



The registered business name of
Independent Contractors Australia
Incorporated Victoria No A0050004U
ABN: 54 403 453 626
www.selfemployedaustralia.com.au
PO Box 13103 Law Courts 8010 Vic

How reforms to the US Internal Revenue Service from 1998 to 2019 offer a model for reforming the Australian Taxation Office

**Submission to the House of Representative Standing Committee on Tax
and Revenue
Federal Parliament**

January 2020

This submission looks at the legislative changes required of the IRS by the US Congress from 1998 to 2019. The submission proposes that those US reforms offer a model for legislative reform of tax administration by the ATO.

The US administrative laws focus on Taxpayer Rights in creating a fairer, just, transparent and accountable tax administration system that enhances voluntary compliance, efficiency and revenue collection.

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Part One

Introduction and Overview

February 2020

Content

1. Purpose and layout of this submission.
2. An observation on cultural differences.
3. Setting the scene: Australia: The nature of the Australian tax administration system: Tax law versus the Rule of Law.
4. Setting the scene: USA: The operation of the US Internal Revenue Service: Law makers take control.
5. Overview: Comparing USA with Australia—Key Performance Indicators

1. Purpose and layout of this submission

This submission looks in considerable detail at the legislative reforms made to the operations of the IRS from 1998 through to 2019. The objective is to look at these reforms from the perspective of potential reform of the Australian Taxation Office.

The US reforms detailed here offer a model, even a template, for tax administration reform in Australia. The US reforms were and are about delivering statutory rights to taxpayers to fair, just and transparent treatment in their dealings with the tax administration system. It is these same statutory taxpayer rights that this submission argues should be delivered to Australian taxpayers.

- To understand the scale of the US reforms it is necessary to dig deep into the reform details. Part Two of this submission does that.
- Then it is necessary to compare the US statutes on tax administration with those that exist in Australia. Part Three of this submission does that.

Of course, the USA and Australia have different institutions and circumstances, so it's not a matter of simply 'plonking' what has been done in the USA on to Australia. Rather, it's a matter of identifying the principles and practices of the IRS reforms to see what, if and how those principles and practices could be applied to the Australian setting.

That being said, there are quite a number of specific IRS reform processes that are potentially and directly applicable to Australia—that is, to the ATO. For example, one specific provision in the US 1998 Act prevents the IRS charging a higher rate of interest on an unpaid tax debt than the interest rate that the US Federal Government itself pays. Such a provision is a potential reform in Australia where currently the ATO charges 7 per cent more in interest than the Australian Government itself pays.

The 1998 Act has an extensive list of such specific instructions to the IRS. This paper therefore extracts and cites from the 1998 reforms the specific items that could be applied to Australia/ATO either directly or through the application of the principle modified for Australian circumstances.

The list included in this paper does not include all provisions in the 1998 or 2019 Acts because many provisions are simply not applicable to Australia. For example, in the USA spouses can file joint tax returns. Significant complications can occur following spousal separation. The Taxpayer Rights provisions (1998 and 2019) give specific instructions to the IRS on the handling of tax problems arising from such separations. These specific provisions are not relevant to Australia as joint tax returns do not apply.

2. An observation on cultural differences

It's interesting that, some 22 years ago, US lawmakers moved with major reform to tax administration out of concern about mistreatment of taxpayers by the IRS. This happened with full support across the political spectrum in Congress and the wider political system. Further reform occurred in 2019, again with full support across the political parties.

It's interesting to reflect that concerns have been expressed in Australia for decades about the behaviour of the ATO toward taxpayers. But no reform of Australia's tax administration has occurred or been attempted that comes close to that of the US reforms

As an observation there appear to be some cultural differences that might explain this.

Broadly speaking

USA: In the USA there's a strong recognition that any large organization, public or private, will abuse power where the organization is left to its own devices to exercise unrestrained and unaccountable power. In the USA, during the decades before 1998 there was strong evidence of the IRS abusing its powers. In 1998 Congress moved in a very specific way to impose on the IRS prescriptive requirements as to when and how the IRS could use its powers. The legislation is quite specific on this.

Australia: In Australia there is a stronger cultural belief in the integrity and good behaviour of government bureaucracy than exists in the USA. That is, there is arguably a belief in Australia that government bureaucracy can be relied on to 'do the right thing'. This is reflected in the legislation governing the administration of the ATO. As a general rule, tax administrative law allows the ATO to administer the tax system applying rules and procedures that the ATO sets for itself. That is, in effect the ATO is a self-governing organization essentially answerable only to itself. Parliament has taken the approach that Parliament's role is to set the ATO a task—collect tax—and leave it to the ATO to decide how that is done. This approach to the ATO has effectively not been reviewed or changed since the ATO was established in 1936.

3. Setting the scene: Australia

The nature of the Australian tax administration system: Tax law versus the Rule of Law

In a 2001 [speech](#), the then-Chief Justice of Australia, Murray Gleeson, put an hypothesis concerning the nature of the rule of law. The Chief Justice said:

*Suppose legislation created an office of Tax Collector, and decreed that every person who derived income should pay to the Collector such percentage of that income as the Collector, in his or her absolute discretion, with uncontrolled power to discriminate, might think fit. **That would be a tax. But would it be a law, within the meaning of a Constitution which assumes the rule of law?*** [emphasis added]

The evidence is that the Australian tax administration system does not operate under the principles and practices of the ‘rule of law’. The Australian Tax Collector has, under statute, absolute discretion with (effectively) uncontrolled power to discriminate as he or she might think fit. The hypothesis put by the Chief Justice in 2001 is for all practical purposes the reality of the Australian tax administration system.

In 2018, high profile and respected tax lawyer Mr Mark Leibler AC gave a speech in which he described the powers of the Australian Taxation Office (ATO). Mr Leibler has been a specialist tax lawyer for close to 50 years, operating at the highest levels. (Speech to 33rd National Convention of the Tax Institute of Australia.)

Mr Leibler stated:

“...for all intents and practical purposes, it’s effectively the (Tax) Commissioner who lays down the law.” “For taxpayers who want to avoid the delay and the expense of action through the courts or tribunals, the **Commissioner effectively continues to act as lawmaker...**”
(emphasis added)

“The Commissioner can raise an assessment on almost any basis he pleases, and then require the taxpayer to prove before the Administrative Appeals Tribunal or the Federal Court what their liability should have been. Merely proving that the Commissioner’s assessment was incorrect will not suffice.”

“To add insult to injury, the Commissioner can require payment in full as soon as the amount assessed becomes due and payable.”

Also in 2018, retired and highly respected Federal Court judge Richard Edmonds SC wrote in a letter to the *Australian Financial Review* (15 April 2018) of

“...the existence of a mentality, maintained by too many ATO officers for too long, that taxpayers on the whole are cheats and liars and anything the ATO does to bring them to account can be justified ...”

The evidence is that the ATO effectively has the power to treat taxpayers in any way it sees fit. The ATO was established in 1936. Since then the ATO has essentially been left to decide how it exercises its administrative powers in the way it treats taxpayers.

The evidence that the ATO has abused taxpayers in the use of its powers has been accumulating for decades. A 2019 report into the compensation scheme available to taxpayers for ATO maladministration (called the CDDA scheme) identified at least 24 major and critical government reviews and reports into the ATO’s administrative practices over the last two decades.

This included reviews, inquiries and reports by parliamentary committees, the Ombudsman, the Inspector-General of Taxation, the Australian National Audit Office, the Department of Finance, the Treasury, the Administrative Review Council, the media and other commentators including the Australian Small Business and Family Enterprise Ombudsman... The Review is one of several government responses prompted by an ABC program which the House of Representatives Standing Committee on Tax and Revenue has described in these terms:

On 9 April 2018, the provocatively titled ABC Four Corners program ‘A mongrel pack of bastards’ was aired. It featured a number of aggrieved small businesses who accused the ATO of unfairness, ineptness and even illegality in its actions against these taxpayers.

(Review of the compensation for detriment caused by defective administration scheme in relation to the Australian Taxation Office for small business- June 2019)

It seems that, in relation to the ATO's tax administration, Australia is adept at expressions of concern and the production of reports, but even more adept at doing nothing. The unsatisfactory status quo prevails.

4. Setting the scene: USA

The operation of the US Internal Revenue Service: Law makers take control

By the mid-1990s the US Congress had come to the view that tax administration by the Internal Revenue Services (IRS) was in trouble. The IRS at the time operated under powers similar to those under which the Australian Taxation Office operates today.

At its core the US Congress was concerned that the American public had lost faith in the tax administration system. This was a consequence of many years of taxpayer complaints about their treatment by the IRS. A 1997 Congressional review of the IRS stated:

"...the perception is that the IRS is neither sensitive nor accountable to the American people."

Congress took the view that:

"The success of our nation's tax administration system depends on continued voluntary compliance with the tax law."

And concluded that the integrity of the US tax system was under threat because of the performance of the IRS.

In 1998, Congress passed a major legislative package reforming the powers and administrative operations of the IRS. Congress sought to ensure that:

Public confidence in the IRS must be restored so that our system of voluntary compliance will not be compromised ... public confidence in the IRS is key to maintaining that willingness.

And that the reform package

... sets the stage for an IRS that is fair, efficient, and friendly. [where]

... taxpayer satisfaction must become paramount at the new IRS ...

The vision of Congress was that:

The IRS's mission is "to collect the proper amount of taxes".

The US lawmakers put the 'rights of taxpayers' at the centre of their reforms.

This approach has transformed US tax administration according to official reports. Since 1998, additional reforms have been implemented, the more important being the 2006 Whistleblower reforms and just last year (2019) the *Taxpayer First Act* which built further on the 1998 Act. What is also worth noting is that at all times the reforms have had universal political support in Congress.

Part Two of this submission details these reforms explaining

- The 1997 Commission of Inquiry into the IRS.
- The 1998 IRS Reform Legislation.
- The 2006 Whistleblower reforms related to the IRS.
- The 2010 Review of the implementation of the 1998 reforms.
- The 2019 *Taxpayer First Act*.

This submission argues that this package of reforms in the USA offers a model, even a template, for reforms to the Australian taxation system.

5. Overview: Comparing USA to Australia—Key Performance Indicators

On many measures the US seems to operate a considerably more efficient and perhaps effective federal tax administration system than does Australia. See discussion below.

Some overview data is as follows:

Table 5.1: Australia and United States Tax Systems, 2016 unless otherwise noted

	United States \$AU [\$US]	Australia \$AU [\$US]
Population	323,400,000	23,400,000
Total tax revenue	\$6,894 billion [\$5,263 billion]	\$487 billion [\$370 billion]
GDP	\$24,392 billion [\$18,620 billion]	\$1,755 billion [\$1,333 billion]
Total tax revenue as percentage of GDP	28 percent	27 percent
Federal tax revenue	\$4,247 billion [\$3,242 billion]	\$387 billion [\$294 billion]
Federal tax revenue as percentage of GDP	17 percent	22 percent
Federal tax revenue as percentage of total tax revenue	61 percent	79 percent
Federal tax revenue per capita	\$13,132 [\$9,980]	\$20,115 [\$15,287]
Primary federal taxes as percentage of total federal tax revenue	2016-2017	2016
	Personal income tax 47 percent	Personal income tax 46 percent
	Company tax 9 percent	Company tax 19 percent
	Social Security tax 34 percent	Taxes on goods and services 26 percent
Number of federal tax office employees	Internal Revenue Service 77,924	Australian Tax Office 17,718
Number of federal tax office employees per 100,000 population	24	76
Federal tax revenue per federal tax office employee	\$54.05 million [\$41.8 million]	\$21.8 million [\$16.6 million]

Sources: Congressional Research Service, Overview of the Federal Tax System in 2019, Washington DC; OECD, Tax revenue, Total % of GDP, 2000 – 2017; OECD, Details of Tax Revenue - United States; US Office of Budget and Management, Historical Tables, Table 2.2 - PERCENTAGE COMPOSITION OF RECEIPTS BY SOURCE: 1934 - 2024; US Internal Revenue Service, Data Workbook 2018, Table 29 Collections, Costs, Personnel, and U.S. Population, Fiscal Years 1989–2018; US Internal Revenue Service, Data Book, October 1, 2015 to September 30, 2016, Table 30. Personnel Summary, by Employment Status, Budget Activity, and Selected Personnel Type, Fiscal Years 2015 and 2016; Australian Bureau of Statistics, 5506.0 - Taxation Revenue, Australia, 2017-18; Australian Bureau of Statistics, 5204.0 Australian System of National Accounts, Table 1. Key National Accounts Aggregates; OECD Details of Tax Revenue - Australia; Australian Bureau of Statistics, 5060DO001_201718 Taxation Revenue, Australia, 2017-18; Australian Tax Office, Annual Report 2016, Appendix 8: Workforce demographics, TABLE 4.10 ATO employees, at 30 June 2016; Australian Bureau of Statistics, Australian Census 2016, People. AUD to USD conversion rate 31 July 2016 1 AUD = 0.76 USD; USD to AUD conversion rate 31 July 2016 1 USD = 1.31 AUD

Table prepared by Peter Murphy, Self-Employed Australia, January 2020.

Table 5.2: Cost of Administration, 2016

	Tax Administration Staff Numbers IRS/ATO*	Population	Population per one tax administration staff member	Tax administration operating budget IRS/ATO [\$AUD]*	Tax administration operating cost per head of population [\$AUD]
USA	77,924	323,400,000	4,150	\$15,327,000,000	\$47
Australia	17,718	23,400,000	1,321	\$3,964,769,000	\$169

Sources: US Internal Revenue Service, Data Workbook 2018, Table 29 Collections, Costs, Personnel, and U.S. Population, Fiscal Years 1989–2018; Australian Treasury, Portfolio Budget Statements 2016-17, Australian Taxation Office. AUD to USD conversion rate 31 July 2016 1 AUD = 0.76 USD; USD to AUD conversion rate 31 July 2016 1 USD = 1.31 AUD

*ATO figure: financial year 2015-2016; IRS figure 2016, \$US11,700,000,000

Table prepared by Peter Murphy, Self-Employed Australia, January 2020.

Table 5.3: US Population, Internal Revenue Service Staff FTE and collection efficiency

Year	Average Federal Tax Rates for All Households	Full time equivalent IRS staff	Year on year increase or decrease of FTE IRS staff	Year on year percentage change of IRS FTE staff	FTE IRS staff as a percentage of 1989 FTE staff	US Population by year at July 1 (million)	Year on year US population increase (percentage)	US population (July 1) as a percentage of US population July 1, 1989	Relative efficiency (ratio) of 1 IRS FTE staff member to the number of Americans	Increase/decrease of relative efficiency of tax collection staff to general population relative to 1989	Grc Collect of do re
1989	21.6	114,758			100.0%	246.82		100.0%	2,151		1,01
1990	21.7	111,962	-2,796	97.6%	97.6%	249.62	101.1%	101.1%	2,230	104%	1,05
1991	21.6	114,628	2,666	102.4%	99.9%	252.98	101.3%	102.5%	2,207	103%	1,08
1992	21.6	116,673	2,045	101.8%	101.7%	256.51	101.4%	103.9%	2,199	102%	1,12
1993	22.1	113,460	-3,213	97.2%	98.9%	259.92	101.3%	105.3%	2,291	107%	1,17
1994	22.5	110,748	-2,712	97.6%	96.5%	263.13	101.2%	106.6%	2,376	110%	1,27
1995	22.7	112,024	1,276	101.2%	97.6%	266.28	101.2%	107.9%	2,377	111%	1,37
1996	22.9	106,642	-5,382	95.2%	92.9%	269.39	101.2%	109.1%	2,526	117%	1,48
1997	23	101,703	-4,939	95.4%	88.6%	272.65	101.2%	110.5%	2,681	125%	1,62
1998	22.7	98,037	-3,666	96.4%	85.4%	275.85	101.2%	111.8%	2,814	131%	1,76
1999	23.1	98,730	693	100.7%	86.0%	279.04	101.2%	113.1%	2,826	131%	1,90
2000	23.1	97,074	-1,656	98.3%	84.6%	282.16	101.1%	114.3%	2,907	135%	2,05
2001	21.6	97,707	633	100.7%	85.1%	284.97	101.0%	115.5%	2,917	136%	2,12
2002	20.8	99,181	1,474	101.5%	86.4%	287.63	100.9%	116.5%	2,900	135%	2,01
2003	19.9	98,819	-362	99.6%	86.1%	290.11	100.9%	117.5%	2,936	136%	1,95
2004	20.3	97,597	-1,222	98.8%	85.0%	292.81	100.9%	118.6%	3,000	139%	2,01
2005	20.8	94,282	-3,315	96.6%	82.2%	295.52	100.9%	119.7%	3,134	146%	2,26
2006	20.9	91,717	-2,565	97.3%	79.9%	298.38	101.0%	120.9%	3,253	151%	2,51
2007	20.5	92,017	300	100.3%	80.2%	301.23	101.0%	122.0%	3,274	152%	2,65
2008	18.5	90,647	-1,370	98.5%	79.0%	304.09	100.9%	123.2%	3,355	156%	2,74
2009	17.9	92,577	1,930	102.1%	80.7%	306.77	100.9%	124.3%	3,314	154%	2,34
2010	18.6	94,711	2,134	102.3%	82.5%	309.33	100.8%	125.3%	3,266	152%	2,34
2011	18.3	94,709	-2	100.0%	82.5%	311.58	100.7%	126.2%	3,290	153%	2,41
2012	18.9	90,280	-4,429	95.3%	78.7%	313.87	100.7%	127.2%	3,477	162%	2,52
2013	20.7	86,974	-3,306	96.3%	75.8%	316.06	100.7%	128.1%	3,634	169%	2,85
2014	21.2	84,133	-2,841	96.7%	73.3%	318.39	100.7%	129.0%	3,784	176%	3,06
2015	21.1	79,890	-4,243	95.0%	69.6%	320.74	100.7%	129.9%	4,015	187%	3,30
2016	21	77,924	-1,966	97.5%	67.9%	323.07	100.7%	130.9%	4,146	193%	3,33
2017		76,832	-1,092	98.6%	67.0%	325.15	100.6%	131.7%	4,232	197%	3,41
2018		73,519	-3,313	95.7%	64.1%	327.17	100.6%	132.6%	4,450	207%	3,46

Sources: US Census Bureau; US Internal Revenue Service, Data Workbook 2018, Table 29 Collections, Costs, Personnel, and U.S. Population, Fiscal Year 2018; Tax Policy Center, Historic Average Tax Rates for all Households 1979 to 2016

Table prepared by Peter Murphy, Self-Employed Australia, January 2020

Table 5.4: /

Year	Number of ATO staff	Relative efficiency (ratio) of 1 ATO staff member to the number of Australians	Selected year on year increase or decrease of ATO staff numbers	Selecte year on y percent: change ATO sta: numbe
1986-87	17,271	927		
1991-92	19,501	886	2230	112.9%
1996-97	17,000	1,072	-2501	87.2%
2000-01	20,000	938	3000	117.6%
2006-07	21,222	936	1222	106.1%
2011-12	24,740	869	3518	116.6%
2016-17	20,435	1,145	-4305	82.6%

Sources: Australian Bureau of Statistics, Australian Census, Population 30 (or adjacent day) rate; Australian Bureau of Statistics, 5060DO001_ Table D3: Australian Government general government sector taxation 2016-17

Table prepared by Peter Murphy, Self-Employed Australia, January 20

In 1997 the USA population was 273 million and the IRS had 100,000 staff. (Page10, 1997 Commission Report) The ratio of population to every IRS staff member was 1 IRS officer for every 2,720 persons.

Since the 1998 IRS reforms, the ratio of population to every IRS staff member has changed to 1 IRS officer for every 4,450 persons as of 2018.

5.3 Comment/Discussion

On the surface it could be argued that, since 1998, the IRS has become considerably more efficient in its administration with around a 50 per cent better ratio of IRS staff to US population. This is reinforced by the fact that the cost of collecting \$100 of US tax has dropped from \$0.51 in 1989 to \$0.34 in 2018 (Table 5.3).

But there is debate and discussion in the US as to whether this leaner IRS is so squeezed for resources that it is failing in critical areas of tax collection. This concern, however, is not supported by the facts. Comparable or higher levels of tax were being collected in 2018 compared to 1989. Gross revenue collected per capita in 1989 was \$US8,314 (adjusted to 2018 values) whereas in 2018 the collection was \$10,592.

That is, more or comparable tax is now being collected at significantly lower administrative cost in the US. This is perhaps why any concerns about revenue collection capacity did not appear to impede the passage of the additional 2019 reforms with the *Taxpayer First Act*.

But, when comparing the USA's tax administration with that of Australia, Australia's tax administration appears grossly inefficient.

There can be reasons for that because this is not necessarily a strict 'apples versus apples' comparison. For example:

- The ATO collects a goods and services tax and oversees and enforces the compulsory superannuation withholding system. The IRS does not have such a function in the USA.

But

- The IRS collects a separate social security tax whereas the ATO does not.

Even if the ATO has a greater and more complex collection task than the IRS, the differences in the apparent performances of the IRS and the ATO are arguably too large to ignore.

In 2016 the ATO is at least

- Twice as inefficient as the IRS was in 1997.
- Three times as inefficient as the IRS is in 2016.

Arguably, to operate at the same level of efficiency as the IRS, the ATO

- would need to have only around 6,000 staff not the current 18,000;
- could deliver cost savings to the Australian budget as high as \$A2.4billion per year.

Such comparisons make for interesting discussion, but it must be remembered that the motivation for the US reforms from 1998 to 2019 were not about tax administration costs.

The motivations were entirely about the integrity of the US tax administration system—that is, whether American taxpayers were subject to processes of fairness, justice, transparency and the rule of law in their dealings with the IRS.

However, it should be noted that a system with a high degree of integrity may also be the most efficient system. It is arguable that integrity means reducing the time spent on wasteful and needlessly punitive activities. Increased tax justice leads to higher productivity in the tax collection system.

The view amongst US lawmakers is that a tax administration system that puts the rights of taxpayers at the top of the priority list encourages voluntary community compliance, the key to all quality, efficient tax systems.



Part Two: Understanding the Legislatively Mandated Reforms to the IRS 1997 to 2019

February 2020

Content of Part Two

Note: The content is laid out to provide

- An overview of the reforms (sections 1, 2 & 3)
- Some details of the three key legislative packages in
1998 (section 4) 2006 (section 5) 2019 (section 6)
- An understanding of the motivations and results of the reforms (sections 7 & 8)

1. How tax administration was viewed 1997-98

- | | |
|--|----------------|
| a) Lack of faith in the IRS | c) The vision |
| b) A Reform package – Taxpayer
Priority | d) One Outcome |

2. Overview of the legislatively mandated operational procedures of the IRS

- | | |
|----------------------------|----------------------------|
| a) 1998 Legislation | c) 2019 Taxpayer First Act |
| b) 2006 Whistleblower laws | |

3. Background to IRS Reforms

4. Summary of the 1998 IRS Reforms

- | | |
|--|---|
| 1. IRS Mission | 17. Limitation on financial status
audit techniques |
| 2. Internal appeals | 18. Approval process for liens,
levies, seizures etc |
| 3. IRS Oversight board | 19. Levy and the like prohibited
during appeal |
| 4. Taxpayer Advocate | 20. Assessment waiting period |
| 5. Treasury Inspector General | 21. Prohibition of sale of seized
property at less than minimum
bid |
| 6. IRS Officers | 22. Principal residence |
| Taxpayer Protection and Rights | 23. Codification of IRS seizure
procedures |
| 7. Burden of proof | 24. Extending statute of
limitations by agreement |
| 8. Awarding Costs | 25. Offers in compromise |
| 9. Civil damages | 26. Enforcing payments while
appealing |
| 10. Special small case procedures | 27. Codification of IRS appeals
procedures |
| 11. Civil action on erroneous lien | 28. Guaranteed availability of
instalment agreements |
| 12. Interest and penalties | |
| 13. Suspension of interest and
penalties if IRS fail to contact
taxpayer | |
| 14. Procedures for imposing
penalties | |
| 15. Notice of interest charges | |
| 16. Due IRS collection actions
(levy) | |

- 29. Waiving rights to sue the government
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- 31. Disclosure of Chief Counsel advice
- 32. Cataloguing complaints
- 33. Whistleblower information to Congress
- 5. The Whistleblower laws – 2006**
 - 5.1 Background: Whistleblower ‘blows up’ the secret Swiss banking system 2012
 - 5.2 Background: Effectiveness of whistleblower laws
 - 5.3 The laws: General
 - 5.4 IRS: Application of the whistleblowers’ laws to the IRS – 2006
 - 5.5 Outcomes IRS
- 6. 2019 Taxpayer First Act**
 - 6.1 Overview of the Taxpayer First Act (12 key points)
From the *Taxpayer First Act*
 - 6.2 Independent appeal process
 - 6.3 Improved service
 - 6.4 Sensible enforcement
 - 6.5 Organisational modernization
 - 6.6 Other
 - 6.7 Title II-21st Century IRS
 - 6.8 Title III – IRS employees
- 7. Congressional motivations for reforming the IRS**
Extracts from the 1997 Commission of the IRS
 - 7.1 Restoring faith in the IRS
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Reform recommendations
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 - 7.10 Taxpayers’ redress
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- 8. Summary 2010 Treasury Review of the 1998 IRS reform laws**
 - 8.1 Overview
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 - 8.5 Reforms of 1998 – Principles and Practices
 - a. IRS Culture
 - b. Statute operational requirements
 - c. Statute debt collection procedural requirements
 - d. IRS employee misconduct
 - e. Conclusion

1. How tax administration was viewed 1997-98

By the mid-1990s the US Congress had come to the view that tax administration by the Internal Revenue Services (IRS) was in trouble.

The following are quotations from Congressional reports and reviews in 1997–98.

a) Lack of faith in the IRS

- The success of our nation's tax administration system depends on continued voluntary compliance with the tax law.
- ...the perception is that the IRS is neither sensitive nor accountable to the American people.
- The goal of this Report is to recommend changes to the IRS that will help *restore the public's faith in the American tax system*.
- ... the IRS has an ethical obligation to serve the American people well, as it is the only federal agency that interacts with almost all citizens.

b) A Reform package—Taxpayer Priority

- Public confidence in the IRS must be restored so that our system of voluntary compliance will not be compromised.
- ... most Americans are willing to pay their fair share of taxes ... public confidence in the IRS is key to maintaining that willingness.
- ...this package sets the stage for an IRS that is fair, efficient, and friendly.
- ... taxpayer satisfaction must become paramount at the new IRS ...
- ... there are no isolated solutions ... an integrated approach will set the stage for a more taxpayer friendly IRS and a tax system which Americans can believe in and trust.

c) The vision

The IRS's mission is "to collect the proper amount of taxes".

-an efficient, service-oriented institution dedicated to collecting the proper amount of tax
- ... motivated, skilled employees of this new IRS would receive the proper training, incentives, authority, tools, and management oversight to get the job done.
- help people comply with a simplified tax code,
- ... managing its data collection and taxpayer accounts to best private and public sector organizations practice.
- ... taxpayers would have adequate protections when the agency exercised its powers in an improper fashion.

d) One Outcome

- In 1997 the IRS had 1 staff member for every 2,681 Americans.
- In 2019 the IRS has 1 staff member for every 4,450 Americans.

This improvement indicates around a *50% increase* in productivity by the IRS since 1997.

2. Overview of the legislatively mandated operational procedures of the Internal Revenue Service (IRS)

This submission puts the proposition that the IRS's effectiveness in tax collection and administration is built around an understanding in the USA that:

Voluntary compliance with the tax system will be maximised where the IRS operates and is seen to operate:

- as a service organisation assisting taxpayers to pay the correct amount of tax; and
- on the principles of fairness and justice in assessment, auditing and enforcement.

Financial incentives exist for people to 'blow the whistle' where they have knowledge of tax non-compliance.

There are three key legislative parts to this.

a) The 1998 legislatively mandated reforms (see details below)

The key factors governing IRS administration had/have a primary emphasis on taxpayer rights—

- IRS is to be a service organisation.
- Required compliance with a Taxpayer Bill of Rights.
- A tax debt cannot be collected until all appeals have been exhausted.
- IRS has the onus of proof of a tax debt. In other words, a taxpayer does not have to 'unprove' the IRS's position.
- Genuine independent review process inside the IRS.
- Taxpayer Advocate is strong (it has 1,600 staff) and is genuinely independent from the IRS, although a division within the IRS. Assists taxpayers to pay the correct amount of tax.
- Treasury Inspector General audits the IRS—including investigating complaints about IRS employee behaviour.
- Appeal rights to a dedicated Tax Court.
- Whistleblower protection laws give up to 30 per cent of tax raised to the whistleblower.
- Long list of legislated procedures the IRS must follow to comply with Taxpayer Rights Code. If the IRS fails to follow procedures, it risks not being able to collect the debt.

b) The 2006 Whistleblower laws relevant to the IRS (more details below)

US Whistleblower laws:

- Provide protections to whistleblowers from harassment, abuse and attack by the entity against whom they are blowing the whistle.
- Provide financial incentives to whistle-blowers' who expose fraud of up to 30 per cent of the revenue raised as a result of their blowing the whistle.

In 2006, these laws were applied to the IRS. Some \$US 13.7 billion (2017) in extra tax revenue has been accrued as a result of these laws.

c) The 2019 Taxpayer First Act (more details below)

In July 2019, the *Taxpayer First Act* consolidated and expanded the reforms of 1998 with twelve additional provisions to improve IRS administration.

3. Background to IRS Reforms

In 1996, the US Congress commissioned an investigation and report into the performance of the Internal Revenue Service (IRS). The trigger for the *National Commission on Restructuring the Internal Revenue Service* was decades of evidence delivered by taxpayers to Congress of taxpayer abuse by the IRS, particularly of individuals and small business people.

The 1997 report of the National Commission held the view that the IRS's abuse of taxpayers lowered the levels of confidence that taxpayers had in the fairness and integrity of the USA tax collection and administration system. This, the National Commission believed lowered the level of voluntary compliance by US taxpayers in the tax system—the central factor in all efficient tax systems.

The US Congress agreed with the views and findings of the 1997 Commission report.

In 1998, Congress passed a package of legislation which imposed sweeping reforms on the administration of the IRS. This was the largest reform to the IRS since the 1950s. The reforms went even further than those recommended by the 1997 Commission.

In 2006, running in parallel but somewhat delayed, Congress modified existing whistleblower protection laws making them applicable to IRS tax collection activities. These laws protect genuine whistle-blowers and allow for whistleblowers to receive up to 30 percent of the tax revenue raised as a result of their blowing the whistle.

In 2010, the US *Treasury Inspector General for Tax Administration* released a report into the implementation of the 1998 reforms by the IRS. The report found that the reforms had been substantially implemented but that challenges remained.

In June 2019, Congress passed legislation imposing further administrative reforms on the IRS. The *Taxpayer First Act*, supported by all sides of Congress, further extended and consolidated the 1998 reforms.

The reforms that have taken place since 1998 on have focused on two key things:

- The rights of taxpayers are paramount.
- The IRS must first and foremost be a service organization servicing taxpayers.

The reforms legislatively impose on the IRS:

- Strong systems of institutional checks and balances on IRS powers.
- Wide levels of transparency.
- Specific procedures about how taxpayers are to be treated.

The whistleblower protection laws incentivize exposure of tax wrongdoing.

It is the totality of the package that has made for a vastly improved IRS and an organization probably significantly superior to the ATO in its tax collection capacity. This proposition shall be discussed in Part Three of this report

4. Summary of the 1998 IRS Reforms

This submission puts the proposition that the IRS's effectiveness in tax collection and administration is built around an understanding in the USA that:

Voluntary compliance with the tax system will be maximised where the IRS operates and is seen to operate:

- as a service organisation assisting taxpayers to pay the correct amount of tax; and
- on the principles of fairness and justice in assessment, auditing and enforcement.

Financial incentives exist for people to 'blow the whistle' where they have knowledge of tax non-compliance.

The following is an overview of the reforms implemented in 1998.

This overview is taken from the document [*General Explanation of Tax Legislation Enacted in 1998*](#). Prepared by the staff of the Joint Committee on Taxation, 24 November 1998, USA Congress.

Appended to this report is a longer document comprising direct extracts from the 'General Explanation'.

(Note 1: In this overview and the appendix extracts from the 'General Explanation' are in small type)

(Note 2: Number references below relates to the numbers used in the appendix)

The [*2010 Treasury review of the implementation of these 1998 reforms*](#) found that the reforms had substantially been implemented by the IRS, although more needed to be done.

The 1998 reforms were sweeping in their scale. They turned the bureaucratic titanic that was the IRS in a totally different direction from where it was heading. This was the stated intent of Congress. It can be assumed that the 1998 reforms were a primary factor in making the IRS significantly more effective as a tax administrator than it was before 1998.

The 1998 legislation required the following changes to the structure and operations of the IRS

- 1. IRS mission:** The IRS's mission statement was changed. It now required the IRS to place a greater emphasis on servicing taxpayers' needs.
The IRS is directed to revise its mission statement to provide greater emphasis on serving the public and meeting the needs of taxpayers.
- 2. Internal appeals:** Introduction of an internal IRS independent appeals process.
 - No communication to occur between IRS appeals officers and other IRS employees that might compromise the appeals division's independence.
- 3. IRS oversight board:** An Independent 'Oversight Board' established inside Treasury, ...to oversee the IRS in the administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws.
- 4. Taxpayer Advocate:** Established in 1996. Operating within the IRS but independent of it (it had 1,600 staff in 2019).
 - Reports to the Commissioner but is independent.
 - Assists taxpayers to resolve IRS problems.

- Identifies problem areas in tax administration.
- Proposed changes to IRS administration.
- Identifies legislative changes.

4.1 *Taxpayer Assistance Orders (TAO) (changes since 1998):*

- Taxpayer may request a TAO if suffering hardship resulting from IRS behaviour.
- TAO can order the IRS to cease, refrain or initiate action.
- Defines 'hardship' in a number of ways
 - (a) immediate threat of action;
 - (b) more than 30 days in resolving a problem;
 - (c) taxpayer will have significant costs;
 - (d) taxpayer will suffer damage; and
 - (e) defined under regulations.
- Where the IRS has failed to follow published guidelines, the Advocate is to favour the taxpayer.

4.2 *Reports*

- The Advocate reports directly to Congress annually. (Called the Purple Book)
- No prior review of reports allowed by the IRS, Treasury or other organisations.

4.3 *Structure*

- Local offices reporting to the National Advocate.
- Staff are employees of the Advocate Office, not employees of the IRS.
- Independent from IRS examination, collection and appeals functions.

4.3 *Notices*

The IRS must publish Advocate contact details on all 'notices of deficiency'.
The Congress believed that the Taxpayer Advocate serves an important role...of preserving taxpayer rights...

5. **Treasury Inspector General (established 1988)**

The IRS Office of the Chief Inspector (Inspection Service) was established in 1951 following widespread corruption in the IRS. The Service was 'beefed up' in 1998 to become the

5.1 *Treasury Inspector General for Tax Administration*

- Audits the IRS (for example, audits 1 per cent of IRS refusals of FOI requests).
- Charged to detect/deter fraud/abuse in IRS operations.
- Protects against external attempts to corrupt the IRS.
- Investigates allegations of wrongdoing/taxpayer abuse by IRS officers. (For example, mandates publication of complaints phone number.)
- Investigates allegations of abuse of IRS officers by taxpayers.
- Refers suspected violations of criminal law to the Department of Justice including suspicion of IRS officers.

6. **IRS officers**

6.1 *Requires termination of IRS officers for*

- Failing to obtain signatures on documents authorising seizure of taxpayer assets.
- Providing a false statement involving a taxpayer.
- Violating a taxpayer's Constitutional or other legislative rights.

- Falsifying/destroying/concealing taxpayer documents.
- Assaulting a taxpayer or IRS officer.
- Concealing data from a Congressional inquiry.
- Threatening to audit a taxpayer for personal gain.

6.2 Performance measures

In assessing the performance of IRS staff, the IRS:

- must favour taxpayer service as its first priority; and
- must not use measures based on quotas, goals or statistics.

6.3 Employee training

- Must be focused on customer service.
- Specifies requirements for training schedule, funding, customer service, etc.

Taxpayer Protection and Rights

7. Burden of proof

7.1 Under tax law before 1998 a ‘rebuttal presumption’ existed that ‘the Commissioner’s determination of a tax liability is correct’. In other words, the taxpayer had to ‘un-prove’ the IRS’s tax assessment.

7.2. The 1998 law was changed so that the burden of proof shifted to the IRS.

“The Congress believed that shifting the burden of proof to the Secretary in such circumstances would create a better balance between the IRS and such taxpayers, without encouraging tax avoidance.”

The IRS has the burden of proof in respect to factual issues. Taxpayer must meet conditions of record-keeping, etc.

The Congress also believed that, in a court proceeding, the IRS should not be able to rest on its presumption of correctness if it does not provide any evidence whatsoever relating to penalties.

7.3 Statistics and penalties:

- The burden of proof is on the IRS if they use statistical data to assess a taxpayer’s income.
- IRS must produce evidence to support a penalty before the court can impose the penalty.

8. Awarding costs

Taxpayers can be awarded administrative costs from the time a ‘letter of proposed deficiency’ is issued. Includes costs associated with review by IRS Office of Appeals and use of *pro bono* legal services. And costs where IRS engages in unauthorised inspections or disclosure activity.

The Congress believed that taxpayers should be allowed to recover the reasonable administrative costs they incur where the IRS takes a position against the taxpayer that is not substantially justified...

9. Civil damages

Taxpayers can recover economic costs where the IRS disregards the Tax Code or violates the Bankruptcy Code. Third parties can also recover costs for unauthorised collection activities. Damages to \$100,000 (1998) plus up to \$1 million in civil damages are allowed.

10. Special small case procedures apply in the Tax Court.

11. Civil action on erroneous lien

Where the IRS has imposed a wrongful lien on a third party for a tax debt, the third party can recover damages.

12. Interest and penalties

- Interest charged to taxpayers to be no greater than the interest the Federal Government pays.
- Where taxpayers are paying unpaid tax through an instalment agreement, they should not suffer the full penalty regime.

13. Suspension of interest and penalties if IRS fails to contact taxpayer

If the IRS fails to notify a taxpayer of tax owed, penalties and interest are suspended after one year.

...Congress was concerned that accrual of interest and penalties absent prompt resolution of tax deficiencies may lead to the perception that the IRS is more concerned about collecting revenue than in resolving taxpayer's problems.

14. Procedures for imposing penalties

The Congress believed that penalties should only be imposed where appropriate and not as a bargaining chip.

Requires that a penalty notice includes (a) name of the penalty (b) the penalty Code (c) the computation. Specific approvals process is required.

15. Notice of interest charges

Requires that every IRS notice must include (a) interest charged (b) detailed computation (c) citation of the Code.

Protections for Taxpayers Subject to Audit or Collection Activities

16. Due IRS collection actions (levy)

The IRS can impose a 'levy' (authority to seize) against a taxpayer's property for unpaid tax. This includes seizure of wages, etc.

The 1998 law requires that:

- the IRS must provide the taxpayer a 'notice of intent to levy' before seizure.
- No levy can occur for 30 days following mailing of the notice.
- Within that 30 days the taxpayer may demand a hearing before an appeals officer who has not had prior involvement with the taxpayer's case.
- No levy can occur until the appeal is determined.

The notice must be delivered in person to the taxpayer or by certified or registered post.

The notice must show:

- Unpaid tax.
- Taxpayer's right to request a hearing within 30 days.
- Proposed IRS action.

At a hearing the IRS is required to verify that all statutory, regulatory and administrative requirements have been met. These are listed. The taxpayer may raise any relevant issue.

The IRS appeal decision is appealable to the Tax Court or Federal District Court.

Seizure of a principal place of residence is not allowed without judicial approval.

Communication between a taxpayer and IRS-authorized tax advisers, including lawyers, is privileged and confidential in non-criminal proceedings. That is, attorney–client privilege is extended to authorized tax advisers.

17. Limitation on financial status audit techniques

The IRS cannot use an ‘economic reality’ test to determine unreported income unless there is a reasonable indication of same.

18. Approval process for liens, levies, seizures, etc.

The Act imposes administrative processes—namely, approval by a supervisor who has reviewed information, verified debt and affirmed that lien and seizure are appropriate.

19. Levy and the like prohibited during appeal

Existing law prevented the IRS from making a tax assessment or collecting payment while a liability is being tested in the Tax Court. This was extended to taxpayer litigation over refunds.

20. Assessment waiting period

A 30-day ‘waiting period’ applies after tax assessments have been made, except where collection is at risk. Where ‘at risk’ exists, Counsel review is required before collection activity is allowed.

21. Prohibition of sale of seized property at less than minimum bid

The IRS cannot sell a seized property for less than the ‘minimum bid’ price (the minimum bid price formulae is stipulated). Forced sale below the minimum bid price would constitute an unauthorized collection action.

22. Principal residence

IRS must exhaust all other payment options before seizing business assets or a principal residence. (See also item 16 above: Seizure of a principal place of residence not allowed without judicial approval.)

23. Codification of IRS seizure procedures

The Act requires the IRS’s administrative procedures on seizure of a taxpayer’s property to be codified—that is, written into law.

24. Extending statute of limitations by agreement

Requires the IRS to fully inform taxpayers that they do not have to agree to an extension to the three-year statute of limitations on tax review. The three-year limit applies from the date a return is filed.

25. Offers in compromise

Taxpayers can offer to settle a tax debt for less than the assessed liability (offer in compromise or OIC) The Tax Code permits the IRS to accept such offers.

The Congress believed that the ability to compromise tax liability and to make payments of tax liability by instalment enhances taxpayer compliance.

The Act prohibits the IRS from:

- rejecting an OIC from low-income taxpayers based solely on the amount;
- rejecting an OIC where the IRS has lost a taxpayer's file; and
- requesting a financial statement based solely on doubt as to liability;

The Act also requires the IRS to publish schedules and guidance for taxpayers on offers in compromise.

26. Enforcing payments while appealing

The IRS cannot collect a deficiency while an appeal is pending at the Tax Court. A court can order a refund if tax is collected during an appeal period.

27. Codification of IRS appeals procedures

The Act requires that IRS procedures in relation to appeals, mediation, binding arbitration and early appeals and other procedures be codified—that is, written into law.

28. Guaranteed availability of instalment agreements

Requires the IRS to make it easier for taxpayers to enter instalment agreements. Stipulates five conditions.

29. Waiving rights to sue the government

The IRS (government) may not request taxpayers waive their rights to sue the government in matters relating to tax issues, unless certain conditions are met.

30. Requirement to inform taxpayer of their appeal rights

The IRS is required to provide a taxpayer with a full description of all appeal rights at the point of the first letter of proposed tax deficiency.

31. Disclosure of Chief Counsel advice

Requires the public release of IRS Chief Counsel advice.

The Congress believed that written documents issued by the National Office of Chief Counsel ... should be subject to public release ... all taxpayers can be assured of access to the “considered view of the Chief Counsel’s national office” on significant tax issues.

32. Cataloguing complaints

IRS to report to Congress all instances involving allegations of misconduct by IRS employees. Individual employees not to be identified.

33. Whistleblower information to Congress

Provides a process whereby a whistleblower may disclose taxpayer return information on a confidential basis to Congress relating to possible IRS misconduct, maladministration or taxpayer abuse.

5. The Whistleblower Laws—2006

This submission puts the proposition that the IRS's effectiveness in tax collection and administration is built around an understanding in the USA that:

Voluntary compliance with the tax system will be maximised where the IRS operates and is seen to operate:

- as a service organisation assisting taxpayers to pay the correct amount of tax; and
- on the principles of fairness and justice in assessment, auditing and enforcement.

Financial incentives exist for people to 'blow the whistle' where they have knowledge of tax non-compliance.

In addition to the 1998 reforms (discussed above) the other major factor affecting the IRS were the changes made in 2006 to US whistleblower laws as applied to the IRS. However, it was not until 2012 that the full scale of the power of these laws was first demonstrated (discussed below).

US whistleblower laws

- a) Provide protections to whistleblowers from harassment, abuse and attack by the entity against whom they are blowing the whistle.
- b) Provide financial incentives to whistleblowers to expose fraud. Whistleblowers can receive up to 30 per cent of the revenue raised as a result of their blowing the whistle.

It can be assumed that the 2006 IRS whistleblower laws combined with the 1998 reforms (discussed above) resulted in the IRS becoming a significantly more effective tax administrator than it was before 1998.

The following information on the USA's whistleblower laws is taken from what is probably recognized in the USA as the 'bible' on whistleblower laws: *The New Whistleblowers Handbook*, by Stephen Martin Kohn, National Book Network, 2017.

5.1 Background: Whistleblower 'blows up' the secret Swiss banking system 2012

In August 2012, the IRS awarded a \$US104 million reward to Bradley Birkenfeld under whistleblower protection laws.

Sometime shortly after 2006, Birkenfeld had exposed a \$US20 billion fraud undertaken by the world's largest bank, UBS, which was hiding American tax cheats money in off-shore Swiss bank accounts. This blew apart forever the secrecy of the Swiss banking system. It resulted in the IRS raising \$US13.7 billion (as of 2017). (Kohn, p. ix, more detail on p. 29)

In the Australian context it is instructive that, in July 2013, the Australian and Swiss governments signed an agreement in which the Swiss government agreed to release the details of Australians with secret Swiss bank accounts. In November 2013, the ATO announced an amnesty for Australians with secret overseas accounts. Some \$A6.5 billion (as of 2015–16) in secret money was declared. As a result of the amnesty, the ATO raised an additional \$A260 million in tax.

The exposure of Australians hiding money in secret overseas bank accounts can be reasonably attributed to the USA's whistleblower laws and the whistleblower Bradley Birkenfeld.

5.2 Background: Effectiveness of whistleblower laws

- “A survey by PricewaterhouseCoopers revealed that ‘whistleblowers are the single most effective source of information in both detecting and rooting out corporate criminal activity’”.
- “...whistle-blowers’ detected and exposed more wrongdoing in the corporate world than every investigator and auditor working for every law enforcement and regulatory agency combined.” (Kohn, p. xii)
- “Whistleblowers now uncover 70 per cent of the civil frauds recovered by the United States.” (Kohn, p. xiii)

Whistleblowers were the cause of

- The exposure of fraud in, and collapse of, Enron.
- The exposure of the Bernard Madoff Ponzi scheme and its collapse.

“As of September 2016, under the False Claims Act alone, the United States has collected \$US53.032 billion from fraudsters since the law was amended in 1986.” (Kohn, p.12)

5.3 The laws: General

In the United States there is no single National Whistleblower Protection Act. Instead, there is a welter of some 50 different Federal Acts. However, of all the laws, one old Act—the False Claims Act—has been the most effective.

The False Claims Act (FCA) (Kohn, p. 2) covers fraud in government contracting. The Act originated in 1863 and was amended in 1943 and 1986.

Since 1986 “... it has proven to be the most effective antifraud law in the United States (and perhaps the entire world.)” (Kohn, p. 21)

- Under the laws “whistleblowers can protect their identities and obtain financial rewards ...” (Kohn, p. 1)
- “Cases are filed under seal and remain confidential during the first phase of the proceedings.” “Eligible whistle-blowers’ are entitled to a reward of 15 to 30 per cent of collected proceeds obtained by the government.”
- “The FCA permits whistle-blowers’ to go to court and show that the government was financially taken advantage of.” If proven, the whistleblower is entitled to a percentage [of fines and penalties paid by the wrongdoer] plus legal fees and costs. (Kohn, p. 75)

If the whistleblower’s information turns out to be harmless or incorrect, the whistleblower gets nothing.

- “Before whistle-blowers’ laws, action against the whistleblower focused on whether the whistleblower was an incompetent or disgruntled employee. The reward laws changed this.” (Kohn, p. 11)

In general

- Anonymous disclosures shield whistleblowers.
- Cases never make the press.
- Contributions are not publicly known.

5.4 IRS: Application of the whistleblowers' laws to the IRS - 2006

In 2006 Congress "...looked toward the False Claims Act to model its IRS tax whistleblower program..." (Kohn, p. 7)

The IRS established a Whistleblowers Office. It operates as follows:

- An initial whistleblower disclosure is filed in the Federal Court under seal.
- Steps are taken to identify frivolous and abusive filings.
- "Initial reward filings with the IRS Whistleblowers office are required to be signed by the whistleblower, under oath and thus cannot be anonymous." (Kohn, p. 9)
- But the IRS rules require the IRS to keep the whistleblower's information strictly confidential, with confidentiality mandated in the IRS Internal Revenue Manual.
- A whistleblower's identity must not be disclosed to any other IRS officer.
- All information is kept in locked file cabinet and/or maximum security screen displays.
- Information is transmitted in a double-sealed envelope.

(Kohn pp. 94–100 details the steps and procedures the IRS must undertake in following up whistleblower information.)

5.5 Outcomes: IRS

In 2016 alone

- "...13,396 whistle-blowers' reported tax frauds and underpayments under the IRS confidential program."
- "...the IRS paid out \$US61 million to whistleblowers..."
(Note: "...if the government (IRS) does not prosecute the alleged fraudster, no reward will be paid".)

"As of January 2017, the United States recovered more than \$US14 billion in sanctions directly attributable to or triggered by the IRS tax whistleblower law." (Kohn, p. 29)

"The IRS whistleblower law fundamentally changed tax compliance. The reason is simple. A comprehensive fraud detection study by the University of Chicago Booth Business School of Business confirmed the obvious. 'A strong monetary incentive to blow the whistle does motivate people with information to come forward'." (Kohn, p. 101)

6. 2019 *Taxpayer First Act*

This submission puts the proposition that the IRS's effectiveness in tax collection and administration is built around an understanding in the USA that:

Voluntary compliance with the tax system will be maximised where the IRS operates and is seen to operate:

- as a service organisation assisting taxpayers to pay the correct amount of tax; and
- on the principles of fairness and justice in assessment, auditing and enforcement.

Financial incentives exist for people to 'blow the whistle' where they have knowledge of tax non-compliance.

So far, this submission has summarised and given some level of detail as to the package of reforms undertaken in 1998 and 2006 which, combined, have delivered substantial results according to official reviews (2010).

However, US lawmakers have not been content and have responded to ongoing IRS abuse of its powers against taxpayers who have done nothing wrong. Evidence of this IRS abuse dates back to at least 2012, with [taxpayers being victims of aggressive IRS cash seizures](#) as just one example.

Some of these cases involved the IRS being forced to refund monies it illegally seized from people after they went through many years of efforts to seek redress and refunds.

On 13 June 2019, Congress approved the [Taxpayer First Act](#). This was signed into law by President Trump on 1 July 2019. The Act passed Congress with support from all sides of the political spectrum.

6.1 Overview of the *Taxpayer First Act*

There are [twelve key reform points](#):

- 1) **Greater access to independent review:** Guarantees taxpayer access to an independent appeal on an audit decision. Before an appeal the IRS must hand over to the taxpayer the taxpayer's case file.
- 2) **Improved customer service:** The IRS is required to adopt best practice standards used by the private sector in customer service.
- 3) **Easier settlement procedures:** No fees imposed by the IRS if a settlement deal is done with the taxpayer.
- 4) **Limited seizure of property:** Property seizure is limited to illegal cash transactions or concealing criminal activity. Post-seizure and hearing requirements to protect taxpayers.
- 5) **Greater protection for innocent spouses:** Applies in cases where a spouse has innocently signed a tax return prepared by the partner and the tax return is wrong.
- 6) **Fewer 'John Doe' summonses:** This will limit the ability of the IRS to conduct unlawful 'fishing expeditions' of foreign bank accounts for specific tax violations.
- 7) **Curbed use of private tax collectors:** The IRS uses private companies to collect tax debts. This will now be limited.
- 8) **Earlier notice of third-party questioning:** The IRS must notify a taxpayer before it makes enquires of a third party about the person's tax—for example, enquiries of a customer.

- 9) **Limited access to taxpayer information:** This limits IRS ‘contractors’ access to taxpayer information.
- 10) **Listening to the Taxpayer Advocate.** The Taxpayer Advocate is given significant new powers to issue enforceable directives to the IRS on taxpayer cases.
- 11) **Greater identity theft protection:** This requires the IRS to apply increased measures to protect taxpayers from identify theft.
- 12) **Accepting credit and debit card payments:** The IRS must accept credit and debit cards for payments.

From the *Taxpayer First Act*

The following are notes directly from the [*Taxpayer First Act*](#). The selection of items is those most likely to be of interest in the Australian context of considering the performance and powers of the ATO.

Title 1—Putting Taxpayers First

6.2 Independent appeal process (Sec 1001)

This establishes or expands the ‘Independent Office of Appeals’ within the IRS under the direction of the ‘Chief of Appeals’.

The purposes are to “Resolve federal tax controversies without litigation”.

Some detail:

- If a taxpayer’s request for a referral to the Office of Appeals is denied, the taxpayer must receive a written, detailed explanation.
- The IRS Commissioner must submit to Congress annually the number of denied requests for appeal and the reasons for denying them.
- The Chief of Appeals shall have the authority to receive legal advice from the Chief Counsel. The assistance and advice should be provided by staff in the Chief Counsel Office who were not involved in the case under appeal.
- The Chief of Appeals shall ensure that a taxpayer is provided access to the nonprivileged portions of the tax file ... not later than 10 days before the conference.

6.3 Improved service (Sec 1101)

“Treasury to submit to Congress a written comprehensive customer service strategy for the IRS including a plan for updated guidance and training materials for IRS customer service employees.”

- ...adopts appropriate best practices of customer service provided in the private sector...
- ...identified metrics and benchmarks for qualitatively measuring the progress of the IRS in implementing such strategy...

6.4 Sensible enforcement (Sec 1201)

- “...revises provisions relating to the seizure of property...
- ...limits the seizure authority to property derived from an illegal source...
- ...provides due process safeguards...”

If property is seized and a person with ownership requests a court hearing, the property must be returned unless the court holds a hearing within 30 days and finds that there is probable cause that a violation has occurred.

(Sec 1202) "...excludes from gross income ... interest received ... to recover property seized by IRS..."

(Sec 1204) "Limits authority...to issue third party summons." Covers persons on low income or disability pensions in particular.

(Sec 1205) "restricts referrals of tax debts to private debt collection agencies..."
"The maximum length of instalment agreements under tax collection contracts is extended from five to seven years."

(Sec 1206) Restricts/revises requirements concerning the IRS's ability to contact a third party in relation to the collection of a taxpayer's liability...

(Sec 1207) "...revises ... issuances of designated summons for determining tax liability..." A summons can only be issued once a review has been conducted and approval for a summons has been issued by the Commissioner.

6.5 Organisational modernization

(Sec 1301) Taxpayer Advocate:

- Modification of Taxpayer Advocate directives—The IRS must act within 90 days
"The Commissioner ... shall modify, rescind or ensure compliance with such directive not later than 90 days..."
Reporting must be made to Congress to "identify any Taxpayer Advocate Directive which was not honoured by the Internal Revenue Service in a timely manner..."
- Modification to Taxpayer Advocate reporting procedures.
- Treasury to supply statistical support to the Taxpayer Advocate

(Sec 1302) Treasury must submit to Congress a plan to redesign the IRS (by FY 2020) to comply with this *Taxpayer First Act*. This plan will

- "prioritize taxpayer services to ensure that all taxpayers easily and readily receive the assistance that they need".

6.6 Other

(Sec 1401 to 1403) Cover the management of low-income taxpayer issues including

- Grants to assist low-income taxpayers with tax return preparation assistance.

(Sec 1404) The IRS cannot sell seized property if the value/price is greatly reduced.

(Sec 1405) Whistleblower rights/protections

- "No employer, or any officer, employee, contractor, subcontractor or agent of such employer, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate ... in reprisal for any lawful act done by the employee ... to provide information ... regarding underpayment of tax..."
- Includes updating of compensation requirements.

(Sec 1406) Covers obligations of the IRS to taxpayers affected by tax scams.

(Sec 1407) The IRS is to establish procedures to allow for

- “taxpayers to report instances in which a refund made by the Secretary by electronic funds transfer was not transferred to an account of the taxpayer”.

6.7 Title II—21st Century IRS

This section covers cybersecurity and identity protection, including requirements around electronic processing safeguards and standards.

There is a wide range of specific matters covered including—

Identity theft:

- (Sec 2006) The IRS must provide a single point of contact for a taxpayer who has been affected by tax-related identity theft.
- (Sec 7529) Where the IRS becomes aware of the identity theft of a taxpayer, the taxpayer must be informed subject to not jeopardizing any investigations...
- (Sec 2008) IRS must develop procedures/standards “... for management of cases involving identify refund fraud in a manner that reduces the administrative burden on taxpayers who are victims of such fraud.”
Requires policies for “the maximum length of time, on average, a taxpayer who is victim of stolen identity refund fraud and is entitled to a tax refund which has been stolen should have to wait to receive such refund...”

6.8 Title III Misc—IRS employees

- (Sec 3001) IRS must not rehire an employee who was sacked for misconduct.
- (Sec 3002) IRS must notify a taxpayer if an IRS employee is disciplined for misuse of the taxpayer’s information.

7. Congressional motivations for reforming the IRS

It appears that during the 1980s and 1990s (at least) Congress received persistent input from the American community that the IRS was effectively a ‘law unto itself’, and that it abused its powers in its treatment of taxpayers. Congress acted to change the situation. In 1996 Congress established a Commission of Inquiry into the IRS. The Commission handed down its report in mid-1997. Congress acted on the report, introducing the 1998 IRS reform legislation that in fact went further than what was recommended by the Commission.

An understanding of the reasons, motivations and vision for reforming the IRS can be gained by reading a selection of extracts directly from the Commission’s report.

Extracts from
Report of the June 25, 1997
National Commission on
Restructuring the Internal Revenue Service
A Vision for a New IRS
(190-page report)
(Note: headings are added for reference)

The IRS mission is “to collect the proper amount of taxes”.

7.1 Restoring faith in the IRS

The goal of this Report is to recommend changes to the IRS that will help restore the public’s faith in the American tax system.

...the perception is that the IRS is neither sensitive nor accountable to the American people.

The Commission believes that the IRS has an ethical obligation to serve the American people well, as it is the only federal agency that interacts with almost all citizens.

The success of our nation’s tax administration system depends on continued voluntary compliance with the tax law. The Commission found that significant noncompliance—both inadvertent and intentional—results from various obstacles within the current system, including the cost of compliance and the complexity of the tax law.

The largest cost of complying with the tax law is borne by the taxpayer.

7.2 A package—taxpayer priority

...this package sets the stage for an IRS that is fair, efficient, and friendly.

- As a guiding principle, the Commission believes that taxpayer satisfaction must become paramount at the new IRS ...
- Additional steps should be taken to improve taxpayers’ ability to recover damages for wrongful actions by the agency, and significant efforts should be made to protect taxpayers from unnecessary disputes with the IRS before they occur.

- The Commission found that there are no isolated solutions and believes an integrated approach will set the stage for a more taxpayer friendly IRS and a tax system which Americans can believe in and trust.

7.3 The vision

This vision embraces an efficient, service-oriented institution dedicated to collecting the proper amount of tax through the use of taxpayer education, modern customer service practices, and effective law enforcement techniques. The motivated, skilled employees of this new IRS would receive the proper training, incentives, authority, tools, and management oversight to get the job done. This new IRS would be able to help people comply with a simplified tax code, while managing its data collection and taxpayer accounts according to methods and standards employed in the best private and public sector organizations. Finally, taxpayers would have adequate protections when the agency exercised its powers in an improper fashion.

...the American people should overwhelmingly answer “yes” to the following questions:

- Was filing your tax return easier than the previous year?
- Did IRS personnel treat you respectfully and professionally?
- Were all of your questions and problems handled as smoothly as account inquiries with your bank, credit card company, or utility?

7.4 Governance

... overall responsibility for IRS governance be placed with a Board of Directors ... The Board will be responsible for overall governance of the agency, but will have no involvement in specific matters in the areas of interpretation or enforcement of the tax laws.

Many of them [IRS employees] agree with the Commission’s findings of serious deficiencies in governance, management, performance measures, training, and culture.

The accountants, lawyers, and taxpayers interviewed expressed universal sentiment that the quality of IRS interaction with taxpayers and the public has deteriorated over the past fifteen years.

7.5 Culture

The culture of IRS is overly risk averse, based on a tradition of valuing checks and controls over creative approaches to solving problems. In order to evolve into a more taxpayer focused, responsive organization, a cultural shift must occur at the IRS.

The negatives are that the IRS environment often does not encourage personal or organizational growth, and stifles creativity, innovation, and quick problem resolution.

Senior managers expressed frustration that the infrastructure and decision-making process at the IRS does not encourage a full airing of issues. Dissent often is frowned upon...

Customer satisfaction must be a goal in every interaction the IRS has with taxpayers, including enforcement actions.

Public employees often work in inefficient, bureaucratic systems they did not invent. Most of them want to be empowered to cut through the red tape that binds them. They are victims of the bureaucracy, not perpetrators.

7.6 IRS communication

IRS notices and correspondence to taxpayers often fail to explain the problem in a clear and simple manner and fail to inform the taxpayer how to resolve it. Notices often lack essential and basic information needed by taxpayers. In a survey of certified public accountants, eighty-seven per cent said that IRS notices do not contain a precise explanation of the problem.

Reform recommendations

7.7 Section 7—Taxpayer rights

A significant part of improving taxpayer service and changing the culture of the IRS involves ensuring that taxpayers are treated fairly and impartially by the IRS, are able to seek redress or review of IRS actions by the courts and are able to resolve conflicts creatively and expeditiously with IRS cooperation.

7.8 Taxpayer Advocates

Taxpayer Advocates must be accessible to taxpayers and have the authority and accountability necessary to speak for and take actions on behalf of taxpayers.

Taxpayer Advocates play an important role and are essential for the protection of taxpayer rights and to promote taxpayer confidence in the integrity and accountability of the IRS. To succeed, the Advocate must be viewed, both in perception and reality, as an independent voice for the taxpayer within the IRS.

7.9 Taxpayer Assistance Orders

One of the important powers of the Advocate is the authority to issue Taxpayer Assistance Orders (TAO).

7.10 Taxpayers' redress

Congress must provide taxpayers with adequate and reasonable compensation for actual damages incurred for wrongful actions by the IRS.

While the Taxpayer Bill of Rights legislation made great strides to allow taxpayers to recover damages for IRS malfeasance, current provisions do not provide adequate relief...

The primary vehicle for taxpayers' redress, section 7430 of the Internal Revenue Code, allows recovery of administrative and litigation costs when the IRS position is not substantially justified. In practice it is nearly impossible to recover administrative costs because the law does not allow recovery of costs incurred prior to the time of the final administrative notice from the IRS.

Moreover, relief is not available when the IRS is negligent or reckless in the use of its summary examination and assessment powers. Congress should provide relief in these areas. For example, Congress could amend section 7433 to allow recovery of damages for unauthorized, improper, or erroneous collection actions when the IRS is negligent, up to \$100,000.

7.11 Quality taxpayer service and treatment

IRS employee performance measures and quality reviews should ensure that taxpayers receive fair, impartial, timely, and courteous treatment.

7.12 Quality service measures

The IRS mission is “to collect the proper amount of taxes”.

7.13 Freedom of information

Congress enacted the Freedom of Information Act (FOIA) to encourage openness in government.

.... For requests to the IRS, the average FOIA request takes six months to process and appeals can take nearly a year, which is far in excess of the 10-business day statutory period for requests and 20 business days for appeals.

8. Summary 2010 Treasury Review of the 1998 IRS reform laws

Below are direct quotations from the [2010 Review](#). Headings have been inserted to assist understanding.

8.1 Overview

Before the IRS Restructuring and Reform Act of 1998 Congress had received taxpayer complaints about how the IRS was overly aggressive in enforcing the tax laws.

The RRA 98 codified many of the recommendations made by the Commission (1997 Commission of Inquiry into the IRS); thereby, causing the largest overhaul of the IRS since the 1950s.

Congress intended to transform the IRS from an enforcement first culture to a culture that valued taxpayer service to help taxpayers comply with their responsibilities.

The RRA 98 legislation touched virtually every aspect of the IRS and tax administration.

To align with the new mission, organizational performance measures were changed to the three equally weighted measures of

- business results,
- customer satisfaction, and
- employee satisfaction.

In addition, the IRS implemented safeguards to ensure enforcement statistics are no longer used as a basis for employee evaluations.

The IRS has made significant strides in transforming into a modern financial services organization but major challenges remain...

8.2 Treasury Inspector General for Tax Administration (TIGTA)—The TIGTA is an independent Inspector General office in the Department of the Treasury devoted to oversight of the IRS. The TIGTA is charged with conducting audits, investigations, and evaluations of IRS programs and operations (including the IRS Oversight Board) to promote the economic, efficient, and effective administration of the nation's tax laws and to detect and deter fraud and abuse in IRS programs and operations.

The governance changes have resulted in significant changes in strategic focus.

...much more balanced approach articulated in the equation "Service Plus Enforcement Equals Compliance". There has also been greater oversight and transparency.

As of March 31, 2009, (since 1998) the TIGTA

- issued more than 1,600 final audit reports and made more than 4,000 recommendations to improve tax administration, 3,500 of which the IRS has taken action;
- identified more than \$192 million in questioned costs and more than \$25 billion in funds that could have been put to better use;

- processed over 91,000 complaints;
- opened over 44,000 investigative cases and successfully closed more than 99 per cent of those cases; and
- provided testimony to Congress on 36 occasions.

8.3 National Taxpayer Advocate (NTA) (Note: established/upgraded under the 1998 reforms)

The NTA resolves tax problems for taxpayers that are having difficulty in obtaining resolution and closure of their tax issues.... the Taxpayer Advocate Service (TAS) case receipts for Fiscal Years (FY) 2001 through 2008 averaged approximately 228,000 per year.

8.4 IRS approach pre-1998

Historically, the IRS used enforcement revenue as a key measure of success. IRS employees and managers perceived pressure to produce tangible enforcement results.

IRS struggles to ensure taxpayer compliance because it relies heavily on examination and collection processes.

8.5 Reforms of 1998—Principles and Practices

a. IRS culture

The RRA 98 was designed by Congress to transform the IRS's organizational culture from an enforcement first focus to a modernized one that values taxpayer service by helping taxpayers comply with their tax responsibilities.

[Under the 1998 reforms] ...Customer satisfaction must be a goal in every interaction the IRS has with taxpayers, including enforcement actions.

The Commission believed that a significant part of improving taxpayer service and changing the culture of the IRS involves ensuring that taxpayers are treated fairly and impartially, are able to seek redress or review of IRS actions by the courts and are able to resolve conflicts creatively and expeditiously with IRS cooperation.

The Commission found that the passage of the Omnibus Taxpayer Bill of Rights (TBOR) and TBOR 2 had an important effect on changing the IRS culture.

b. Statute operational requirements

In total, 71 taxpayer protections and rights required by the RRA 98 were engineered into operational processes and procedures. As a result, taxpayers receive more professional and courteous services to assist them in complying with the tax law.

Some provisions of the RRA 98 TBOR codified existing practices, while many provided taxpayers with additional rights. These include:

- Notifying taxpayers of their rights in each matter and verifying that they received Publication 1, *Rights as a Taxpayer*, to ensure taxpayers' rights are protected and observed.
- Providing publications to explain the examination and collection processes; Appeal rights; and why the IRS requests information, what is done with information, and the consequences if the information is not provided.

- Including a contact telephone number on notices and including IRS telephone numbers and local office addresses in local telephone directories.
- Maintaining practitioner–client privilege of confidentiality of tax advice by generally not requesting audit or tax accrual workpapers.
- Recording third-party contact information so taxpayers can be provided with records of persons contacted to determine or collect the taxpayers' tax liabilities.
- Advising taxpayers of their right to refuse to extend the statute of limitations or limit the extension to specific issues or time periods.

c. Statute debt collection procedural requirements

Congress believed that taxpayers are entitled to similar protections from the IRS as from any other creditor. Accordingly, the IRS should afford taxpayers adequate notice of collection activity and a meaningful hearing before the IRS deprives them of their property. Due process in collections affords fairness to taxpayers.

The RRA 98 also changed the IRS process for filing liens [garnishees] and levies. The IRS must notify taxpayers within five business days of filing Notices of Federal Tax Lien. The IRS also implemented automated controls in database systems to ensure that taxpayers are advised of their appeal rights at least 30 calendar days prior to issuance of a systemically generated levy.

The RRA 98 codified existing guidelines for Collection function personnel that apply prior to a sale. Also, for fairness and the appearance of propriety, Collection function personnel attempting to collect tax are prohibited from participating in the sale of seized assets. Prior to sale of seized property, Collection function personnel must verify the taxpayer's liability and determine that there is enough equity in the property to yield proceeds after expenses. Collection function personnel must obtain approvals for seizures of personal residences and assets of the individual used in a trade or business.

A new position, the property appraisal liquidation specialist, takes possession of and stores property after seizure by Collection function personnel, verifies the fair market value, determines the minimum bid price, and sells seized property thorough public auction or public sale under sealed bids.

Outcome: The RRA 98 had a tremendous effect on IRS seizures. In FY 1997, the IRS performed 10,090 seizures. In FY 2000, the seizure total was 74. After that initial drop, the number of seizures increased to 676 in FY 2007 and 610 in FY 2008. Each year the TIGTA performs an audit of IRS seizure activity. There have been no significant problems reported ...

d. IRS Employee Misconduct

The RRA 98, Section 1203, defined ten specific acts of misconduct—covering taxpayer and employee rights and tax return filing requirements—for which an IRS employee may be terminated. In FY 2008, 320 Section 1203 allegations were substantiated. Of these, 311 were due to employees' failure to file a Federal tax return or understatement of their tax liability and would not have affected taxpayers.

e. Conclusion

Implementing the RRA 98 was a tremendous task for the IRS, but as a result of numerous efforts to improve processes, program computers, and train employees, taxpayer rights are better protected today.

Taxpayers are better positioned to challenge IRS assertions, even those taxpayers who cannot afford representation.

Taxpayers are more educated about their rights and IRS processes.

IRS employees are held accountable for their actions and evaluated on their treatment of taxpayers.

The IRS is fairer and taxpayers who truly cannot pay what they owe have more options to settle their debt which is especially important in these difficult economic times.



Part Three:

The administrative powers of the ATO compared with the administrative powers of the IRS

February 2020

Content

1. Purpose of Part Three
2. Initial commentary
3. Overview and comparative table
4. Comparative Taxpayer Rights

Appendix A—US: Taxpayer Bill of Rights

Appendix B—Taxpayer Rights in Australia

Appendix C—Investigations Undertaken by the Inspector-General of Taxation into the ATO's Administrative Practices

1. Purpose of *Part Three*

Background, Part One of this submission, lays out the administrative procedures with which the IRS is required to comply by statute in its dealings with taxpayers. These statutory requirements are relatively easy to locate in two pieces of legislation that were passed in 1998 and 2019.

The statutes detail the ‘rights’ that US taxpayers have in their dealings with the IRS. The legislative documents are comprehensive and detailed but also written in comparatively plain language, making the ‘rights’ relatively easy to understand—even by a layperson.

The consequence is that there is a good measure of legal clarity in what the IRS can and cannot do in critical areas of tax administration. These tax administration laws have the stated aim of ensuring that taxpayers have rights to fair and just treatment by the IRS. Further that the IRS is subject to considerable and effective oversight, transparency and accountability.

This section, Part Three, seeks to compare these legislated taxpayer rights in the US with the taxpayer rights available to Australian taxpayers. However, assessing Australian taxpayer rights is a more difficult exercise because the administrative powers of the ATO are dispersed through numerous statutes, common and constitutional law and precedential court rulings.

For example, the ATO:

- has administrative powers that are contained in the *Tax Administration Act* 1953;
- is subject to the *Public Service Act*, the *Fair Work Act* and associated industrial relations instruments in matters relating to employee behaviour;
- draws on the powers of the Federal Police;
- applies bankruptcy and insolvency laws;
- is subject to constitutional law and powers and also draws on common law;
- has powers under precedential tribunal and court rulings; and
- has considerable discretionary power to write its own administrative rules and to change those rules.

This concoction of laws and rulings is convoluted, complex, subject to wide interpretation and generally written in a legalistic style. The upshot is that few people outside the ATO know or understand the rules and what the ATO lawfully can and cannot do in administrative terms. One observation that does seem clear, however, is that Australian taxpayers do not have ‘rights’ in any form equivalent to or near those of American taxpayers.

Given these constraints, *Part Three* seeks to identify any administrative ‘rights’ which Australian taxpayers could arguably have under statute when compared with the statutory ‘rights’ that American taxpayers enjoy.

The table below (section 3) works through the maze of Australian complexity to enable some understanding using some 40 comparative criteria. The table is complemented by relevant commentary and investigation available in reports from the Australian Inspector-General of Taxation (IGT) (see section 4 and Appendices B and C).

2. Initial commentary

The evidence is that Australian taxpayers are in a very weak position in terms of their ‘rights’ when dealing with the ATO compared with American taxpayers in their dealings with the IRS. The differences between the IRS and ATO are stark.

For example, at the ‘high’ policy end:

2.1 Taxpayer rights

- In the US, the entire thrust of the 1998 and 2019 laws was to ensure that taxpayers have clear rights to fair treatment in their dealings with the IRS. The laws include a statement of legislated principles which are backed up by quite specific descriptions and declarations on processes the IRS must follow (see table below, section 3 and Appendix A).
- In Australia, no such similar legislated arrangement exists. The ATO has a self-created Taxpayer Charter which it says it follows but which has no force at law. The Inspector-General of Taxation has put together a report (see below section 4 and Appendix B) that identifies Australian legislated ‘Taxpayer Rights’. But these ‘rights’ are almost exclusively only ‘rights’ to appeal against what the ATO has already done. They do not impact on what the ATO ‘does’ as is the case for the IRS.

2.2 Tax debt

- In Australia, a tax debt is created at law when the ATO finalises an assessment—whether the assessment is in fact correct or not. This means that the ATO can collect on the ATO’s ‘debt’ assessment immediately, even before appeals.

- In the US, a tax debt is only created at law when all appeals have been exhausted. An IRS assessment does not trigger the legal debt and collection cannot occur until appeals are finalised.

2.3 Internal Appeals

- In Australia, the ATO decides its internal appeals processes.
- In the US, legislation determines key requirements of IRS internal appeals processes.

2.4 Burden of Proof

- In Australia, the burden of proof of a tax debt is on the taxpayer.
- In the US, the burden of proof of a tax debt is on the IRS.

According to an Inspector-General of Taxation report of December 2016 this is important:

No better example of the powers of the ATO and the inferior standing of taxpayers is provided than by the requirement under the Act that taxpayers should satisfy the burden of proving their cases. (See below, section 4 and Appendix B.)

2.5 Oversight

- In Australia, oversight of the ATO is arguably comparatively cursory and restricted to investigation and ‘commentary’ by ‘oversight’ bodies.
- In the US, oversight of the IRS is multi-layered and strong, with oversight bodies having the power to issue directions and requirements to and against the IRS.

2.6 Mission Statement

Even on the basic issue of a mission statement:

- In Australia, the ATO is only required by statute to develop its own mission statement.
- In the US, the IRS’s mission statement is stated in statute.

The evidence is that in Australia there is no such mandated, legislative instruction to the ATO in the way it is to treat taxpayers as there is in the USA in relation to the IRS. The ATO is, in reality, an administrative law unto itself. The extent of this becomes clear in the table below (section 3) which compares the detailed administrative procedures required of the IRS with those of the ATO.

3. Overview and comparative table

	IRS	ATO
a) Staffing 2016	323 million US population 77,924 IRS employees 4,150 Americans per 1 IRS staff \$A54.05m Federal tax raised per employee Budget \$A15 billion Cost: \$A47 per employee per year	23 million Australian population 17,718 ATO employees 1,321 Australians per 1 ATO staff \$A21.8m Federal tax raised per employee Budget \$A4 billion Cost: \$A169 per employee per year

The table below summarises and gives an overview of the administrative processes required of the two tax administrations (IRS/ATO) *as stipulated by legislation*.

(Note: If errors exist in this table, we are interested in being alerted to necessary corrections related to legislative requirements.)

Issue	IRS 1998 (Refer to <i>Part One</i> of this document for sources and precise explanations)	ATO
b) Mission statement	Legislated Mission Statement requires the IRS to service taxpayer needs.	No legislative Mission Statement. Legislation only requires the ATO to have a process to develop its own 'Outcome Statement'.
c) When does an assessment becomes a collectable debt?	An IRS assessment is not a debt or collectable until all appeals processes have been exhausted.	An ATO assessment immediately becomes a tax debt at law, due, payable and enforceable by the ATO as soon as the assessment is made.
d) Internal Appeals	The IRS has a mandated independent internal appeals division/process. For example, IRS appeals officers are prohibited from communicating with IRS assessment officers such that the independence of the process is compromised.	The ATO decides its own internal appeals processes.
e) Burden of Proof	The IRS has the burden of proof. <i>"The Congress believed that shifting the burden of proof to the Secretary in such circumstances would create a better balance between the IRS and such taxpayers, without encouraging tax avoidance."</i> (1998) (See <i>Part One</i>)	ATO's assessments/positions are taken at law to be correct. The taxpayer must not just 'un-prove' the ATO's position but 'prove' what the tax assessment should be. <i>"No better example of the powers of the ATO and the inferior standing of taxpayers is provided than by the requirement under the Act that taxpayers should satisfy the burden of proving their cases."</i> (Inspector-General of Taxation—see below, section 4 and Appendix B)
f) Oversight — IRS Board	An independent Oversight Board exists within Treasury overseeing all functions of the IRS.	All taxing power is vested in the Tax Commissioner. There is no oversight board but only advisory boards and processes. The Board of Taxation, Inspector-General of Taxation, Parliamentary Committees and responsible Ministers can review, give opinions and recommendations but have no authority over the ATO's operations.
g) Oversight — Taxpayer Advocate	The Taxpayer Advocate exists within the IRS and is an independent body. Staff are employed by the Advocate. The Advocate's brief is to assist taxpayers to pay the correct tax and resolve issues with the IRS. It can issue orders against the IRS to cease, refrain from or initiate action in relation to a taxpayer. The Advocate reports directly to Congress. Has 1,600 staff.	No authority with similar powers to the US Advocate exists in Australia. The closest is the Inspector-General of Taxation who can investigate taxpayer cases and issue reports. It has no power to make orders against the ATO. It has a staff of approximately 35.
h) Oversight — Treasury Inspector General	Treasury Inspector General for Tax Administration (TIGTA) is external to the IRS. It audits the IRS, detects fraud within the IRS and investigates IRS staff for wrongdoing and taxpayer abuse. It also	No authority with similar powers to the US TIGTA exists in Australia. ATO fraud and staff abuse of taxpayers is investigated by an internal ATO body. Conceptually, the Federal Police can investigate

	investigates taxpayer abuse/threats toward IRS officers.	ATO fraud. It has been recently proposed that the Australian Commission for Law Enforcement Integrity should investigate ATO fraud. It currently cannot investigate the ATO.
i) Staff performance	Performance measures <ul style="list-style-type: none"> • Must favour taxpayer service. • Bans quotas, goals, stats. Dismissal reasons mandated in legislation.	Performance measures are determined internally by the ATO.
j) Taxpayer Rights	Taxpayer Bill of Rights mandated at law (see below, section 4 and Appendix A).	The ATO's Taxpayer Charter is an 'aspirational' statement. It has no force at law.
k) Burden of Proof - Statistical data (eg: industry profiling)	If IRS uses statistical data to assess income, the IRS has the burden of proof.	If ATO uses statistical data to assess income, taxpayer must 'un-prove' the ATO's assessment. See above, 'e) Burden of Proof'.
l) Burden of Proof — Penalty	IRS must produce evidence to the court before it can impose a penalty.	ATO imposes penalties at its sole discretion. Taxpayer must 'un-prove' to the ATO. See above, 'e) Burden of Proof'.
m) Awarding costs	Taxpayer can recover costs where IRS engages in unauthorised inspections or disclosure.	Taxpayer can seek costs for ATO 'maladministration'. ATO assesses and decides. That is, the ATO alone decides what damage it has done to a taxpayer and what compensation it will pay. A recent review (November 2019) recommends some limited external process oversight but the external reviewer is appointed by the ATO and can only make recommendations.
n) Civil damages	Taxpayer can recover costs where IRS violates Tax or Bankruptcy Code.	'Misfeasance' exists as a common law ground for damages by a taxpayer against the ATO. In practice this legal bar is set very high and arguably near impossible to clear.
o) Civil damages liens	Civil action is available to taxpayers for IRS erroneous lien (charge of asset for debt). Extends to third parties.	No such provisions other than maladministration as per above.
p) Tax Court	Specialised Tax Court with 'small case' division/procedures.	No specialist Tax Court. Recently introduced Small Business Tax Tribunal (March 2019) created by non-parliamentary process (in other words, not legislated).
q) Interest charges	IRS cannot charge interest above the rate the government is paying.	ATO charges interest based on the Treasury 90-day bill rate plus 7 per cent. How the tax is to be calculated is set out in <i>Taxation Administration Act</i> 1953. (Parts IIA & IIB)
r) Penalties	Taxpayers cannot be charged penalties when paying off a tax debt in instalments.	ATO can still charges penalties where instalment payments are being made.
s) Contacting taxpayer	Interest and penalties are suspended where IRS fails to contact taxpayer.	No such legislated requirements on the ATO exist.
t) Penalty procedures	IRS must comply with legislated procedures before imposing penalties.	No such legislated requirements on the ATO exist.
u) Interest calculations	IRS must comply with procedures relating to interest calculations.	How the interest is to be calculated is set out in <i>Taxation Administration Act</i> 1953. (Parts IIA & IIB)
v) Collections actions	Any action by the IRS to seize property for a tax debt requires the IRS to: <ul style="list-style-type: none"> • Deliver a notice (certified post, etc.). • Provide 30 days for taxpayer to appeal. • Not seize until appeal heard. 	In the sale of any assets the ATO follows general bankruptcy and insolvency laws. ATO debt recovery provisions are in Part 4-15 of schedule 1 to the <i>Tax Administration Act</i> 1953. ATO can and does collect through garnishees before notifying the taxpayer.

w) Collections appeals	At hearings IRS must verify it has met all process requirements. Appeal to Tax Court, etc.	No such legislated requirements on the ATO exist.
x) Privileged Advice	Taxpayer-lawyer and taxpayer-authorised advisers is privileged.	Taxpayer-lawyer communication is privileged. ATO is currently seeking to remove the privilege. Privilege does not extend to non-legal advice to taxpayers (eg accountants)
y) Economic reality test	IRS is restricted in the use of 'economic reality' tests etc to determine taxpayer income.	No such legislated requirements on the ATO exist. ATO regularly applies 'economic reality' tests.
z) Approval for seizures, etc.	Mandated processes to check/approve seizures.	No such legislated requirements on the ATO exist.
aa) Assessment during appeal	Assessment/collection not allowed during appeal to Tax Court, etc. Court can order refund if tax collected during appeal.	No such legislated requirements on the ATO exist.
bb) Assessment waiting period	30-day waiting period before IRS can act on an assessment. This is to give the taxpayer time to notify of an appeal.	No such legislated requirements on the ATO exist. The ATO can and does move immediately to enforce debts once it has undertaken an assessment.
cc) Minimum value of asset seizure	Process established for assessing a minimum 'bid price' for IRS sale of taxpayer's assets.	No such legislated requirements on the ATO exist.
dd) Sale of home	Sale of home/business must be last option.	No such legislated requirements on the ATO exist.
ee) Codification of process	IRS administrative process for seizure of property to be written into law.	No such legislated requirements on the ATO exist. The ATO can and does change its processes over time.
ff) Extend statute of limitations	Restricts IRS in seeking taxpayers to agree to period of time in which tax can be reviewed.	No such specific legislated requirements on the ATO exist. Subdivision 155-B of Schedule 1 to the TAA 1953 sets out the limitations on periods of ATO review and the relevant exceptions/extensions of time (for instance, Federal Court order, Commissioner's opinion that fraud and/or evasion exists, etc.)
gg) Offers to settle for less than tax owed	Sets rules IRS must follow in processing/accepting taxpayer offers to settle debt for less than amount owed.	No such legislated requirements on the ATO exist.
hh) Codification of appeals process	IRS administrative process in relation to appeals, etc. to be written into law.	Part IVC of the TAA 1953 sets out the main requirements for statutory internal review (objection decisions) and external review (appeals) for decisions on tax liabilities. The AAT Act 1975 and the Federal Court Rules also set out what information the ATO would be required to give to taxpayers in an appeal.
ii) ii) Instalment procedures	Stipulates process for allowing instalment agreements	No such legislated requirements on the ATO exist. ATO decides its own policy on instalment agreements.
jj) Suing the government	Restricts the ability of the IRS to request that a taxpayer not sue the government.	No such legislated requirements on the ATO exist.
kk) Informing appeal rights	IRS must supply taxpayer information on all appeal rights.	No such legislated requirements on the ATO exist.
ll) Chief Counsel Advice	Chief Counsel's advice on tax application to be publicly released.	Part 5-5 of Schedule 1 to the TAA 1953 sets out the advice that is binding on the ATO (rulings) as well as whether they are to be made public

		or kept private.
mm) IRS staff misconduct	IRS must report to Congress misconduct of IRS employees, however no individual employee can be identified.	No such legislated requirements on the ATO exist.
nn) Whistleblowers	Whistleblowers can disclose: <ul style="list-style-type: none"> • IRS misconduct etc. to Congress. • Taxpayer fraud and receive up to 30 per cent of revenue raised. 	The <i>Public Interest Disclosure Act 2003</i> covers whistleblowers exposing ATO misconduct. Whistleblowers can disclose taxpayer fraud, but no payments made for disclosure.

Note: Sources of the factual analysis above

- *IRS*: The sources of the summaries in the table above are located in *Part One* of this paper, which includes references to primary source documents, principally US legislation, etc.
- *Australia*: As discussed earlier, the sources of the summaries in the table above can be relatively involved to locate and consolidate. The table information has been put together with assistance from several parties who are specialists in tax administration. We are confident in the accuracy of the description applied above about the **legislated obligations** the ATO must follow in terms of its administrative processes.

4. Comparative Taxpayer Rights

There are two documents that provide a good comparison between the USA and Australia on taxpayer rights.

4.1 US — Taxpayer Bill of Rights

The central feature of the US laws covering IRS administration is ensuring Taxpayer Rights for taxpayers' in their dealings with the IRS. This essentially boils down to the law requiring the IRS to follow specified administrative processes in their dealings with taxpayers. The laws are intended and designed to ensure that the inherent power imbalance that exists between the IRS and taxpayers is addressed by requiring the IRS administration to operate under the principles and practices of fairness and justice.

The detail of how this operates is demonstrated in the table above. But in addition to this detail, there is a legislated statement of principles and practices with which the IRS is required to comply. This is titled "Taxpayer Bill of Rights." This Taxpayer Bill of Rights is shown below (Appendix A). This is a direct extract from the relevant US legislation.

4.2 Australia — Taxpayer Rights

There are no 'taxpayer rights' in Australia that equate to or replicate those that exist in the USA. In other words, the inherent power imbalance that exists between the ATO and Australian taxpayers is allowed to continue, even encouraged to 'flourish' some might say, under law.

Below (Appendix B) is a table extracted from a December 2016 report by the Inspector-General of Taxation which sought to identify what 'rights' Australian taxpayers could arguably have.

But close examination of these 'rights' makes it clear that they are almost exclusively only 'rights' to appeal against what the ATO has already done. They do not impact on what the ATO administratively does, or can do, as is the case with the IRS. This distinction is significant.

Appendix A

US: TAXPAYER BILL OF RIGHTS

The Right to be Informed

Taxpayers have the right to know what they need to do to comply with the tax laws. They are entitled to clear explanations of the laws and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.

The Right to Quality Service

Taxpayers have the right to receive prompt, courteous, and professional assistance in their dealings with the IRS, to be spoken to in a way they can easily understand, to receive clear and easily understandable communications from the IRS, and to speak to a supervisor about inadequate service.

The Right to Pay No More than the Correct Amount of Tax

Taxpayers have the right to pay only the amount of tax legally due, including interest and penalties, and to have the IRS apply all tax payments properly.

The Right to Challenge the IRS's Position and Be Heard

Taxpayers have the right to raise objections and provide additional documentation in response to formal IRS actions or proposed actions, to expect that the IRS will consider their timely objections and documentation promptly and fairly, and to receive a response if the IRS does not agree with their position.

The Right to Appeal an IRS Decision in an Independent Forum

Taxpayers are entitled to a fair and impartial administrative appeal of most IRS decisions, including many penalties, and have the right to receive a written response regarding the Office of Appeals' decision. Taxpayers generally have the right to take their cases to court.

The Right to Finality

Taxpayers have the right to know the maximum amount of time they have to challenge the IRS's position as well as the maximum amount of time the IRS has to audit a particular tax year or collect a tax debt. Taxpayers have the right to know when the IRS has finished an audit.

The Right to Privacy

Taxpayers have the right to expect that any IRS inquiry, examination, or enforcement action will comply with the law and be no more intrusive than necessary, and will respect all due process rights, including search and seizure protections and will provide, where applicable, a collection due process hearing.

The Right to Confidentiality

Taxpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. Taxpayers have the right to expect appropriate action will be taken against employees, return preparers, and others who wrongfully use or disclose taxpayer return information.

The Right to Retain Representation

Taxpayers have the right to retain an authorized representative of their choice to represent them in their dealings with the IRS. Taxpayers have the right to seek assistance from a Low Income Taxpayer Clinic if they cannot afford representation.

The Right to a Fair and Just Tax System

Taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. **Taxpayers have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels. [Emphasis added.]**

Appendix B

TAXPAYER RIGHTS IN AUSTRALIA

From Inspector-General of Taxation – [Report- Chapter 2](#)

“No better example of the powers of the ATO and the inferior standing of taxpayers is provided than by the requirement under the Act that taxpayers should satisfy the burden of proving their cases.”

The Charter was transitioned into a ‘business as usual’ model whereby the ATO aspired to a model of ‘living the Charter’ rather than specifically promoting it as something separate from its ordinary activities.

Table 1: Existing taxpayer rights and protections in Australia

Taxpayer right	Source
Challenge (most) assessments, determinations, notices and decisions	Part IVC of the <i>Taxation Administration Act 1953</i> (TAA 1953)
Challenge the issue or failure to issue a private ruling	Part IVC of the TAA 1953
Challenge an assessment for an administrative penalty	Section 298-30, Sch 1 to the TAA 1953
Apply to remit a penalty; challenge a refusal to remit a penalty	Section 298-20, Sch 1 to the TAA 1953
Protection from interest charges if non-binding advice is relied on in good faith	Section 9 of the TAA 1953
Appeal an AAT or Federal Court decision	Part IVC of the TAA 1953
Request a referral on a question of law to the full bench of the Federal Court	Section 44 of the <i>Administrative Appeals Tribunal Act 1975</i>
Request an amendment of their income tax return	Section 170 of the <i>Income Tax Assessment Act 1936</i>
Obtain an assessment if no assessment is issued 6 months after a return is submitted	Section 155-30, Sch 1 to the TAA 1953
Request an assessment of an indirect tax	Section 105-20, Sch 1 to the TAA 1953
Request a variation or revocation of a departure prohibition order (DPO)	Section 14T of the TAA 1953
Request a departure authorisation certificate where a DPO has been issued	Section 14U of the TAA 1953
Challenge the issue of a DPO	Section 14V of the TAA 1953
Challenge a garnishee notice	ADJR Act 1977 or <i>Judiciary Act 1903</i> (Judiciary Act)

Apply for a stay of execution on the grounds of serious hardship in respect to a debt owing under an assessment	Sections 14ZZM and 14ZZR of the TAA 1953
Review a demand for a security deposit	ADJR Act 1977 or Judiciary Act or the Constitution
Obtain reasons for a decision	<i>Administrative Decisions (Judicial Review) Act 1977</i>
Obtain a refund for excess tax withheld	Schedule 1 to the TAA 1953
Obtain a tax receipt for an income year	Section 70-5, Sch 1 to the TAA 1953
Object to an excess concessional contribution determination	Section 97-10, Sch 1 to the TAA 1953
Finality of assessment (Commissioner may not amend an assessment after the period for review has elapsed)	Section 155-40 to 155-60, Sch 1 to the TAA 1953
Obtain interest on overpayments and prepayments	<i>Taxation (Interest on Overpayments and Early Payments) Act 1983</i>
Access government-held documents	<i>Freedom of Information Act 1982</i>
Complain to the Information Commissioner or IGT for a breach of the privacy principles	<i>Privacy Act 1988</i>
Lodge a complaint to the IGT (other than on assessments)	<i>Inspector-General of Taxation Act 2003</i>
Apply for compensation under the CDDA Scheme	Section 61 of the Constitution and the <i>Public Governance, Performance and Accountability Act 2013</i>
Claim legal professional privilege when responding to requests for information and documents under sections 353-10 and 353-15, Sch 1 to the TAA 1953	Common law
Comply with a notice issued under sections 353-10 and 353-15, Sch 1 to the TAA 1953 only to the extent they are able to do so	Common law
Obtain procedurally fair treatment from the ATO	Common law
Claim damages for pure economic loss due to wrongful ATO conduct	Common law

Appendix C

Investigations Undertaken by the Inspector-General of Taxation into the ATO's Administrative Practices

Even in the absence of legislated US-style taxpayer rights in Australia, it is common (and perhaps should be expected), for the ATO to assert that its administrative procedures deliver fairness to taxpayers. It would follow, then, that the ATO might assert that it does not need prescriptive legislation, as in the USA, for the ATO to act with fairness.

Information drawn from reports by the Inspector-General of Taxation may help to determine whether the ATO's administrative practices actually do deliver fairness. These reports (listed below) primarily look at the performance, behaviours and internal administrative policies of the ATO.

If legislative reform of the ATO's administrative practices is considered desirable, then the IGT's reports are a good place to gain some preliminary insights into what might be needed. All reports can be sourced from [the IGT's website](#).

In what follows, the major subheadings have been selected to echo some of the more important administrative processes and policies currently guiding the operation of the IRS (as outlined above in section 3).

Internal appeals

- a) *ATO's use of Early and Alternative Dispute Resolution* report (2012)
This report looked at the ATO's use of non-Part IVC resolution options and made 22 recommendations to improve the ATO's resolution of disputes matters. In addition, other ATO operational procedures were considered including a) separation of the internal review process, b) litigation management and c) audit functions. See Chapter 6 of that report.
- b) *Management of Tax Disputes* report (2015)
This considered the issue of the separation of the ATO's compliance and internal review functions and charted out the options for reform (see chapter 4) before making recommendations (see chapter 6).
- c) *Underlying causes and the management of objections to Tax Office decisions* (2009)
This considered some of the broader principles. Chapters 5–7 remain particularly relevant.

Burden of proof

- d) *ATO's administration of valuation matters* (2014)
This considered the burden of proof in relation to the burden of proof applied when there was a difference of professional judgement (see pages 63–68).

Oversight – IRS Board

- e) *IGTO's submission to the 2011 Tax Forum* (2011)
This sets out observations on a number of ATO-governance issues, including the options for a management board and compares arrangements with other selected jurisdictions, including the USA and UK.

Taxpayer rights, civil damages, awarding costs and suing the Government

- *Taxpayers' Charter and Taxpayer Protections* report (2016)

This compared the Australian approach to selected jurisdictions, including USA, UK, Canada and NZ. Appendix 2 sets out a legal analysis of legal rights that taxpayers have, including the source of those rights. Appendix 3 reproduces a report that is prepared for the IBFD on the status of taxpayer rights in Australia. Chapter 4 examines concerns raised about the ATO's administration of the CDDA scheme and availability of compensation for legal liability. (Note the CDDA scheme has recently undergone further review in 2019.)

Burden of proof – Statistical data

- f) *ATO's use of benchmarking to target the cash economy* (2012)
This examined the ATO's use of statistical data to select small businesses for compliance action and as a basis for default assessments (for the latter, see Chapters 5-7).

Penalties, Penalty procedures and Burden of proof – Penalty

- g) *Improving the Self-Assessment system report* (2012)
This examined features of the tax self-assessment system and asked whether changes made at that time had the effect of moving the system from a pure self-assessment system back towards quasi-full assessment system. Chapter 4 focused on particular issues raised on the penalty regime.
- h) *ATO's administration of penalties* (2014)
Chapter 1 gives an outline of the tax penalty framework, including the underlying legislative basis. Chapter 4 examines the ATO's penalty decision making and unsustained penalties. Amongst other issues, the report considers whether the burden of proof for tax penalties should be different to the burden of proof for primary tax liabilities (see pages 42–46).

Interest charges

- i) *Improving the Self-Assessment system report* (2012)
Amongst other issues, this report briefly examined particular concerns raised with the GIC/SIC regime, including concerns that there was a regressive effect on small businesses (see pages 118–121).

Collection actions

- j) *Debt Collection* (2015)
This examined a number of concerns raised with ATO debt recovery practices. Chapter 1 sets out the relevant framework, including relevant law. Chapters 3 and 4 look at the ATO's payment assistance and firmer recovery actions.
- k) *ATO's small business debt collection practices* (2005)
Although this is an old report, the principles distilled still hold true. Particularly see recommendation 1, page 5. The issues considered in Chapter 3 are generally relevant today.

Extend statute of limitations

- l) *Improving the Self-Assessment system report* (2012)
This considered requests for extensions to amendment periods (see pages 83–85).

Offers to settle for less than tax owed

- m) *Aspects of the Tax Office's settlement of compliance activities* (2009)

This focused on the settlement of tax liabilities. Although an older review, the principles that could be distilled from the findings and conclusions (paragraphs 3.16–3.23) and recommendations 8–21 would still be relevant today.

Chief Counsel advice

- n) *Improving the Self-Assessment system* report (2012)
Chapter 2 examined a number of issues regarding the ATO's advice function, including whether penalties and interest should apply when the ATO had not provided public advice on the issue.
- o) *Tax Office's administration of public binding advice* (2009)
This focused on concerns raised with the binding nature of public binding advice and compared the broad features of the public binding advice system to other selected jurisdictions, including the USA (eg. Appendix 4).

IRS staff misconduct

- p) *ATO's fraud control management* (2018)
Chapters 2 and 5 examine the governance arrangements for ATO staff as well as the internal and external reporting/referral arrangements/requirements.