

Commissioner's address to the Tax Institute National Convention 2019

- Taxing times: positioning the ATO as an instrument of democracy
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Commissioner Chris Jordan, AO

Address to The Tax Institute 34th National Convention

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(Check against delivery)

Introduction

Good morning and thank you once again for inviting me to speak today.

This is my seventh address to the Tax Institute's National Convention as Australian Tax Commissioner, and always one of the key addresses of the year for me.

I'd like to congratulate the Institute's Stuart Glasgow and the program committee on organising another excellent event with an impressive line-up of speakers, including a number of my ATO colleagues.

Bob, thank you for your opening remarks this morning.

I think it's fair to say that the ATO has an excellent relationship with the Institute and its members, because we believe that what you do – providing advice to your clients and often acting as our frontline auditors – makes the system better for everyone.

In partnership, we provide an essential service for the national economy, which is essential to the wellbeing of all Australians.

A healthy tax system which people have confidence in contributes to the stability and prosperity of our country.

We are currently operating in a regulatory environment where everything is under scrutiny, and where it's more important than ever that we are seen to be fair, open, communicative and responsive.

Everyone is a stakeholder in what we do.

We, at the ATO, want to be seen to be working with the community, regardless of the market segment, from the smallest earner to the biggest multinational, and every business and individual in between.

As tax officers, we are keepers of knowledge – a huge body of knowledge about tax laws, rules, rights and processes – that we share so that taxes are collected in a fair, equitable and lawful way for the good of our community.

Journalist Verona Burgess wrote in *The Mandarin* last month – “2019 may well be the year of the watchdog”.

With a Federal Integrity and Corruption Commission on the cards – integrity is everything.

Off the back of the Banking Royal Commission's recommendations, Burgess singled out the ATO.

She commended “(our) no-nonsense approach” saying we have “worked hard and continuously on finding the right balance between its iron hand and velvet glove”, and that we “may well be the most successful of the economic regulators.”

This was, unsurprisingly, very pleasing to read.

Speaking of iron hands and velvet gloves, when my young son asked me recently, “Dad are you the Chief Tax Collector?”, as a classmate of his had said, I told him – “well, I guess I am.”

As we had been reading Robin Hood a couple of weeks before (and yes, I still read bedtime stories) he then asked whether I went knocking on doors to take things from poor people like the Sheriff of Nottingham's soldiers.

I said that while some people may wish to portray me that way, I would like to think I'm more involved in a noble function of democracy, not the strong arm of an oppressive state. His eyes glazed over.

Perception is critical – about which I will say more shortly.

But I'd like to start with a story about the importance of getting advice, and the ATO's commitment to providing good advice to all our stakeholders.

Good advice means better outcomes: supporting small business to thrive

I was recently in Perth speaking with staff working in our Small Business team.

They shared with me a good result they'd had with a local owner of two cafes who had got into difficulties with her businesses.

Of course we have changed some of the specifics of this example to protect the taxpayer's identity. The business operator found herself with a \$200,000 GST debt. She had suffered from an illness and had some difficult family issues which meant she fell behind in tax as well as other business matters.

The team, I was pleased to hear, explained in detail what needed to be done to get back on track, and put an agreed payment plan in place that allowed the business to continue operating while the debt was recovered over time.

For me this is a simple example of working with a business to support them to continue to operate, providing advice on tax obligations so we can perform our duty not at the expense of clients, but with them. Particularly when they are going through difficulties in their personal lives.

In this case it turned out that the business owner was, surprisingly, unrepresented – she did not have a tax agent, and came to our attention via the Curtin University Tax Clinic.

At the advice of clinic volunteers, she enlisted a tax agent, who has subsequently ensured that the business has the right systems in place to continue to be viable.

It reminded me of when I was at law school in the '70s, in Sydney, where I helped set up the Redfern Legal Centre.

Based in a then low socio-economic area of Sydney, to this day the centre has a focus on social justice and human rights for vulnerable people and communities. While people came into the centre because they were in trouble with the law, I soon recognised there were often deeper reasons behind why they were really there.

Needing a lawyer was just one of many problems they were facing and accessing legal advice was a vital first step in turning things around.

As a young law student, this was a formative moment.

Getting the right advice at the right time can make all the difference.

For Redfern clients, legal advice could prevent their lives spiralling into debt, incarceration, family breakdown, the lot.

For tax clients – sometimes it's not so different. Problems in non-payment of tax are often symptomatic of other issues in people's lives.

Knowing where to go, and when, to get the guidance you need is critical.

Feeling you can reach out, and will be listened to and supported – is also critical.

As part of this, anticipating and addressing problems before they escalate is one of the key objectives in the ATO's regulatory activity.

And while the ATO can't be the provider of all the services people need, we've been working long and hard on a suite of reforms to build that focus on the whole client into our systems and culture, to help build trust and confidence.

By changing the culture of how we do business we are seeing some outstanding results across all markets – as people, small business and large corporates, feel more confident about their dealings with us, making it better for everyone.

That's also why much of the media commentary of 2018 was so disappointing. While we have done much to build trust and confidence in the system and in us, to reassure people it is OK to come and talk to us about their problems before they get out of hand, some media was doing the opposite. Particularly the *Four Corners* report on the ATO, containing allegations about inappropriate use of ATO

powers to issue garnishee notices and extract payment, especially from small business taxpayers.

Small businesses are a very important market for the ATO.

We've been focused for some time on working closely with them to help them to get it right. We have worked hard to build a relationship of trust and openness with this market and our Small Business Stewardship Group plays a fundamental role in this.

So of course allegations of cowboy cash-grabs on small business and that debt staff were rewarded for amounts collected, as well as suggestions of systemic reckless and disrespectful conduct toward Australian taxpayers, are particularly concerning.

This is why I was delighted to see that just yesterday, the Inspector General of Taxation released his report on his investigation into these allegations.

And this review has found that the allegations are not substantiated.

The review found no evidence that management had given directions to staff to issue standard garnishee notices as a cash-grab.

It found that it is 'very clear' that staff issuing garnishee notices applied due process in a manner that had regard for the taxpayer, and acted entirely within the objectives of the overall ATO administrative policy in issuing garnishee notices.

I quote: "In the IGTO's view, the requirement for staff to exercise their own judgment and not issue enduring garnishee notices in most or every... case was *not only ATO endorsed policy but was also understood by DBL (Debt Business Line) staff, as a whole.*"

The review also makes it very clear that:

- ATO staff followed the guidelines on garnishees, keeping the taxpayer first in their considerations
- There was no monetary collection target for staff
- Staff did not believe they had a revenue or volume KPI overriding any of their normal processes.

A fundamental aspect of the *Four Corners* show, and more recent media, has been these garnishee allegations.

It is these allegations about garnishee practices that have now been refuted after exhaustive investigation. A proper investigation by the Inspector General has found them to be false.

I believe that people genuinely want their institutions to be reliable, moral and community focussed.

People want the ATO to be doing its job properly and to see that being done, and to have confidence that it is the case.

And while the ATO is not perfect, when mistakes are made, we should own them and, if necessary, implement improvements.

In fact we have been pushing through significant reforms to the tax system to make things work better, specifically for small business.

We've introduced or enhanced a range of services aimed at earlier and fair resolution of disputes for small business, including In-house Facilitation, Dispute Assist, ATO Test Case Litigation and Fast Intensive Triage.

And a new Government initiative this year is the expansion of the Tax Clinics program.

Based upon the Curtin Tax Clinic, which I touched on before, the tax clinics are independent from the ATO and will assist unrepresented taxpayers to understand and comply with their tax and super obligations.

The new tax clinics will soon enter pilot phase in 10 universities across the country and are set up to fill a niche gap in the market for unrepresented individuals and small businesses.

They are for taxpayers who may not be able to afford professional advice and representation.

While the ATO doesn't play a direct role in the running of the clinics, it's a great mechanism for taxpayer support, alongside our ATO officers and Tax Help volunteers, who have helped thousands of Australians for over 30 years.

From 1 March 2019, there is a new small business division at the Administrative Appeals Tribunal, offering a low-cost avenue for small businesses who dispute our assessment of their tax position. Generally these hearings will be without lawyers, but if lawyers are required, the ATO will cover the cost of equivalent legal representation for the small business.

Applicants will also have a case manager to support them, pay a reduced application fee and, after the hearing process is concluded, decisions will be finalised within 28 days.

But of course if we can work with small businesses earlier to improve their cash flow, record keeping, identify mental health challenges and understand why they are finding it difficult to comply, then that is even better.

To this end e-invoicing is another initiative we believe will make a difference in the lives of small businesses by saving them time and money, cutting business costs and improving their cash flow.

These are just a few of the many examples of our commitment to supporting small businesses.

I welcome the Inspector General's report on our use of garnishee notices, and I feel optimistic about the future and our work with the small business community – to make tax quick and painless for honest business owners.

Now I would like to say a few words about the role that you, the Institute and its members, play in building a stronger, fairer and more open tax system and help the ATO do its work

Tax agents – the backbone of our tax system

A partnership with tax agents has always been a priority for the ATO. A big part of this is our new online service for agents that as of this week is available to all tax and BAS agents. The new service will eventually replace our existing tax and BAS agent portals.

We designed these new services in collaboration with tax and BAS agents, making sure to address many of the irritants from previous systems.

The private beta started with just six agents, and over 12 months in 2018, expanded to more than 1500 users testing the system.

Our team reviewed and personally responded to every item of feedback provided, including providing reasons when suggested changes were not implemented.

We published a register of all feedback for transparency throughout the process.

In an interview with Fairfax in January, tax partner at business accounting firm Trust One, Kathryn Harris, who has been part of our private beta, said the changes have saved her 'hours a week'.

Kathryn referred to the new system as 'just awesome' and commented that it's allowing her team to do their jobs better because there is much more functionality.

Through this consultative approach, we gained valuable insights into your needs, which we used to refine the service before expanding the private beta to give access to all agents over the last couple of months.

Our new service provides agents with greater visibility of client data in real-time, including client tax return history and additional account and transaction details, which should save you time and enable you to better support your clients.

A member's feedback in TaxVine last week gave some great feedback and I encourage all of you to give us your feedback through the feedback link within Online services for agents. We'll continue to review your feedback and work with you and your digital service providers to prioritise future enhancements within Online services for agents, and through your practice management software.

In 2016, when I made the tough decision to push back these reforms to our services to agents, it may have been difficult for you.

But I made that decision to delay implementation for the sake of long-term quality and functionality.

Subsequently, we had a stable tax time in both 2017 and 2018 and now we have a system that works better than any we have had.

I want to thank you for your patience and partnership in making this happen.

Your professionalism, your engagement, and your willingness to weather the delays in the interests of the greater long-term good, is a credit to your members, and demonstrates the strength of our relationship with you.

Increasingly, the ATO is shifting our focus from individual transactions to a more holistic approach and each taxpayer's ongoing relationship with the tax system.

The new system is helping support this, and I look forward to hearing about the benefits you experience and working with you to further refine the system over the coming months.

Individuals focus: the tax gap

We're also doing some important work in our individuals market.

In July 2018 we released the Individuals not in business tax gap for the first time, and found that, unsurprisingly, work-related expenses are the main driver of the gap. Incorrect rental claims and not reporting cash wages also contribute.

Perhaps more surprising was the number of returns that needed adjusting. This shows that in the individuals market, a lot of people are getting things a little bit wrong, which adds up to a lot.

Our efforts to reduce the gap focus on prevention, ranging from enhanced guidance and advice, through to better data and technology to help taxpayers get their claims right up front, as well as enforcement activities.

For work-related expenses, our efforts are beginning to pay off.

For the first time in almost 25 years, the average work-related claim decreased, falling on average by about \$130 over the past two years. The estimated revenue gain for that same period will be around \$600 million.

Our next focus is rental income and deductions.

As part of our broader random enquiry program, our auditors have now completed over 300 audits on rental property claims and found errors in almost nine out of 10 returns reviewed.

We're seeing incorrect interest claims for the entire investment loan where it has been refinanced for private purposes, incorrect classification of capital works as repairs and maintenance, and taxpayers not apportioning deductions for holiday homes when they are not genuinely available for rent.

And when you consider that rentals include over 2.1 million taxpayers claiming \$47.4 billion in deductions, against \$44.1 billion in reported income, you can get a sense of the potential revenue at risk.

We also know that 85% of taxpayers with rental properties are represented by an agent, so you can see there is work we can do together in this space. To assist we have developed a range of products for tax agents including a comprehensive rental guide, which can be accessed on our website.

We're also continuing our efforts in the superannuation space – chiefly around helping people find their lost super or to consolidate various accounts.

Small business income tax gap

Work is progressing to finalise the income tax gap for the small business sector.

Our early insights from that work show that the population can be broken into three groups:

- Those inside the system.
- Those outside the system.
- Those inside the system some of the time.

While most people inside the system try to get it right, those who operate outside the system contribute to a large amount of the gap. We have identified that over 60% of the gap is made up of black economy behaviour, meaning taxpayers are deliberately omitting income and overclaiming expenses.

The Government has provided us with additional funding for a black economy program, based on the Black Economy Taskforce recommendations. So you will see an increased focus in this area through both physical visits to “cash only” businesses and better use of data analytics. It will become much harder to operate outside the system, or to report income below what your lifestyle suggests.

The size of the small business income tax gap is much larger in percentage terms than in other market segments at between 10% and 15%. While we will be releasing the figures soon, to give an indication, we are expecting the small business income tax gap to be in the order of \$10 billion.

Although our small business population is very diverse, the tax gap program has highlighted some common issues, like not declaring all income or failing to account for private use of business assets or funds.

But, when we see businesses operating well, we see that they get the basics right. They keep good records, they run their business with the help of technology (such as point of sale software and accounting systems), and they seek advice from a tax professional when they need it.

Large market and legal professional privilege

And finally a few points about our large market.

We at the ATO are working very hard to hold large market taxpayers to account.

29% of all corporate tax in Australia is paid by our largest 10 companies, and the top 100 pay 42% of all corporate tax.

With Australia's 1,500-odd large corporate groups (those with a turnover of \$250 million plus) responsible for over \$44 billion in tax revenue, it's not hard to see why the big end of town is on our radar.

More than just the sheer dollar value, though, there is a need to focus on these groups because of the influence they have on our other markets.

Upholding the community's trust in us to administer the tax system fairly, no matter how big the corporate, is a key focus for us.

If people think large corporates are not paying the right amount of tax, this can have a large negative impact on areas such as small businesses, and individuals with work-related expenses or rental properties.

One of the Government's key initiatives in tax administration has been the establishment of our Tax Avoidance Taskforce.

From 1 July 2016 to 31 January 2019 we have raised:

- \$8 billion in tax liabilities against foreign-owned multinationals and public groups
- \$4.9 billion in tax liabilities against wealthy individuals and associated groups.

Another focus for us going forward is cracking down on the misuse of legal professional privilege.

Don't misunderstand me – we're not opposed to legal professional privilege as a concept. We want taxpayers to be able to get the right and proper legal advice.

But when lawyers are claiming privilege on thousands or tens of thousands of documents – and we have seen this – we start to wonder if it's a genuine claim or an effort to conceal a contrived tax arrangement.

It all comes back to fairness – are you using legal professional privilege because you have a genuine need, or as a way to cheat the system? We'll be taking a tougher stance in the future.

Conclusion

I've been Tax Commissioner for six years now. I'm roughly halfway through my tenure at the helm of the ATO.

And it feels like a good time for reflection on the principles that underpin our work, both now and in the years ahead.

I want to thank all the key partners who are helping us revitalise, streamline and open up the ATO – and that includes all of you.

It's also a good time to thank my staff – the people who work at the ATO across Australia, who have weathered some not insignificant storms recently, and who are the heart of our organisation.

I like to surround myself with good people who help me learn, help me do better, and help the ATO and the Australian taxation system do better for everyone. I have been fortunate to have been able to attract some top talent into the ATO as well as developing and promoting top talent from within.

I firmly believe the system should serve the many – the good, the earnest and the hardworking, the compliant citizens who abide by the law and deserve to have its institutions live up to the standards they themselves have set by their goodness and hard work.

I will continue to promote an ATO that can be the trusted regulator we need, that makes the tax system fairer, simpler, better for everyone.

For those who are antagonistic towards us, and our reform program, who do not want to pay their share of tax, who see the ATO as something of an enemy, I believe community sentiment is against you and will increasingly become more so.

I'm looking forward to working with the members of the Tax Institute to continue on this mission, so fundamental to a tax administration that people can have trust and confidence in.

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