



COMMONWEALTH OF AUSTRALIA

# Proof Committee Hansard

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

**Reference: Biannual hearing with Commissioner of Taxation**

FRIDAY, 3 OCTOBER 2008

MELBOURNE

**CONDITIONS OF DISTRIBUTION**

This is an uncorrected proof of evidence taken before the committee. It is made available under the condition that it is recognised as such.

BY AUTHORITY OF THE PARLIAMENT

**[PROOF COPY]**



## **INTERNET**

Hansard transcripts of public hearings are made available on the internet when authorised by the committee.

The internet address is:

**<http://www.aph.gov.au/hansard>**

To search the parliamentary database, go to:

**<http://parlinfoweb.aph.gov.au>**

**JOINT STATUTORY  
COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT**

**Friday, 3 October 2008**

**Members:** Ms Grierson (*Chair*), Mr Georgiou (*Deputy Chair*), Senators Mark Bishop, Boyce, Bushby, Feeney and Lundy and Mr Bevis, Mrs Bronwyn Bishop, Mr Bradbury, Mr Briggs, Mr Butler, Ms King, Mr Neumann and Mr Robert

**Members in attendance:** Mrs Bishop, Mr Bradbury, Mr Briggs, Senator Boyce, Senator Feeney, Ms Grierson, Mr Neumann

**Terms of reference for the inquiry:**

To inquire into and report on:

Biannual hearing with Commissioner of Taxation

**WITNESSES**

**BUTLER, Mr David, Second Commissioner, Change Program and IT, Australian Taxation Office ..... 2**

**D’ASCENZO, Mr Michael, Commissioner, Australian Taxation Office..... 2**

**DRUHAN, Ms Sally, Assistant Commissioner, Financial Operations, Australian Taxation Office ..... 2**

**GRANGER, Ms Jennie, Second Commissioner, Compliance, Australian Taxation Office ..... 2**

**KONZA, Mr Mark, Deputy Commissioner, Small and Medium Enterprises, Australian Taxation Office ..... 2**

**QUIGLEY, Mr Bruce, Second Commissioner, Law, Australian Taxation Office ..... 2**



**Committee met at 11.06 am**

**CHAIR (Ms Grierson)**—As chair of the Joint Committee of Public Accounts and Audit I welcome everybody here this morning to the committee's fourth biannual meeting with the Commissioner of Taxation. These meetings serve a number of purposes. From the parliament's perspective we are able to ask the Taxation Office to account for its actions and explain its decisions. The Taxation Office has an opportunity to put its side of the story on tax issues. It can also make suggestions about what government, legislators and the community can do to make the tax system work better. Finally, members of the public can learn more about how their tax dollars are spent and how their tax dollars are collected.

Some of the developments in tax administration since our last meeting with the commissioner in April include the report by the US Senate Committee on Homeland Security and Governmental Affairs on tax haven banks and US tax compliance; the Australian National Audit Office's performance audits on tax havens and data matching; the release of the Taxation Office's compliance program for 2008-09, which focuses on offshore tax havens, organised crime and small business compliance; the Inspector-General of Taxation's review of GST audits of large taxpayers; and I also draw attention to this committee's report on tax administration.

I remind participants that the committee will be looking at policy and administration matters. We are not seeking to act as a review panel for any individual case studies or grievances with the Taxation Office. We understand that the ATO, by law, cannot disclose details of an individual's tax matters.

Before beginning I advise witnesses that the hearings today are legal proceedings of the parliament and warrant the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. The evidence given today will be recorded by Hansard and will attract parliamentary privilege.

I formally welcome the members of our committee. You will note we have some new members, particularly Mr Briggs, who is a new member to our committee. Since we last met there have certainly been further additions to our committee. We have Senator Feeney from Victoria, Mr Neumann and Senator Boyce from Queensland, Ms Bishop, Mr Bradbury and me from New South Wales.

[11.09 am]

**BUTLER, Mr David, Second Commissioner, Change Program and IT, Australian Taxation Office**

**D'ASCENZO, Mr Michael, Commissioner, Australian Taxation Office**

**DRUHAN, Ms Sally, Assistant Commissioner, Financial Operations, Australian Taxation Office**

**GRANGER, Ms Jennie, Second Commissioner, Compliance, Australian Taxation Office**

**KONZA, Mr Mark, Deputy Commissioner, Small and Medium Enterprises, Australian Taxation Office**

**QUIGLEY, Mr Bruce, Second Commissioner, Law, Australian Taxation Office**

**CHAIR**—Welcome. Commissioner, do you wish to make a brief opening statement before we proceed to questions?

**Mr D'Ascenzo**—Since our last appearance we have closed our books for year-end reporting and made a successful start to tax time 2008. We have also welcomed Mr David Butler, formerly New Zealand's Tax Commissioner, back to the Australian tax office as a second commissioner. In that time this committee has published *Report 410—tax administration*. We appreciate the positive and supportive approach taken in the report to our administration. We are currently finalising our formal response to the report. The committee's focus in *Report 410* was primarily on tax administration, and our responsibilities also extend to important aspects of superannuation and to the Australian Business Register.

Nevertheless, at a headline level, in 2007-08 revenue collections were significantly above budget forecasts. We also paid substantial income tax refunds, GST input tax credits, excise grants and social benefits. Importantly, we were able to maintain the positive trend in our independently conducted surveys of tax agent, business and community perceptions. We did this in a difficult year, given our transformational change program and the need to deliver a range of new legislative measures.

In August 2008, we provided the committee with copies of our annual compliance program for the year. We publish the compliance program so that taxpayers know what sorts of transactions we will be focusing on in the coming year and the actions we will take. These include expanding our coverage of income tax compliance issues across the board; a continued strong focus on discouraging the abusive use of tax havens and dodgy tax schemes; wealthy individuals; large business, including global corporate restructures; and unfair cash economy practices. We continued to make it easier for individuals to comply with their tax obligations by expanding e-tax. Around 1.9 million people lodged their 2007 tax return using e-tax and we are seeing a similarly strong take-up for 2008.

Australia's tax and superannuation systems work best when there are high levels of voluntary compliance. We now use around 50 consultative forums with taxpayer, business and tax professional representatives to foster good compliance and to reduce compliance costs. This puts us in a good position to build community commitment to systems that fund public goods and services, deliver social and economic policies, and safeguard retirement income for Australians.

**CHAIR**—Thank you, Commissioner. Would you like to update our committee on your response to the recommendations from our tax report into taxation administration?

**Mr D'Ascenzo**—We are in the process of developing a formal response. We were hopeful to have that response provided to the committee before this session. We have taken on board some of the issues and are already implementing a number of those recommendations and we are hopeful to have that response to the committee in the next month.

**CHAIR**—Do you have any view at this stage on how many of those recommendations you might accept?

**Mr D'Ascenzo**—In terms of accepting the recommendations, most of them will be accepted in full. In relation to others, where we might have some minor qualifications, we will still be trying to progress the thrust and directions of those recommendations.

**CHAIR**—You will understand that in the past we have canvassed several issues. Certainly compliance issues have been considerable. We have also canvassed the superannuation guarantee payments being collected and put aside properly. With the global and domestic downturn that we are seeing, what impact do you think that will have regarding compliance for the ATO?

**Mr D'Ascenzo**—Again, our role is to implement compliance and so the outcome of that in a revenue sense will depend on how much income profits are derived in the Australian economy. But certainly in times where there is any reduction in the economic growth it does put pressure on people in terms of paying their debts, so there could be more pressure with respect to debt collection. Some strong payments were made over the last few years in terms of capital gains tax and certainly reductions in capital gains tax are probably to be expected. Treasury are looking at the ramifications of the economic position as part of their mid-year economic round-up. In terms of tighter economic growth, the task of promoting high levels of voluntary compliance becomes that little bit harder.

**CHAIR**—We have previously discussed self-funded superannuation funds at biannual hearings, and you have expressed concerns regarding the skill level of some of the administrators of those funds and people setting up those funds. Have discussions with APRA and ASIC continued in that area, and if so have there been any outcomes?

**Mr D'Ascenzo**—I think we continue to consult broadly on aspects of superannuation with APRA and ASIC. Basically, our role is to ensure that new trustees are given sufficient information so that they can properly comply with their responsibilities. We have a starter kit prepared for trustees, we seek to implement the new measures that require trustees to certify that they have an understanding of their obligations and we have been in discussion with other agencies and at ministerial level in terms of indicating what we are seeing on the ground.

**CHAIR**—Commissioner, it would be remiss if we did not deal with the US senate committee report *Tax haven banks and US tax compliance*. It has received major attention internationally, of course. Would you like to update the committee on progress with your activities? Last time we met you talked about the Liechtenstein information that had been passed on. You said it would be used. We would like to know what has happened following your access to that information from the LGT Bank in Liechtenstein.

**Mr D'Ascenzo**—The very initial press release indicated that we saw potential revenue of the order of many millions of dollars at risk—I think it was \$100 million—and that we had 20 reviews and investigations in course. That is still currently the position. We have used that information in the course of those audit activities.

**CHAIR**—So that audit activity could take a long time?

**Mr D'Ascenzo**—I think we have already been working in that area for some time, and we are hopeful that we will get some outcomes from that work in the near future.

**CHAIR**—So there are no outcomes at this stage—no referrals to DPP or any other agencies?

**Mr D'Ascenzo**—Not from that work, but certainly from the work done in Project Wickenby, which is another aspect of our challenge to abusive tax haven activities. There are certainly a number of referrals through the ACC and the AFP to the Commonwealth Director of Public Prosecutions.

**CHAIR**—So there have been referrals. We have had one conviction arising from Wickenby.

**Mr D'Ascenzo**—That is right.

**CHAIR**—But there are further referrals.

**Mr D'Ascenzo**—There are further referrals. Also, there are a number of extra charges being laid in relation to the Vanuatu arrangements.

**Senator BOYCE**—How many referrals?

**Mr D'Ascenzo**—I do not have those figures here, but with the Vanuatu ones the AFP laid charges in relation to, I think, 27 people. That is just in relation to Vanuatu. The Operation Wickenby exercise, which involves the ACC, has also made some referrals, and the AFP has done so as part of Project Wickenby.

**Senator BOYCE**—So there are more than one, anyway.

**Mr D'Ascenzo**—That is right.

**CHAIR**—Before we leave the US senate report, any reading of it by any person, I think, would tend to startle and amaze when you look at the intricacies of arrangements. When there are such intricacies—with bank secrecy and also with different placements of funds, different

sources of funds and different citizenships involved—do you have the powers nationally, and is there international cooperation, for you to be able to pursue those?

**Mr D'Ascenzo**—Once you are getting to other jurisdictions you have the jurisdictional issue of how far your domestic powers can operate, so there is a limit to how much Australia can legislate for activities that occur outside its borders and jurisdictions. That is a problem that all countries face. In that sort of environment, you really have to put as much emphasis as you can on good working relationships with counterparts like overseas tax jurisdictions, and we have done that very strongly with those with whom we have treaties.

The problem is that when you have tax havens you do not often have a treaty arrangement. That is why we have been supporting the OECD activities in trying to pressure tax havens to provide more transparency on bank secrecy in those tax haven activities. So the short answer is: if Australia could legislate, firstly, to facilitate an exchange of information—both with our treaty partners and with others—and, secondly, to be able to tap into requirements or information held elsewhere that relates to an Australian citizen or resident, that could be advantageous.

**CHAIR**—So you would suggest that there is a need for legislative change.

**Mr D'Ascenzo**—I am sure that as part of this review Treasury and government will be looking at whether or not our fabric of laws is apt for the task. I will qualify that by saying that, to some extent, the reach of governments of one jurisdiction is sometimes limited to what other countries legislate. It is hard to legislate if the tax haven has bank secrecy provisions. Other than using international pressure, as we have been doing, to allow them to introduce tax information exchange agreements, for example, it is hard to see what a country can do to meet that concern.

**CHAIR**—That does not give a lot of comfort, I am afraid, to the general taxpayer.

**Mrs BRONWYN BISHOP**—My question is not as sexy as Liechtenstein and other places, but I think it is more relevant to ordinary battling punters and their superannuation and the pressure that a downturn in the economy is going to have. I have previously asked you a question about the relationship between the ATO and ASIC. The specific sort of problem, without going to a particular case, that is of concern to me is as follows. A taxpayer can write to the tax office and put you on notice that their employer has not paid their superannuation. The tax office does know that ASIC may deregister such companies for other reasons, but the tax office feels no obligation to notify, nor does it notify, ASIC of the fact that that superannuation has not been paid. What then transpires is that ASIC may then deregister the companies concerned. There can be a series of companies. They can be renamed and go through a whole series of name changes.

The tax office, when approached further, will then say, 'Sorry, we can't pursue unregistered companies. Talk to ASIC.' ASIC says, 'Getting back unpaid super is the tax office's problem.' Neither organisation will take responsibility for the taxpayer who has been done out of their super. This is more likely to happen in a downturn, when more and more people are going to be pressured and that super is not going to be paid. I did ask you previously if you would look at it. I understand that you have some additional funds to do something about ASIC, but this problem has still not been addressed. There are people out there suffering because of it. I would like to

ask you what you intend to do about it and whether there is a remedy that people can pursue now.

**Mr D'Ascenzo**—I welcome that insight about areas of concern. I share your concern about those sorts of outcomes. I am not sure what our legal position is on being able to provide that information to ASIC. But what to do from here is to first find out whether or not I can do more in that area under the law.

**Mrs BRONWYN BISHOP**—I have seen correspondence that the ATO has written saying: 'Sorry. Can't do anything.' ASIC's correspondence said, 'Talk to the tax office.' Neither organisation wants to take responsibility.

**Mr D'Ascenzo**—That is not because of not wanting to do anything. It may be that we are constrained by the law in terms of what we can do.

**Mrs BRONWYN BISHOP**—Indeed. I accept that. But the problem with that is that I know you have been on notice with such a problem since 2003. I know that I personally brought it to the attention of the tax office at a previous hearing. Here we are in 2008 and I still hear from people who are suffering because they do not get their super. As a legislator thought I was legislating to assist them, but they are not getting any assistance and they are being done out of their dough.

**Mr D'Ascenzo**—I understand fully what our legal position is. If the legal position is such that I cannot do anything further, I will make sure that it is put on the table for others. Treasury and government—

**CHAIR**—You are happy to get back to us formally on that answer?

**Mr D'Ascenzo**—Yes.

**Mrs BRONWYN BISHOP**—If I can really make the point: the problem with that is that this was raised previously and nothing has happened. Is that what you are telling me?

**Mr D'Ascenzo**—I am not sure that is the case. I am sure that any of the issues that you and others on the committee have raised would have been considered. I am just not sure of precisely what we have done in terms of who we referred the matter to. I suspect that there are some legal issues associated with our provision of information, in those circumstances, to ASIC and I suspect that that information has been passed on to the appropriate policy people, but I do not know; I cannot guarantee that.

**CHAIR**—We are going to move from that—

**Mrs BRONWYN BISHOP**—I understand that you want to move on, but, Mr Commissioner, may I have a contact point where I may discuss this further with somebody, because it is important?

**Mr D'Ascenzo**—The second commissioner in charge of law will be happy to do that. I might add that there are some high-profile cases where we have taken the action of trying to reinstate the company after ASIC has—

**Mrs BRONWYN BISHOP**—The letter that came said: 'You may wish to try and get us to reinstate the company, but it is all a bit difficult. Look at the website.' I do not think that is fair for an ordinary, battling punter.

**Mr Quigley**—We have certain cases where we have, as the commissioner mentioned, attempted to reinstate the company to actually be able to get those sorts of debts, but I am more than happy to—

**CHAIR**—We cannot pursue individual cases, but certainly there is a principle that needs to be clarified.

**Mr BRADBURY**—Commissioner, could I just come back to the issue of tax havens. Obviously the US Senate committee inquiries and particularly, I guess, the unearthing of the LGT documents really do emphasise the fact that secrecy provisions are critical. They are barriers that stop administrations, such as ours here, from being able to ascertain what the true position is in relation to a company or an individual's arrangements. Your point is that there is not a lot that a domestic legislature or administration can necessarily do other than work broadly.

**Mr D'Ascenzo**—I was not limiting the options and I did not want to sound as negative as perhaps I did sound. I just wanted to put a level of reality in terms of what can be done. We are closely looking at what the US response to the issue is to see whether there are learnings there that we can apply ourselves. Under the current framework of laws, we have been very active in trying to create a very strong and close working relationship with a range of international treaty countries. I think that some of the work we have done, both through those processes and through the OECD, has put pressure on many tax havens to review their secrecy provisions and to provide an opening for better exchanges of information. We have three tax information exchange agreements already signed with tax havens and we have a number of others on the drawing board in terms of them being negotiated. So there is a movement in terms of trying to open up the secrecy of some of the countries and I think part of that is an international response rather than just a unilateral one. The other side of it is the work that we do with AUSTRAC and some of the activities that we do through our own focus on the abuse of tax havens, which I think is sending a message—and it includes Wickenby—that this sort of behaviour is really not going to be countenanced in the Australian environment.

**Mr BRADBURY**—In relation to the Liechtenstein Foundation model, if you like—that type of entity; the foreign hybrid in question in that particular case—clearly it is not just a question of secrecy; it is also a question of legal form and the capacity of our laws to deal with other legal forms. Clearly that is not the only foreign hybrid entity that exists out there internationally. Have you made any recommendations to government in relation to legislative responses that might better equip the tax administration with the capacity to respond to those foreign hybrids?

**Mr D'Ascenzo**—Let me answer that in a general sense. In relation to the particular foundation status, there is a question about whether those hybrids fit within our attribution regimes. We are getting advice on that. My own thinking is that it would fall within the legislation. Subject to the

advice that I receive, I would be happy to challenge it on that basis. Also, I know that part of the review by the Board of Taxation into our attribution regime is looking at that issue. That report has not been made public by the government, but that issue is covered as part of that review.

**Mr BRADBURY**—More generally, in relation to the CFC, transfer or trust provisions, how effective, in your view, are the legislative tools available to you in combating, I guess, deferral activities and other anti-avoidance activities internationally?

**Mr D'Ascenzo**—I think that, at the large end of town, the CFC—controlled foreign corporation—legislation does allow us to obtain information from those entities that are controlled by Australia, so in that sense it is quite a good way of getting that information provided that that link remains. What we have difficulties with is not at that level; it is with people who just conspire to conceal payments or assets and then abuse that process where that is subject to tax in Australia. It is really the ones that are hidden. In that respect, Australia is probably ahead of any other country in the world in terms of the facility that AUSTRAC gives to keep some track of that information.

**Mr BRADBURY**—In relation to the CFC, transfer or trust provisions, what sort of numbers do those provisions raise in terms of revenue?

**Mr D'Ascenzo**—The attribution regimes are actually intended to be regimes that discourage, so you do not expect a large amount of direct revenue from those sorts of activities.

**Mr BRADBURY**—Would you have figures or be able to estimate the sorts of figures involved?

**Mr D'Ascenzo**—I do not have any figures. We may have figures associated with attribution, but that really would not be reflective of the role that they play in the interior of the system.

**CHAIR**—I will just ask something, though. Your offshore compliance program is a multi-agency approach. Would LGT have been on your horizon as one of these foundations that act in this way before the Liechtenstein information came out?

**Mr D'Ascenzo**—We have looked in that area. What we would do, basically, is to look at areas where we see greater flows or flows that may require some review. Liechtenstein, actually, is probably not the highest profile tax haven from Australia's perspective. That is why our focus on Vanuatu, for instance, has been clear.

**CHAIR**—I note from the evidence that LGT have come out to meet with their clients several times. Would the same apply with Vanuatu? Do you track that sort of obvious engagement, which would obviously be to do with Australian taxpayers and their arrangements?

**Mr D'Ascenzo**—The fact that we have had over 20 charges in relation to Vanuatu is really the result of long-term cooperative work with the Australian Federal Police over many, many years.

**CHAIR**—Thank you.

**Senator BOYCE**—I have some questions around tax havens, and then a few general ones, but I might just do the tax haven ones now; we can get on to the others later. Ms Granger, I got the impression earlier that you had actually found a figure for the number of referrals to the DPP around Wickenby; is that right?

**Ms Granger**—What I found was charges. As the commissioner just said, there have been over 20 charges. I do not think we have—

**Senator BOYCE**—That is for Vanuatu?

**Ms Granger**—It is mostly Vanuatu. It is the figure for Wickenby generally. There have been 24 people charged.

**Senator BOYCE**—Twenty-four people have been charged?

**Ms Granger**—Yes.

**Senator BOYCE**—And there are other referrals?

**Mr D'Ascenzo**—There are.

**Ms Granger**—It is important that Wickenby covers Vanuatu and some other projects as well, obviously.

**Senator BOYCE**—You mention here in your focus for 2008-09 that you had written directly to 3½ thousand Australian taxpayers asking them to 'review their international activities'. Could you tell us a little bit more about that, please.

**Mr D'Ascenzo**—I think that is part of our offshore disclosure initiative, which allows them to come clean.

**Senator BOYCE**—So you have selected these people on the basis of something you have seen in terms of their international transactions?

**Mr D'Ascenzo**—That or exchanges of information with other countries. There are a range of things that provide some protection to the Australian population, but it is risky for people to seek to conceal and obfuscate their obligations to Australia.

**Mrs BRONWYN BISHOP**—To clarify, is that the letter that was written to high-taxpaying people like Dick Smith, or is it a different letter? There is a lot of anger about that letter.

**Senator BOYCE**—I am presuming it is different.

**Ms Granger**—I can help with that. One particular part of that project involved information on debit and credit cards that we received under treaty from the treaty partner. We then wrote to a number of people. We identified 700, and we wrote to 185 saying, 'Is there something you need to tell us?' Out of that, \$1.5 million in omitted income has been declared. So we give them a chance. There is always the question, 'Is there more that we need to understand about this, or is

it fairly straightforward—just an offshore bank account with fairly low amounts of money?’ But there is an opportunity. The commissioner has put in place a voluntary disclosure approach, as you know, to encourage disclosure of offshore income and assets. This is just prompting people to say, ‘We’re going to have a look at this; would you please check.’ In general that project, which covers a range of things, not just information received under treaty—

**Senator BOYCE**—Which particular project? There is the debit and credit one.

**Ms Granger**—The debit and credit one has found \$1.5 million in omitted income in the last year.

**Senator BOYCE**—Admitted income?

**Ms Granger**—Omitted.

**Senator BOYCE**—Sorry.

**Ms Granger**—So that is now included. Sorry about the language. It is extra income. That is from 185 prompter letters. Then we went on to do 30 risk reviews where we either did not get the response we were expecting or got no response and we thought we needed to look into it further. That is just an insight into that issue.

**Senator BOYCE**—But we have 3½ thousand taxpayers.

**Ms Granger**—Yes. There are more than that; that is just one project to illustrate that point.

**Mrs BRONWYN BISHOP**—That is different from the letter that I just alluded to?

**Ms Granger**—The letter you were referring to is in relation to high-wealth individuals. It is a different matter.

**Senator BOYCE**—The high-wealth letter is not related to this?

**Ms Granger**—No, it is a different strategy.

**Senator BOYCE**—So we have 3½ thousand people who were sent letters. What has been the result of this?

**Ms Granger**—I will just see if I have some stats for you. If you want to ask the next question, I will come back to that.

**Mr D’Ascenzo**—In terms of the overall offshore disclosure initiative, I think we have had 830-odd people who have come in and said, ‘Can we move on?’ I think they have paid—

**Senator BOYCE**—Thirty-five million dollars?

**Mr D’Ascenzo**—I think it is \$36 million now.

**Ms Granger**—It is.

**Senator BOYCE**—Okay. I am impressed.

**CHAIR**—It is growing daily, by the sound of it.

**Mr D'Ascenzo**—That is more at the level of people. A lot of what we find there is that people have had accounts elsewhere. Certainly we have found migrants who have had accounts and were not aware that, once they become Australian residents, their income from offshore is taxable. That is cleaning up people of that ilk. That is one strategy for that. Project Wickenby is looking at promoters of these schemes and also at some high-risk situations. Again, we are working with OECD and other countries to open up the transparency across the world.

**Senator BOYCE**—I am trying to get a sense of what the ATO perceives to be the scale of fraudulent offshore activity.

**Mr D'Ascenzo**—I understand.

**Senator BOYCE**—I assume you are telling me that you think the majority of these 3½ thousand people were not deliberately behaving dishonestly.

**Mr D'Ascenzo**—Of that group. That is one aspect of our strategies, but that is not the whole gamut of the work. The broad size here is really impossible for us to measure.

**Senator BOYCE**—That is why I suggested it was what you perceived it to be rather than what it is, because no-one knows what it is.

**Mr D'Ascenzo**—We do think it is serious. That is why we have included it as a priority of our corporate focus. But it is not of the dimension that many other countries have to face and deal with. Historically, part of that has been to do with geographic distances and the difficulties, until recently, of communications. But also I think that AUSTRAC has made it much more difficult for people here to engage in those sorts of activities.

**CHAIR**—Could you explain why.

**Mr D'Ascenzo**—Because all major financial dealings where money has to flow across borders are now tracked by AUSTRAC.

**CHAIR**—And you do the data matching.

**Mr D'Ascenzo**—We very much do that. Other countries do not have that facility. The other side of it is that by and large we do have a reasonably good compliant culture. There are cultural issues to do with how much people will engage in these sorts of activities. If we are talking about high-wealth individuals, over the last decade Australia has had a very concentrated and specific program that focuses on that group. I do not think any other country has had that level of focus on high-wealth individuals. So, again, the risks for many individuals would be greater in Australia than in other countries. I think it all adds up to an environment where, compared to many other countries, it is not as big a problem. It is certainly a problem where we think there

needs to be a constant focus in the current environment, where technology does make the tyranny of distance easier to breach.

**Senator BOYCE**—You talk about the agreements that you have concluded, to do with information exchange, and say that you have another seven being negotiated. Where will the problem areas be when this round of negotiations concludes? Perhaps you could talk about the current negotiations first.

**Mr D'Ascenzo**—Again, they are done as part of the Australian government initiative, so it is not the tax office doing that.

**Senator BOYCE**—I realise that.

**Mr D'Ascenzo**—I think that is reflected in Australia's support for—

**Senator BOYCE**—But presumably there are almost finished and less finished negotiations.

**Mr D'Ascenzo**—That is right.

**Senator BOYCE**—Could you talk a little bit about that.

**Mr D'Ascenzo**—That is basically where it is at. We are seeing a greater willingness for tax havens to negotiate with us, given the pressure internationally against the abusive use of tax havens. I think it is a positive trend in that respect.

**Senator BOYCE**—The problem children.

**CHAIR**—But equally it might be just the tip of an iceberg, mightn't it?

**Mr D'Ascenzo**—The government is looking to target those tax havens where the flows from and to Australia seem to be significant or those that have an interest in wanting to be part of the global acceptance of more transparency. The proof of the pudding, when we have the powers, will be whether or not the countries will comply with those arrangements.

**Mr NEUMANN**—I want to take up what Mr Bradbury was saying. In this area we have part IVA of the Trade Practices Act, we have the Income Tax Assessment Act and we have a number of other pieces of legislation—certainly the legislation governing AUSTRAC. Have you got any recommendations on the legislative response? Are there any particular legal changes you think are necessary in this regard?

**Mr D'Ascenzo**—I think it was already raised by this committee—and I agree—that you do not want to be stymied because of different common law or civil law concepts of entities. That is one aspect. I know that the board of tax is looking at that issue. My general proposition has been that anything that will help us promote effective exchanges, on both a bilateral and a multilateral basis, would be advantageous. Also, where there is a link between a tax haven and a citizen, business or resident in Australia, perhaps there is the jurisdictional reach to have a requirement that that information be provided.

**Mr NEUMANN**—You have lauded AUSTRAC and said how useful it is in monitoring the use of money coming in and out, above \$10,000, but I think the average taxpayer would be a bit amazed that you are not in a position to give some sort of idea or guesstimate of the kinds of figures we are talking about in terms of tax havens coming in and out of Australia, in terms of dollars and cents—

**Mr D'Ascenzo**—We do have the figures. In fact, in the report that I gave to the US Senate committee, we talked in terms of the \$15 billion flows. A lot of that has to do with what is called tax competition in that it is not the abusive use of the law. The law allows people to set up a structure and operate through a tax haven or a low-tax country. The concern we have in terms of abusive use is where it becomes concealment, not necessarily what, under the current law, is open for people to undertake.

**Mr NEUMANN**—There was some recent criticism of you by prominent Sydney lawyer Robert Richardson in relation to the fact that you were not concentrating on how money got out of Australia and how money would come back into Australia. What do you say about that?

**Mr D'Ascenzo**—If Mr Richardson can give me some answers, I would be pleased to take them.

**Mr NEUMANN**—I thought that is why you are here!

**Mr D'Ascenzo**—It is easy to say that, but how would we do that?

**Mr NEUMANN**—His criticism was that you were concentrating on other things—that you were not actually monitoring, to the extent it needed to be monitored, in terms of the actual money leaving Australia and then coming back in. Why do people use tax havens if they cannot bring the money back into Australia for their own benefit? That is the issue.

**Mr D'Ascenzo**—Again, the AUSTRAC information is all about money flows in and out. There was Ms Granger's comment about debit cards and the like. It is about how many people make use of that wealth that is hidden offshore.

**Ms Granger**—I could give you another point to think about. Some of these cases that we have seen have been about people working offshore and setting up arrangements that are perfectly legitimate. The point of temptation is when they come back to Australia or when people move to Australia. There can be a whole range of reasons. It could also be people going out of the country and only accessing those accounts while they are out of the country—perhaps for holidays or other things. You are right in the sense that one of the things the tax office always needs to think about is where there is a gap between lifestyle and what is being returned. We do have projects that are focused in that area.

**Mr NEUMANN**—The miracles of modern accountancy—how people can enjoy their lifestyles—

**Ms Granger**—That is right. I think we talked about some of those before, where we have started to look at things like luxury boat registers.

**CHAIR**—You have been doing data matching between annual reports and declared income. That has been successful, hasn't it?

**Ms Granger**—Yes.

**Mr NEUMANN**—On top of that, a lot of our cash economy project is about conspicuous consumption vis-a-vis their taxable income.

**CHAIR**—And you are looking at high-earning executives of companies. For those with incomes of over \$1 million, I think you have found that the range of non-disclosure ranged from \$180,000 to \$2 million.

**Mr D'Ascenzo**—That is right.

**CHAIR**—So you will continue to pursue those approaches?

**Mr D'Ascenzo**—This year we are expanding that and including not only public company executives but also private and foreign company executives.

**CHAIR**—So just by doing that exposure you would anticipate that a higher return from that section has not often been just straight out evasion. Sometimes people have not appreciated how to bring to book their benefits, even if they were equity benefits that they got from their shareholdings.

**CHAIR**—Mr Neumann raised some criticism from a journalist, but you were criticised by the ANAO.

**Mr NEUMANN**—A lawyer.

**CHAIR**—I am sorry—a lawyer. I will not comment any further! You were criticised by the ANAO for your key steering committee on tax havens not having met in the time of their audit. Could you tell us a little bit about its activities, its strategy and its strategic approach now, and perhaps why that occurred?

**Mr BRADBURY**—You do not hold meetings in tax havens!

**Mr D'Ascenzo**—No. The reason I am smiling is that it is it is an interesting answer. I think Jennie will give it to you.

**Ms Granger**—The committee was meeting informally. We accepted the criticism and we have now put it on a formal basis with a charter, which I am happy to make available to the committee. A number of my deputies and I have a number of different meetings and they also meet in the margins of that. Their focus overall is to coordinate tax haven strategy across the tax office. The risk, as the commissioner has already painted, is different across different market segments. We have now got to the point where, having that kind of expertise needs to be part of the skills set of all of our compliance officers, not a specialty. The challenge of having that coherent and prioritised is their job. It is also necessary to build the capability of our staff at the same time. So they are basically coordinating the entire strategy. They are now meeting on a

regular basis every four to six weeks, or as needed in between that, with formally documented minutes—

**CHAIR**—With the priority to pursue cases in that area.

**Ms Granger**—which are published in the compliance program.

**CHAIR**—So at what level, Commissioner, do you have engagement with the OECD Forum on Tax Administration or with other countries? I see reference to someone meeting with the UK to pursue tax havens. What is the information sharing? What are the formal structures and what are the informal structures for information sharing that may deliver better outcomes on tax havens?

**Mr D'Ascenzo**—We have under our treaties the formal exchange of information. So we have our authorities involved in providing that information both automatically or spontaneously, depending on what the situation is. That has been around for some time. We have built on that through our JITSIC work, where we have a joint group of people looking at tax shelter information and the abusive use of tax havens. That is at SES level but certainly under the auspices of our compliance area. I meet with counterparts at commissioner level both through the forum on tax administration and also through the Leeds Castle group. Ms Granger does a lot of work at deputy level in this area. She might want to talk about the very extensive range of contacts and dealings that we have in this area.

**Ms Granger**—As the commissioner said, we are part of a number of formal meetings that look at, overall, what can be done to influence relationships. Often what comes out of that is a common interest to work on. At an operating level, if we are getting down to tin tacks of who we can work with on a particular set of taxpayers, there has to be a relevant interest under a treaty. There are quite strict rules regarding that.

**CHAIR**—That certainly limits your activity. Therefore, sudden windfalls like Liechtenstein are very welcome.

**Ms Granger**—Just to clarify, there is a level—for example, with JITSIC and others—where you can share what the intelligence means and you can give people an idea of what to look for. There is then the next level, which is: can you go into a simultaneous risk assessment on particular cases? That is the level at which you must have a relevant interest under treaty, which we would want here in Australia as well. That is about protecting the privacy of taxpayer information unless there is a relevant interest. I am just trying to give a bit of a picture of moving through from formally trying to set up policy and practices down into where you can alert countries what to look for and down to where you can actually work together where you have a common interest in a particular taxpayer.

**Mr D'Ascenzo**—Mr Butler, who has recently come back from the OECD, can share his perspectives.

**Mr Butler**—Michael mentioned in his introduction that I was the commissioner in New Zealand. I was there for over six years. I have spent the last 18 months working for the OECD

and this is my second week back in the job at the ATO. So I have been away for about eight years.

More broadly, on the whole Liechtenstein issue, I was working for the OECD when that all broke, in a sense. As Jennie Granger is referring to, the OECD cannot actually deal with taxpayer-specific information, but for a long time there has been a strong focus on tax havens and improving the exchange of information. There are structured working parties that meet twice a year to bring countries together. There are frequent, ongoing discussions. There is a database of aggressive tax schemes; however, that is anonymous so that it does not mention taxpayer names. That has been built and is shared among OECD countries. It shows developments in tax planning that seem to be aggressive schemes of various sorts. So there has been a lot of work done there.

**CHAIR**—Do they have a view on secrecy laws and bank secrecy?

**Mr Butler**—The OECD?

**CHAIR**—Yes.

**Mr Butler**—Yes. Perhaps Jennie might like to refer to that. Just to paint the picture a little bit further, in a sense, many countries have been concerned about tax havens for a long time. They have had incredible coverage in the media in Europe, the UK and North America.

**Mrs BRONWYN BISHOP**—We had one here—Switzerland—and we still have not resolved that. That is a very old one, so how far are we along the track there?

**Mr Butler**—Some of the articles in Europe suggest that the money that is in a lot of the Liechtenstein accounts was actually there before the Second World War. It was put there because of what was happening during that period of time. There is a lot of money there. From my observations, Australia has a completely different problem, as the commissioner was alluding to, because we are in a different situation. You can drive from France to Liechtenstein for a weekend or on a weekday. You can do it in one day and see your banker. It is much harder in Australia. It is very different, but I think Australia has been very much at the forefront of trying to deal with these sorts of things as well.

**Mr BRIGGS**—My question is about administration of the tax office rather than tax havens. How would you describe your resourcing? Do you have enough resources to do the job that the government asks you to do?

**CHAIR**—Did you ask this gentleman to ask you this question, Commissioner?

**Mr D'Ascenzo**—No. I keep on using the words in this committee's report—that we have a very difficult but important job. Like any organisation, ultimately governments have a pot of money, and they have to allocate that to a range of activities. They allocate a certain amount to our administration. From an administrator's perspective, if we had more money then we could do more.

**Mr BRIGGS**—Sure.

**CHAIR**—You are being two per cent more efficient, aren't you?

**Mr BRIGGS**—Do you face the efficiency dividend from the budget this year?

**Mr D'Ascenzo**—Yes, that is right.

**Mr BRIGGS**—The reason I ask is that it seems to me that in 2010 you have quite a tsunami of work heading your way through potential policy changes. You have what I will call the Swan review of the tax system, which is to report late in 2009. Presumably out of that you would have changes that the government would like to pursue in 2010, potentially. The government is planning to introduce an emissions trading scheme in 2010, which you would think the tax office would have some role in; we will come back to that. I understand that you are introducing the change program, which is a big new IT system to encapsulate your work and which you have delayed until 2010, I noticed in the papers recently. There is a potential change of service provider for your IT systems, as I understand it, which is also in 2010. So you have a tsunami of work heading your way. Are you resourced to handle the workload?

**Mr D'Ascenzo**—2010 will be our centenary year as well.

**Mr BRIGGS**—So there will be a whole heap of celebrations.

**CHAIR**—Party time!

**Mr D'Ascenzo**—Let me start with what we have been doing over quite a long period of time. We have been investing in trying to redevelop our IT platforms for the future, so it is really an ongoing, continuous change program. The delay has been a scheduling delay; there have been delays within that schedule.

**Mr BRIGGS**—I understand. My point is that there is a lot of work coming your way. Potentially, a major change to the taxation system will be taking place.

**Mr D'Ascenzo**—That is right. In fact, if we had not invested through the self-funding of our IT change program, I would be very concerned as to whether or not the existing legacy systems would have been able to cope with whatever that change might be. One of the real reasons for the change program—there are a number of reasons—is that it provides a better service for the community. Another one is that there are efficiencies for the organisation in the way that we work. Just as important is that it is a platform that is going to be more robust and flexible to meet the government of the day's requirements.

I am quite pleased that it will not be before 2010 before that tsunami comes otherwise I would have some difficulties. Even in the last few years, since we started the program of change to really refresh our platform, we have had some very major policy changes—particularly with superannuation. At the moment we are building the first home saver account system.

**Mr BRIGGS**—Presumably that is on the legacy system.

**Mr D'Ascenzo**—No.

**Mr BRIGGS**—On the new system?

**Mr D'Ascenzo**—On the new system. It is a really challenging time but it is an investment that we need to make to handle that tsunami.

**Mr BRIGGS**—I presume you are engaging with the Assistant Treasurer, the Treasury and the Treasurer himself about resourcing and the potential challenge of 2010.

**Mr D'Ascenzo**—Regularly.

**CHAIR**—I can see a new policy proposal coming on.

**Mr BRIGGS**—On emissions trading, how heavily involved in the Treasury preparations is the tax office.

**Mr D'Ascenzo**—We are working very closely. It is part of an integrated tax design process that we are working on with them.

**CHAIR**—What would be the outcomes you would want to see, in terms of improved administration of taxation, that might flow from it.

**Mr D'Ascenzo**—Again, we would be trying to input into that design what might make it easier for taxpayers to operate, what could reduce compliance costs for people and what are the risks in terms of potential gaps to the integrity of the system. It would be the three areas.

**CHAIR**—What is not up for grabs? What would you be absolutely insistent on that is not up for grabs in that review?

**Mr D'Ascenzo**—Again, all we do is act as a small voice in trying to make the system work for the community.

**Mr Quigley**—When you talk about the review with the emissions trading we have had a team of people working very closely with Treasury and providing advice on the interpretation of the law as it might apply in those circumstances and helping in designing the system.

**Mrs BRONWYN BISHOP**—You certainly see it as a new tax.

**Mr Quigley**—It is not necessarily a new tax.

**CHAIR**—Are you verballing our witnesses?

**Mrs BRONWYN BISHOP**—A new tax from the tax office.

**Mr BRIGGS**—Is it your expectation that the tax office will administer the introduction of an emissions trading scheme in the sense of being the tax—without using the word tax?

**Mr D'Ascenzo**—The government has not indicated that that is the case.

**Mr Quigley**—Where we certainly would have a role is to provide our interpretation of the law once it is enacted—to say, ‘This is how the law applies in these circumstances’.

**Mr BRIGGS**—Let me put it another way: would you agree with me that it would make sense for the tax office to be the likely administrator, to use that word, of any emissions trading scheme?

**Mr D’Ascenzo**—I think that is still a matter for government but it could work at different levels. As Mr Quigley said it could work in terms of just providing some advice capability or it could be that it is managed elsewhere but uses our IT platforms. There are different solutions.

**Mr BRIGGS**—Let me ask it yet another way: what other major revenue collection agencies does the government have? Is there another agency which collects significant revenue from either business or ordinary taxpayers or is it largely done through the tax office?

**Mr D’Ascenzo**—We are the main federal government collection agency.

**Ms Granger**—I think it is important to distinguish between regulatory and tax administrative functions here. I think some of your questions go to who should be regulating that scheme.

**CHAIR**—I will put on the record the apologies of our deputy chair, who is ill today. She might have noted that you mentioned that the proceeds of crime and organised crime are a part of your focus in Project Wickenby. Could you explain to us how that came about and how that is progressing?

**Senator FEENEY**—This is the *Underbelly* question.

**CHAIR**—Well it is a little bit Melbourne.

**Mrs BRONWYN BISHOP**—Chair, I have a little bit more to follow-up on the administration question before we go to more exotic things.

**CHAIR**—If you will complete that section and then we will move on.

**Mrs BRONWYN BISHOP**—On that administration question, you got additional money to enhance your compliance function?

**Mr D’Ascenzo**—That is right.

**Mrs BRONWYN BISHOP**—Was it \$700 million?

**Mr D’Ascenzo**—As part of the income tax expansion it was \$700 million provided with the intention of increasing direct and indirect revenue by \$5.7 billion over a four-year period.

**Mrs BRONWYN BISHOP**—When you go to the government to say, ‘We would like more money so that we can enhance our compliance and collect more tax,’ you must be able to work out a ballpark figure of how much tax you think you ought to be able to collect and that this additional money will let you collect. You have to make out that case, I presume?

**Mr D'Ascenzo**—It varies in the sense that sometimes government ask us whether or not we think there is more scope for us to do more activity in certain areas.

**Mrs BRONWYN BISHOP**—I do not mind who asks the question but you presumably have to put a case that says, 'If we have this much more money, we could achieve this much more income for the government.'

**Mr D'Ascenzo**—Sometimes, but sometimes it is to provide benefits in terms of better service, so it is not just revenue. In relation to many measures there is a revenue aim.

**Mrs BRONWYN BISHOP**—Of the \$700 million you have just got, how much of that money is designed to enhance the revenue you collect?

**Mr D'Ascenzo**—Again, it is not tied but, basically, our work in trying to increase voluntary compliance and direct revenue outcomes—

**Mrs BRONWYN BISHOP**—You must have an idea of how much more money you can collect for getting that additional resource?

**Mr D'Ascenzo**—It is \$5.7 billion, but it is not a direct revenue. It also includes increases in the base in terms of voluntary compliance.

**Mrs BRONWYN BISHOP**—Where do you publish the outcome of the amount that you have spent? Where do you say: 'Here is the \$700 million. We have spent this money in the following way'. Where is that accountable and where is the outcome?

**Mr D'Ascenzo**—Again, we report to government on that.

**Mrs BRONWYN BISHOP**—It is taxpayers' money so it is something that should be on the public record I think.

**Ms Granger**—We will be able to publish progress on that at the end of this year, Mrs Bishop. It is only just starting this year. We did include in our compliance program information about the expanded focus and what we expected to collect. As the Commissioner has said, there are both direct and indirect in there but we will be able to do that.

**Mrs BRONWYN BISHOP**—So we will see an acquittal?

**Mr D'Ascenzo**—That is right.

**CHAIR**—What would the trend data be across all your compliance areas? Are some things plateauing, are some things increasing? Would you be doing your own risk assessment of which areas you need to target more aggressively?

**Mr D'Ascenzo**—Trying to risk assess is exactly what the compliance program is about and that is why we make the program available, not only to this committee but publicly, with a request.

**CHAIR**—So all the things you have targeted in this year’s compliance work program, we will expect to see, as Mrs Bishop has said, some outcomes on that.

**Mrs BRONWYN BISHOP**—I can look forward to seeing an acquittal: this amount of money spent, this is the outcome from spending the money and this is the area we did it in.

**Mr D’Ascenzo**—I am not sure what the reporting requirements are but there will be an acquittal.

**Mrs BRONWYN BISHOP**—Yes, and we will see it?

**Mr D’Ascenzo**—Again, there is some acquittal in the annual report and if I can make that public to this committee I am happy to do so.

**Mrs BRONWYN BISHOP**—I want to see precisely what the outcome is and, then, since you are able to do that, do you think you might be able to report: this is the amount of income we should collect, this is in fact what we are collecting and this is the gap.

**CHAIR**—I am sure you would always like to quantify those ephemeral ones as well, the ones that you discourage.

**Mr D’Ascenzo**—We had the discussion about the gap analysis and we are working with the OECD in terms of what is a worthwhile effort in that regard. At the moment the figures are subject to a lot of economic discussion.

**Mrs BRONWYN BISHOP**—That is just the point: you used to be able to do it and it assisted.

**Mr D’Ascenzo**—We did do it; I am not sure we did it well.

**Mrs BRONWYN BISHOP**—Well, I am sure you can do it better then. We have had a lot of discussion about exotic places in the world where, I am sure, people go and do inspections and have a look—places like Paris, Liechtenstein, Switzerland, Vanuatu. It all sounds like a wonderful holiday!

**CHAIR**—I do not think this committee will be going there, I am sorry.

**Mrs BRONWYN BISHOP**—I forgot the Virgin Islands. But, in all seriousness, there is this long-standing case involving Switzerland and the LGT Bank, where information was leaked with regard to Liechtenstein. Years have gone by and we have had no outcome. Are we likely to see an outcome of that case?

**Mr D’Ascenzo**—I do not know about the cases that you refer to or about the allegations of leaking.

**Mrs BRONWYN BISHOP**—It was very public.

**CHAIR**—You might seek some clarification for us and give us an update on that.

**Mrs BRONWYN BISHOP**—It was all over the papers.

**Mr D'Ascenzo**—But it may not—

**Mrs BRONWYN BISHOP**—The Offset Alpine printing press case.

**Mr Konza**—I think the matter you are referring to is in court.

**CHAIR**—Which makes it inappropriate for us to comment on it.

**Mr Konza**—There is nothing more that can be said on that. It is in court in Sydney.

**Senator BOYCE**—It is slightly on a side issue though, isn't it?

**Mrs BRONWYN BISHOP**—It is not on a tax issue.

**CHAIR**—Well, if it is a criminal activity—

**Mr Konza**—No, I think it is on a tax issue.

**CHAIR**—I am just going to say that we will leave that one and, Commissioner, we would just ask if you would like to provide to this committee at some time a brief overview of the links between the original case and what might be happening now. Let us get back to organised crime. Are we in a peak of organised crime? Is that what has made you put it on your compliance work program this year? How has that come about?

**Ms Granger**—We have always, over many years, cooperated with enforcement agencies in relation to tax implications of organised crime, and we provide specialist expertise in that context. So, in that sense, that is not a new issue for us. There is one specific issue that we have been flagging, around refund fraud, which you may be referring to. I could come back to that. I think your area of interest is in relation to the Purana task force in Victoria.

**CHAIR**—Yes.

**Ms Granger**—Again, we have been cooperating with them for some time. I can give you the latest statistics in terms of the issues that we have had to look at coming out of that. Usually the issue for us is that somebody's lifestyle does not match their income. So, as at 30 June, liability has raised about \$12 million; revenue collected is just under \$1 million; audits completed, six; audits in progress, 30; referrals for nonlodgement—oftentimes this is the point at which we discover people outside the system—are at just under 70, there are 69.

**Mr BRADBURY**—In relation to executive remuneration, I know that you, Commissioner, specifically mentioned the issue of share options. Are there any other areas of particular risk that you have identified in relation to executive packages?

**Mr D'Ascenzo**—I think the other area might be the equity benefits of shareholdings, but it often has to do with the non-cash benefits that they receive. That is what we are finding.

**Mr BRADBURY**—The extent that company boards are adequately taking tax matters into account before transactions are entered into or decisions are taken is a matter that you have been very vocal on, as has the tax office generally. Could you make some observations as to whether or not you think the situation is improving in that regard and whether any progress is being made?

**Mr D'Ascenzo**—In my discussions with members of boards, directors, CEOs, they are now saying that what the ATO is suggesting is mainstream. That is not necessarily the case in all countries overseas. I think that in Australia the message is there and people are seeing material risks and there are corporate governance processes cover all material risks, including tax. Again, that is important because, if you have a situation where large, complex dealings are seen as 'black box' and, therefore, 'I do not want to know what the risk is', there is a real gap in the corporate governance of those companies. I think it has been well received and I think the surveys that some of the accounting firms for instance have done have indicated it seems much more mainstream in Australia than in some other countries.

**Mr BRADBURY**—I want to explore another topic in relation to promoter penalties? When was the regime introduced, in 2006?

**Mr Quigley**—In 2005-06.

**Mr BRADBURY**—I wonder if you might be able to provide the committee with some information in relation to any action that has been taken pursuant to those provisions?

**Mr D'Ascenzo**—I will ask Ms Granger to do that. Again, the promoter penalty regime, like we talked about the attribution rules, is very much trying to prevent rather than cure. There is a cure aspect to it as well, but it is one of trying to prevent one. The fact that you have the legislation and the fact that we are approaching potential promoters early in the piece has meant that they have stopped or desisted from that promotion. Ms Granger might add to that.

**Ms Granger**—According to my notes, the promoter penalty laws became effective on 6 April 2006. You are asking for progress in relation to that? First of all there has been undoubtedly a preventative effect. There is no doubt that that has led to more caution and we have testified on that before this committee previously. We do a range of activities including tracking the activities of promoters that have been very aggressive in the past and visiting at times of the year when there are likely to be tax exploitation schemes out there. The intelligence from that has been that there has been quite a reduction in direct marketing. In terms of actual activities, we have also put out 16 taxpayer alerts. They are proving very effective to get people's attention about being cautious about particular schemes that might be being promoted. It is critical to be able to do that early alerting. We have undertaken 51 risk reviews including those visits. There are 14 potential applications of promoter penalty laws under consideration at the moment including enforceable voluntary undertakings. They are in progress; I am not sure which way they are going to turn out.

**Mr BRADBURY**—Is it a civil penalties regime?

**Mr D'Ascenzo**—Yes.

**Mr BRADBURY**—So no civil penalties have been imposed by that regime to this point?

**Ms Granger**—No. We have not got that far and we may not need to. As I said, one of the things happening here is there is a keenness to go to voluntary and forceful undertaking. I should also say we have had immediate cessation of promotion in a number of cases where we have visited.

**Mr D'Ascenzo**—We have highlighted the effectiveness of the promoter penalty legislation in our compliance program.

**Mr BRADBURY**—In relation to the matters we were discussing earlier about offshore activities, is there any extraterritorial application to the promoter penalties laws? Is that a matter that is being pursued, because clearly there is some evidence at least that appears on the table to suggest that it might be worth investigating certain activities offshore. Is that a matter that has been under consideration?

**Ms Granger**—I am not quite sure where that is going but to the extent it is being promoted in Australia, our experience around a lot of this offshore activity is that if there is a network it is promoted into then it would be subject to these laws if it is provable.

**Mr BRADBURY**—If we are legislating using constitutional powers in this country there needs to be a nexus. I have not got the legislation in front of me, and neither do you, but do you understand to what extent is that nexus required? Does the mere existence of a connection, albeit a remote one, to an Australian taxpayer include a meeting that might have occurred in Australia, or a transaction or contract entered into offshore by an Australian resident? I am just wondering to what extent there may be some application to these laws in relation to some of the broader enforcement activities that the tax office is undertaking internationally?

**Senator FEENEY**—In that instance some of the real miscreants are US banking institutions, so how does that work in the question's general frame?

**Mr Quigley**—I think the first way to answer that is that there are no extraterritorial powers in the promoter penalty legislation, so it really gets back to what the commissioner said earlier: where things are outside our jurisdiction it is more difficult to impose Australia's laws on extraterritorial transactions. Where there is a link to Australia, the Australian taxation laws and other regulatory bodies would apply. There are no extraterritorial aspects to the pro bono legislation that I am aware of.

**Mr BRADBURY**—I guess it is just a question of degree. I am not seeking to single out any particular case, but there are so many permutations that could exist here and clearly there is the possibility of a nexus, albeit a fairly remote one, with an Australian taxpayer. Does the promotion have to occur within Australia? Without seeing the text of the legislation it is difficult for me to know whether that is the case. Is the nexus one of the promotion occurring in Australia or is the existence of an Australia taxpayer sufficient to potentially trigger the promoter penalties regime?

**Mr Quigley**—Forgive me, because I am talking off the top of my head here, but I think the nexus does go to the effect that it would have on Australian tax laws. That is the link; that is the

nexus. If whatever is occurring or whatever is being promoted were to have a detrimental effect on Australian tax laws then I think that would be a sufficient nexus.

**Senator BOYCE**—We heard this morning from the Corporate Tax Association about forward compliance arrangements, and these are mentioned in the public document that you have provided to us around your tax focus for 2008-09 saying that you have established four of these trials and three were with large businesses. Could you talk about the progress with that and where it is going? I understand that this was something you hoped you could expand further.

**Mr D'Ascenzo**—Again, they are based on principles of good governance, and so we were particularly focusing on forward compliance agreements through a lot of the transaction taxes, which include GST and excise. The three that we have done with large businesses include GST and excise primarily.

**Senator BOYCE**—So you have focused on particular aspects of tax, not broadly across tax?

**Mr D'Ascenzo**—To fall within that forward compliance agreement they have to have very good levels of corporate governance. We work with them to ensure that that framework is quite robust. We have a standing sitting committee with them where we progressively look at the issues that arise in relation to the taxes under which the agreement is signed. Since then we have announced what we call the annual compliance agreement, and that takes a wider opportunity.

**Senator BOYCE**—I think I have confused the two. It is the annual compliance arrangements that I was interested in.

**Mr D'Ascenzo**—Basically the annual compliance arrangements are about sharing our risk reviews and their risk reviews.

**Senator BOYCE**—That is a fairly radical change, isn't it, from the way the tax office and particularly large corporations have functioned in the past?

**Mr D'Ascenzo**—Yes, it is.

**Senator BOYCE**—How long has that been happening for?

**Mr D'Ascenzo**—We are just negotiating our first one.

**Senator BOYCE**—So there are none of these actually happening at the moment?

**Mr D'Ascenzo**—None at the moment. We are negotiating two.

**Senator BOYCE**—When do you see them happening?

**Mr D'Ascenzo**—I see one happening this month.

**Senator BOYCE**—This month! That would be just the beginning of the process.

**Mr D'Ascenzo**—We are hoping it works.

**Senator BOYCE**—How long do you see this pilot lasting? Presumably you are piloting this with two companies—or with how many?

**Mr D'Ascenzo**—I think we have made it available to the 50 largest companies. We have not said, 'You cannot do it,' but I think people are waiting to see how it turns out and then we will see a gradual increase.

**Senator BOYCE**—So they have not been knocking down the door saying, 'Pick me, pick me'?

**Mr D'Ascenzo**—No, there has been quite a lot of interest. Again, the fact that we only announced this a few months ago and we are about to sign one soon is an indication that there is a lot of interest in seeing how these work out. It is about going down the path of trying to have a more no-surprise environment for large businesses.

**Senator BOYCE**—As I understand it, they would meet with you or another senior person from the tax office regularly to discuss material tax events, or tax events that would be considered that way. How do they interact with these people from the tax office when they might have a concern themselves about the treatment of a particular item?

**Mr D'Ascenzo**—This is what it is all about—to actually encourage that to be put on the table so that we can then work it through, rather than them not knowing about it or having this issue and then finding themselves in a difficult audit position many years after the event.

**Senator BOYCE**—So they might end up with what is almost akin to an informal private ruling because they have sat down and said, 'How should we handle this?' Are they actually getting on-the-spot tax advice?

**Mr D'Ascenzo**—On an annual basis, we say that these are the risks we see, and those are the risks they see, and we say, 'Okay, these ones are quite minor risks; we're going to focus on those other ones in terms of the risk management approach.' In relation to advice, we enable them to access our streamlined private ruling system, so if they have got a big issue they go through the normal private ruling process.

**Senator BOYCE**—So they would sit down and say, 'The interpretation of this is a bit open', and the tax office person would say, 'Go for a private ruling'?

**Mr D'Ascenzo**—That is right; they would go for a private ruling. At least it allows us to have that closer, enhanced relationship with what is quite significant in terms of the tax that is paid by large corporations in Australia.

**CHAIR**—How do you make sure that closer, enhanced relationship does not become just a cosy relationship that gives a soft outcome for major companies?

**Mr D'Ascenzo**—Ultimately, it has to go through the same normal processes of rigour.

**CHAIR**—You are confident of the integrity of that system?

**Mr D'Ascenzo**—That is right—yes, I am.

**Mr NEUMANN**—I want to talk about sex, sport and soliciting.

**Mr D'Ascenzo**—I will ask Mr—

**CHAIR**—I am not sure of the correlation!

**Mr NEUMANN**—And not solicitation for the purpose of *Hansard*! The first thing is that I think most of us would have noticed a growth in the adult entertainment industry in our areas. Certainly, adult shops in South-East Queensland have grown like Topsy. I think there are more adult shops than Coles, actually.

**CHAIR**—It sounds very personal, Mr Neumann! Is this personal research?

**Mr NEUMANN**—I think that some years ago the tax office came to arrangements in relation to certain areas of the adult entertainment industry and the amount of tax that was paid. I raise this in the context of your comments on the cash economy, where you said you consulted industry in relation to benchmarking. Have you considered that area, which seems to be a real growth area?

**Mr D'Ascenzo**—Maybe Mr Konza would like to answer!

**CHAIR**—Is this the flick pass?

**Mr NEUMANN**—This is a serious question because it is a very large industry, and you are dealing with metal roofing and tiling. I am talking as a lawyer who practised in South-East Queensland.

**Mr D'Ascenzo**—If anything, the amount of coverage we had in that area was significant over the last number of years. I wonder whether at an economic level, notwithstanding the growth, if it was really warranted. Mr Konza might say something else.

**Mr Konza**—I think the first thing to note is that the—

**CHAIR**—You are not saying you are an expert?

**Mr Konza**—No, I hope not! The first thing to note is that the challenges in this industry are different to the others. The challenges in this industry are simply to get people to identify themselves as being taxpayers in the industry. When you are looking at concreting and other things, you are a little bit further down the compliance path already.

**Mr NEUMANN**—They certainly act like a cash economy; that is for sure.

**Mr Konza**—Yes. So, we have put a fair bit of effort into working with the industry to make sure that the employees are identified as employees. We have also clarified with them the tax status of those employees. Actually, Centrelink fraud was a bigger issue in this industry than tax fraud, at one level. That is why the identification and the clarification that people are in fact employees was an important part. We also got a bit of media coverage at one stage because we told them things about their work related expenses. So, at this stage, I would say we are not looking to issue benchmarks for them because we are yet to get them up to that mark. As the commissioner said, it is not as big an industry as is sometimes thought—compared with other industries. The building industry is huge in Australia.

**Mr NEUMANN**—They certainly can be very profitable. I can tell you that clients of mine make considerable money.

**Mr Konza**—Yes, that is right. It is an issue that we are dealing with, but we are dealing with it in a way that is appropriate to that industry.

**Mr D’Ascenzo**—Apart from the industry, if you do have a person who is making a lot of money it does come under the broader cash economy process as well.

**Mr NEUMANN**—In terms of sport, I notice that you are undertaking audits in relation to football players, clubs and management. Is that intended to continue? I ask that in this context: we are seeing, for example, in the NRL, a number of players going overseas to play but still wanting to come back to Australia to play as well. This is in Rugby Union as well as league. We are seeing cricketers as well. Recently we saw players making huge sums of money in India and the subcontinent playing Twenty20 cricket. Are you looking to continue the auditing process in that regard? I know we are in Victoria, and the AFL does not really penetrate beyond the territorial jurisdiction of the Commonwealth of Australia—

**CHAIR**—Go the Swans!

**Mr NEUMANN**—But, seriously, there are serious international implications. Are you looking to undertake further auditing in that regard?

**Mr Konza**—Yes. We recognise that in the sporting industry we have to maintain a continuous presence, because you do not have the same longevity in that industry as you do in others. We constantly have new participants coming in, and managers and other financial intermediaries are whispering in their ears about what they can get away with. So we have to stay engaged with that industry on a continual basis. You are also correct that another factor is the internationalisation of the industry—

**Mr NEUMANN**—Soccer as well, by the way.

**Mr Konza**—yes, that is right—so we are dealing with a number of challenges. We also communicate with other jurisdictions, because we have found instances in which a sportsperson has ceased to be a resident of Australia and failed to become a resident of the place that they are playing in. Some communication is necessary between the authorities to make sure that they are doing the right thing.

**Mr NEUMANN**—My final question is on solicitors and it is in relation to service trusts, where you really took a more hardline or robust approach with respect to the benchmarking—the 50 to 30 per cent arrangement. Have you noticed any real change in the number of service trusts that solicitors use? Certainly in Queensland, for example, the incorporated legal practice is becoming a more fashionable way to go about it, which does not involve service trusts often. But what about other jurisdictions?

**Mr Konza**—The changes in the operation of the legal profession are more driven by changes to the law acts themselves. So incorporation was not possible until maybe two years ago in nearly all jurisdictions. It has been rolling out right across the country since then. That is what is really driving the restructure in the legal industry, I think. We recognised that as a risk a couple of years ago, because we thought that people moving to an incorporated approach might not get their tax compliance right. We issued a booklet—I think the year before last—on incorporation of professional practices. We also liaised with the law societies in the various states.

One reason that we knew it was a bit of a risk was that some of the law societies themselves run helplines, and those helplines were telling us that people were ringing and asking, ‘Can I do this, this and this?’ The helplines themselves were wondering at the end what the people were going to do about the tax consequences of what they were thinking—and the stamp duty consequences as well. So we developed this specific advice and we have given it to the law societies to try and make sure that that people have the opportunity to comply.

**Mr NEUMANN**—So it is more legislatively driven and practice driven rather than tax driven?

**Mr Konza**—I think so, yes.

**Mr NEUMANN**—I promise I will behave myself now, Chair.

**CHAIR**—It was light relief!

**Mr BRIGGS**—I have two questions. The first one is just to clarify something in an answer earlier on about the emissions trading participation in the review. You said you were giving advice on the law. I presume that was the acts that the tax office administers that you were giving advice on.

**Mr Quigley**—Yes.

**Mr BRIGGS**—Thank you. The second question relates, Commissioner, to a report in the *Australian Financial Review* on Monday, which I just want your clarification or acceptance of, I guess. It alleges that the ‘Tax office puts heat on small businesses’. That is the headline. In the article it suggests that you are taking a stronger approach on compliance of small business with GST than you have in the past. Is the article a fair reflection? I am happy to show you the article if you like.

**Mr D’Ascenzo**—No, that is fine. I do not recall that article specifically—and Ms Granger might want to say something—but I can say this to you. We have put a lot of effort—and you will see that in our corporate plan this year and last year—into our assistance package program

with small business. So, if you look at our compliance program, you will see that the thrust there is very much about providing a very enhanced amount of assistance. In fact, that is one of the areas for which we were not provided with extra supplementation in terms of funding, but we thought it was really important to do anyhow. We are working very closely with COSBOA and other small business associations—as well as people like beyondblue, because of the issues of stress that this puts on businesses in this sort of environment, to have a supportive environment. At the same time, you have got to be careful that, while most people might be doing the right thing, it is very important that they feel that others are as well.

**Mr BRIGGS**—Yes, I understand.

**Mr D’Ascenzo**—So we have to be firm as well where people are abusing the system.

**Mr BRIGGS**—So you would not agree with the proposition put in the article? It said:

... the Tax Office’s compliance approach for smaller entities had shifted from education to enforcement.

**Mr D’Ascenzo**—No, I think we still have a very heavy educational role. But we do have a firm edge where people are not complying with their obligations and not trying to carry them out.

**Mr BRIGGS**—Okay. Thank you.

**Ms Granger**—Just adding to that, we did signal in the program a number of areas where we were concerned—where people were getting it wrong, without knowing that particular article. For example, one of the very basic things is forgetting to include distributions from trusts and partnerships. We are actually writing to agents who have clients doing that to prompt them to do it. The balance of the program is on assistance, but the cash economy obviously is a—

**Mr BRIGGS**—My question was more about whether there was a direct decision within the tax office to focus on compliance rather than education, but what you are saying is no.

**Ms Granger**—No. And what we learn on the audit side of things we then push back into the education side of that program as well. I suspect, without knowing the article, that it is picking up particular risks that we are talking about to alert people to focus on in that market.

**Mr D’Ascenzo**—Part of our strategy is often trying to have that ‘prevention is better than cure’ approach, but sometimes you have to follow that up with some hard-edged enforcement. After having provided the education and having provided the opportunities, there are still people who do not comply.

**Mr BRIGGS**—But that is a different today than it was five years ago.

**CHAIR**—So what is your trend regarding penalties and pursuing penalties?

**Mr D’Ascenzo**—Penalty provisions still apply but, as I said, if you look at what we have been trying to do it is to have that prevention. If you do not get into a shortfall, then a penalty is not applicable.

**Mrs BRONWYN BISHOP**—Sometimes it is bankruptcy; that is the hard part. Have the bankruptcies increased?

**Mr D'Ascenzo**—I think the number of liquidations in the business area has slightly increased.

**Mrs BRONWYN BISHOP**—Very often when they are sole traders they literally are bankruptcies.

**Mr D'Ascenzo**—There are bankruptcies.

**Mrs BRONWYN BISHOP**—Has that increased?

**Mr D'Ascenzo**—I think it has increased generally across the economy, but not necessarily because of the tax office.

**Mrs BRONWYN BISHOP**—No; has the number of bankruptcies instigated by the tax office increased? Would you like to take that on notice?

**Ms Granger**—I may have the answer. I know we have looked at that, and I think the answer is only very marginally, but I will check it. We are often a creditor, but we are very rarely the trigger.

**Mrs BRONWYN BISHOP**—But you are sometimes?

**Ms Granger**—Yes, we are.

**Mrs BRONWYN BISHOP**—And you do have compassionate grounds to act on when there is a bankruptcy?

**Ms Granger**—Absolutely.

**Mr D'Ascenzo**—Yes, we do. There is a hardship panel that can take into account hardship cases.

**CHAIR**—There are a few questions following up from last time as well that I would like to put on the record. Integrity within the ATO—we see some attention to the practice of ATO employees looking up neighbours' tax returns or whatever. I see you are fairly rigorous about that. What is the latest in terms of the action taken or the incidence of that sort of behaviour?

**Mr D'Ascenzo**—I think last year we had 18 out of 22,000 people.

**CHAIR**—Good. You would be pleased with that outcome.

**Ms Granger**—We would like zero.

**Mr D'Ascenzo**—It is an area you cannot be complacent about.

**CHAIR**—Yes, every Commonwealth department has to deal with it.

**Mr D'Ascenzo**—I think our level of compliance with internal rules and legal rules is high.

**CHAIR**—At the top end, we have talked about the Fitzgerald report. We still have not seen any outcomes from that, or any publicly revealed information from the Fitzgerald report. Would you like to comment on that in terms of integrity at the top end of your agency?

**Mr D'Ascenzo**—Bruce is closer to it than I am.

**Mr Quigley**—With the Fitzgerald report, we agreed with Mr Fitzgerald that his review would take two stages. The first stage was concentrating on the suspension of a senior person in our serious non-compliance area. The finding that the commissioner came to as a result of Mr Fitzgerald's review was that it was reasonable and appropriate to take the action that was taken. That was to do with connections with a particular alleged underworld figure and the senior officer's refusal to cease those sorts of associations. By the way, all the staff were made aware of what the findings of Mr Fitzgerald were in that first stage.

The second stage of Mr Fitzgerald's review is probably going to be a more far-reaching one and we are still settling the terms of reference. It will look at cultural issues that go more generally to contact between the people involved in crime and our own people that actually investigate that. We put in place a number of quite strict procedures where that sort of contact would or would not be appropriate. Given that they actually do investigate these people, obviously there has got to be some contact, and there are strict rules about when that is appropriate. If, for instance, informal or passing contact is made then the officer has to advise senior people.

**Mrs BRONWYN BISHOP**—That is all contacts?

**Mr Quigley**—It is all contact with people that are alleged to be underworld and criminal figures.

**Mrs BRONWYN BISHOP**—Do you keep a master list of who those people are?

**CHAIR**—GPS.

**Mr Quigley**—I would not say there was a master list but certainly we are talking about people who have been alleged to be involved in serious crime.

**CHAIR**—On to the finance minister's question—value for money and IT. You have expended your program of upgrading your IT expenditure and outcomes at this stage?

**Mr D'Ascenzo**—Again, we have got a very ambitious transformational change program. It is IT enabled. The IT aspect of the program commenced with an original tag of \$453 million. In between there has been new government policy that has required around \$244 million in addition to that. The total cost is, I think, an extra \$40 million more than that, because we have had to maintain legacy systems longer in the meantime. Plus, because we self-funded the \$453 million, it is harvesting efficiencies that we had to push back. So all of that suggests that the program is

still on the right track, it is still delivering important outcomes for us and the community and we are very confident that it will provide a much better base for the future.

**CHAIR**—What about timeliness and efficiency in terms of being on budget?

**Mr D'Ascenzo**—I think the budget position is a difficult one because of two aspects of it. As the original program is sequenced through a longer period then the efficiencies that we hoped to get are pushed back plus the use of legacy systems, which we had hoped to have closed down, also start to impact. There are some accounting adjustments as well.

**CHAIR**—So you have had a scope change along the way as well.

**Mr D'Ascenzo**—The scope changes are new measures that we, as an administration, have to take into account, in terms of delivering on each year's annual government agenda.

**CHAIR**—Our report on tax administration made some recommendations regarding settlements and increasing the transparency on settlement arrangements. That does not mean naming the people that you do settlement agreements with, but at this stage we have found there is no way for us to see what the original assessment was by you of a tax debt, what the settlement amount was and what the gap is. Do you have a view on that? I know you will be responding formally to our report, but it is the sort of area that gives no comfort to the public. They need to be well informed on those revenues and potentials.

**Mr D'Ascenzo**—The concept of trying to ensure that there are high levels of confidence in that process is one that is very important to me and to our organisation. I have taken on board the views of the committee and we have tried to see what we can do in terms of the information in our annual report and other support processes to add further confidence, so I think we are making progress that is seeking to address the thrust of the committee's recommendation.

**CHAIR**—Do you have a parameter or a benchmark for what is an acceptable loss, or revenue foregone? How do you decide? Is it case by case?

**Mr D'Ascenzo**—It has to be case by case, often informed by the quality of the evidence and the judgements about what the litigation risks are. Often these processes are done not necessarily after the assessment but as part of the assessment process and so you are still getting new information, and even the settlement process starts to bring new information into the frame.

**CHAIR**—So is it possible that a major corporate would have a settlement out of every audit? If it is, I would be quite alarmed. But is there that degree of tolerance or discrepancy every time?

**Mr Quigley**—No.

**Mr D'Ascenzo**—The answer is no.

**CHAIR**—I am pleased you all agreed on that one!

**Mr Quigley**—Not every time.

**CHAIR**—Not after every audit.

**Mr D'Ascenzo**—We are looking at the committee's recommendation and seeing what more transparency we can give.

**CHAIR**—We will look forward to that coming about.

**Mr D'Ascenzo**—It is one of those balancing acts of trying to keep the confidentiality of the process with the individuals and to provide the level of security for the community that everything is done in the proper way.

**Mrs BRONWYN BISHOP**—I think that the question the chair asked is a very serious question. It is talked about in the general populous that there is tax mining, that there are audits that go in, that they are ambit claims and that it is done in that way to force a settlement and just to put the screws on somebody because it is cheaper to pay than to fight. It is something that is perceived as what happens, that is what people believe happens. I have talked to any number of people who have come to me with tax problems who say that they have been put upon but they have to pay because they cannot afford to fight.

**Mr D'Ascenzo**—The question of perceptions was raised by the Corporate Tax Association. My answer is that in the ATO it is not a one-person show. There are a whole lot of checks and balances, steps and processes that people have to go through.

**Mrs BRONWYN BISHOP**—No, this is a cultural thing they talk about. It is the culture.

**Mr D'Ascenzo**—I am saying there are so many checks and balances there, whereas sometimes from a company's perspective it is the company director, the finance manager or their adviser without any checks and balances. In a lot of respects, our processes are likely to produce more rigour than some companies.

**Mrs BRONWYN BISHOP**—I am not just talking about large corporations. I am talking about ordinary taxpayers who get screwed that way too—pardon the language.

**Mr Quigley**—On the checks and balances, is it the suggestion that it is the case manager that is doing that? In fact, the case manager cannot make that decision in any settlement. That decision has to be made by a senior executive officer.

**Mrs BRONWYN BISHOP**—I know all of that. But if you are running a smallish business and you have to accommodate a tax auditor in your office—supply the coffee, make sure he is comfortable and give him the whole box and dice—it is costing you a fortune to have him there and it is disrupting the business. All you will be anxious to do is pay to get rid of him. They people feel that there is a culture of a certain amount of targets that go on that way—you getting the revenue and them paying the price.

**Mr D'Ascenzo**—If that were the case, we would not have the sort of focus we have on help and assistance to the program. On the contrary, that is part and parcel of what we do.

**CHAIR**—What would your complaint data be?

**Mrs BRONWYN BISHOP**—We went through the stage of having smiley faces on your letterhead. That sort of stuff does not wash, the idea of ‘We’re from the tax office and we’re here to help you’.

**CHAIR**—Regarding complaints: you do generally tell us how your complaint data is trending.

**Mr D’Ascenzo**—That is right.

**CHAIR**—How is it at the moment?

**Mr Quigley**—The complaint numbers in the Ombudsman’s report have been steady over the last few years. In his report, he gave us a fairly good health check on the administration of the system.

**CHAIR**—Good. Thank you.

**Mr BRADBURY**—I want to ask a couple of questions in relation to the Tax Design Review Panel recommendations, but before that I have something of a policy question going to the capacity of the ATO to respond to a policy change in this area if it were to be contemplated. I know that in some other jurisdictions—although I note that they are generally of a much more simplistic nature in terms of the set of economic arrangements within those economies—there have been some attempts to introduce wage withholding as a final tax in order to simplify the system. Would a proposal of that nature be something that could be accommodated within the architecture of our system or is that something that would be a logistical nightmare to implement?

**Mr D’Ascenzo**—I think we could cope with it, but it would add an extra layer of complexity for employers. The problem with those systems is often at the employer end, particularly when people change their requirements. It puts an extra requirement there. One of the countries where this is seen to be a prominent part of their system is the UK, and I note that they have difficulties with that system because of the compliance burden it puts on their employers. From an administrative perspective we could cope with it.

**Mr Butler**—New Zealand has a system where most individuals do not have to file at all. That has been in place since the late eighties, when there was quite substantial tax reform. The key difference between New Zealand and Australia is that you cannot claim work related expenses at all in New Zealand and you can claim rebates for gifts through a separate form. It is a completely different system. It does put more onus on the employer, as Michael suggested, but the way it is designed is that that cost is borne by the government through the departments—in the revenue departments it is called reconciliation with employers.

Over time it still seemed to be a successful regime, but for child support payments, student loan obligations or income support they actually have to contact the department to square up at the end of the year. New Zealand now has a situation where it gets one and a half times its population in phone calls, because it is mostly done through call centres or the website. So no system is perfect, but in that country there were some pretty major changes back in the eighties,

as you may recall, which allowed the government at the time to bring about quite significant change in the income tax for individuals.

**Mr NEUMANN**—I guess that is always the challenge in these things. Obviously it would depend entirely upon the nature of how a system was constructed, but could you estimate how many taxpayers you could potentially remove from the stream of those that would otherwise have to submit returns in a more complicated fashion?

**Mr D'Ascenzo**—Again, that is part of the policy parameters the government might impose. We recently had to look at a small number because of new social security arrangements. As David said, to the extent to which you have tax and transfer assistance for individuals—that seems to be the way that, say, the recent Treasury review is going—it is hard to disentangle people from the system. What we are trying to do to reduce that compliance burden on people is through our pre-filling initiative, which tries to achieve the right outcome but through a different solution.

**Mr Butler**—In the Nordic countries they have great success in that area. In all the Nordic countries they have quite significant pre-filled return transmissions back to taxpayers. It can be done electronically, and that has been captured by the OECD and published in various documents.

**CHAIR**—We looked at that in our tax report too as something that was working quite favourably.

**Mr NEUMANN**—In relation to the recommendations that have come out of the Tax Design Review Panel process, I note that one of the aspects is, I guess, potentially giving the ATO a little bit more voice, if not at the drafting level then certainly before drafting of legislation might occur. I guess historically the ATO has played a much greater role than it does at the moment. From your perspective would that be a good thing?

**Mr D'Ascenzo**—I have always a supporter of what I call integrated tax design. It is just a question of making sure that people understand their particular role in that process. Treasury being the departmental arm of government has always had the call on the policy through government. I think people misunderstood when there was a change from our drafting instruction role to Treasury that we actually did the policy as well. We never really had formal responsibility for the policy, and that should, quite properly, be situated in Treasury. What we add to the integrated tax design is a number of skills. One is the administrative skills of what it will mean in terms of how the system would work, just from our perspective. Secondly, we would like to take a championing voice for the compliance costs of the measure to the taxpayer. In other words, if this is the government intent, because we have so many on-the-ground dealings with taxpayers and representative bodies, we might be better positioned to say, 'This can be done in a different way to achieve the same policy outcome but at a lower cost.' That is why I answered the question beforehand about the compliance cost issues.

The third area is the actual drafting. While it is done by the Office of Parliamentary Counsel, there is a requirement for people to have skills in interpretation. In other words, what is a court likely to understand these words to mean? Also, there is a very contextual understanding of how the tax acts work together so that, when there is an intersection of different measures, those two

measures work appropriately. That is some expertise that we have rather than others. So I think there are things we can bring to the table from the administrative perspective or the compliance cost perspective or the interpretive perspective, but the policy should always be a matter for Treasury and government.

**Mr BRADBURY**—Recommendation 24 of the Tax Design Review Panel was:

Investigate powers to grant extra-statutory concessions.

That is a significant proposal and it might mean different things to different people. That is the first point to make. The premise behind that is that the tools available to you do not allow you to necessarily achieve the right outcome in the full array of cases—and, principally, the powers at your disposal are in terms of penalties, remissions and things of that nature. Do you believe that you have sufficient powers to deal with situations as you confront them in that respect?

**Mr D’Ascenzo**—My primary responsibility is to apply the laws at the ATO that I am responsible for. That works whichever way it works. Whether it produces an outcome that is favourable to the revenue or an outcome that is adverse to the revenue, ultimately my responsibility is to apply those laws. There are situations where everybody would see that the law is not achieving what it was intended to achieve—where it is causing significant compliance costs, it is just wrong and it cannot work. I still have to apply it. I do not think that I have a discretion to not apply the clear words of the law.

There is what is called the ‘Commissioner’s administrative discretion’, but I read that—and the courts have read that—as a very narrow discretion. Do I follow up every single taxpayer that may have made a mistake? I cannot do that, because I do not have the resources to do that and it does not make sense. Do I immediately seek to assess somebody when the government has announced a law to be passed? That is not sensible. It is at that procedural level that I have some power, but I do not have a power to say, ‘Well, this is inconvenient for everybody, so we will ignore it.’ And that is the problem. I think the concern in that panel report was that it is really a requirement for legislative change and it starts to cause the delays that are inherent in some legislative change proposals. The short answer is that I cannot for convenience fix things up, even if everybody thinks it is the best thing to do.

**CHAIR**—To conclude, Commissioner, you do have a responsibility to exercise the charter, though. The Audit Office recently did a follow-up on the taxation charter and emphasised the need for you to embed fairness into your systems and culture, treating all taxpayers fairly. How confident are you that you have achieved that? What are you doing to make sure that is part of the culture?

**Mr D’Ascenzo**—Actually, we did independent surveys in this area, and the one area where we rated highest was that we treat people fairly and with courtesy and respect. So that very element is the top-rating community perception of us.

**CHAIR**—Well, that is a good position to be in and an interesting point to conclude on.

**Ms Granger**—Mrs Bishop asked earlier about the numbers of petitions we initiated for bankruptcy. I have got the figures now. They are for the past three years. In 2005-06, the figure

was 797. The following year it was 792. It dropped to 751 in 2007-08. On company wind-ups there was the same trend of lessening: 540, 431 and 386. And that does not include those where we are a creditor; these are ones we have initiated. So the trend is that they are both dropping. We think that is partly because of our ability now to engage earlier with taxpayers when they are struggling.

**CHAIR**—Thank you. We hope perceptions will always be reality. We hope that last statement is reality, Commissioner. Thank you very much for bringing your team with you today.

Resolved (on motion by **Senator Feeney**):

That this committee authorises publication, including publication on the parliamentary database, of the transcript of the evidence given before it at public hearing this day.

**Committee adjourned at 1.04 pm**