



Documents to be Tabled Wednesday 10 April

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Correspondence from Senator Ketter	
01	Letter from Senator Ketter
02	ATO Response to Senator Ketter
Questions taken on Notice on Friday 5 April	
01	ATO Policy on making a PID
02	FPII Guidelines
03	IGT Interviews



Senator Chris Ketter

SENATOR FOR QUEENSLAND



Parliament of Australia
The Senate

9 April 2019

Mr Chris Jordan AO
Commissioner of Taxation
Australian Taxation Office
GPO Box 9990
CANBERRA ACT 2600

Dear Mr Jordan

I write on behalf of Labor Senators ahead of the Senate Estimates hearing scheduled for tomorrow, 10 April 2019.

Given recent public comments from the Government and the Australian Taxation Office regarding the Government's proposed Personal Income Tax Plan changes, notably the Low and Middle Income Tax Offset (LMITO), I believe it is important the committee understand the communications and processes that have taken place over the last week.

I therefore request that you be able to provide the following information when the Australian Taxation Office attends Senate Estimates tomorrow on 10 April 2019, preferably in a hard copy version ready to be tabled on the day:

1. Have you had direct contact with the Treasurer, Treasurer's office or Treasury, about the implementation of the LMITO tax cut changes since Budget night?
2. On how many occasions? When?
3. Has a view been expressed by the Treasury or the Treasurer's office that the LMITO tax cuts should be implemented administratively before legislation passes? What was that view?
4. Did the Treasurer, his office, or Treasury contact the ATO – including ATO media - about the issue as reported in New Daily over the last weekend and then over the last few days? If so, how many times and what were there concerns?
5. In relation to the ATO statement issued late on Monday 8 April, was a view expressed from Treasury or the Treasurer's office/Treasurer that another statement should be made by the ATO?

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Thank you for your assistance with this matter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'C Ketter', with a long horizontal flourish extending to the right.

Chris Ketter
Senator for Queensland

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Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

2018 - 2019

Division/Agency: Australian Taxation Office

Question No:

Topic: Correspondence from Senator Ketter

Reference: (09 February 2019)

Senator: Chris Ketter

Question:

1. **Have you had direct contact with the Treasurer, Treasurer's office or Treasury, about the implementation of the LMITO tax cut changes since Budget night?**
2. **On how many occasions? When?**
3. **Has a view been expressed by the Treasury or the Treasurer's office that the LMITO tax cuts should be implemented administratively before legislation passes? What was that view?**
4. **Did the Treasurer, his office, or Treasury contact the ATO – including ATO media – about the issue as reported in New Daily over the last weekend and then over the last few days? Is so, how many times and what were there concerns?**
5. **In relation to the ATO statement issued late on Monday 8 April, was a view expressed from Treasury or the Treasurer's office/Treasurer that another statement should be made by the ATO?**

Answer:

1. No
2. N/A
3. No, N/A
4. The Treasurer's Office contacted the ATO on Monday afternoon following the publication of the New Daily article, to seek clarification on what media response the ATO had provided to the journalist.
5. No

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

2018 - 2019

Division/Agency: Australian Taxation Office

Question No: 1

Topic: ATO Policy on making a PID

Reference: (05 February 2019)

Senator: Rex Patrick

Question:

Senator PATRICK: The Act is silent on where the protection starts. But one would reasonably assume that the protection starts from the moment you decide to make a disclosure, and protects any act for which the dominant purpose is to bring the disclosure to the attention of the organisation. Would that be a reasonable proposition?

Mr Todd: I think the Act protects you from the time you've made a disclosure and in making a disclosure you've got to be cognisant of the requirements of the PID Act and other laws.

Senator PATRICK: So you think only at the point you make the disclosure?

[...]

Ms Curtis: They are specific questions which I would like to take on notice because we would have to give that due consideration.

Answer:

As a matter of practicality, it would not be possible for an agency to protect a discloser before the agency becomes aware that the disclosure is being made or has been made.

Once an agency is aware of a disclosure, the discloser is protected 'for making a public interest disclosure'. That would include acts necessarily performed to facilitate making the disclosure that fall within the requirements of the PID Act, as set out and explained below.

Section 10 of the Public Interest Disclosure Act ('PID Act') provides that 'if an individual makes a public interest disclosure', 'the individual is not subject to any civil criminal or administration liability (including disciplinary action) for making a public interest disclosure'.

Based on this, the ATO's view is that disclosers are protected as soon as their concerns are disclosed.

Section 13(1) of the PID Act provides that a person takes a reprisal against another person if:

- the first person causes by act or omission any detriment to the second person; and
- when the act or omission occurs the first person believes or suspects that the second person or any other person made, may have made, or proposes to make a public interest disclosure, and
- that belief or suspicion is the reason or part of the reason, for the act or omission.

Section 13(2) of the PID Act provides that detriment includes any disadvantage, including (without limitation) the following:

- dismissal
- injury of an employee in his or her employment;
- alteration of position to the employees detriment;
- discrimination between the employee and other employees of the same employer.

Paragraph 8.2 of the Commonwealth Ombudsman's *Agency Guide to the Public Interest Disclosure Act 2013* ('the Guide'), states that the protections and immunities for disclosers apply to internal, external and emergency disclosures in accordance with the PID Act. In relation to the application of the protections, the Guide states at paragraph 8.2:

Even if the discloser's report of wrongdoing turns out to be incorrect or unable to be substantiated, they are still protected under the PID Act, provided their report meets the criteria for a public interest disclosure in s 26 (see 5.1.1) **and** they reasonably believe or believed at the time of the disclosure that the information tends to show disclosable conduct. [Original emphasis]

The Guide includes the following statements about making public interest disclosures:

2.8 WHAT HAPPENS IF INFORMATION IS DISCLOSED OUTSIDE THESE CIRCUMSTANCES?

Public officials are privy to a great deal of private and sensitive information about individuals and government matters. Maintaining strict confidentiality is an important part of a public official's role and this obligation is often backed up by criminal sanctions.

A public official must use one of the proper avenues to gain the protections available under the PID Act. Those protections include confidentiality and immunity from criminal and civil liability or disciplinary action (see Chapter 8 of this guide).

A public official will not receive these protections if they give the information to someone outside government like a journalist, Member of Parliament or union representative, unless the conditions for an external or emergency disclosure are met. The official may be in breach of their duty to maintain appropriate confidentiality in relation to official information they have gained in the course of their work, or be subject to other civil, criminal or disciplinary action. For example, the official could be in breach of the Crimes Act 1914, s 79 (official secrets), or the secrecy/confidentiality provisions in the legislation under which the information was collected. If the disclosing official is an APS officer, they could be subject to disciplinary procedures under the APS Code of Conduct.

The limitations on protection under the PID Act should encourage public officials to make a disclosure to the people and agencies that have the responsibility to take action.

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

2018 - 2019

Division/Agency: Australian Taxation Office

Question No: 2

Topic: FPII guidelines

Reference: (05 February 2019)

Senator: Rex Patrick

Question:

Senator PATRICK: I am talking about the start of the investigative process. The AFP, when it conducts an investigation, goes through a process to decide whether to proceed with an investigation.

Mr Todd: Yes well our internal FPII people would have similar access to similar guidelines.

Senator PATRICK: Can you provide to this committee those guidelines for your own internal decisions about how you initiate an investigation?

Mr Todd: Yes we will take that on notice

Answer:

ATO internal investigations follow the standards set out in [Australian Government Investigation Standards \(AGIS\)](#) and [Commonwealth Ombudsman Agency Guide to the Public Interest Disclosure Act 2013](#).

The ATO also has internal practices that are consistent with the above policy documents, in particular Public Interest Disclosure Procedures and Internal Investigation Standards which includes a Case Evaluation Model that identifies and prioritises risk factors with allegations reported.

The Case Evaluation Model outlines a range of priority areas and corresponding response times for how cases are managed (e.g. sensitivities with the unauthorised access or disclosure of taxpayer information is classified as a higher impact and priority for the ATO than more trivial internal fraud matters).

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

2018 - 2019

Division/Agency: Australian Taxation Office

Question No: 4

Topic: IGT Interviews

Reference: (05 February 2019)

Senator: Rex Patrick

Question:

Senator PATRICK: [...] When the IGT conducted his investigation he went to various different sites around the country. I want to know whether in any of those locations, when he was interviewing staff were those staff accompanied by another ATO officer.

Ms Curtis: We might have to take that on notice because it may have varied from site to site

[...]

Mr Todd: We will confirm on notice but I am pretty sure that they only had someone there if they wanted someone there.

Answer:

- Arrangements for interviews with ATO staff onsite were agreed with the IGT prior to the site visits commencing.
- Under those arrangements, ATO staff could be accompanied by another ATO officer at the interviews.
- This was to provide support for the ATO staff member (if required) and facilitated the purposes of the review including any necessary logistical support for the IGT.
- Staff were also provided with the name and contact number of an IGT staff member to contact directly if they wished to speak to the IGT anonymously.