

**Australasian Tax Teachers Association
Conference 2019**

Tax in a changing world

Change is the new black

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Contents

1. Tax in a changing world	3
2. Data and Analytics	4
3. Innovation	4
4. Prevention, Education and Support through business partners - clients and staff	5
4.1 School Education	5
4.2 Working with the profession to educate clients	6
4.3 Future of the Tax Profession.....	7
4.4 Public Advice and Guidance.....	7
4.4.1 Private Advice	8
4.5 Supporting clients who need more help	8
4.6 National Tax Clinic Program.....	9
4.7 Focus on the education of ATO staff	10
4.7.1 Inaugural Tax Technical Conference.....	10
5. Prevention of disputes story.....	10
5.1 The birth of RDR: Separation of assessment and review	13
5.2 Continuous improvement and measures in dispute resolution.....	14
5.3 Future challenges and opportunities in dispute resolution	15
5.4 A new separate Second Commissioner	15

1. Tax in a changing world

Three years ago, I spoke at this conference and discussed the need to have a tax and super system that is sustainable, one that can meet the challenges of a rapidly changing, fast-paced world. I think this need is even more relevant now than ever before.

Change in tax has been the one consistent feature of the tax landscape for decades. In the 1970s there was the precursor to change: the Asprey Committee report. It set the scene for a number of the changes that occurred in subsequent years.

In the 1980s we saw the introduction of capital gains tax, fringe benefits tax, dividend imputation, the taxation of superannuation and more. Perhaps most significantly for the administration of the tax system was the introduction of self-assessment. That alone could be the subject of a debate as to the efficacy of that on the system given the advent of technological solutions to the problem then faced.

Further major changes in taxation were delivered in 2000 following on from the A New Tax System (ANTS) proposals. The Commissioner at the time, Michael Carmody, believed these changes were “the greatest changes ever to our tax system (that) were implemented.”¹

These changes included the introduction of a goods and services tax (GST), a pay as you go system (PAYG), which replaced 11 existing systems, including pay-as-you-earn, prescribed payments, reportable payments, provisional tax and company instalments. Of course there was also the introduction of a range of benefits and grants scheme.

In 2009 the Henry Review delivered the report on Australia’s future tax system, outlining findings and recommendations – some that are still considered to be very ambitious. The review attracted great interest with over 1,500 written submissions.

It was acknowledged by the report itself that significant reforms required time to implement and even would require further adaptation over time.²

Perhaps in keeping with that perspective, very little from the Henry Report has been implemented (and in one notable case, what was implemented wasn’t implemented consistently with the recommendation and was subsequently repealed).

Ten years on and digitisation, our systems, data matching and analytics capability have changed the way we do business. Digitisation has created huge benefits for everyone – the client, the tax practitioner and the ATO. The efficiencies that have been gained are enormous and we now can deal with people and their issues for the most part in real time.

Towards 2024

With this in mind, the focus for ATO is **now** on 2024 – the next wave of change, reflecting the ATO's commitment to ongoing transformation and creating a streamlined, integrated and data-driven organisation.

¹ ATO annual report 2000–01

² Australia’s future tax system – Report to the Treasurer, December 2009

Working towards our 2024 vision, we have two aspirations – building trust and confidence and being streamlined, integrated and data-driven. To ensure our client experience is streamlined and integrated, we will use data to direct our work and automate our processes where we can.

2. Data and Analytics

Our goal is to use data and insights to deliver value for our clients and inform decision making in everything we do.

We are seeing an exponential increase in the data we receive from third parties and the volume of digital transactions we are processing. During Tax Time 2017–18, we made 82 million transactions available to taxpayers and agents via pre-filing services, making it quicker and easier to complete your tax return.

Single Touch Payroll (STP) is bringing in real-time reporting of employment data in line with pay cycles, providing greater insights during the year and giving employees greater visibility to their pay and superannuation in myGov. Over 52,000 employers are reporting to the ATO through STP each payday on behalf of around 3 million employees. The reporting from STP is likely to triple the amount of data that the ATO receives from third parties.

As part of a wide range of international measures aimed at combating tax avoidance through more comprehensive exchanges of information between countries, we are continuing to exchange Country-by-Country (CbC) reports with partner jurisdictions. To date, we have exchanged CbC reports with more than 50 countries. We handle a variety of data, structured and unstructured, to allow fast and flexible data mining and visualisations across datasets to inform business decisions.

We are using our data and analytics capabilities to make it easier for clients with stable and basic tax affairs, including taxpayers who only need to lodge a return to receive a refund of their franking tax credits. We use the data we have to calculate their refunds, assure ourselves of their low risk and send out their refunds. Nearly 60,000 taxpayers got a “push” income tax assessment in 2017–18. Looking forward to 2024, we want to expand this service so that for an individual taxpayer, tax just happens.

We are putting the foundations in place to take advantage of innovations in automation and artificial intelligence. Our capabilities will enable the ATO to use smart technologies to deliver efficiencies while enhancing the client and staff experience. Robotic process automation can replace repetitive factual tasks, freeing tax officers for higher-value work. Virtual assistants, agents and chat-bots, such as Alex our virtual assistant, can assist users to find answers to less complex queries. Artificial intelligence including machine learning can generate insights that augment, rather than replace, human decision making.

3. Innovation

To keep up with change we must continually invest and allow our people to be innovative. With this in mind, the ATO is revitalising our approach to Innovation. This is being developed through creating a culture that supports innovation, ideas and creativity, providing the right environment, tools and support to staff to drive innovation, recognising staff achievements and contributions to improving the organisation and making innovation part of our DNA.

Our new ATO Innovation Framework provides a simple and more consistent approach across the organisation that is aligned to our corporate priorities. In an organisation the size of the ATO it is

important to promote greater visibility of ideas or initiatives and provide opportunities for collaboration across business lines. It will also provide a way to reduce duplication of similar ideas, the ability to leverage ideas across different parts of the organisation and help filter and categorise these ideas – sorting those which can and should be taken forward and determining how they are progressed.

This framework will support and facilitate three types of change:

- **Grassroots change** – simple change where it is easy to make improvements as part of our everyday work with limited investment.
- **Tactical change** – improvements where we need a level of collaboration across the organisation and some investment.
- **Transformational change** – taking steps towards our longer term future direction.

The framework is also designed to attract innovations worth testing and to refine, develop, test and fail or validate ideas. This will then allow informed investment decisions on how an idea may work, its value and feasibility.

4. Prevention, Education and Support through business partners - clients and staff

To be sustainable in a rapidly changing world, we need to keep up with changes and, more importantly, support our clients to meet their tax and super obligations. The answer lies in working in partnership with tax teachers, tax practitioners, business, industry bodies and other organisations.

4.1 School Education

The ATO has 9.6 million individual clients, and not surprisingly, individual clients have the most interaction of all categories of taxpayers with the ATO. They contribute around 47% of all tax collected. Given these facts, understanding the basics of taxation and superannuation is essential learning for all young Australians.

The ATO promotes learning of tax and super through school visits, expos and teacher training (teacher professional learning). Although teaching tax and super is not mandatory, the ATO material is linked to the national curriculum. The take-up of our existing products and services is inconsistent across schools, something that Assistant Commissioner Kath Anderson talked about at last year's conference.

In the last 12 months we have done considerable research to better understand community sentiment and we've also been undertaking a program of work to redesign our materials and our approach. The aim being that, by 2024, tax and super learning will be:

- included in the Australian curricula (federal and state). We recently provided a submission to the NSW Education Board's curriculum review and will provide further submissions to curriculum reviews as the opportunities arise;
- actively taught in at least 50% of schools, supported by products and services that have been co-designed with teachers, are easy to teach and understand, and are accepted and accessible. For example, we've been co-designing a values-based primary school resource with teachers and various stakeholders which we hope to launch in mid-2019, and

- reinforced by parents and influencers.

Our schools education strategy is a core component of a longer term strategy to foster a positive community culture towards tax and superannuation and dispel common myths such as:

- Big businesses don't pay the correct amount of tax. A recent survey commissioned by the ATO found 73% of people surveyed believed that big business did not pay the correct amount of tax
- Everyone cheats a bit, so I can too. 32% believed one would have to cheat in excess of \$1,000 before their cheating hurt others
- When I lodge I should get a refund. 51% agreed that most people would over-claim deductions or leave out income to make sure they got a refund

4.2 Working with the profession to educate clients

Most small businesses rely on their tax agent's advice on what they need to know to effectively run their business, manage their business finances and meet regulatory requirements.

Recognising this, we are working closely with accountants, bookkeepers and business advisors to co-design and develop education, coaching and support services that they can deliver to their clients.

The ATO has a growing program of work focused on helping small businesses understand their tax obligations and more effectively manage their businesses, broader than just tax.

We know that:

- Almost half of small businesses are under financial pressure within the first year of starting business and this pressure increases in years 1–3.
- More than 60% of small businesses cease operating within three years of starting.
- 90% of small business failures are due to poor cash flow.

To address this, the ATO has been working with tax professionals and other intermediaries over the last year to implement an educational coaching program called the 'Cash Flow Coaching Kit'. This kit was co-designed with small businesses and tax professionals to quickly help small businesses to better understand, and easily identify, actions they can take to improve their cash flow and business performance.

The kit is delivered to small businesses through business coaching conversations with their trusted advisor. Accountants, bookkeepers and business advisors who have used the kit found that it helped them to have effective conversations with their small business clients about cash flow.

Extensive research has guided the design of the Cash Flow Coaching Kit. It is:

- designed for time poor small businesses
- builds capability
- flexible and suitable for all stages of the business lifecycle
- empowers small businesses with the knowledge to make informed decisions

- delivered through the natural small business ecosystem.

Up to 30 June 2018, we had trained nearly 1,000 tax professionals and business advisors to use the Kit with their small business clients.

The design and build of an interactive, digital version of the kit is well under way. It is expected to be available to tax professionals to use with their small business clients in the coming months.

Thanks to the success of the Cash Flow Coaching Kit, we are working on more education products to deliver through partners. In 2018, we successfully piloted a new white-labelled education product: Planning your Regular Financial Commitments. This product focuses on an easy, five-step process to plan for future commitments. We also developed a one-to-one product for tax professionals to use with their small business clients.

4.3 Future of the Tax Profession

The future focus for tax practitioners is changing too. In 2017, the Commissioner requested the Inspector-General of Taxation to conduct a review into the Future of the Tax Profession. Previous reviews were aimed at issues relating to existing ATO systems and practices as well as associated interactions with taxpayers, tax practitioners and other third parties. By contrast, this review focused on the future of the profession, taking into account technological, social, policy and regulatory changes.

The Inspector-General sought input from a broad spectrum of stakeholders which included taxpayers, tax practitioners, professional bodies as well as other third parties such as financial advisers, software developers and hardware developers. Overseas experiences and research were considered to identify the significant changes ahead, aspects of the current system that should be retained and/or augmented, those that need to be discarded and the new strategies required to meet future challenges and realise the potential benefits.

The ATO worked closely with the Inspector-General with the review which has concluded and is currently awaiting ministerial approval for public release.

4.4 Public Advice and Guidance

Last year at the ATTA conference, I discussed the changes in the way we are providing advice. There is now a layered approach, including web-based guidance, factsheets, rulings and more detailed explanations that users can access depending on their needs.

For context, last financial year we published 184 public rulings and other formal guidance products. These included:

- 157 public rulings (this is inclusive of class and product rulings, draft public rulings and draft and final significant addenda to public rulings).
- 27 guidance products (13 Practical Compliance Guidelines, 10 Decision Impact Statements, two Law Administration Practice Statements, one Taxpayer Alert and one SMSF Regulator's Bulletin).

The ATO 2018–19 Corporate Plan provides that proactive advice and guidance is a strategic initiative for the ATO. This involves using a data-driven and forward looking approach to develop accessible public advice and guidance.

The ATO prioritises public advice and guidance under development to ensure that our people are working on the most important public guidance and advice, continually exploring better use of data to further inform the public advice and guidance we're developing and tailor that advice or guidance to meet client needs.

The use of surveys provides feedback on the usability of both the public advice and guidance we provide and our digital platforms – this allows us to obtain valuable insights to improve our offering.

4.4.1 Private Advice

Our interpretative guidance products explain how the law operates generally. They often provide step-by-step guidance, are simply expressed, and don't cover all possibilities. However, we also offer a tailored service and assurance designed to provide clients with the opportunity and incentive to seek early engagement on potential areas of compliance risk and attempts to balance the tension between timeliness and absolute certainty.

This service provides taxpayers and their advisers with the opportunity to engage with specialist officers to discuss technical issues for complex transactions that are being planned or have recently been implemented, and obtain tailored advice.

It allows us to understand the taxpayer's circumstances, work together to resolve identified issues as early as possible so that your clients can obtain the level of certainty that meets their needs.

The entry points have been streamlined to make it easier to access the service – Call back, email and submitting the Early Engagement for advice request form.

A 'streamlined private ruling application form' is now available to clients and their advisors. This will provide greater guidance when applying for a private ruling and recognises the significant skill and ability of clients and intermediaries.

4.5 Supporting clients who need more help

The ATO has volunteers to help low income taxpayers prepare and lodge their return online using the Tax Help Program. 2018 marked the 30th anniversary of Tax Help and 750 volunteers operating out of 601 centres undertook over 28,950 interactions. Of these centres, 28 centres provided assistance to Indigenous communities and 101 centres assisted culturally and linguistically diverse communities, providing assistance in 61 languages. Since Tax Help began in 1988, the service has helped more than 1.5 million Australians with their current and prior year tax returns.

We also hold tax time pop-up shops in community and shopping centres, to help taxpayers with general enquiries and the transition to digital services. During Tax Time 2017–18, we had 53 pop-ups in 26 shopping centres, 25 community hubs (including four drought affect areas) and one at Southern Cross Station in Melbourne, collectively managing 7,550 interactions and 12,025 questions.

Pop-ups are based on regions/population assessed as at-risk locations – for example higher work related expenses claims, lost super, non-lodgment, and high culturally and linguistically diverse populations.

Those who cannot access Tax Help and pop-ups can either phone us or access online services through Department of Human Services (DHS) shopfronts, agencies and self-help locations.

Throughout the year ATO staff visit communities and community groups where a need is identified (e.g. we conduct visits to indigenous and migrant communities and provide additional support to taxpayers in natural disaster zones).

4.6 National Tax Clinic Program

I'm sure you're all familiar with the Curtin University Tax Clinic which Annette and Minister Stuart Robert spoke about yesterday.

The clinic here was established in July 2018 – the first of its kind in Australia. While some Australian University Law Schools run law clinics, these tend to focus on administrative, commercial, criminal, family and immigration law. To our knowledge, no law clinics provide tax law support or advice. This is also generally the case for legal aid and community law centres.

The clinic uses tax law and accounting students, operating under the supervision of experienced tax practitioners from the Faculty of Business and Law, to provide free tax advice and assistance for unrepresented taxpayers.

The ATO has been supportive of the clinic project from its outset, both for its work in supporting taxpayers and in helping build practical experience for the future profession. We have been happy to be involved in providing the clinic some key contacts and practical assistance in helping resolve its clients' tax issues.

The hard work of Annette, her colleagues and the tax students at Curtin has proven the value of the concept and demonstrated the potential benefits for the good of the whole tax system.

This has also been recognised by the Commonwealth Government, with a trial of a National Tax Clinic Program announced by Prime Minister Scott Morrison in November last year, and which Minister Robert also spoke about yesterday.

The program will involve support for 10 tax clinics, including Curtin, operated by Australian universities to provide free tax advice and support to small businesses and individuals.

As with the Curtin clinic, the focus will generally be on unrepresented and lower income individuals and small businesses, providing support across a wide range of services including tax advisory work, reporting and filing obligations, debt and payment negotiations, and disputes or other ongoing issues with the ATO. This will also give tax law and accounting students practical experience of dealing with clients in a real-life setting.

The clinics will also run regular public seminars on tax topics as part of a more general tax education service. By focussing on unrepresented and lower income clients the clinics will address an acknowledged gap in the market and are not intended or expected to compete with professional tax advisors and accountants.

The government has tasked the ATO to administer the trial, and we have already started work with the 10 short-listed universities. We see our role in this process as facilitators, helping to get things up and running and putting in place the necessary support points to make a national trial a practical reality. Even though the trial is only for 10 clinics, we are keen for any universities who are interested across the sector to be involved and engaged. We are all on a learning curve here, and are keen to see this succeed and to see where it might end up.

4.7 Focus on the education of ATO staff

Let me turn to professional development opportunities for our staff. The ATO encourages all staff to take up opportunities for self-development. There is also a focus on sharing knowledge with our colleagues and the community.

By investing in providing contemporary, flexible learning solutions, the ATO aims to build staff capabilities to complete priority work now and into the future. We use a capability framework to integrate our people system, and we refreshed that framework in 2018 to make it easier for staff to recognise the range of current and emerging capabilities that the ATO needs. The capability framework outlines the core sets of skills, knowledge, attributes and behaviours, and learning solutions are mapped to these capabilities.

To maintain and increase the professionalism in the ATO, we have implemented a professional stream approach. This broadens our organisational view of capability, highlights the depth, breadth and importance of each profession in the ATO, and delivers on our commitment to developing a contemporary workforce. Professional streams are guided by stream owners who translate industry best practice back to the ATO, and help us to create a holistic approach to workforce capability development to ensure expertise, credibility and influence across all our professions.

Staff are further supported to build their professional capabilities through the Tuition Assistance Program. The program provides financial assistance where staff undertake a qualification or certification that will enhance the ATO's ability to meet key business objectives.

The ATO continues to offer staff a variety of ways to learn, beyond traditional classroom learning. Through technology-assisted products – including webinars, short learning events via ATO Learning Express, and online learning platforms, such as Lynda.com and Udemy – we provide staff with access to anywhere, anytime learning.

4.7.1 Inaugural Tax Technical Conference

While the ATO has conducted various internal seminars and conferences for many years to keep our people up to date, these have tended to be organised on a site by site or business line by business line basis. In 2018 we changed this to implement a more National and whole of ATO approach.

The inaugural ATO Technical Conference for staff took place between 19 and 23 March, 2018. The conference was held to support the building of technical and leadership capability on an enterprise level and further our strategic objective of being a high performing workforce. With the theme 'being contemporary in a changing environment', the Inaugural Tax Technical Conference explored the key challenges and risks the ATO faces in a rapidly evolving digital era. A program of plenary and site based sessions provided all staff with the opportunity to learn from internal and external experts through a variety of interactive formats.

5. Prevention of disputes story

There has been major change in our approach to dispute prevention and resolution. While not desirable, disputes are a feature of a complex system. Where taxpayers disagree with a decision made by the ATO, the law provides them a right to formally dispute this first through an internal ATO review process (by objecting in writing within the time limits specified under the law). Where a taxpayer disagrees with the outcome of an objection with the ATO, they may pursue action under the Administrative Appeals Tribunal (AAT) or the Federal Court of Australia.

All of this is unsurprising and completely appropriate to a well-functioning tax system.

To give some sense of size and scale, most interactions with the ATO do not end up in dispute. Of the millions of tax returns and activity statements lodged, and various superannuation matters last year, there were around 24,350 objections, around half of which were what we describe as “self-objections”; these are objections that people lodge to correct something in their return (including claiming additional deductions). That leaves around 12,000–13,000 that are objections against an ATO action (such as an audit). These objections represent less than 0.01% of all lodgments of activity statements and tax returns, around 3% of all audit activity and around 3.5% of staff effort.

There were 478 objection decisions that were appealed to the AAT or court and only 102 cases went all the way through to decision. While these numbers are small in the broader scheme, their significance is not – we recognise they impact people’s lives and businesses, and the matters themselves need to be resolved for the taxpayer and potentially, the broader system.

The way the ATO handles disputes has always been the subject of commentary and scrutiny. And that is no different now. What is different though, is the ‘old’ solutions for improvements to ATO’s dispute management are still being touted, based on the ‘old’ ATO, when in fact the ATO’s dispute prevention, management and resolution have significantly changed in the past few years. Since Commissioner Jordan took the reins in 2013, and the author took on the role of Second Commissioner, with responsibility for independent review in 2014, approaches to resolving disputes have been overhauled.

The new approaches and initiatives for dispute resolution have taken account of, and are consistent with, recommendations from reviews by the Inspector General of Taxation (IGT)³, the House of Representatives Standing Committee on Tax and Revenue⁴. The recommendations from the various reports can sometimes cover similar ground. Accordingly, for ease of reference, the below table⁵ brings together similarly themed recommendations to show how the ATO has responded by way of progressing and implementing changes and improvements:

Recommendation	Implementation
Independence <ul style="list-style-type: none"><li data-bbox="240 1413 1362 1447">• House of Representatives Standing Committee on Tax and Revenue – Tax disputes 2015<li data-bbox="240 1496 836 1529">• IGT – The Management of Tax Disputes 2015<li data-bbox="240 1579 1281 1612">• IGT – Review into the ATO’s use of early and Alternative Dispute Resolution 2012	

³ [Review into the Taxpayers’ Charter and taxpayer protections](#) 2016
[The management of tax disputes](#) 2015
[Review into the Australian Taxation Office’s use of early and alternative dispute resolution](#) 2012
[Review into aspects of the Tax Office’s settlement of active compliance activities](#) 2009
[Review into the underlying causes and the management of objections to Tax Office decisions](#) 2009

⁴ [House of Representatives Standing Committee on Tax and Revenue Inquiry into Tax Disputes 2015.](#)

⁵ I am indebted to my colleagues at the ATO, in particular Michael Latter, for preparing this table for me. Any errors or omissions are mine

<p>That the Government consider legislatively creating a separate appeals group and establish a dedicated new second commissioner to be responsible for managing tax disputes for all taxpayers, including pre-assessment reviews; objections; litigation including identifying test cases and providing oversight on settlements; and facilitating the use of ADR throughout the compliance and dispute resolution process.</p>	<p>✔ While legislatively this is a matter for Government, the ATO has taken quite a number of steps to implement administrative improvements to essentially give effect to these recommendations.</p> <p>This has included creating a separate appeals function under the leadership of a separate Second Commissioner independent from all audit activity.</p>
<p>Establish an independent appeals area with a separate Second Commissioner.</p>	<p>All tax disputes and objections to taxation matters have been managed independently from ATO originating areas since 2015.</p>
<p>Resolution Improvements</p> <ul style="list-style-type: none"> • House of Representatives Standing Committee on Tax and Revenue – Tax disputes 2015 • IGT – Review into the ATO’s use of Early and Alternative Dispute Resolution 2012 • IGT – Review into aspects of the Tax Office’s settlement of active compliance activities 2009 	
<p>The ATO introduce a triage system for disputes</p>	<p>✔ Fast intensive triage was introduced in 2015.</p>
<p>The ATO ensure that engagement between auditor and objection officer only consist of the factual case documents</p>	<p>✔ Communication protocols have been established to ensure RDR officers remain independent from original decision-making areas of the ATO</p>
<p>The ATO amend its compliance procedures to require ATO officers to consider, and if appropriate engage in ADR.</p> <p>The ATO also undertake a pilot of using in-house trained facilitators to mediate resolution of lower complexity tax matters.</p>	<p>✔ ATO’s In-house facilitation (IHF) was developed and implemented in 2014. Following this, from 2015 our separate appeals function, Review and Dispute Resolution, has formed the mechanism to consistently promote consideration of IHF and other forms of ADR with compliance areas, to resolve disputes as soon and as pragmatically as possible.</p>
<p>Develop training for disputes targeted at early issue identification of issues and conflict resolution and negotiation skills.</p>	<p>✔ Immediately following this recommendation, the ATO undertook a program promoting training in these areas with officers. Since the implementation of our IHF program, Review and Dispute Resolution has also championed and led resolution and mediation training to develop these skills in officers at audit and review.</p>

<p>The ATO identify and report cases that could clarify the law and resolve them appropriately via litigation, including use of declaratory proceedings where appropriate and supporting funding the taxpayer to do this.</p>	<p>✔ The ATO's existing Test Case Funding program was reviewed and vastly improved with a proactive approach to identify and support cases for law clarification.</p>
<p>Lead work to implement improvements to raise the quality of recording, decision making and administration of settlements across the ATO.</p>	<p>✔ Following this recommendation, the ATO has implemented a range of settlement administrative improvements, including a vastly improved Code of Settlement, the Settlement Coordinators Network and more recently our Independent Assurance of Settlements program.</p>

5.1 The birth of RDR: Separation of assessment and review

Following the reviews referred to earlier, the Commissioner endorsed the creation of an administrative review function that would sit under a separate Second Commissioner, independent from the ATO's audit functions. The broad thrust of the ATO response to the recommendations regarding Dispute Resolution and Management have been outlined above but the drivers for that change have been:

- Reducing the time, cost and angst involved in dispute resolution – for taxpayers and the ATO
- Focussing on material matters – knowing when to let go and when to hold on
- Increasing the use of alternative dispute resolution
- Ensuring independence of review
- Learning from disputes to prevent the cause of disputes upstream
- Being pragmatic and focussing on future compliance as well as the current issue
- Using settlements and litigation sensibly.

The RDR approach is based on a philosophy that fair, impartial and independent dispute resolution and prevention services should be accessible to all taxpayers. This is fundamental to the operation of an effective tax system, to promote trust and confidence in the ATO, and encourage voluntary compliance and willing participation.

Transitioning a large number of staff over the years from different areas within an organisation has been a significant logistical, people and cultural change management exercise. The implementation plan to give effect to this focused on initiatives that would bring the practical and cultural aspects of our new workforce together as one, including:

- Creating the right culture and mindset
- Taking a whole-of-client approach (not creating divisions on tax/super type lines – refer below) including the debt interactions

- Unifying language/terminology
- Creating a single objections process
- Coaching staff program and broadening their skills by widening the different types of disputes they could be involved in
- Improving communication with clients
- Building skills in evidentiary practices and allowable evidence
- Improving effectiveness and performance reporting.

[Communication protocols](#) were also established to ensure RDR officers remain independent from original decision-making areas of the ATO.

5.2 Continuous improvement and measures in dispute resolution

Since 2015 there has been a particular focus on promoting a culture of fairness and greater consideration of each client’s circumstances in dispute resolution as an aim and outcome of resolving a dispute. Previously, staff had focused on meeting a measurement that was a time-based KPI, resulting in work management practices that didn’t necessarily account for a good experience for taxpayers.

The fairness ‘mindset’ is promoted from both the perspectives of procedure and outcome with Review Officers.

This approach was about promoting ‘tailored-timeliness’ – the right amount of time to resolve a dispute that’s relevant to the dispute itself and the taxpayer’s circumstances. The approach also included that the officer contact the taxpayer by phone as soon as possible after the ATO had received their objection to discuss the timeframe for the resolution of their dispute relevant to the taxpayer’s circumstances and issue.

We are now actually also seeing an improvement in what was originally being measured, with ~30% better average completion time being realised now for objections.

As part of the ATO’s commitment to fair, impartial and effective dispute resolution, RDR has also developed and implemented a number of dispute resolution innovations and services (which are all free) to assist taxpayers in dispute with the ATO. Many of these are mentioned at the beginning of this section.

Collaboration and fairness were strong focus points for us as we developed and implemented these improvements. All of the innovations in dispute resolution mentioned above were consulted on with the external community through a number of mechanisms we’ve created, which include:

- The Dispute Resolution Working Group – consisting of legal and tax industry external representatives.
- Legal Profession engagement, via ongoing “Round Table” engagements; and
- Engagement with the Administrative Appeals Tribunal and Australian Courts to develop a strong relationship.

It may be hard to believe, given the controversy that seems to still exist, but RDR has been recognised internationally as exemplars of dispute resolution practice. We’ve also engaged and

collaborated with many international jurisdictions, sharing knowledge, improvement experience and practice with other tax agencies.

Many opportunities for improvement have been born from the observations of our internal and external scrutineers and RDR has been active in implementing the recommendations from these reviews.

Most recently, in 2017–18 the ANAO reviewed the [ATO's use of settlements](#). The ANAO report particularly highlights the improvements made in recent years to resolving taxation, superannuation and debt disputes with taxpayers. It found that the ATO is effective, comprehensive and fair in using settlements to resolve taxpayer disputes and made some additional recommendations for improvement.

5.3 Future challenges and opportunities in dispute resolution

As we work towards the ATO's vision for 2024, we will continue to improve our approach to prevention, management and resolution of disputes. In particular, we are using insights into the objections received and reasons for decision. This is allowing for a dispute 'prevention and resolution' perspective into future audits, driving upstream prevention and opportunities for increased RDR engagement pre-assessment.

The ATO is also looking at expanding the reach we have into the taxpaying community and the tax profession to encourage early engagement and to improve awareness of our dispute resolution services and approach. We are also maturing our services and exploring new ways we can support dispute prevention and management more broadly across the system and for all taxpayers, especially those who need more support. Examples of this include the Dispute Assist process, engagement with the Curtin University Tax Clinic and exploring opportunities for improvement of processes with the AAT.

5.4 A new separate Second Commissioner

The first recommendation in the above table has, as its theme, the separation of any review of a decision from the original decision maker. Further, the recommendation is that the reviewer be part of a separate Group within the ATO under a separate Second Commissioner. This is to ensure that the reviewer (which can include an objection officer, independent reviewer, ADR practitioner or litigator) are separate from any original decision maker no matter in which other Group that original decision maker sits.

In 2013, the ATO began to progressively implement this independent review with the establishment of the Review and Dispute Resolution (RDR) line and the introduction of independent review for taxpayers with a turnover of more than \$250 million under the leadership of Second Commissioner, Law Design and Practice (LDP). Progressively, all objections have moved to RDR, with the last of those being related to decisions about ABN decisions, moving in 2018.

So a separate Second Commissioner has ultimate responsibility for managing tax disputes for all taxpayers, including pre-assessment reviews for all businesses; objections; litigation including identifying test cases and providing oversight on settlements; and facilitating the use of ADR throughout the compliance and dispute resolution process.

In my view, there is strength in the Appeals Second Commissioner being the Second Commissioner LDP. As part of the ATO Executive, with responsibility for the appeals function, the position is part of the ongoing leadership and governance of the ATO. This supports and allows systemic and systematic understanding of what is happening with disputes – in an ongoing manner and in the context of managing the whole ATO and the whole-of-client experience.

As part of the ATO Executive, the Second Commissioner LDP is ideally positioned to collaborate with Executive members to continue to drive improvements to business processes, practices, technology and culture. With the Second Commissioner LDP being part of the Executive, it allows for greater integration, moderation and balance and allows the Commissioner to consider and decide issues regarding dispute management in a fully informed and balanced way.

Despite this, there is some current commentary still calling for a separate Second Commissioner, notwithstanding the significant changes already made. There is commentary that there is still a conflict by having all review decisions (appeals, objections, independent review etc.) being part of what is described as the “legal advisory group”.

The “legal advisory group” is a mis-description of the activities of the LDP Group that the author leads. In fact, LDP’s largest set of activities is now what is colloquially best described as the Appeals functions, and it gives cause to consider renaming the Group to better reflect the majority of its functions. Incorporating the word “Appeals” may be sensible to help convey a clear message to the community, the tax profession and stakeholders of what is undertaken and what is important in the Group. Watch this space.

However, the purported conflict that is said to arise is that “(p)recedential ATO views are developed and finalised in the same Group⁶ and taxpayers, who wish to object to ATO decisions, may have to also challenge an ATO precedential view.”⁷ The problem with that view is that separation of “Appeals” into a separate Group would do nothing to change the obligation of ATO officers to follow precedential views unless they can distinguish their case from that view or choose to challenge the view. There is no “conflict” as such. That ATO officers should follow well thought through precedential views of the ATO should come as no surprise, and indeed, should be expected by taxpayers to ensure consistency in the application of the law.

The ATO has well established mechanisms for officers to challenge such a view⁸. This may particularly occur where there are new court decisions that throw a different light on those views or there is a change in law (and it may not be limited to tax law) or if there is a change in industry practice that sheds a new light on the previously formed view. In practice, I am advised that such situations seldom occur. Consistent with what a senior barrister taught me as a young tax practitioner, my staff tell me that it is usually the facts that give rise to different outcomes from what may be contained in an ATO precedential view. That is, the precedential view just doesn’t apply.

The same would occur whether the “Appeals” function remained as part of the Law Design and Practice Group or if it was part of a completely separate Group.

Finally, should there be a fourth Second Commissioner, I suspect I would be out of a job.

⁶ i.e. by Tax Counsel Network

⁷ Noroozi, *A Valedictory Speech*, Melbourne 4 October 2018

⁸ For example, PSLA 2003/3