APPENDIX 1

Submission 1

REX PATRICK
Senator for South Australia

Senator O'Neill
Chair
Senate Standing Committee of Privileges
PO Box 6100
Parliament House
Canberra ACT 2600

BY EMAIL: priv.sen@aph.gov.au

Deb

Dear Senator,

Privilege Referral – Tax Commissioner

Orders of Production

1. The Senate has the power to order the production of documents. The source of this power is Section 49 of the Constitution.

   Parliament is invested with the power of ordering all documents to be laid before it, which are necessary for its information.[1]

2. The ability for a House of Parliament to do so was judicially tested and confirmed in the High Court in *Egan v Willis [1998] HCA 71; 195 CLR 424; 158 ALR 527; 73 ALJR 75 (19 November 1998).*

3. A Senate Order for Production (OPD) is similar to a Court subpoena/order to produce in terms of process, which in simple terms is dealt with as follows:

   a. A subpoena/order is issued/made.
   b. The recipient can comply with the order or contest it.
   c. If the recipient contests the order they can be heard on the issue.
   d. It is ultimately the Court that has the final say in respect of the contest.

   In the Senate:

   a. An OPD is made.

   ... it may be stated that all public departments connected with the collection of management of the revenue, or which are under control of the treasury, or are constituted or regulated by statutes, may be reached by a direct order from either house of Parliament ...[2]

[1] Erskine May, x Edition, 1893, Page 507
[2] Ibid, Page 507

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b. The recipient can comply with the order or advance a public interest immunity.

c. If the recipient contests the order they must spell out the harm that will occur if the order is complied with and the Senate considers this.

d. It is ultimately the Senate that has the final say.

But however ample the power of each house to enforce the production of papers, a sufficient cause must be shown for the exercise of that power; and if consideration of public policy can be urged against a motion for papers, it is either withdrawn, or otherwise dealt with according to the judgement of the House.[3]

4. Once step d is complete, the OPD must be complied with. In the event of non-compliance, the Senate may impose on a person a penalty of a fine or imprisonment for a period not exceeding 6 months.

If parties neglect to make returns in reasonable time, they are ordered to make them forthwith.: or so much of the returns as has not been made. If they continue to withhold them they are ordered to attend at the bar of the house; and unless they satisfactorily explain the causes of their neglect and comply with the order of the house, they will be censured or punished according to the circumstances of the case.[4]

5. There is no discretion for a statutory officer to not comply with the order, any more than they could for any other mandatory duty imposed upon them.

6. A Senate OPD directed at an official cannot be countermanded by a Minister. Any direction to not comply with an order of the Senate is not a lawful order. Public servants are not required to obey any directions, only lawful ones – see *Pirrie v McFarlane [1925] HCA 30; (1925) 36 CLR 170 (24 August 1925).*

The Circumstances Related to This Referral

7. On 4 August 2021, the Senate ordered the Commissioner of Taxation to table the list of all employers with an annual turnover of greater than $10 million that were paid a JobKeeper payment, the number of employees paid, the total amount paid and any amount returned. The Senate required this information be provided by Thursday, 12 August 2021.

8. In his response tabled on 12 August, the Commissioner raised a public interest immunity claim relating to the interests served by maintaining the confidentiality of taxpayer information.

[3] Ibid, Page 510
[4] Ibid, Page 510

9. On 23 August 2021, the Senate rejected this public interest immunity claim and insisted on production of the information resolving:

That the Senate

a) notes that:

i. the order of 4 August 2021 requiring the Commissioner of Taxation to provide, by 9.30 am on Thursday, 12 August 2021, the list of all employers with an annual turnover of greater than $10 million that were paid a JobKeeper payment and the number of employees paid, the total amount paid and any amount returned, has not been complied with,

ii. the response by the Commissioner acknowledges the power of the Senate to require the publication of documents and information, but claims public interest immunity in relation to the documents, and

iii. in support of the claim the Commissioner asserts that the release of the information will harm the public interest by undermining public confidence in the Commissioner's ability to keep taxation information confidential;

b) rejects the claim of public interest immunity made by the Commissioner of Taxation, noting that:

i. the information sought relates to public funding received by an employer, not an employer's business or taxation information, and

ii. the harm purported cannot be sustained, noting identical data relating to New Zealand employers has been published on a searchable and real time New Zealand Government web page; and

c) orders the Commissioner of Taxation to comply fully with the order by 4.30 pm on 26 August 2021.

10. On 26 August 2021, the government responded to this order with a letter from the Treasurer raising a public interest immunity claim. It is curious that the Treasurer has sought to raise this claim when Division 355 of the Taxation Administration Act 1953 prevents him accessing the required information. In any case, this response really does no more than reiterate the claim which the Senate has already explicitly rejected.

Contempt

11. Pursuant to section 4 of the Parliamentary Privileges Act 1987, any conduct may constitute a contempt if it

"*amounts to, or is intended to amount to, an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a member of the member's duties.*"

12. The Senate has supplemented the statutory test with its privilege resolutions.

13. Resolution 6 relevantly declares that breaches of the following prohibitions may be treated by the Senate as acts of contempt:

    A person shall not, without reasonable excuse, disobey a lawful order of the Senate or of a committee.

    A person shall not, without reasonable excuse… refuse or fail to produce documents, or to allow the inspection of documents, in accordance with an order of the Senate or of a committee.

14. The final order of the Senate is a lawful order directed at an independent statutory officer, and the Commissioner must comply. There is no scope for a minister to counter a Senate order. It is my strong view that the Tax Commissioner is in contempt of the Senate.

15. Finally, the Government's response to the order of 23 August 2021 is no relevance or defence for the Tax Commissioner in the consideration of your Committee.

The Committee Must Make a Strong Response to the Contempt

16. This referral to the Privilege Committee is the second this year relating to OPD non-compliance.

17. There is a general perception amongst the public service and the public that the Senate can be treated with contempt. Many senators have expressed their concern to me as to this perception.

18. Senators are responsible for this unacceptable state of affairs.

19. Throughout this submission I have presented extracts from the 10th edition (1893) of A treatise on the Law, Privileges, Proceeding and Usage of Parliament by Sir Thomas Erskine May, K.C.B., C.C.L, Clerk of the House of Commons and Bencher of the Middle Temple.

20. The powers, privileges and immunities of the Australian Senate are inherited from the House of Commons.

    The power of commitment [for contempt] *by the Commons is established upon the ground and evidence of immemorial usage.*[5][6]

21. Respectfully, I suggest that disrespect for the Senate by the public and public officials is directly related to the Senate's willingness to suffer contempt.

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[5] Ibid, Page 62

[6] Nearly 1000 instances of its exercise occurred between 1547 and the first half of the last century.

22. It is fully in the power of the Senate to remedy this situation. The question is whether Senators have the will to do so.

23. Should you have any further questions in relation to this matter I would be please to assist in any way I can.

Yours sincerely,

Rex Patrick
Senator for South Australia
11 November 2021

Submission 2

Australian Government
Australian Taxation Office

Commissioner of Taxation

Senator the Hon Deborah O'Neill
Parliament House
CANBERRA ACT 2600

Dear Senator

Inquiry regarding possible contempt

1. Thank you for your letter of 25 October 2021 and the opportunity to provide an initial submission to the Committee for its inquiry regarding possible contempt in relation to Order for Production of Documents 1196 and 1219 (**OPD**) concerning the JobKeeper scheme.

2. I understand the Committee is to inquire and report on whether I have, without reasonable excuse:

   (a) disobeyed a lawful order of the Senate;

   (b) failed to produce documents in accordance with an order of the Senate; or

   (c) improperly interfered with the power of the Senate to obtain information necessary to support its accountability functions,

   and if so whether any contempt was committed in that regard.

3. I respectfully submit that I have not done so, and that I am not in contempt of the Senate. I believe that I had (and continue to have) a reasonable excuse for not producing the documents sought in the OPD within the stipulated timeframe.

4. At all times, I have acted in good faith and with careful regard both to my statutory duties and responsibilities and to the privileges and processes of the Senate. I have not sought, and do not seek, to be obstructive or to impede the Senate from performing its critical functions. As conveyed in my letter of 26 August 2021, I feel I am in an unprecedented position.

5. I understand that my submission is received in the context of the Committee's initial consideration of this matter. If the inquiry proceeds to the next stage, I understand that I will have further opportunities to make representations.

6. Please be assured that I view the OPD, and my responsibilities in relation to it, with the utmost seriousness. I stand ready to assist the Committee in its inquiry however necessary.

Yours sincerely,

Chris Jordan AO

SUBMISSION

A. INTRODUCTION

1. On 4 August 2021, the Senate made an Order for the Production of Documents requiring me to produce a "list of all employers with an annual turnover of greater than $10 million that were paid a JobKeeper payment, and the number of employees paid, the total amount paid and any amount returned" by 9:30 am on 12 August 2021 (the **OPD**).

2. On 12 August 2021, I wrote to the President of the Senate indicating that I claimed public interest immunity (**PII**) over the information requested in the OPD. That claim was rejected by the Senate on 23 August 2021, and I was ordered to comply with the OPD (replicated by Order 1219) by 4:30 pm on 26 August 2021.

3. On 26 August 2021, I was notified that the Treasurer had claimed PII over the documents the subject of the OPD. On the same day, I wrote to the President of the Senate and advised that I had decided to delay producing the documents pending determination by the Senate of the Treasurer's PII claim. I felt compelled to act in this way:

   (a) to respect the processes of the Senate by ensuring that it could consider and determine the Treasurer's PII claim; and

   (b) having regard to my statutory duties and responsibilities, including those concerning "protected information" under Division 355 of Schedule 1 to the *Taxation Administration Act 1953* (Cth) (**TAA**), which would otherwise apply and the effective adherence to which is vital to instil trust and confidence in Australia's taxation and superannuation systems.

4. I was not seeking to be obstructive, or to interfere improperly with the Senate's power to obtain information. I sought to ensure that the application which had been made to the Senate by the Treasurer could be considered without pre-emptively and irreversibly disclosing protected taxpayer information in circumstances where that disclosure might ultimately not be demanded of me if the Senate had decided to accept the Treasurer's PII claim.

5. For those reasons, I respectfully submit that I had a reasonable excuse for not producing the documents sought under the OPD and accordingly, am not in contempt of the Senate.

6. I view the OPD, and my responsibilities in relation to it, with the utmost seriousness. In the period leading up to 26 August, Australian Taxation Office (**ATO**) staff took all necessary steps to ensure that information was collated and ready to be produced to the Senate to comply with Order 1219. Whilst I remain deeply concerned about the implications that may flow from public disclosure of the information sought under the OPD (on which I elaborate below), I affirm my commitment to producing the information to the Senate without delay if and in the event that the Treasurer's PII claim is rejected by the Senate.

B. SUBMISSIONS

7. I did not produce the documents sought under the OPD on 26 August 2021 because I believed that doing so could compromise the integrity of (and impede) the Senate's proper processes because it had yet to determine the Treasurer's PII claim.

8. As recognised in the Senate's resolutions of 16 July 1975 (J.831):

   (a) the Senate's power to require that a person produce documents is "subject to the determination of all just and proper claims of privilege"; and

   (b) "upon a claim of privilege based on an established ground being made… to the production of any documents, the Senate shall consider and determine each such claim".

9. PII – which was formerly known as "crown privilege" or "executive privilege" – is a recognised type of privilege. For many decades, the Senate has dealt with executive government claims of PII on a case by case basis: see *Odgers' Australian Senate Practice* (2016), pages 44-45, 644-645.

10. Had I produced the documents sought under the OPD on 26 August 2021, I would have pre-empted the outcome of the Senate's adjudication of the Treasurer's PII claim and made that adjudication futile. I was cognisant of the fact that once the documents were provided, they could not be recalled. To the best of my knowledge, the scope of the OPD is not typical in that it requires the production of confidential information about a significant number of taxpayers.

11. My intention was not to interfere with the Senate's processes, but to allow those processes to be followed in the proper and customary way before producing information which is, by its nature, ordinarily protected by the provisions of Division 355 of Schedule 1 to the TAA which underpin the orderly and proper administration of the tax laws enacted by the Parliament of Australia which is in the interests of all Australians.

12. The importance of the Senate determining the Treasurer's PII claim was and is, in my mind underscored by:

   (a) the nature of the information sought in the OPD;

   (b) the potential ramifications if that information is produced; and

   (c) by consequence, the significance of the Treasurer's PII claim to the integrity and administration of the Australian taxation system, including the broader impact upon the administration of the taxation system in Australia by disclosing information otherwise protected from disclosure by Division 355.

13. As I have noted, the information sought in the OPD is "protected information" within the meaning of s 355-30 of Schedule 1 to the TAA, having been obtained under Commonwealth "taxation laws": see s 5 of the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* (Cth). It encompasses confidential financial and commercial information about identified taxpayers. It is information in respect of which explicit statutory protections exist for the reasons outlined in both my and the Treasurer's PII claims. In particular:

(a) "Protected information" is collected by taxation officers under, and for the purposes of administering, taxation laws. It includes confidential and highly sensitive personal and commercial information. It is vital to the integrity and effectiveness of Australia's taxation system that taxpayers have confidence in the maintenance of confidentiality over such information. This encourages taxpayers to disclose information voluntarily in a system that is fundamentally dependent on self-assessment and voluntary compliance for its efficient and effective operation.

(b) The provisions in Division 355 impose "strict obligations on taxation officers and others who receive taxpayer information" in order to maintain taxpayer privacy and confidence, because "compliance with taxation laws could be adversely affected if taxpayers thought that their information could be readily disclosed": see paragraphs 1.2 and 1.15 of the Explanatory Memorandum to *Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2010* (Cth) (the **2010 EM**).

(c) The provisions in Division 355 were "designed to provide clarity and certainty to taxpayers, the Australian Taxation Office and users of taxpayer information": 2010 EM, page 3. The Division contains express permissions for disclosure of taxpayer information to particular entities in "certain specified circumstances" in which "the public benefit associated with the disclosure clearly outweighs the need for taxpayer privacy": 2010 EM, paragraph 1.16. Within Division 355, there is an express permission concerning "information that relates to the jobkeeper scheme" (s 355-65(8), item 10A), but that permission is strictly confined and does not cover the present circumstances.

(d) In this context, when providing personal and financial information to the ATO to enrol in (and demonstrate ongoing eligibility for) the JobKeeper scheme, I believe that taxpayers would legitimately have expected that that information would only be used for the purposes of my administration of the scheme. It continues to be my belief that the public disclosure of that information may harm the public interest by undermining confidence in our ability to keep taxation information confidential, although I accept my obligation to disclose it to the Senate and that its further disclosure is a matter for the Senate.

(e) I also believe that public disclosure of the information sought in the OPD may cause commercial or other harm to the entities identified (which include individuals/sole traders, partnerships, trusts and private companies), including by indicating that they reasonably predicted or have experienced a decline in turnover and that their turnover exceeds (or exceeded) $10 million. My concern was, and is, exacerbated by the fact that:

    (i) the terms of the OPD have required me to make certain assumptions or approximations on account of gaps and limitations in the data held by the ATO (for example, the ATO does not routinely collect "turnover" data from all taxpayers and its systems cannot, in all cases, compute an entity's annual turnover with precision);

    (ii) an entity's turnover – whilst relevant to its eligibility for the JobKeeper scheme – does not provide an accurate indication of its profitability; and

(iii) by consequence, information disclosed in response to the OPD may be incomplete, misconstrued or apt to mislead or confuse.

14. Having regard to these important considerations (which are raised in my correspondence of 12 August, as well as in the Treasurer's letter of 26 August 2021), I felt compelled to delay producing documents in response to the OPD until the Treasurer's PII claim had been determined by the Senate. I believed, and continue to believe, that the Senate should have the opportunity properly to consider the Treasurer's PII claim in accordance with its proper and usual processes. It was not for me to presume the outcome of those processes by producing documents before the Senate decides the Treasurer's PII claim, which remains before the Senate for consideration. The Senate may resolve to:

(a) allow the Treasurer's PII claim and take no further action in relation to the OPD;

(b) issue a revised Order for the Production of Documents (in place of the OPD) requesting different information and/or specifying conditions for the production of information; or

(c) refuse the claim and order that the documents sought under the OPD be produced.

15. In recent years, I have had experience with the first and second of those potentialities:

(a) In 2018, at an estimates hearing of the Senate Economics Legislation Committee, the ATO was asked to provide taxation information about a particular taxpayer. The ATO expressed reservations about providing the information, however, the Senate continued to require the information (General Business Notice of Motion 937 moved by Senator Patrick, 14 August 2018). After the ATO sought to clarify the scope of the Senate's order so as to avoid an unreasonable diversion of resources while still achieving the objectives of the order, the Senate agreed to resolutions on a revised form of orders which required me to produce information (General Business Notice of Motion 1108 moved by Senator Patrick, 16 October 2018). Following a claim for PII by the Government, and further correspondence between Senator Cormann and the Senate Economics Legislation Committee, I complied with that revised form of order on a confidential basis to the Committee.

(b) On 11 September 2020, during a hearing of the Senate Select Committee on COVID-19, Senator Siewert raised a Question on Notice for the ATO calling for a "list of ASX200 listed companies that are or have been receiving JobKeeper" (Question 7, Committee document number 407). On 15 December 2020, I made a PII claim in respect of the information sought. In February 2021, I was advised that the Committee had concluded that "it would not be in the public interest to disclose the information" and had "decided not to pursue the matter further".

16. I also respectfully submit that my decision to delay producing the documents to allow the Senate to consider the Treasurer's PII claim should be understood in the context of Parliament's concurrent deliberations about legislative mechanisms providing for the public disclosure of JobKeeper information.

17. On 21 June 2021, the *Coronavirus Economic Response Package Amendment (Ending Jobkeeper Profiteering) Bill 2021* (Cth) was introduced and read in the Senate. The Explanatory Memorandum for the Bill states that it will have the effect of (inter alia) "requiring the Australian Taxation Office to publish a list of all entities in receipt of

JobKeeper payments, and how much they received, excluding those with an annual turnover of less than $50 million". The Bill was still before the Senate on 26 August 2021, and remains before the Senate today.

18. In addition, on 5 August 2021, a proposed amendment to the *Treasury Laws Amendment (COVID-19 Economic Response No. 2) Bill 2021* (Cth) providing for the publication of information about JobKeeper recipients was moved, debated and passed by the Senate, but rejected by the House of Representatives. The reasons given by the House of Representatives for disagreeing with the proposed amendment, which would have required publication of information materially identical to that sought by the OPD, included that:

    (a) the amendment "would undermine trust and confidence in the protected nature of taxpayer information enshrined in legislation by the tax secrecy laws";

    (b) "Australians disclosed information for the purposes of receiving JobKeeper to the Australian Taxation Office on the basis that the information would be subject to these strict tax confidentiality and secrecy laws"; and

    (c) "the benefit from disclosure of the information proposed in the amendment does not outweigh the risks it poses to the Commissioner's administration of Commonwealth law".

19. The Senate did not insist on the amendment and the Bill was passed on 9 August 2021.

20. On 24-25 August 2021, similar amendments providing for the publication of information about JobKeeper recipients were moved in the Senate in relation to the *Treasury Laws Amendment (2021 Measures No. 2) Bill 2021* (Cth). Those amendments were not adopted by the Senate on 2 September 2021, and the Bill was passed by both Houses later that day.

21. This context demonstrates both the seriousness with which Parliament views the maintenance of taxpayer privacy and confidence, and the strongly competing opinions about compelling disclosure of confidential information pertaining to JobKeeper recipients in light of the secrecy regime for which Division 355 of Schedule 1 to the TAA provides. On 26 August 2021, I sincerely believed – and I still believe – that it is proper for the Senate to consider and determine the Treasurer's PII claim in light of the recent parliamentary developments. Had I produced the documents sought under the OPD on 26 August, I would have interfered with, and potentially compromised the integrity of, that process.

22. For completeness, I note that I have proceeded on the basis, which I fully accept, that the Senate's powers extend to requiring the production of the documents sought under the OPD contrary to the express requirements of Division 355 of Schedule 1 to the TAA. In making this observation, I am not seeking in any way to put in doubt the settled understanding of the Senate's powers or of my obligations notwithstanding Division 355. It is rather to note that the obligation is one that required caution on my part because it required me to do something which Division 355, a law passed by both Houses of Parliament, otherwise forbade me to do.

23. As indicated above, however, if the Treasurer's PII claim is refused, I undertake to produce the documents sought under the OPD fully and without delay. I wish to reiterate my commitment to cooperating with the Committee and continuing to respect the processes and privileges of the Senate.

C. FURTHER OBSERVATIONS

24. I seek the Committee's indulgence with respect to the following further observations.

25. I note that the JobKeeper scheme was a very significant Commonwealth financial support program which involved considerable public expenditure.

26. I also note the crucial importance of the Senate's role in scrutinizing the expenditure of public funds and, in so doing, facilitating transparency and accountability at an executive level: see, for example, *Odgers' Australian Senate Practice* (2016), page 656.

27. I wish respectfully to suggest that it may be possible for me to supply information to the Senate about JobKeeper recipients in a manner which:

    (a) provides sufficient particulars to enable the Senate to fulfil its critical functions in examining the disbursement of public funds on the JobKeeper program; but

    (b) does not impinge upon the protections afforded to taxpayers under Division 355 of Schedule 1 to the TAA, at all or to the same extent as the OPD (I note that Division 355 only prohibits the disclosure of information which "identifies, or is reasonably capable of being used to identity", an entity: see s 355-30(1)(c). It also includes an exception for the disclosure of "periodic aggregate tax information": s 355-47); and

    (c) perhaps avoids the necessity for some of the assumptions and approximations to which I have referred in paragraph 13(e)(i), above, to be made.

28. I would welcome the opportunity to discuss these matters further with the Committee should it so wish.

Chris Jordan AO

Commissioner of Taxation

Submission 3

Senator the Hon Simon Birmingham

Minister for Finance
Leader of the Government in the Senate
Senator for South Australia

Ms Jackie Morris
Secretary
Committee of Privileges
CANBERRA ACT 2600

Dear Ms Morris

I write with regard to an invitation I received as Minister representing the Treasurer from the Chair of the Committee of Privileges. Senator Deborah O'Neill, to make a submission on matters relevant to its inquiry into possible contempt.

As the committee is aware, the referral of the Commissioner of Taxation to the Senate Standing Committee on Privileges is in relation to the Order for the Production of Documents containing "the list of all employers with an annual turnover of greater than $10 million that were paid a JobKeeper payment and the number of employees paid, the total amount paid and any amount returned" (the Order).

The Commissioner and the Government acknowledge the serious nature of this referral. I note that Committee has only considered one matter of privilege relating to possible disobedience of a lawful order of the Senate without reasonable excuse however this inquiry lapsed at the dissolution of the Senate and the House of Representatives on 9 May 2016.

The Senate's Privilege Resolution No.3 concerning Criteria to be taken into account when determining matters relating to contempt (agreed to by the Senate on 25 February 1988) relevantly provides that:

> *"The Senate declares that it will take into account the following criteria when determining whether matters possibly involving contempt should be referred to the Committee of Privileges and whether a contempt has been committed, and requires the Committee of Privileges to take these criteria into account when inquiring into any matter referred to it:*
>
> ...

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(c) whether a person who committed any act which may be held to be a contempt:

...

(ii) had any reasonable excuse for the commission of that act."

The Government's position is that the Commissioner's actions in declining to comply with the Order and produce the relevant taxpayer information to the Senate amounts to a reasonable excuse and should not be considered to reach a standard of conduct that would be found to be a contempt of the Senate.

As the Commissioner has stated in his claim of public interest immunity to then President of the Senate on 12 August 2021, this information would ordinarily be treated as confidential taxpayer information and subject to the strict confidentiality laws in accordance with Division 355 of the *Taxation Administration Act 1953*. It is an offence for a taxation officer to disclose 'protected information' to anyone unless a specific exception applies to authorise the disclosure.

I note that the Senate has accepted the proposition that secrecy provisions contained in statute have no effect on the powers of the Houses to seek information from persons who have that information. However, the Government is firmly of the view that the protection of confidential taxpayer information is paramount and that the reasons outlined by the Commissioner in his letter of 12 August 2021 for not complying with the Order were reasonable and should not be considered as conduct amounting to contempt.

Further, in making his decision in relation to the Order, the Commissioner also considered the text of the Explanatory Memorandum of the Bill, which explicitly states the requirement for the Commissioner to treat this information confidentially (see paragraph 2.18 of the Explanatory Memorandum for the Coronavirus Economic Response Package (Payments and Benefits) Bill 2020).

It is also important to note that the Parliament as a whole considered and passed this legislation in full knowledge that the information provided by taxpayers for the purposes of this Bill would be kept confidential.

The Government, with regard to the interests of all taxpayers and the protection of their information, considered the actions of the Commissioner both reasonable and necessary and wrote to the then President of the Senate to make a claim of public interest immunity on 26 August 2021. The Commissioner subsequently wrote to the President outlining his intention to not produce the information until the Senate had resolved the Government's claim of public interest immunity.

At all times, the Commissioner has acknowledged the seriousness of the situation and his respect for the Senate and its functions. However, the Commissioner holds reasonable and legitimate concerns about the precedent that would be set by disclosing the highly sensitive tax information of more than 10,000 taxpayers.

Taxpayers must have confidence in the Commissioner that information provided to the Australian Taxation Office will only be used for tax administration purposes and will remain confidential now and into the future. The presumption of confidentiality ensures the effective administration of the tax system by encouraging taxpayers to disclose information voluntarily in a system that is dependent on self-assessment for its operation.

The actions of the Commissioner must therefore be considered both in light of his statutory duties and also his ability to effectively administer the tax system by obtaining information provided by taxpayers on a voluntary basis.

In addition to the very serious concerns he raised in his initial claim of public interest immunity, he has also written to the then Senate President acknowledging the conflict that arises from complying with the order. In his opinion, if he were to produce the taxpayer information, he would effectively dispose of the Government's public interest immunity claim before the Senate has the opportunity to consider that claim.

I would be happy to provide any further information that the Committee requires.

Yours sincerely

Simon Birmingham

19 November 2021