

Review of ATO controls for managing the risk of bias in decision-making and communications

Context

This review follows from our own-motion review of the Australian Taxation Office's (ATO) management of a historic and complex taxpayer complaint about alleged maladministration by the ATO. That review raised concerns about prejudicial conduct and procedural fairness across a number of teams and functions, and not limited to just one or two individual officers. Nonetheless, we recognise that the own-motion review focused on one case and does not, on its own, demonstrate a systemic issue. Although the events examined in the own motion review occurred more than ten years ago, the issues raised remain relevant and have informed this review.

The ATO's risk-based compliance model, which we support, appropriately guides the prioritisation of resources and the nature and intensity of compliance action. Where decisions involve significant enforcement consequences, it is especially important that there are controls in place to support fair and proportionate outcomes based on contemporaneous facts. This recognises that investigators are human and will always carry conscious or unconscious bias. Also, taxpayers are not static and that while historical compliance behaviours can rightly shape targeting of resources, they should not unduly determine current enforcement decisions. We recognise that bias is an inherent risk across all tax authorities, and we would expect the ATO to have mitigating controls in place.

The own-motion review also highlighted concerns about both external disclosures of taxpayer information and internal communications recorded in ATO systems. While there is no dispute that ATO officers have wide discretion in the performance of their duties, this review will consider whether existing ATO controls adequately guide its officers in their internal and external communications.

Objectives

This review will examine the ATO's current controls that are designed to raise awareness of and prevent bias from influencing administrative decisions, including whether those controls support fair and proportionate outcomes relative to assessed compliance risk. It does not seek to assess individual decisions or determine whether bias has occurred.

This review will also seek to examine the ATO's current safeguards, frameworks, structures, guidance and training. It will consider whether these appropriately guide investigators' judgement and discretion. This includes whether disclosures made

regarding taxpayers are necessary to achieve legitimate aims, proportionate in scope and tone, and communicated in neutral language and factual terms, even when deemed in the course of an officer's duties.

Approach

We will assess the ATO's safeguards and controls in functional areas where decisions can significantly affect taxpayers, for example audit and criminal investigations areas and any related enforcement actions arising from those investigations. This will largely be achieved from a desktop review of key documentation, followed by engagement with key ATO officers and targeted external stakeholders.

We will also compare these findings with the historical private investigation case to determine whether the ATO's current controls would prevent similar issues from occurring.

Given the nature of the topic to be reviewed and our specific focus on the ATO's internal controls, we will not be seeking public input for this review. However, we will conduct targeted consultation with select stakeholders to gather insights into their experience.

Scope

This review will examine:

1. the ATO's current controls that are intended to promote unbiased decision-making and minimise the risk of bias in decisions related to high-risk taxpayers,
2. the ATO's current controls that are intended to support appropriate and proportionate communication practices, including when engaging with third parties and sharing information internally,
3. how the ATO assures itself that its controls are working effectively.

Out of scope

The review will not examine whether bias exists, individual decisions, or assess the legality of disclosures made under Division 355 of Sch 1 to the *Taxation Administration Act 1953*.

The review will also not consider the ATO's controls outside of tax administration, such as corporate and internal human resource decisions.

Within tax administration, the review will not examine the large volume decisions and transactions delivered in ATO's Frontline Operations.

We acknowledge that ATO officers have broad legal discretion to disclose protected taxpayer information when acting in the course of their duties and thus will not be reviewing the lawfulness of disclosures.

Deliverable

This review will result in a public report which is expected to be delivered by July 2026.