



INFORMATION, ANALYSIS
AND ADVICE FOR THE PARLIAMENT

INFORMATION AND RESEARCH SERVICES

Bills Digest
No. 53 2002–03

Inspector-General of Taxation Bill 2002

ISSN 1328-8091

© Copyright Commonwealth of Australia 2002

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this publication may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent of the Department of the Parliamentary Library, other than by Senators and Members of the Australian Parliament in the course of their official duties.

This paper has been prepared for general distribution to Senators and Members of the Australian Parliament. While great care is taken to ensure that the paper is accurate and balanced, the paper is written using information publicly available at the time of production. The views expressed are those of the author and should not be attributed to the Information and Research Services (IRS). Advice on legislation or legal policy issues contained in this paper is provided for use in parliamentary debate and for related parliamentary purposes. This paper is not professional legal opinion. Readers are reminded that the paper is not an official parliamentary or Australian government document. IRS staff are available to discuss the paper's contents with Senators and Members and their staff but not with members of the public.

Inquiries

Members, Senators and Parliamentary staff can obtain further information from the Information and Research Services on (02) 6277 2646.

Information and Research Services publications are available on the ParlInfo database. On the Internet the Department of the Parliamentary Library can be found at:
<http://www.aph.gov.au/library/>

Published by the Department of the Parliamentary Library, 2002

INFORMATION AND RESEARCH SERVICES

Bills Digest
No. 53 2002-03

Inspector-General of Taxation Bill 2002

Susan Dudley
Law and Bills Digest Group
21 October 2002

Contents

Purpose	1
Background	1
Basis of policy commitment	1
Federal taxation administration	2
Taxpayer grievances	2
Position of significant interest groups/press commentary.	2
Political party policy position	3
Main Provisions	4
Object of the Act.	4
Functions of Inspector-General	4
Powers of Inspector-General	5
Protection to people providing the Inspector-General with information	6
Disclosure of information	7
Legal Professional Privilege	7
Privacy requirements	7
Information prejudicial to the public interest	8
Confidential information.	8
Secrecy	8
Appointment of Inspector-General and other administrative matters	9
Concluding Comments	9
Endnotes.	10

Inspector-General of Taxation Bill 2002

Date Introduced: 19 September 2002

House: House of Representatives

Portfolio: Treasury

Commencement: Royal Assent

Purpose

The purpose of this Bill is to establish the Inspector-General of Taxation.

Background

Basis of policy commitment

In the Coalition's election statement *Securing Australia's Prosperity* the Prime Minister announced that a re-elected Coalition Government would create an Inspector-General of Taxation. The Prime Minister stated that:

The Government will focus in the next term.....on improving the structures and the governance practices of all its Statutory Authorities and Office Holders, with particular emphasis on those that impact upon the business community.....

The Coalition recognises the special role the ATO plays in creating an environment in which businesses, and indeed individuals, can prosper. As a separate and distinct initiative, in a third term, the Coalition will strengthen the advice given to government in respect to matters of tax administration and process through the creation of a senior office, the Inspector-General of Taxation.¹

This announcement followed a series of problems with key areas of tax administration such as mass marketed tax schemes and the business activity statement.

Following the election statement, the Government released *The Inspector-General of Taxation in the Taxation System*² Consultation paper in May 2002. The Board of Taxation consulted extensively on this paper and provided its final report to the Minister for Revenue and Assistant Treasurer in July 2002.³ In August 2002 the Minister responded to

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

the recommendations of the Board of Taxation and stated that the Government, in principle, accepted all of the Board's recommendations.⁴

Federal taxation administration

The Australian Taxation Office (ATO) is responsible for the administration of the Federal taxation system. It is headed by the Commissioner of Taxation. Broadly speaking, the Commissioner of Taxation is responsible for the general administration of tax laws and is the Government's principal adviser on tax administration issues.

The Board of Taxation⁵ is an independent non statutory body responsible for providing advice to the Treasurer on the quality and effectiveness of tax legislation, the processes for its development including the processes of community consultation and improvements to the general integrity and functioning of the taxation system.⁶

The Commonwealth Auditor General reports to Parliament on various aspects of the ATO's administration of the tax laws as part of its overall responsibility of providing independent reviews of the performance and financial management of public sector agencies.

The Department of the Treasury is responsible for developing tax law policy and providing advice to the Treasurer in this regard.

Taxpayer grievances

A taxpayer can appeal against a decision, made by the ATO, regarding their tax assessment or other taxation decision. The taxpayer who has a complaint regarding the assessment or decision may:

- apply to the ATO's internal review processes for the decision to be reviewed,
- apply to the Administrative Appeals Tribunal for a review of the decision, or
- appeal to the Federal Court.

If the taxpayer is dissatisfied with the administrative action taken by the ATO, the taxpayer may complain to the Commonwealth Ombudsman.⁷

Position of significant interest groups/press commentary

Since the election statement and more recently following the introduction into Parliament of the Inspector-General of Taxation Bill, there has been significant discussion reported by the media regarding the proposal.⁸

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

The Institute of Chartered Accountants⁹ and CPA Australia¹⁰ have both expressed strong support for the creation of an Inspector-General of Taxation. It appears however that both bodies consider that the Inspector-General proposal does not go far enough. Prior to the introduction of the Bill into Parliament, the Institute suggested:

The appointment of a Second Commissioner with specific responsibility for tax administration and tax practitioner support would be a positive first step to help resolve the real problems with ATO administration and processes.

....a senior official would coordinate tax administration and tax practitioner support. It would also provide an important link to the position of the.....Inspector-General of Taxation.

More recently, CPA Australia have suggested that the Inspector-General's powers should be broader. For example CPA Australia has suggested that the Inspector-General should:

Be able to review and make recommendations on broader tax policy and law design issues in order to deliver improvements to tax administration, and

Have the power to require the Government or Commissioner of Taxation to respond to issues that the Inspector-General is concerned about.¹¹

Another key aspect of the proposal that has been reported in the media is the budgetary commitment. The May budget papers show that \$2 million per year for the next four years will be allocated to fund the Inspector-General. There have been a number of key groups that have expressed concern at this level of funding stating that \$2 million is not sufficient to staff the office with the level of technical expertise needed to operate effectively.¹²

Political party policy position

The Shadow Assistant Treasurer Mr David Cox, on 16 September 2002, in a media release opposing the Inspector-General proposal, stated that:

The proposal to establish an Inspector-General of Taxation is a smoke screen designed to trick taxpayers into believing that the Government is addressing the problems with Australia's tax system.....

Imposing another level of bureaucracy on a flawed system will not solve the current crisis in tax administration.¹³

On 15 October 2002, Mr Cox, in a further media release stated that:

The Taxation Ombudsman is already empowered to investigate systemic issues in tax administration.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

However, the Taxation Ombudsman does not have the resources to undertake the required investigations into systemic issues (a point which was unanimously agreed to during the three consultation sessions held by the Board of Taxation).

If the Howard Government were serious about tackling systemic issues in tax administration they would provide the Taxation Ombudsman with the resources to do so - not waste \$2million on overheads for a new under-resourced Inspector-General of Tax.¹⁴

Main Provisions

The Bill establishes the Inspector-General of Taxation and sets out:

- the functions of the Inspector-General
- the powers of the Inspector-General
- protection to people providing the Inspector-General with information
- disclosure of information, and
- appointment of the Inspector-General and other administrative matters.

Object of the Act

The Board of Taxation in its July 2002 report recommended that:

the legislation establishing the Inspector-General of Taxation should include a clause stating that the object of the legislation is to improve the way in which the Australian Taxation Office administers the Australian taxation system from the perspective of taxpayers.¹⁵

Proposed clause 3 of this Bill sets out the object of this Act and gives effect to the Board of Taxation's recommendation.

Functions of Inspector-General

Proposed Clause 6 of the Bill establishes the Inspector-General of Taxation and **proposed clause 7** sets out the Inspector-General's functions. In summary, under **proposed clause 7**, the Inspector-General's role will be to review and report to the Minister on the administration of the federal taxation system.

More specifically, the Inspector-General will review the systems established by the ATO to administer the tax laws and the systems established under tax laws that deal with

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

administrative matters. The Inspector-General will not have a direct role in handling complaints from individual taxpayers nor will it advise the Government on the revenue aspects of taxation policy.

The Inspector-General will be required to report review findings to the Minister (**proposed clause 10**). **Proposed clause 11** provides that the Minister may make the reports publicly available by tabling in Parliament or otherwise.

Proposed clause 41 of the Bill states that the Inspector-General will also be required to provide the Minister with an annual report, to be tabled in Parliament, regarding the Inspector-General's operations during the reporting year.

Proposed clause 8 sets out when the Inspector-General will conduct a review. The **clause** provides that the Inspector-General can undertake work on an own motion basis, it may be directed by the Minister¹⁶ to review a certain matter or it may receive a request from the Commissioner of Taxation, a Parliamentary Committee or Parliament to conduct a review.

The Inspector-General will be able to determine its own work priorities (**proposed clause 9**) however if the Minister directs it to conduct a review, it must comply with this direction.

One of the issues raised during the course of consultation on the Inspector-General proposal was the need to ensure there is not an overlap or duplication in the work being conducted by the Commonwealth Ombudsman, the Commonwealth Auditor-General and the newly established Inspector-General. To address this concern, **sub-clause 9(2)** states that the Inspector-General must consult with these two bodies at least annually.

Powers of Inspector-General

Proposed Division 3 sets out the powers that the Inspector-General has in performing its functions. The powers relate to information gathering by the Inspector-General. Some of the powers are supported by a penalty regime to ensure that the Inspector-General is able to gather information effectively.

Proposed clause 12 states that the powers may be exercised either during the course of conducting a review and providing a report or when deciding whether a particular matter should be reviewed.

The Inspector-General may invite the public, particular people or organisations to make submissions relevant to the subject of the review (**proposed clause 13**). The Inspector-General may make submissions, received under this clause, available to the public. The Commissioner of Taxation, or tax officials, may make submissions.

Proposed clause 14 states that the Inspector-General may ask the Commissioner of Taxation for information, documents or to answer questions that are relevant to the review.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Proposed clause 15 states that the Inspector-General may ask a tax official for information, documents or to answer questions that are relevant to the review. Tax officials are defined in **proposed clause 4** and include the Commissioner of Taxation. Failure to comply with the Inspector-General's request under **proposed clause 15** within the allowable time, is an offence with a maximum penalty of 6 months imprisonment. The Bill excludes certain defences otherwise available under the Criminal Code in **proposed subclause 16(1)**.

The Inspector-General may require that the information or answers under **proposed clause 15** be given under oath or affirmation. As noted in the explanatory memorandum, administering an oath or affirmation when taking oral evidence means that the taking of the evidence becomes a judicial proceeding for the purposes of Part III of the *Crimes Act 1914*. The explanatory memorandum states that:

this creates offences relating to false testimony, fabrication of evidence, destruction of evidence and interference with witnesses¹⁷

The Bill under **proposed clause 38** also gives the Inspector-General the power to report a tax official's misconduct to the Commissioner of Taxation and misconduct of the Commissioner of Taxation to the Minister. This power is the same as the power held by the Commonwealth Ombudsman to report on misconduct by a Departmental officer.¹⁸

Protection to people providing the Inspector-General with information

Disclosing information

The legislation includes provisions to protect people who provide the Inspector-General with information under proposed clauses 13 –15. **Proposed clause 17** provides that a person who has made a submission to the Inspector-General under **proposed clause 13** cannot be subject to civil proceedings brought by a person who has suffered loss because of this disclosure, provided the disclosure was done in good faith.

Similarly, a person that discloses information under proposed clauses 14 and 15 will not be liable in civil proceedings brought by a person that has suffered loss as a result of that disclosure or criminal proceedings that contravene laws (such as the secrecy provisions in the tax laws). Therefore, this sub-clause overrides the secrecy provisions in the tax laws.

Victimisation

The Bill, in **proposed clause 39** makes it an offence for a person to threaten to cause or actually cause detriment to a second person because that person has given evidence under proposed clause 14 or 15 of the Bill. This proposed clause also makes it an offence to victimise a person because they have been referred to in a report or because the Inspector-General has reported that person to the Commissioner for misconduct.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

Disclosure of information

The Bill contains measures to protect information that is subject to legal professional privilege. The Bill also contains a number of measures to ensure that information that is obtained during the course of the Inspector-General's activities are not disclosed or used for improper purposes.

Legal Professional Privilege

Legal professional privilege protects communications between lawyers and clients provided they pass as professional communications in a professional capacity. **Proposed clause 18** provides that information or a document does not lose its legal professional privilege simply because it has been provided to the Inspector-General under proposed clauses 13, 14 or 15.

Information supplied to the Inspector-General under proposed clause 14, 15 or 25 that is the subject of legal professional privilege or derived from information or a document that is the subject of legal professional privilege, must not be included in a report under proposed clause 10 or 41 (**proposed clause 27**).

Privacy requirements

The *Privacy Act* was passed in 1988. The Act gave effect to Australia's agreement to implement Guidelines adopted in 1980 by the Organisation for Economic Cooperation and Development (OECD) for the Protection of Privacy and Transborder Flows of Personal Data, as well as to its obligations under Article 17 of the International Covenant on Civil and Political Rights.¹⁹

One of the main objectives of the Act is to protect personal information in the possession of federal government departments and agencies. Eleven Information Privacy Principles (IPP's), which are based on the OECD guidelines, set out strict safeguards for any personal information handled by federal government agencies.²⁰

As discussed above, under proposed clause 15 of the Bill, tax officials will be required to pass personal taxpayer information onto the Inspector-General. This is permitted under the *Privacy Act 1988* by virtue of Principle 11(1)(d) in the Act which states that personal information may be disclosed to a person, body or agency if it is required by law.

The Bill does however put in place mechanisms to protect the privacy of taxpayers. The Bill ensures that the privacy of taxpayer information is not compromised by the new arrangements through **proposed clause 23**. This clause states that information relating to a taxpayer's affairs must not be included in a report under proposed clause 10 or 41 if the taxpayer could be identified. In addition, submissions provided to the Inspector-General under proposed clause 13 that contain information relating to a taxpayer's affairs are not to be made publicly available **proposed subclause 23(2)**.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

The activities of the Inspector-General are further regulated to protect the identity of tax officials. Under **proposed clause 24**, clause 10 and 41 reports and sub-clause 13(3) submissions must not name tax officials other than the Commissioner of Taxation, however parts of the ATO may be identified.

Information prejudicial to the public interest

The Bill sets out circumstances where the Minister may issue a certificate limiting the Inspector-General's powers to gather or disclose information. **Proposed clause 22** states that an Inspector-General may issue a certificate where the disclosure of the information would, to mention a few examples:

- endanger the safety of any person
- prejudice the security, defence or international relations of the Commonwealth, and
- involve the disclosure of deliberations or advice of the Executive Council.

The Minister may issue a certificate under **proposed clause 22** of the Bill preventing the Inspector-General from gathering certain information under proposed **clause 14** or **15**, or disclosing information under clause 10, 13(3) and 41. The Minister cannot however issue a certificate preventing the Inspector-General from gathering information under clause 13 of the Bill which relates to inviting submission from the public.

Confidential information

The legislation also contains a provision to ensure that confidential information that is provided to the Inspector-General is not disclosed. Under **proposed clause 26**, if a submission under proposed clause 13 claims to contain confidential information, that submission will not be made available under proposed clause 13(3), and the information is precluded from being included in a report under proposed clauses 10 or 41. It is interesting to note that the confidential information clause does not contain any criteria that needs to be met before confidentiality may be claimed.

Secrecy

Proposed clause 37 of the Bill contains further protections relating to the treatment of 'protected information' and 'protected documents' obtained by the Inspector-General whilst performing the functions under the Bill.

The clause makes it an offence with a maximum period of imprisonment of 2 years, for the Inspector General or a member of staff to copy or disclose to another person or court or tribunal protected information or protected documents if this conduct is not in the course of performing or exercising functions, powers and duties under the Bill.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

In addition under this clause, a court will not be able to force a person to disclose protected information or protected documents unless the disclosure is necessary to give effect to the Act.

Appointment of Inspector-General and other administrative matters

Proposed Part 3 of the Bill establishes the administrative arrangements for the Inspector-General and in particular sets out the appointment arrangements for the Inspector-General. **Proposed clause 28** provides that the Inspector-General will be appointed by the Governor-General for a period of five years. The Bill does not specify appointment criteria. **Proposed clauses 32 and 33** state that:

- the Inspector-General must not engage in paid employment outside the duties of Inspector-General, and
- that the Inspector-General must disclose all interests that could conflict with the Inspector-General's proper performance of functions.

Proposed clause 35 specifies when the Inspector-General's appointment must be terminated, including where the Inspector-General:

- becomes bankrupt
- engages in other paid work, or
- fails to disclose interests.

The Bill also deals with staff for the Inspector-General (**proposed clause 36**), delegation of powers by the Inspector-General (**proposed clause 42**) and regulations under the Bill (**proposed clause 43**).

Concluding Comments

The Inspector-General of Taxation Bill puts in place the key legislative requirements recommended by the Board of Taxation to the Minister for Revenue and Assistant Treasurer in June 2002.

As noted in the background in this Digest, one of the primary criticisms levelled at the proposal is that the Inspector-General's limited funding may restrict the office's ability to drive reforms to the administration of the federal taxation system.

The Bill clearly defines the role of the Inspector-General – namely to review and provide independent reports and recommendations to the Government on the administration of the taxation system. This new oversight body has not been handed power to directly change

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

the way that the administrative functions of the federal taxation system operate. It would appear that implementation of the Inspector-General's recommendations will occur through the normal taxation policy development channels.

Endnotes

- 1 *The Howard Government Putting Australia's Interest First: Election 2001*: [<http://www.liberal.org.au/policy/securing.PDF>], (14 October 2002).
- 2 http://www.taxboard.gov.au/inspector_general.html, (14 October 2002).
- 3 *Inspector-General of Taxation: A Report to the Minister for Revenue and Assistant Treasurer*; July 2002: [http://www.taxboard.gov.au/content/inspector_general/index.asp], (14 October 2002).
- 4 'Minister Responds to Inspector General Report', *Media Release*, Senator Helen Coonan, Minister for Revenue and the Assistant Treasurer, 16 September 2002: [<http://assistant.treasurer.gov.au/atr/content/pressreleases/2002/098.asp>], (14 October 2002).
- 5 The Board of Taxation was established in August 2000 following recommendations made in *A Tax System Redesigned* (the Ralph Report).
- 6 The functions of the Board of Taxation are detailed on the Board of Taxation's website [<http://www.taxboard.gov.au/content/charter.asp>], (14 October 2002).
- 7 Crowley, Melinda et al, *Australian Master Tax Guide 2002*, CCH Australia Limited, Sydney, 2002, p. 10.
- 8 'ICAA call for senior voice for tax practitioners within ATO', *Media Release*, The Institute of Chartered Accountants, 16 August 2002: [<http://www.icaa.org.au/tech/index.cfm?id=A105309912>], (14 October 2002).
- 9 'The Inspector General of Taxation must be well resourced to make a difference, warns ICAA', *Media Release*, The Institute of Chartered Accountants, 16 October 2001: [<http://www.icaa.org.au/news/index.cfm?id=A104415906>], (14 October 2002), 'Time to move forward', *Media Release*, Institute of Chartered Accountants, 12 November 2001: [<http://www.icaa.org.au/news/index.cfm?id=A104435196>], (14 October 2002).
- 10 'Inspector General must deliver improvements to the tax system', *Media Release*, CPA Australia, 17 September 2002: [http://www.cpaaustralia.com.au/01_information_centre/1_0_0_0_home.asp], (14 October 2002).
- 11 *ibid*
- 12 'ATO Powers Under Scrutiny', *The Australian Financial Review*, October 4 2002; 'The Inspector General of Taxation must be well resourced to make a difference, warns ICAA', *Media Release*, The Institute of Chartered Accountants, 16 October 2001; 'Tax Inspector Will

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

- Need Funds: Critics', *The Australian*, 17 September 2002, 'Poor Start For New Tax Advocate', *The Australian Financial Review*, 17 September 2002.
- 13 'Inspector General of Tax' *Media Release*, Mr David Cox – Shadow Assistant Treasurer, 16 September 2002: [<http://www.alp.org.au/media/0902/20002195.html>], (14 October 2002).
 - 14 'Inspector General of Tax - It's a Waste of Money Costello', *Media Release*, Mr David Cox – Shadow Assistant Treasurer, 15 October 2002: [<http://www.alp.org.au/media/1002/20002556.html>], (18 October 2002).
 - 15 *Inspector-General of Taxation: A Report to the Minister for Revenue and Assistant Treasurer*; July 2002: [http://www.taxboard.gov.au/content/inspector_general/index.asp], (14 October 2002) p.vi .
 - 16 Although not defined the Minister will generally be the Treasurer or the Minister for Revenue and the Assistant Treasurer.
 - 17 *Explanatory Memorandum*, Inspector-General of Taxation Bill 2002.
 - 18 *Commonwealth Ombudsman Act 1976*, section 8.
 - 19 Further background information regarding Federal Privacy Law can be found at: [http://www.privacy.gov.au/act/index_print.html#2.1], (14 October 2002).
 - 20 The Privacy Principles can be viewed at: [<http://www.privacy.gov.au/publications/ipps.html>], (14 October 2002).

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.