Appendix 3

Correspondence

Senator the Hon Michaelia Cash
Minister for Employment
Minister for Women
Minister Assisting the Prime Minister for the Public Service

Reference: MB17-003370

Mr Ian Goodenough
Chair
Parliamentary Joint Committee on Human Rights
S1.111
Parliament House
CANBERRA ACT 2600

Dear Mr Goodenough

Fair Work Amendment (Corrupting Benefits) Bill 2017 and the Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017

This letter is in response to your letter of 10 May 2017 concerning issues raised in the Parliamentary Joint Committee on Human Rights' *Human Rights Scrutiny Report No.4 of 2017* in relation to the Fair Work Amendment (Corrupting Benefits) Bill 2017 (Corrupting Benefits Bill) and the Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017 (Vulnerable Workers Bill).

The Australian Government made an election commitment to implement the majority of the recommendations made in the Final Report of the Royal Commission into Trade Union Governance and Corruption. The Corrupting Benefits Bill responds to Recommendations 40, 41 and 48 of the Royal Commission. The Australian Government also made an election commitment to protect vulnerable workers and the Vulnerable Workers Bill delivers on this commitment.

My detailed response to each of the issues raised in your correspondence is at Attachment A. I trust the Committee will find the information useful.

Yours sincerely

Senator the Hon Michaelia Cash
29 / 5 / 2017

Encl.

Attachment A

Detailed response to issues raised in *Human Rights Scrutiny Report No.4 of 2017*

FAIR WORK AMENDMENT (CORRUPTING BENEFITS) BILL 2017

Compatibility of the measure with the right to a fair trial

The committee asks whether the measure limits the right not to be tried and punished twice for an offence which is the same, or substantially the same, as an offence for which the person has already been finally convicted or acquitted.

As the Committee has noted (at [1.45]), section 4C of the *Crimes Act 1914* (Cth) protects a person from being punished for a Commonwealth offence after having been punished for the same offence under the law of a State or Territory.

Where a person is first punished for a Commonwealth offence, the applicability to the person of any overlapping State or Territory offence is a matter to be determined by the applicable law in that State or Territory, including the common law.

In this regard, I note that a number of States and Territories have express statutory provisions dealing with anterior punishments for Commonwealth offences: see for example *Crimes (Sentencing Procedure) Act 1999* (NSW), s 20; *Sentencing Act 1995* (WA), s 11(2); *Legislation Act 2003* (ACT), s 191(2).

Compatibility of the measures with the right to be presumed innocent

The Committee asks:

- **how the strict liability offence is effective to achieve (that is, rationally connected to) its stated objective; and**
- **whether the limitation is a reasonable and proportionate measure to achieve the stated objective.**

It is appropriate for strict liability to attach to paragraphs 536F(1)(a), (c) and (d) of the relevant criminal offence. Section 536F is intended to address the problem which the Royal Commission into Trade Union and Governance found to be 'insidious' and 'immensely damaging': the provision of corrupt payments and other benefits by employers to unions and their officials (Final Report, Volume 5, Chapter 4 at [58]). The Commissioner stated (at [60]):

> *Seeking simply to prohibit payments made or received with a particular intention has consequent difficulties of investigation and proof. Instead it is recommended that, subject to certain exceptions, all payments by employers to a relevant union or officials of that union be outlawed.*

Paragraph 536F(1)(a) limits the offence to the defendant being a national system employer who is not an employee organisation. As explained in the Explanatory Memorandum to the Bill, this element is jurisdictional in nature, in that it attaches the offence to the relevant Commonwealth head of power to legislate. Strict liability attaching to this element can be justified by virtue of the fact that it is jurisdictional in nature.

One of the principal purposes of the offence provision is to ensure that a defendant national system employer has sufficiently robust internal governance and accounting mechanisms in place so as to ensure that they are aware of whether the recipient of a payment is a person to whom the

circumstances in paragraphs 536F(1)(c) and (d) apply. If the provision were to have fault elements for paragraphs 536F(1)(c) and (d), the imperative for employers to have appropriate mechanisms in place to prevent illegitimate payments to employee organisations and their associates would be diminished. The absence of fault elements is thus a necessary and proportionate means to achieve the provision's objectives. Proportionality is further served by the availability of the defence of reasonable mistake of fact.

Similarly, strict liability attaches to paragraph 536G(1)(c) because an employee organisation and its officers should be aware of the circumstances in which the payment of money by an employer would be an offence against section 536F. The provision is intended to ensure that employee organisations take sufficient care not to solicit payments from national system employers that would contravene section 536F. Proportionality is further served by the availability of the defence of reasonable mistake of fact.

FAIR WORK AMENDMENT (PROTECTING VULNERABLE WORKERS) BILL 2017

Compatibility of the measure with criminal process rights

The Committee asks:

- **whether the penalties may be considered criminal**
- **whether the increases in the maximum civil penalties could be limited so as to, not apply, or to be reduced, in respect of individuals including employees; and**
- **if the penalties are considered 'criminal' for the purposes of international human rights law, whether the measure accords with criminal process rights.**

Response

I am satisfied the proposed penalties for 'serious contraventions' in the Bill may be reasonably characterised as civil, based on the criteria in Guidance Note 2: Offence provisions, civil penalties and human rights, December 2014.

The objective of the proposed new penalties is to implement a proportionate response to address persistent and deliberate exploitation of vulnerable workers (including migrant workers). This new penalty is justified because the new provisions specifically target deliberate and systematic misconduct, and the penalty needs to be high enough to ensure that the consequences of such egregious law-breaking aren't simply written off as an acceptable 'cost of doing business'.

I acknowledge the Committee's observation that 'the Fair Work Act governs the terms of employment very broadly, such that it is unclear whether the regime can categorically be said not to apply to the public in general'. The relevant provisions do however specifically target employer-employee relationships, not work relationships more broadly.

On balance, and taking all of the relevant features into account, I am satisfied the penalties are not 'criminal' in nature.

Application of proposed penalties for 'serious contraventions' to individuals

I have also considered the application of the proposed maximum civil penalties to individuals including employees.

The provisions have been crafted to specifically target contraventions relating to underpayment of employees, so the new penalties will apply to employers or others who are involved in such contraventions, whether individuals or otherwise.

I am not satisfied that employers who are individuals, including sole traders, should be excluded from the proposed 'serious contraventions' regime given the purpose of these provisions is to deter deliberate and systematic underpayment of workers.

The appropriate penalty to be applied in any particular case will be determined by the courts, which are in the best position to ensure the penalties imposed are appropriate to the case at hand and achieve effective deterrence.

Criminal process rights

As the civil penalty for 'serious contraventions' may reasonably be characterised as not being 'criminal', the specific criminal process guarantees in Articles 14 and 15 will not apply. The provisions do however comply with the requirements of articles 14 and 15.

The proposed legislation draws on the existing civil penalty regime, which means:

- the standard of proof for allegations involving 'serious contraventions' is the civil standard of proof (Article 14(2))
- the privilege against self-incrimination is abrogated but replaced with immunities (Article 14(3)(g))
- protection against 'civil double jeopardy' is included under the Fair Work Act (s 556), so criminal proceedings may follow civil proceedings in relation to conduct which is the same or substantially the same (see the Fair Work Act, s 554), and
- the proposed provisions would not apply retrospectively (Article 15(1)).

Importantly there is no risk of 'double punishment' because the proposed new provisions are regulatory in nature and there are no apparent corresponding criminal offences. This means there would be no real need for supplementary protections against 'double jeopardy', for the purposes of international human rights law.

Information-gathering powers – Compatibility of the measure with the right to privacy

The Committee asks:

- **how the measure is effective to achieve (that is, rationally connected to) its stated objective; and**
- **whether the limitation is a reasonable and proportionate measure to achieve the stated objective**

Response

The proposed FWO powers are effective to achieve the stated objectives of:

- more 'effectively deterring unlawful practices, including those that involve the deliberate and systematic exploitation of workers', and
- ensuring 'the Fair Work Ombudsman has adequate powers to investigate and deal with serious cases involving the exploitation of vulnerable workers and the deliberate obstruction of its investigations'.

Inadequacies in the Fair Work Ombudsman's powers have been highlighted by some recent cases. In FWO investigations into 7-Eleven for example, the Fair Work Ombudsman resorted to CCTV footage

and registers of fuel levels to reconstruct hours of work for underpaid workers due to a lack of cooperation by the company. Investigations into the Baiada group in New South Wales stalled altogether due to lack of cooperation. These are not discrete examples but form part of a broader picture of deliberate non-compliance by certain unscrupulous operators.

These cases show how serious instances of underpayment may not be able to be investigated where any employer refuses to provide documents or cooperate with a FWO investigation. The limitation on the powers also means that vulnerable workers may not have sufficient confidence that they can come forward without facing retribution from their employer or others.

While FWO Inspectors may interview people under the Fair Work Act, para 709(e), there is currently no penalty for a person who refuses or fails to answer questions. In these kinds of cases, investigations stall and the Act becomes very difficult if not impossible to enforce.

Is the limitation reasonable and proportionate
The proposed FWO powers have been drafted to pursue the legitimate objective of ensuring 'the Fair Work Ombudsman has adequate powers to investigate and deal with serious cases involving the exploitation of vulnerable workers and the deliberate obstruction of its investigations'. The breadth of the powers goes no further than necessary to achieve this stated objective.

The proposed measure is carefully drafted to include appropriate safeguards, so the proposed new FWO powers are proportionate to the outcomes being sought. The safeguards have been modelled on provisions conferring similar powers on ASIC and the ACCC and are described in more detail in the Explanatory Memorandum.

The Fair Work Act is the primary workplace legislation in Australia and it is critical that it is, and is seen to be, enforceable and enforced.

Information-gathering powers – Compatibility with the right to not to incriminate oneself

The Committee asks:

- **whether there is reasoning or evidence that establishes that the stated objective addresses a pressing or substantial concern or whether the proposed changes are otherwise aimed at achieving a legitimate objective;**
- **how the measure is effective to achieve that objective;**
- **whether the limitation is reasonable and proportionate; and**
- **whether a derivative use immunity could be included in proposed section 713(3).**

Response

As explained above, I am satisfied that the penalties in the Bill should not be considered criminal for the purposes of human rights law. On this basis, the Bill does not engage the right to a fair trial in the determination of a criminal charge guaranteed by Article 14 of the ICCPR.

In response to the Committee's questions, proposed section 713 in the Bill is based on existing section 713 of the Fair Work Act, except supplementary provisions are proposed to deal with arrangements for the proposed FWO powers. The proposed supplementary provisions support the proposed FWO powers.

The provisions are directed at the legitimate objective of ensuring the Fair Work Ombudsman has adequate powers to investigate and deal with serious cases involving the exploitation of vulnerable workers and the deliberate obstruction of its investigations.

Abrogating the privilege against incrimination is critical to achieving the stated objective. The proposed laws are concerned with addressing deliberate and systematic non-compliance with workplace laws, and ensuring they are enforceable in cases involving serious misconduct, poor, falsified or no records, and orchestrated cover-ups. Those who may be best placed to give information about possible contraventions of workplace laws may have had some level of involvement in those contraventions, or may have contravened another law. If the privilege is not abrogated, such individuals would be unlikely to provide information to the FWO. The proposed arrangements will enhance the FWO's evidence-gathering powers to ensure these kinds of serious cases can be effectively investigated under the Fair Work Act.

Is the limitation reasonable and proportionate

The limitation on the protection against self-incrimination is justified because it is subject to a full use immunity, which extends in relation to all future proceedings, except several criminal proceedings relating to perjury-type offences.

I do not believe a derivative use immunity is necessary for the limitation to be proportionate. The information gathering powers are based on those available to corporate regulators such as ASIC and the ACCC, which do not include a derivative use immunity. The burden placed on investigating authorities in conducting a prosecution before the courts is the main reason why the powers of the Australian Securities Commission (now ASIC) were amended to remove derivative use immunity. Similarly, the Government considers that the absence of derivative use immunity is reasonable and necessary for effective proceedings to be brought in this context.

ASIC in its submission to the Australian Law Reform Commission Inquiry into Traditional Rights and Freedoms: Interim Report 127, noted the full scope of derivative use immunity cannot be accurately predicted in advance and risks making a person conviction-proof for an unforeseeable range of contraventions.[1] Furthermore, while specific provision may not be made for derivative use immunity there remains 'wide and flexible' judicial discretion to exclude derivative evidence in order to prevent or remedy potential unfairness.[2] These observations are equally relevant in the present context and should be taken into account.

[1] *Australian Law Reform Commission Inquiry into Traditional Rights and Freedoms: Interim Report 127, Submission by the Australian Securities and Investment Commission*, September 2015, p. 7
[2] Ibid, p. 14

UNCLASSIFIED

SENATOR THE HON JAMES MCGRATH
ASSISTANT MINISTER TO THE PRIME MINISTER

Reference: MC17-045289

Mr Ian Goodenough MP
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Dear Mr Goodenough Ian,

I refer to your letter dated 10 May 2017 to the Minister for Indigenous Affairs, Senator the Hon Nigel Scullion, regarding the Prime Minister and Cabinet Legislation Amendment (2017 Measures No. 1) Bill 2017 (the Bill). I have been asked to respond.

Coercive powers of Royal Commissions – proposal to increase penalty for failing to attend a Royal Commission as a witness

The Bill implements recommendation 78 of the final report of the Royal Commission into Trade Union Governance and Corruption. The Hon John Dyson Heydon AC QC recommended that the *Royal Commissions Act 1902* be amended '*to increase the penalties for a failure to comply with a summons to attend, a failure to comply with a notice to produce, a failure to be sworn or answer questions, and a failure or refusal to provide documents to at least a maximum penalty of 2 years' imprisonment or a fine of 120 penalty units or both*'.

Right to fair trial and hearing

The Committee notes that the Bill's statement of compatibility 'does not acknowledge that the [measure to increase the penalty for failure to comply with summonses issued by the Royal Commission] engages and limits the right not to incriminate oneself and therefore does not provide an assessment of whether that limitation is justifiable'. The Committee therefore seeks advice on whether:

- *the measure is aimed at achieving a legitimate objective for the purposes of international human rights law; effective to achieve (that is, rationally connected to) that objective; a reasonable and proportionate measure to achieve the stated objective; and whether a derivative use immunity would be workable.*

In making that recommendation, Commissioner Hedyon observed that the existing penalty for those offences is 'inadequate' and that a penalty of up to 2 years' imprisonment is consistent with the penalty applicable to a failure to comply with notices issued by the

Australian Security and investments Commission and by the Australian Competition and Consumer Commissioner (pages 626; 630 Final Report).

The right not to incriminate oneself derives from Article 14(3)(g) of the International Convention on Civil and Political Rights (ICCPR) which states that *in determining a criminal charge*, everyone shall be entitled to the minimum guarantee not to be compelled to testify against themselves or to confess guilt.

As noted in the Bill's statement of compatibility (para 13), the Bill does not engage Article 14 because a Royal Commission does not exercise judicial power and cannot *determine criminal charges*. However, I make the following observations.

The proposal to increase penalties for failure to comply with summonses is aimed at achieving the legitimate objective of ensuring a Royal Commission can fully inquire into, and report on, matters of public importance. The proposal is 'rationally connected' to that objective because higher penalties will enhance compliance with the summonses and therefore the Commission's ability to obtain information and evidence so that it can conduct its inquiry.

The Committee comments that the proposal to *increase* the penalty for failure to comply with summonses engages the right not to incriminate oneself because, through another existing provision in the Royal Commissions Act, a person is not excused from answering a question on the ground that the answer might tend to incriminate the person (section 6A). That provision is reasonable and proportionate because while it reinforces an objective of equipping Royal Commissions with appropriate investigative powers, there are limits or safeguards on the abrogation of the privilege against self-incrimination. The privilege still applies where the production of information or answer to a question might tend to incriminate the person in relation to an offence, and the person has been charged with the offence, and the charge has not been finally dealt with by a court. Furthermore, if incriminating evidence is obtained by a Royal Commission, the Royal Commissions Act provides a 'use' immunity so that any statement or disclosure made by the person is not admissible in evidence against that person in any civil or criminal proceedings (section 6DD).

A Commissioner may communicate information or evidence that relates to a contravention of the law to certain office holders such the police or the Director of Public Prosecutions where the Commissioner considers it appropriate to do so (section 6P). Introducing a 'derivative use' immunity would unreasonably hinder the ability of these law enforcement agencies to investigate and prosecute matters reported on by a Royal Commission. However, because of the 'use' immunity in section 6DD, the law enforcement agencies could not directly use that information against the person, and could only use it to obtain further evidence against that person.

Right to privacy

The Committee notes that the Bill's statement of compatibility 'has not identified or addressed the limitation on the right to privacy imposed [by the measure to increase the penalty for failure to comply with summonses issued by the Royal Commission]'. The Committee therefore seeks advice on whether:

- *the measure is aimed at achieving a legitimate objective for the purposes of international human rights law; effective to achieve (that is, rationally connected to) that objective; and a reasonable and proportionate measure to achieve the stated objective.*

The proposal to increase penalties for failure to appear as a witness and answer questions engages and limits the right to privacy, to the extent that a witness is required to provide personal information to the Commission.

The proposal to increase penalties for failure to comply with summonses is aimed at achieving the legitimate objective of ensuring a Royal Commission can fully inquire into, and report on, matters of public importance. The proposal is 'rationally connected' to that objective because higher penalties will enhance compliance with the summonses and therefore the Commission's ability to obtain information and evidence so that it can conduct is inquiry.

The proposal is reasonable and proportionate because while it reinforces an objective of equipping Royal Commissions with appropriate investigative powers, there are limits and safeguards on the use and sharing of personal information obtained by a Commission. For example, a Commission has power to make a non-publication direction over any evidence given before a Commission, over the contents of any documents or written statement given to a Commission, and over any information that might enable a person who have given evidence before the Commission to be identified (section 6D(3)).

Further, a witness can request that their evidence be taken in private where the evidence relates to the profits or financial position of any person and taking of the evidence in public would be unfairly prejudicial to the interests of that person (section 6D(2)). If there is any incriminating evidence about an individual, the 'use' immunity in section 6DD of the Royal Commissions Act applies so that any information or statement given by the person is not admissible in evidence against that person in any civil or criminal proceedings.

Coercive powers of Royal Commissions – proposal to give the Commission a new power to require a person to give information or statement in writing

Item 2 of Schedule 5 of the bill would insert new subsection 2(3C) into the Royal Commissions Act to give a member of a Royal Commission the power to issue a written notice requiring a person to give information or a statement in writing to the Commission.

This proposal implements a recommendation by Mr Ian Hanger AM QC in his report of the Royal Commission into the Home Insulation Program 'to empower a Royal Commission to compel the provision of statement by a potential witness' (page 12 of the report). Commissioner Hanger supported the rationale for a similar recommendation made by the Australian Law Reform Commission in its 2009 *Making Inquiries Report.* The ALRC considered that the power to require written statements '… may reduce the need for hearings and examinations and enable more flexible, less formal and more cost-effective inquiry procedures' (page 271 of the report).

Right to fair trial and hearing

The Committee notes that the Bill's statement of compatibility 'does not acknowledge that the measure [to give a Commission a new power to require a person to give information or a statement in writing] engages and limits the right not to incriminate oneself and therefore does not provide an assessment of whether that limitation is justifiable'. The Committee therefore seeks advice as to whether:

- *the limitation is a reasonable and proportionate measure to achieve the stated objective; and whether a derivative use immunity would be workable.*

The right not to incriminate oneself derives from Article 14(3)(g) of the International Convention on Civil and Political Rights (ICCPR) which states that *in determining a criminal charge*, everyone shall be entitled to the minimum guarantee not to be compelled to testify against themselves or to confess guilt.

The Committee comments that the proposal to give a Commission the power to require a person to give information or a statement in writing engages and limits the right not to incriminate oneself as that requirement applies regardless of whether such information might incriminate the person.

As noted in the Bill's statement of compatibility (para 13), the Bill does not engage Article 14 because a Royal Commission does not exercise judicial power and cannot *determine criminal charges*. However, I make the following observations.

It is acknowledged that the Bill would amend existing section 6A of the Royal Commissions Act so that a person is not, in all cases, excused from giving information or a written statement on the ground that the information or statement might tend to incriminate the person. That power is reasonable and proportionate because while it reinforces an objective of equipping Royal Commissions with appropriate investigative powers, there are limits or safeguards on the abrogation of the privilege against self-incrimination. The privilege would still apply where the giving of information or a statement might tend to incriminate the person in relation to an offence, and the person has been charged with the offence, and the charge has not been finally dealt with by a court. Furthermore, if incriminating evidence is obtained by a Royal Commission, it is proposed in the Bill that the 'use' immunity in section 6DD of the Royal Commissions Act apply so that any information or statement given by the person is not admissible in evidence against that person in any civil or criminal proceedings.

It is also acknowledged that a Commissioner may communicate information or evidence that relates to a contravention of the law to certain office holders such the police or the Director of Public Prosecutions where the Commissioner considers it appropriate to do so (section 6P). Introducing a 'derivative use' immunity would unreasonably hinder the ability of these law enforcement agencies to investigate and prosecute matters reported on by a Royal Commission. However, because of the 'use' immunity in section 6DD, the law enforcement agencies could not directly use that information against the person, and could only use it to obtain further evidence against that person.

Right to privacy

The Committee notes that the Bill's statement of compatibility 'has provided no information about why the measure [to give a Commission a new power to require a person to give information or a statement in writing] is necessary to achieve the legitimate objective nor addressed there are adequate safeguards in place with respect to the exercise of this power'. The Committee therefore seeks advice as to whether:

- *the limitation is a reasonable and proportionate measures to achieve the stated objective (including the availability of less rights restrictive measures and the existence of relevant safeguards).*

The proposal to give a Commission a power to require a person to give information or a statement engages and limits the right to privacy only to the extent that a person is required to give personal information to the Commission in a written statement.

The proposal is reasonable and proportionate because while it reinforces an objective of equipping Royal Commissions with appropriate investigative powers, there are limits and

safeguards on the use and sharing of personal information obtained by a Commission. For example, the Bill would extend existing section 6D(3) of the Royal Commissions Act so that a Commission has power to make a non-publication direction over the contents of any written statement given to a Commission (item 26 of Schedule 5 of the Bill). Existing section 6D(3)(c) gives a Commission the power to make a non-publication order over any information that might enable a person who has given evidence before the Commission to be identified. If there is any incriminating evidence about an individual, it is proposed that the 'use' immunity in section 6DD of the Royal Commissions Act apply so that any information or statement given by the person is not admissible in evidence against that person in any civil or criminal proceedings (item 28 of Schedule 5 of the Bill).

While a Royal Commission can now invite individuals to give information or a statement in writing, under that approach the Commission would need to rely on other existing powers to require an individual to attend to give evidence if that person refuses voluntarily give the information. As noted above, the ALRC considered that the power '*may reduce the need for hearings and examinations and enable more flexible, less formal and more cost-effective inquiry procedures'*.

Compatibility of the coercive powers of Royal Commissions with multiple rights

The Committee also seeks advice 'as to whether a foundational assessment of the Royal Commissions Act could be undertaken to determine its compatibility with human rights (including in respect of matters previously raised by the Committee)'.

I note the *Human Rights (Parliamentary Scrutiny) Act 2011*does not require an assessment of this kind. In accordance with the requirements in sections 8 and 9 of the *Human Rights (Parliamentary Scrutiny) Act 2011*, the Government will continue to prepare statements of compatibility in relation to Bills that amend the Royal Commissions Act and certain legislative instruments made under the Royal Commissions Act.

I note the Committee refers to particular examples of other legislation relating to the Royal Commissions Act that has been the subject of requests for information by the Committee. I understand that the Committee would have received responses to those requests.

I trust this information will be of assistance.

Yours sincerely

JAMES MCGRATH

25 / 5 / 2017

SENATOR THE HON MATHIAS CORMANN
Minister for Finance
Deputy Leader of the Government in the Senate
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Ref: MC17-004534

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Dear Mr Goodenough

I refer to the letter of the Parliamentary Joint Committee on Human Rights originally directed to the Treasurer, concerning the Treasury Laws Amendment (2017 Measures No. 1) Bill 2017. The letter has been referred to me as I have responsibility for this matter. I apologise for the delay in responding to you.

Prior to the amendment made by the Bill, the Australian Securities and Investments Commission (ASIC) was able to share confidential information with the Commissioner of Taxation (ATO) on an ad hoc basis. Subsection 127(4) of the *Australian Securities and Investments Commission Act 2001* required the ASIC Chairperson, or their delegate, to be satisfied that sharing particular information would enable or assist the ATO to perform or exercise its functions or powers.

The amendment in the Bill supports improved machine-to-machine data matching and sharing as it removes the need for the ASIC Chairperson, or their delegate, to be personally involved in the process. The approach is appropriate to achieve the objective of streamlining the process for ASIC to share confidential information with the ATO as it mirrors the existing arrangements already in place for ASIC to share information with the Reserve Bank of Australia, the Australian Prudential Regulation Authority and the responsible Minister. I note that the Office of the Australian Information Commissioner was consulted on the measure and raised no objections.

As outlined in the explanatory memorandum to the Bill, where ASIC has shared information with the ATO, the information remains protected from unauthorised disclosure as Division 355 of Schedule 1 to the *Taxation Administration Act 1953* makes the unauthorised disclosure of confidential information an offence. The legislation ensures that the confidential information ASIC shares with the ATO is subject to the same high level of protection from unauthorised disclosure as all other confidential information held by the ATO.

Furthermore, the application of the Australian Privacy Principles and Australian Public Service Code of Conduct to the ATO and ASIC provides for additional protection of confidential information, particularly in relation to personal information.

I note that the Bill passed both Houses of Parliament on 27 March 2017 and commenced on 5 April 2017.

Kind regards

Mathias Cormann

8 June 2017