left to the parties in dispute.

We have, however, been given the opportunity by the ATO to provide input into its settlement processes. For example, we have commented upon draft Practice Statements with a view to ensuring that taxpayers have an opportunity to be heard and to comment upon matters considered by the ATO to be adverse to them. Our concern is to ensure that individual taxpayers have the opportunity to put forward a case as to why their specific circumstances warrant an individual approach. We have made suggestions on what review rights should exist in relation to settlement processes, including the provision of at least one level of internal review and clear advice about a taxpayer's right to approach the Taxation Ombudsman if dissatisfied with the ATO's actions.

Generally speaking, these suggestions have been accepted and implemented by the ATO. Coupled with the significant advances in relation to the ATO's general compliance practices (such as the ATO Compliance Program), we believe our observations have gone some way to improving the ATO's administration of its settlement processes, particularly as they relate to avoidance schemes. In our view, the area that offers most opportunity for administrative enhancement is in continuing education of the taxpaying community about tax avoidance and evasion.

In this regard, the ANAO report on the ATO's management of aggressive tax planning¹⁷ acknowledged it to be an important issue in tax administration that bears on the integrity, efficiency and effectiveness of the tax system. Aggressive tax planning poses a revenue risk and can affect community confidence in the tax system. As such, the ATO considers aggressive tax planning to be a priority corporate risk. The ANAO found that the

¹⁶ See Commonwealth Ombudsman, *The ATO and Budplan: report of the investigation into the Australian Taxation Office's handling of claims for tax deductions by investors in a mass-marketed tax-effective scheme known as Budplan*, June 1999, and Commonwealth Ombudsman, *The ATO and Main Camp: report of the investigation into the Australian Taxation Office's handling of claims for tax deductions by investors in a mass-marketed tax-effective scheme known as Main Camp*, January 2001.

¹⁷ The Auditor-General Audit Report No.23 2003-04, *The Australian Taxation Office's Management of Aggressive Tax Planning*.

management of aggressive tax planning is a complex, ongoing task involving balancing subjective judgements, legal interpretations and changing community attitudes as to what constitutes aggressive tax planning. In managing aggressive tax planning, the ATO must address technical tax matters, as well as anticipating, shaping and responding to taxpayers' changing attitudes and behaviour.

The ANAO, like this office, accepted that there have been problems in the past with the ATO's management of aggressive tax planning. However, the ANAO also concluded that the ATO has now developed appropriate strategies, structures and processes to effectively manage aggressive tax planning. While there was room for improvement – and the ANAO made five recommendations to this effect – the ANAO's view was that the ATO had responded positively to the problems it had encountered, and had made considerable and significant improvements to its processes since 1999. The ANAO report is generally consistent with the views of this office. It is for this reason, as noted above, that I consider greater attention could be given to taxpayer education and values.

Penalties and Interest Charges

My office receives a large number of complaints about the General Interest Charge (GIC) and other tax penalties – generally around two to three hundred each year (or about 13% of all tax complaints)¹⁸. Most complaints relate to the imposition or level of penalties or interest. We also receive complaints about ATO decisions on the remission of both interest charges and penalties.

The General Interest Charge

The imposition and level of GIC clearly causes community angst. However, it is equally clear that taxation law leaves the ATO with limited scope to mitigate the effect of the GIC on individual taxpayers. There is often little that this office can investigate, as the matter is quite clearly determined by law. Complaints of this kind rarely point to an administrative deficiency or flaw. Instead they often amount to a criticism of the underlying policy objectives or purposes that inform legislation.

The Commissioner has a discretion, delegated to ATO officers, to remit GIC after its imposition. In the absence of any identifiable error in the process of imposing the GIC and the consideration of its discretionary remission, my office generally advises that there is no further role for the Taxation Ombudsman. We understand that while GIC is perceived as unfair in some sections of the community, it reflects deliberate high-level government policy.

In a submission to the I-GT's review of ATO GIC remission practices in late 2003, we observed that an appreciation of the broader historical and policy context of GIC was relevant when evaluating individual disputes between the ATO and taxpayers involving GIC. Similarly, that broader historical context can be relevant to any dispute about remission as part of a settlement arrangement. The I-GT review dealt specifically with the ATO's interaction with groups of taxpayers, particularly participants in Employee Benefit Arrangements (EBAs). The I-GT's report compared the Commissioner's approach to the remission of GIC in different areas of tax administration. The report was generally critical of the Commissioner's 'narrow' approach to remission decisions, particularly in relation to GIC accrued prior to the issuance of amended assessments.

¹⁸ We have not yet received any complaints about the Shortfall Interest Charge.

The Commissioner's response to the I-GT report raised an interesting question as to the responsibility of administrators to address the harsh consequences of legislation. He suggested that the I-GT report appeared to be *'based on the premise that the operation of the current law is inappropriate and that we [the ATO] should compensate for that'*. This raises the issues as to whether ATO administrators bear any responsibility for addressing the consequences of deliberate and considered legislation. This is not an issue the Taxation Ombudsman has generally taken up, regarding it as more a matter for the legislature, or possibly Treasury, as reflected in some of the changes initiated by the Treasury Review of Self Assessment.

It is also important to acknowledge the ATO's positive response to the I-GT review in relation to areas over which it had some responsibility and ability to provide remedies. For example, the ATO undertook a review of its remission guidelines and established a panel of senior tax officers to consider when widely-based settlement offers are appropriate. It invited participants in EBAs to apply for remission of interest and penalties based on their individual circumstances, and prepared guidelines outlining the circumstances that would lead to a remission being granted. We regard this as a tailored and appropriate response.

This office has been consulted by the ATO in relation to better educating the public about the availability of remission of GIC and the guidelines supporting that process. We have also suggested (in our submission to ROSA) that the ATO should explore the use of an application form for remission of GIC (perhaps along similar lines to the recently developed application form for compensation claims).

We also routinely consider complaints about remission decisions, to ensure that the ATO has properly taken into account all relevant circumstances and that the decision is fair and reasonable in light of ATO guidelines and the law. Where a deficiency is identified, we have generally found the ATO to be responsive to our suggestions. In other cases, where we cannot identify any errors, our process of inquiry can be reassuring to taxpayers and highlight whether other options are available to them.

The Shortfall Interest Charge

As the Shortfall Interest Charge (SIC) has only recently been enacted, we have not yet seen how it will operate in practice, nor received any complaints. We have, however, been consulted by the ATO during the process of developing the guidelines on how SIC remission will operate, and have a good understanding of the thinking behind the ATO's approach to SIC.

The introduction of the SIC is an excellent illustration of how complexity in tax law develops. SIC introduces an element of fairness into the system by applying a lower rate of interest to tax shortfalls for that period between when an income tax shortfall amount would originally have been due and when the shortfall is corrected in an amended assessment, than for tax unpaid after the amended assessment has issued. However, the creation of differential levels of interest for different periods but ostensibly the same unpaid tax adds a layer of complexity that was not previously there.

We were pleased to see the ATO develop an approach that ensured its administration of both the SIC and GIC would be as consistent as possible, particularly in relation to remission decisions, and err in favour of grounds more favourable to the taxpayer.

Shortfall and other penalties

Unlike interest charges, the Commissioner has some discretion to impose differential levels of penalty on tax shortfalls depending on the nature of the taxpayer's conduct and whether it was accidental, negligent, reckless or intentional. There are some obvious advantages to this – the scheme takes into account a taxpayer's individual circumstances and some taxpayers will benefit in the sense of being subjected to the lowest shortfall rate. However, such variability and flexibility adds to legislative and procedural complexity for the ATO and taxpayers. It also generates disputes or disagreement over a taxpayer's level of culpability as assessed by the ATO. Despite the general desire for more simplicity, it is safe to assume that those who benefit from lower shortfall penalty rates would prefer that outcome to a single penalty rate and the risk of being characterised as an aggressive tax promoter engaged in deliberate evasion.

The determination of the level of penalties and the broad circumstances in which they should be applied is most properly the responsibility of the Parliament and policy-makers. However, on our observation, the current differential levels of penalty applied by the exercise of judgment informed by fact, law and administrative guidelines is both a fair and reasonable response to individual acts of non-compliance and an effective means of encouraging greater voluntary compliance. Most importantly, the tax system provides an effective and accessible process for challenging any such decisions if a taxpayer believes the imposition of a shortfall penalty to be excessive.

The operation and administration of the Pay As You Go (PAYG) system

My office receives few complaints about the PAYG system – generally less than one hundred complaints each year (or around 5% of all tax complaints). Most complaints relate to the PAYG instalments system. Of these, most raise problems relating to entry and exit timing matters and systems issues. For example, in the Commonwealth Ombudsman's Annual Report 2001–02, my predecessor noted that the office had received complaints raising issues about: entering the system; annual payment elections versus quarterly elections; delays and non-processing of quarterly payments accompanied by erroneous PAYG notices overstating the tax owed or delays in receiving returns; and having payments processed through to exiting the system. Following our investigation of one case, the ATO acknowledged there had been a problem with PAYG election lodgments and contacted the affected taxpayers to advise them of corrections¹⁹.

The PAYG system also appears to impact disproportionately upon certain taxpayer segments, such as retirees who receive lump sums and who, perhaps, are not in the best position to understand the system. For example, in my 2003–04 Annual Report I referred to a complaint where an elderly self-funded retired couple were confused by the wife's inclusion in the PAYG system. Despite contacting the ATO, they did not understand the new system. Following our inquiry the ATO wrote to the wife explaining how the PAYG system applied in her case, setting out the criteria for annual instalments and clarifying the notices that had been sent to her. The case raised issues about: the impact of an ageing population on tax administration; the increasing emphasis on fully or part funded retirement; the complexity of the tax system; and the nature of the self-assessment regime. In the course of our investigation the ATO advised that it had taken steps to provide for increasing support for seniors in the form of a new range of products, services and assistance²⁰.

¹⁹ Commonwealth Ombudsman Annual Report 2001-2002, p 67.

²⁰ Commonwealth Ombudsman Annual Report 2003-2004, p 36.

While one solution might have been to exclude retirees from the system, the incorporation of such a rule would only add to complexity. Although such changes might provide for a more sophisticated approach to the different circumstances in which these demographic sub-groups might find themselves, inevitably this would result in more rules, exceptions or practices, thereby leading to greater complexity. As such, we need to come back to the question of balance and utility. This case reinforced my view that better taxpayer education and awareness strategies may be more useful in reducing taxpayer concerns as represented by the number of complaints my office receives. That is, improved administrative procedures might provide better results than the incorporation of new rules or exceptions.

Fringe Benefits Tax (FBT)

Generally, my office receives few complaints about the administration of Fringe Benefits Tax (FBT) – generally less than 20 complaints each year (or around 1% of all tax complaints). Of these, few raise issues of general significance for administrators. For example, during the 2002–03 financial year, my office dealt with a number of complaints arising from an ATO systems failure that wrongly imposed a debt on around 2000 Centrelink clients²¹. Following our investigation, the ATO manually issued cheques to those people affected and instituted new procedures to prevent such an error from re-occurring. The ‘one-off’ systems based nature of this problem and the limited number of complaints in this area suggests that, generally, the administration of FBT poses few significant issues for most taxpayers and tax professionals.

Conclusions

The Commissioner of Taxation, Mr D’Ascenzo, has recently stated that it is critical that tax administrators support the continuing facilitation of a culture of community voluntary tax compliance. He believes the key is to instil high levels of community confidence in tax administration by, among other things: providing effective, efficient, professional and courteous service; engaging with the community to simplify tax compliance as much as possible; and supporting honest taxpayers by having effective deterrent strategies against significant offenders. In furtherance of this approach, the ATO would focus on consultation, collaboration and co-design with taxpayers and tax professionals, by encouraging feedback, minimising red-tape, and by supporting tax professionals.

Our observations over the ten years’ operation of the Taxation Ombudsman role within the Commonwealth Ombudsman’s office is that the ATO is increasingly committed to providing an administration of the tax system that strives to balance fairly the needs and interests of individual taxpayers with those of the wider community. Most importantly, the ATO has recognised that it will not always get that balance right, and so it has established internal processes that are responsive to the concerns of individual taxpayers, and has encouraged a culture that is open to external scrutiny in relation to both the concerns of individuals and the broader community.

As the only external complaint-handling agency for taxpayers with complaints about the ATO, the Taxation Ombudsman continues to provide a special focus on tax administration, in recognition of the fundamental imbalance that exists between the powers of the ATO and the rights of individual taxpayers. The Taxation Ombudsman also continues to identify systemic issues and remedies arising from individual complaints and works together with other external oversight bodies such as the I-GT and the ANAO to improve aspects of tax

²¹ Commonwealth Ombudsman Annual Report 2002-2003, p 46.

administration. Above all, we continue to work together with taxpayers and the ATO in helping to provide practical solutions to tax problems.

Our observations are drawn from the complaints that we see, and to some extent reflect our own jurisdictional limitations. While this is only a partial frame through which to view the taxation system, the experiences and complaints made by individual taxpayers offer important perspectives on strengths and weaknesses in the taxation system. We trust that this perspective is a valuable contribution to the range of views that will be considered by the JCPAA in its inquiry.

Attachment A

In 1993, the JCPAA conducted an inquiry into ATO operations. Reflecting its concerns about the way these powers were used, and what redress taxpayers had, it recommended, amongst other things, that:

- a taxpayers charter be established to outline taxpayers' rights and obligations in their dealings with the ATO; and
- a statutory position of Taxation Ombudsman be created within my office with sufficient resources to enable taxation complaints to be adequately investigated.

These recommendations stemmed from the JCPAA's perception that a fundamental imbalance existed between the powers of the ATO and the rights of taxpayers. The JCPAA regarded the establishment of a Taxpayers Charter and a Taxation Ombudsman as key mechanisms in correcting the imbalance.

The Government agreed and the *Ombudsman Act 1976* was subsequently amended to enable the Ombudsman to call himself or herself the Taxation Ombudsman with respect to matters concerning the ATO. In 1995 my office established a specialist Tax Team to give more focused attention to taxpayer complaints about the actions of the ATO. The Taxpayers Charter, supported by an internal complaints handling mechanism, was launched by the ATO on 1 July 1997.

The Tax Team consists of a Senior Assistant Ombudsman, known as the Special Tax Adviser, and four full time staff. The Tax Team investigates complaints about the ATO and provides advice to investigating officers about tax matters. In addition to investigating complaints about the ATO, the Tax Team is also the agency specialist for complaints relating to the Tax Agents Board and the Australian Valuation Office.

Since mid-1995 when the specialist Tax Team commenced operation, we have received approximately 22,000 complaints. In 2004-2005, the Taxation Ombudsman received 1,633 complaints, a slight reduction on the previous year's 1,711 complaints. We generally receive between 1,500 and 2,000 complaints annually. In 2000-2001 we received a record 3,354 complaints, of which some 1,039 (or 31%) related to the introduction of the new tax system. Since then the number of complaints to the Taxation Ombudsman annually has marginally, but steadily, decreased to stabilise at between 1,500 to 2,000 complaints per year.



Australian Government
Australian Taxation Office

COMMISSIONER OF TAXATION

322

Professor John McMillan
Commonwealth Ombudsman
GPO Box 442
Canberra ACT 2601

Dear Professor McMillan

Australian Taxation Office Complaint Handling

On 18 March 2004 the then Special Tax Advisor, Philip Moss, requested a report outlining our progress in implementing the recommendations you made following the own motion investigation into the Australian Taxation Office's (ATO) complaint handling systems.

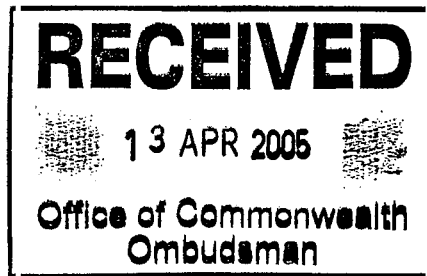
On 25 August 2004 Acting Commissioner D'Ascenzo provided you with a brief outline of our progress and asked the relevant people in the ATO to ensure that all recommendations be fully implemented by the end of the 2004 calendar year.

I am now able to provide final assurance that the recommendations you made have been fully implemented. A brief outline against each of the recommendations is attached.

Yours sincerely

Michael Carmody
COMMISSIONER OF TAXATION

// April 2004



Recommendation 1

That the ATO develop a strategy for implementing best practice "relationship management" within complaint handling across the ATO, including the:

- further development of a complaint-handling process that incorporates elements of key client management; and***
- further development of Alternative Dispute Resolution as an element of, or in partnership with, ATO complaint handling.***

As you noted in your report the relationship between the ATO and the taxpayer is defined by the Taxpayers' Charter. The revised Taxpayers' Charter was released in November 2003.

The Australian National Audit Office (ANAO) has recently completed a performance audit of the Taxpayers' Charter and overall concluded that we are managing our responsibilities under the Charter. The report recognises and acknowledges the commitment we have to our Charter, the work we've done in reviewing and updating it and the practices we have in place that underpin it. The ANAO identified some areas for improvement and made a number of recommendations. We have agreed with all the recommendations some of which are already being implemented.

The ANAO has supported our overall approach to more effectively measuring our performance against the charter principles. Of relevance to our complaints handling is the importance the ANAO has placed on the relationship between ATO Complaints and the Charter. It considers that the complaints information will assist to identify issues relating to Charter performance and improve our reporting and accountability across the Tax Office.

The principles and approaches for effective complaints handling in the ATO, including Alternate Dispute Resolution are being brought together in a Corporate Management Practice Statement on complaint handling. This Practice Statement dictates minimum standards expected in the handling of complaints and further supports the implementation of relationship management better practices. This guidance should be available to all staff in a final form by the end of this month and I trust it provides you with the appropriate level of assurance that we have fully implemented your first recommendation.

We will continue to seek out ways of improving relationship management within complaint handling across the ATO.

Recommendation 2

That ATO Complaints and the Business Lines collaborate to further develop a:

- *system of alerts for possible future complaints, whereby Business Lines are responsible for informing ATO Complaints of the likelihood of any significant increase in future complaints from any new or revised operations;*
- *more co-operative approach to dealing with systemic issues raised by complaints, including a central point for the follow-up of significant systemic matters; and*
- *quality assurance strategy for complaint handling at all levels, including consideration of random performance audits.*

This recommendation has been implemented. Further work is underway to improve parts of the complaints process. This work includes bringing systemic issues into our Issues Management process for the ATO Executive and the Integrity Advisory Committee, ensuring close reporting and monitoring.

An interim manual quality assurance process was introduced from 1 March 2004 for complaint cases completed. Business lines have been undertaking quality assurance reviews since that time. A comprehensive quality assurance process was implemented as part of the new single ATO-wide complaint handling system in November 2004.

To date, the results of quality assurance reviews conducted on cases completed in the new complaints system indicate:

- The 'Contact management' aspects of cases have exceeded the required benchmark.
- Documentation of complaints has improved measurably however further work is being done to meet the required benchmark.
- Further work is required to ensure all complaint issues are identified and addressed.

To ensure continuous improvement in complaints handling processes the learnings are being fed into the project mentioned in Recommendation 5 below.

We are also considering commencing a program of random performance audits.

Recommendation 3

That the ATO adopt a consistent complaint-recording system, capable of tracking complaints, as soon as practicable.

Following a number of delays our new taxpayer complaints system was successfully implemented on 29 November 2004. The system allows for the capture of all correspondence and email complaints as well as phone complaints received through the complaints and tax agent relationship management phone lines. It allows for the

quick distribution of these complaints to the area best equipped to resolve the complaint.

The system provides the ATO with the capability of tracking and managing complaints through the workflow and case management aspects of the system. The system also enables the ATO to effectively manage complaints in accordance with service standard requirements. These features plus the revised work practices that the system supports will significantly improve the experience of clients who complain to the ATO as well as reduce reverse workflows. The system will also improve the ATO's intelligence on complaint issues and their resolution.

I consider this recommendation is now fully implemented. We will continue to identify opportunities for improvements.

Recommendation 4

That the ATO should investigate the past poor performance and more recent improvement in relation to correction of administrative or clerical errors to determine what action, if any, is required to ensure more effective complaint resolution.

This recommendation has been actioned and details were provided in Mr D'Ascenzo's response to you dated 25 August 2004.

Recommendation 5

That all Business Line staff be reminded of the importance of promptly responding to complainants, consistent with the ATO's service standards and commitment to an effective complaint-handling system.

The ATO's service standards for complaints handling are included in the Practice Statement which also provides all staff with the information necessary to manage complaints effectively. The Practice Statement is binding on all ATO officers handling complaints.

The implementation of the new complaints system, including the quality assurance programme (see Recommendation 2 and 3 above) provides the system support to enable effective complaint handling across the ATO. We used the system implementation and training process as an opportunity to reiterate and embed key messages about the importance of promptly responding to all complainants into both training and support material.

A project team, established in February 2005 will develop additional resources and tools such as procedures, guidelines and skilling material required to expand on the principles outlined in the Practice Statement. This team is also reviewing existing materials in the light of information coming from the quality assurance process. The project is expected to be complete by the end of June 2005.

Recommendation 6

That the ATO develop service standards in relation to complaint resolution, including provision for an extension of time where warranted.

We agree with this recommendation and a published service standard for the resolution of complaints has been approved by the Complaints Forum and incorporated into the new complaints system. Our performance against the standard will be reported monthly to the ATO Executive and other stakeholders.

The service standard has also been incorporated into our draft Practice Statement and will be included in the Taxpayers' Charter Explanatory Booklet *Our service standards*.

Ways in which ATO performance against the Good Practice criteria might be improved.

- i) providing complainants with detailed particulars of the steps taken to resolve their complaints;**

A strategy is currently in place to ensure that Client Service Representatives on the Complaints Hotline provide complainants with detailed particulars of the steps taken to resolve their complaint.

See also Recommendation 2, 3 and 5 above.

- ii) providing complainants with better explanations of the reasons behind decisions;**

See Recommendation 2, 3 and 5 above.

- iii) providing complainants with an opportunity to provide any additional information or comments prior to the finalisation of a complaint;**

See Recommendation 2, 3 and 5 above.

- iv) development of an on-line complaint form;**

An on-line complaints form has been developed and trialed on the ATO external website. Minor system problems are expected to be resolved shortly with the full implementation of the on-line complaints form to follow shortly thereafter.

- v) full contact details for ATO Complaints in TaxPack;**

The ATO has long recognised the need for consistency of complaints information and contact details in TaxPack. The complaints wording was changed in 2002 to reflect the name change from the 'Problem Resolution Service' to 'ATO complaints' and to provide full contact details. The same wording has been retained for 2003, 2004 and 2005 thus ensuring consistency.

- vi) developing and maintaining a centralised database for systemic issues; and**

See Recommendation 2 above.

- vii) reinstating the Officer ID policy.**

A Corporate Management Practice Statement on staff identification has been developed and was released on 17 January 2005. A copy is attached for your information.