



10 December 2024

Senator Nita Green
Committee Chair
Senate Legal and Constitutional Affairs Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Senator Green

Inquiry into the Oversight Legislation Amendment (Robodebt Royal Commission Response and Other Measures) Bill 2024 [Provisions]

As the Inspector-General of Taxation and Taxation Ombudsman (**IGTO**), I welcome the opportunity to contribute to the Senate Legal and Constitutional Affairs Legislation Committee's Inquiry into the Oversight Legislation Amendment (Robodebt Royal Commission Response and Other Measures) Bill 2024 [Provisions]. These provisions would amend the *Inspector-General of Taxation Act 2003* to implement the government's response to Recommendations 21.1 and 21.2 of the Report of the Royal Commission into the Robodebt Scheme, providing my office with additional powers. As such, they enhance and strengthen my ability to fulfil my statutory role effectively.

About the IGTO

The IGTO is an independent statutory agency which investigates and provides oversight of the administration of the tax and superannuation systems of Australia, including the actions and decisions made by tax officials of the Australian Taxation Office (**ATO**) and the Tax Practitioners Board (**TPB**). The IGTO contributes to 'fair, accountable and improved administration and integrity of the taxation and superannuation systems for the benefit of the Australian community, through independent investigation and reporting.'¹ We undertake investigations for the purpose of providing independent advice and assurance to Government and Parliament on tax administration, assuring the integrity of and making recommendations for improvement in the systems of administration.

As part of my role as Taxation Ombudsman, I also support taxpayers to resolve complaints with the ATO or TPB, where those agencies have had an opportunity to resolve them with the complainant without a satisfactory resolution. My legislation, the

¹ Commonwealth of Australia, *Portfolio Budget Statements 2024-25 Budget Related Paper No 1.15 Treasury Portfolio*, p 297 <[Portfolio Budget Statements 2024-25](#)>.

Inspector-General of Taxation Act 2003, mirrors certain provisions of the *Ombudsman Act 1976* in order to provide the same powers as the Commonwealth Ombudsman in relation to my management of complaints about the ATO and TPB.

The IGTO is an integrity agency within the framework of the *National Anti-Corruption Commission Act 2023*.

Focus of this submission

The Committee is reviewing the provisions of the Bill which include additional powers for the IGTO. My agency has been engaged in the development of the Government's response to the Royal Commission into the Robodebt Scheme, notably in advice on the measures contained in this Bill. My submission strongly supports the new provisions within the Bill and provides the Committee with information to highlight how these powers will be used to improve the oversight and integrity of Australian tax administration and to enhance the checks and balances within the system.

Context – the Royal Commission into the Robodebt Scheme

The Committee is very aware of the failure of public administration and oversight that occurred in relation to the Robodebt Scheme. As the Royal Commission report highlighted "It was a costly failure of public administration, in both human and economic terms". Not only did the administration of the Scheme fail both legally and ethically, the checks and balances in the system to avoid such failures did not identify or stop the maladministration. The powers in this Bill respond to those failures by bolstering the powers and independence of those of us with the responsibility to uphold the integrity of the system(s) and to shine a light on areas that are not operating as intended, without fear or favour. In particular, the Bill enables me to conduct investigations without reliance on officials to work in good faith during investigations.

The Royal Commission also highlighted the importance of community trust in government and the public service. The mechanisms for upholding accountability and the appropriate checks and balances in the system should work to afford the community confidence that the significant powers wielded within arms of the public service are used in accordance with the law and in the public interest. Notable from the Royal Commission is the need to assure the community that Australians experiencing vulnerability are protected from harm (either intentional or unintentional) through the use of those powers, within the appropriate administrative and legislative frameworks.

Greater accountability also requires transparency and the right of the community to understand how decisions are made on their behalf or on matters impacting their personal lives, finances or businesses.

The Australian tax system relies on public trust and confidence

While the Robodebt Scheme was applied within the Australian welfare system, it is equally important that community trust in the tax system is maintained. While the tax system's primary role is to raise and collect revenue, it also performs other important roles, such as obtaining information that government uses to promote social policy objectives such as the preservation of retirement savings and the financial support of separated parents' children. The tax system is a self-assessment system and therefore

relies primarily on voluntary compliance. That requires all taxpayers to have confidence that their money is withheld and their liabilities assessed accurately and in accordance with the tax law, and that their information is used for the purposes for which it was provided. The Commissioner of Taxation is responsible for the confidentiality and the management of personal and commercially sensitive information about all Australian individuals and businesses and must manage the use of this data within his powers and in accordance with the law.

Where taxpayers fail in their compliance with their obligations, the Commissioner of Taxation has wide ranging powers to collect the tax due, ranging from applying penalties through to removal of money from wages or bank accounts (via garnishee orders) and ultimately bankruptcy.

From my role as Taxation Ombudsman, I see the severe impact on individual taxpayers, their families and businesses in the small proportion of cases when those powers are used inappropriately or in error.

The community must have the confidence to know that there are independent agencies who can and will hold the ATO to account, where necessary, or to whom they can refer potential errors or cases of maladministration for investigation. This Bill ensures that my role in contributing to the integrity of the Australian tax system can be achieved with access to the right records and information, independent of the management of the ATO.

Bolstering the powers of the IGTO

The provisions of this Bill bolster my powers in the independent oversight and assurance of the integrity of the tax and superannuation systems in two measures:

- a) imposing a statutory duty on agency heads and their staff to use their best endeavours to assist the investigations of my agency;

The statutory duty on all public servants to assist the Ombudsman and the IGTO is an important addition to our checks and balances. It applies, importantly, as we make initial inquiries as well as during in depth investigations or in the follow up of previous recommendations. Overall, the current system works well and everyone involved in the system generally acts to do the right thing and to respect the important role of independent oversight authorities. However, the relationship between scrutineer and the subject of scrutiny can give rise to tensions or to create reticence and defensiveness, which can impact the efficiency or effectiveness of investigations.

The Robodebt experience has shown that investigations should not be solely reliant on the co-operation of those under scrutiny for access to relevant information or documentation. This new measure is unequivocal and timely: all public servants have a legal duty to assist the Ombudsman (and for ATO/TPB officials to assist the IGTO) without undue delay, distraction or withholding of relevant material. Failure to observe this statutory duty provides grounds for a breach of the APS Code of Conduct (s13 of the *Public Service Act 1999*), which would attract sanctions, where needed.

I expect that this new measure would act as a prevention and deterrent measure to any tax official considering blocking or delaying the progress of an IGTO investigation. Should an IGTO investigation be delayed or obstructed, this new measure would

assist me to confidently resolve the issue with the Commissioner so that the investigation could proceed and that light can be shone on any part of the tax system where there is a complaint, cause for concern or opportunity for improvement.

b) enhancing my powers of access to agency records, data and information, including remotely.

The right to full and free access to agency records, physically and remotely, is also an enhancement to my powers. The IGTO has direct access to some of the ATO's main customer record systems. This access is specified in the IGTO-ATO Protocol and is subject to the ongoing agreement of the ATO. Having full and free access as a right would assist my office to expedite inquiries and strengthen my independence in conducting investigations. At the commencement of an investigation, my office would normally submit a "request for information" to the ATO or TPB for data, documents or records that we believe will inform our analysis and investigations. This is reliant on tax officials searching for and seeking appropriate clearance to provide the requested information. It also relies on clear and unambiguous requests from my agency and on the ATO/TPB understanding the request and responding to the intent of the request. There can be instances where documents exist that the IGTO is not aware of, and thus are not included within the request for information but which are material to our enquiries.

Again, the current system mostly works well through reliance on the cooperation and good faith of public servants doing the right thing and providing what is asked for, or offering alternatives if what is asked for is not available, including additional materials for context or background. This new measure would mean that when my requests for information to either the ATO or TPB were delayed or not met, and there is no good reason for that, my authorised officers could seek direct access to the appropriate systems/records and expect the ATO or TPB to provide appropriate facilities to enable that access, with the objective of pursuing an important line of enquiry within our investigation. This is in line with the powers in the *Auditor-General Act 1997* (subsection 33(3)) and would be done transparently, with my authorised officers explaining what they are looking for and why. The measure also provides clear consequences if not met, which I believe brings appropriate "teeth" to the requirement.

I expect these powers to be used only in exceptional circumstances but, nevertheless, they are an important addition to my powers. Importantly the powers will strengthen my independence and my ability to investigate matters of integrity in the tax system without reliance on those tax officials involved in the administration I am investigating.

Summary

In summary, I strongly support the measures in the proposed Oversight Legislation Amendment (Robodebt Royal Commission Response and Other Measures) Bill 2024 [Provisions]. The measures directly address two of the failings of oversight highlighted by the Royal Commission into the Robodebt Scheme, and in doing so, enhance the powers of my office to independently investigate matters of concern within the tax and superannuation systems of Australia. The measures will strengthen my contribution to the integrity and oversight of the tax system, which should provide the community with additional assurance that there is appropriate scrutiny, oversight and accountability within the complex system in which they are obliged to participate.

I hope this submission is helpful to inform the Committee's inquiry. If you have any further questions or wish to discuss this submission, please do not hesitate to contact me on 0427 902 463 or at ruth.owen@igt.gov.au.

A handwritten signature in black ink, appearing to read 'Ruth Owen', written over a horizontal line.

Ruth Owen CBE
Inspector-General of Taxation and Taxation Ombudsman