



**Sharon Grierson MP**  
**Federal Member for Newcastle**

**26 June 2008**

### **JCPAA Taxation Report**

**Ms GRIERSON** (Newcastle) (10.00 am)—On behalf of the Joint Committee of Public Accounts and Audit, I present the committee's report, incorporating dissenting reports, *Report 410: Tax administration*, together with evidence received by the committee.

Since the introduction of self-assessment in 1986, this is the committee's second report on tax administration. The committee reported in 1993 with 148 recommendations, the majority of which were implemented. In this report, the committee is satisfied with the tax office's performance overall. Good tax administration requires tax authorities to strike a delicate balance between efficiency and fairness. Generally, the Australian Taxation Office achieves this.

The inquiry commenced in December 2005. The committee received 58 submissions. Submitters included peak bodies, Treasury, individuals and the Taxation Office, external scrutineers such as the Australian National Audit Office and the Inspector-General of Taxation as well as individual taxpayers. The committee held five hearings in the second half of 2006. Following this, the committee held three biannual meetings with the Commissioner of Taxation and his staff. These meetings helped the committee to stay up to date in the fast-moving world of tax.

The topic in the report that has the most recommendations is the complexity of our tax laws. In 2004, Australia had the third most complex tax system out of the 20 largest economies in the world. Admittedly, the recent repeal of inoperative tax law has made Australia's tax laws less complex. However, on this league table of complexity Australia has probably only dropped from third to fourth place. Much more needs to be done.

Complexity is important because of the self-assessment system. Taxpayers take the risk of penalties and interest if the tax office amends their return and finds a tax shortfall. Complex tax law increases the chance of taxpayer error and taxpayer risk.

Simplifying the tax law depends on coherent, simple tax policy, which in turn depends on thorough consultation. This is exactly what the committee recommended in 1993, but neither side of politics to now has been able to deliver on that.

Redrafting the tax law into plain English was well intentioned. However, it has not simplified the law. Anthony Mason, previously a Chief Justice on the High Court, has publicly stated this position.

This government has commenced a tax review, Australia's Future Tax System. The committee feels that this has the potential to conduct the thorough consultation on tax law that the committee recommended 15 years ago. I wish the review panel well in this challenging but important task.

Another important issue to emerge in the report was illustrated through the court case of *Essenbourne*, decided in late 2002. Broadly, the Federal Court found that a particular transaction between related entities did not attract fringe benefits tax but was not an allowable tax deduction. The decision meant that the arrangements were no longer financially attractive.

The tax office took the unusual step of neither accepting the decision nor appealing it. Instead, they stated that they would attempt to bring another test case on the fringe benefits tax question. In early 2007, the full Federal Court gave its decision in *Indooroopilly*, which confirmed the same decision brought down in *Essenbourne*.

The tax office's conduct increased taxpayer uncertainty. If taxpayers followed *Essenbourne*, they faced the risk of tax office litigation. However, if they took the tax office view, then they might be paying unnecessary tax. More importantly, the case raised the question of whether the tax office was following the law. The tax office received a great deal of criticism for its position.

The tax office has received legal advice that it may take this course of action if it acts quickly. However, the committee believes that a court decision represents the law and should be followed. This was also the view of the full Federal Court in *Indooroopilly*. Michael McHugh, when he was a High Court justice, also made a statement to this effect.

The committee recommended that the tax office should either appeal or accept court decisions. If the tax office has concerns about how a court decision will affect the tax system or the revenue, it can always refer the matter to Treasury.

The committee's report confirms the view of senior judges. Given this consensus among the parliament and the judiciary, it may be appropriate for the tax office to publicly announce, in the near future, that it is prepared to implement the committee's recommendation.

In tabling this report, I would like to acknowledge the many people who contributed to it. In particular, I note the contribution of the peak bodies, agencies and individuals who gave their time and knowledge to the committee. By listening to them, we become much more expert ourselves in an area which is very complex.

Finally, I would like to thank my fellow members on the Joint Committee of Public Accounts and Audit for their constructive, collegiate, and professional attitude to the inquiry and their work on this committee overall. In particular, I thank retiring senators John Watson and Andrew Murray for their expertise and diligence in working through

the evidence. The committee wishes them well for the future and they will certainly be missed on our committee.

I also acknowledge the outstanding work of our secretariat: the work of our secretary, Russell Chafer, and in particular David Monk, who had some expert knowledge, much needed by us, in the area of taxation, who guided this inquiry and report, and of course the other staff in the secretariat. I commend the report to the House.