

REGULATION Praise and brickbats

Leibler warns on tax chief's wide powers

Nassim Khadem

Australia's tax system gives "draconian" powers to just one person – Tax Commissioner Chris Jordan – making the Tax Office's pledge to try to bring about cultural change, and external checks and balances, more important than ever, says one of Australia's most respected tax experts, Mark Leibler.

Mr Leibler spoke to Fairfax Media ahead of a speech he will be delivering to the Tax Institute's conference in Cairns today, where he will address senior tax office staff and tax professionals from across the country about the Commissioner's extraordinary powers and the potential for them to be misused.

Mr Leibler praised Mr Jordan's cultural reinvention process, saying the ATO was taking a more conciliatory approach during tax disputes and trying to resolve them quicker. But there was a "long way to go" to ensure that message was trickling down to the ATO's 20,000 staff.

"It's inevitable that, very occa-

sionally, there will be cases of misconduct, impropriety and maladministration, and interactions with taxpayers that don't meet the standards enshrined in the Taxpayers' Charter," Mr Leibler said.

He noted that the Commissioner's powers to issue taxpayers tax bills are "draconian" and that while Mr Jordan was "extraordinarily powerful", he is also human.

"We should not expect him to exhibit the strength, reflexes, and balance of Spider-Man, or have a subconscious ability to sense everything in his surroundings."

He said the reality was that "under the self-assessment regime, the full scope of this power lurks beneath the surface like a salt-water crocodile."

The Commissioner could require the production of documents, gain access to private premises, and compel individuals to attend and give evidence about their own tax affairs or the tax affairs of others.

The burden of proof was on the taxpayer who is guilty until they can prove themselves innocent. "Crim-



Mark Leibler, of Arnold Bloch Leibler, says the Tax Commissioner is not Spider-Man. Photo: Luis Ascui

inals have many more rights before the law because you have to prove your case against a criminal beyond reasonable doubt. Here [in tax] it's the exact opposite extreme."

Mr Leibler did not think the law could be changed to reverse the onus of proof. "No government is going to adopt that proposal because of the risk to the revenue," he said.

It would always be the case that taxpayers have to take their case to the Administrative Appeals Tribunal and Federal Court. That said, for

taxpayers the burden of proof was so immense that "merely proving that the Commissioner's assessment was incorrect will not suffice".

"If put to proof, how many taxpayers would have sufficient evidence to justify every cent of expenditure incurred – even in the internet age where almost every action and interaction is logged online?" Mr Leibler said.

"To add insult to injury, the Commissioner can require payment in full as soon as the amount assessed becomes due and payable."

Mr Leibler said there were "no reported cases in which this power has been abused or used for political purposes, as it has been in less scrupulous jurisdictions around the globe" but that "as the Commissioner's authority continues to expand in scope and reach, it is essential for taxpayers to be made aware of the very real and ever-expanding risks they face".

That's why checks and balances such the office of the Inspector-General of Taxation headed by Ali Noroozi, was crucial.