

Submission to House Tax and Revenue Committee request for comments on the administration of the taxation system.

9 October 2018

Appendix B

ATO False Statements

The ATO has vast resources at its disposal and it would be inexcusable if the ATO made statements before Parliament that had not been factually checked. Yet we have direct experience of the ATO not being factual under parliamentary scrutiny, particularly when confronted with criticism. It is legitimate to ask if the ATO chooses to mislead Parliament when faced with criticism? Does the ATO only correct false statements when forced?

Below are some examples of where the ATO has made false or misleading statements under parliamentary privilege.

1. False statement to Parliament 2016: That Self Employed Australia had not accepted the ATO's offer to consider specific cases

In 2016 we were surprised that the ATO were becoming perhaps becoming somewhat annoyed about our public comments on the ATO performance. We were in regular and direct contact at Assistant and above Commissioner level in what appeared to be quality discussions.

However in early 2016 we made a submission to the Parliamentary Inquiry into whether the ATO is subject to too much scrutiny.
<http://www.selfemployedaustralia.com.au/Downloads/Taxation/ICA-Submission-to-Parliamentary-Tax-Office-Review-March-2016.pdf> Our submission argued for more scrutiny of the ATO, not less.

We were surprised to be referred to in the ATO's opening statement to the Parliamentary Committee where the Acting Commissioner of the ATO said of us:

“I note with concern the reported comments by the head of the Independent Contractors Association today criticising the ATO for purportedly making improper allegations of fraud against small business. Mr Phillips has made these claims on numerous occasions and in various forums but, despite our invitation,

has not brought any actual cases forward for investigation. I repeat that offer now: if the ICA wishes to provide the ATO with actual cases to support Mr Phillips's claims, we will have these cases independently reviewed and we will report back to this committee on a de-identified basis on the outcomes. If there are no such cases, we respectfully suggest Mr Phillips ought to withdraw these claims that go to the integrity of the ATO in administering the tax and superannuation systems.”

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON TAX AND REVENUE
External scrutiny of the Australian Taxation Office Hansard Wednesday, 16 March 2016

The ATO’s rebuke was and is misleading. It is correct that the ATO made an offer to us to bring cases forward to them—and at very high levels in the ATO. However, what is misleading is the failure of the ATO to report to the Committee our responses to them of this offer—namely, that we were referring specific cases to the ATO as follows:

- a) The case examples we publicized and brought to the attention of the ATO privately as well as in our public submissions were from small business people who supplied their situations to us in confidence.
- b) Our submissions were meant to assist in good public policy formulation and the inclusion of the identity of specific individuals is not always necessary for public policy considerations.
- c) We were involved in assisting several self-employed people in defending themselves against allegations of fraud/evasion and other matters by the ATO. We advised senior ATO officers that we were assisting those people to go through the internal ATO’s review/appeals processes. We stated that it made common sense to see if the ATO’s internal processes could adequately address and resolve the specific cases. If so, this would be a positive and we could work with the ATO from there. If not, we could work in other ways with the ATO. That is specific cases we referred to were being investigated by the ATO.

In other words, we were testing the ATO’s systems from a user’s perspective. We wanted to give the ATO a fair go and would report back to the ATO on the outcomes of the specific cases. In discussions with the ATO this was accepted as a sensible approach.

Instead of acknowledging this cooperation with the ATO while maintaining privacy for individual cases, the ATO’s Acting Commissioner rebuked us to the Parliamentary Committee. That rebuke, regrettably, has come to typify what we see as the ATO’s approach to criticism. It seeks to close down criticism rather than accept it, take it on board and investigate if lessons can be learned. The rebuke was an expression of the culture of the ATO from someone at the highest level of the ATO. It is not a good culture.

But of concern also is the attempt in our view by the ATO to mislead Parliament. The ATO should be above reproach in its presentation of facts to Parliament. In this case the ATO misrepresented the facts to the Parliamentary Committee. The fact was that we were in the process of preparing specific cases for review by senior ATO officers and had cases undergoing ATO review. This was well known in the ATO and the identify of the specific cases was well known in the ATO.

2. Incorrect statement: The Four Corners, *Mongrel Bunch of Bastards* show. Was the Commissioner invited to appear?

This example relates to whether the Tax Commissioner was factual in his description of why he did not appear on the Four Corners show of 9th April 2018. The Commissioner stated in the Senate Economics Committee hearing of 30th May 2018 that he was not formally invited to appear on the show. According to the Fairfax journalist, Adele Ferguson, this is incorrect.

The Hansard reads

Senator WILLIAMS: Mr Jordan, my apologies, I saw some of your opening statement from my office, but I had meetings to attend. If I'm going over old ground, please forgive me. You're aware of the combined ABC-Fairfax *Four Corners* story. Were you offered an interview with that story?

Mr Jordan: We went through this before. It was not a formal offer. It was discussions between our organisations as to who, what and where...

Adele Ferguson, stated in an article of 31st May,

“He also made the incredible statement to the inquiring senators that he had not been formally offered an interview...

This is an incredible thing to say because it is so palpably wrong.

For the record, Four Corners and Fairfax Media did put in an official request for an interview with Jordan. An email was sent on March 13 to his media handlers with the subject line: “Interview request with Chris Jordan”.

<https://www.smh.com.au/business/companies/ato-s-chris-jordan-seeks-to-shoot-the-messenger-20180531-p4z1qh.html>

Following complaints to the Committee the ATO corrected the record on 5 July 2018 admitting that a formal invitation to appear on Four Corners was issued to the Commissioner. (See https://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/Economics/2018-2019_Budget_estimates/treasury Letter Acting Commissioner 5/7/2018)

3. Incorrect statements: The Four Corners, *Mongrel Bunch of Bastards*, Alleged bad behaviour of the persons profiled on the show.

This example relates to whether the Tax Commissioner was factual in his description of the cases that were highlighted in the Four Corners show, *Mongrel Bunch of Bastards* of 9th April 2018.

Taken from the Hansard of 30th May 2018 in evidence before the Senate Economics Committee the Tax Commissioner said,

“There is not much more to say, but the various cases you saw reported on Four Corners represent the spectrum of behaviour that we see: those who just don't understand what they're meant to do; those who get in a mess because they leave things too late or long; those who don't pay attention to their admin, put their head in the sand or are struggling without the right help; or, worse, those who are deliberately being evasive.

Let me just explain some of the behaviours we saw in this group of mainly old cases.

Some people claimed significant expenses and did not provide proof of their expenditure, in one case saying the invoices were secret, even though they were given the opportunity a number of times to show the necessary paperwork over a period of time. It would be all too convenient if invoices were secret from the tax office.

In the same case, they couldn't show us the assets that related to these expenses. The assets had apparently been destroyed.

They did not respond to repeated attempts by us to contact them or their agent.

There was abuse of company and trust structures so that they did not pay tax on their income, and expenses were simply concocted and false invoices created.”

Correcting the incorrect statement/s

The identities of the persons the Tax Commissioner referred to are clearly known through the Four Corners show. In the statements above the Tax Commissioner has allegedly impugned the good names and reputations of those persons. The statements by the Tax Commissioner are wrong. To correct the record the parties identified by the Tax Commissioner assert that;

- All of the cases were and are current cases. They are not ‘old’ cases.
- Invoices were not kept secret from the ATO.
- Assets were not destroyed and assets could be shown.
- All parties responded to the ATO at all times.
- There were not company or trust structure abuses.
- Expenses were not concocted or false invoices created.

A number of the parties referred to by the Commissioner lodged complaints with the Committee.

As one example Ms Helen Petaia in her complaint to the Committee stated
“...I seek to protect my personal and professional reputation and ensure emotional stability for my family....my disappointment that one of the most powerful public officials has used parliamentary privilege to spread false allegations (about me).”

(See https://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/Economics/2018-2019_Budget_estimates/treasury Letter Helen Petaia 17/8/2018)

In reply to these complaints the Commissioner responded to the Committee
“... the fact that no individuals were referred to by name or in such a way as to enable them to be readily identified, it is submitted that the submissions to not qualify for referral to the Committee of Privileges...”

(See https://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/Economics/2018-2019_Budget_estimates/treasury Letter Commissioner 5/9/2018)

It seems implausible that the original statement by the Commissioner to the Committee that “...various cases you saw reported on Four Corners...” did not clearly identify the people concerned.

4. Incorrect Statement: Does the ATO initiate recovery on disputed debt?

This example relates to whether the ATO was factual in its description of its policy on enforcing disputed debt.

In the Senate Economics Committee hearing of 30th May 2018 the Hansard records the following exchange

Senator LEYONHJELM: So you're saying that, where the amount claimed by the ATO is disputed by the taxpayer, you don't initiate recovery action?

Mr Mills: We don't. That doesn't mean people won't pay voluntarily or think that they need to pay if they don't understand that they can leave it outstanding while the dispute is resolved.

Correcting the incorrect statement.

We can confidently assert that the ATO regularly initiates debt recovery on debts disputed by a taxpayer. The statement by the ATO is incorrect.

A primary example is in the court record and judgment of *Bosanac v Commissioner of Taxation [2017] FCA 1057 (5 September 2017)*. The court record and judgment shows that the trial to determine the disputed debt was set for the 20th March 2017. Yet some forty (40) days before trial on 8th February 2017 the ATO issued a garnishee against Mr Bosanac for \$14,000 a month. That is, the debt of Mr Bosanac was clearly disputed yet the ATO initiated debt recovery action by issuing a garnishee.

5. Incorrect Statement: False mixed metaphor, roasting-boiling

The following is perhaps somewhat trite and silly but non-the-less contributes to understanding the reliability and accuracy or otherwise of ATO evidence.

In the Senate Economics Committee hearing of 30th May 2018 the Hansard reads,

Senator KENEALLY: I note your language in your opening statement. You said that people at the ATO do not get up in the morning thinking, 'Who can I destroy today or boil to death?' Did the ABC assert that the ATO got up in the morning and sought to boil people to death?

Mr Jordan: There was a person on *Four Corners* who said that the people at the ATO—he had a bit of a mixed metaphor here—slowly boil people until we roast them to death. I can cook, so I know you don't roast when you boil, but nonetheless that's what he said. So, yes, he said that, and that was on the ABC *Four Corners* program—entirely inappropriate—

Senator KENEALLY: A person who was being interviewed said that.

Mr Jordan: to actually put someone on—notwithstanding who said it—to put a camera in front of someone, to say that we slowly boil people until they're roasted to death. How ridiculous. How ludicrous and absurd is such a statement.

Correcting the incorrect statement

The Tax Commissioners statement was wrong. The transcript of the Four Corners show, *Mongrel Bunch of Bastards* Mon 9 Apr 2018, reads

“They play games with you. They just pull you in, and then they cook you slowly, effectively until you are roasted and you are dead.”

There was no mixed metaphor in the Four Corners show.

With the vast resources of the ATO, simple fact checking of the transcript of the *Four Corners* programme should be expected. If such misrepresentation can be done by the ATO on such a silly matter how much reliability can be attributed to the ATOs representations on significant matters? Is the ATO so affected by criticism that it loses its sense of responsibility to the Parliament?