



**Submission by the  
Commonwealth Ombudsman**

**DESIGNING A TAX SYSTEM  
ADVISORY BOARD OF INQUIRY**

**CONSULTATION BEING CONDUCTED  
BY THE TREASURY**

Submission by the Commonwealth Ombudsman, Allan Asher

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## INTRODUCTION

On 21 January 2011 the Hon. Bill Shorten MP, the Assistant Treasurer and Minister for Financial Services and Superannuation invited public comments on the Discussion Paper - 'Designing a Tax System Advisory Board'.

This submission forms the views of the Commonwealth Ombudsman in response to the Discussion Paper. The Commonwealth Ombudsman has concerns that the proposed structure for a Tax System Advisory Board (the Board) to provide advice to the Commissioner of Taxation on the ATO's management would duplicate the role currently performed by existing Australian Government integrity agencies and the internal ATO committees and forums such as the ATO People Committee. It remains unclear what additional value the proposed Board would provide in the tax administration system and how the Board's effectiveness could be quantified.

The Commonwealth Ombudsman proposes an alternative model for an advisory board to the Commissioner, with the core members to include Australian Government integrity agencies and other relevant non-Government members.

## BACKGROUND

The Commonwealth Ombudsman safeguards the community in its dealings with Australian Government agencies by:

- correcting administrative deficiencies through independent review of complaints about Australian Government administrative action
- fostering good public administration that is accountable, lawful, fair, transparent and responsive
- assisting people to resolve complaints about government administrative action
- developing policies and principles for accountability, and
- reviewing statutory compliance by law enforcement agencies with record keeping requirements applying to telephone interception, electronic surveillance and like powers.

The Commonwealth Ombudsman, as established through the *Ombudsman Act 1976*, is also the Taxation Ombudsman. The Taxation Ombudsman focuses on investigating complaints from taxpayers and tax professional about the administrative actions of the Australian Taxation Office (ATO). In addition to resolving individual complaints, this office uses information from complaints to identify potential systemic problems in tax administration. Through project work, including own motion investigations and less formal reviews, we review the effectiveness of specific area of tax administration and consider areas for improvement. We also liaise regularly with the Inspector-General of Taxation.

The Ombudsman's office meets regularly with the ATO to canvas ways to improve administration and prevent or respond more effectively to complaint issues.

This office also provides information or submissions to government reviews of elements of tax administration.

## SUMMARY

The Board's creation is proposed to allow the ATO to benefit from a wide range of perspectives and experiences in managing large complex organisations.

Three key elements are proposed in the Discussion Paper to shape the Board's role. These include:

- The Board's role will be to advise the Commissioner of Taxation (Commissioner) on a range of organisational matters.
- The Commissioner's statutory independence to administer the tax, superannuation and Australian Business Register and responsibilities to parliament will not be affected by the Board.
- The Board is to be comprised of the Commissioner and non-Government members.

The Board's role is to advise the Commissioner and the ATO Executive Committee on the strategic, direction, culture, organisation, management, compliance planning, staff profile and information technology plans of the ATO.

The Discussion Paper also sought comments on three possible structures for the proposed Board, which included: a Board established by legislation, a Board established by charter and a Board established by the Commissioner.

## RESPONSE TO CONSULTATION PAPER

Australia's Future Tax System Review (AFTS) Recommendation 118 suggested that a board be created to advise the Commissioner on the general organisation and management of the ATO. The AFTS's recommendation is a positive recognition of the value of consultation however this office is concerned that the governance and administrative elements proposed in the possible frameworks of the Board may duplicate the role and function of existing integrity agencies and parliamentary processes. For example the Commonwealth Ombudsman, the Australian National Audit Office and the Inspector-General of Taxation all have specific integrity functions that consider the ATO's performance and these organisations are working with the ATO where appropriate and also report publicly on the ATO's operations.

This Office strongly supports recommendation 117 of the AFTS Review that the Inspector-General of Taxation, the ANAO and this office should be sufficiently resourced to perform operational functions in recognition of their important role in maintaining a fair and efficient tax system.

The Discussion Paper raises the possibility of the Board producing an annual report on its performance however this seems untenable given the difficulty in how the Board's roles might be measured noting that the Commissioner is free to ignore their advice, it is proposed that the Board's meeting minutes be kept confidential and it would not be clear what advice had been provided to the Commissioner.

In contrast the Commonwealth Ombudsman, ANAO and the Inspector-General of Taxation all have defined responsibilities which are measured and reported to

Parliament annually in agency Annual Reports. This office and Inspector-General of Taxation have specific integrity functions within the tax administrative system which are reported on.

Currently there are a number of existing ATO internal and external committees and forums that form a part of the ATO's governance framework. In particular many of the ATO's People Committee functions would be duplicated by the proposed Board. The People Committee's functions include advising the Commissioner on people, culture and integrity issues. Membership of the People's Committee includes Taxation Commissioners, representatives from government agencies, the Commonwealth Ombudsman's office and senior private sector experts. There are no suggestions in the Discussion Paper as to a method of interaction between the Board and these existing committees and forums.

In the area of parliamentary accountability the Senate Standing Committee on Economics and the Joint Committee of Public Accounts and Audit currently plays an important role in reviewing and monitoring the ATO's performance. The Commonwealth Ombudsman also provides information to this parliamentary committee on the ATO's performance.

In the AFTR Review, the United States of America (USA), Canada and the United Kingdom (UK) were identified as countries that utilise an advisory management board as part of administering their tax system. Advisory boards in the USA, UK and Canada have different functions compared to the Board proposed in the Discussion Paper and perform core governance and compliance roles in the USA, UK and Canadian tax systems. Some of the key functions of these advisory boards are outlined below:

- Canada's Board of Management has total responsibility for the governance and overall strategy of the Canada Revenue Agency (CRA). The Commissioner is a member of the Board of Management and is accountable to the board for the daily management of the CRA. Each year the Board of Management is also responsible for assessing the management performance of the CRA.
- The Board of Management in the UK's Her Majesty's Revenue and Customs (HMRC) has total responsibility for the governance and overall strategy of HMRC. The Chief Executive is accountable to the Board for the delivery of strategies and the HMRC's performance. The Chairman of the Board has responsibility for evaluating the Board's performance and this is reported in the Corporate Governance Report. The Board of Management is also responsible for approving the assurance and performance aspects of the departmental annual report. The Board of Management includes sub-committees for audit and risk, ethics and responsibilities and people to support its functions.
- The Taxpayer Advocacy Panel (TAP) in the USA performs the functions of an advisory board to the Internal Revenue Service (IRS). The TAP operates under the Department of Treasury and has an established charter and also publishes public reports annually on its performance. The changes to the IRS

in 1998 were designed to position the IRS to resemble the private corporate model around customer needs and TAP was a part of this change.

Aspects of the governance and compliance roles conducted by the advisory boards in the USA, UK and Canada should be considered for inclusion as part of the proposed Board.

The Commonwealth Ombudsman would like to suggest to Treasury an alternative composition for an advisory board to the Commissioner. This office suggests that an advisory board comprising of the Commonwealth Ombudsman, ANAO, Inspector-General of Taxation, the Board of Taxation and other non-governmental members be considered. Non-Government members could also be appointed to the Board as proposed in the Discussion Paper. The benefits of this model is that integrity agencies are well placed to assist the ATO to bring issues to the Commissioner's attention at an early stage to allow for earlier intervention and also working with the ATO on systemic issues that may have been identified in recommendations for possible change.

Specific comments on the three Board structures proposed in the Discussion Paper have not been addressed in this submission however our office would welcome the opportunity to discuss the above points and any other elements of the Discussion Paper with Treasury officials.