

Why the charges against ATO whistleblower Richard Boyle should be dropped

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Background

On 9 April 2018 an [ABC Four Corners exposé was aired](#) which exposed malpractice and small business abuse by the Australian Taxation Office. Ex-ATO debt collection officer Richard Boyle featured in the program, detailing malpractice in the ATO's debt collection division. Essentially the ATO was raiding people's bank accounts in defiance of their required rules.

Richard had lodged an internal report to the ATO detailing the malpractice which was ignored. Richard then followed lawful whistleblower procedures in going public. However, the ATO still went after him, initially with charges that would put Richard in jail for 161 years.

Richard's report on ATO malpractice was subsequently proven to be accurate by both the Inspector-General of Taxation and the Small Business Ombudsman. A Senate Committee criticised the ATO.

See

[Richard's Public Interest Disclosure Statement](#)
[Small Business Ombudsman Report](#)
[Inspector General of Taxation Report](#)
[SEA summary of Reports](#)
[ABC online Richard Boyle coverage](#)

Our (SEA) position

In our view the charges against Richard have been laid entirely as a direct consequence of Richard's 'whistleblowing' of malpractices by the Australian Taxation Office. The charges, in our view, should be reviewed within the context of the public good undertaken by Richard in exposing ATO malpractice.

Specifically:

1. Richard's whistleblowing was the moral thing to do. This impacts upon the appropriateness of the prosecution

Richard Boyle exposed facts about the inappropriate use of debt collection garnishee powers by the Australian Taxation Office. Richard first reported those facts directly to the ATO in 2017, but they were ignored. Then, after failing to generate action via this route, Richard went public in 2018 working with whistleblower protection concepts found in legislation. These allegations were subsequently investigated by both the Inspector-General of Taxation and the Small Business Ombudsman. Both authorities confirmed the accuracy of Richard's allegations. (See [Overview](#), [SBO report](#), [IGT Report](#).)

The charges against Richard are directly linked to whether Richard is afforded whistleblower protection. Further, the charges are directly linked to questions of whether the ATO operated transparently and ethically, and within the procedures and practices that the ATO claims.

In other words, in our view the charges against Richard must be considered within the ambit of Richard's whistleblower activity as it exposed malpractice within the ATO. We submit that the public interest (that of exposing malpractice) mitigates the seriousness of the charges against Richard and warrants the dropping of the charges against him.

2. Richard Boyle has no prior convictions and was/is a person of high standing

Before exposing malpractice inside the ATO, Richard Boyle had, to our knowledge, an unblemished standing in the community.

3. There are no 'victims'

There is no evidence of which we are aware of any 'victim' as a consequence of the alleged breaches of law by Richard. There are no allegations of which we are aware to indicate that any taxpayer suffered as a result of Richard's alleged breaches of law.

That is, the prosecution of Richard is proceeding without evidence of any 'victim' who can be said to have suffered in any material way.

4. There was no actual or potential harm occasioned by the alleged offence

There is no evidence that the alleged offences committed by Richard Boyle caused any harm to anyone.

Rather, Richard's whistleblowing action (and the activities related to that) were done in order to protect taxpayers from garnishee activity by the ATO which breached the ATO's own procedural requirements. Again, the garnishee behaviours were subsequently investigated by both the Inspector-General of Taxation and the Small Business Ombudsman. Both authorities confirmed the accuracy of Richard's allegations. (See [Overview](#), [SBO report](#), [IGT Report](#))

If there were any 'harm', it could be said that it related entirely to potential embarrassment for the ATO as a result of exposing the ATO's malpractices in its administration of garnishees. Rather than viewing this as 'harm', it is entirely in the public interest that such malpractice be exposed. That is, Richard Boyle was acting in the public interest.

5. The charges against Richard are the product of a witch hunt

Within the scheme of Richard's whistleblower activity, the laying of charges is in our view the outcome of a witch hunt conducted by the ATO against Richard.

To take an analogy, the alleged offences equate in effect to someone making defamatory remarks about someone else but retaining those remarks on their personal computer or phone but never making those remarks in the public domain. Further, and to continue the analogy, that the alleged defamatory remarks were only discovered following a police raid, confiscation of computers and phones and forensic examination of the computers/phones—even to the point of discovering defamatory remarks that had been deleted.

We submit that, under normal circumstances, the alleged offences are of such a low level that they would have been ignored, or at worst been subject to administrative sanction within public service procedures. Further, that the way the charges are being dealt with, equates to a 'burning at the stake' response to Richard's whistleblower activity.

6. The length and expense of a trial is a waste of public resources

Richard's prosecution has already dragged out over some four years with no end in sight. Richard is reliant on publicly funded legal aid for his defence.

On any evaluation, the public resources allocated to this prosecution are extraordinarily high and cannot be justified in relation to the nature of the alleged offences.

7. There is a need to maintain public confidence in the administration of justice

Richard Boyle's exposure of the ATO's maladministration of garnishees cuts to the core of public confidence in the moral, ethical and just administration of tax by the ATO.

The question the public must ask is: Can the ATO be trusted to operate within transparent, clear rules in tax administration? Richard's core allegation was that the

ATO set secret financial revenue targets for ATO enforcement officers in defiance of the ATO's stated required procedures. Although denied by the ATO, Richard's allegations were proven correct by subsequent official reviews (IGT & SBO).

In undertaking the prosecution of Richard, the Commonwealth risks creating the impression of conducting a cover-up of evidence of maladministration by the ATO. If not a cover-up, then at least a diversion from the truth. This seriously diminishes the confidence of the public in the tax administration system. Further, it seriously diminishes trust in the justice system itself, by delivering the potential impression that the justice system is likewise involved in covering up maladministration by the ATO.

Background: Richard Boyle and Self-Employed Australia

Self-Employed Australia (SEA) is a not-for-profit advocacy group dedicated to defending the rights of self-employed, small business people. Formed in 2000, a key part of our activity has been the investigation and reporting on the treatment of small business people by the Australian Taxation Office. We have numerous case studies on ATO maladministration and mistreatment of small business taxpayers. We advocate for reform of the ATO and publish our campaigning on our website here: <https://selfemployedaustralia.com.au/current-advocacy/reforming-the-ato/>

In late 2017 we supplied a case study dossier and assessment of ATO maladministration to the Australian Broadcasting Corporation. This triggered an ABC *Four Corners* investigation which led to a *Four Corners* exposé being aired on 9 April 2018. See here: <https://www.abc.net.au/4corners/mongrel-bunch-of-bastards/9635026>

SEA was heavily involved in assisting *Four Corners* in their case studies research for the program. In that process the ABC researchers introduced us to Richard Boyle. We subsequently had many dealings with Richard—in particular seeking to establish his bona fides. Richard appeared in the *Four Corners* program.

In all our dealings with Richard we have found him to be a person of the highest ethical and moral standards. Our assessment is that his motivation for whistleblowing about the maladministration of the ATO has been entirely selfless. He acted when he saw that the ATO engaged in abuse of small business taxpayers through a process that breached the ATO's own standards and procedures. The Catch-22 for Australians is that there are no laws that can effectively hold the ATO accountable when it breaches its own standards. The ATO is effectively unaccountable.

Richard Boyle has been fearless in exposing the ATO's maladministration, but he has suffered dire consequences as a result. We hold the view that the Commonwealth's prosecution of Richard Boyle is being conducted for the purposes of warning all other ATO officers that they should never tell the truth about ATO maladministration. Effectively, the prosecution is being done, in our view, for the purposes of silencing any other potential whistleblowers.

SEA would not make this submission for the dropping of charges against Richard Boyle unless all our experiences with Richard led us to have the highest confidence in his integrity, honesty, morality and ethical standing. We consider his prosecution to be an act of persecution rather than the application of justice. We consider Richard Boyle to be an Australian hero. For the reasons we have stated above, we call for the prosecution of Richard Boyle to be dropped.