

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

2016 Annual Report of the Australian Taxation Office

Performance Review 2015–16

House of Representatives Standing Committee on Tax and Revenue

March 2017
CANBERRA

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ISBN 978-1-74366-618-0 (Printed Version)

ISBN 978-1-74366-619-7 (HTML Version)

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Chair's forward

The 2016 Annual Report of the Australian Taxation Office covers a period of consolidation under the ATO's Reinvention Program, a whole of agency reform to improve taxpayer engagement with Australia's tax and superannuation systems.

In its federal Budget for 2015–16, the Government funded the ATO to 'reduce red tape' and simplify compliance by making digital interaction the main mechanism for taxpayer engagement with the ATO. Tax time 2016 was a test for progress under this digital transformation agenda. This report records good news from the ATO; tax payers have embraced online compliance in increasing numbers while complaint levels have dropped sharply compared with last year.

The digitisation of ATO services is a major part of the Reinvention strategy, but it is not all. The broader strategy entails behavioural as well as structural change. Rather than focus on enforcement action, the ATO's new priority is 'early engagement', so that tax payers know their rights and obligations, and can use digital tax and superannuation lodgement systems to make compliance easier. For those without or unused to digital access, a suite of alternative services and supports are available.

The ATO's evidence to the Committee during this review suggested that taxpayers have good reason to be confident that the reform process is being managed with the propriety and professionalism expected of Australia's key revenue collection agency. Certainly, positive responses from tax professional bodies and small business indicated that past anxieties have dissipated. The ATO has emerged as a partner in the design and transformation of services to these sectors, with opportunities for high level consultation and a range of outreach programs working to resolve outstanding issues. The Committee has recommended that

these well received supports to small business and tax agents should continue beyond the initial development phase, to further refine services to these sectors.

While the ATO is to be congratulated on its achievement over the reporting period, the Committee takes the view that the agency's transformation program has reached a point which calls for greater accountability in performance reporting in a number of key areas. This will allow for the results of reform to be better gauged over time.

The Committee has made 14 recommendations in this report which call for, among other matters, more comprehensive reporting on: staff investment and deployment; progress against digital service milestones; investment in data analytics and auditing of debt collection decisions; the functionality and security of online systems; progress and numbers of new draft rulings and on tax simplification measures; and prioritisation of work identifying the size of the revenue gap.

A number of these recommendations go to the need for increased accountability to the public at a time when the digitalisation of government services has raised concerns about the security and integrity of the data held. The ATO's work in this area has been commended. However, sustained system outages in late December 2016, then in early 2017, saw the Office contract an independent assessment of its data development and management processes. There were also well publicised problems with data sharing of tax information, which damaged public confidence in the fairness and integrity of ATO data matching systems.

The Committee regards the personal and business impacts of ATO service disruptions as a concern, and has recommended that the ATO benchmark the functionality and security of its online systems for report in its next annual review. In the context of fairness to taxpayers, the Committee has also recommended that the ATO invest more in data analytics and auditing, and work with the Department of Human Services to limit the potential for errors in data sharing.

A related request is for agency-wide reportage on investment in and deployment of staff, to ensure value for money in high (person to person) and low (online) functions, including in compliance activity. The Committee regards this information as a priority following the workforce redesign that was conducted by the ATO in late 2015. More comprehensive reportage against ATO's fairness

measures, which rate the total quality of taxpayer satisfaction with ATO services, is a complementary measure.

In this report the Committee commends the Inspector-General of Taxation for his work in mediating more serious tax disputes, a role he took on in May 2015. A matter raised during this review was the tax treatment of self-assessing offshore (non) residents and the Commissioner's unlimited powers for retrospective auditing in cases of non-lodgement. The Committee has identified an anomaly in tax law which it considers unfairly impacts on long term non-residents, and has recommended the ATO provide an administrative remedy.

Finally, as Chair, I would like to draw attention to the relevance of evidence taken during this review to the Committee's ongoing inquiry into tax payer engagement with the tax system. Under this broad mandate, the Committee has specific interests in investigating the extent of the cash economy in Australia, and the work that the ATO is doing domestically, and with overseas counterparts, to identify the drivers and antidotes to its proliferation.

In anticipation of this, the Committee in this report has also urged the ATO to prioritise the development of indicators to identify and assess the size of the revenue gap, and to report promptly on its findings to promote public debate and awareness of the extent of the problem.

I thank the ATO Commissioners, the Inspector-General of Taxation and his Deputy, and representatives of tax professional and small business peak bodies for providing their professional insights during this review, and look forward to further discussion in coming months.

Kevin Hogan MP
Chair

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Members

Mr Kevin Hogan MP

Chair

Ms Julie Owens MP

Deputy Chair

Ms Terri Butler MP

Ms Nicolle Flint MP

Mr Milton Dick MP

Mr Julian Leeser MP

Mr Jason Falinski MP

Mr Bert van Manen MP

Terms of Reference

The Tax and Revenue Committee will review the 2015–16 Annual Report of the Australian Taxation Office.

For this review, the Tax and Revenue Committee has resolved to investigate a range of matters raised in the 2015–16 Annual Report of the Australian Taxation Office, including:

- progress on new technology projects, including myTax;
- relationships with tax practitioners;
- how the ATO is monitoring and assisting individuals and very small businesses who are not computerised to handle the new environment;
- how does the ATO benchmark its performance in introducing new IT: how does it compare, say, with the banks, or other countries' tax offices;
- an update on measuring the tax gap, any new estimates of particular taxes and of total revenue impacts, and an overall timetable for completion;
- the new strategy for addressing the cash economy, and an assessment of its effectiveness;
- a progress report on dealing with the backlog of draft public rulings; and
- an update on the indicators of perceptions of fairness in disputes and other performance information as listed in the Committee's previous report.

Abbreviations

| | |
|--|--------|
| Australian Business Software Industry Association | ABSIA |
| Australian Cyber Security Centre | ACSC |
| Australian National Audit Office | ANAO |
| Australian Taxation Office | ATO |
| Australian Taxpayers' Alliance | ATA |
| Australian Business Software Industry Association | ABSIA |
| Business Activity Statement | BAS |
| Chartered Accountants of Australia and New Zealand | CAANZ |
| Chief Executive Officer | CEO |
| Client Communication List | CCL |
| Cyber Security Working Group | CSWG |
| Council of Small Business of Australia | COSBOA |
| Electronic Lodgement Service | ELS |
| Goods and Services Tax | GST |

| | |
|--|--------|
| House of Representatives | HoR |
| Information technology | IT |
| Joint International Taskforce on Shared Intelligence and Collaboration | JITSIC |
| Practitioner Lodgement Service | PLS |
| Price Waterhouse Coopers | PwC |
| Software Industry Partnership Office | SIPO |
| Standard Business Reporting | SBR |
| Tax Practitioners Board | TPB |

List of recommendations

Recommendation 1

3.9 The Committee recommends that the Australian Taxation Office (ATO) report on:

- the ratios of staff deployment in person to person advice, both telephone and in community outreach, compared with online delivery and maintenance, relative to each business line;
- the investment in training, and the nature of training, for staff who have a direct engagement with taxpayers; and
- the extent to which the ATO is using contract staff and volunteers, their training and contracts of appointment.

Recommendation 2

3.10 The Committee also recommends that the ATO:

- provide total cost figures for deployment of staff across all ATO service bands to allow for a cost benefit analysis by business function; and
- advise on any comparative analysis that has been done on the outsourcings of particular business lines.

Recommendation 3

- 3.21 The Committee recommends that the ATO in its Annual Report tabulate progress of the digitisation of ATO's services from conception to current status, with information on how the ATO is tracking against original delivery targets.

Recommendation 4

- 3.32 The Committee recommends that the ATO should further invest in data analytics and auditing to promote the integrity of the tax system and work with the Department of Human Services and other agencies to enhance the auditing and review of apparent discrepancies identified through data matching.

The Committee also recommends that the ATO should ensure there is adequate telephone support provided, particularly in peak times or when there is a disruption to online services.

Recommendation 5

- 3.41 To provide greater certainty to Australian taxpayers, the Committee recommends that the ATO develop best practice benchmarks for measuring and reporting on the security and functionality of its online systems in its Annual Report.

Recommendation 6

- 3.50 The Committee recommends that the ATO, to improve certainty and reduce business impacts on tax agents, should publish on the Tax Agents Dashboard:
- a projected schedule and service updates on enhancements to the Practitioner Lodgement Service and corresponding changes on the Electronic Lodgement Service as an ongoing feature, with
 - advice on the timeframe and milestones for launch of the additional lodgement gateway for 2017 tax time and its functionality thereafter.

Recommendation 7

3.60 The Committee recommends that the ATO continue to invest in community outreach and assistance programs such as the ATO Fix-it Squads and Agents Visit Program beyond system development for consultation and ongoing refinement of user friendly digital service systems for the small business sector.

Recommendation 8

3.70 The Committee recommends that the ATO provide information in its Annual Report on:

- its trajectory and progress in the redesign of tax law to simplify compliance; and
- the number and timeliness of public rulings, issued and finalised, over the reporting period.

Recommendation 9

3.77 The Committee recommends that the ATO develop specific output targets for online services used by general taxpayers and by tax agents to benchmark the functionality of these services. The ATO should also include this benchmarking in its Commitments to Service Performance framework, and report outputs in its annual reports.

Recommendation 10

3.79 The Committee also recommends the ATO report against its fairness measures – on the basis of taxpayer and tax agent experience of the outcome; the process; the information provided; and interaction with staff – for specific business lines, including audit, advice and debt work, in its next Annual Report.

Recommendation 11

3.90 The Committee recommends that, in the interests of fairness, the ATO should assess and issue automatic notices of assessment to non-resident tax payers with nil income.

Recommendation 12

- 3.99 The Committee recommends that the ATO, to better inform public and policy debate and increase community awareness, should publish in 2017 its revenue gap measures and report the total revenue gap estimate and assessments for different community sectors on its website as they become available, and in the 2016–17 Annual Report.

Recommendation 13

- 3.101 The Committee recommends that the ATO's Annual Report should include a more detailed differentiation of data on unrecoverable debt, including by distinguishing between the amounts of debt written off as unrecoverable at law or that is uneconomical to pursue.

Recommendation 14

- 3.105 The Committee recommends that the ATO provide more detailed information in its Annual Report about its investment in compliance activity relative to revenue outcomes under debt recovery activities, for both funded pre-existing ATO activities and for indirect additional revenue commitments.

1. Introduction

Conduct of the inquiry

- 1.1 The House of Representatives Standing Committee on Tax and Revenue is authorised by Standing Order 215(c) to examine annual reports of agencies allocated to it by the Speaker.
- 1.2 Since its formation in 2013, the Tax and Revenue Standing Committee has held five biannual hearings involving the Commissioner of Taxation, the Inspector-General of Taxation and tax advisory bodies in which tax administration matters were discussed.
- 1.3 In its examination of the *Commissioner of Taxation Annual Report 2015–16*, the Committee continues with its assessment of the trajectory of the Australian Taxation Office (ATO)'s Reinvention Program in the light of matters raised in examination of the ATO's 2015 Annual Report, presented in May 2016, and other issues highlighted in evidence to this review.
- 1.4 Despite the scale of change and complexity of the matters under consideration, the coverage in this report aims to be both accessible and relatively succinct. This mirrors the ATO's approach in its annual report,

which reports in two slim volumes on 24 programs,¹ under the ATO's single outcome statement to promote:

Confidence in the administration of aspects of Australia's taxation and superannuation systems through helping people understand their rights and obligations, improving ease of compliance and access to benefits, and managing non-compliance with the law.²

- 1.5 To assist its evaluation of ATO performance over 2016, the Committee called for public submissions and convened two public hearings. On 23 November 2016 tax professionals gave evidence in Canberra. The Committee thanks representatives from CPA Australia, the Chartered Accountants of Australia and New Zealand (CAANZ) and the Tax Institute for updating the Committee on developments since hearings held for the 2015 annual report review.
- 1.6 On 30 November 2016, the Committee followed with evidence from the Australian Tax Commissioner Mr Chris Jordan, his second and deputy commissioners, and senior executive staff. The meeting concluded with commentary from the key scrutineer of ATO administration practice, the Inspector-General of Taxation Mr Ali Noroozi and his Deputy, Mr Andrew McLoughlin.
- 1.7 Following the hearings, the Committee forwarded extensive Questions on Notice to the ATO to further investigate the topics under inquiry. Additional questions were also taken by the Inspector-General on the day. The Committee appreciates the efforts made by these agencies to provide this additional information, as reflected in this report, in a timely manner.

Report structure and themes

- 1.8 This report covers matters arising over 2015–16, as advised at the time of presentation of the ATO Annual Report on 28 October, with additional insights on performance during tax time 2016 as discussed at hearings and in submissions.

¹ See the Australian Taxation Office (ATO), *Commissioner of Taxation Annual Report 2015–16, Volume 1 (Vol. 1), 'Part 01 Overview'*, p. 4, and *Vol. 2, Financial Statements*.

² ATO, *Commissioner of Taxation Annual Report 2015–16, Vol. 1, 'Part 01 Overview'*, p. 4.

- 1.9 The ATO Annual Report highlights a number of development milestones in the digital transition of tax and superannuation compliance over the reporting period. A notable example was the very positive response to SuperStream, an electronic system for streamlining superannuation payments.³ At hearings, the Tax Commissioner also cited increased online lodgements by individuals using myTax and enhancements to the Tax Agents Portal as important achievements over tax time 2016.⁴
- 1.10 In contrast to the Committee's last review, tax agents expressed increasing confidence in, and satisfaction with, the ATO which they said was working closely with them to enhance online systems and resolve problems. Notwithstanding this, some tax practitioners continued to struggle with ongoing technical and administrative challenges imposed by the ATO's digital transformation process, including website outages during tax time and later in 2016.
- 1.11 The ATO's decision making in disputes and its debt recovery processes were other areas under review. The Committee further explored identified issues with the Inspector-General of Taxation, who had taken over the tax complaints handling service from the Commonwealth Ombudsman in May 2015.⁵
- 1.12 Much of the evidence is outlined in Chapter 2 of this report. Chapter 3 examines issues of concern in more detail, and provides the Committee's recommendations and concluding observations.
- 1.13 A list of submissions and supplementary submissions, some containing Answers to Questions on Notice, are in Appendix A. Appendix B provides the list of hearings and participants. Appendix C contains the ATO's Answers to Questions on Notice in relation to its fairness in specific decision-making processes.

³ ATO, *Commissioner of Taxation Annual Report 2015–16, Vol. 1*, p. 23.

⁴ Mr Chris Jordan, Tax Commissioner, ATO, *Committee Hansard*, Canberra, 30 November 2016, p. 8.

⁵ These changes, which took effect from 1 May 2015, were aimed at enhancing the systemic review role of the Inspector-General and providing taxpayers with more specialised and focused complaints handling of tax matters. The Inspector also took on responsibility for scrutiny of the functions of the Tax Practitioners Board at this time. See Inspector-General of Taxation, *Submission 7*, p. 1.

- 1.14 Submissions and transcripts, along with further information about the inquiry, can be accessed at the committee inquiry website at:
http://www.aph.gov.au/Parliamentary_Business/Committees/House/Tax_and_Revenue/2015-16AnnualReport

2. Tax time 2016, in review

Reinventing the ATO

- 2.1 The 2016 Annual Report of the Australian Taxation Office (ATO) records a period of significant progress under the ATO's Reinvention strategy. The Taxation Commissioner Mr Chris Jordan explained:

...the ATO is progressing an extensive transformation program to improve the client experience and staff experience and to change our culture. The transformation program is called Reinventing the ATO and is all about increasing levels of willing participation or, as it is sometimes called, voluntary compliance, and also about building confidence in the ATO and the tax and superannuation systems.¹

- 2.2 The Commissioner reported that, over tax time 2016, the ATO had achieved on both scores; with high levels of voluntary compliance and 35 million activity statements and tax returns lodged, and complaint levels reduced by 26 per cent compared with the same time in the previous reporting period.²

¹ Mr Chris Jordan, Commissioner of Taxation, Australian Taxation Office (ATO), *Committee Hansard*, Canberra, 30 November 2016, p. 8.

² During tax time July to October 2016, Commissioner Jordan, ATO, *Committee Hansard*, Canberra, 30 November 2016, p. 8.

2.3 This chapter provides an overview and update on ATO performance since the Committee's last review in February 2016 of the ATO's 2015 Annual Report.³ It covers a range of matters identified for further consideration in that review:

- *Digital transition*—take-up over tax time 2016, prefilling and data matching, data integrity, security and management;
- *Engagement with tax practitioners*—consultations with tax agents and bodies, status of the Tax Agents Portal, transition to the Practitioners Lodgement Service, consultation with agents, ongoing technology issues and compensation;
- *Supports to small business*—early engagement, online and person to person supports, SuperStream, Single Touch Payroll developments, and debt management;
- *Guidance and advice*—issues around draft rulings including the backlog of old rulings;
- *Complaints handling and perceptions of fairness*—the role of fairness indicators and voluntary compliance, fairness in management of disputes and complaints handling, and in debt collection;
- *The tax and revenue gap*—the size of the tax gap and revenue impacts, the prevalence of the cash and hidden economy and large business tax avoidance; and
- *ATO performance benchmarking*—work done to assess the ATO's digital technologies and revenue collection performance compared with other nations.

2.4 As indicated in the introductory chapter, this coverage aims to provide a summary of progress and evolving issues to date. It does not provide a detailed history nor technical explanation of ATO systems and laws other than necessary for evaluation of recent developments in tax administration.

³ House of Representatives (HoR) Standing Committee on Tax and Revenue, *2015 Annual Report of the Australian Taxation Office*, First Report, April 2016.

Digital transition

2.5 The digital transformation of the ATO's lodgement processes aims to promote voluntary tax and superannuation compliance by making it 'less complicated and stressful for the community'.⁴ The ATO has advised that over the 2015–16 reporting period 'most people' could interact efficiently with the Tax Office online:

- For those with simple tax affairs, the system offers a '100 per cent digital interaction' with the ATO with taxpayers using myDeductions, myTax and online tracking of returns.⁵
- For businesses, the ATO had addressed problems with the Single Touch Payroll system,⁶ while the introduction of SuperStream, for processing superannuation payments, has made compliance easier.⁷
- For tax professionals, improvements to the Tax Agents Portal and the launching of the Practitioner Lodgement Service (PLS) for Tax Time 2016, with full transition from the Electronic Lodgement Service (ELS) in March 2018, will support improved interaction with the ATO.⁸

The digital by default agenda

2.6 The Digital by Default initiative was one of three core reforms to ATO services introduced by Government in the 2015–16 Federal Budget.⁹ The proposal aimed to progressively establish digital interaction as the main method for provision of information and lodgement of payments for

⁴ ATO, *Submission 1*, p. 6.

⁵ ATO, *Submission 1*, p. 6.

⁶ Mr Peter Strong, Chief Executive Officer, Council of Small Business Organisation of Australia (COSBOA), *Committee Hansard*, Canberra, 30 November 2016, p. 1.

⁷ ATO, *Tax Commissioner's Annual Report 2015–16, Volume 1 (Vol.1)*, p. 24.

⁸ The original date planned was March 2017, ATO, *Submission 1*, pp. 20–21.

⁹ Associated measures were improvements to data and analytics infrastructure and streamlining of income tax returns through the myTax system for taxpayers with more complex tax affairs. See 'Reducing Red Tape—Reform to the Australian Taxation Office', see Budget 2015, Part 2: Expense measures <www.budget.gov.au/2015-16/content/bp2/html/bp2_expense-21.htm> viewed 20 December 2016.

taxpayers, while maintaining support for those ‘unable to transition’.¹⁰ The ATO’s submission advised:

The ATO recognises that transitioning to digital is not just about providing services for the community to interact with the ATO digitally. That is why we are supporting people who need assistance in transitioning to digital services and we will continue to support those who are unable to utilise digital services.¹¹

2.7 Accordingly, the ATO uses risk-based analytics to identify and tailor appropriate supports to taxpayers, according to need.¹²

- For those requiring tailored online assistance, the ATO has introduced the ‘Show me’ tool to direct clients to new products and services and Alex the Virtual Assistant, which helps with less complex enquiries. A webchat facility addresses more complex online questions, with a new successful screen share function incorporated in mid-October 2016.¹³
- For people who cannot use digital channels, the ATO’s ‘high touch’ approach involves face to face interactions for individuals and businesses at shopfronts and pop-up offices and through field services visits, and information groups such as the Small Business Community Engagement workshops.¹⁴

2.8 The Committee asked the ATO about specific assistance provided to sectors of the community identified as being less likely to support or have ready access to digital services – Australians in rural and remote areas, older people, and those with lower incomes or education levels.¹⁵

2.9 The ATO advised of a suite of supports to regional Australians, through the Tax Help program, pop up offices, schools program, a network of third

¹⁰ Australian Government, ATO, *Digital by Default Consultation Paper*, November 2015, p. 3.

¹¹ ATO, *Submission 1*, p. 6.

¹² ATO, *Submission 1.3*, pp. 5–6.

¹³ With 2 000 webchats and 300 screen shares recorded since the function was introduced.
See ATO *Submission 1*, p. 7.

¹⁴ ATO, *Submission 1*, pp. 7–8, 9.

¹⁵ See Digital Transformation Agency and Digital by Default (2015) research. ATO, *Submission 1*, p. 7.

party providers and the Department of Human Services' Mobile Service Centre trucks. Telephone services such as SMS reminder messages and one to one calls are also used to keep rural and remote clients informed, while face to face, paper and telephone lodgement options will be maintained where needed.¹⁶

- 2.10 Many of these services also assist people with a disability, older people and migrants. The ATO's Tax Help Service, for example, deploys skilled volunteer staff from the community to assist taxpayers, with pop-up shops located in key migrant areas, and education seminars conducted by key migrant service providers. In 2016 Tax Help assisted taxpayers with over 24 000 lodgements (with a further 3 000 interactions) from 613 centres across the country by 818 volunteers.¹⁷
- 2.11 Telephone support also continues to play an important role nationally, with over 2.8 million calls received over tax time 2016 tax.¹⁸

Electronic lodgements in 2016

- 2.12 The ATO considered tax time 2016 to be a digital processing success with myTax online lodgements, as at 16 October 2016, up by nine per cent on the previous tax year.¹⁹ Further, by 18 November 2016, most returns—97 per cent of all individual returns, 92 per cent of non-individual returns, and 83 per cent of activity statements—had been lodged electronically with the ATO.²⁰
- 2.13 As discussed below there were, however, some difficulties experienced with the digital service over tax time 2016. The accuracy of prefilled information, fears about data matching, lodgement disruptions through myGov and questions about data security were covered in the media and discussed in evidence during the period of review.

¹⁶ ATO, *Submission 1.3*, pp. 5–6.

¹⁷ ATO, *Submission 1.3*, p. 5.

¹⁸ ATO, *Submission 1*, p. 8.

¹⁹ ATO, *Submission 1*, p. 10.

²⁰ ATO, *Submission 1*, p. 6.

Data management and security

- 2.14 The ATO has stated that ‘the growth of digital interaction, greater automated processing of exceptions and the more effective allocation of staff is speeding up tax return processing’.²¹ However, the reliance on digital processing also increases client expectations of efficiencies, which can be offset by system overloads and errors.²²
- 2.15 During tax time in 2015 system technical overloads were reported.²³ This year, a ‘short disruption’ to the myTax service occurred at tax time.²⁴ Later, in mid-December 2016 there was a sustained outage of ATO’s internal data and all customer service systems, followed by related service issues in early February 2017.²⁵ The ATO advised that, as well as an internal inquiry into the matter, it had appointed Price Waterhouse Coopers (PwC) to conduct an independent review of the causes, responses and risks of the outages, and to identify methods to mitigate these events in future. The Review would report back to the ATO in March 2017.²⁶
- 2.16 During the year, events on Census night,²⁷ and the release of the Australian Cyber Security Centre’s *2016 Threat Report*, drew attention to the potential risks to the security of government held data posed by external

²¹ ATO, *Tax Commissioner’s Annual Report 2015–16, Vol. 1*, p. 36.

²² ATO, *Tax Commissioner’s Annual Report 2015–16, Vol. 1*, p. 85.

²³ ATO, *Tax Commissioner’s Annual Report 2015–16, Vol. 1*, p. 36.

²⁴ Name Withheld, *Submission 5*, Attachment, R Myer, ‘Online Tax Returns hit by Cyber Attack’, *The News Daily*, 4 November 2016 and see N Towell, ‘ATO Fumes after Cyber Criminals Attack myGov Portal during Last Days of Tax Time 2016’, *Canberra Times*, 4 November 2016.

²⁵ See Commissioner’s statements over December 2016 to February 2017, at ATO Systems Update, <www.ato.gov.au/Media-centre/Media-releases/ATO-systems-update/> and see N Towell, ‘Public Servants Sit Idle as ATO’s IT Melts Down’, *Sydney Morning Herald*, 14 December 2016 <www.smh.com.au/national/public-service/thousands-of-public-servants-sit-idle-as-atos-it-melts-down-20161213-gt9xfd.html> viewed 5 January 2016.

²⁶ ATO, *Submission 1.3*, p. 7.

²⁷ Attributed to failure of Australian Bureau of Statistics geo-blocking services, see *ABC News*, ‘Census: How the Government says the Website Meltdown Unfolded’, 10 August 2016 <www.abc.net.au/news/2016-08-10/census-night-how-the-shambles-unfolded/7712964> viewed 13 February 2017.

cyberattacks.²⁸ Tax agents also identified cybersafety as a major issue for businesses in the digital economy.²⁹

- 2.17 The ATO advised that a key initiative for industry consultation on tax and cyber security threats was the establishment in early 2016 of the ATO's Cyber Security Working Group (CSWG). The group is comprised of the accounting associations, tax professional bodies and the Australian Business Software Industry Association (ABSIA).³⁰ Other initiatives include an online communications plan for fraud and online security messaging, implementation of minimum requirements for software products and supporting systems to protect business information. The Software Industry Partnership Office (SIPO) is also managing information incidents identified by software providers for the ATO.³¹
- 2.18 Tax agents expressed confidence in ATO credentials on cybersafety to date.³² At hearings Mr Michael Croker, Tax Leader Australia, Chartered Accountants Australia and New Zealand (CAANZ) particularly commended the ATO's work addressing phishing scams and ransomware, considering tax agents could assist in educating clients about these threats.³³ Tax professional bodies also spoke positively of their engagement with ATO through the CSWG.³⁴
- 2.19 CPA Australia reported on joint work to 'ensure there is widespread awareness of the risks and encouragement on all sides that appropriate risk

²⁸ The report advised that 'Australian government networks are regularly targeted by the full breadth of cyber adversaries', with 1 095 cyber security incidents on government systems. See Australian Government, *ACSC Australian Cyber Security Centre 2016 Threat Report*, p. 10.

²⁹ CPA Australia, *Submission 2*, pp. 1–2, Chartered Accountants Australia and New Zealand (CAANZ), *Submission 3*, p. 3.

³⁰ ATO, *Submission 1.3*, p. 14.

³¹ ATO, *Submission 1.3*, p. 14–15.

³² CAANZ, *Submission 3*, p. 3.

³³ Mr Michael Croker, Tax Leader Australia, CAANZ, *Committee Hansard*, Canberra, 23 November 2016, p. 3

³⁴ CPA Australia, *Submission 2*, p. 2; CAANZ, *Submission 3*, p. 4.

mitigation strategies are employed/ put in place.³⁵ CAANZ highlighted key initiatives to:

- Publish common sense cyber security safeguards, for tax and Business Activity Statement (BAS) agents and their clients
- Establish a rectification procedure whereby agents and the ATO (or other tax-related stakeholders) collaborate quickly and effectively to address cyber breach incidents.³⁶

Prefilling and data matching

2.20 ATO statistics suggest that it achieved greater efficiency in pre-filling data in 2016 compared to previous years—more data was made available sooner allowing for returns to be lodged earlier. The submission reports:

- By 15 July 2016, the ATO had received 57.6 million pre-fill records in comparison to 47 million records at the same time in 2015—an increase of almost 20 per cent.
- By 26 July 2016, the ATO had received all available welfare data, most private health insurance data and over 80 per cent of interest, dividend and term deposit data, representing the majority of...pre-fill data types.³⁷

2.21 The ATO highlighted the role of its extensive data matching networks in achieving this outcome, with 600 million transactions conducted. While there were isolated delays,³⁸ the ATO notes that financial institutions and many large employers had provided information well in advance of industry deadlines.³⁹

2.22 The ATO also uses data matching of information to identify incorrect reporting for individual tax returns, with debt letters issued if the discrepancy is greater than \$200.⁴⁰ Media coverage in early 2017 drew

³⁵ CPA Australia, *Submission 2*, p. 2.

³⁶ CAANZ, *Submission 3*, p. 4.

³⁷ ATO, *Submission 1*, p. 11.

³⁸ Medicare Private. The ATO notes that this was resolved by 24 August 2016, when 80 per cent of the information had been prefilled ATO, *Submission 1*, p. 12.

³⁹ ATO, *Submission 1*, p. 12.

⁴⁰ ATO, *Submission 1*, p. 12.

attention to concerns about this process in relation to debt letters being issued to Centrelink Welfare recipients, where ATO data matching had indicated discrepancies between its records and Centrelink declared incomes.⁴¹ Inaccuracies in the collation and interpretation of prefilled information had allegedly caused these discrepancies in many reported cases.⁴²

- 2.23 The accuracy of the prefilled data was raised as a concern during this inquiry. A tax agent asserted colleagues' experience that prefilled information on myTax 'had many errors and omissions' and was 'difficult to change and correct'. The submitter cited research by H&R Block (released in mid-October 2016) which had suggested that two thirds of self-lodged assessments had errors which favoured the ATO. He also raised the prospect of revenue loss from inaccurate medicare, overseas resident status and capital gains declarations, made by self-lodgers using myTax.⁴³
- 2.24 The ATO advised that it is working closely with stakeholders across the community 'to help individuals understand their tax obligations and entitlements'. Improved technology has enhanced the quality and volume of the data prefilled which, it suggested, also improves the accuracy of data in self-lodged returns. In addition:

In myTax 2016 we introduced real time prompting that encourages taxpayers to review their deduction claims where they are higher than expected.

We have sophisticated analytical rules in place that scrutinise every tax return to identify unusual, inaccurate and fraudulent claims, prior to refunds issuing. We also use data matching techniques to identify discrepancies and compare

⁴¹ A Anderson, 'Centrelink: Social Services Minister Christian Porter defends Debt Recovery System' <www.abc.net.au/news/2017-01-03/christian-porter-defends-centrelink-debt-recovery-system/8158286> viewed 5 January 2016.

⁴² P Martin, 'Centrelink's Robo-Debate is a Litany of Inhuman Errors', *The Age*, 4 January 2017 <www.theage.com.au/comment/centrelinks-robodebate-is-a-litany-of-inhuman-errors-20170103-gtl77k.htm>; T McLroy, 'What Caused the Controversy at Centrelink?', *The Age*, 4 January 2017 <www.theage.com.au/federal-politics/political-news/what-has-caused-the-controversy-for-centrelink-20170104-gtlqh1.html> viewed 5 January 2016.

⁴³ Name Withheld, *Submission 5*, pp. 2–3 and see Attachment: 'K Taurian, 'Majority of myTax Returns Inaccurate Study Finds', *Accountants Daily*, 15 November 2016.

taxpayer claims with their peers to identify those that are higher than expected which we then examine more closely.⁴⁴

Engagement with tax practitioners

- 2.25 At hearings in February 2016, peak tax practitioner bodies had felt uncertain about the future of their profession, given the Government had prioritised investment in the myTax and myGov based self-lodgement systems.⁴⁵
- 2.26 During this review, tax practitioners announced that their former concerns had largely been addressed.⁴⁶ CPA Australia's Head of Policy Mr Paul Drum, for example, considered the Tax Commissioner's recommendation that those who missed the online lodgement deadline in October 2015 should go to a tax agent, as a landmark in the profession's relationship with the ATO. Instead of the expected decline in clients under new self-lodgement systems, consultations with tax agents had increased over the last twelve months, Mr Drum said.⁴⁷
- 2.27 Representatives of the Tax Institute and CAANZ also expressed satisfaction in a perceived new 'openness' in the relationship, with ATO resources now being dedicated to address tax agents' issues.⁴⁸ The ATO submission confirmed that tax agents are now regarded as integral partners in the design of tax agents portals and lodgements systems, with a focus 'on providing the right services while mitigating costs to tax practitioners'. Key to this is the delivery of design solutions that are 'incrementally informed by the agents themselves'.⁴⁹

⁴⁴ ATO, *Submission 1.3*, p. 6.

⁴⁵ Mr Tony Greco, General Manager, Technical Policy, Institute of Public Accountants, *Committee Hansard*, Canberra, 10 February 2016, p. 4.

⁴⁶ Mr Paul Drum, Head of Policy, CPA Australia; Mr Arthur Anathasiou, [former] President, and Ms Stephanie Caredes, Tax Counsel, The Tax Institute and Mr Croker, CAANZ, *Committee Hansard*, Canberra, 23 November 2016, p. 2–3.

⁴⁷ Mr Drum, CPA Australia, *Committee Hansard*, Canberra, 23 November 2016, pp. 2, 5.

⁴⁸ Mr Drum, CPA Australia; Mr Anathasiou, The Tax Institute and Mr Croker, CAANZ, *Committee Hansard*, Canberra, 23 November 2016, pp. 2–3.

⁴⁹ ATO, *Submission 1*, p. 17.

- 2.28 The ATO's pilot Agent's Visit Program was considered to be central to the process, acting both as an aid to implementation and initial source of feedback on 'irritants, concerns and ideas' for the enhancement of the ATO portals.⁵⁰ Mr Drum felt that that access to qualified ATO staff was also invaluable to address systems issues for agents.⁵¹ Mr Anathasiou reported: 'They are now prepared to come out to the agents directly and work with the agents on whatever problems the agents have—they are fixed on the spot.'⁵²
- 2.29 Another advance was the ATO's rationalisation of consultative fora for tax professionals. Commissioner Jordan advised these were reduced from 68 to eight, with 'high level, genuine stewardship committees' now feeding advice into a 'consultation hub'.⁵³ Mr Drum referred to the formation of the ATO Practitioner Advisory Group:

Getting some of the very best practical experience and hands-on experience and bringing that to the table and being able to include that in the conversation is going to lead and does lead and has led to much better outcomes across the board. There is an example of a transformation—and maybe that is a transmutation. It has been quite an epiphany moment and a big change in how we engage with the tax office in this regard.⁵⁴

Tax agents portal

- 2.30 During the last review, the Committee recommended that the Tax Office report on the planned time frames for the transition to the new Tax Agent's Portal. (Recommendation 1). The ATO's submission to this review provides a detailed outline, which involves increasing software services and improving online services from December 2016 to tax time 2017.⁵⁵

⁵⁰ Introduced in early 2016 as a pilot under the 'Show Me What How and Why' program, see ATO, *Tax Commissioner's Annual Report 2015–16, Vol. 1*, p. 35; and ATO, *Submission 1*, p. 17.

⁵¹ Mr Drum, CPA Australia, *Committee Hansard*, Canberra, 23 November 2016, p. 2.

⁵² Mr Anathasiou, The Tax Institute, *Committee Hansard*, Canberra, 23 November 2016, p. 2.

⁵³ Commissioner Jordan, ATO, *Committee Hansard*, Canberra, 30 November 2016, p. 11.

⁵⁴ Mr Drum, CPA Australia, *Committee Hansard*, Canberra, 23 November 2016, p. 6.

⁵⁵ ATO, *Submission 1*, p. 20. The official Government Response to the report, however, remains outstanding at the time of writing.

- 2.31 Notably, instead of exiting old systems, the ATO advises it will improve online services (new portals) by trialling a pilot/beta in production *alongside* the existing agent portals. The new online services for agents will be released in three phases:
- Pilot phase 1 / private beta is scheduled for release on 25 November 2016 – Six agents have been invited to trial the new site...The number of agents participating will be increased to 20 agents in February/March 2017.
 - Pilot phase 2 / public beta is planned for April/May 2017— Online services for agents will be open for all agents to trial and provide feedback.
 - Tax Time 2017—Online services for agents will become the default offering from 1 July. Legacy Tax and BAS agent portals will continue to be accessible.
 - Decommissioning of the existing portals will commence at a later date which is still to be determined.⁵⁶
- 2.32 While the continuation of parallel systems was seen to be desirable to offset risks and negative effects, some agents were not impressed. A submitter asserted that the Tax Agents Portal ‘continues to be unreliable’, suggesting that constant upgrades, shifts in implementation dates of new systems, and ongoing glitches and outages were causing uncertainty and imposing administrative burdens on tax professionals.⁵⁷
- 2.33 Significant downtime and deteriorated functioning for the Tax Agent Portal, BAS Portal and Business Portal over recent months exacerbated these frustrations, particularly as the functionality of the Australian Business Register and BAS portal, for example, remained limited after restoral of other critical systems.⁵⁸
- 2.34 At hearings for the 2015 annual report review in February 2016, CPA Australia had called on the ATO to budget for compensations to tax professionals affected by disruptions and delays associated with the

⁵⁶ ATO, *Submission 1*, p. 20.

⁵⁷ Name Withheld, *Submission 5*, pp. 5–6.

⁵⁸The Commissioner of Taxation referred to the events in December as the ‘worst unplanned system outage in recent memory’ and the ATO made commitments that overdue BAS would not attract ‘penalties, interest or follow up action’, if lodged by 10 January 2017, see Media Statements, 16 and 20 December 2016 <www.ato.gov.au/Media-centre/Media-releases/ATO-systems-update/> viewed 20 December 2016.

transition process.⁵⁹ A submitter to the current review advised of his attempts to receive compensation on a claim of defective administration by the ATO of the Tax Agents Portal in 2104.⁶⁰

- 2.35 The Committee notes that the Inspector-General of Taxation, in his recent report into the Taxpayer's Charter and Taxpayer Protections, has called on the ATO to consider budgeting for potential compensatory payments relating to outages and delays.⁶¹ The ATO advised in response, however, that the ATO General Counsel currently has a centrally managed budget allocation for compensation purposes, making dedicated allocation unnecessary.⁶²

Practitioner lodgement service

- 2.36 The Practitioner Lodgement Service (PLS) is intended as the primary interaction point for agents to lodge returns and other reports, and was launched for use during tax time 2016. The Annual Report for 2015–16 provides:

The practical benefit for tax practitioners is a streamlined process that avoids the need to switch and transfer information between systems. The PLS is more interactive, enabling ATO-held data such as tax history and third-party data to be fed into the tax agent's systems. Changes that tax agents make to their client lists will also be reflected instantly.⁶³

- 2.37 The PLS will replace the existing Electronic Lodgement Service (ELS). The ATO had planned for full transition to the PLS by 31 March 2017. However, on advice from software developers and some tax practitioners, full

⁵⁹ Mr Paul Drum, Head of Policy, CPA Australia, *Committee Hansard*, Canberra, 10 February 2016, pp. 4, 2.

⁶⁰ Mr Richard Wytkin, *Supplementary Submission 4.1*.

⁶¹ Inspector-General of Taxation, *Review into the Taxpayer's Charter and Taxpayer Protections*, December 2016, para 4.52.

⁶² ATO, *Submission 1.3*, p. 12.

⁶³ ATO, *Commissioner of Taxation Annual Report 2015-16, Vol. 1*, p. 35.

conversion will now not take place until March 2018, with the ELS to continue as a back-up channel for individual income tax returns.⁶⁴

- 2.38 The ATO advises that the PLS uses the Standard Business Reporting (SBR) language and format, and will enable tax agent and BAS agent portals who are SBR enabled to interact with the government and clients through a single and secure digital entry point.⁶⁵ The submission acknowledges that the transition to an SBR only lodgement platform presents ‘a major challenge’ for both tax professionals and software developers.⁶⁶ However,

Progressively removing return forms from the Electronic Lodgement Service allows greater flexibility for software developers to smoothly transition their remaining tax agent customers to the Practitioner Lodgement Service throughout 2017.⁶⁷

- 2.39 The ATO will also introduce a second lodgement gateway to reduce risk of overload to handle peak lodgement volumes, as identified by software developers of the PLS for 2017 tax time.⁶⁸

Client communication list

- 2.40 Major problems were reported in the Committee’s last review of the Tax Agent Portal’s Client Correspondence service (now the Client Communication List). In particular, ATO notifications had been sent direct to clients through myGov. This process, as the Tax Institute suggested, caused: ‘a disintermediation of, or disconnection with, tax agents’, and a loss of confidence in their management of client affairs.⁶⁹

- 2.41 The ATO advised that, since February 2016, it has enhanced the client correspondence list functionality in the tax agent portal, also extending the

⁶⁴ ATO, *Submission 1*, p. 21.

⁶⁵ ATO, *Commissioner of Taxation Annual Report 2015-16, Vol. 1*, p. 35.

⁶⁶ ATO, *Submission 1*, p. 21.

⁶⁷ ATO, *Submission 1.3*, p. 12.

⁶⁸ ATO, *Submission 1*, p. 22.

⁶⁹ Mr Arthur Athanasiou, [former] President, The Tax Institute, *Committee Hansard*, Canberra, 10 February 2016, p. 3, and see Name Withheld, *Submission 5*, p. 3.

service to BAS agents from 29 April 2016. Ongoing refinements of the rebadged service aim to ensure agents have access to all correspondence received by a client tax payer through myGov.⁷⁰ A new Communication Preferencing function will also allow agents to prioritise categories of information to be notified from the myGov account.⁷¹

2.42 However, a tax agent submitter was very dissatisfied with these refinements. He considered that the CLS function still does not provide tax professionals with information on legacy documents or full advice on matters such as late lodgement of clients' tax returns. Instead, it imposes a substantial administrative burden on agents as each client account must be individually calibrated.⁷²

2.43 The ATO advised that it continues to evolve the design of the CLS with advice from tax professionals with recent developments being:

- increased content being provided via the Client Communication List, including emails and SMS messages sent directly to taxpayers
- improved naming standards for items of correspondence to make items easier to identify
- capacity to view up to 5 years of communication for individual taxpayers online
- improved search facilities that allow practices at the click of one button to see what new correspondence has been issued by the ATO to taxpayers on a day by day basis
- an ability to search on correspondence sent to those taxpayers that have linked their myGov mailbox to the ATO.⁷³

Late lodgement rule

2.44 At the last review, there was some discussion of the 85 per cent lodgement rule which applies to tax practitioners' lodgement of tax returns. At issue

⁷⁰ ATO, *Submission 1*, pp. 18–19, and see *Commissioner of Taxation Annual Report 2015-16, Vol. 1*, p. 34.

⁷¹ ATO, *Submission 1*, p. 21.

⁷² Name Withheld, *Submission 5*, pp. 3–4, and supplementary advice from the author.

⁷³ ATO, *Submission 1.3*, p. 11.

was the problem of clients who did not provide the necessary information on time, and the consequent threat of an agent being deregistered.⁷⁴

2.45 Responses at the time from the Inspector-General of Taxation Mr Ali Naroozi⁷⁵ and Mr Tony Greco of the Institute of Public Accountants⁷⁶ had indicated that concerns had been resolved. However, a tax agent writing to the current review provided many objections to the rule which he considered distorted the agent–client relationship, through:

- the ATO’s arbitrary calculation of the percentage, with outstanding returns from the previous tax year influencing current year assessment;
- targeting agents who assist taxpayers who have many outstanding tax returns, and
- alienating some 700 000 others through the ATO suggesting agents purge non-compliant clients from their lists (in 2011 and 2012) in order to meet the 85 per cent target.⁷⁷

2.46 The submitter also remarked the ATO’s failure to report on the number of taxpayers who disengaged from the tax system as a consequence of the purge since the last review, nor on the percentage of agents who managed to meet the lodgement rule.⁷⁸

⁷⁴ HoR Standing Committee on Tax and Revenue, *2015 Annual Report of the Australian Taxation Office*, First Report, April 2016, p. 16.

⁷⁵The Inspector-General advised that he had called for the ATO to consider the circumstances of the agent and the client in each case, and considered the matter had now been resolved. Mr Ali Noroozi, Inspector-General of Taxation, *Committee Hansard*, Canberra, 24 February 2016, pp. 13, 14.

⁷⁶ Mr Greco suggested the rule was essentially a ‘good feature of the system’, and through collaborative effort, the issues had been ‘pretty much ironed out’. *Committee Hansard*, Canberra, 10 February 2016, p. 5.

⁷⁷ Name Withheld, *Submission 5*, p. 4.

⁷⁸ Name Withheld, *Submission 5*, p. 5.

Supports to small business

2.47 Promoting small business compliance is a priority for the ATO. The sector is lagging behind all others in tax performance⁷⁹ and is also responsible for 65.2 per cent of total collectable debt, more than half of that owed to the ATO.⁸⁰

2.48 Data recorded in the 2015–16 annual report, for instance, indicates that the situation actually grew worse over the reporting period, with advances in small business lodgement of activity statements gained previously reversing over 2015–16,⁸¹ and small business debt increasing by 1.9 per cent over the previous year.⁸²

Early engagement

2.49 The ATO has adopted a policy of systemic ‘early engagement’ to promote voluntary compliance by taxpayers.⁸³ For the small business community, ATO priorities include:

- Ensuring ATO staff understand small business and their needs, and can access full client profiles to see the full picture;
- Launching the ‘show me what, how, why’ online services and webinars.
- Focusing on and fixing small business ‘irritants (such as though Fix-It Squads to develop small business solutions);
- Streamlining reporting options to provide as simple reporting systems for small business; and
- Providing visibility of all ATO transaction history, risk ratings and third party data for ATO Tax and super affairs.⁸⁴

⁷⁹ ATO, *Tax Commissioner’s Annual Report 2015–16*, Vol. 1, p. 22.

⁸⁰ At June 2016. ATO, *Tax Commissioner’s Annual Report 2015–16*, Vol. 1, p. 37.

⁸¹ ATO, *Tax Commissioner’s Annual Report 2015–16*, Vol. 1, p. 22.

⁸² ATO, *Tax Commissioner’s Annual Report 2015–16*, Vol. 1, p. 37.

⁸³ Commissioner’s Forward, ATO, *Submission 1*, p. 3.

⁸⁴ ATO, *Submission 1.3*, Attachment: *Supporting Small Business*, p. 7.

- 2.50 Mr Peter Strong, Chief Executive Officer (CEO) of the Council of Small Business of Australia (COSBOA) considered that outmoded software, the nature of technology and the attitudes of ATO staff have been obstacles to timely compliance in the sector.⁸⁵ He commended the ATO's responsiveness to these challenges, considering that small business targeted software solutions in e-invoicing, SuperStream, the myGov BAS (Business Activity Statement) lodgements, and more user friendly help lines would decrease debt levels and increase small business efficiency.⁸⁶
- 2.51 CAANZ's submission highlighted the following ATO initiatives as particularly effective for assisting small business compliance:
- Early ATO intervention/contact with the taxpayer
 - Taxpayer "nudge" techniques (based on behavioural science)
 - Re-designed ATO debt correspondence which makes it crystal clear that a debt is owing and what to do about it
 - Online debt repayment plans...
 - An ATO small business cash flow education product to be rolled-out in 2016-17
 - Warnings before more drastic action is taken by the ATO.⁸⁷
- 2.52 Mr Croker, warned, however, that the ATO's assistance needs to be well targeted as small business operators can be overwhelmed by a proliferation of information and tools.⁸⁸
- 2.53 The Australian Taxpayers' Alliance (ATA) also saw risks in proposals for new penalties to promote timely lodgement by small business, which could introduce anomalies, and recommended that the ATO ensure checks and balances are in place to protect taxpayer interests.⁸⁹

⁸⁵ Mr Peter Strong, CEO, Council of Small Business of Australia (COSBOA), *Committee Hansard*, Canberra, 30 November 2016, p. 3.

⁸⁶ Mr Strong, COSBOA, *Committee Hansard*, Canberra, 30 November 2016, p. 6.

⁸⁷ CAANZ, *Submission 3*, p. 5.

⁸⁸ Mr Croker, CAANZ, *Committee Hansard*, Canberra, 23 November 2016, p. 7.

⁸⁹ Australian Taxpayers' Alliance (ATA), *Submission 6*, pp. 3–4; and see ATO, 'Proposed Changes to Penalties for Small Business and Individuals—Consultation', October 2016 <lets-

Single Touch Payroll and e-invoicing

- 2.54 The Single Touch Payroll is a mechanism designed to simplify tax and superannuation payments for business. The Committee was advised that problems with the system as originally introduced have now been addressed through progression of the e-invoicing process in consultations with the ATO, the small business peak COSBOA, and through the work of the Digital Business Council.⁹⁰
- 2.55 COSBOA's Mr Strong, a founding co-chair of the Digital Business Council, considered that the rollout of the e-invoicing system will be a 'win for everybody', as the ATO will have reliable information direct from business, and businesses won't have to review their activity statements for end of year summaries.⁹¹ He explained:

At the moment, if you lodge an invoice, say, with Bunnings and you are small business, you have to retype it and when it comes back you have to retype something else. There is a lot of work. If you only do it every now and then, it is a pain in the neck. That is a common story across big and small, as is that the software will not talk to each other. So e-invoicing means that, no matter what software we are using, it will talk to each other... That will save a lot of time and a lot of mistakes for the small business community.⁹²

SuperStream

- 2.56 The new SuperStream system allows businesses to bundle all their super payment and employee information into one transaction, which is then dispersed to the nominated superannuation fund.⁹³
- 2.57 Small employers (those with 19 or fewer employees) were required to make contributions using the SuperStream standard by 30 June 2016. The ATO advised that, overall, 570 000 employers had implemented the SuperStream

talk.ato.gov.au/penaltyconsultation/news_feed/proposed-changes-to-penalties-for-small-business-and-individuals-consultation> viewed 20 December 2016.

⁹⁰ Mr Strong, COSBOA, *Committee Hansard*, Canberra, 30 November 2016, p. 1.

⁹¹ Mr Strong, COSBOA, *Committee Hansard*, Canberra, 30 November 2016, p. 4.

⁹² Mr Strong, COSBOA, *Committee Hansard*, Canberra, 30 November 2016, pp. 3–4.

⁹³ ATO, *Submission 1*, p. 8.

standard by this date, including 70 per cent of small employers. An extended deadline was offered to 28 October 2016 for those that missed the date.⁹⁴

- 2.58 The ATO estimates that SuperStream will deliver substantial savings to business, estimated at \$350 million per annum.⁹⁵ However it also recognises that businesses in rural and regional areas may struggle to meet requirements. The ATO reports work with the superannuation industry to develop a solution which will allow current super lodgement methods to convert to an electronic transaction compatible with SuperStream requirements.⁹⁶
- 2.59 Mr Strong commended this work on complimentary solutions to SuperStream as a positive for small business.⁹⁷

Managing small business debt

- 2.60 Discussion during the inquiry focussed on the persistent and increasing volume of small business debt, and the need to manage tax obligations with flexibility to support business sustainability and innovation.
- 2.61 CPA Australia's Mr Drum noted that while small business debt has been a long term issue for the ATO, it has spiked since the Global Financial Crisis. Noting that 'ultimately small business and the inability to pay its debt is a function of liquidity and inability of debtors to pay to each business on time',⁹⁸ he recommended that the ATO adopt a cautious approach to small business debt:

...There needs to be a rethink about it [ATO debt collection] because there is that balance that...where you have families that rely on businesses to put food on the table—businesses that employ people and so forth—and, if you try and get that debt and use all available means, you will basically hurt a lot of

⁹⁴ ATO, *Tax Commissioner's Annual Report 2015–16, Vol. 1*, p. 23.

⁹⁵ ATO, *Tax Commissioner's Annual Report 2015–16, Vol. 1*, p. 23.

⁹⁶ ATO, *Submission 1*, p. 8.

⁹⁷ Mr Strong, COSBOA, *Committee Hansard*, Canberra, 30 November 2016, p. 6.

⁹⁸ Mr Drum, CPA Australia, *Committee Hansard*, Canberra, 23 November 2016, p. 10.

people in a broader sense in the economy. So I think there needs to be a rethink of that particular strategy.⁹⁹

- 2.62 The ATO says that its new online debt repayment plan arrangements have led to more positive outcomes for small business, with the number of plans entered into increasing by 17.2 per cent on the previous year.¹⁰⁰ The annual report notes that online plans have also been 22.4 per cent more effective collecting debt than through traditional payment arrangements.¹⁰¹
- 2.63 However, the CAANZ submission suggested that some chartered accountants considered that the ATO's online debt repayment plans made it too easy to get tax debt payment extensions.¹⁰² The submission called for more extensive policy intervention by Government to support small business compliance and viability.¹⁰³

ATO guidance – draft rulings

- 2.64 The Committee's report on the 2015 Annual Report recommended that in future, all draft public rulings should cease on a certain date or when they are made redundant by legislation (Recommendation 3).¹⁰⁴
- 2.65 In its submission, the ATO referred to the results of an internal review of aged draft rulings which found that, in many cases, these were awaiting court outcomes. The ATO did not therefore consider withdrawal of all draft

⁹⁹ Mr Drum, CPA Australia, *Committee Hansard*, Canberra, 23 November 2016, pp. 10–11.

¹⁰⁰ With 950 000 plans offered an online payment arrangements for \$100 000, up from \$50 000 now allowable. See ATO for detail <www.ato.gov.au/general/paying-the-ato/help-with-paying/> viewed 5 January 2016.

¹⁰¹ ATO, *Tax Commissioner's Annual Report 2015–16, Vol. 1*, p. 37.

¹⁰² CAANZ, *Submission 3*, p. 5.

¹⁰³ Such as by offering training prior to granting an ABN, changes to upfront PAYG arrangements, agent and bank supervision of credit and debt plans, training and start-up plans for business, and limitation on the number of debt plans, See CAANZ, *Submission 3*, p. 6.

¹⁰⁴ HoR Standing Committee on Tax and Revenue, *2015 Annual Report of the Australian Taxation Office*, First Report, April 2016, p. 30.

rulings after a specified period advisable, considering it could cause 'greater uncertainty' to taxpayers.¹⁰⁵

- 2.66 The unresolved status of many rulings, however, continued to cause concerns among tax professionals. The CAANZ reiterated its view that there is a need for greater clarity on the status of ATO Interpretative Decisions, and its plans for rejuvenation of older public rulings on important topics.¹⁰⁶ Mr Anathasiou of the Tax Institute commented, 'there are a lot of rulings out there that have not been finalised, which makes tax practice very, very difficult'. However, he also observed:

I think there is a real push by the ATO to deal with all of that old outstanding legacy stuff. The ATO would come up with a draft position and then just leave it in abeyance for a decade. I think that is all changing.¹⁰⁷

- 2.67 The Australian Taxpayers' Alliance noted that the ATO's Annual Report for 2016 fails to provide advice on the number and timeliness of public rulings and determinations, in contrast to previous years.¹⁰⁸ It submitted that: '...the ATO should be held to a higher standard of excellence in ensuring that public rulings are being released so that tax practitioners and taxpayers are able to access timely information that would be relevant for them as they engage with the services from the ATO'.¹⁰⁹
- 2.68 The ATO subsequently reported to the Committee that the ATO had issued 69 public rulings (draft and final) and of that 20 were draft public rulings over the 2015–16 reporting period. Further, there had been no formal complaints made to the ATO in relation to draft rulings over the year.¹¹⁰

¹⁰⁵ ATO, *Submission 1*, p. 23.

¹⁰⁶ CAANZ, *Submission 3*, p. 5.

¹⁰⁷ Mr Anathasiou, The Tax Institute, *Committee Hansard*, Canberra, 23 November 2016, p. 8.

¹⁰⁸ Being 92 rulings and determinations in 2011–12; 69 in 2012–13; and 64, with 81 per cent on time, in 2014–15.

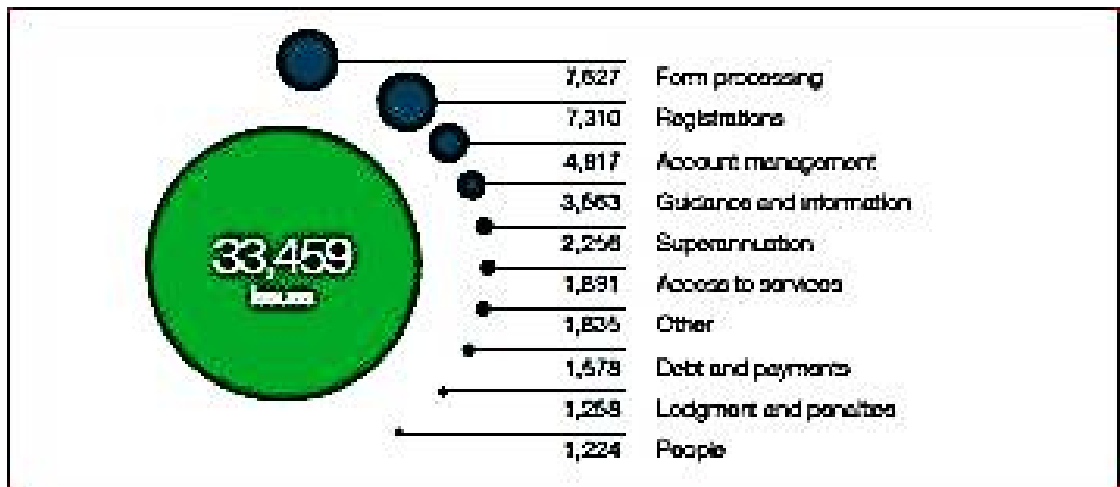
¹⁰⁹ Australian Taxpayers' Alliance, *Submission 6*, p. 2.

¹¹⁰ ATO, *Submission 1.3*, p. 3.

Complaints handling and perceptions of fairness

2.69 The ATO's Annual Report records the number of complaints received over 2015–16 as 34 323, or 0.2 per cent of the 17 million income tax returns received. Figure 2.1, below, shows the top ten complaint issues.¹¹¹

Figure 2.1 ATO's top ten complaint issues for 2015–16



Source: ATO, *Tax Commissioner's Annual Report 2015–16, Vol.1, p. 85.*

[figure showing top ten areas, from top: form processing registration, account management, guidance and information, superannuation, access to services, other, debt and payments, lodgements and penalties and people]

2.70 As indicated, the two main complaint issues addressed were:

- ATO administration of form processing and account management; and
- Delays associated with the release in January 2015 of the Client Register system.¹¹²

¹¹¹ The total number of complaints cited in the text differs to the number of issues shown on the table because a single complaint may include multiple issues, a complaint issue may not have been captured, and data is not captured for complaints resolved on a first client call. See Notes to Figure 3.2, ATO, *Tax Commissioner's Annual Report 2015–16, Vol. 1, p. 85.*

¹¹² ATO, *Tax Commissioner's Annual Report 2015–16, Vol. 1, p. 85.*

- 2.71 The Annual Report advises that the overall increase in complaints over the whole of the 2015–16 tax year, was attributable to these two main issues, with 61 per cent of complaints being received in the first half of the financial year.¹¹³ The Report goes on to note that while overall performance targets for returns for the period had been exceeded, ‘improved digital services ha[d] increased expectations with regard to the time frames for refund processing’.¹¹⁴ The ATO later advised that processing issues had been resolved by tax time 2016, when complaint levels dropped well below those received over July to October in 2015.¹¹⁵
- 2.72 Structural reform within the ATO’s dispute resolution process also brought a new capacity for timely resolution of disputes.¹¹⁶ The Commissioner highlighted features of the new process, which included an increased use of alternative dispute resolution services, new settlement guidelines and independent ATO facilitators.¹¹⁷ The Commissioner further advised:
- The changes can also be noticed in the interactions we have with taxpayers, for example responding to inquiries with ‘natural conversations’ not just scripted answers, and picking up the phone in the early stages of a dispute to see if a simple mistake or misunderstanding exists. Our early engagement and focus on helping people get things right is having a positive impact on the time taken and costs incurred to resolve matters.¹¹⁸
- 2.73 The ATO recorded the practical effect of these reforms for the 2015–16 reporting period:

¹¹³ ATO, *Tax Commissioner’s Annual Report 2015–16, Vol. 1*, p. 85.

¹¹⁴ In response, the ATO reduced of the overall processing time for standard income tax returns by one day by Tax Time 2016. ATO, *Tax Commissioner’s Annual Report 2015–16, Vol. 1*, p. 85.

¹¹⁵ Senate Supplementary Budget Estimates 2016, ATO, Answer to Questions on Notice no. 252, Senate Economic Legislation Committee, lodged 9 December 2016.

¹¹⁶ From 1 July 2015 the objections functions for complaints moved from the Client Engagement Group into the ATO Review and Law Design and Practice Group’s Dispute Resolution Business line. See ATO, *Tax Commissioner’s Annual Report 2015–16, Vol. 1*, p. 47.

¹¹⁷ ‘Commissioner’s Review’, ATO, *Tax Commissioner’s Annual Report 2015–16, Vol. 1*, p. ix.

¹¹⁸ Commissioner’s Forward, ATO, *Submission 1*, p. 3.

- the number of ATO litigation cases decreased significantly with increases in successful outcomes for the cases pursued;¹¹⁹ and
- the number of appeals made through the Administrative Appeals Tribunal dropped from 533 cases over 2014–15 to 396 in 2015–16.¹²⁰

Fairness indicators

- 2.74 Community perceptions of fairness measures are used to assess the ATO's performance in managing objections, disputes and complaints handling.¹²¹
- 2.75 During the previous reporting period, the ATO developed a 60 per cent Corporate Key Performance Indicator on fairness perceptions with a view to improving client fairness perceptions.¹²² Over 2015–16, fairness assessments of performance were conducted on four measures: distributive (the outcome); procedural (the process); informational (information aspects); and interpersonal fairness.¹²³
- 2.76 The Australian Taxpayers' Alliance welcomed the ATO's commitments to fairness in disputes, noting its inclusion as a performance measure for integrity in the ATO Corporate Plan 2015–2019. However, the ATA submitted that the 60 per cent target for 2016 should be raised to 75 per cent by 2019, stating:

The ATA recognizes that there are lower perceptions of fairness by the taxpayer when a decision favours the ATO. A plan should be set in place to improve this and uphold the public confidence in the dispute resolution process. Realistic expectations for taxpayers need to be met while also ensuring that there are transparency and the rationale is explained so taxpayers can understand why a decision was not ruled in their favour...taxpayers may feel out of place when raising their dispute with a

¹¹⁹ Success rate of 85 per cent, with 77 per cent of cases fully favourable to the ATO and 8 per cent partly favourable. Commissioner's Review, ATO, *Tax Commissioner's Annual Report 2015–16*, Vol. 1, p. ix.

¹²⁰ ATO *Submission 1*, p. 25.

¹²¹ ATO, *Tax Commissioner's Annual Report 2015–16*, Vol.1, p. 47.

¹²² ATO *Submission 1*, p. 25

¹²³ ATO *Submission 1*, p. 26.

government body such as the ATO and be overwhelmed by the process, the subsequent jargon and handling of their objection.¹²⁴

The role of the Inspector-General of Taxation

- 2.77 The Inspector-General of Taxation took on the complaints handling role for tax in 2014. Since the role took effect in May 2015, the Inspector-General has dealt with the more serious and difficult tax complaints.¹²⁵
- 2.78 At February 2016, a total of 1 779 cases were being dealt with by his Office.¹²⁶ By the close of the financial year, 2 148 complaints had been received of which over 95 per cent were processed and finalised within the same period.¹²⁷ At hearings, the Inspector-General said the increase was a positive, being reflective of the public's growing awareness of his Office's role as one of the 'checks and balances' in the tax disputes resolution system.¹²⁸
- 2.79 The most common issue of complaint to the Inspector-General's Office is the ATO's debt collection action, which accounts for 23 per cent of all issues raised during 2015–16. The Inspector-General explained that the major catalyst to complaint is the debtor's failure to understand his or her tax obligations:
- In a typical example, of a re-raising of a debt by the ATO, the taxpayer did not understand the reasons why his debt had been re-raised and was concerned that he was not notified by the ATO of its decision to re-raise the debt...My staff engaged with the relevant ATO officers on this issue and focused on ensuring that the taxpayer received an explanation regarding why his debt was re-raised and why he had not received notification from the ATO.¹²⁹
- 2.80 In the 2104–15 Annual Report review the Committee raised the issue of lack of clarity in relation to re-raising of debt collection letters issued by the

¹²⁴ Australian Taxpayers' Alliance, *Submission 6*, p. 2

¹²⁵ Inspector-General of Taxation, *Submission 7*.

¹²⁶ Mr Noroozi, Inspector-General of Taxation, *Committee Hansard*, Canberra, 24 February 2016, p. 2.

¹²⁷ Mr Naroozi, Inspector-General of Taxation, Answers to Questions on Notice in *Submission 7.1*, p. 3.

¹²⁸ Mr Naroozi, Inspector-General of Taxation, *Committee Hansard*, Canberra, 30 November 2016, p. 17.

¹²⁹ Inspector-General of Taxation, *Submission 7.1*, p. 3.

ATO.¹³⁰ The Committee was subsequently told improvements had been made and was issued with a copy of the revised letter.¹³¹ In his review of the ATO's debt collection practices (July 2015), the Inspector-General noted that the ATO's revised debt letters had been updated to 'incorporate behavioural economics principles and to make the letters easier for taxpayers to understand'.¹³²

- 2.81 Deputy Inspector Mr Andrew McLoughlin suggested that part of the problem is the ATO's need to get debt communication out quickly.¹³³ As already noted, the automated debt letter process has raised new concerns in this regard, given the onus is on taxpayers to provide information if data matched discrepancies are indicated.¹³⁴ The Australian Taxpayers' Alliance observed:

When a taxpayer interacts with the ATO and raises an issue through the dispute resolution processes, the current culture at the ATO suggests that taxpayers are considered guilty until they are proven to be innocent.¹³⁵

- 2.82 The Alliance argued that the ATO should bear the legal burden of proving any allegation by the taxpayer to ensure that taxpayers are not being taxed 'merely because of an allegation of fraud and evasion'.¹³⁶
- 2.83 Tax agent Richard Wytkin supported this view, noting that neither the Inspector-General of Taxation nor the Ombudsman are empowered 'to conduct a merit review' on an ATO decision.¹³⁷ Referring to the case of a client who had been subject to a six year audit period (rather than the mandated two year period), Mr Wytkin advised that a Freedom of

¹³⁰ Ms Bronwyn Bishop MP, *Committee Hansard*, 24 February 2016, pp. 6–7.

¹³¹ ATO, *Submission 3.1*, to the Committee's 2015 ATO Annual Report review.

¹³² Australian Government, *Debt Collection: a Report to the Assistant Treasurer*, Inspector-General of Taxation, July 2015, p. 65.

¹³³ Mr McLoughlin, Deputy-Inspector of Taxation, *Committee Hansard*, Canberra, 30 November 2016, p. 17.

¹³⁴ ATO, *Submission 1*, p. 12.

¹³⁵ Australian Taxpayers' Alliance, *Submission 6*, p. 4.

¹³⁶ Australian Taxpayers' Alliance, *Submission 6*, p. 4.

¹³⁷ Mr Richard Wytkin, *Submission 4.1*, pp. 1–2.

Information (FOI) request had not revealed the basis of the ATO's decision, nor why this was 'fair and reasonable'.¹³⁸ He asked why the ATO was not obliged to respond to the Inspector-General's finding on the matter (on 29 October 2015), that: '...the ATO should have, in our view and as a matter of fairness, limited its review and its requirement to the two-year period leading to [the client's] employment in Australia'.¹³⁹

- 2.84 The Inspector-General advised that while his determinations are not binding on the ATO, 'hopefully [they are] persuasive' if the Tax Office perceives a 'need to change their course' on a particular issue.¹⁴⁰ Deputy Inspector McLoughlin explained the value of the Office's role in ATO dispute resolution, which:

...provides us with a healthy opportunity to make sure that people who would otherwise be disaffected can be picked back up—in a sense, not re-engage with the system, but to make sure that we do not get ill-will or bad-will being created'.¹⁴¹

The tax and revenue gap

- 2.85 The ATO is the Australian Government's principal revenue collection entity. Over 2016–17, the ATO has budgeted expenses of \$21.5 billion to deliver its 24 programs in service to this single outcome. Its budgeted taxation revenue for the period is \$372.2 billion. A breakdown of sources of this expected revenue is shown below.¹⁴²

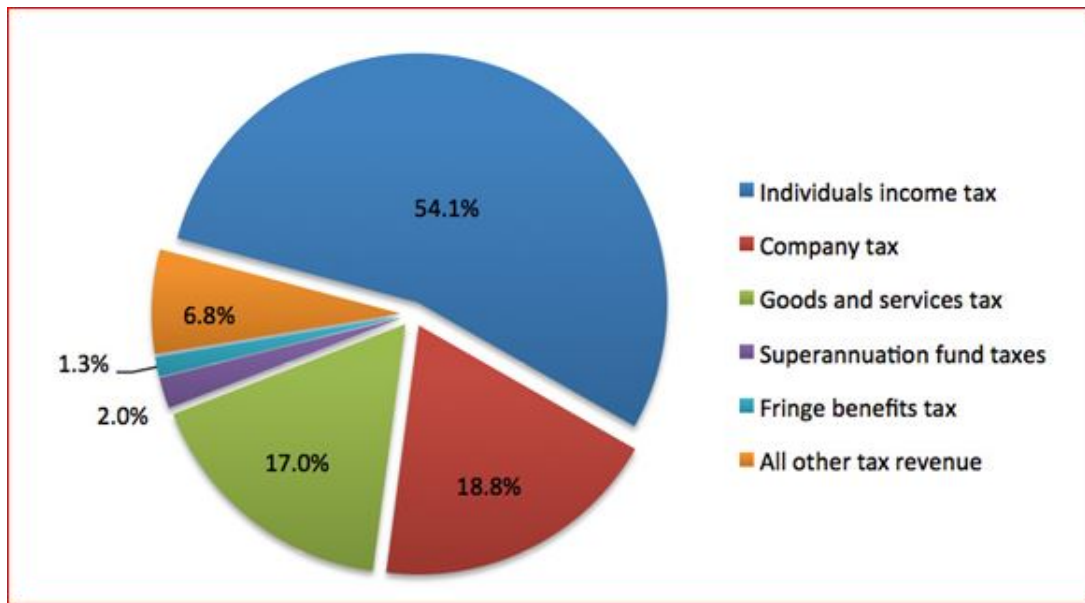
¹³⁸ Mr Richard Wytkin, *Submission 4*, p. 2.

¹³⁹ Mr Richard Wytkin, *Submission 4*, pp. 1–2.

¹⁴⁰ Mr Naroozi, Inspector-General of Taxation, *Committee Hansard*, Canberra, 30 November 2016, p. 21.

¹⁴¹ Mr McLoughlin, Deputy-Inspector of Taxation, *Committee Hansard*, Canberra, 30 November 2016, p. 17.

¹⁴² Sourced from the ATO Overview, Annual Audit Work Program, Australian National Audit Office (ANAO) <www.anao.gov.au/work-program/portfolio/australian-taxation-office/portfolio-overview> viewed 21 February 2017.

Figure 2.2 Revenue to be collected by the ATO 2016–17

Source: Estimate—Australian National Audit Office (ANAO) analysis of Budget Paper No. 1, 2016-17 (pp. 4–19) and Portfolio Budget Statement 2016–17 Paper No. 1.16.

[Pie graph showing percentage of Individual's revenue contribution of 54.1 %, Company tax 18.8%, GST 17%, Superannuation fund 2%, Fringe Benefits 1.3%, and all other revenue 6%]

Assessing the tax gap

2.86 The ATO's definition of the tax or revenue gap is an 'estimate of the difference between what the ATO collects and the amount that would have been collected if every taxpayer was fully compliant'.¹⁴³ Estimating this gap, as the ATO Annual Report indicates, is a challenge:

Tax gaps are in effect, about measuring what is not visible—what people have not told us about their compliance, whether through misunderstanding, by choice or by taking a tax position that differs from the ATO view of the law.¹⁴⁴

2.87 At hearings, Deputy Commissioner, Small Business, Mr Steve Vesperman stated that there is a lack of empirical evidence to reliably estimate revenue

¹⁴³ ATO, *Tax Commissioner's Annual Report 2015–16, Vol.1*, p. 43.

¹⁴⁴ ATO, *Tax Commissioner's Annual Report 2015–16, Vol.1*, p. 43.

gaps.¹⁴⁵ Mr Jeremy Hirschorn, Acting Second Commissioner, Client Engagement, noted that reportage on the beer excise tax gap had been revoked due to problems with the data methodology. Work was also 'ongoing' to develop a 'credible and reliable' method to assess the superannuation gap.¹⁴⁶

2.88 The ATO has also made commitments to develop a draft measurement framework to assist evaluation of revenue loss from non-compliance in the cash economy, in keeping with Auditor-General's recommendation in this area.¹⁴⁷ The ATO also advised that performance indicators and targets for these measures are being formulated for finalisation in early 2017.¹⁴⁸ As part of the process, the ATO has determined to re-segment revenue sectors to distinctly assess the gap for individuals (not business) as against small business and medium business, in addition to that on large business and high wealth individuals. This would aid evaluation of the drivers of non-compliance in each sector and help target communications to address the problem.¹⁴⁹

2.89 The ATO emphasised, however, that in estimation of the tax gap and shadow economy for these different client sectors, data would only be released when 'sufficiently creditable', rather than on an annual reporting basis.¹⁵⁰

¹⁴⁵ Mr Steve Vesperman, Deputy Commissioner, Small Business, ATO, *Committee Hansard*, Canberra, 30 November 2016, p. 9.

¹⁴⁶ Mr Jeremy Hirschorn, Acting Second Commissioner, Client Engagement, ATO, *Committee Hansard*, Canberra, 30 November 2016, p.15; see also ATO, *Submission 1*, beer excise and duty estimates were 'withdrawn due to identified data issues', p. 28.

¹⁴⁷ Specifically Personal Services, See Recommendation 1 – ATO supported, in the Auditor-General, 'Strategies and Activities to address the Cash and Hidden Economy, Australian Taxation Office', *ANAO Report No.27 2015–16, Performance Audit, Australian National Audit Office*, 2016, p. 10.

¹⁴⁸ ATO, *Submission 1*, p. 15.

¹⁴⁹ ATO, *Submission 1*, pp. 29–30.

¹⁵⁰ ATO, *Submission 1*, p. 30.

Unrecoverable debt

2.90 Unrecoverable debt contributes to the size of the revenue gap. In answer to a Question on Notice, the Inspector-General of Taxation explained:

... the ATO generally categorises debt as ‘written off’ when it is either irrecoverable at law (that is, a ‘winding-up’ through bankruptcy or receivership or legal settlement including compromise) or uneconomic to pursue in its annual reporting. A debt which is irrecoverable at law is effectively extinguished legally and cannot be re-raised against the taxpayer.¹⁵¹

2.91 The Inspector-General noted that the largest ATO write off of debt occurred in the 2012–13 financial year. As highlighted in the table below, the amount was \$4.6 billion, which was a \$2 billion dollar increase on the previous financial years and has been larger than any subsequent write off.

Figure 2.3 ATO Annual debt write-off over 2010–16

| Annual Report | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 |
|--|---------|---------|---------|---------|---------|---------|---------|
| Value of debt not pursued (\$Bn) | 1.7 | 3.8 | 2.6 | 4.6 | 3.4 | 1.4 | 1.7 |
| Increase / (decrease) on prior year (\$Bn) | N/A | 2.1 | (1.2) | 2.0 | (1.2) | (2.0) | 0.3 |

Source: ATO data cited in *Inspector-General of Taxation, Submission 7.1, p. 2.*

[Table showing relative debt unrecovered over 2010 to 2016 with 1.7 per cent of debt not pursued in 2015–16]

2.92 The Inspector-General also drew the Committee’s attention to the fact that the 2012–13 and 2013–14 financial years were the only years in which the ATO provided a breakdown in its annual reports of these debts in primary terms.¹⁵² The Inspector-General identified a need for more comprehensive reportage, including a reconciliation between the impairment of the taxation receivables line item and the amount of debt written off as irrecoverable at law or uneconomical to pursue.¹⁵³

¹⁵¹ Inspector-General of Taxation, *Submission 7.1*, p. 1.

¹⁵² Inspector-General of Taxation, *Submission 7.1*, p. 2.

¹⁵³ Inspector-General of Taxation, *Submission 7.1*, p. 2.

Reducing the cash and hidden economy

2.93 The ATO's commitment to reduce the cash economy is part of its broad objective to increase willing compliance across the whole Australian community. The Tax Commissioner stated:

Australians want to know we are doing what we can to level the playing field for businesses – with multinationals, the sharing economy, the cash economy and other risk areas. We will continue to use more sources and more sophisticated intelligence to target compliance action on those who warrant such attention.¹⁵⁴

2.94 The ATO's strategy to reduce the cash and hidden economy has been couched in terms of 'protecting honest businesses from unfair competition in industries where cash economy behaviours have been identified'.¹⁵⁵ As part of this work, the ATO surveyed over 127 000 businesses in industries most at risk, with restaurants and cafes, hair and beauty, and building and construction sectors identified as the top three cash economy operators in 2015–16. Further analysis is to follow in emerging 'sharing' economies, such as transport services, accommodation and personal services.¹⁵⁶

2.95 Deputy Commissioner Vesperman explained that the ATO's modus operandi is now to ascertain the drivers of non-compliance, rather than focus purely on end enforcement action:

On our interaction and engagement, each time we do a review or an audit we look at the best approach in understanding what the driver was and then responding to that to lock in forward compliance behaviour. That is a much better outcome than looking backwards all the time. That is how we go about our business.¹⁵⁷

2.96 CAANZ suggested that the Committee may wish to investigate whether the ATO has the legislative and administrative tools it needs to adequately

¹⁵⁴ 'Commissioner's Review', ATO, *Tax Commissioner's Annual Report 2015–16, Vol. 1*, p. x.

¹⁵⁵ ATO, *Submission 1*, p. 14.

¹⁵⁶ ATO, *Submission 1*, pp. 15–16.

¹⁵⁷ Mr Vesperman, ATO, *Committee Hansard*, Canberra, 30 November 2016, p. 10.

address this difficult area of tax administration. Possible areas for exploration include:

- The use of non-tax sanctions (whereby other legal entitlements or commercial benefits are jeopardised by non-compliance with the tax law as part of a broader social contract)
- The issue of tax compliance certificate as a pre-condition for the taxpayer applying for a government tender
- The use of tax bonds as a condition of obtaining an Australian Business Numbers for repeat cash economy offenders.¹⁵⁸

2.97 Mr Strong argued that education is needed to change social attitudes, so that the perpetrators recognise the broader impact on community revenue and services.¹⁵⁹ He also considered advances in payments systems and analytic technologies would simultaneously reduce opportunities for cash interactions and increase co-operation with the ATO.¹⁶⁰

Large business and multinational tax avoidance

2.98 The Commissioner has committed the ATO to take ‘a well-balanced approach across the different market segments to increasing levels of participation in the tax and super systems’.¹⁶¹ This includes work implementing the Multinational Anti-Avoidance Law (MAAL), through the Tax Avoidance and the Serious Financial Crimes Task Force, and on the OECD’s Base Erosion and Profit Shifting (BEPS) action plan and the Joint International Taskforce on Shared Intelligence project on the Panama Papers.¹⁶²

2.99 In evidence on the integrity of the overall tax system, tax agents raised the implications of the Panama Paper revelations to call for greater transparency and sharing of tax information. The Tax Institute’s Mr Anathasiou stated:

¹⁵⁸ CAANZ, *Submission 3*, p. 4.

¹⁵⁹ Mr Strong, COSBOA, *Committee Hansard*, Canberra, 30 November 2016, p. 5.

¹⁶⁰ Mr Strong, COSBOA, *Committee Hansard*, Canberra, 30 November 2016, pp. 4, 7.

¹⁶¹ ATO, *Submission 1*, p. 4.

¹⁶² ATO, *Submission 1*, p. 4.

...where information is available it should be used to ensure that everybody pays their fair share of tax. It is that issue about big data—making sure that whatever information is out there in discrete areas, discrete points or discrete transactions will be able to be crunched and brought together so we are in a position to allow the ATO to get a clear picture of everybody's tax position. We also need to make the whole process easier because, if the process becomes easier, compliance with the law becomes easier and the cost of tax administration and tax collection reduces and the system works properly.¹⁶³

2.100 Commissioner Jordan advised that there is unprecedented global collaboration and action in addressing high wealth and multinational tax avoidance:

I chair the Joint International Taskforce on Shared Intelligence and Collaboration, JITSIC, and that network has the Panama papers as a significant project right now. And of course we are doing a lot of work on the multinational anti-avoidance law that came in in January this year. All of that work, I think, provides a really good signal to the community that we have both got the tools that we need and we are doing what we can to level the playing field and ensure that people and companies pay the right amount of tax.¹⁶⁴

2.101 At the national level, the ATO Annual Report 2015–16 anticipates progress in the wake of the favourable Federal Court decision for the ATO in relation to the matter of *Chevron Australia Holdings Pty Ltd v the Commissioner of Taxation* in December 2016. The decision confirmed the Commissioner's powers under the existing transfer pricing provisions to deal with profit sharing using cross border related-party financing to reduce taxes payable in Australia.¹⁶⁵ The Government's recent introduction of the Diverted Profits Tax Bill, with complementary legislation to increasing penalties for large business non-lodgement and harmonisation of transfer pricing laws, aims to

¹⁶³ Mr Athanasiou, The Tax Institute, *Committee Hansard*, Canberra, 23 November 2016, p. 9.

¹⁶⁴ Commissioner Jordan, *Committee Hansard*, Canberra, 30 November 2016, p. 8.

¹⁶⁵ *Chevron Australia Holdings Pty Ltd v the Commissioner of Taxation (no.4)* [2015] FCA 1092, see discussion ATO, *Tax Commissioner's Annual Report 2015–16, Vol.1*, p. 29.

further empower the ATO to apply Australia's anti-avoidance provisions and penalties.¹⁶⁶

2.102 However, questioning during this review on the ATO's litigation on the Bell Group matter, in which the Western Australian Government introduced legislation to facilitate the dispersal of debts and end litigation on \$1.7 billion funds owed to creditors by Alan Bond's Bell Group of Companies since the 1990s,¹⁶⁷ indicates that large business revenue collection and tax enforcement has potential to be a highly politicised and contested area of constitutional law and tax administration.¹⁶⁸

ATO performance benchmarking

2.103 The ATO participates in a range of benchmarking and research initiatives in relation to information technology (IT) performance, by:

- Participation in the annual Whole of Government Cross Agency ICT Benchmark Study, leading research memberships (Gartner Research, Forrester Research, Ovum Research, and Massachusetts Institute of Technology [MIT] Research) and an international forum of tax agencies;
- Reviewing ATO IT infrastructure to ensure it is fit for purpose and all outsourced infrastructure to better understand modernisation requirements;

¹⁶⁶ Into Parliament on 9 February 2017. Complementary legislation, the Combating Multinational Tax Avoidance Bill 2017, will substantially increase penalties for large multinationals where they fail to lodge tax documents on time or make false or misleading statements to the ATO. An additional measure will harmonise Australia's transfer pricing laws with the 2015 OECD transfer pricing recommendations. The Hon Scott Morrison MP, Treasurer, 'Turnbull Government continues Crackdown on Multinational Tax Avoiders', *Media Release*, 9 February 2017 <www.ministers.treasury.gov.au/media-release/009-2017/> viewed 10 February 2017.

¹⁶⁷ See the Hon Mike Nahan, (former) Minister for Energy, Citizenship and Multicultural Affairs, 'Legislation passed to finalise Bell Group case Legislation', *Media Release*, 27 November 2016 <www.mediastatements.wa.gov.au/Pages/Barnett/2015/11/Legislation-passed-to-finalise-Bell-Group-case.aspx> viewed 10 February 2017.

¹⁶⁸ See *Bell Group N.V. (in liquidation) & ors v State of WA & ors* [2016] HC A21, in which the High Court unanimously held that the Bell Act is invalid in its entirety 'because of Section 109 inconsistency with Commonwealth taxation laws'. See ATO, *Tax Commissioner's Annual Report 2015-16, Vol.1*, Appendix 4: Strategic Litigation, p. 107, and refer to Answers to Questions on Notice in ATO, *Submissions 1.2, passim*, and 1.3, p. 1.

- Conducting industry comparison through informal talks with similar scale IT organisations in Australia, including the major banks.¹⁶⁹

2.104 The Committee's terms of enquiry invite information on the benchmarking of new ATO IT systems against that of banks and tax agencies overseas. The ATO's submission provides:

Due to the differing nature of business operations, it is difficult to directly compare IT performance between organisations. When compared to other similar size Commonwealth government agencies, the ATO performs well, with no significant performance variations.

Specific quantitative IT benchmark studies have not been recently conducted against Australian banks or overseas tax agencies. The range of research available to the ATO through its ICT research body memberships is able to meet ATO requirements for industry comparison.¹⁷⁰

2.105 The ATO reports that this involvement in research memberships allows for an 'informal comparison' between international tax agencies.¹⁷¹ The ATO is also examining international methodologies to promote broader tax compliance through pre-lodgement engagement and has engaged an international expert to review wider revenue effect estimation approaches.¹⁷²

¹⁶⁹ ATO, *Submission 1*, p. 32.

¹⁷⁰ ATO, *Submission 1*, p. 32.

¹⁷¹ ATO, *Submission 1*, p. 32.

¹⁷² ATO, *Submission 1*, p. 31.

3. Issues and recommendations

An efficient and fair tax system

- 3.1 The Australian Tax Office's Annual Report for 2015–16 covers a period of consolidation under the Reinvention strategy and its delivery of the ATO's operation objective, to promote:

Confidence in the administration of aspects of Australia's taxation and superannuation systems through helping people understand their rights and obligations, improving ease of compliance and access to benefits, and managing non-compliance with the law.¹

- 3.2 The outcomes recorded in the Annual Report reveal a Tax Office that has shifted its core strategic focus from end compliance to early engagement with the tax payer. The structure of the report, which highlights the tax performance of key sectors of the community—small or large business, tax professionals, as well as in management of revenue collection, the tax gap, and ATO performance culture—reflects the ATO's new take on person to person engagement, simultaneous to the digital automation of the majority of its lodgement and advice systems.
- 3.3 Reflecting back on achievements in the new ATO Corporate Plan for 2016-17, Tax Commissioner Chris Jordan stated:

¹ ATO Outcome Statement, ATO, *Tax Commissioner's Annual Report 2015–16, Volume 1 (Vol. 1)*, p. 4.

We have been driving significant change—to improve the client and staff experience, to improve our organisational performance, and to increase trust and confidence in the tax and superannuation systems.

We are making it easier for people to do the right thing and providing certainty for them. We are engaging early with stakeholders in the tax and superannuation professions, software providers, government and other organisations to provide contemporary services that foster willing participation.²

- 3.4 The Committee’s review of the year’s activities with representatives from the tax profession and the small business community registered overall a new level of satisfaction with the ATO’s attitude to, and engagement with, their members. There was a sense of collective purpose; the ATO’s extensive consultation processes were not only improving the compatibility of online lodgement, business registration and payment tools, but they were providing opportunities for industry bodies, businesses and individuals to give ATO tax experts and management a better sense of the needs and objectives of taxpayers.
- 3.5 The Inspector-General of Taxation, commenting on the increase in the number of complaints to his Office over the period, took this to indicate that the system was working more effectively. The ATO recorded significant falls in the number of complaints it received over tax time 2016, with litigation cases and appeals also much reduced, suggesting online efficiency and redesigned dispute resolution services had been a success. For those still aggrieved, there was the Inspector-General on call for advice and scrutiny of ATO decision making.
- 3.6 In review of this fairer and more efficient ATO, the Committee nevertheless identified a number of issues which merited a more thorough investigation. One area of interest was in the ratios of staff deployed in online services and innovation relative to the ‘high touch’ person to person engagement the ATO is carrying on with small business, for example, and less digitally enabled sectors of the community. This was not easily discernible from the

² Commissioner’s Forward, *ATO Corporate Plan 2016–17*, August 2016, p. 1

<www.ato.gov.au/uploadedFiles/Content/CR/downloads/n7769-07-2016_js37088_w.pdf> viewed 14 February 2017.

activity and financial statements in the Annual Report,³ nor was a question given to the ATO on this matter answered.⁴

- 3.7 Further, in view of the ATO's new focus on improving staff capability, following the decrease of 17 per cent in ATO staff over the previous three years, and with the organisational alignment now concluded, it would be useful to know where current staff is deployed and how they are being trained.⁵ An addendum to this would be about the extent to which the ATO is now using local networks and volunteers as additional supports, and on what basis.
- 3.8 The Committee therefore considers it is important to get a truer picture of ATO staff deployment and skills at this point in time, given the potential for errors to be made in digital processing, when matters are complex, or to ensure that grievances are quickly resolved. In evidence to the Committee, the Commissioner himself made this point clear in highlighting the importance of the ATO Fix-it Squads and Visits programs, and of telephone advice to clarify compliance requirements, and to resolve disputes.

Recommendation 1

- 3.9 **The Committee recommends that the Australian Taxation Office (ATO) report on:**
- **the ratios of staff deployment in person to person advice, both telephone and in community outreach, compared with online delivery and maintenance, relative to each business line;**
 - **the investment in training, and the nature of training, for staff who have a direct engagement with taxpayers; and**
 - **the extent to which the ATO is using contract staff and volunteers, their training and contracts of appointment.**

³ Appendix 8 in the Annual Report provides Work Force Demographics by business line and location. See ATO, *Tax Commissioner's Annual Report 2015–16, Volume 1 (Vol.1)*, pp. 116–18.

⁴ Specifically in relation to assistance provided to small business. Detail was provided on the range of services, not staff ratios. See ATO, *Submission 1.3*, pp. 13–14.

⁵ ATO, *Tax Commissioner's Annual Report 2015–16, Vol.1*, pp. 49–50.

Recommendation 2

3.10 The Committee also recommends that the ATO:

- **provide total cost figures for deployment of staff across all ATO service bands to allow for a cost benefit analysis by business function; and**
- **advise on any comparative analysis that has been done on the outsourcings of particular business lines.**

3.11 This information could be usefully reported over time as more services are digitised and could be used to calibrate staff needs as the community demographics and ATO compliance foci changes. Specific concerns raised in relation to the ATO's digital transformation processes and other matters discussed in the body of the report are addressed below.

Digital transition

3.12 The ATO's evidence to this review sets out a number of milestones for this tax year, with the majority of taxpayers able to interact with ATO online services and, by November 2016, nearly all individual returns, 92 per cent of non-individual returns, and 83 per cent of activity statements having been lodged electronically with the ATO.⁶

3.13 The digitisation of government services, business transactions and payments are accepted as inevitable by most people in the community. This supposition is supported by ATO research, that of the Digital Transformation Agency, and also in evidence to this review.

3.14 The Committee considers that it is nevertheless important not to underestimate the impact that a digitisation transformation of tax services on the scale undertaken by the ATO must have on some sectors in the community. This entails uncertainty and inefficiencies caused by digital transition and disruption to lodgement and processing services, by incompatible software used by business operators (including tax agents), as

⁶ ATO, *Submission 1*, p. 6.

well as the proportion of businesses and others in the community who have poor access to internet services or do not routinely use them.

- 3.15 Past reviews have not focussed in particular on the challenges of digital transition in a nation like Australia, where internet access is unreliable or unavailable in many regions. The services that the ATO has outlined in its report and other evidence to this inquiry, including that provided in detailed supplementary material, suggests that the ATO is genuinely committed to help those in rural and remote areas in the medium to long term as needed.
- 3.16 The ATO's flexibility during the first mandatory year of SuperStream implementation was another plus for regional businesses. The ATO highlighted, in this regard, its adherence to the Digital Transformation Agency's Digital Service Standard. The ATO is also contributing to the whole-of-government Digital Transformation Roadmap which is 'delivering a range of initiatives that are designed to make it as simple and fast for people to get things done, through any channel, wherever they are.'⁷
- 3.17 The Committee was pleased to note that the ATO's submission provided a timeline for transition to the new Tax Agents Portal, as recommended in the Committee's review of the previous annual report. Peak tax bodies also appeared satisfied with the ATO's support to them during the phased transition to the upgraded portal and the Electronic Lodgement System (ELS) and Standard Business Reporting (SBR), now planned for March 2018.⁸ Small business was pleased with progress on compatible software systems, and confident that the ATO is committed to resolving issues.⁹
- 3.18 Notwithstanding this, one tax agent's submission was strongly critical of the ATO's constant iterations of new features and updates for key lodgement services, considering that the uncertainty created by transition was a threat

⁷ ATO, *Submission 1.3*, p. 5.

⁸ CPA Australia, *Submission 2*, p. 1; Chartered Accountants of Australia and New Zealand (CAANZ), *Submission 3*, p. 2; Mr Tony Anathasiou, [former] President, The Tax Institute, *Committee Hansard*, Canberra, 23 November 2016, pp. 2–3.

⁹ Mr Peter Strong, CEO, Council of Small Business of Australia (COSBOA), *Committee Hansard*, Canberra, 30 November 2016, p. 3.

to his business.¹⁰ There was also discussion of calls for the ATO to provide budget for compensation to tax agents affected by digital transition impacts, although the ATO considered arrangements adequate at this time.

- 3.19 This, in the Committee's view, highlights the importance of the ATO's continuing commitment to enhance online services, including those for myTax 2017, with a 'focus on continuing improvement and building taxpayer feedback to further streamline and improve the experience'.¹¹ Maintaining momentum in the transition process will be important for this.
- 3.20 The digitisation of ATO services is part of the broader Reinvention Program, a whole-of-organisation reform launched in 2015. The Committee notes that detailed information for the transformation of each service area is available on the public record.¹² Nevertheless, the Committee considers that it would be helpful if the ATO were to provide a timeline showing the implementation of the digitisation project in its Annual Report, with information on how the ATO is tracking against its original delivery targets for each service area.

Recommendation 3

- 3.21 The Committee recommends that the ATO in its Annual Report tabulate progress of the digitisation of ATO's services from conception to current status, with information on how the ATO is tracking against original delivery targets.**
- 3.22 Recommendations 5, 6 and 9 in this report address the need for improvements to reportage on outcomes and time frames for specific services since the last annual report review.
- 3.23 In terms of the ATO's broader focus on assisting the community during transition, the Committee commends the Tax Office's efforts to support less digitally enabled sectors – people with a disability, older people and new taxpayers, migrants and youth. In particular, the ATO is demonstrating its

¹⁰ Name Withheld, *Submission 5*.

¹¹ ATO, *Submission 1*, p. 11.

¹² See ATO, *Reinventing the ATO* at <www.ato.gov.au/About-ATO/About-us/Reinventing-the-ATO/> viewed 3 March 2017.

online services in a range of contexts to ensure these groups better understand our tax and superannuation systems.¹³

- 3.24 The Committee would hope to see continuing investment in the mitigation of impacts on the tax profession and the business community, and in education of the broader community both to secure revenue collection and, in fairness to taxpayers—the most vulnerable of whom may be more likely to attract compliance action if they fail to meet their obligations.

Data integrity and compliance issues

- 3.25 According to the ATO, a total of 80.4 million tax records were prefilled by November 2016, with less than 30 complaints received.¹⁴ This is a remarkable achievement which, considered with increases in online lodgement through myTax over tax time 2016, suggests that Australian taxpayers are happy to have a simpler, easier and less stressful way of meeting their tax obligations. While this might be expected to increase the number of self-lodged applications, there was also evidence that tax agents' business increased over the tax year rather than otherwise.
- 3.26 Tax professional bodies were overall more positive about the ATO's management of lodgement processes over 2016, although there were some reservations. Discussion focussed on the accuracy of data obtained in prefilling, that provided by self-lodgers, and the potential for data-matching to distort tax outcomes for some in the community. More fundamentally, ethical questions were raised about the use of data-matching to identify tax defaults, and the ATO's role as tax administrator and regulator as digitisation of personal tax and business information becomes automatic.
- 3.27 In relation to the breadth of these concerns, the Inspector-General of Taxation advised:

That is a concern of some in the tax profession: you do not want to get your advice from the regulator; there needs to be some level of independence. That is very true, but myTax should be used for what it is. It is for somebody with simple affairs who wants to lodge a return. For anything more complex than

¹³ ATO, *Submission 1*, 3, p. 5.

¹⁴ See ATO, *Submission 1*, p. 11.

that, they might need to seek the advice of a tax agent or a tax practitioner, or myTax needs to evolve more, to ask a few more questions, or whatever. So I agree with you to some extent that you cannot replace an independent adviser with technology. You will always have some need for that, depending on the level of sophistication that you require.¹⁵

- 3.28 The Committee was pleased to note that the ATO has developed automated systems to improve the quality of prefilled data and has ‘sophisticated analytical rules’ to scrutinise tax returns to ‘identify unusual, inaccurate and fraudulent claims’ as well as to ‘identify taxpayers who have made an error’, and will consider amending their returns to disallow a deduction.¹⁶ Mr Tony Anathasiou, President of The Tax Institute, commented:

In terms of information being provided to the ATO, the idea is to ensure that you are able to get the best possible information which can be quickly gathered, is accurate and can be easily disseminated through to the ATO. Once it goes into the ATO, that same information should then be able to be used by the whole of government. The point is that information should only be sent once and should be able to be used.¹⁷

- 3.29 Events during the last part of 2016 brought new concerns about the potential for error in data sharing between agencies. The Committee anticipates the ATO will also prioritise higher scrutiny of the accuracy of tax information shared with other agencies. Areas of concern discussed in this report include alleged inconsistencies in ATO information provided to Centrelink and errors made incidentally. There was also potential for deliberate distortion of ABN and BAS information provided in online registration by ‘rogue’ advisers offshore.¹⁸ In many of these cases, only auditing by a tax staff member might reveal errors.

- 3.30 The Committee further notes the ATO’s advice that it expects to contact over 300 000 taxpayers this year where ‘once only’ discrepancies are identified in

¹⁵ Mr Ali Naroozi, Inspector-General of Taxation, *Committee Hansard*, Canberra, 30 November 2016, pp. 20–21

¹⁶ ATO, *Submission 1.3*, p. 6.

¹⁷ Mr Anathasiou, The Tax Institute, *Committee Hansard*, Canberra, 23 November 2016, p. 5.

¹⁸ Mr Michael Croker, Tax Leader Australia, CAANZ, *Committee Hansard*, Canberra, 23 November 2016, pp. 3, 4.

tax returns. If the tax payer disagrees with the assessment they can contact the ATO prior to the due date and provide supporting information.¹⁹ Given concerns about this process, in which the onus of proof is on the tax payer, the Committee sees room for greater scrutiny of automated data matching and related tax debt audit processes, and greater investment in scrutiny of each case before debt letters are sent out.

- 3.31 The ATO may also consider whether requirements for the taxpayer to provide very old information at short notice, requires a review of the automatic deduction of debts and a corresponding need for greater investment in telephone support for quick resolution in case of error.

Recommendation 4

- 3.32 The Committee recommends that the ATO should further invest in data analytics and auditing to promote the integrity of the tax system and work with the Department of Human Services and other agencies to enhance the auditing and review of apparent discrepancies identified through data matching.**

3.33 The Committee also recommends that the ATO should ensure there is adequate telephone support provided, particularly in peak times or when there is a disruption to online services.

Data security

- 3.34 The ongoing disruption to ATO online services over December 2016 and into 2017 brought into focus the potential risks associated with the digitisation of core government processing and support services, such as those managed by the tax, health and social security services.
- 3.35 The ATO Commissioner has been forthright in public statements about the recent outages of ATO internal and external services. In an ATO Systems Update statement, he criticised the media for sensationalising reports during the outages, which he described as ‘a challenging and testing time for the community and the ATO’. Mr Jordan went on to advise on the preliminary findings of the independent review, being conducted by Price Waters

¹⁹ ATO, *Submission 1*, p. 12.

Cooper (PwC) following the December outages, which identified a 'failure by the contractor Hewlett Packard Enterprise (HPE) to provide contracted services in a reliable way and ensure stability of our systems'.²⁰

- 3.36 While the ATO has given reassurance that no taxpayer data was lost during the outage, the Committee notes that concerns about the security of government held data exacerbates the effects on tax professionals and others in the community when core government processing and payment services, assistance and advice, goes offline.
- 3.37 As noted in this report, the Australian Cyber Security Centre (ACSC) has highlighted an increasing cyber security risk to Australian government systems. However, the ACSC's 2016 cyber threat review also considered that government agencies are increasingly aware of the risks and are managing them more effectively, with reported threats correspondingly decreasing.²¹
- 3.38 Tax peak bodies expressed confidence in the ATO's work in this area to date, however, there was the view that the international nature of cyber threats requires a more developed 'whole-of-government' approach as more government data is held and shared.²² In this regard, the Chartered Accountants of Australia and New Zealand (CAANZ) noted the value of government work with the ACSC, and the supplementary need to work with bodies such as the Tax Practitioners Board to consider how to regulate the threat of the 'digital disruption' of financial advice and information from offshore.²³
- 3.39 Also discussed in this report, the ATO established a Cyber Security Working Group (CSWG) in early 2016 to consult with government and specific industry bodies to collectively consider cyber risks to tax information and services, with internal and external reviews underway to consider the causes

²⁰ Commissioner's statement – ATO Systems, ATO Systems Update, 8 February 2017
<www.ato.gov.au/Media-centre/Media-releases/ATO-systems-update> viewed 13 February 2017.

²¹ Australian Government, *ACSC Australian Cyber Security Centre 2016 Threat Report*, p. 10.

²² Mr Croker, CAANZ, and Mr Anathasiou, *The Tax Institute, Committee Hansard*, 23 November 2016, pp. 7 and 8 respectively.

²³ Mr Croker, CAANZ *Committee Hansard*, 23 November 2016, pp. 7, 3.

of 2016 outages and reduce future risks associated with them.²⁴ The ATO also advised that it works in close partnership with the Department of Human Services, as administrator of myGov, to plan for and address incidents, particularly in the lead-up to tax time.²⁵

- 3.40 The Committee supports further development of a ‘whole-of-government’ approach to cyber threats and the Government’s continued investment in the work of the ACSC.

Recommendation 5

- 3.41 To provide greater certainty to Australian taxpayers, the Committee recommends that the ATO develop best practice benchmarks for measuring and reporting on the security and functionality of its online systems in its Annual Report.**

- 3.42 The Committee also would expect to see a full disclosure of the findings of the PwC review of the ATO outages, with potential for the ATO to discuss its response at future meetings with the Committee.

Partnerships with tax agents

- 3.43 The very positive responses from peak tax professional bodies during this review indicate that the ATO has been working hard to include them as integral supports to Australia’s taxation and superannuation systems. As already noted, there was a new sense of partnership with the ATO, with the agency now engaging directly with tax professionals, both through newly formed expert level consultation groups, and out in the community under the ATO Agent’s Visit Program.
- 3.44 The ATO’s submission described how its system design for lodgement systems and the Tax Agents Portal now ‘focusses on providing the right services while mitigating costs to tax practitioners’, with design solutions

²⁴ ATO, *Submission 1.3*, pp. 14–15.

²⁵ ATO, *Submission 1.3*, p. 7.

that are ‘incrementally informed by the agents themselves’.²⁶ The 2016 Annual Report confirmed:

The ATO is working with tax professionals and software developers to streamline practice processes. We will work with tax professionals to develop and establish a trusted relationship model that allows them more flexibility in the way they use digital services to serve their clients.²⁷

- 3.45 The Committee noted in particular that in early 2016 the ATO took the step of visiting around 250 tax practitioners in the pilot Agents Visit program to consult on ‘irritants’, concerns and seek ideas for enhancement of the portals.²⁸ The ATO describes how agents from small to large practices then trialled systems at end user testing centres. Consultations with software designers informed the development of the final tax service through agent practice software.²⁹ Over February to March this year, the ATO will involve another 20 tax agents in a private phase to test a number of foundational features of the Tax Agent Portal service, including navigation, activity statements and income tax history, as well as improved services including the ‘add client’ function and an extended list of accounts and transactions.³⁰
- 3.46 Against the background of past concerns, the Committee welcomes this progress in the refinement of the Portal’s features. The improved performance of the Client Communications List (formerly client correspondence list), and its rollout to the BAS Portal, are major advances over 2016. While the Committee did receive criticism of the rebadged CLS, the Committee notes that the ATO has committed to ensure agents have a comprehensive view of all correspondence received by myGov and other agencies progressively as the changes are made to ATO systems.³¹ The Committee anticipates that the trialling with agents in late 2016 of the new

²⁶ ATO, *Submission 1*, p. 17

²⁷ ATO, *Commissioner of Taxation Annual Report 2015–16, Vol. 1*, p. 34.

²⁸ ATO, *Commissioner of Taxation Annual Report 2015–16, Vol. 1*, p. 35.

²⁹ ATO, *Submission 1*, pp. 17–18.

³⁰ ATO, *Submission 1*, p. 20.

³¹ ATO, *Submission 1*, p. 18.

Communication Preferencing function will also ensure agents have a user friendly system by the projected release date of July 2017.³²

- 3.47 In relation to the implementation of the Practitioner Lodgement Service (PLS), the ATO has wisely taken a staged progression approach, with the parallel electronic system to operate on into March 2018. The Committee notes that over July–October 2016, 280 000 lodgements had been made successfully by 3 000 Tax practitioners using the PLS.³³ The Annual Report further records a 90 per cent increase in Standard Business Reporting (SBR) gateway lodgements compared with the previous year, totalling one million in 2015–16.³⁴ Gross savings from combined lodgement using SBR, the Australian Business Register and AusKey lodgements were estimated at \$1.2 billion for the period.³⁵
- 3.48 The Committee welcomes Commissioner Jordan’s commitments to work with the tax profession to ensure the ATO remains on track in its development of a seamless new PLS.³⁶ However, it is also aware of concerns arising from frequent changes and sporadic upgrades to the system. The Committee notes, for example, ATO advice that the Fringe Benefits Tax return will not be made available under the old Electronic Lodgement System for 2017, and that income tax forms will be progressively removed from the ELS safety net throughout 2017.³⁷
- 3.49 The Committee would appreciate a response from the ATO on the anticipated timeframe for the roll out of new features and publication of this on the Tax Agents Dashboard. Advice on the development of the additional lodgement gateway to reduce risk of overload on the PLS for 2017 tax time should also be posted.

³² ATO, *Submission 1*, p. 21.

³³ ATO, *Submission 1*, p. 21.

³⁴ ATO, *Tax Commissioner’s Annual Report 2015–16, Vol. 1*, p. 55.

³⁵ ATO, *Tax Commissioner’s Annual Report 2015–16, Vol. 1*, p. 56.

³⁶ Commissioner Jordan, *Committee Hansard*, Canberra, 30 November 2016, p. 8.

³⁷ ATO, *Submission 1.3*, p. 12.

Recommendation 6

3.50 The Committee recommends that the ATO, to improve certainty and reduce business impacts on tax agents, should publish on the Tax Agents Dashboard:

- a projected schedule and service updates on enhancements to the Practitioner Lodgement Service and corresponding changes on the Electronic Lodgement Service as an ongoing feature, with
- advice on the timeframe and milestones for launch of the additional lodgement gateway for 2017 tax time and its functionality thereafter.

Assisting small business

3.51 The Committee commends the ATO's focus on promoting compliance among small business under its program of early engagement. This includes extensive work online and face to face out in the community under the 'Show me what, how and why' strategy.³⁸

3.52 In its supplementary advice to the Committee, the ATO provided detail on the wide range of online services and tools accessible on the updated small business web page (launched 14 November 2016), which now provides:

- An online registration for new business start-ups to register for ABN and tax obligations
- Information on GST, Superannuation and employer registration and reporting obligations
- Access to online tools, calculators and business portal for lodging activity statements online
- Videos and webinars explaining tax and super information
- Registration for free small business workshops

³⁸ ATO, *Tax Commissioner's Annual Report 2015–16, Vol. 1*, p. 25, and see ATO, *Submission 1*, pp. 9–10.

- Our 'Small business assist' tool provides tailored information, offers live web chat and the option to book after hours and weekend call back service with an experienced ATO support officer.³⁹

3.53 In an attachment, the ATO further outlined the full suite of assistance offered to small business, with priorities for the 2016–17 period being Mental Health initiatives, a simpler BAS for the GST, a Better Telephone experience, easier access and authentication, and a Small Business Record Keeping Tool.⁴⁰

3.54 In terms of the reception of these products, the Committee was satisfied that the Tax Office is on track. Chief Executive Officer (CEO) of the Council of Small Business of Australia (COSBOA) Mr Peter Strong highlighted programs enabled by the ATO on mental health issues associated with small business debt:

We have had Kate Carnell, the Small Business and Family Enterprise Ombudsman, talk to groups of staff. We have had a woman called Leanne Faulkner, who is working for us in the mental health area, also talk to them about what happens when you get paid late from a big business and the pressure that puts upon you as an individual. It is not just a business issue, where you have got to manage cash flow, which is hard enough, but you have got to go home and think, 'How am I going to pay my BAS? How am I going to pay my super?' or 'How am I going to put food on the table,' in worst-case scenarios. But they are educating their staff so that, when you are talking to someone, it is not just a tax bill that they have got. Indeed, there is probably something else going on as well.⁴¹

3.55 The ATO's work with COSBOA and other stakeholders to develop compatible lodgement systems and software tools for small business in particular, is both a practical and commendable approach to improve tax compliance in an underperforming sector. Mr Strong saw that development of these business friendly systems will both ease the burden on business operators and simplify compliance.⁴² He also welcomed the ATO's flexibility in the rollout of SuperStream, with development of complimentary solutions

³⁹ ATO, *Submission 1.3*, p. 13.

⁴⁰ Attachment A, ATO, *Submission 1.3*.

⁴¹ Mr Strong, COSBOA, *Committee Hansard*, Canberra, 30 November 2016, p. 2.

⁴² Mr Strong, COSBOA, *Committee Hansard*, Canberra, 30 November 2016, p. 3.

being a big positive for small business.⁴³ The ATO, meanwhile, reported early success in the sector with around 70 per cent implementing SuperStream by 30 June 2016, following a program of ATO assistance and support.⁴⁴

- 3.56 The Committee notes and congratulates the ATO for receiving the Gold Award in the 2016 Prime Minister's Awards for Excellence in Public Sector Management for implementation of the SuperStream project.⁴⁵ The Committee also commends the ATO on its new flexibility in dealing with small business debt, with online debt plans available, and mental health support as a focus throughout 2017.
- 3.57 However, given the plethora of online services and tools, the Committee also takes note of advice from tax professionals that assistance to small business must be well targeted, as their operators are often time poor and can be overwhelmed by digital commerce options.⁴⁶ In its evidence, the ATO highlighted the value of the Fix-It Squads as a major support to the small business sector in this regard:

We are very proud of the fix-it squads. What we have done there is, in a sense, not just to co-design the removal of irritants for small business; we have actually empowered small business to help with removing those irritants. So the fix-it squads were cross-agency groups of people that identified: 'What is a real irritant for small business?' and then did a bit of a fast-tracked design, asking: 'How can that irritant be removed? How can it be resolved?' We are extremely proud of the outcomes there. I do have some figures here about the fix-it squads. We have actually had five fix-it squads across a whole range of particular areas that have come up with recommendations; I think at least 27 or 28 recommendations have come out of it, of which 21 have already been

⁴³ Mr Strong, COSBOA, *Committee Hansard*, Canberra, 30 November 2016, p. 6.

⁴⁴ ATO, *Tax Commissioner's Annual Report 2015–16, Vol. 1*, p. 23.

⁴⁵ S Easton, 'Tax Office takes Top Honour at PM's Management Awards', *The Mandarin*, 9 November 2016, <www.themandarin.com.au/72398-tax-office-takes-top-honour-at-prime-ministers-management-awards/> viewed 3 February 2017.

⁴⁶ Mr Croker, CAANZ, *Committee Hansard*, Canberra, 23 November 2016, p. 7.

implemented. It is really about empowering small business to assist in that removal of those irritants.⁴⁷

- 3.58 Person to person services carried out under the ATO Fix-It Squads and the pilot Agents Visit Programs, trialled earlier in 2016, were also highly regarded by agents and small business representatives.
- 3.59 The Committee therefore considers that the ATO should continue with similar programs of engagement as an ongoing feature of ATO support to digital lodgement systems.

Recommendation 7

- 3.60 The Committee recommends that the ATO continue to invest in community outreach and assistance programs such as the ATO Fix-It Squads and Agents Visit Program beyond system development for consultation and ongoing refinement of user friendly digital service systems for the small business sector.**

- 3.61 This will be particularly beneficial for very small businesses, the Committee was advised, a large number of which do not use software.⁴⁸As CPA Australia suggested, this also has broader implications than tax compliance:

We do an annual survey of six countries in the Asia-Pacific and, in the context of Asian countries, 83 per cent get revenue from ecommerce, whereas in Australia it is only about 30 per cent of businesses. That is quite a big difference. The stats are similar for the use of social media as a medium to promote or market businesses. Certainly I think that is the way we are going. A lot of your conversation was really about payment more than the broader ecommerce issue, but I thought for the record it was worthwhile noting where we are at.⁴⁹

- 3.62 The Committee agrees that, to become competitive, Australia's small business sector must move online. The ATO could be in a position to facilitate this by continuing to work on small business compatible services and systems, with ongoing investment in industry consultation, telephone

⁴⁷ Deputy Commissioner Vesperman, *Committee Hansard*, Canberra, 30 November 2016, pp. 13–14.

⁴⁸ Mr Strong, COSBOA, *Committee Hansard*, Canberra, 30 November 2016, p. 6.

⁴⁹ Mr Drum, CPA Australia, *Committee Hansard*, Canberra, 23 November 2016, p. 8.

assistance, information fora and visits to assist the sector with software issues.

Draft rulings and tax law complexity

- 3.63 In its last annual report review the Committee called on the ATO to improve certainty for taxpayers around its public rulings by automatic withdrawal of aged draft rulings after a specified timeframe.⁵⁰
- 3.64 The ATO has rejected this recommendation, suggesting that without replacement, automatic withdrawal would create an 'absence of guidance on relevant issues and could imply that the ATO no longer holds the views expressed in the withdrawn draft rulings', leading to greater speculation and uncertainty.⁵¹ The ATO acknowledged, however, that unfinalised aged draft rulings (over 12 months old) may also contribute to tax payer uncertainty. Accordingly, new processes to promote timeliness have been introduced as part of the ATO's development of public advice and guidance.⁵²
- 3.65 The Australian Taxpayers' Alliance saw an urgent need for tax payers and tax professionals to have timely advice on the issuing and status of public rulings, also noting that the ATO's Annual Report for 2016 had failed to advise on the number and timeliness of public rulings and determinations, in contrast to previous years.⁵³ The ATO subsequently submitted this information to the Committee.⁵⁴
- 3.66 The Committee supports the view that the ATO should provide more public information on the introduction and progress of rulings to improve certainty for taxpayers and the tax profession. The Committee notes in this regard, the recent launch of the Advice under Development Program website, which aims to provide early guidance in one location to tax agents and the public

⁵⁰ Recommendation 3, House of Representatives (HoR) Standing Committee on Tax and Revenue, *2015 Annual Report of the Australian Taxation Office*, First Report, April 2016.

⁵¹ ATO, *Submission 1.3*, p. 2.

⁵² ATO, *Submission 1*, p. 23.

⁵³ Australian Taxpayers' Alliance, *Submission 6*, p. 2.

⁵⁴ ATO, *Submission 1.3*, p. 3.

on rulings.⁵⁵ According to the ATO, the measure will to increase ‘the transparency of its consultation and community engagement by alerting the public to issues which we are considering for public advice and guidance’.⁵⁶

3.67 The Committee believes that this measure should help to address issues outlined in the Committee’s previous annual report review, in regard to the role of conflict of opinion in finalising rulings and the need for improved consultation.⁵⁷ However, in the Committee’s view, there remains an ongoing concern about the overall complexity of taxation law, which may impede the finalisation of these rulings, and potentially provide an incentive or contribute to the prevalence of tax avoidance in the community.

3.68 As the Tax Commissioner has noted, tax systems ‘by their nature are quite detailed and are very rules-based’. He went on to advise the Committee that:

We have some complex legislation that has emerged over the last 20 years, which is in a certain style, and that style is trying to make sure that no person can ever possibly get around these provisions. It is designed for the last worst person. And we are trying to turn this around and we are trying to move to more of a situation of designing for the majority. The vast majority of people want to do the right thing.⁵⁸

3.69 The Committee commends the ATO for its work in simplifying tax law as part of its agenda to promote voluntary compliance.⁵⁹ However, the Committee also considers that the ATO should document its trajectory in the redesign of tax law to simplify compliance, as well as regularly report on the number and timeliness of public rulings, issued and finalised, in its Annual Report.

⁵⁵ ATO, ‘Advice under Development Program’ <www.ato.gov.au/General/ATO-advice-and-guidance/Advice-under-development-program/> viewed 20 February 2017.

⁵⁶ ATO, *Submission 1*, p. 23.

⁵⁷ HoR Standing Committee on Tax and Revenue, *2015 Annual Report of the Australian Taxation Office*, First Report, April 2016, pp. 23–24.

⁵⁸ Mr Chris Jordan, Tax Commissioner, ATO, *Committee Hansard*, Canberra, 30 November 2016, p. 16.

⁵⁹ Including by commissioning the ACIL Allen Report on tax complexity in July 2015. See ATO, ‘A Potential Path to Simpler Tax Law’ <www.ato.gov.au/General/Gen/A-potential-path-to-simpler-tax-law/> viewed 9 March 2017.

Recommendation 8

3.70 The Committee recommends that the ATO provide information in its Annual Report on:

- its trajectory and progress in the redesign of tax law to simplify compliance; and
- the number and timeliness of public rulings, issued and finalised, over the reporting period.

Complaints handling and perceptions of fairness

3.71 A key indicator of the ATO's performance in managing objections and disputes and compliance handling are community perceptions of fairness.⁶⁰

3.72 As discussed in Chapter 2, the ATO's fairness assessments are conducted on the basis of taxpayer experience of the outcome; the process; the information provided; and interaction with staff. The ATO advised that over 2015–16 the ATO had improved ratings in all categories, with a high of 75 per cent achieved for interpersonal fairness in staff contact.⁶¹ The Commissioner reported:

I should also say that our complaints are now at a level 26 per cent lower than at this time last year. We are performing well against our performance measures including improvements to results of our fairness surveys that we do with taxpayers.⁶²

3.73 The Committee notes that the ATO Corporate Perceptions Survey 2015–16 is also documented on the ATO website, and records that 74 per cent of ATO clients and 67 per cent of tax agents were satisfied with the service they

⁶⁰ ATO, *Tax Commissioner's Annual Report 2015–16, Vol. 1*, p. 47.

⁶¹ ATO, *Submission 1*, p. 26.

⁶² Commissioner Jordan, ATO, *Committee Hansard*, Canberra, 30 November 2016, p. 8.

received. Satisfaction was reported to be 'high across most delivery channels, however, there was weaker satisfaction with the ATO website'.⁶³

- 3.74 Significant here, is the fact that the impact of the sustained outages in ATO online services in 2016 and early 2017, as discussed in this report, are not reflected in the 2015–16 survey nor in the ATO's Annual Report for the period under review.
- 3.75 To improve accountability in this area, the Committee has recommended that the ATO should develop benchmarks for measuring and reporting on the security and functionality of its online systems in its Annual Report (Recommendation 5). The Committee also recommends that specific targets for the functionality of online services for general clients and tax agents should be developed and that outputs be recorded in the ATO's Annual Report.
- 3.76 The Committee anticipates that this information would be recorded within the ATO's Commitments to Service Performance reporting, which rates the ATO's achievements against its fairness measures for core functions and activities.⁶⁴

Recommendation 9

- 3.77 The Committee recommends that the ATO develop specific output targets for online services used by general taxpayers and by tax agents to benchmark the functionality of these services. The ATO should also include this benchmarking in its Commitments to Service Performance framework, and report outputs in its annual reports.**
- 3.78 Noting that the ATO is currently extending its fairness survey to audit, advice and debt work, and intends to use the findings of these surveys to

⁶³ ATO, Corporate Perceptions Survey 2015-16 <www.ato.gov.au/About-ATO/Research-and-statistics/In-detail/Annual-research/ATO-Corporate-perceptions-survey--2015-16/> viewed 1 March 2017.

⁶⁴ ATO, *Tax Commissioner's Annual Report 2015–16, Vol.1*, Table 4.22, Commitments to Service Performance, 2014–15 to 2015-16, Appendix 13, Reporting on Activities (outputs), p. 137.

transform services in these areas,⁶⁵ the Committee would also like to see more detailed reporting against these measures in the next Annual Report.

Recommendation 10

3.79 The Committee also recommends the ATO report against its fairness measures – on the basis of taxpayer and tax agent experience of the outcome; the process; the information provided; and interaction with staff – for specific business lines, including audit, advice and debt work, in its next Annual Report.

3.80 Monitoring of outcomes against these measures will improve scrutiny of the ATO's standards of service delivery over time, and assist in the design of approaches to alleviate detrimental effects on particular sectors of the community, as the ATO's service models transform under the Reinvention program.

Processes for scrutiny of ATO decision making

3.81 As discussed in the body of this report, during the Committee's review there were some concerns raised about the lack of an independent process which can elicit a response from the ATO in review of its decisions or administrative processes, particularly where there were allegations of fraud or deliberate tax evasion.

3.82 The ATO's administration is subject to external review by the Australian National Audit Office (ANAO) and by parliamentary committees, including this Committee, the Joint Committee of Public Accounts and Audit (JCPAA), and two Senate Standing Committees on Economics (Legislation and References). These bodies do not, however, have powers to compel the ATO to act on recommendations made in their respective reports, although it is expected that the ATO will advise on whether it supports, partially supports, or disagrees with the recommendations.⁶⁶

⁶⁵ ATO *Submission 1*, p. 26.

⁶⁶ Government agencies are required to respond to Joint and Senate Committee reports within three months, and House Committee reports by six months from tabling. For some committees, such as the JCPAA, these rules do not generally apply. For a JCPAA report, an agency is however

- 3.83 The ANAO recently issued a report evaluating the ATO's implementation of supported recommendations made in previous ANAO and committee reports.⁶⁷ In relation to the audit reports, the ANAO found that the ATO's performance in implementing recommendations in five audit reports 'compares very well to the nine entities recently audited by the ANAO', with the ATO 'the best performing entity in terms of percentages'.⁶⁸ Further, in relation to a sample of 21 parliamentary committee recommendations that the ANAO surveyed, the ATO had agreed with 17 recommendations and disagreed with two. It also implemented a majority of recommendations it had agreed to.⁶⁹
- 3.84 The ATO's administration is also subject to scrutiny from the Inspector-General of Taxation who undertakes reviews of the ATO's administration of the tax and superannuation systems and makes recommendations to the ATO and Government on matters arising from his complaints handling function.
- 3.85 The Committee has recorded the Inspector-General's advice that, while he has no formal power to compel the ATO to respond to his decisions on complaints cases, he considers there will be increased opportunities to influence ATO decision-making in top level meetings the Inspector-General has arranged in response to Committee recommendations made in its External Scrutiny report on the ATO in May 2016.⁷⁰ The Inspector-General also advised that he plans to expand consultation with community and public sector stakeholders including the Treasury, the ATO, Tax Practitioners Board (TPB) and ANAO,⁷¹ which the Committee considers should also have positive outcomes for taxpayers.

required to respond to 'policy' recommendations. See Department of Prime Minister and Cabinet, 'Guidelines for the Presentation of Documents to the Parliament', August 2016, p. 8.

⁶⁷ Tabled 6 February 2017, see Australian National Audit Office (ANAO), 'The ATO's Implementation of Recommendations', *ANAO Report No.37 2016-17*.

⁶⁸ ANAO, 'The ATO's Implementation of Recommendations', *ANAO Report No.37 2016-17*, p. 21.

⁶⁹ ANAO, 'The ATO's Implementation of Recommendations', *ANAO Report No.37 2016-17*, p. 20.

⁷⁰ Inspector-General of Taxation, *Submission 7*, p. 2, and see Recommendation 3, HoR Standing Committee on Tax and Revenue, *External Scrutiny of the Australian Taxation Office*, 5 May 2016, p. 42

⁷¹ Inspector-General of Taxation, *Submission 7*, p. 2.

3.86 Given the generalised nature of these review processes, the Committee determined to examine the ATO specifically about its processes in relation to matters raised in inquiry evidence. In response to questioning on the principles of fairness and transparency in ATO decision-making, Tax Commissioner Jordan explained:

I should say a general thing: sometimes when people raise specific issues around specific things that happened to a specific taxpayer, it is very difficult for us to respond because we cannot talk about the activities or things around that specific taxpayer. Sometimes it is hard to respond other than in general terms. We cannot disclose facts relevant to that specific taxpayer. And, as I said, we deal with 10s and 10s of millions of transactions and interactions every year. The system works pretty well.⁷²

3.87 Questions on Notice were also lodged on the ATO's decision-making processes, specifically on retrospective auditing of debts (also canvassed in the media during the period of review);⁷³ whether the ATO seeks external advice in making determinations on such matters; to what extent litigants are advised on ATO determinations; and the feasibility of the Inspector-General having wider jurisdiction to review and make recommendations with binding effect on the ATO. In a supplementary submission to the Committee the ATO provided a detailed response to these questions, which is included as *Appendix C* in this report.⁷⁴

3.88 The first issue was raised by Mr Richard Wytkin in his submission, and addressed concerns about the ATO's retrospective audit of the affairs of a client who had not lodged an income tax return having self-assessed as a non-resident while working overseas for a ten-year period.⁷⁵ The ATO's response explained that under Section 170 of the *Income Tax Assessment Act 1936*, self-assessed cases may be audited for a limited two year period, except where deliberate fraud or evasion is suspected. However: *'In cases of*

⁷² Commissioner Jordan, ATO, *Committee Hansard*, Canberra, 30 November 2016, p. 15.

⁷³ For example, see R Gottliebese, 'ATO Attacks Mum and Dad Partnerships', *The Australian*, 19 October 2016.

⁷⁴ Questions and answers are provided in ATO, *Submission 1.3*, pp. 8–9.

⁷⁵ Mr Richard Wytkin, *Submission 4*, p. 1.

non-lodgement where no assessment has yet been made, section 170 is not applicable such that Commissioner may issue a review at any time'.⁷⁶

- 3.89 The Committee was advised that, on his return, Mr Wykin's client was assessed by the ATO as having a very substantial debt which, to meet, would require him to sell his home. The Committee considers that, in the interest of fairness, the ATO should provide an early opportunity to overseas residents to have their status as 'non-resident tax payers with nil income' assessed and automatically issue notices of assessment to these non-residents so they can finalise their annual tax affairs.

Recommendation 11

- 3.90 The Committee recommends that, in the interests of fairness, the ATO should assess and issue automatic notices of assessment to non-resident tax payers with nil income.**

- 3.91 In relation to the broader question of the Inspector-General of Taxation's jurisdiction over ATO decision making, the Committee accepts the ATO's view that this is a matter for government. The Committee believes that the Inspector-General's current role in the amelioration of concerns around more serious disputes, and in explaining ATO advice to debtors, is a valuable complement to the ATO's increasing focus and success in reforming its dispute resolution process.

Tax gap and revenue collection

- 3.92 The current inquiry elicited useful insights into some of the challenges faced by the ATO as it seeks to identify, manage and reduce tax gaps over time.⁷⁷
- 3.93 As recorded in this report, the ATO has advised that it has committed to develop a draft measurement framework to assess a range of matters to assist evaluation of revenue loss from non-compliance in the cash economy.⁷⁸ This was recommended in the Auditor-General's review of the

⁷⁶ Questions and answers are provided in ATO, *Submission 1.3*, pp. 8–9.

⁷⁷ ATO, *Tax Commissioner's Annual Report 2015–16, Vol.1*, p. 43.

⁷⁸ ATO, *Submission 1*, p. 15.

ATO's strategies to address the cash and hidden economy (April 2016), which the ATO states had otherwise concluded that: 'the ATO's approach is consistent with international best practice, sound and increasingly cost effective'.⁷⁹

- 3.94 However, the ANAO, in its recent survey of the ATO's implementation of audit recommendations did not consider the ATO had fulfilled its commitments on measures related to the revenue gap, being to: fully implement recommendations to develop a methodology to assess the 'potential magnitude at risk from non-compliance';⁸⁰ and to 'more efficiently allocate resources' and 'more accurately calculate returns on investment' for High Wealth individuals compliance activities.⁸¹
- 3.95 The ATO's Mr Michael Mr Cranston, Deputy Commissioner, Private Groups and High Wealth Individuals, told the Committee that one way of measuring the prevalence of the revenue gap in different sectors is by evaluating penalties imposed, however:

It actually varies from the large end down to the small end. For example, in the large end generally there are often arguable positions and it is not through lack of reasonable care. At the smaller end, we get some more aggressive penalties. But then even at the smaller end there are a lot of mistakes. So it is probably more in the middle that there are more aggressive penalties.⁸²

- 3.96 The Committee notes that the ATO has made commitments to take 'a well-balanced approach across the different market segments to

⁷⁹ See Personal Services, Recommendation 1—ATO supported, in the Auditor-General, 'Strategies and Activities to address the Cash and Hidden Economy, Australian Taxation Office', *ANAO Report No. 2, 2015–16, Performance Audit, Australian National Audit Office*, April 2016, p. 10, and ATO, *Submission 1*, p. 15.

⁸⁰ Box 1: Report No. 5, 2013–14, *Administration of the Taxation of Personal Services Income*, Recommendation 1, in ANAO, 'The ATO's Implementation of Recommendations', *ANAO Report No. 37, 2016–17*, p. 18.

⁸¹ Box 3: Report No. 35, 2013–14, *Managing Compliance of High Wealth Individuals*, Recommendation 2 in ANAO, 'The ATO's Implementation of Recommendations', *ANAO Report No. 37, 2016–17*, p. 19.

⁸² Mr Michael Cranston, Deputy Commissioner, Private Groups and High Wealth Individuals, *Committee Hansard*, Canberra, 30 November 2016, pp. 10–11.

increasing levels of participation in the tax and super systems'.⁸³ As part of the process, the ATO has determined to re-segment revenue sectors to distinctly assess the gap for individuals as against small business and medium business, in addition to large business and high wealth individuals. This is intended to aid evaluation of the drivers of non-compliance in each sector and help target communications to address the problem.⁸⁴

- 3.97 The ATO has also advised that performance indicators and targets for assessing the size of the revenue gap associated with the cash and shadow economy should be finalised in early 2017.⁸⁵ Evaluations, however, will only be released when they are 'sufficiently creditable', rather than on an annual reporting basis.⁸⁶
- 3.98 The Committee considers that, to better inform public and policy debate and increase community awareness of the problem of non-compliance, the ATO must prioritise publication of the revenue gap measures and report sectoral assessments promptly.

Recommendation 12

3.99 The Committee recommends that the ATO, to better inform public and policy debate and increase community awareness, should publish in 2017 its revenue gap measures and report the total revenue gap estimate and assessments for different community sectors on its website as they become available, and in the 2016–17 Annual Report.

- 3.100 During hearings, the Inspector-General of Taxation advised that unrecoverable debt contributes to the size of the revenue gap and that, on this one measure, the ATO could report more comprehensively in its Annual Report.⁸⁷ The Committee supports the Inspector-General's recommendation for reporting on a fuller differentiation of data showing the contribution of unrecoverable debt to the revenue gap, including by distinguishing between

⁸³ ATO, *Submission 1*, p. 4.

⁸⁴ ATO, *Submission 1*, pp. 29–30.

⁸⁵ ATO, *Submission 1*, p. 15.

⁸⁶ ATO, *Submission 1*, p. 30.

⁸⁷ Inspector-General of Taxation, *Submission 7.1*, p. 2.

the amount of debt written off as unrecoverable at law or that is uneconomical to pursue.⁸⁸

Recommendation 13

3.101 The Committee recommends that the ATO's Annual Report should include a more detailed differentiation of data on unrecoverable debt, including by distinguishing between the amounts of debt written off as unrecoverable at law or that is uneconomical to pursue.

3.102 The Committee considers that this measure may also go to improve ATO performance reporting, as suggested by the ANAO in its recent audit of the ATO's performance in meeting revenue commitments from compliance measures.⁸⁹

3.103 In this regard, the Committee commends the ATO for its commitments to the ANAO to improve guidance and document assumptions made in estimating revenue against outcomes in compliance work.⁹⁰ Asked about this at hearings, the Tax Commissioner advised that: 'around 95 per cent or so of the revenue we collect comes in just...through the existence of the system. Less than five per cent comes in through active compliance measures'.⁹¹

3.104 The Committee notes that ATO annual reports record 'net cost to collect' trends over time. The 2016 Annual Report indicates that while cost to collect ratios trended down by three per cent annually over 2013–14 and 2014–15, there was stasis over 2014–15 and 2015–16.⁹² The Committee would like to see more detailed reporting in this area in the Annual Report.

⁸⁸ Inspector-General of Taxation, *Submission 7.1*, p. 2.

⁸⁹ ANAO, 'Meeting Revenue Commitments from Compliance Measures, Australian Taxation Office', *ANAO Report No.15 of 2016-17*, 12 September 2016.

⁹⁰ See ATO Response to ANAO recommendations, in ANAO, 'Meeting Revenue Commitments from Compliance Measures, ATO', *ANAO Report No.15 of 2016-17*, 12 September 2016, p. 11.

⁹¹ Commissioner Jordan, ATO, *Committee Hansard*, Canberra, 30 November 2016, p. 16.

⁹² The unit of evaluation is the 'cost to collect \$100'. According to the ATO the drag in net collections over the period 2015–16 was related to company tax receipts, which fell below \$4.3 billion and was attributable to declines in commodity prices. See 'Performance Reporting', Table 2.11,

Recommendation 14

3.105 The Committee recommends that the ATO provide more detailed information in its Annual Report about its investment in compliance activity relative to revenue outcomes under debt recovery activities, for both funded pre-existing ATO activities and for indirect additional revenue commitments.

Inquiry into the cash and shadow economy

3.106 On 25 November 2016 the Committee launched an inquiry into tax payer engagement with Australia's tax system, with a focus on improving compliance among small business and individuals. As part of this inquiry, the Committee will examine:

- the prevalence and impact of the 'cash economy' on the tax system, mechanisms to ensure tax compliance and strategies used by comparable countries' revenue authorities;
- how taxpayers currently interact with the tax and superannuation system, including through tax agents and other intermediaries, and the different compliance burdens of doing so;
- the contemporary use of information and communication technology by the Australian Taxation Office and comparative tax administrators to deliver services; and
- behavioural insights from other service delivery agencies including possible ways to better inform taxpayers to help them make decisions in their best interests.⁹³

3.107 The ATO's submission to this review sets out a pragmatic plan to address the problem of the cash and hidden economy, which includes:

Program 1.1 ATO 2013–14 to 2015–16, ATO, *Tax Commissioner's Annual Report 2015–16, Vol.1*, p. 66.

⁹³ HoR Standing Committee on Tax and Revenue, Inquiry into Taxpayer Engagement with the Tax System <www.aph.gov.au/Parliamentary_Business/Committees/House/Tax_and_Revenue/Taxpayerengagement>

- [a shift] from focussing primarily on audit to a broad and overarching community participation and assurance approach that seeks to engage with business and the community on the drivers of cash economy behaviours.
- increased education and assistance activities for businesses, and increasing the visibility of our cash and hidden economy program of work with a view to positively influencing the drivers and behaviours for business and community participation.
- the use of more sophisticated data and analytics techniques to better tailor and target our assistance and assurance activities, and to improve identification of taxpayers operating in the cash and hidden economy.⁹⁴

3.108 The ATO also highlighted the importance of global co-operation and the introduction domestically of a range of legislative tools which the Government had brought to bear on the cash economy and to address high wealth and multinational tax avoidance.⁹⁵

3.109 Tax professionals expressed their keenness to partner with the ATO in this area. At hearings Mr Croker of CAANZ noted a potential to work at the large business end,⁹⁶ and to explore state tax models adopted by the Western Australian Government, South Africa's use of the social contract where by a tax clearance certificate affirms good character before tenders are awarded, and the domestic B2B withholding tax mechanisms used in New Zealand to ensure upfront payment of some taxes in industries of concern, such as the building and construction sector.⁹⁷

3.110 The Committee also invited information on the ATO's benchmarking of its technology systems against that of banks and other countries' tax regulators as background to assessing and improving ATO performance on revenue collection. The ATO's submission suggested, however, that 'the differing nature of business operations makes it difficult to compare [IT] performance between organisations'. The ATO added that it does, however, have

⁹⁴ ATO, *Submission 1*, p. 14.

⁹⁵ ATO, *Submission 1*, p. 4.

⁹⁶ Mr Croker, CAANZ, *Committee Hansard*, Canberra, 23 November 2016, p. 6.

⁹⁷ Mr Croker, CAANZ, *Committee Hansard*, Canberra, 23 November 2016, pp. 11–12.

‘frequent informal discussions with other similar size organisations in Australia, including major banks’.⁹⁸

- 3.111 Tax professionals saw potential for the Government to work more closely with the financial sector, to share data and address avoidance behaviours. Mr Croker observed: ‘It used to just be a triangle—the ATO, the tax agent and the client. Now it is starting to look a little like a box with your financial institution added in, and they are getting a lot of tax-related data coming in as well’.⁹⁹
- 3.112 The Committee shares this view and would like the ATO to engage to more formally with the banking and financial sector on a regular basis, both in Australia and through international fora and research partnerships and programs. Areas for investigation and information sharing might include:
- to ascertain what is the ATO’s current investment in data analysis for compliance related matters compared with that made for related work in similar sized revenue collection agencies;
 - to establish the number of ATO staff deployed in global co-operation and IT comparisons activities; and
 - the findings of the international expert appointed by the ATO to examine ways to assess the wider revenue effects of various tax compliance measures, such as through pre-lodgement interventions.
- 3.113 The Committee further invites the ATO to advise on small business participation in the cash and shadow economy within the broader domestic and global economic context, including the behaviours of larger businesses, high wealth individuals and the black economy.
- 3.114 The Committee looks forward to working with the Tax Office, and with stakeholders, to explore new methods to enhance revenue collection under a fairer and more efficient ATO.

⁹⁸ ATO, *Submission 1*, p. 32.

⁹⁹ Mr Croker, CAANZ, *Committee Hansard*, Canberra, 23 November 2016, p. 8.

Kevin Hogan MP
Chair
Standing Committee on Taxation and Revenue

22 March 2017

A. Submissions

- 1 Australian Taxation Office
- 1.1 ATO
- 1.2 ATO—Answers to Questions on Notice
- 1.3 ATO—Answers to Questions on Notice
- 2 CPA Australia
- 3 Chartered Accountants of Australia and New Zealand
- 4 Mr Richard Wytkin
- 4.1 Mr Richard Wytkin
- 5 Name Withheld
- 6 Australian Taxpayers' Alliance
- 7 Inspector-General of Taxation
- 7.1 Inspector-General of Taxation

B. Public hearings

Canberra, Wednesday 23 November 2016

CPA Australia

Mr Paul Drum, Head of Policy,

Chartered Accountants Australia and New Zealand

Mr Michael Croker, Tax Leader Australia

The Tax Institute

Mr Arthur Athanasiou, [former] President

Ms Stephanie Caredes, Tax Counsel

Canberra, Wednesday 30 November 2016

Council of Small Business Organisations of Australia

Mr Peter Strong, Chief Executive Officer

Australian Taxation Office

Mr Chris Jordan, Commissioner of Taxation

Mr Jeremy Hirschhorn, Acting Second Commissioner, Client Engagement

Mr Andrew Mills, Second Commissioner, Law Design and Practice

Mr Michael Cranston, Deputy Commissioner, Private Groups and High Wealth Individuals

Mr Steve Vesperman, Deputy Commissioner, Small Business

Ms Sue Sinclair, Acting Chief Operating Officer, Corporate and Enabling Services

Ms Melinda Smith, Chief Service Delivery Officer, Service Delivery

Inspector-General of Taxation

Mr Ali Noroozi, Inspector-General of Taxation

Mr Andrew McLoughlin, Deputy Inspector-General of Taxation

C. Answers to Questions on Notice

Perceptions of fairness in complaints

Extract: Answers to Questions on Notice¹

Australian Taxation Office, 30 November 2016

Topic: Perceptions of fairness and complaints handling

Reference: Additional written—14 December 2016

Question:

1. The Committee has received submissions which express concerns about the fairness and transparency of ATO determinations on fraud and evasion, with retrospective debt action a consequence.²

- a) What are the general principles which support the ATO taking retrospective action beyond the two years specified in section 170 of the Tax Act?
- b) Does the ATO seek external advice in making determinations on such matters?

¹ ATO, *Submission 1.3*, pp. 8–9

² See Submissions 4, and 5.

c) To what extent are litigants advised about the reasons for the ATO's determinations?

2. The Inspector-General's decisions have no binding effect on the ATO in review of such cases. It has been suggested that the Inspector be given wider jurisdiction and resourced to act with binding effect. Have you a comment?

Answer:

1 a) The self-assessment system of taxation relies upon taxpayers self-assessing their own liability through the lodgement of taxation returns and formal assessment. Under section 170 of the Income Tax Assessment Act 1936, a limited period of two years (or four years for taxpayers with more complex affairs) generally applies for the Commissioner to amend assessments; providing certainty and finality. However, by way of exception, the Commissioner has an unlimited amendment period to amend income tax assessments when he is of the opinion there has been fraud or evasion. This power embodies a longstanding principle that people who engage in calculated behaviour to evade tax should remain permanently at risk.

In cases of non-lodgement where no assessment has yet been made, section 170 is not applicable such that the Commissioner may issue an assessment at any time.

b) The ATO does not generally seek external advice in making determinations on such matters. The ATO generally relies on its in-house resources, including internal technical panels. However, in limited instances the ATO does seek advice from external counsel.

c) Taxpayers who end up in litigation with the ATO (either by challenging the ATO's assessment decisions or in defending against ATO recovery action) are advised of the ATO's reasons for determinations at various stages. For instance:

- An opinion on fraud or evasion will usually be formed at the audit stage. Litigants will have been provided with reasons as to why the opinion was formed by the auditor.
- If the Litigant lodges an objection to have the opinion reviewed, the objections officer will consider the objection and make a decision as to whether to allow the objection or disallow it. The Objections officer will issue reasons for his/her decision. Accordingly the Litigant will again be

advised of the reasons if the opinion in respect of fraud or evasion still stands.

- If the Litigant proceeds to file an application in either the Federal Court or in the Administrative Appeals Tribunal to have the Objection Decision reviewed in respect of the opinion, the Commissioner will be required to provide the Court and the Tribunal with either an Appeal Statement or a Reasons for Decision (depending upon the jurisdiction) which will set out the Commissioner's reasons for forming an opinion on fraud or evasion, and which would reflect and reference earlier explanations already provided to the taxpayer. The Litigant is provided with a copy of this document.

The above processes occur in the overwhelming majority of cases involving the formation of an opinion of fraud or evasion. There are a very limited number of cases where the Litigant may not be provided with the reasons as to why the opinion was formed by the auditor before an assessment issues.

For example, where there are concerns the Litigant may be involved in organised crime or the Commissioner considers there to be a high risk of dissipation of assets, the Commissioner may conduct the audit on a covert basis and proceed to issue assessments to the Litigant with limited notice of the reasons for forming the opinion. This type of action is not taken lightly and serious considerations would need to exist before the Commissioner would take this approach.

2. This is a matter for Government.