



Inspector-General of Taxation Act 2003

No. 28, 2003

**An Act to provide for the appointment of an
Inspector-General of Taxation, and for related
purposes**

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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Inspector-General of Taxation Act 2003

No. 28, 2003

An Act to provide for the appointment of an Inspector-General of Taxation, and for related purposes

[Assented to 15 April 2003]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Inspector-General of Taxation Act 2003*.

Section 2

2 Commencement

This Act commences on the day after it receives the Royal Assent.

3 Objects of this Act

The objects of this Act are to:

- (a) improve the administration of the tax laws for the benefit of all taxpayers; and
- (b) provide independent advice to the government on the administration of the tax laws; and
- (c) identify systemic issues in the administration of the tax laws.

4 Definitions

In this Act:

Inspector-General means the Inspector-General of Taxation referred to in section 6.

Inspector-General's staff means:

- (a) the staff referred to in subsection 36(1); and
- (b) any employees or officers whose services are made available as referred to in subsection 36(3); and
- (c) any consultants engaged under subsection 36(4).

review means a review referred to in section 7.

tax law means:

- (a) an Act, or a part of an Act, which the Commissioner of Taxation administers, or of which the Commissioner has the general administration; or
- (b) an Act, or a part of an Act, to the extent it contains powers or functions that are delegated to the Commissioner of Taxation or to other tax officials; or
- (c) regulations, or other subordinate legislation, made under an Act, or a part of an Act, covered by paragraph (a) or (b).

tax official means:

- (a) the Commissioner of Taxation; or

- (b) a Second Commissioner of Taxation; or
- (c) a Deputy Commissioner of Taxation; or
- (d) a person engaged under the *Public Service Act 1999*, or an employee or officer of an authority of the Commonwealth, performing duties in the Australian Taxation Office; or
- (e) a person engaged on behalf of the Commonwealth by the Commissioner of Taxation, or by another tax official, to provide services related to the administration of the tax laws; or
- (f) a person who:
 - (i) is a member of a body established for the sole purpose of assisting the Commissioner of Taxation in the administration of an aspect of the tax laws; and
 - (ii) receives, or is entitled to receive, remuneration (but not merely allowances) from the Commonwealth in respect of his or her membership of the body.

taxpayer means a person or other entity who is, was, or may become, liable to pay tax under any tax law.

5 Geographical application of this Act

This Act applies both within and outside Australia and extends to every external Territory.

Part 2 Establishment and functions of the Inspector-General of Taxation

Division 1 Establishment of the Inspector-General of Taxation

Section 6

**Part 2—Establishment and functions of the
Inspector-General of Taxation**

**Division 1—Establishment of the Inspector-General of
Taxation**

6 Inspector-General of Taxation

There is to be an Inspector-General of Taxation.

Division 2—Functions of the Inspector-General

7 Functions of the Inspector-General

- (1) The functions of the Inspector-General are:
 - (a) to review:
 - (i) systems established by the Australian Taxation Office to administer the tax laws, including systems for dealing or communicating with the public generally, or with particular people or organisations, in relation to the administration of the tax laws; and
 - (ii) systems established by tax laws, but only to the extent that the systems deal with administrative matters; and
 - (b) to report on those reviews, setting out:
 - (i) the subject and outcome of the review; and
 - (ii) any recommendations that the Inspector-General thinks appropriate concerning how the system reviewed could be improved.
- (2) The reference in subparagraph (1)(a)(ii) to administrative matters includes, for example, the process for assessing, collecting, paying or recovering amounts under a tax law, or the enforcement of a tax law. However, it does not include rules imposing or creating an obligation to pay an amount under a tax law, or rules dealing with the quantification of such an amount.

8 When a review may be conducted

- (1) The Inspector-General may conduct a review on his or her own initiative.

Note: For example, the Inspector-General may conduct a review on a matter that has been drawn to his or her attention by taxpayers, tax professionals or the Commonwealth Ombudsman.
- (2) The Inspector-General may be directed, in writing, by the Minister to conduct a review. On receipt of a direction, the Inspector-General must include the review in his or her work program under section 9.

Part 2 Establishment and functions of the Inspector-General of Taxation

Division 2 Functions of the Inspector-General

Section 9

Note: Under section 9, the Inspector-General has discretion in deciding how to include the review in the work program (including, for example, what priority to give the review).

- (3) The Inspector-General may be requested to conduct a review by:
- (a) the Minister; or
 - (b) the Commissioner of Taxation; or
 - (c) a resolution of either House, or of both Houses, of the Parliament; or
 - (d) a resolution of a Committee of either House, or of both Houses, of the Parliament.

However, the Inspector-General is not required to comply with the request.

9 Setting the Inspector-General's work program

- (1) The Inspector-General has discretion in setting his or her work program (subject to subsection 8(2) and subsection (2) of this section).
- (2) The Inspector-General must consult the Commonwealth Ombudsman and the Commonwealth Auditor-General, at least once a year, to assist the Inspector-General in setting his or her work program.

10 Reporting on reviews

After completing a review, the Inspector-General must make a written report to the Minister setting out:

- (a) the subject and outcome of the review; and
- (b) any recommendations that the Inspector-General thinks appropriate concerning how the system reviewed could be improved.

Note: For limitations on what may be included in reports under this section, see the following provisions:

- (a) section 22 (information that would be prejudicial to the public interest);
- (b) section 23 (taxpayer information);
- (c) section 24 (identifying tax officials);

- (d) section 25 (criticising the ATO or tax officials);
- (e) section 26 (confidential submissions);
- (f) section 27 (legal professional privilege).

11 Public release of reports

- (1) The Minister must cause a copy of each report under section 10 to be tabled in each House of the Parliament, or to be otherwise made publicly available:
 - (a) before the general publication deadline; or
 - (b) if the Inspector-General recommends that the tabling or public release of the report be delayed for a specified period—before the extended publication deadline.
- (2) For the purposes of subsection (1):
 - (a) the **general publication deadline** is the end of 25 sitting days of each House of the Parliament, calculated starting from the day after the day on which the Minister receives the report; and
 - (b) the **extended publication deadline** is the end of 25 sitting days of each House of the Parliament, calculated starting from the day after the day on which the period referred to in paragraph (1)(b) ends.

Note: If, because of differences in the days on which the two Houses sit, the 25 sitting day period for the two Houses ends on different days, the relevant deadline is the end of the later of those days.

Section 12

Division 3—Obtaining information, documents etc. for the purposes of reviews

12 Purposes for which powers may be exercised

Actual conduct of a review

- (1) This Division confers powers that may be exercised for the purposes of conducting a review.

Deciding whether to conduct a review

- (2) The powers conferred by this Division also apply for the purposes of deciding whether a review should be conducted. For this purpose:
 - (a) a reference to conducting a review is taken to be a reference to making such a decision; and
 - (b) a reference to submissions, information, documents or questions relevant to a review is taken to be a reference to submissions, information, documents or questions relevant to making such a decision; and
 - (c) documents produced under section 14 or 15 for the purpose of making such a decision may, if the decision is that a review is to be conducted, continue to be kept under section 19 for as long as is necessary for the purposes of conducting the review.

13 Inspector-General may invite submissions

Inviting submissions

- (1) For the purposes of conducting a review, the Inspector-General may invite members of the public generally, or particular people or organisations, to make submissions relevant to the review.

Note 1: Section 17 protects a person making a submission in good faith from liability to damages.

Note 2: Section 18 provides that making a submission does not result in a loss of legal professional privilege.

Process for inviting or making submissions

- (2) The Inspector-General has discretion in deciding matters connected with the process for inviting or making submissions, including:
- (a) how to communicate the invitation; and
 - (b) how submissions may be made.

Note: For example, the Inspector-General may:

- (a) advertise in the press or other media seeking written submissions from the public; or
- (b) contact particular people or organisations inviting them to attend a meeting at which they may make oral submissions.

Submissions may be made publicly available

- (3) The Inspector-General may, in any way he or she thinks appropriate, make any submission, or a written record (which may be a summary) of any oral submission, available to the public generally, or to particular people or organisations.

Note: For restrictions on the power given by this subsection, see the following provisions:

- (a) section 22 (information that would be prejudicial to the public interest);
- (b) section 23 (taxpayer information);
- (c) section 24 (identifying tax officials);
- (d) section 26 (confidential submissions).

14 Inspector-General may request Commissioner of Taxation to provide information and documents etc.

For the purposes of conducting a review, the Inspector-General may request the Commissioner of Taxation:

- (a) to give the Inspector-General, or a member of the Inspector-General's staff, information relevant to the review, or arrange for another tax official to do so; or
- (b) to produce to the Inspector-General, or a member of the Inspector-General's staff, documents relevant to the review, or arrange for another tax official to do so; or

Section 15

- (c) to attend before the Inspector-General, or a member of the Inspector-General's staff, to answer questions relevant to the review, or arrange for another tax official to do so.

Note 1: For restrictions on the power given by this section, see section 22 (information that would be prejudicial to the public interest).

Note 2: Section 17 protects a person complying with a request in good faith from liability to a penalty or damages.

Note 3: Section 18 provides that compliance with a request does not result in a loss of legal professional privilege.

15 Inspector-General may require tax officials to provide information and documents etc.

Application of section

- (1) This section applies to a person who is or was a tax official if the Inspector-General has reason to believe that the person:
- (a) has information or documents relevant to a review; or
 - (b) is capable of giving evidence that is relevant to a review.

Inspector-General may require information, documents etc.

- (2) The Inspector-General may, by written notice given to the person, require the person:
- (a) to give the information to the Inspector-General, or a member of the Inspector-General's staff, by the time, and in the manner and form, specified in the notice; or
 - (b) to produce the documents to the Inspector-General, or a member of the Inspector-General's staff, by the time, and in the manner, specified in the notice; or
 - (c) to attend before the Inspector-General, or a member of the Inspector-General's staff, at the time and place specified in the notice, and answer questions relevant to the review.

Note 1: For restrictions on the power given by this subsection, see section 22 (information that would be prejudicial to the public interest).

Note 2: Section 16 removes certain excuses that might otherwise justify non-compliance with a requirement.

Note 3: Section 17 protects a person complying with a requirement in good faith from liability to a penalty or damages.

Note 4: Section 18 provides that compliance with a requirement does not result in a loss of legal professional privilege.

People must be given at least 14 days to comply

- (3) The time specified under paragraph (2)(a), (b) or (c) must be at least 14 days after the notice is given.

Information or answers may be required to be given on oath etc.

- (4) The Inspector-General may require the information or answers to be verified by, or given on, oath or affirmation, and either orally or in writing. For that purpose, the Inspector-General, or a member of the Inspector-General's staff, may administer the oath or affirmation.
- (5) The oath or affirmation is an oath or affirmation that the information or answers are or will be true.

Offence

- (6) The person commits an offence if:
- (a) the person has been given a notice under subsection (2); and
 - (b) the person fails:
 - (i) to give the required information by the time, and in the manner and form, specified in the notice; or
 - (ii) to produce the required documents by the time, and in the manner, specified in the notice; or
 - (iii) to attend to answer questions at the time and place specified in the notice; or
 - (iv) to answer questions relevant to the review while attending as required by the notice.

Penalty: Imprisonment for 6 months.

Section 16

16 Certain excuses are not available in relation to section 15 requirements

Excuses that are not available

- (1) A person is not excused from giving information, producing a document, or answering a question, under section 15 on the ground that to do so:
- (a) would contravene any other law; or
 - (b) might tend to incriminate the person or otherwise expose the person to a penalty or other liability; or
 - (c) would disclose material that is protected against disclosure by legal professional privilege or any other duty of confidence; or
 - (d) would be otherwise contrary to the public interest.

Note: See section 27 for other provisions about legal professional privilege.

Use/derivative use indemnity

- (2) However, neither:
- (a) the information or answer given or the document produced; nor
 - (b) any information, document or thing obtained as a direct or indirect consequence of giving the information or answer or producing the document;
- is admissible in evidence against the person in proceedings, other than:
- (c) proceedings for an offence against subsection 15(6); or
 - (d) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* (false or misleading information or documents) that relates to this Act; or
 - (e) proceedings for an offence against section 149.1 of the *Criminal Code* (obstruction of Commonwealth public officials) that relates to this Act.

17 Protection from liability for people making submissions or complying with requests or requirements

- (1) A person who, in good faith, makes a submission in response to an invitation under section 13 is not liable to civil proceedings for loss, damage or injury of any kind suffered by another person because of that conduct.
- (2) A person who, in good faith:
 - (a) gives information; or
 - (b) produces a document; or
 - (c) answers a question;when requested or required to do so under section 14 or 15 is not liable:
 - (d) to any proceedings for contravening any other law because of that conduct; or
 - (e) to civil proceedings for loss, damage or injury of any kind suffered by another person because of that conduct.

18 No loss of legal professional privilege

Information or a document does not cease to be the subject of legal professional privilege merely because it is:

- (a) included or referred to in a submission made in response to an invitation under section 13; or
- (b) given or produced in response, or included or referred to in a response, to a request or requirement made under section 14 or 15; or
- (c) referred to in answering a question asked pursuant to a request or requirement made under section 14 or 15.

19 Inspector-General may keep documents

Inspector-General may keep documents

- (1) The Inspector-General may take possession of a document produced under section 14 or 15 and keep it for as long as is necessary for the purposes of conducting the review to which the document is relevant.

Section 20

Certified copy to be supplied to person entitled to document

- (2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Inspector-General to be a true copy.

Certified copy to be treated as original

- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.

Right to inspect and copy the original

- (4) Until a certified copy is supplied, the Inspector-General must, at such times and places as the Inspector-General thinks appropriate, permit the person otherwise entitled to possession of the document (or a person authorised by that person) to inspect and make copies of all or part of the document.

20 Inspector-General may make and keep copies of documents

The Inspector-General may make and keep copies of all or part of any documents produced under section 14 or 15.

21 Access to ATO premises

The Commissioner of Taxation must comply with (or ensure compliance with) any reasonable request made by the Inspector-General for access by the Inspector-General, or a member of the Inspector-General's staff, to any premises occupied by the Australian Taxation Office for the purposes of:

- (a) receiving information or documents under section 14 or 15;
or
(b) asking questions under section 14 or 15.

Division 4—Handling sensitive or confidential information

22 Information that would be prejudicial to the public interest

Minister's power to certify that disclosure of information would be prejudicial

- (1) The Minister may give the Inspector-General a certificate stating that the disclosure of information relating to a specified matter would:
 - (a) prejudice the security, defence or international relations of the Commonwealth; or
 - (b) prejudice negotiations relating to a treaty or other international agreement; or
 - (c) be contrary to a treaty or other international agreement; or
 - (d) prejudice relations between the Commonwealth and a State or Territory; or
 - (e) involve the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet; or
 - (f) involve the disclosure of deliberations or advice of the Executive Council; or
 - (g) prejudice the prevention, investigation or prosecution of an offence against any law; or
 - (h) prejudice the prevention or investigation of, or the conduct of proceedings for recovery of civil penalties brought with respect to, other contraventions of any law; or
 - (i) be contrary to an order of a court or tribunal; or
 - (j) be contrary to the public interest for any other reason that could form the basis for a claim in a judicial proceeding that information relating to the matter should not be disclosed or documents relating to the matter should not be produced; or
 - (k) endanger the safety of any person; or
 - (l) prejudice the revenue of the Commonwealth.

Section 23

Certificates may have effect for information-gathering powers and/or reporting obligations

- (2) A certificate may be expressed to have effect for the purposes of either or both of the following:
- (a) the Inspector-General's information-gathering powers;
 - (b) the Inspector-General's reporting obligations.

However, a certificate based on the ground referred to in paragraph (1)(1) must only be expressed to have effect for the purposes of the Inspector-General's reporting obligations.

Effect of certificate on information-gathering powers

- (3) The following provisions apply while a certificate that is expressed to have effect for the purposes of the Inspector-General's information-gathering powers is in force:
- (a) a submission, or a record of a submission, that contains information relating to the matter specified in the certificate must not be made available under subsection 13(3);
 - (b) a person must not be requested or required under section 14 or 15 to give information, produce documents, or answer questions, relating to the matter specified in the certificate;
 - (c) any request or requirement made under section 14 or 15 before the certificate was given ceases to have effect, so far as it relates to the matter specified in the certificate.

Effect of certificate on reporting obligations

- (4) While a certificate that is expressed to have effect for the purposes of the Inspector-General's reporting obligations is in force, information relating to the matter specified in the certificate must not be included in a report under section 10 or 41.

23 Taxpayer information

Reports not to include information relating to a taxpayer's affairs

- (1) Information relating to a particular taxpayer's affairs must not be included in a report under section 10 or 41 if:

- (a) the taxpayer is named, or otherwise specifically identified, in the report as the taxpayer to whom the information relates; or
- (b) it is reasonably likely that people generally (other than people to whom the taxpayer has disclosed information relating to the taxpayer's affairs) would be able to work out the identity of the taxpayer to whom the information relates.

Submissions not to be made available if they include information relating to a taxpayer's affairs

- (2) A submission, or a record of a submission, that contains information relating to a particular taxpayer's affairs must not be made available under subsection 13(3) if:
 - (a) the taxpayer is named, or otherwise specifically identified, in the submission or record as the taxpayer to whom the information relates; or
 - (b) it is reasonably likely that people to whom the submission or record is proposed to be made available (other than people to whom the taxpayer has disclosed information relating to the taxpayer's affairs) would be able to work out the identity of the taxpayer to whom the information relates.

Note: This subsection applies even when the information relates to the submission-maker's own affairs.

Matters to be taken into account in "reasonably likely" test

- (3) For the purposes of applying paragraphs (1)(b) and (2)(b) to information relating to a particular taxpayer's affairs, the context in which the information appears, and information that is otherwise publicly available, must be taken into account (as well as any other relevant matter).

24 Identifying tax officials

Reports generally not to name tax officials

- (1) A report under section 10 or 41 must not name, or otherwise specifically identify, a particular tax official, other than the Commissioner of Taxation, as being a person whose conduct has been considered in the course of a review.

Section 25

Submissions not to be made available if they name tax officials

- (2) A submission, or a record of a submission, must not be made available under subsection 13(3) if it names, or otherwise specifically identifies, a particular tax official, other than the Commissioner of Taxation.

However this does not apply to references to parts of the ATO

- (3) For the purposes of this section, merely naming, or otherwise specifically identifying, a part of the Australian Taxation Office does not constitute naming or identifying a particular tax official.

25 Criticising the ATO or tax officials

Proposal to include criticism of the ATO or tax officials in a report

- (1) This section applies if it is proposed to include in a report under section 10 or 41 material that is expressly or impliedly critical of:
- (a) the Australian Taxation Office or a part of the Australian Taxation Office; or
 - (b) a tax official or a group of tax officials.

Commissioner to be given opportunity to make submissions

- (2) The material must not be included in the report unless the Inspector-General has given the Commissioner of Taxation, or a person authorised in writing by the Commissioner, a reasonable opportunity to make submissions to the Inspector-General in relation to the subject of the criticism.

Note: Compliance with this subsection for the purposes of including material in a report under section 10 also counts as compliance for the purposes of including substantially the same material in a report under section 41.

How submissions may be made

- (3) The Commissioner or the authorised person may choose to make either or both written or oral submissions.
- (4) If the Commissioner or the authorised person chooses to make oral submissions, the Commissioner or authorised person may:

- (a) make the submissions personally; or
- (b) choose another person to make the submissions on the Commissioner's or authorised person's behalf (whether or not the Commissioner or authorised person is present during those submissions).

Protection from liability for people making submissions

- (5) A person who, in good faith, makes a submission under this section is not liable:
 - (a) to any proceedings for contravening any other law because of that conduct; or
 - (b) to civil proceedings for loss, damage or injury of any kind suffered by another person because of that conduct.

No loss of legal professional privilege

- (6) Information or a document does not cease to be the subject of legal professional privilege merely because it is included or referred to in a submission made under this section.

26 Confidential submissions

Confidential submissions not to be made available or reported

- (1) If a person who makes a submission under section 13 has told the Inspector-General, or a member of the Inspector-General's staff, that the submission is to be kept confidential, then:
 - (a) the submission, or a record of the submission, must not be made available under subsection 13(3); and
 - (b) information contained in the submission must not be included in a report under section 10 or 41.

Restriction does not apply if same information is obtained by other means

- (2) However, paragraph (1)(b) does not prevent the inclusion in a report of information contained in a submission if the same information has also been obtained by the Inspector-General, or a member of the Inspector-General's staff, by other means.

Section 27

27 Legal professional privilege

Reports not to include privileged information or documents

- (1) Information or a document:
- (a) that has been given or produced to the Inspector-General, or a member of the Inspector-General's staff, under section 14, 15 or 25; and
 - (b) that is:
 - (i) the subject of legal professional privilege; or
 - (ii) derived from information or a document that is the subject of legal professional privilege;
- must not be included in a report under section 10 or 41.

Limited power to refer in reports to privileged legal advice

- (2) Despite subsection (1), a report may include a statement:
- (a) to the effect that legal advice (being advice contained in information or a document that was given or produced as referred to in paragraph (1)(a)) was considered in the course of the review; and
 - (b) outlining, in general terms, the relevance of that advice, or of any aspect of it, to the review.

However, in doing so, the other provisions of this Division must still be complied with.

Subsection (2) does not otherwise affect privilege

- (3) If a report includes a statement relating to legal advice as referred to in subsection (2), the advice does not cease to be the subject of legal professional privilege merely because:
- (a) the report includes that statement; or
 - (b) the report is given to the Minister; or
 - (c) the report, or any part of it, is tabled or otherwise made publicly available by the Minister.

Part 3—Administrative provisions about the Inspector-General and staff

28 Appointment

Appointment by Governor-General on full-time basis

- (1) The Inspector-General is to be appointed by the Governor-General by written instrument. The appointment is to be on a full-time basis.

Obligation to fill vacancy as soon as practicable

- (2) Whenever a vacancy occurs in the office of Inspector-General, an appointment must be made to the office as soon as practicable.

Period of appointment

- (3) The Inspector-General holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Terms and conditions not covered by this Act

- (4) The Inspector-General holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Governor-General.

29 Acting appointment

- (1) The Minister may appoint a person to act as the Inspector-General:
 - (a) during a vacancy in the office of Inspector-General (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Inspector-General is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Section 30

- (2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

30 Remuneration

- (1) The Inspector-General is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Inspector-General is to be paid the remuneration that is prescribed.
- (2) The Inspector-General is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

31 Leave

- (1) The Inspector-General has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Inspector-General leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

32 Engaging in other paid work

The Inspector-General must not engage in paid employment outside the duties of his or her office without the Minister's approval.

33 Disclosure of interests

The Inspector-General must give written notice to the Minister of all interests (financial or otherwise) that the Inspector-General has

or acquires and that could conflict with the proper performance of the Inspector-General's functions.

34 Resignation

The Inspector-General may resign his or her appointment by giving the Governor-General a written resignation.

35 Termination of appointment

Obligation to terminate on certain grounds

- (1) The Governor-General must terminate the appointment of the Inspector-General if the Inspector-General:
 - (a) becomes bankrupt; or
 - (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (c) compounds with his or her creditors; or
 - (d) assigns his or her remuneration for the benefit of his or her creditors; or
 - (e) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (f) fails to comply with section 32 (engaging in other paid work); or
 - (g) fails, without reasonable excuse, to comply with section 33 (disclosure of interests).

Discretion to terminate for misbehaviour or physical or mental incapacity

- (2) Subject to subsections (3) and (4), the Governor-General may terminate the appointment of the Inspector-General on the ground of misbehaviour or physical or mental incapacity.
- (3) If the Inspector-General:
 - (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
 - (b) has not reached his or her maximum retiring age within the meaning of that Act;

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his or her appointment cannot be terminated on the ground of physical or mental incapacity unless the CSS Board has given a certificate under section 54C of that Act.

- (4) If the Inspector-General:
- (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and
 - (b) is under 60 years of age;

his or her appointment cannot be terminated on the ground of physical or mental incapacity unless the PSS Board has given a certificate under section 13 of that Act.

36 Staff and consultants

Staff engaged under the Public Service Act

- (1) The staff required to assist the Inspector-General in the performance of the Inspector-General's functions are to be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
- (a) the Inspector-General and the APS employees so assisting the Inspector-General together constitute a Statutory Agency; and
 - (b) the Inspector-General is the Head of that Statutory Agency.

Secondments and similar arrangements

- (3) The Inspector-General may arrange with an Agency Head (within the meaning of the *Public Service Act 1999*) for the services of employees or officers of the Agency to be made available to the Inspector-General.

Consultants

- (4) The Inspector-General may, on behalf of the Commonwealth, engage persons having suitable qualifications and experience as consultants to the Inspector-General. The terms and conditions of the engagement of a person are such as are determined by the Inspector-General.

Part 4—Other matters

37 Secrecy

Definitions

(1) In this section:

person to whom this section applies means a person who is or was:

- (a) the Inspector-General; or
- (b) a member of the Inspector-General's staff.

protected document means a document that:

- (a) is obtained or made by a person to whom this section applies in the course of, or because of, the person's functions, powers or duties under or in relation to this Act; and
- (b) contains information relating to a taxpayer's affairs.

protected information means information that:

- (a) is disclosed to, or obtained by, a person to whom this section applies in the course of, or because of, the person's functions, powers or duties under or in relation to this Act; and
- (b) relates to a taxpayer's affairs.

Protected information may be recorded or disclosed only for purposes of this Act

(2) A person to whom this section applies commits an offence if:

- (a) the person:
 - (i) makes a copy or other record of any protected information or of all or part of any protected document; or
 - (ii) discloses any protected information to another person or to a court or tribunal; or
 - (iii) produces all or part of a protected document to another person or to a court or tribunal; and

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- (b) in doing so, the person is not acting in the course of performing or exercising functions, powers or duties under or in relation to this Act.

Penalty: Imprisonment for 2 years.

Courts generally cannot require protected information to be disclosed etc.

- (3) A person to whom this section applies cannot be required to:
 - (a) disclose any protected information to a court or tribunal; or
 - (b) produce all or part of a protected document to a court or tribunal;

unless that disclosure or production is necessary for the purpose of carrying into effect the provisions of this Act.

38 Reporting breaches of duty or misconduct

If the Inspector-General forms the opinion either before, during or after conducting a review:

- (a) that a person who is or was a tax official has engaged in misconduct; and
- (b) that the evidence is of sufficient weight to justify the Inspector-General doing so;

the Inspector-General must report the evidence to:

- (c) if the person is or was the Commissioner of Taxation—the Minister; or
- (d) otherwise—the Commissioner.

39 Victimisation

Actually causing detriment to another person

- (1) A person (the **first person**) commits an offence if:
 - (a) the first person engages in conduct; and
 - (b) the first person's conduct causes any detriment to another person (the **second person**); and
 - (c) the first person intends that his or her conduct cause detriment to the second person; and

- (d) the detriment is caused without the consent of the second person; and
- (e) the first person engages in his or her conduct because the second person or a third person:
 - (i) gave, or may give, information when requested or required to do so under section 14 or 15; or
 - (ii) produced, or may produce, a document when requested or required to do so under section 14 or 15; or
 - (iii) attended, or may attend, to answer questions when requested or required to do so under section 14 or 15; or
 - (iv) answered, or may answer, questions while attending to answer questions when requested or required to do so under section 14 or 15; or
 - (v) is expressly or impliedly referred to in a report under section 10 or 41; or
 - (vi) is the subject of a report under section 38.

Penalty: Imprisonment for 6 months.

Threatening to cause detriment to another person

- (2) A person (the **first person**) commits an offence if:
 - (a) the first person makes to another person (the **second person**) a threat to cause any detriment to the second person or to a third person; and
 - (b) the first person:
 - (i) intends the second person to fear that the threat will be carried out; or
 - (ii) is reckless as to causing the second person to fear that the threat will be carried out; and
 - (c) the first person makes the threat because a person:
 - (i) gave, or may give, information when requested or required to do so under section 14 or 15; or
 - (ii) produced, or may produce, a document when requested or required to do so under section 14 or 15; or
 - (iii) attended, or may attend, to answer questions when requested or required to do so under section 14 or 15; or

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- (iv) answered, or may answer, questions while attending to answer questions when requested or required to do so under section 14 or 15; or
- (v) is expressly or impliedly referred to in a report under section 10 or 41; or
- (vi) is the subject of a report under section 38.

Penalty: Imprisonment for 6 months.

- (3) For the purposes of subsection (2), a **threat** may be:
 - (a) express or implied; or
 - (b) conditional or unconditional.
- (4) In a prosecution for an offence against subsection (2), it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

40 Protection from liability for Minister, Inspector-General etc.

- (1) This section applies to the following persons (**protected persons**):
 - (a) the Minister;
 - (b) the Inspector-General;
 - (c) a person acting under the Inspector-General's authority.
- (2) A protected person is not liable to civil proceedings for loss, damage or injury of any kind suffered by another person as a result of the performance or exercise, in good faith, of the protected person's functions, powers or duties under or in relation to this Act.

41 Annual report

Annual report to be given to Minister

- (1) The Inspector-General must, as soon as practicable after 30 June in each year, prepare and give to the Minister a report (an **annual report**) on the operations of the Inspector-General during the year that ended on that 30 June.

Note: For limitations on what may be included in reports under this section, see the following provisions:

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- (a) section 22 (information that would be prejudicial to the public interest);
- (b) section 23 (taxpayer information);
- (c) section 24 (identifying tax officials);
- (d) section 25 (criticising the ATO or tax officials);
- (e) section 26 (confidential submissions);
- (f) section 27 (legal professional privilege).

Details of any subsection 8(2) directions to be included

- (2) The report must include details of any directions given by the Minister under subsection 8(2) during the year.

Annual report to be tabled in Parliament

- (3) The Minister must cause a copy of each annual report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

42 Delegation of certain powers by Inspector-General

The Inspector-General may delegate all or any of the following powers to a member of the Inspector-General's staff:

- (a) the Inspector-General's powers under section 13 to invite submissions, to decide matters connected with the process for inviting or making submissions, and to make submissions available;
- (b) the Inspector-General's power under section 21 to request access to premises;
- (c) the Inspector-General's power under section 25 to give a reasonable opportunity to make submissions;
- (d) the Inspector-General's powers under subsections 36(3) and (4) to make arrangements and engage consultants (including determining the terms and conditions of their engagement).

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43 Regulations

General power to make regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Regulations about fees and allowances for expenses

- (2) Without limiting subsection (1), the regulations may provide for a person who attends before the Inspector-General, or a member of the Inspector-General's staff, under section 13, 14, 15 or 25 to be paid, in relation to that attendance, fees and allowances for expenses fixed by, or calculated in accordance with, the regulations.

44 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Consequential amendments

Freedom of Information Act 1982

1 Schedule 3

Insert in its appropriate alphabetical position:

Inspector-General of Taxation Act 2003, section 37

National Crime Authority Act 1984

2 Schedule 1

Insert in its appropriate alphabetical position:

Inspector-General of Taxation Act 2003, section 37

[*Minister's second reading speech made in—
House of Representatives on 19 September 2002
Senate on 17 October 2002*]

(193/02)