



Tax Working Group
Te Awheawhe Tāke

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Report on the suitability of establishing a tax ombudsman and a tax advocate

This paper considers whether either of the following alternatives would be appropriate in the New Zealand context:

A tax ombudsman;

A tax advocate intended to provide 'smaller' taxpayers with a low-cost way of settling disputes with Inland Revenue and how would such a process fit within the existing disputes regime

Executive Summary

Based on a review of other jurisdictions I consider New Zealand's tax system has fallen well behind current international developments in best practice for taxpayer rights and dispute resolution. These failings are jeopardising the procedural fairness of the tax system. They represent a threat to the integrity of the tax system and taxpayers' perception of that integrity.

I therefore make the following recommendations:

1. The Ombudsman's office should appoint a properly resourced deputy ombudsman with sole responsibility for oversight of complaints involving Inland Revenue (IR). This would be in line with current best practice developments outside New Zealand.
2. A clear, accessible and affordable disputes process is integral to the integrity of the tax system. The present disputes regime is expensive and its cost acts as a bar to smaller taxpayers in particular, prompting the question of whether a taxpayer advocate is required to provide assistance. Furthermore, there has been a very marked fall-off in substantive tax cases appearing in the courts. This fall-off has been the subject of comment from two Supreme Court Justices. If taxpayers feel the disputes process is not available to them then that represents a threat to taxpayers' perception of the integrity of the tax system.
3. This threat can be countered by simplifying the current disputes process to reduce costs principally by allowing earlier use of IR's Dispute Resolution Unit. In conjunction with this reform, IR should establish a Taxpayer

Advocate Service (TAS) similar to the Taxpayer Advocate Service run by the United States Internal Revenue Service.

4. The TAS would have responsibility for providing assistance to low income earners, small businesses and individuals with English as a second language who are engaged in a dispute with IR over the quantum of tax payable. Qualifying taxpayers would be able to request assistance from the TAS where the core tax in dispute is under \$50,000.
5. Taxpayers who received assistance from the TAS in relation to a dispute with IR should retain their existing appeal rights. The involvement of the TAS would be an integral part of a reformed dispute regime, rather than an adjunct of it as initially suggested.
6. As part of IR's Charter obligations, the TAS should also adopt the Australian Tax Office's (ATO) Dispute Assist programme. This would provide assistance to qualifying taxpayers with other issues with IR outside the disputes process such as payment of tax due, repayment of overpaid tax credits, child support and student loans.
7. Although within IR, the head of the TAS would report directly to Parliament's Finance and Expenditure Committee (FEC). We suggest the head of the TAS is appointed from outside IR. This should promote the independence of the TAS and therefore boost public confidence in the service.
8. Consideration should be given into developing the current IR Charter into a formal taxpayers' Bill of Rights similar to that available to taxpayers in the United States. It appears taxpayer and tax agents' knowledge of the Charter is not widespread¹. IR should promote taxpayer knowledge of the Charter and its annual report to the FEC should include specific details on its progress in promoting the Charter.²

¹ In preparing this report we surveyed the members of the Accountants and Tax Agents Institute of New Zealand (ATAINZ) and Institute of Certified NZ Bookkeepers (ICNZB) on a range of issues (see Appendix A for details). Only 39% of respondents said they were aware of the IR Charter.

² We note IR's current Statement of Intent 2016-2020 does not mention the Charter <http://www.ird.govt.nz/resources/4/5/4576ff3c-2e12-458a-abf1-e586e8596ce0/soi2016.pdf>

Detailed Analysis

A. Background

1. The questions I have been asked to consider are at core matters of taxpayer rights, whether it is of oversight of administrative practice or a lower-cost way of settling tax disputes.
2. The issue of taxpayers' rights in general, other than when involved in a dispute with IR, does not seem to have been officially examined in any detail since the Finance and Expenditure Committee (FEC) Inquiry into the powers of the Inland Revenue Department in 1999.³ The FEC Inquiry made a number of recommendations regarding taxpayer rights and the Ombudsman's oversight of complaints about IR. Those recommendations were initially implemented but in recent years some appear to be no longer operative.
3. Subsequently, the McLeod Tax Review in 2001 made only a passing reference to the issue of disputes resolution⁴ and the Victoria University of Wellington Tax Working Group final report released in 2010⁵ made no comment on the matter of taxpayer rights, whether in respect of disputes or generally.
4. Notwithstanding the relative official silence in the last two reviews of the tax system, tax practitioners, academics and members of the Judiciary have regularly commented on the status of taxpayer rights in New Zealand whether in relation to the disputes process or IR's exercise of its search, inspection and seizure powers under sections 16 and 16B of the Tax Administration Act 1994.⁶ Presenting at the NZLS Tax Conference in 2013 Geoff Clews QC remarked of his experience working on the changes to the dispute process in 2010-11:

³ <http://taxpolicy.ird.govt.nz/publications/1999-other-inquiry-ird-fec/overview>

⁴ See para 2.21 <https://treasury.govt.nz/sites/default/files/2007-11/taxreview2001-report.pdf>

⁵ <https://www.victoria.ac.nz/sacl/centres-and-institutes/cagtr/pdf/tax-report-website.pdf>

⁶ See for example *Tax and the Courts* speech by Glazebrook J at the 2015 Tax Conference of Chartered Accountants Australia and New Zealand

<https://www.courtsfnz.govt.nz/publications/speeches-and-papers/#speechpaper-list-2015>

Small Tax Dispute Resolution in New Zealand – Making Taxpayers 'Winners' Not 'Losers,' paper by Melinda Jone and Andrew Maples presented at the Australasian Tax Teachers Association Conference in January 2018

https://www.monash.edu/_data/assets/pdf_file/0003/1256250/Maples-and-Jones-ATA2018.pdf

Search and Surveillance Mike Lennard and Graham Tubb paper presented at the 2011 NZLS Tax Conference

Remedies against the Commissioner: revenue through a public law lens Una Jagose paper presented at the 2013 NZLS Tax Conference

“While the achievements of that project have improved the process, working on it with IR officials reinforced the impression that IR is very conscious that it presides over a tax administration which is weighted in its favour. It is reluctant to see that change. It may agree to administrative or managerial changes, which are not always just tinkering at the edges, whatever critics may argue, but is most reluctant to see taxpayer interests reflected in a different legislative response. In short, the interests of taxpayers in the system were viewed and distilled through the judgments of IR, rather than by reference to independently stated rights.”⁷

5. Since 1999 tax authorities around the world have been sharing increasing amounts of taxpayer information. This trend accelerated in the wake of the Global Financial Crisis, with such information-sharing initiatives as Foreign Account Tax Compliance Act (FATCA) and the OECD's Common Reporting Standard (CRS) on Automatic Exchange of Information. According to the OECD over 100 jurisdictions will exchange CRS information in September 2018 under more than the 3,200 bilateral relationships now in place.⁸ This significant intrusion into taxpayer privacy has so far gone largely unchallenged.
6. Over the same period there have been a number of developments around the world in relation to clarifying the rights and responsibilities of taxpayers and tax authorities and the resolution of tax disputes between taxpayers and tax authorities. Increasing numbers of countries are establishing specific tax ombudsmen offices and tax authorities are adopting taxpayer charters/bill of rights. Reflecting the growing interest in these issues a Model Taxpayer Charter⁹ was launched in 2015 as part of a collaboration between the Asia Oceania Tax Consultants' Association (AOTCA), Confederation Fiscale Europeenne (CFE) and Society of Trust and Estate Practitioners (STEP). In the same year the International Fiscal Association's *Cahiers de droit fiscal international* focussed on the practical protection of taxpayers' fundamental rights.
7. Against this backdrop it is therefore timely for the Tax Working Group to consider the general state of taxpayer rights in the New Zealand tax system including the current tax disputes process.

⁷ Para 2.1 reproduced at

<https://www.taxcounsel.co.nz/Resources/Publications+papers+and+commentary/Remedies+Against+the+Commissioner+of+Inland+Revenue+Considered+Through+a+Constitutional+Lens/2013+NZLS+Tax+Conference+Paper.html>

⁸ OECD press release <https://www.oecd.org/tax/major-enlargement-of-the-global-network-for-the-automatic-exchange-of-offshore-account-information-as-over-100-jurisdictions-get-ready-for-exchanges.htm>

⁹ <http://www.taxpayercharter.com/>

B. Establishing a Tax Ombudsman

1. At present taxpayers can take complaints regarding IR to the Ombudsman if they have not resolved the matter through IR's complaints management service. IR remain one of the largest sources of complaints to the Ombudsman with an average of over 100 complaints over the 2011-2017 period. About one-third of all cases taken to the Ombudsman involve child support or student loan which may indicate other issues with representation/appeal rights.¹⁰
2. The FEC Inquiry in 1999 noted "overwhelming support"¹¹ from submitters for a separate tax ombudsman to investigate taxpayer complaints. However, the Commissioner of Inland Revenue expressed concerns about duplication and uncertainty. The then Chief Ombudsman Sir Brian Elwood submitted¹² that the cost of additional specialist resources to deal with tax administration investigations would be less than the cost of establishing a separate Tax Ombudsman Office. The FEC ultimately decided establishing a separate tax ombudsman's office was "not desirable" and instead recommended:

the Government establish a specialist tax adviser position within the Office of the Ombudsman with appropriate resources to investigate matters of tax administration by [IR].

This recommendation was subsequently implemented.

3. The current level of tax expertise within the Ombudsman's office is not clear and at the very least the FEC's recommendation in 1999 should be followed and the necessary level of expertise re-established.
4. Since the FEC Inquiry there has been a significant increase in the number of specific tax ombudsmen offices around the world including in the following Commonwealth jurisdictions:

¹⁰ Based on the Annual Reports for each of the years ended 30th June 2011 to 2017 inclusive. <http://www.ombudsman.parliament.nz/resources-and-publications/corporate-documents/annual-reports> These statistics do not include complaints under the Official Information Act 1982.

¹¹ <http://taxpolicy.ird.govt.nz/publications/1999-other-inquiry-ird-fec/term-of-reference-d>

¹² See pages 45-46 of the FEC report. In addition, the Parliamentary library supplied me with a copy of Sir Brian's submission

	Date Established
Australia (Inspector-General of Taxation)	2003/2015 ¹³
Canada	2007
India	2006
Pakistan	2000
South Africa	2013

5. The United Kingdom established the Adjudicator's Office in 1993 to review complaints about HM Revenue and Customs (HMRC). In the United States the National Taxpayer Advocate (NTA) was created in 1998 within the Internal Revenue Service (IRS). The NTA is the successor organisation to the Office of the Taxpayer Ombudsman. Two other bodies, The Oversight Board (currently suspended for lack of a quorum) and the Treasury Inspector General for Tax Administration have oversight of the IRS.
6. With regards to the situation in countries with similar sized population to New Zealand, Ireland does not have a separate tax ombudsman. All complaints about the Revenue Commissioners are handled by the Office of the Ombudsman.¹⁴ Finland and Norway do not have separate tax ombudsmen and the general ombudsman in both countries handles tax complaints about tax administration. By contrast, from 1 January 2017 the Danish parliament's ombudsman established a new office which is exclusively responsible for reviewing tax and tax administration cases.
7. As part of the research for this paper over 1,200 ATAINZ and NZICB¹⁵ members were surveyed. As in 1999, there appears to be widespread support for a separate tax ombudsman. To date more than 200 responses have been received. Of these, 94.7% supported the idea of a separate tax Ombudsman with 74.1% considering he or she should be part of the Ombudsman's office.
8. I consider the extent of IR's reach and powers are sufficient to merit a specific role within the Ombudsman's office at the level of Deputy Ombudsman. This would also be in line with international trends towards establishing such offices. Keeping such a role within the Ombudsman's office should counter concerns about duplication and expense. We also suggest that IR reports regularly to the tax ombudsman on its progress in dealing with complaints through its internal complaint management service. We note that statistics regarding complaints handled internally no longer appear to be part of IR's annual reports.

¹³ The Inspector-General of Taxation was created in 2003 and took over responsibility for handling taxpayer complaints about the Australian Tax Office (ATO) from the Commonwealth Ombudsman in 2015

¹⁴ <https://www.ombudsman.ie/>

¹⁵ See Appendix for details of the questions asked

C. Improving the dispute resolution process for small taxpayers

1. Taxpayers must not only have the right to challenge the Commissioner they must also feel that both IR and the disputes process will treat them fairly. I do not consider a majority of taxpayers and practitioners involved with the current disputes process¹⁶ would accept that it is fair.
2. Tax practitioners have made repeated complaints about the disputes process since its implementation at the start of the 1996-97 income year and these have been largely ignored. For example, the New Zealand Law Society (NZLS) and the New Zealand Institute of Chartered Accountants (NIZICA) made joint submissions on the issue in 2008 and then again in 2010. Although some administrative changes were made in 2010/11, all the substantive changes suggested by NZLS/NIZICA in submissions to Tax Administration and Remedial Matters Bill in 2010 were declined. The effect of inaction risks undermining taxpayer perceptions of the integrity of the tax system which is contrary to the responsibility of ministers and officials to protect the integrity of the tax system under Section 6 of the Tax Administration Act 1994.
3. Supreme Court Justice Glazebrook encapsulated the main complaints about the current disputes process when she observed at the 2015 Chartered Accountants Australia and New Zealand tax conference:

“What is not so positive is the concern that the dispute resolution processes, even in simple cases, takes a lot of time, effort and therefore cost to complete. When this is coupled with the new penalty and interest regime with its differential interest rates for taxpayers and the Revenue, the concern is that taxpayers are “burnt off” by the taxation disputes process. This means that taxpayers may be forced to settle legitimate tax disputes as they cannot afford the time or money necessary to continue court proceedings. Certainly, the time and cost of the dispute resolution processes was one of the concerns coming out of the survey of tax practitioners reported on 19 November 2015 at the conference.¹⁷”

4. I recommend the establishment of a TAS to assist smaller taxpayers in disputes with IR involving tax of \$50,000 or less¹⁸. Assistance would be provided through a series of Low Income Tax Clinics (LITCs). Regardless of this, a significant reduction in costs for taxpayers should be achievable by changing the current disputes process to introduce mediation via the DRU if the dispute is still unresolved after the NOPA/NOR exchange is completed.

¹⁶ Part IVA of the Tax Administration Act 1994 (the TAA), a diagram of the current process is at Appendix B

¹⁷ *Tax and the Courts* see note 6 above

¹⁸ This was the figure suggested by most respondents to the ATAINZ/ICNZB survey

The introduction of Alternative Dispute Resolution (ADR) processes particularly is a growing part of tax disputes internationally¹⁹.

5. For example, from 1 April 2014 the ATO made in-house facilitation available for individuals and small businesses. This involves an ATO officer trained in facilitative mediation who has previously not been involved in the dispute.²⁰ According to the ATO, every dispute resolved through in-house facilitation saves taxpayers A\$50,000 on average. The process also has *“a positive impact on the relationship between the ATO and taxpayer and promotes trust and confidence in the system.”*²¹
6. Similarly, HMRC offers a voluntary ADR service also involving a HMRC staff member trained in ADR techniques and with no prior involvement in the case²². Using ADR does not affect a taxpayer's appeal rights. According to its 2017-2018 Annual Report 82% of cases accepted for ADR were resolved successfully. In 2017-18 94% of taxpayers and their representatives said they were either satisfied or very satisfied with the ADR process.²³
7. Moving the DRU involvement to after the NOPA/NOR stage would not affect taxpayers' rights of appeal. In both Australia and the United Kingdom taxpayers adopting the in-house facilitation or voluntary ADR service still retained their appeal rights.
8. I do not consider any change is needed to the NOPA/NOR stage of the disputes process at this point because the increasing availability of insurance against IR reviews and audits should enable taxpayers to cover most costs up and including to the NOPA/NOR stage. However, the present IR policy of limiting the Commissioner's NOPA to five pages for disputes involving less than \$5,000 (excluding evasion and tax avoidance issues) should be revised to apply to disputes under \$50,000 as this is the suggested cap for TAS assistance.
9. As noted by Glazebrook J in the passage cited above, the current use of money interest regime with its differential rates ²⁴can act as a deterrent to taxpayers. I suggest interest should stop running 60 days after a Notice of Response has been filed, thereby completing the NOPA/NOR stage in a dispute. This is because at present no time limit applies for setting a date

¹⁹ See Melinda Jone & Andrew Maples [Small tax disputes resolution in New Zealand: Making taxpayers "Winners" not "Losers"](#)

²⁰ <https://www.ato.gov.au/general/dispute-or-object-to-an-ato-decision/options-for-resolving-disputes/in-house-facilitation/>

²¹ ATO Annual Report 2016-2017 page 65

<https://www.ato.gov.au/uploadedFiles/Content/CR/downloads/annualreport.pdf>

²² <https://www.gov.uk/guidance/tax-disputes-alternative-dispute-resolution-adr>

²³

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/724943/HMRC_Annual_Report_and_Accounts_2017-18__print_.pdf

²⁴ The current interest rates are 8.22% for underpaid tax and 1.02% for overpaid tax

for a conference hearing. Given the differential between use of money interest rates the present system advantages the Commissioner in disputes. Turning off the interest clock should incentivise both parties to move to the proposed adjudication phase quickly.

10. As a joint NZLS/NZICA submission noted the disputes process is “*unique in New Zealand law, and in terms of global tax administration.*”²⁵ This makes statistical comparisons with other jurisdictions difficult. Based on the available data the current disputes process appears to be acting to be acting as a deterrent to litigation on substantive matters. There has been a noticeable decline in cases reaching the courts which has been noted by the judiciary itself. Young J first raised the matter in a 2009 paper²⁶ and his colleague Glazebrook J discussed it in 2013²⁷ and again in 2015. According to Glazebrook J the average number of substantive tax cases heard in the Taxation Review Authority and High Court between 1993 and 2015 was as follows:²⁸

Period	Taxation Review Authority	High Court
1993-2002	50	20
2003-2008	10	6
2008-2013	9	8
2014-2015	12	15

11. The 2003 Issues Paper *Resolving tax disputes: a legislative review*, stated the proportion of audited cases giving rise to a dispute was two percent of total cases in 1997. After the introduction of the new disputes regime, this figure had dropped to 0.91 percent in 2002.²⁹ By contrast the ATO reported that for the 2013-14 year on average about 14 percent of all income tax audits resulted in objections.³⁰

²⁵Per NZLS/NZICA joint submission to FEC in 2011 https://www.parliament.nz/resource/en-NZ/49SCFE_EVI_00DBHOH_BILL10469_1_A172698/c643b4b633b4e93d50984f72619501aa9cebc_bec

²⁶“*Tax Disputes in New Zealand*” (2009) 4(1) JATTA (also cited by Glazebrook J)

²⁷ *Taxation Disputes in New Zealand* paper presented at the Australasian Tax Teachers Association 2013 Conference <https://www.courtsofnz.govt.nz/publications/speeches-and-papers/#speechpaper-list-2013>

²⁸ *Tax and the Courts* see note 6 above

²⁹ <http://taxpolicy.ird.govt.nz/publications/2003-dd-disputes/overview> see para 1.8

³⁰ Table 1.1 *Tax disputes* Report by the House of Representatives Standing Committee on Tax and Revenue https://www.aph.gov.au/Parliamentary_Business/Committees/House/Tax_and_Revenue/Inquiry_into_Tax_Disputes/Report

12. According to IR statistics the total number of NOPAs and NORs issued during each of the years ended 30th June 2011 to 30th June 2017 inclusive was as follows³¹:

	2011	2012	2013	2014	2015	2016	2017
Taxpayer NOPAs	75	92	91	95	89	109	86
CIR NORs	62	70	67	83	74	98	78
CIR NOPAs	306	266	289	225	216	225	211
Taxpayer NORs	69	118	137	126	85	99	79
Total	512	546	584	529	464	531	454

13. In the context of 4.8 million active customers as at 31 March 2107 including over 447,000 companies and more than 246,000 trusts³², an average of 517 NOPAs/NORs issued annually seems low. Tax can be litigious particularly when involving issues such as the capital-revenue divide. The question therefore arises as to whether many taxpayers are not entering into disputes because of cost or other factors. It would be helpful if IR were to provide more comprehensive statistics on the level and results of its investigation/review activity.

14. Although it is important to lower the cost barriers to enter into the disputes process, at the same time this does not mean that taxpayers can engage in frivolous or vexatious disputes. Retention of the NOPA/NOR stage should mitigate against such action.

³¹ Supplied by IR. These are indicative only and no correlation between the NOPAs and NORs should be assumed.

³² IR statistics <http://www.ird.govt.nz/aboutir/external-stats/customers/act-by-entity-type/customers-act-by-entity-type.html>

D. Tax Advocate Service

1. The practical protection of taxpayers' fundamental rights was subject 2 of the 2015 edition of the International Fiscal Association's (IFA) *Cahiers de droit fiscal international*.³³ In it the IFA stated:

We have little hesitation in recommending that the best practice is the establishment of a separate office of tax ombudsman/taxpayer advocate/director of legal protection for taxpayers within the tax authority, but clearly independent from the normal operation of that authority.

2. The current best example of the role of a taxpayer advocate would appear to be the United States Taxpayer Advocate Service³⁴ headed by the National Taxpayer Advocate (NTA) Nina Olsen who has been in the role since 2001. Although both the NTA and Taxpayer Advocate Service are under the jurisdiction of the IRS, the NTA reports directly to Congress³⁵.
3. I propose IR should establish a Taxpayer Advocate Service (TAS) based on the United States model. I envisage the proposed TAS as adjacent but separate to IR and playing a big role in helping IR deliver on the values of the Charter. Any risk of "group think" developing between IR and the TAS could be avoided by ensuring the head of the TAS is someone from outside IR with a strong background in customer rights. The TAS would report to the FEC or alternatively to the proposed Deputy Tax Ombudsman. Whether it's the FEC or the Ombudsman, TAS should not report to the Commissioner of Inland Revenue. The success of the role will ultimately depend on its perceived independence. TAS' independence could be enhanced if it was actually entirely separate from IR, although that might raise inter-jurisdictional issues between it and IR as well as being costlier to introduce.
4. Part of the TAS' role would be to follow the example of the NTA and establish a series of LITCs aimed at supporting the low income and those for whom English is a second language. I suggest 'low income' for this purpose could be below \$48,000 for individuals and maybe \$60-70,000 for a family unit. As noted in part C above LITCs could also provide support where the total tax in dispute (excluding penalties and interest) was under \$50,000.
5. In the United States the NTA runs a grant scheme³⁶ for charities and other organisations who represent low income taxpayers in disputes with the IRS. Grants are made on a dollar for dollar basis up to a maximum of US\$100,000.

³³ <https://www.ifa.nl/home> not available online but IR supplied a copy

³⁴ <https://taxpayeradvocate.irs.gov/about-tas>

³⁵ <https://taxpayeradvocate.irs.gov/reports/2017-annual-report-to-congress>

³⁶ <https://taxpayeradvocate.irs.gov/about/litc>

In the United Kingdom charities such as TaxAid³⁷ and Tax Help for Older People³⁸ provide assistance in tax matters. This may involve retired tax practitioners advising on specific issues. I recommend the TAS run a similar programme which would involve providing grants to bodies such as the Citizens Advice Bureau and Child Poverty Action Group.

6. We note that Curtin University in Western Australia in conjunction with Greenstone Legal opened a tax assistance clinic on 2nd July³⁹ very similar in design to the suggested LITCs. We suggest IR monitors the progress of this initiative.
7. It should be noted that many tax practitioners do currently provide services to taxpayers in dispute with IR on a pro-bono or reduced rate⁴⁰. Arguably, such support represents a hidden subsidy for IR. 87.9% of ATAINZ and NZICB members surveyed were very supportive of the role of a taxpayer advocate⁴¹.
8. In December 2016 the ATO commenced a pilot called Dispute Assist to support unrepresented individual taxpayers such as the elderly or those dealing with family illness, domestic violence or mental health issues. By 30 June 2017, 64 such taxpayers had received the assistance of an independent ATO guide to assist them through the Australian disputes process and related issues such as tax debts or issues with other government agencies. Subsequently, the Dispute Assist project has been expanded to include small business taxpayers. Regardless of whether a TAS is established, I recommend IR adopt a similar programme to Dispute Assist as soon as possible. Apart from income tax and GST, the programme is likely to support those with issues around child support, working for families' tax credits and student loans.

³⁷ <http://taxaid.org.uk/>

³⁸ <http://www.taxvol.org.uk/>

³⁹ <https://businesslaw.curtin.edu.au/law/tax-clinic/>

⁴⁰ In the survey of ATAINZ members, 24 of 33 respondents said they had provided support in tax disputes at no or reduced cost.

⁴¹ See Appendix A

E. Charter/Bill of Rights

1. The FEC recommended IR establish a taxpayer's charter outlining taxpayers' rights and obligations in respect of the tax system. IR first published its Charter⁴² in 2001 but it was last reviewed in detail in March 2009. In the meantime, international practice is moving towards clearer expressions of taxpayer rights and obligations either in the form of a taxpayer Bill of Rights or a charter.
2. The Canadian Revenue Agency adopted a Taxpayers Bill of Rights⁴³ in 2007 in conjunction with the creation of the Tax Ombudsman's Office. In the United States in 2014 the IRS adopted a Taxpayer Bill of Rights as proposed by the NTA.⁴⁴
3. Reflecting the growing interest in these issues the Asia Oceania Tax Consultants' Association, Confederation Fiscale Europeenne and Society of Trust and Estate Practitioners (STEP) jointly released a Model Taxpayer Charter in July 2015. The Model Tax Charter was drawn up after surveying members in 41 countries including New Zealand.⁴⁵
4. However, there are difficulties in developing a taxpayer Charter/Bill of Rights around the extent to which it is legally enforceable. The difficulties of legislating such a document was noted by the Australian Inspector General of Taxation (the IGT) in his 2016 review into the Australian Taxpayers' Charter and taxpayer protections⁴⁶. He consequently decided not to recommend a formal taxpayer bill of rights.
5. As part of his review the IGT examined taxpayer rights internationally.⁴⁷ With regard to the IR Charter he commented it

"2.94 The Inland Revenue Charter is noticeably different to other jurisdictions, in that the Charter appears to be targeted at the IRD itself, not the taxpayer unlike those of Australia and the UK which are outward-facing community documents.

2.95 As a result of this difference in approach, the Inland Revenue's Charter does not set out taxpayer obligations¹⁸³ and generally does not

⁴² <http://www.ird.govt.nz/aboutir/commitment/aboutir-charter.html> reproduced in Appendix C

⁴³ https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/rc17/taxpayer-bill-rights-guide-understanding-your-rights-a-taxpayer.html#_Ref191276364

⁴⁴ <https://taxpayeradvocate.irs.gov/about-tas/taxpayer-rights>

⁴⁵ Members of STEP New Zealand were surveyed

⁴⁶ <http://igt.gov.au/publications/annual-reports/2016-17-annual-report/overview/>

⁴⁷ <http://igt.gov.au/publications/reports-of-reviews/taxpayers-charter-and-taxpayer-protections-review/chapter-2-taxpayer-rights-in-australia-and-international-comparisons/>

use 'rights' terminology. Instead, it sets out its service commitments. However, the content of the commitments made within the Inland Revenue's Charter are similar in substance to comparable taxpayer charters or documents in other jurisdictions some of which are discussed above."

6. However, in the survey of ATAINZ/NZICB members only 39% of all respondents said they were aware of the Charter. Amongst ATAINZ members just over half acknowledged its existence.
7. IR's Statement of Intent 2016-2020⁴⁸ makes no mention of the Charter nor of taxpayer rights, even though the document refers to "customer/customers" 133 times.
8. If the New Zealand tax system is to be fully up to date with international best practice then IR will need to both promote taxpayer awareness of the Charter whilst also re-focussing it towards taxpayers.

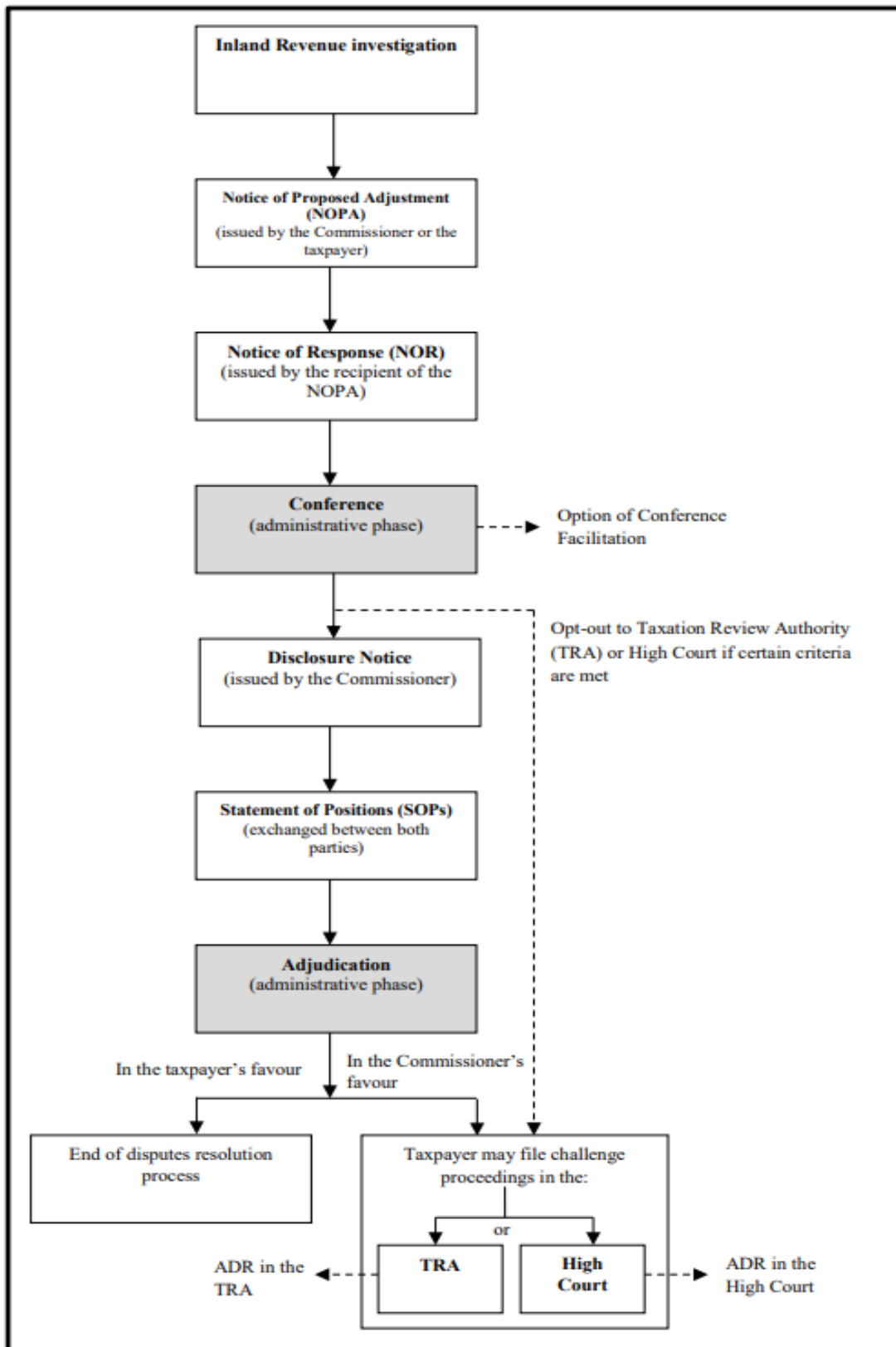
⁴⁸ <http://www.ird.govt.nz/resources/4/5/4576ff3c-2e12-458a-abf1-e586e8596ce0/soi2016.pdf>

APPENDIX A
TAX AGENT AND BOOKKEEPER SURVEY QUESTIONS AND RESPONSES

Survey asked of members of Accountants and Tax Agents Institute of New Zealand (ATAINZ) and the Institute of Certified NZ Bookkeepers (ICNZB)

1. Do you support the idea of a separate tax ombudsman to handle IRD complaints?	Yes 215 No 12
2. If yes, should the tax ombudsman be either: a. A separate unit within IRD; or b. Outside of IRD but a specialist part of the general Ombudsman's office; or c. Separate of both the IRD and the Ombudsman	 18 166 143
3. The United States has a Taxpayer Advocate which has many similar features to an Ombudsman. It also has a role advocating for low income taxpayers, including providing such taxpayers with a low-cost way of settling disputes with the IRS (the equivalent of Inland Revenue). Do you support the establishment of a tax advocate to provide support for taxpayers in disputes with IRD?	Yes 197 No 27
4. If yes, what should be the threshold of tax at stake above which no support should be provided? a. \$25,000 b. \$50,000 c. \$75,000	 52 78 75
5. Do you think both a tax ombudsman AND a tax advocate are needed?	Yes 140 No 75
6. Are you aware of Inland Revenue's Charter?	Yes 39 No 61

**APPENDIX B
CURRENT DISPUTE PROCESS**



APPENDIX C INLAND REVENUE'S CHARTER (as of March 2009)

Inland Revenue collects money to pay for public services. We help people to meet their obligations and receive their entitlements. We work within the Inland Revenue Acts and other relevant laws, and our actions are consistent with the spirit of the Treaty of Waitangi.

How we will work with you

- We will be easy to deal with, prompt, courteous and professional.
- We will follow through on what we say we will do.
- We will be responsive to individual, cultural and special needs.
- The person you are dealing with will give you their name.
- We will value your feedback and use it to improve our services.

Reliable advice and information

- We will provide you with reliable and correct advice and information about your entitlements and obligations.
- We will assist you to get in touch with the right people for your needs.
- We will be well-trained and competent.
- We will keep looking for better ways to provide you with advice and information.

Confidentiality

- We will treat all information about you as private and confidential, and keep it secure. We will only use or disclose it in accordance with the law.

Consistency and equity

- We will apply the law consistently so everyone receives their entitlements and pays the right amount.
- We will take your particular circumstances into account as far as the law allows.

Your right to question us

- We will make it easy for you to question the information, advice and service we give you.
- We will inform you about options available if you disagree with us, and we will work with you to reach an outcome quickly and simply.

For this Charter to work effectively, we rely on each customer to provide all relevant information when dealing with Inland Revenue.

<http://www.ird.govt.nz/aboutir/commitment/aboutir-charter.html>