

EVALUATING AUSTRALIA'S TAX DISPUTE RESOLUTION SYSTEM IN THE CONTEXT OF THE ATO'S REINVENTION PROGRAM

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Abstract

The world in which we live is rapidly changing. Revenue authorities around the world are thus faced with the challenge of delivering contemporary tax administration that optimises the value of sophisticated technology as well as meeting the ever-rising expectations of taxpayers, the community and governments. Against increasing resource constraints, revenue authorities are consequently implementing projects aimed at transforming their tax systems and tax administrations. These transformation programs address a range of topics, including using new technologies to improve compliance and taxpayer services, redesigning the tax system for increased tax fairness and optimising tax collection. The Australian Taxation Office (ATO) is currently undergoing a broad transformational change program, 'Reinventing the ATO', focused on achieving the ATO's vision of being 'a contemporary, service-oriented organisation'. The Reinvention program also incorporates the ATO's adoption of the Digital by default initiative which requires most people to use digital services to send and receive information to and from, and interact with, the ATO.

Against this background, this paper conducts a dispute systems design (DSD) evaluation of the Australian tax dispute resolution system in the context of the ATO's Reinvention program and the Digital by default initiative, and consequently makes recommendations on the tax dispute resolution system looking forward in the ATO's Reinvention program. This paper finds that the Reinvention program enhances the Australian tax dispute resolution system in a number of ways. However, the benefits of the digital solutions introduced as part of the Reinvention program, including online web chat services, virtual assistance, a digital app and SMS notifications, do not fall equally on all segments of the taxpayer population which the ATO serves. In particular, vulnerable taxpayer groups, such as the elderly, disabled, low-income earners and taxpayers with limited English proficiency, may not receive the benefits of digital tax services due to a 'digital divide' between those with access, and the knowledge and ability to use such services. This paper concludes that it is critical that the ATO conducts research on the service needs and preferences of vulnerable taxpayer groups in order to enhance equity of access to the dispute resolution system and consequently, improve voluntary taxpayer compliance.

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1. INTRODUCTION

The world in which we live is rapidly changing. Revenue authorities around the world are thus faced with the challenge of delivering contemporary tax administration that optimises the value of sophisticated technology as well as meeting the ever-rising expectations of taxpayers, the community and governments. As a consequence, revenue authorities are implementing projects aimed at transforming their tax systems and tax administrations. These transformation programs address a range of topics, including using new technologies to improve compliance and taxpayer services, redesigning the tax system for increased tax fairness, optimising tax collection and addressing the informal economy.²

The Australian Taxation Office (ATO) is currently undergoing a broad transformational change program, ‘Reinventing the ATO’, focused on achieving the ATO’s vision of being ‘a contemporary, service-oriented organisation’.³ The program is aimed at improving taxpayer and staff experiences as well as transforming the ATO’s culture to be more service-oriented. At a high level, implementation of the program is expected to better position the ATO to: be more contemporary; innovate with technology; and meet taxpayer expectations.⁴ The program applies to all aspects of the ATO’s operations, including infrastructure, tools, services and capability. It is expected to create a different internal culture resulting in a stronger connection to the community and an openness and willingness to change in order to maximise the community’s willing participation in the tax system.⁵

The ATO’s Reinvention program was initiated partly in response to the Australian Public Service Commission’s capability review in 2013, which outlined the challenge for the ATO to transform its existing processes, systems, culture and workforce to be more agile, responsive, efficient and effective.⁶ The Reinventing the ATO program formally commenced in 2015 with the release of the Reinventing the ATO Blueprint.⁷ The ‘Blueprint’ was co-designed with taxpayers and ATO staff and describes their expected experience shifts as a result of the implementation of the program. It outlines six comprehensive programs of work that the ATO have established to transform their culture, systems, practice and processes:⁸

1. Digital infrastructure and services
2. Smarter data
3. Working with our partners
4. Tailored engagement and support
5. Workforce capability and culture

² Aurélie Barnay et al, ‘Tax myths: Dispelling myths about tax transformation in rapidly growing economies’ (McKinsey Centre for Government, September 2015) 4.

³ Australian Taxation Office, *Program blueprint summary* (22 August 2016) <<https://www.ato.gov.au/About-ATO/Managing-the-tax-and-super-system/Strategic-direction/Program-blueprint-summary/>>.

⁴ While productivity benefits and operational savings were expected from the Reinventing the ATO program, they were not a key driver for its implementation. Australian National Audit Office, *Costs and Benefits of the Reinventing the ATO Program* (2017) 14, [1.3]. This contrasts with the Internal Revenue Service’s (IRS’s) Future State initiative, where cost is a key driver. See William J Wilkins, ‘Exploring the IRS Future State: Balancing Taxpayer Needs with IRS Resource and Budget Constraints’ (Presentation to the ABA National Institute on Tax Controversy, Las Vegas, 9 December 2016) 3.

⁵ Australian National Audit Office, above n 4, 14-15, [1.5].

⁶ Ibid 14, [1.4].

⁷ Australian Taxation Office, *Program Blueprint* (March 2015). The precursor to the Reinvention program was the ATO’s 2020 Vision and Mission, developed in July 2013 following the appointment of the current Australian Commissioner of Taxation, Chris Jordan.

⁸ Ibid 7. Existing and new ATO projects have been assigned to one of the six strategic programs. There are 100 Reinventing the ATO projects. See Australian National Audit Office, above n 4, Appendix 2.

6. Governance and measuring success

Another major driver of the ATO's Reinvention program was acknowledgement of the growing community expectations around Government services being simpler, faster and easier to use. Recognising the change in community expectations, the Government developed the digital transformation agenda being led by the Digital Transformation Office (DTO), formally established in July 2015.⁹ In the 2015-16 Federal Budget the Government announced its intention to proceed with the 'Reducing red tape measure – reform to the Australian Taxation Office.'¹⁰ Part of this measure included the Digital by default initiative, 'a proposal that will progressively make the method of interacting with the ATO, in a digital manner, with support for those unable to transition.'¹¹ This initiative means that the ATO will require most people to use their digital services to send and receive information and payments to and from the ATO.¹² Thus, with digital solutions being the primary medium of service delivery envisaged by the Reinvention program, the way in which information is provided to taxpayers, the ATO's interactions with taxpayers and their inbound and outbound transactions, will undergo significant transformation in all areas of the ATO's tax administration.

As noted above, a number of other revenue authorities around the world are implementing projects aimed at transforming and digitalising their tax systems and tax administrations. For example, Inland Revenue in New Zealand (NZ) are changing to make the tax system more open, simpler and more certain for New Zealanders to pay their taxes and receive their entitlements through its 'Business Transformation' programme.¹³ Business Transformation is a multi-stage programme aimed at modernising the NZ tax system by 2021 through streamlining Inland Revenue's processes, policies and upgrading their online services.¹⁴ In the United Kingdom (UK), HM Revenue and Customs (HMRC) is currently over halfway through its ten-year modernisation programme to 'create a tax authority fit for the future.'¹⁵ The modernisation programme includes investment in new online services, data analytics, new compliance techniques, new skills and new ways of working, 'to make it easier for the honest majority of customers to pay their tax, including by improving customer service, and harder for the dishonest minority to cheat the system.'¹⁶ While in the United States (US), the IRS has been working on a 'Future State' initiative for tax administration. The Future State initiative seeks to 'take advantage of the latest technology to move the entire taxpayer experience to a new level ... in a way that meets the needs of taxpayers and the tax community in an efficient and effective manner while respecting taxpayer rights.'¹⁷ Notwithstanding that the various jurisdictions are at different stages of the implementation of their tax transformation programs, common to all of the transformation programs and their incorporation of digital solutions, is that they affect significant areas of tax administration where taxpayers need to interact with

⁹ The DTO was superseded by the Digital Transformation Agency, <<https://www.dta.gov.au/>> in October 2016.

¹⁰ Australian Government, *Budget 2015: Part 2: Expense measures* <http://www.budget.gov.au/2015-16/content/bp2/html/bp2_expense-21.htm>.

¹¹ Australian Taxation Office, *Digital by Default Consultation Paper* (November 2015) 3.

¹² Ibid 6.

¹³ See Inland Revenue, *Transforming Inland Revenue* (19 February 2018) <<http://www.ird.govt.nz/transformation/?id=footer>>.

¹⁴ Inland Revenue, *Our Business Transformation Programme* (29 January 2018) <<http://www.ird.govt.nz/transformation/bt-programme/bt-programme-section-contents.html>>.

¹⁵ HM Revenue and Customs, *HMRC announces next step in its ten-year modernisation programme to become a tax authority fit for the future* (15 November 2015) <<https://www.gov.uk/government/news/hmrc-announces-next-step-in-its-ten-year-modernisation-programme-to-become-a-tax-authority-fit-for-the-future>>.

¹⁶ Ibid.

¹⁷ Internal Revenue Service, *Future State Initiative* (5 November 2018) <<https://www.irs.gov/newsroom/future-state-initiative>>.

revenue authorities. Furthermore, the ways by which revenue authorities interact with taxpayers impact on the public perception of the tax system and the degree of voluntary compliance.¹⁸

One critical area of taxpayer-revenue authority interaction is that of tax dispute resolution. Thus, this paper provides a dispute system design (DSD) evaluation of the tax dispute resolution system of Australia in the context of the ATO's Reinventing the ATO program. This paper adopts a DSD perspective given that the aim of DSD of reducing the cost of handling disputes and producing more satisfying and durable resolutions, aligns with the delivery of contemporary tax administration. Previous DSD evaluations of the Australian tax dispute resolution system have all been conducted prior to the implementation of the ATO's Reinvention program, with the most recent evaluation being published in 2015.¹⁹ Hence, the purpose of this paper is two-fold. First, this paper seeks to provide a DSD evaluation of the Australian tax dispute resolution system in the context of the various initiatives introduced as part of the ATO's Reinventing the ATO program, including its adoption of the Digital by default initiative. Secondly, based on the DSD evaluation conducted, this paper aims to provide recommendations on the tax dispute resolution system for the ATO (and other revenue authorities undergoing similar transformation programs) going forward in its Reinvention program. Accordingly, it is not the purpose of this paper to resolve any previously identified structural DSD deficiencies in the Australian tax dispute resolution system²⁰ or to make recommendations for major reform to the dispute resolution procedures.

The remainder of this paper is organised as follows. Section 2 will outline the set of DSD principles which will be used in this paper to evaluate the Australian tax dispute resolution system. Section 3 will give a brief overview of the current tax dispute resolution system in Australia and section 4 will then provide a DSD evaluation of the system in the context of the ATO's Reinventing the ATO program. Section 5 will discuss the impact of the ATO's Reinvention program on the DSD evaluation conducted and provide possible recommendations for the ATO going forward. Lastly, section 6 will provide the conclusions and limitations of the paper.

2. THE DISPUTE SYSTEMS DESIGN PRINCIPLES UTILISED

DSD refers to a deliberate effort to identify and improve the way an organisation addresses conflict by decisively and strategically arranging its dispute resolution processes.²¹ It concerns the design and implementation of a dispute resolution system that is a series of procedures for handling disputes, rather than handling individual disputes on an ad hoc basis.²² The origin of

¹⁸ Organisation for Economic Co-operation and Development, *Principles of Good Tax Administration* (Practice Note GAP001, 2001) 3.

¹⁹ Duncan Bentley, 'Problem Resolution: Does the ATO Approach Really Work?' (1996) 6(1) *Revenue Law Journal* 17 updated in Duncan Bentley, *Taxpayers' Rights: Theory, Origin and Implementation* (Kluwer Law, 2007); Sheena Mookhey, 'Tax dispute systems design' (2013) 11 *eJournal of Tax Research* 79; Melinda Jone, 'Evaluating Australia's tax dispute resolution system: A dispute systems design perspective' (2015) 13 *eJournal of Tax Research* 552.

²⁰ See, eg, Mookhey, above n 19, at 89-90; Jone, above n 19, 577-578.

²¹ See William L Ury, Jeanne M Brett and Stephen B Goldberg, *Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict* (Program on Negotiation at Harvard Law School, first published 1988, 1993 ed); Cathy A Costantino and Christina S Merchant, *Designing Conflict Management Systems: A Guide to Creating Productive and Healthy Organizations* (Jossey-Bass, 1996).

²² John Lande, 'Principles for Policymaking About Collaborative Law and Other ADR Processes' (2007) 22 *Ohio State Journal on Dispute Resolution* 619, 630.

DSD began in the context of workplace disputes and can be traced to the publication of *Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict* by Ury, Brett and Goldberg in 1988.²³ DSD has since been applied in ‘a host of organisations in the public, private, and nonprofit sectors to address the myriad disputes organisations face both within and outside their walls.’²⁴ Furthermore, and of relevance to this paper, DSD has also been applied in the context of tax dispute resolution.²⁵

DSD identifies three primary methods of conflict resolution: interests, rights and power-based procedures.²⁶ Interests-based approaches focus upon the underlying interests of the parties to produce solutions to satisfy as many interests as possible.²⁷ Rights-based approaches involve a determination of which party is correct according to some independent and objective standard.²⁸ Power-based approaches are characterised by the use of power and frequently involve an exchange of threats and/or acts of aggression.²⁹ Interests, rights and power-based approaches produce different costs and benefits. DSD theory posits that ‘in general, reconciling interests costs less and yields more satisfactory results than determining who is right, which in turn costs less and satisfies more than determining who is more powerful.’³⁰ Accordingly, the costs of resolving disputes can be reduced by designing and implementing ‘interests-orientated’ systems.³¹ An interests-orientated system promotes the resolution of disputes through interests-based procedures wherever possible, but also provides ‘low cost ways to determine rights or power for those disputes that cannot or should not be resolved by focusing on interests alone.’³² In the context of tax dispute resolution, strategies utilised by tax authorities such as early engagement with taxpayers and the use of interests-based ADR processes,³³ are consistent with the focus of DSD on the development of interests-orientated systems.

²³ Ury, Brett and Goldberg, above n 21.

²⁴ Tina Nabatchi and Lisa Blomgren Bingham, ‘From Postal to Peaceful: Dispute Systems Design in the USPS REDRESS Program’ (2010) 30 *Review of Public Personnel Administration* 211, 212. For review articles on the use of DSD in the contexts of employment, education, the environment, criminal justice, family disputes, civil litigation in courts, and community disputes, see Symposium, ‘Conflict Resolution in the Field: Assessing the Past, Charting the Future’ (2004) 22 *Conflict Resolution Quarterly* 1

²⁵ See, eg, Bentley, ‘Problem Resolution: Does the ATO Approach Really Work?’, above n 19, updated in Bentley, *Taxpayers’ Rights: Theory, Origin and Implementation*, above n 19; Mookhey, above n 19; Jone, above n 19; Melinda Jone, ‘Evaluating New Zealand’s tax dispute resolution system: A dispute systems design perspective’ (2016) 22 *New Zealand Journal of Taxation Law and Policy* 228; Melinda Jone, ‘What can the United Kingdom’s Tax Dispute Resolution System Learn from Australia? – An evaluation and Recommendations from a Dispute Systems Design Perspective’ (2017) 32 *Australian Tax Forum* 59; Melinda Jone, ‘Lessons New Zealand can Learn from the Tax Dispute Resolution System in Australia’ (2018) 24 *New Zealand Journal of Taxation Law and Policy* 13; Melinda Jone, ‘A dispute systems design evaluation of the tax dispute resolution system in the United States and possible recommendations from Australia’ (2018) 16 *eJournal of Tax Research* 56; Melinda Jone, ‘The Internal Revenue Service’s Future State initiative and its impact on the tax dispute resolution system of the United States: A dispute systems design perspective’ (2018) 16 *eJournal of Tax Research* (forthcoming).

²⁶ Ury, Brett and Goldberg, above n 21, 4-8.

²⁷ Negotiation and a variety of alternative dispute resolution (ADR) processes such as facilitation and mediation are examples of interests-based approaches.

²⁸ Adjudication and ADR processes such as arbitration and early neutral evaluation are examples of rights-based approaches.

²⁹ Strikes, voting and warfare are examples of power-based approaches.

³⁰ Ury, Brett and Goldberg, above n 21, 4.

³¹ *Ibid* 18.

³² *Ibid*.

³³ Examples of interests-based ADR processes utilised by various revenue authorities around the world include in-house facilitation and mediation programs. See Australian Taxation Office, *In-house facilitation* (29 September 2017) <<https://www.ato.gov.au/General/Dispute-or-object-to-an-ATO-decision/Options-for-resolving-disputes/In-House-Facilitation/?=redirected>>; Inland Revenue, *Changes to the dispute resolution process* (12 July 2010) <<http://www.ird.govt.nz/technical-tax/general-articles/changes-to-disputes-res->

Certain principles have been put forward by various DSD authors and practitioners in order to provide guidance for creating low-cost interests-orientated dispute resolution systems.³⁴ Systems that follow these general design principles are generally thought to be ‘more likely to produce positive dispute outcomes and improve the organisation’s overall capacity for effective conflict management.’³⁵ Table 1 below outlines a set of 14 DSD principles, synthesised from the DSD literature, which will be used in the evaluation of the Australian tax dispute resolution system in this paper. The use of these 14 principles is consistent with a number of other DSD evaluations that have been conducted in recent times in the tax dispute resolution context.³⁶

proc.html>; HM Revenue and Customs, *Tax disputes: Alternative Dispute Resolution* (3 February 2016) <<https://www.gov.uk/guidance/tax-disputes-alternative-dispute-resolution-adr>>; Internal Revenue Service, *Appeals Mediation Programs* (22 May 2018) <<https://www.irs.gov/compliance/appeals/appeals-mediation-programs>>.

³⁴ See Ury, Brett and Goldberg, above n 21; Costantino and Merchant, above n 21; Mary P Rowe, ‘Dispute Resolution in the Non-Union Environment: An Evolution Toward Integrated Systems for Conflict Management?’ in Sandra Gleason (ed), *Frontiers in Dispute Resolution in Labor Relations and Human Resources* (Michigan State University Press, 1997) 79; Jennifer Lynch, *CCRA: Contemporary Conflict Resolution Approaches* (Canada Customs and Revenue Agency, 1998); Karl A Slaikou and Ralph H Hasson, *Controlling the Costs of Conflict: How to Design a System for Your Organization* (Jossey-Bass, 1998); Society for Professionals in Dispute Resolution, *Designing Integrated Conflict Management Systems: Guidelines for the Design of Integrated Conflict Management Systems within Organizations* (2001).

³⁵ Nabatchi and Blomgren Bingham, above n 24, 215.

³⁶ See Jone, above n 19; Jone, ‘Evaluating New Zealand’s tax dispute resolution system: A dispute systems design perspective’ above n 25; Jone, ‘What can the United Kingdom’s Tax Dispute Resolution System Learn from Australia? – An evaluation and Recommendations from a Dispute Systems Design Perspective’ above n 25; Jone, ‘Lessons New Zealand can Learn from the Tax Dispute Resolution System in Australia’, above n 25; Jone, above n 25, ‘A dispute systems design evaluation of the tax dispute resolution system in the United States and possible recommendations from Australia’; Jone, ‘The Internal Revenue Service’s Future State initiative and its impact on the tax dispute resolution system of the United States: A dispute systems design perspective’, above n 25.

Table 1: The 14 dispute systems design principles used in this study

(1)	Stakeholders are included in the design process. Stakeholders should have an active and integral role in creating and renewing the systems they use.
(2)	The system has multiple options for addressing conflict including interests, rights and power-based processes. The system should include interests-based processes and low-cost rights and power-based processes should be offered should interests-based processes fail to resolve a dispute.
(3)	The system provides for loops backward and forward. The system should include loop-back mechanisms which allow disputants to return from rights or power-based options back to interests-based options and also loop-forward mechanisms which allow disputants to move directly to a rights or power-based option without first going through all of the earlier interests-based options.
(4)	There is notification and consultation before and feedback after the resolution process. Notification and consultation in advance of taking a proposed action affecting others can prevent disputes that arise through misunderstanding or miscommunication and can identify points of difference early on so that they may be negotiated. Post-dispute analysis and feedback can help parties to learn from disputes in order to prevent similar disputes in the future.
(5)	The system has a person or persons who function as internal independent confidential neutral(s). Disputants should have access to an independent confidential neutral to whom they can go to for coaching, referring and problem-solving.
(6)	Procedures are ordered from low to high cost. In order to reduce the costs of handling disputes, the procedures in the system should be arranged in graduated steps in a low to high cost sequence.
(7)	The system has multiple access points. The system should allow disputants to enter the system through many access points and offer a choice of persons whom system users may approach in the first instance.
(8)	The system includes training and education. Training of stakeholders in conflict management as well as education about the dispute system and how to access it are necessary.
(9)	Assistance is offered for choosing the best process. This includes the use of guidelines and/or coordinators and process advisers to ensure the appropriate use of processes.
(10)	Disputants have the right to choose a preferred process. The best systems are multi-option with disputants selecting the process.
(11)	The system is fair and perceived as fair. The system should be fair to parties and foster a culture that welcomes good faith dissent.
(12)	The system is supported by top managers. There should be sincere and visible championship by senior management.
(13)	The system is aligned with the mission, vision and values of the organisation. The system should be integrated into the organisation and reflect the organisational mission, vision and values.
(14)	There is evaluation of the system. This acts to identify strengths and weaknesses of design and foster continuous improvement.

3. THE AUSTRALIAN TAX DISPUTE RESOLUTION SYSTEM

This section provides an outline of the formal tax dispute resolution procedures in Australia (section 3.1), ADR processes used by the ATO (section 3.2), the ATO's independent review process (section 3.3) and the early assessment and review (EAR) in the Administrative Appeals Tribunal (AAT) (section 3.4).³⁷

3.1 The tax dispute resolution procedures

Under the current self-assessment regime in Australia, tax disputes principally arise from the ATO's review and audit activities.³⁸ As illustrated in Figure 1, a taxpayer dissatisfied with an assessment or other taxation decision may challenge the decision in accordance with the objection, review and appeal procedures outlined in Part IVC of the Taxation Administration Act 1953 (Cth) (TAA 1953 (Cth)). The steps in the procedures where a taxpayer wishes to challenge an assessment (or other taxation decision) are generally as follows:

- An objection is lodged by the taxpayer.³⁹
- The ATO issue an internal objection decision either allowing or disallowing the taxpayer's objection.⁴⁰
- If the objection is disallowed the taxpayer may file an application for review or appeal in the (AAT) or the Federal Court of Australia.⁴¹
- The Australian Commissioner of Taxation or the taxpayer may appeal to the Federal Court from a decision of the AAT on a question of law only.⁴²
- If dissatisfied with the Federal Court's decision, the taxpayer or the Australian Commissioner can appeal against the decision to the full Federal Court, and ultimately, with leave, to the High Court of Australia.

In addition to the formal dispute resolution process outlined above there are a number of additional options for resolving disputes. These include: ADR processes (discussed in section 3.2), independent review (discussed in section 3.3) and early assessment and resolution (EAR) in the AAT (discussed in section 3.4).

3.2 Alternative dispute resolution

Where disputes cannot be resolved by early engagement and direct negotiation between the ATO and the taxpayer, the ATO is 'committed to using ADR where appropriate to resolve disputes.'⁴³ The ATO describes ADR as 'an inclusive term for all processes, other than judicial

³⁷ The outline of the Australian tax dispute resolution system contained in this section provides a simplified overview of the dispute resolution system only. This is in order to provide a background context to the DSD evaluation undertaken in section 4 of this article. For a detailed overview the Australian tax dispute resolution system, see Andrew Johnston, *ATO Disputes* (CCH Australia, 2017).

³⁸ Mookhey, above n 19, 83

³⁹ An objection must be lodged within two years of service of the notice of assessment or decision for most individuals and very small business taxpayers, or within four years of service of the notice of assessment or decision for taxpayers with more complex affairs: s 14ZW TAA 1953 (Cth).

⁴⁰ If an objection decision is not made within 60 days, the taxpayer may require the Australian Commissioner to make a decision within a further 60-day period: s 14ZYA TAA 1953 (Cth).

⁴¹ An application for review or appeal must be made within 60 days of being served the objection decision: ss 14ZZC and 14ZZN TAA 1953 (Cth).

⁴² An appeal to the Federal Court is heard by a single judge (unless a judge of the Federal Court presided in the AAT in which case the appeal must be heard by a full bench of the Federal Court).

⁴³ Australian Taxation Office, *Practice Statement Law Administration 2013/3: Alternative Dispute Resolution in ATO Disputes* (2013) <<http://law.ato.gov.au/atolaw/view.htm?locid='PSR/PS20133/NAT/ATO'>> ['PS LA 2013/3'] [5].

or tribunal determination, in which an impartial person, assists those in a dispute to resolve or narrow the issues between them.’⁴⁴ Broadly, there are three categories of ADR used by the ATO:

- **In-house facilitation:** the ATO’s version of mediation which is a free service where a trained independent ATO facilitator assists the parties to negotiate their dispute. It is targeted predominantly at taxpayers in the small business and individuals market segment, at the audit and objection stages of the disputes process.
- **ADR conducted by an external practitioner:** in large, complex disputes the parties may consider engaging an external practitioner to conduct ADR. While ADR may be utilised by large ATO clients at any stage of dispute, it is most commonly undertaken at the objection stage
- **ADR initiated by the courts or tribunals:** ADR can be initiated by the courts or tribunals in litigation cases in order to resolve, or at least narrow the issue(s) in dispute that proceed to hearing. Mediation, conciliation and early neutral evaluation are the most commonly utilised ADR processes in the courts and tribunals.

ADR is generally initiated by agreement⁴⁵ between the parties in dispute and can be considered at any stage during the disputes process.

3.3 Independent review

Another option for the resolution of disputes is the ATO’s independent review process. To facilitate the timely outcome of the ATO audit process (and avoid cases proceeding to objection and litigation), large business taxpayers with a turnover greater than \$250 million can request an independent review of the proposed outcome of an ATO audit before it is finalised.⁴⁶ The process provides an opportunity for an independent technical officer (the independent reviewer) outside of the audit area to review the technical merits of an audit case prior to finalisation of the ATO position. The independent reviewer is a senior officer from the Review and Dispute Resolution (RDR)⁴⁷ business line who will not have previously been involved in the audit process. A key step in the process is a conference with all parties which is conducted by the independent reviewer. The conference is not an ADR forum, rather it is an opportunity for all parties to provide input to the reviewer about the case. The outcome of an independent review process is in the form of recommendations on what the independent reviewer considers is the better view of the facts and the application of the law to those facts. Effective from 1 July 2018, the ATO are running a 12-month pilot to extend the independent review process to eligible small business taxpayers.⁴⁸

⁴⁴ Australian Taxation Office, *ATO plain English guide to alternative dispute resolution* (1 June 2015) <<https://www.ato.gov.au/About-ATO/About-us/In-detail/Key-documents/ATO-plain-English-guide-to-alternative-dispute-resolution/>>.

⁴⁵ In certain circumstances, both the AAT and Federal Court of Australia can direct the ATO and the taxpayer to participate in certain ADR proceedings: Administrative Appeals Tribunal Act 1975 (Cth), s 34A; Federal Court of Australia Act 1976 (Cth), s 53A.

⁴⁶ Australian Taxation Office, *Independent review of the Statement of Audit Position for groups with a turnover greater than \$250m* (23 January 2017) <[https://www.ato.gov.au/General/Dispute-or-object-to-an-ATO-decision/In-detail/Avoiding-and-resolving-disputes/Independent-review/Independent-review-of-the-Statement-of-Audit-Position-for-groups-with-a-turnover-greater-than-\\$250m/](https://www.ato.gov.au/General/Dispute-or-object-to-an-ATO-decision/In-detail/Avoiding-and-resolving-disputes/Independent-review/Independent-review-of-the-Statement-of-Audit-Position-for-groups-with-a-turnover-greater-than-$250m/)>.

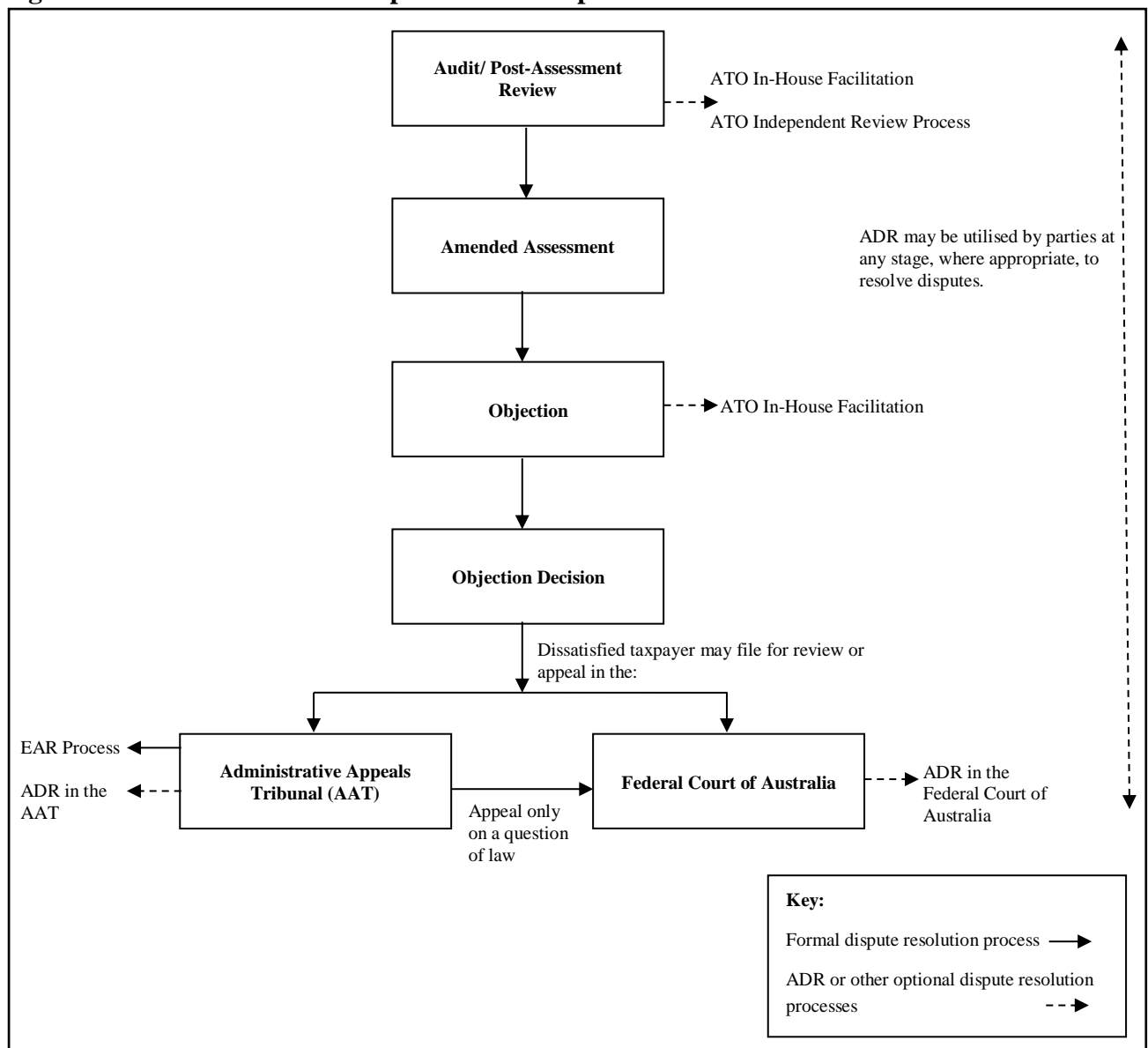
⁴⁷ The RDR business line, established in July 2013, is responsible for managing and resolving all tax disputes within the ATO.

⁴⁸ See Australian Taxation Office, *Independent review – small business pilot* (11 October 2018) <<https://www.ato.gov.au/General/Dispute-or-object-to-an-ATO-decision/In-detail/Avoiding-and-resolving-disputes/Independent-review/Independent-Review---Small-Business-Pilot/>>.

3.4 Early assessment and review

The early assessment and resolution (EAR) process is applied to all tax dispute cases lodged with the AAT.⁴⁹ The process focuses on early engagement with the taxpayer to listen, discuss and accept evidence of events where appropriate. The officer also engages with other stakeholders in the ATO in attempt to resolve the dispute without the need for an AAT hearing. Where complete resolution is not achieved, the process aims to identify and narrow the issues in dispute and ensure that only the right matters proceed to hearing without delay.

Figure 1: The Australian tax dispute resolution procedures



⁴⁹ Australian Taxation Office, *Early assessment and resolution* (30 March 2017) <<https://www.ato.gov.au/General/Dispute-or-object-to-an-ATO-decision/In-detail/Avoiding-and-resolving-disputes/Litigation/Early-assessment-and-resolution/>>.

4. DISPUTE SYSTEMS DESIGN EVALUATION OF THE TAX DISPUTE RESOLUTION SYSTEM

This section evaluates the Australian tax dispute resolution system in the context of the ATO's Reinvention program using the 14 DSD principles outlined in Table 1 in section 2 of this paper.

4.1 DSD Principle 1: stakeholders are included in the design process

As noted in Section 1, the starting point for the Reinvention program was provided by the ATO's Reinventing the ATO Blueprint which describes the kinds of experience people want to have with the ATO.⁵⁰ The Blueprint was formed with input from thousands of people from different market segments, members of the tax and legal professions, other agencies, and ATO staff. Throughout the course of the Reinvention program the ATO have continued to include stakeholders in the design process and engage with the community to co-design products and services, including through:⁵¹

- Regular community satisfaction and staff engagement surveys
- A Simulation Centre to test the ATO's thinking and products
- On-site visits to understand the client experience
- Co-design and planning workshops with different market segments
- A Beta site for website and online product development.

Stakeholders, including tax agents, may also be involved in the design process through the ATO's Let's Talk website which provides an online chat, consultation and feedback forum.⁵² The Let's Talk website was used as an outlet for collecting public feedback on the ATO's Digital by default consultation paper in November 2015.⁵³ In the context of the tax dispute resolution system, stakeholders have been involved in the design process through pilot programs of ATO dispute resolution processes such as its in-house facilitation service, independent review process, independent assurance of settlements⁵⁴ and Dispute Assist.⁵⁵ There is also external stakeholder consultation on the dispute procedures undertaken by the

⁵⁰ See Australian Taxation Office, above n 7.

⁵¹ Chris Jordan, 'Better services and a better experience for Australians' (Speech to the 12th International Conference on Tax Administration, Sydney, 31 March 2016).

⁵² Australian Taxation Office, *Let's Talk* <<https://lets-talk.ato.gov.au/>>.

⁵³ During the consultation period, the Let's Talk website received 15,300 unique visits to view the consultation paper. Of those who visited the Let's Talk website, 808 responded to the consultation questions, with 1003 responses overall (submitted online, by email, post, telephone and face-to-face). Australian Taxation Office, *Digital by Default: Findings Report* (February 2016) 2.

⁵⁴ Under the independent assurance of settlements process, the ATO have engaged four retired Federal Court judges to conduct independent assurance of some of the ATO's largest and most significant settlements. The process includes a focus on large markets and multinational enterprises, including on matters arising from the Corporate Tax Avoidance Taskforce. The key focus for the judges has been to provide their view on whether the settlements have been fair and reasonable for the Australian community.

⁵⁵ Dispute Assist is an ATO service providing tailored assistance to individual unrepresented taxpayers including those dealing with relationship breakdowns, illness (including mental health difficulties) and sudden disability within the family. An independent ATO guide helps taxpayers to navigate the dispute process and address related issues, such as ongoing tax debts or issues with other government agencies. Dispute Assist is discussed further under DSD Principle 5 in section 4.5 of this paper.

ATO's RDR business line with professional associations and the legal profession. For example, the Dispute Resolution Working Group⁵⁶ and the Legal Practitioners Roundtable.⁵⁷

4.2 DSD Principle 2: The system has multiple options for addressing conflict including interests, rights and power-based processes

The Australian tax dispute resolution system has multiple options for addressing conflict. The ATO encourage disputes to be resolved through early engagement and (interests-based) direct negotiation with the ATO officer involved in the dispute in the first instance. If the dispute cannot be resolved, the taxpayer may lodge a formal objection with the ATO where the decision is internally reviewed by a different ATO officer. If the taxpayer is dissatisfied with the internal review outcome, then they may utilise rights-based processes by proceeding to litigation in either the AAT or the Federal Court of Australia. In addition, as outlined in section 3.4, the EAR process is applied to all tax dispute cases lodged with the AAT in order to identify, narrow and/or resolve issues in dispute before an AAT hearing.

In line with the ATO's focus on preventing and resolving disputes, as part of the Reinvention program the ATO has placed an emphasis on increasing the uptake of a range of different ADR processes (outlined in section 3.2) tailored to suit different types of tax disputes. These include embedding the use of the ATO's in-house facilitation service, with a particular focus on small business and individual disputes,⁵⁸ and the increased use of external ADR in large and complex disputes, including by using former Federal Court and High Court judges as mediators.⁵⁹ In addition, there has been continued refinement of the independent review process for large market audits which was introduced in July 2013 (see section 3.3). The ATO published updated independent review guidelines in January 2017 following stakeholder consultation.

4.3 DSD Principle 3: The system provides for loops backward and forward

Loop-backs in the dispute resolution process are provided for in the respect that ADR options are theoretically available at all stages of the disputes resolution process thus, allowing taxpayers to loop back from a rights-based to an interests-based approach (for example, ADR in the AAT or the Federal Court provides a loop back from litigation). Accordingly, it follows that the increased emphasis on the use of ADR processes by the ATO as part of the Reinvention program arguably also enhances the provision of loop-back processes in the Australian tax dispute resolution system. The EAR process in the AAT also constitutes a loop-back procedure in the sense that the focus of the process is to identify cases in the AAT which can be preferably be resolved through direct negotiation without the need for a (rights-based) AAT hearing.

⁵⁶ The Dispute Resolution Working Group is a forum for the ATO and external representatives from the tax profession and industry bodies to discuss and develop dispute resolution strategies. The Dispute Resolution Working Group is chaired by the Deputy Commissioner, RDR. Non-ATO members include representatives from: Chartered Accountants Australia and New Zealand; the Tax Institute; the Federal Court of Australia; AAT; Law Council of Australia; Independent Contractors of Australia; Corporate Tax Association; Hall and Wilcox; and CPA Australia.

⁵⁷ The Legal Practitioners Round Table is a regular forum that supports the ongoing relationship between the ATO and the legal profession. It enables legal practitioners to share feedback with the ATO and identify areas of improvement for ATO services, including dispute resolution and settlements. The Legal Practitioner Round Table is chaired by the Deputy Commissioner, RDR. Its membership comprises all State and Territory legal professional bodies, including the Law Council of Australia and the Australian Corporate Lawyers Association.

⁵⁸ For example, in the 2015-16 year there were 128 referrals for in-house facilitation. This was a 30 per cent increase in the number of referrals compared to the 2014-15 year. Debbie Hastings, 'The Effective and Timely Resolution of Tax Disputes: The ATO In-house facilitation service and beyond' (Speech to the National Mediator Association Conference, Gold Coast, 11-14 September 2016) 6.

⁵⁹ For example, in the 2015-16 year there were 19 external mediations or ENEs conducted compared to 13 in the 2014-15 year. Ibid 7.

However, as noted by Jone,⁶⁰ taxpayers are unable to loop-forward in the formal dispute resolution process as taxpayers must go through the ATO's internal review (objection) process before appealing an ATO decision externally to the AAT or the Federal Court of Australia.

4.4 DSD Principle 4: There is notification and consultation before and feedback after the resolution process

The ATO's Reinvention program incorporates enhancements to both notification before and feedback after the dispute resolution process. With respect to notification before the resolution process, the Reinvention program emphasises 'prevention, rather than correction and "gotcha" – with taxpayer alerts and practical compliance guidelines which give people the "flags on the beach."'”⁶¹ For example, for taxpayers in the privately owned and wealthy groups segment, the ATO have published income tax risk reports online to let them know what behaviours, characteristics and tax issues attract the ATO's attention (and thus, potentially identify areas where disputes may arise).⁶² Drawing from behavioural economics research to encourage 'good behaviour', the ATO have been using automated SMSs (rather than formal letters) to notify habitual late lodgers and payers.⁶³ The ATO have also introduced an income tax assurance notification which is issued to individual taxpayers if their income tax risk is low, as assessed by the ATO's computer analytical models.⁶⁴ Although this does not provide notification of potential disputes per se, the intention is that this process will provide certainty for identified groups as these are taxpayers who the ATO do not intend to make further enquiries with unless material information subsequently comes to light (such as tax fraud).

With respect to feedback after the resolution process, in addition to collecting feedback from participants in ATO dispute resolution processes such as in-house facilitation and independent review, the ATO have developed a key performance indicator (KPI) of taxpayer perceptions of fairness in tax disputes.⁶⁵ The KPI is directed at the 'qualitative and taxpayer experience aspects' of feedback (as distinct from quantitative measures) so that the ATO can better understand its own performance from the perspective of the taxpayer.⁶⁶ This KPI is monitored and reviewed by the ATO executive and reported in the ATO's annual report.⁶⁷ Previously, beyond 'timeliness of disputes', there was no specific KPI which focused on disputes.⁶⁸

⁶⁰ Jone, above n 19, 566.

⁶¹ Chris Jordan, 'IPA National Congress Address' (Speech to the IPA National Congress, Gold Coast, 23 November 2017).

⁶² Australian Taxation Office, *What attracts our attention* (10 May 2018) <<https://www.ato.gov.au/Business/Private-owned-and-wealthy-groups/What-you-should-know/Transparency/What-attracts-our-attention/>>.

⁶³ Jordan, above n 61. The ATO's automated SMS reminders reaped an extra \$800 million in on-time payments in 2016–17 at a cost of just \$0.09 per SMS (compared with \$1 for a formal letter).

⁶⁴ Australian Taxation Office, *Certainty letter* (25 November 2016) <<https://www.ato.gov.au/Individuals/Lodging-your-tax-return/In-detail/Certainty-letter/>>.

⁶⁵ The KPI of taxpayer perceptions of fairness in tax disputes was developed following a recommendation made by the Australian House of Representatives Standing Committee on Tax and Revenue in their inquiry into *Tax Disputes* in 2015. See House of Representatives Standing Committee on Tax and Revenue, *Tax Disputes* (2015) 17, [2.17].

⁶⁶ *Ibid* 15, [2.10]. See also Inspector General of Taxation, *The Management of Tax Disputes* (2015) 104-105, [5.50]-[5.52].

⁶⁷ See, eg, Australian Taxation Office, *Commissioner of Taxation Annual Report 2016-17* (2017) 96; Australian Taxation Office, *Commissioner of Taxation Annual Report 2017-18* (2018) 196.

⁶⁸ House of Representatives Standing Committee on Tax and Revenue, above n 65, 15 [2.9].

4.5 DSD Principle 5: The system has a person or persons who function as internal independent confidential neutral(s)

The ATO's Reinvention Program also addresses the DSD principle pertaining to the provision of persons who function as internal independent confidential neutrals in the system. For ATO staff, a Case and Technical Leadership group within RDR has been established to provide mentoring and guidance to ATO staff in objections, ADR and litigation.⁶⁹ Also originating from the Reinvention Program, the ATO's Dispute Assist service introduced in 2017, provides persons who serve as internal independent confidential neutrals for taxpayers in disputes with the ATO. ATO Dispute Assist 'guides' provide tailored assistance and support to certain unrepresented taxpayers who may be disadvantaged by exceptional personal circumstances including those dealing with relationship breakdowns, illness (including mental health difficulties) and sudden disability within the family so that they have confidence to engage with debt officers and to cultivate relationships.⁷⁰

4.6 DSD Principle 6: Procedures are ordered from low to high cost

The formal disputes procedures are ordered in a low to high cost sequence in the respect that there is the opportunity for direct negotiation in the first instance, followed by the ATO's internal review process and then external review or appeal to the AAT or the Federal Court of Australia respectively. This sequence generally implies an increase in costs at each level. The option to employ ADR potentially at any stage of the disputes process also adds further costs at the stage(s) at which ADR is utilised in the disputes process. However, if the dispute is settled at that stage, then parties do not subsequently have to move further up the sequence to higher cost processes.

While the Reinvention program emphasises early engagement and the use of ADR processes to avoid the time and cost of litigation, as noted by Jone, the Australian tax dispute resolution process can require substantial upfront costs (for example, the time spent by the taxpayer in preparing for, and participating in negotiations as well as the cost of professional advisors) from the taxpayer.⁷¹ This may serve as a barrier to justice for taxpayers, (particularly small taxpayers), given that professional advice and assistance, if required, generally represent the bulk of the costs to taxpayers. However, such high upfront costs may not necessarily be a deficiency in the Australian disputes procedures per se, but rather a common feature of tax disputes resolution in general.⁷² This is because, given the arguably complex nature of many tax disputes, taxpayers are required to work out their positions from the outset and as a consequence, may require professional advice and assistance (which incur associated costs) in order to do so.⁷³

4.7 DSD Principle 7: The system has multiple access points

The Australian tax dispute resolution procedures offer multiple access points to the system for particular users in the respect that the ATO offer a range of support services to help people from non-English speaking backgrounds, Indigenous Australians and people with disabilities. For example, people from non-English speaking backgrounds can phone the Translating and Interpreting Service for help with their calls or if they want to speak to an ATO officer in their preferred language, Aboriginal and Torres Strait Islander people can ring the ATO's

⁶⁹ Debbie Hastings, 'ATO Reinvention and Managing Disputes Post Independent Review' (Paper presented at the Tax Institute of Australia Financial Services Taxation Conference, Surfers Paradise, 18-20 February 2015) 10.

⁷⁰ Australian Taxation Office, *Commissioner of Taxation Annual Report 2016-17*, above n 67, 65.

⁷¹ Jone, above n 19, 568.

⁷² *Ibid.*

⁷³ *Ibid.*

Indigenous Helpline which specialises in helping indigenous clients with a range of matters, and people who are deaf or have a hearing or speech impairment can contact the ATO through the National Relay Service. While these services assist certain taxpayers in reaching the ATO in general, they also provide means of access for these taxpayers to the dispute resolution system.

The ATO's Reinvention program adds to the provision of multiple access points to the system through the introduction of an after-hours call back service, online web chat and screen share services and Alex, who is the ATO's virtual assistant that understands conversational language and is always available on ato.gov.au to help with general tax enquiries.⁷⁴ However, a critical factor is that the new online options are limited to providing additional access points to the system for taxpayers that have internet access and who are willing and able to use online channels.

In terms of multiple access points to the system viewed from a structural sense, as noted in Jone's 2015 DSD evaluation, there is only one structural entry point to the Australian tax dispute resolution system.⁷⁵ This is because, as outlined in section 4.3, taxpayers are unable to loop-forward in the formal disputes process as they must go through the ATO's internal review process before appealing an ATO decision externally to the AAT or the Federal Court of Australia.

4.8 DSD Principle 8: The system includes training and education

The ATO's Reinvention Program incorporates various forms of training and education of stakeholders. In the general context of information provision, the ATO have transformed its website to 'deliver a better online experience.' From 1 March 2015 the ATO website went through a site-wide refresh, including reducing the number of words on ato.gov.au by approximately 5.3 million words (or 45 per cent), removing duplication and complexity to allow greater ease of use for users in obtaining information.⁷⁶ Also as part of the Reinvention program, the ATO have created a digital application (the ATO app), which can be downloaded onto a smart phone or tablet and features a range of tools and calculators for various taxpayers.⁷⁷ Although, as stated in section 4.7, the benefits of the enhanced website and the ATO app are limited to those who have access to digital channels and who are willing and able to use them.

The Reinvention program also includes a number of forms of training and education of stakeholders in the context of tax dispute resolution. To promote and educate stakeholders on its in-house facilitation service, the ATO released an info-graphic on you-tube on in-house facilitation⁷⁸ and training and awareness sessions on the benefits of in-house facilitation as a suitable approach to resolve less complex disputes have been provided to over 700 frontline

⁷⁴ Chris Jordan, 'Our regulators – can their job be easier?' (Speech to the COSBOA Small Business Summit 2017, Melbourne, 24 August 2017). More than 1.7 million conversations had been held by the virtual assistant as at 31 July 2017 with an 81 per cent first contact resolution rate. Australian Taxation Office, 'Australian Taxation Office Submission: Inquiry into digital delivery of government services' (September 2017) 15.

⁷⁵ Jone, above n 19, 568.

⁷⁶ Jordan, above n 61.

⁷⁷ Australian Taxation Office, *ATO app* (5 November 2018) <<https://www.ato.gov.au/general/online-services/ato-app/>>.

⁷⁸ Australian Taxation Office, *ATO In-house Facilitation Service* (28 May 2015) <<https://www.youtube.com/watch?v=KfH7cwwNwIc>>. The infographic has had almost 200,000 hits on YouTube since its release in May 2015.

staff within the ATO.⁷⁹ As noted in section 4.2, the Reinvention program encourages early engagement and direct negotiation with taxpayers and accordingly, a number of frontline ATO staff have also undergone training on how to better communicate with taxpayers during disputes.⁸⁰

4.9 DSD Principle 9: Assistance is offered for choosing the best process

The dispute resolution system includes forms of assistance for choosing the best process as part of the Reinvention program. RDR act as general process advisors for taxpayers who have disputes with the ATO. RDR's Service Commitment states that when taxpayers have a dispute with the ATO, RDR will 'discuss with you the options available to resolve the disagreement or dispute, including opportunities for settlement or alternative dispute resolution.'⁸¹ Implemented as one of the ATO's new services as part of the Reinvention program, the ATO's Fast Intensive Triage (FIT) service also provides a form of process advice. The FIT service is applied to all incoming objections by RDR triage staff who 'within a few days ... will be able to make early, meaningful contact with taxpayers and their agents.'⁸² The triage staff assess all cases at the earliest opportunity to determine if the matter looks straightforward, can be resolved relatively quickly and make that happen, or if the matter is more involved or complex, they will allocate it directly to the right person in RDR for resolution.

4.10 DSD Principle 10: Disputants have the right to choose a preferred process

Disputants in the system have the right to choose a preferred process in the respect that, as noted in section 3.2, ADR is generally available at all stages of the disputes process. This feature means that the Australian disputes process is multi-option in the respect that disputants may select between the formal disputes process and various ADR processes at a given stage of the disputes process. Moreover, if an ADR process is unable to resolve a dispute in whole or in part, taxpayers' review and appeal rights in the formal ADR process are unaffected by their participation in ADR, subject to the terms of any settlement reached and compliance with the legislative timeframes. The Reinvention program has further enhanced the ability for disputants to choose a preferred process in the system through the introduction of online web chat and screen share services, Alex, the ATO's virtual assistant and an after-hours call back service for more specific support. These additional services may generally be utilised by taxpayers alongside the formal disputes process. However, again, the online options introduced are limited to providing additional options to those taxpayers who have internet access and the ability and preference to use online channels.

4.11 DSD Principle 11: The system is fair and perceived as fair

In the ATO's Blueprint for reinvention, taxpayers' perceptions of fair treatment by the ATO is a central focus in the transformation of their relationship with the community. During 2014 to 2017 the ATO engaged an external firm to research and survey taxpayers who were in dispute with the ATO in order to understand taxpayers' perceptions of fairness. For the 2017-18 year, the ATO's KPI measuring perceptions of fairness in tax disputes indicated that 54 per cent of taxpayers who were involved in a dispute with the ATO agreed that the dispute process was

⁷⁹ Hastings, above n 69, 6.

⁸⁰ Nassim Khadem, 'ATO seeks to make tax disputes resolution more cordial', *The Sydney Morning Herald* (online), 20 July 2015 <<https://www.smh.com.au/business/the-economy/ato-seeks-to-make-tax-disputes-resolution-more-cordial-20150717-giesm7.html>>.

⁸¹ Australian Taxation Office, *Our commitment to you in resolving your dispute* (29 September 2017) <<https://www.ato.gov.au/General/Dispute-or-object-to-an-ATO-decision/Options-for-resolving-disputes/Our-commitment-to-you-in-resolving-your-dispute/>>.

⁸² Chris Jordan, 'Commissioner's address to the Tax Institute National Convention 2017' (Speech to the Tax Institute 32nd National Convention, Adelaide, 16 March 2017).

fair (compared with 56 per cent in the 2016-17 year).⁸³ The way in which the ATO interact with taxpayers in disputes is of significance given that, as observed by the Organisation for Economic Co-operation and Development (OECD), ‘The ways by which revenue authorities interact with taxpayers and employees impact on the public perception of the tax system and the degree of voluntary compliance.’⁸⁴ This proposition is supported both by tax authorities in other jurisdictions⁸⁵ and the literature.⁸⁶

While not an outcome of the Reinvention program per se, of further relevance to perceptions of fairness of the system are the ongoing reports of criticism of the ATO which continue to come from the small business and individuals taxpayer segments.⁸⁷ Ali Noroozi, the then Inspector-General of Taxation (IGT)⁸⁸ conducted a review of the ATO’s handling of tax disputes in 2015 and reported that ‘there may be an imbalance of power and experience’ when the ATO deals with small businesses and individuals.⁸⁹ The IGT observed that the ATO is one of the largest Government agencies which, by necessity, has monopoly power and significant resources. It is considered to have considerable advantage over the vast majority of taxpayers, particularly small businesses and individuals, when dealing with legal disputes.⁹⁰ In 2017 the Australian National Audit Office (ANAO) noted criticisms that ATO settlements ‘may favour the “large end of town”’⁹¹ and furthermore, that the ATO’s Small Business and Individuals business lines ‘appeared to be less inclined to enter into settlements at the earlier stages of the dispute process.’⁹² In April 2018, Revenue and Financial Services Minister Kelly O’Dwyer launched an investigation into the ATO following allegations of unfair treatment of small businesses and individuals raised in a joint Fairfax Media-Four Corners investigation.⁹³ The

⁸³ Australian Taxation Office, *Commissioner of Taxation Annual Report 2017-18*, above n 67, 196.

⁸⁴ Organisation for Economic Co-operation and Development, above n 18, 3.

⁸⁵ See, eg, Nina Olson, *National Taxpayer Advocate 2013 Annual Report to Congress – Volume One* (2013) 6.

⁸⁶ See, eg, Betty R Jackson and Valerie Milliron, ‘Tax compliance research, findings, problems and prospects’ (1986) 5 *Journal of Accounting Literature* 125; Maryann Richardson and Adrian J Sawyer, ‘A taxonomy of the tax compliance literature: Further findings, problems and prospects’ (2001) 16 *Australian Tax Forum* 137; Kristina Murphy, ‘The Role of Trust in Nurturing Compliance: A Study of Accused Tax Avoiders’ (2004) 28 *Law and Human Behaviour* 187; John T Scholz, ‘Trust, Taxes and Compliance’ in Valerie Braithwaite and Margaret Levi (eds), *Trust and Governance* (Russell Sage Foundation, 1998) 135.

⁸⁷ However, these issues are relevant to the reinvention of the ATO’s culture. See, eg, Nassim Khadem, ‘Ali Noroozi report points to perception of ATO favouritism for top end of town’, *The Sydney Morning Herald* (online), 3 March 2015 <<http://www.smh.com.au/business/ali-noroozi-report-points-to-perception-of-ato-favouritism-for-top-end-of-town-20150302-13sqa7.html>>; Nassim Khadem, ‘No fresh set of eyes for small business, advisers say’, *The Sydney Morning Herald* (online), 25 March 2016 <<http://www.smh.com.au/business/the-economy/no-fresh-set-of-eyes-for-small-business-advisers-say-20160325-gnqzm8.html>>; Nassim Khadem, ‘ATO takes “unnecessary”, “belligerent” stance on small business disputes, ANOA told’, *The Sydney Morning Herald* (online), 2 July 2017 <<http://www.smh.com.au/business/the-economy/ato-takes-unnecessary-belligerent-stance-on-small-business-disputes-submission-20170630-gx1yfh.html>>; Nassim Khadem, ‘“ATO operates its systems to target revenue collection”: Kate Carnell’, *The Sydney Morning Herald* (online), 3 July 2018 <<https://www.smh.com.au/business/the-economy/ato-operates-its-systems-to-target-revenue-collection-kate-carnell-20180703-p4zp76.html>>.

⁸⁸ Ali Noroozi ended his 10-year tenure as IGT on 6 November 2018.

⁸⁹ Inspector General of Taxation, above n 63, 58, [3.106].

⁹⁰ *Ibid* 58, [3.107].

⁹¹ Australian National Audit Office, *The Australian Taxation Office’s Use of Settlements* (2017) 35, [2.38].

⁹² *Ibid* 35, [2.40].

⁹³ See Four Corners, ‘Mongrel bunch of bastards’ (9 April 2018) <<http://www.abc.net.au>>. See also, Adele Ferguson and Nassim Khadem, ‘Blowing the whistle on the tax office’s “tax grab”’, *The Sydney Morning Herald* (online), 9 April 2018 <<https://www.smh.com.au/business/the-economy/blowing-the-whistle-on-the-tax-office-s-cash-grab-20180404-p4z7rj.html>>. For the ATO’s response, see Australian Taxation Office, ‘ATO Executive statement on ABC/Fairfax coverage’ (10 April 2018) <<https://www.ato.gov.au/Media-centre/Commissioners-online-updates/ATO-Executive-statement-on-ABC-Fairfax-coverage/>>.

IGT told the joint media investigation that the ATO makes mistakes in about one in 20 tax cases, often with huge financial impacts to the small businesses and taxpayers involved.⁹⁴ The IGT launched a further inquiry into allegations made in the Four Corners program regarding the ATO's use of garnishee notices as well as relevant themes emerging from complaints made to his office.⁹⁵ The former IGT had also long been calling for a new second commissioner to head a separate appeals area within the ATO to offer greater independence when taxpayers appeal an ATO decision – a move which the Australian Commissioner has been resisting.⁹⁶ However, in direct response to the concerns raised during the Fairfax Media-Four Corners investigation, the Australian Commissioner agreed to trial the independent review process for certain small business taxpayers in dispute with the ATO (see section 3.3 above).⁹⁷

4.12 DSD Principle 12: The system is supported by top managers

As noted by Jone,⁹⁸ support and championship of the dispute resolution system in the ATO have featured as a recurring topic in various speeches made by the current Australian Commissioner, Mr Chris Jordan AO.⁹⁹ A number of the Commissioner's speeches have highlighted the significance of the Reinvention program on the way that the ATO manages and resolves tax disputes as well as the results achieved by the various strategies and interventions employed as part of the Reinvention program. Dispute resolution has also featured as a topic in presentations and speeches made by the Second Commissioner Law and First Assistant Commissioner, RDR.¹⁰⁰ However, as noted above in section 4.11, the Australian Commissioner has continued to indicate that a new commissioner dedicated to resolving small business disputes is not necessary. Mr Jordan has stated that 'Tax is an issue for small

⁹⁴ Adele Ferguson, 'Labor's ATO plan, a watershed moment', *The Sydney Morning Herald* (online) 31 August 2018 <<https://www.smh.com.au/business/the-economy/ato-to-be-reformed-under-a-labor-government-20180831-p5011t.html>>.

⁹⁵ See Inspector General of Taxation, *Review into the Australian Taxation Office's use of Garnishee Notices: Terms of reference* (2018).

⁹⁶ Inspector General of Taxation, *Investigation into matters reported by the Four Corners program about small business dealings with the Australian Taxation Office: A submission to the Secretary of the Treasury* (2018) 31, [6.3]. Shadow Treasurer Chris Bowen also announced that, if elected in 2019, Labor will legislate to establish a new position of Second Commissioner within the tax office, reporting to the Australian Commissioner, to head up a new appeals group. Jothan Lian, 'Opposition proposes shake-up of ATO appeals processes' (3 September 2018) <<https://www.mybusiness.com.au/management/4870-opposition-proposes-shake-up-of-ato-appeals-processes>>.

⁹⁷ See Nassim Khadem, 'New ATO commissioner to hear taxpayer appeals "inevitable": watchdog', *The Sydney Morning Herald* (online), 5 June 2018 <<https://www.smh.com.au/business/the-economy/new-ato-commissioner-to-hear-taxpayer-appeals-inevitable-watchdog-20180605-p4zjlw.html>>. For further information on the independent review pilot for small business taxpayers, see Australian Taxation Office, above n 48.

⁹⁸ Jone, above n 19, 573.

⁹⁹ See Australian Taxation Office, *Media centre* <<https://www.ato.gov.au/Media-centre/#!type=All+media+types&year=All+years&pageOption=10&pageIndex=0>>.

¹⁰⁰ See *ibid.*

businesses and disputes is a little subset’,¹⁰¹ claiming that the ATO was ‘happy with its facilitation of disputes through mediation and alternative resolution processes.’¹⁰²

4.13 DSD Principle 13: The system is aligned with the mission, vision and values of the organisation

The mission of the ATO is ‘we contribute to the economic and social wellbeing of Australians by fostering willing participation in our tax and superannuation systems.’¹⁰³ There are a variety of factors which influence the community’s attitude towards the tax and superannuation system, one of which is the experience that taxpayers have in dealing with the ATO.¹⁰⁴ As stated by Hastings, ‘to help achieve the goal of fostering willing participation, the ATO needs to manage and resolve disputes early, quickly and in a cost effective way.’¹⁰⁵ Thus, the ATO’s stated approach towards dispute resolution seeks to work towards achieving the overall mission of the revenue authority in helping to enhance willing participation in the tax system. ATO statistics arguably also indicate that the various initiatives introduced by the ATO as part of its Reinvention program have led to the earlier resolution of disputes. The 2016-17 ATO Annual Report states that early engagement and ADR have resulted in a 61 per cent reduction in the number of appeals to the AAT since 2013–14 (from 922 in 2013–14 to 357 appeals in 2016–17).¹⁰⁶ ‘[R]ecent innovative approaches’ to dispute resolution have also resulted in a 30 per cent reduction in the time it takes to resolve a dispute in the objections process since 2016–17.¹⁰⁷ However, despite these statistics, as noted in section 4.11, only 54 per cent of taxpayers who were involved in a dispute with the ATO thought that the process was fair and moreover, criticism continues to come from the small business and individual taxpayer segments with respect to unfair treatment received by taxpayers in disputes with the ATO.

4.14 DSD Principle 14: There is evaluation of the system

As noted in section 4.1, the Reinvention program includes the ATO’s engagement with the community in the co-designing of products and services and to get feedback on the ATO’s performance. Thus, evaluation of the Reinvention program occurs through its analysis of feedback collected from community satisfaction and staff engagement surveys, and feedback from ATO testing grounds such as its Beta site for website and online product development. In addition, the ATO has undertaken a number of internal audits in relation to the Reinvention

¹⁰¹ Chris Jordan, quoted in Cara Waters and Nassim Khadem, ‘ATO boss pushes back on need for a new Commissioner’, *The Sydney Morning Herald* (online), 31 August 2018 <<https://www.smh.com.au/business/small-business/ato-boss-pushes-back-on-need-for-a-new-commissioner-20180831-p500wp.html>>. Moreover, the IGT has criticised the ATO’s public response to the allegations made in the Fairfax Media-Four Corners investigation as being ‘diminishing of complainants and lacking in compassion.’ See Adele Ferguson, ‘All spin, no compassion: How the ATO handled a scandal’, *The Sydney Morning Herald* (online), 13 July 2018 <<https://www.smh.com.au/money/tax/all-spin-no-compassion-how-the-ato-handled-a-scandal-20180713-p4zrb9.html>>. See also, Tom McIlroy and John Kehoe, ‘Tax Commissioner Chris Jordan wants to draw “line in sand” with small businesses’, *Australian Financial Review* 24 October 2018 <<https://www.afr.com/news/policy/tax/tax-commissioner-chris-jordan-wants-to-draw-line-in-the-sand-with-small-business-20181024-h171r3>>.

¹⁰² Jordan, above n 101.

¹⁰³ Hastings, above n 69, 4.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Australian Taxation Office, *Commissioner of Taxation Annual Report 2016-17* (2017), above n 67, iii.

¹⁰⁷ Australian Taxation Office, *The Full Picture: How the ATO works with and for small business* (9 April 2018) 5.

program¹⁰⁸ and the ANAO has also conducted an independent performance audit on the costs and benefits of the Reinvention program.¹⁰⁹

With respect to the dispute resolution system, the feedback collected from participants in the ATO's in-house facilitation and independent review services is used to evaluate these processes so that they can continue to remain effective in resolving or narrowing issues in dispute. As noted in section 4.11, the ATO has engaged external market research companies to conduct regular surveys of taxpayers' perceptions of fairness in their interactions with the ATO. The aim of this research was to allow the ATO to identify particular areas where they need to make improvements to their strategies to improve taxpayer perceptions fairness of the dispute resolution system. External evaluation of the dispute resolution system has also occurred through inquiries and independent performance audits conducted by parliamentary committees¹¹⁰ and government-appointed entities such as the IGT¹¹¹ and the ANAO.¹¹²

5. DISCUSSION AND RECOMMENDATIONS

The DSD evaluation conducted in section 4 above indicates that the ATO's Reinventing the ATO program impacts in some way or another on each of the 14 DSD principles. It has brought about increased options for taxpayers to resolve disputes through the introduction and expansion of services by the ATO for managing and resolving disputes. These include various ADR processes and an independent review process. Enhancements to the availability of independent confidential neutrals in the system have resulted from the implementation of the ATO's Dispute Assist service providing support and assistance to unrepresented taxpayers. Process advice within the system has also been improved through the introduction of the ATO's FIT service which assesses and triages all incoming objections. In relation to digital aspects, the Reinvention program incorporates enhancements to multiple access points to the system through the introduction of an after-hours call back service, online web chat and screen share services and an online virtual assistant. Notification before the dispute resolution process has been enhanced through the ATO's use of automated SMS reminders to notify habitual late lodgers and payers, and the issuing of certainty letters to low risk taxpayers as determined by the ATO's computer analytical models. Enhancements to the education of stakeholders in the system, including taxpayers and their advisers, have also been made through improvements to the ATO website and the development of the ATO app.

The implementation of the above initiatives appears to align with the aim of the Reinvention program to become a 'contemporary, service-orientated organisation.'¹¹³ As noted above, the Reinvention program incorporates a number of digital solutions which contribute towards a whole-of-government digital transformation agenda. As stated in Section 1, the ATO has adopted a Digital by default initiative which requires most of the community to use digital services to send and receive information and make payments to the ATO. However, the DSD evaluation conducted indicates that the digital solutions implemented as part of the Reinvention program do not necessarily provide equal benefits to all segments of the taxpayer population

¹⁰⁸ Australian Taxation Office, *Reinventing the ATO* (October 2016); Australian Taxation Office, *Benefits Management Framework* (October 2016); Australian Taxation Office, *Rollout of the Culture and Leadership Strategies* (August 2016); Australian Taxation Office, *Corporate Function Review Outcomes* (June 2016).

¹⁰⁹ Australian National Audit Office, above n 4.

¹¹⁰ See, eg, House of Representatives Standing Committee on Tax and Revenue, above n 65.

¹¹¹ See, eg, Inspector General of Taxation, above n 66.

¹¹² See, eg, Australian National Audit Office, above n 91.

¹¹³ Australian Taxation Office, above n 3.

which the ATO serves. The benefits of the digital solutions introduced as part of the Reinvention program are limited to those taxpayers that have access to digital channels and who are willing and able to use them.

The public consultation on the Digital by default initiative recognised that ‘the community expects that Digital by default does not mean digital only. Digital services will be the primary way to interact, with alternative options available for users who cannot go digital.’¹¹⁴ Moreover, the findings from the consultation acknowledged a need to ensure that ‘vulnerable users’ are considered in the transition to digital services.¹¹⁵ The elderly, disabled and low-income earners were specifically identified as those who could potentially be entitled to digital exemptions.¹¹⁶ However, to date there has been no specific research conducted by the ATO on understanding the potential implications of the increasing digitisation of service provision and information dissemination for particular taxpayer groups.

The lack of access to digital channels by certain taxpayer groups has been explored to some degree in other jurisdictions such as in the US where the NTA recently commissioned a survey on broadband and internet access.¹¹⁷ The survey, conducted by the Taxpayer Advocate Service (TAS), covered various segments of the individual taxpayer population including: low income taxpayers (taxpayers with total positive income (TPI) at or below 250 per cent of the federal poverty level); elderly taxpayers (taxpayers aged 65 or older); disabled taxpayers (taxpayers who self-identified as having a long-term disability); and taxpayers with limited English proficiency.¹¹⁸ These ‘vulnerable groups’ were compared with the group of taxpayers who are generally not vulnerable (termed the ‘not low income’ group, since the vulnerable groups tend to be low income taxpayers).¹¹⁹ The TAS survey found that more than 33 million taxpayers in the US did not have access to broadband and 14 million had no internet access at home.¹²⁰ 12.5 per cent of the not low income group had no broadband access at home.¹²¹ However, 28.5 per cent, 40 per cent, and 31.9 per cent of the low income, elderly, and disabled taxpayers,

¹¹⁴ Australian Taxation Office, above n 53, 2. The research findings of the National Taxpayer Advocate (NTA) in the US also indicate that online services should supplement rather than replace more personal taxpayer services. See Nina Olson, *National Taxpayer Advocate 2016 Annual Report to Congress – Volume I* (2016) 129. However, as noted in section 1 of this paper, despite these findings, ‘the IRS’s decision to prioritize online services over other service channels is resource-driven rather than based on research on taxpayer needs and preferences and the impact on compliance.’ Nina Olson, *National Taxpayer Advocate 2017 Annual Report to Congress – Volume I* (2017) 37.

¹¹⁵ Australian Taxation Office, above n 53, 2.

¹¹⁶ *Ibid* 5.

¹¹⁷ See Mike Nestor, Tom Beers and Carol Hatch, ‘Taxpayers’ Varying Abilities and Attitudes Toward IRS Taxpayer Service: The Effect of IRS Service Delivery Choices on Different Demographic Groups’ (2016) in Nina Olson, *National Taxpayer Advocate 2016 Annual Report to Congress – Volume II* (2016). HMRC have also conducted various research on taxpayers’ and tax agents’ attitudes and expectations regarding its ‘Making Tax Digital’ programme. See, eg, HM Revenue and Customs, *Making Tax Digital (MTD): Qualitative research with individuals and agents to understand attitudes, likely behaviour and engagement with ‘Making Tax Digital’* (HMRC Research Report 500, June 2016); HM Revenue and Customs, *Digital Contact Channel research: Understanding customer preferences and attitudes towards contact channels when using digital services, to understand how these can be used to meet customer needs and expectations* (HMRC Research Report 504, February 2017). HM Revenue and Customs, *Making Tax Digital for Business: Survey of small businesses and landlords* (HMRC Research Report 480, November 2017).

¹¹⁸ Whilst taxpayers with limited English proficiency was included as one of the groups of taxpayers surveyed, the analysis by the TAS does not include this group of taxpayers as there was an inadequate sample size.

¹¹⁹ Nestor, Beers and Hatch, above n 117, 4. The low income and not low income groups collectively include all taxpayers (the elderly, disabled and limited English proficiency groups overlap within the two groups). In 2016, low income taxpayers constituted 46 per cent of the individual taxpayers filing tax returns.

¹²⁰ *Ibid*.

¹²¹ *Ibid* 8.

respectively, had no broadband access at home, thus significantly limiting their ability to conduct online activities.¹²²

Furthermore, the TAS survey findings revealed that ‘for large portions of the taxpayer population, taxpayers continue to be uncomfortable with many aspects of online interaction.’¹²³ For example, all of the vulnerable groups (low income, elderly, and disabled) were less comfortable sending emails on the internet than not low income taxpayers.¹²⁴ Similarly, all of the vulnerable groups, particularly the elderly, felt that they were less skilled than the not low income at doing research on the internet.¹²⁵ In addition, significant percentages of all taxpayer segments did not feel secure sharing personal information with a government agency. Only 38 per cent of the not low income population, 33 per cent of the low income, 17 per cent of the elderly, and 32 per cent of disabled taxpayers were comfortable sharing personal information with the government.¹²⁶ This led the NTA to conclude that ‘these findings have profound implications for taxpayers’ willingness to interact with the IRS online in all but the most rudimentary of actions.’¹²⁷ Further research indicates that individuals prefer online services for information services, because they can gather and receive information or data on their own schedule and without a need for further discussion.¹²⁸ However, they prefer to interact in-person when they need more individualised services.¹²⁹ Where substantial money is at stake and particularly where a taxpayer is experiencing a financial hardship, online interaction will neither resolve issues like these nor provide the taxpayer with the certainty he or she seeks.¹³⁰

Yet, as noted above, in Australia to date there has been no tax-specific research equivalent to the NTA research into vulnerable taxpayer groups’ access to the internet, comfort and skill in using the internet, and the preferences of various vulnerable taxpayer groups to accessing digital tax information and services. A recent Australian study by Bevacqua and Renolds¹³¹ notes that general work conducted by the Australian Human Rights Commission and data collected by the Australian Bureau of Statistics suggests that the findings found in the NTA research might be relevant in the Australian context.¹³² However, Bevacqua and Renolds propose that more research is required in the tax context on the needs and preferences of vulnerable taxpayer groups due to the existence of a “digital divide” between those who use technology and the internet and those who do not.¹³³ The digital divide can be understood as ‘the difference in ICT access and use between countries, between regions, or between other

¹²² Ibid.

¹²³ Nina Olson, *National Taxpayer Advocate 2016 Annual Report to Congress – Volume I* (2016) 22.

¹²⁴ Nestor, Beers and Hatch, above n 117, 11.

¹²⁵ Ibid 10.

¹²⁶ Olson, above n 123, 23.

¹²⁷ Ibid.

¹²⁸ Julia Klier, Regina Pflieger and Lea Thiel, ‘Just Digital or Multi-Channel? The Preferences of E-Government Service Adoption by Citizens and Business Users’ (2015) *Wirtschaftsinformatik Proceedings 2015* 180, 190, cited in Nina Olson, *National Taxpayer Advocate 2015 Annual Report to Congress* (2015) 58.

¹²⁹ Olson, above n 128, 58.

¹³⁰ Ibid 8.

¹³¹ John Bevacqua and Victor Renolds, ‘The Digital Divide and Taxpayer Rights – Cautionary Findings from the United States’ (Paper presented at the 13th International Conference on Tax Administration, Sydney, 5-6 April 2018).

¹³² See, eg, Australian Human Rights Commission, *Submission to the Joint Select Committee on Cybersafety Inquiry into Cybersafety for Senior Australians* (January 2002); Australian Human Rights Commission, *Background Paper: Human Rights in Cyberspace* (2013); Australian Bureau of Statistics, *Household Use of Information Technology, Australia, 2014-2015* (18 February 2016). See also Australian Competition and Consumer Commission, *Targeting Scams—Report of the ACCC on Scams Activity 2017* (May 2018) for demographics in scam activity in Australia.

¹³³ Bevacqua and Renolds, above n 131, 286.

groupings that share common characteristics.’¹³⁴ The digital divide includes imbalances both in physical access to technology, as well as in the resources and skills needed to effectively use such technology.¹³⁵ Bevacqua and Renolds suggest that ‘there is a need for deeper and more nuanced understanding of our most vulnerable taxpayers’, including ‘appreciating differences between sub-groups of vulnerable taxpayer groups, such as differences between “young olds” and the very elderly.’¹³⁶ They also propose that much more information is required in order to design online services in the manner most likely to address the challenges faced by vulnerable taxpayers, including investigating the possible advantages of utilising a mobile-optimised approach to the provision of information and support.¹³⁷ Furthermore, they state that ‘there is a good case for extending ... research to specifically understand the impact of a shift to digitisation of tax support and information on trust-based compliance behaviour of vulnerable taxpayer groups.’¹³⁸

The Australian House of Representatives Standing Committee on Tax and Revenue note, with respect to the ATO’s digital transition generally:¹³⁹

Some people are not engaging with the new digital interface—which is the first-line engagement interface of the ATO—because it is unfamiliar and they aren’t ICT [information and communications technology] confident. These people are likely to become increasingly disengaged from knowledge of their own affairs and information about the system as a whole.

Notwithstanding that research on vulnerable taxpayer groups’ service needs and preferences is applicable to all areas of tax administration where the ATO interact with taxpayers, it is of particular significance to tax dispute resolution given the reports of criticism of the ATO which continue to emanate from the small business and individuals taxpayer segments (as noted in section 4.11). These taxpayer segments arguably constitute a significant portion of the vulnerable taxpayer groups. As noted by the NTA, if the transition to online tax services and information provision results in taxpayers finding it much harder to resolve their problems, this will generate a great deal of taxpayer frustration with the revenue authority.¹⁴⁰ As a consequence, confidence in the fairness of the tax system will erode, and taxpayer frustration and alienation may lead over time to a lower rate of voluntary compliance.¹⁴¹ This has further significance in the context of the ATO’s Reinvention program as the enhancements to voluntary compliance brought about by the non-digital aspects of the Reinvention program, such as increased options for ADR and early engagement with taxpayers, may be reduced as a

¹³⁴ International Telecommunication Union, ‘Measuring the Information Society’ (2013) 39.

¹³⁵ Ibid. For further information on the digital divide in Australia, see J Thomas et al, ‘Measuring Australia’s Digital Divide: The Australian Digital Inclusion Index 2017’ (RMIT University for Telstra, 2017).

¹³⁶ Bevacqua and Renolds, above n 131, 306. For example, Bevacqua and Renolds state that there is increasing recognition of the need to distinguish between ‘young olds’, who are more likely to be digitally literate and comfortable in using internet-based services, and those of older generations, such as those over 80. The latter group are far more likely to be left out insofar as accessing information and services is concerned.

¹³⁷ Ibid. There is evidence that mobile devices are overtaking computers as the primary avenue for accessing the internet. See, eg, StatCounter, ‘Mobile and tablet internet usage exceeds desktop for first time worldwide’ (Media release, 1 November 2016) <<http://gs.statcounter.com/press/mobile-and-tablet-internet-usage-exceeds-desktop-for-first-time-worldwide>>. This evidence is particularly strong amongst low income groups. However, effective information and services may not necessarily be provisioned to mobile devices in the same manner as to computers as people do not and cannot use smartphones and tablets in the same ways that they use computers because of the differing interfaces. Bevacqua and Renolds, above n 131, 286, n 4.

¹³⁸ Bevacqua and Renolds, above n 131, 304.

¹³⁹ House of Representatives Standing Committee on Tax and Revenue, *Taxpayer Engagement with the Tax System* (August 2018) 180, [6.49].

¹⁴⁰ Olson, above n 128, 4.

¹⁴¹ Ibid.

consequence of the potential corrosive effects of the transition to online tax services and interactions on vulnerable taxpayer groups' perceptions of fairness, and trust and confidence, in the tax system.¹⁴²

As noted in section 4.1, the feedback collected from the ATO's Digital by default consultation was predominantly collected from online responses. Thus, the findings are largely indicative of the service needs and preferences of *already-online* taxpayers. It is not a comprehensive analysis of the online or service needs of the entire taxpayer population which the ATO serves. Stakeholder involvement in the design process is an important aspect of DSD.¹⁴³ To build effectiveness and trust in a system, stakeholders should be asked first what they want and then be provided a structured means to give input into both design and continuous improvement.¹⁴⁴ Furthermore, 'considering what complainants actually want, which is, if possible, to raise concerns *as they personally wish to raise them*, is critical to ensuring that a system is actually used.'¹⁴⁵ Therefore, it is essential that the ATO engages with and seeks feedback from all segments of the taxpayer population, in particular including those with no or limited access and/or ability to use digital channels (such as the elderly, disabled low-income earners and taxpayers with limited English proficiency). Such a step would arguably also contribute towards rebuilding the trust and confidence in the ATO of small business and individual taxpayers.

Thus, looking forward in the ATO's Reinvention program, it is recommended that research similar to and extending that conducted by the NTA, examining the access, confidence and proficiency of vulnerable taxpayer groups in utilising digital services and information, is conducted by the ATO. This research is necessary in order for the ATO to educate itself on the particular needs and preferences of vulnerable taxpayer groups and further to design online services in a manner most likely to address the barriers faced by vulnerable taxpayers as well as provide alternative options for those that are unable to interact digitally. More detailed insights into technology usage and preferences of vulnerable taxpayers can 'provide a justification for the need to retain a baseline level of traditional forms of support targeted for those who simply cannot be expected to ever fully embrace online information and service provision.'¹⁴⁶ Moreover, such research is critical to improving equity of access issues associated with tax dispute resolution. The digital divide adds to existing tax social justice¹⁴⁷ issues and the effective accessibility to tax dispute resolution in Australia.¹⁴⁸ As noted by Tran-

¹⁴² In addition, the system-wide ATO technological outages which occurred in 2016 and 2017 may also have potentially contributed towards an erosion of taxpayer trust and confidence in the tax administration. The Australian Commissioner referred to the system outage occurring in late 2016 as the 'worst unplanned system outage in recent memory'. A second system-wide ATO outage occurred in February 2017. See Australian Taxation Office, *ATO systems update* (8 February 2017) <<https://www.ato.gov.au/Media-centre/Media-releases/ATO-systems-update/>>.

¹⁴³ See DSD Principle 1, in Table 1, section 2, of this paper.

¹⁴⁴ Rowe, above n 34, 85.

¹⁴⁵ Ibid (emphasis in original).

¹⁴⁶ Bevacqua and Renolds, above n 131, 301.

¹⁴⁷ Tran-Nam and Walpole note that tax (social) justice is a multidimensional concept and distinguish between 'tax policy equity' (concerned with the distribution of tax burdens among individuals in a society) and 'tax procedural equity' (concerned with the fairness of the procedures involved in tax audits and disputes, and the perceived treatment the taxpayer receives from the tax authority). Binh Tran-Nam and Michael Walpole, 'Tax disputes, compliance costs and access to tax justice' (2016) 14(2) *eJournal of Tax Research* 319, 321. Equity of access issues in connection with the digital divide are more closely associated with the tax justice dimension of tax procedural equity.

¹⁴⁸ See, eg, *ibid*; Binh Tran-Nam and Michael Walpole, 'Access to Tax Justice: How Costs Influence Dispute Resolution Choices' (2012) 22(1) *Journal of Judicial Administration* 1; Binh Tran-Nam and Michael Walpole,

Nam and Walpole, ‘taxpayers with greater resources may be able to obtain more favourable outcomes than taxpayers with lesser resources.’¹⁴⁹ The digital divide creates additional equity of access issues stemming from disparities in the access, resources and skills needed to use digital technologies among different demographic groups.

6. CONCLUSIONS AND LIMITATIONS

Similar to various other tax administrations around the world, the ATO is currently undergoing a broad transformational change program, ‘Reinventing the ATO’, focused on achieving the vision of being ‘a contemporary service-oriented organisation’.¹⁵⁰ The Reinvention program incorporates the Digital by default initiative which requires most people to use ATO digital services to send and receive information and payments to and from the ATO. Hence, the Reinvention program and its focus on using digital solutions affects significant areas of tax administration where taxpayers need to interact with the ATO, including tax dispute resolution. Thus, this paper has sought to provide a DSD evaluation of the Australian tax dispute resolution system in the context of the ATO’s Reinventing the ATO program and its adoption of the Digital by default initiative. Based on the DSD evaluation conducted, this paper has then provided recommendations on the tax dispute resolution system for the ATO going forward in its Reinvention program.

Consistent with previous DSD evaluations of the Australian tax dispute resolution system, the DSD evaluation conducted indicates that the tax dispute resolution system meets, in full or in part, most of the DSD principles of best practice. The Reinvention program enhances the Australian tax dispute resolution system through aspects such as increased options for dispute resolution, additional access points to the dispute resolution system, enhancements to the provision of independent confidential neutrals and process advice within the system, and digital improvements to taxpayer notifications and the provision of information. ATO statistics appear to support these findings with early engagement and ADR processes resulting in a 61 per cent reduction in the number of appeals to the AAT since 2013-14 and a decrease in the average cycle time through the objection process by more than 30% in 2016-17.¹⁵¹ In addition, every dispute resolved through the ATO’s in-house facilitation saves taxpayers, on average, more than \$50,000.¹⁵² Automated SMS reminders notifying habitual late payers have also produced cost savings for the ATO over chasing payments through phone calls and formal letters.¹⁵³

In line with the Digital by default agenda, the digital solutions introduced as part of the Reinvention program, including online web chat and screen share services, virtual assistance, a digital app and SMS notifications, provide a number of benefits to those taxpayers who have internet access and have the requisite skills to navigate digital channels. Taxpayers with access to the system, and who have the knowledge and skills required to use it, will be more informed and will be able to interact with the ATO in a more convenient way. However, due to the existence of a digital divide, these benefits may not necessarily accrue to vulnerable taxpayer groups (low income, elderly, disabled and taxpayers with limited English proficiency) who may not have access to digital channels and/or who may be unable or unwilling to use them.

‘Independent Tax Dispute Resolution and Social Justice in Australia’ (2012) 35(2) *UNSW Law Journal* 470. See also Inspector General of Taxation, above n 63, 56-58.

¹⁴⁹ Tran-Nam and Walpole, above n 147, 319.

¹⁵⁰ Australian Taxation Office, above n 3.

¹⁵¹ Australian Taxation Office, *Commissioner of Taxation Annual Report 2016-17*, above n 67, iii.

¹⁵² *Ibid* 65.

¹⁵³ *Ibid* iii.

The public consultation on the Digital by default initiative only goes as far as recognising that ‘the community expects that Digital by default does not mean digital only.’¹⁵⁴ The data collected from the Digital by default consultation was predominantly from online responses. To date there has been no specific research conducted by the ATO on understanding the potential implications of the increasing digitisation of service provision and information dissemination on vulnerable taxpayer groups with no or low access to digital channels.

In the US, notwithstanding that the IRS’s decision to prioritise online services over other service channels is primarily cost-driven, research by the NTA also bears out that digital channels should be utilised as a complement rather than as a substitute to existing channels. The NTA’s findings indicate that while ‘the delivery of online services may appear cost-effective at first glance, focusing solely on one method of service delivery is short-sighted as it does not properly address the actual service needs of [all] taxpayers.’¹⁵⁵ Ignoring the service needs of a significant segment of the population will likely impact on voluntary compliance and have more costly downstream consequences for the revenue authority.¹⁵⁶

Thus, looking forward in the ATO’s Reinvention program, it is recommended that research examining the access, confidence and proficiency of vulnerable taxpayer groups in utilising digital services and information, is conducted by the ATO. Research extending that undertaken by the NTA is necessary in order for the ATO to provide digital services in a manner most likely to address the barriers faced by vulnerable taxpayers. This may include designing mobile services more strategically and addressing concerns about cybersecurity and privacy of personal information. Further research is also required in order to develop a strategy for meeting the service needs of those taxpayers who are not likely to use digital service offerings. The strategy should take into account the reasons for the taxpayer’s behaviour and tailor the personal services to meet those needs.

Research on the service needs and preferences of vulnerable taxpayer groups is critical to improving equity of access issues brought about by the digitalisation of tax services and information. Moreover, in the context of the ATO’s Reinvention program, the enhancements to voluntary compliance brought about by the non-digital aspects of the Reinvention program, including increased options for ADR and early engagement with taxpayers, may be reduced by the potential corrosive effects of the transition to digital tax services and information provision on vulnerable taxpayer groups’ trust and confidence in the tax system. Also, such research is relevant in the context of ATO dispute resolution due to the potential for the greater digitalisation of tax dispute resolution processes in the future.¹⁵⁷

This paper is subject to a number of limitations including that the recommendations made for research on the digital service needs and preferences of vulnerable taxpayer groups are made in the particular context of the Australian tax dispute resolution system. Accordingly, it was beyond the scope of this paper to address issues associated with the recent failures in the ATO’s broader IT systems framework. Furthermore, while research on the service needs and preferences of vulnerable taxpayer groups is applicable to all areas of tax administration where the ATO interacts with taxpayers, it is of particular significance to tax dispute resolution given

¹⁵⁴ Australian Taxation Office, above n 53, 2.

¹⁵⁵ Olson, above n 128, 63.

¹⁵⁶ Ibid 57.

¹⁵⁷ For example, in the US the IRS have piloted web-based virtual Appeals conferences. See Internal Revenue Service, *Appeals Virtual Conferences – WebEx* (9 August 2018) <<https://www.irs.gov/compliance/appeals/appeals-virtual-conferences-webex>>.

the reports of criticism of the ATO which have come from the small business and individuals taxpayer segments on their dealings with the ATO. Hence, such research is critical to improving taxpayers' perceptions of fairness in the tax system and thereby, voluntary compliance.

The DSD evaluation on the Australian tax dispute resolution system is limited to being conducted in the context of the ATO's Reinvention program. Thus, the consequent recommendations put forward are made in the forward-looking context of the Reinvention program. As stated in section 1, it was not the purpose of this paper to provide remedies to any previously identified DSD deficiencies in the Australian tax dispute resolution system. This paper also did not seek to provide recommendations for reform of the tax dispute resolution procedures and/or the operation of the ATO. The recommendations made are also subject to the budget and resources available to the ATO.

Finally, while the recommendations made are in the context of the Australian tax dispute resolution system and the ATO's Reinvention project in its current state of progress, the suggestions may also potentially be of relevance to revenue authorities in other jurisdictions which are currently undergoing similar transformation or digitalisation programs.