

Opening Statement

Senate Economics Legislation Committee
Supplementary Budget Estimates
Wednesday, 23 October 2019

Thank you for your request for me to be here today. I am always grateful for the opportunity to speak to this Committee to inform you of the work we are doing and at times to correct the record.

It's been a big year for the ATO, and I would have hoped to speak today about some of our many achievements and highlights.

But unfortunately those issues – which should be the focus of this committee, and my role, must take a back seat for today.

Why? Because this week began with a public campaign across all major media outlets that included the claim, “The Tax Office can take money directly out of people’s accounts. But you’re not allowed to know.” Wow. Imagine if that was true! Go for your life on a ‘right to know’ campaign but please, if you are seeking the truth, use it yourself.

We have a debt book of almost \$45 billion and we have around 8 million debt interactions a year, following up people to pay their debt. We attempt to engage with taxpayers for an extended period, and provide them with every chance to rectify their tax situation and pay the amounts due under the law. We use garnishees and other firmer actions only after these attempts to engage the taxpayer have failed.

On average, there have been 19 interactions or attempts to engage a taxpayer before we exercise garnishee powers.

I am the chief tax collector. It is not a particularly easy or popular role, but it is one I took on voluntarily. In discharging my duties, I must do the best I can to ensure we at the ATO act with empathy where appropriate, but at the end of the day collect the tax that is due, which is often GST collected on sales, tax withheld from wages, and superannuation not paid for employees. Otherwise that \$45 billion will grow and take funds away from the provision of government services and employees will miss out on future retirement benefits.

The 'right to know' campaign also reignited misleading public commentary about the tax office's attitude towards whistle-blowers, and the accompanying editorials in many papers made specific claims about former ATO employee Richard Boyle. This continues on from last Friday, where claims were made at the Inquiry into the performance of the Inspector General of Taxation that warrant immediate correction, in particular around the cases of two former ATO employees.

I want to inject some balance into this conversation. The facts are not salacious or sensational, however they reinforce why potential breaches of the law in Australia should not go unchecked.

To do so, I will be referring to the specific cases of these past employees. No doubt I will attract criticism for doing so and may be accused of being defensive. It is something I would normally refrain from speaking about. But as the individuals in these cases have repeatedly sought out the public eye, and made public claims that are potentially damaging to our organisation and the administration of the tax system, I am obliged to respond in this way, to ensure the facts are put on the table.

Today, I will clarify issues regarding our treatment of whistle-blowers. Contrary to what is being written by some commentators, the ATO takes whistle-blowing very seriously and we actively encourage disclosures where people feel they are warranted. There are many avenues available for staff to make a public interest disclosure, or PID, and we have a culture that encourages and supports it.

Our latest Census results highlight an improvement in the level of staff awareness and understanding of policy and procedures in this area. In fact, 88% of respondents from the ATO are confident in knowing what to do when suspicious behaviour is observed in the workplace, and we have seen this trend continue to rise in recent years.

Since 2013-14, we have had 198 employees make Public Interest Disclosures, and 24 of those were substantiated. 89 were unsubstantiated with no disclosable conduct found. And 79 were discontinued under Section 48 of the PID act because they had already been investigated under other processes: were vexatious, frivolous or did not concern serious disclosable conduct: or could be more appropriately investigated under another process. 6 are still under investigation.

We deal with PIDs regularly, and like any large agency, we know them to be a valuable part of the system that helps drive greater accountability, reflection, and system improvements.

We rarely ever receive complaints about our handling of PIDs, yet currently we have two public cases where former employees believe they have tried to 'whistle-blow' on ATO activities, and feel that the system has not afforded them adequate protections.

I note that both employees were subject to ongoing workplace performance or conduct issues that were close to finalisation and likely to result in their termination. This was well before seeking these whistleblower style protections. This is in stark contrast to the public portrayal that they were terminated as a result of whistle-blowing.

The first of these employees was Mr Ron Shamir.

He appeared on Friday at the Inquiry into the performance of the Inspector General of Taxation. He alleged "...the issue that allegedly led to the termination had been ongoing for two and half years and had not resulted in termination in that time. But, yes, you could say it was a coincidence that the day before I was marched out, the Tax Office had confirmed from the IGT that I had been issued with that notice."

This is factually incorrect.

Our records show Mr Shamir was served the notice on 18 May. We were well aware of this notice on the 26th of May 2015 when Mr Shamir's lawyer advised the ATO that he had received the notice.

He attended work but refused to perform his assigned duties for 10 days in the period before he was finally put on leave with pay on 10 June. During which time he could have fulfilled the requirements of the section 9 notice.

Contained in the notice served to Mr Shamir was a request for information that should have taken very little time to provide (some procedural documents and case details or reference numbers) – certainly not days, and certainly not over a week.

This is an employee who was counselled over a number of years because of his persistent and inappropriate behaviour towards fellow employees and managers. When Mr Shamir's work group was restructured he refused to perform other duties, notwithstanding multiple retraining opportunities.

This is an employee whose unfair dismissal claim was rejected, with the full bench of the Fair Work Commission stating his termination was as a result of his "unjustified non-performance of duties."

Mr Shamir did not raise any arguments in the hearing of his unfair dismissal case that he was dismissed because of any whistle-blowing in relation to identity fraud or other issues.

Before joining the ATO, I understand Mr Shamir had a similar experience with the Victorian Country Fire Association.

Today I am tabling a detailed timeline of Mr Shamir's employment and the incidents that occurred, to underscore the extensive and serious nature of his behaviour and to emphasise that his termination was not any form of reprisal for his role in the IGTO enquiry, but simply for refusing to perform any duties.

The second employee is Mr Richard Boyle. As much as I would like to, I can't respond to Mr Boyle's claims in detail, because of an ongoing criminal matter before the courts.

However, I will speak to clarify some of the blatant and persistent misrepresentations that surround the commentary around the case, where I believe they may undermine the community's trust and confidence in the tax system, or deter genuine whistle-blowers from coming forward.

The reporting has attempted to obscure and conflate two separate issues.

Firstly, a set of allegations about our culture and debt policies. These have been found to be unsubstantiated by the IGTO.

Secondly, and separately, what is before the courts are alleged offences of providing personal taxpayer information to a third party and allegedly recording people's conversations without their approval. These alleged offences were not as a result of any content reported in the Four Corners program, or any other reporting.

The commentary around this second issue has been at times deliberately sensationalist, with reports that the defendant is likely to face 161 years in jail. This is a blatant and knowing mischaracterisation of our current sentencing system. The convention holds that sentences for similar related offences are usually imposed concurrently rather than consecutively, having regard to the overall circumstances.

But, just this morning, yet again, the ABC reported that “Mr Boyle is facing a threat of life in prison (161 years maximum to be exact) for speaking out about heavy-handed debt collection tactics he witnessed at the ATO Adelaide Office”

The charges do not relate to speaking out about heavy-handed debt collection practices, but rather to allegedly providing taxpayer files to third parties and allegedly recording conversations. These files were not referred to in Four Corners or any other reporting.

So let me be clear, the threat of a prison sentence is not about speaking out about debt collection practices.

We drum into all ATO staff and take very seriously the taxation secrecy laws.

Australian citizens and taxpayers have a right to privacy.

To not take action against alleged breaches of taxation secrecy laws would undermine public confidence in our administration of the taxation system. We cannot turn a blind eye to alleged contraventions of the law.

I don't think anybody in this room would want their private, personal information that is collected under legal compulsion to be made publicly available, contrary to the laws protecting it.

We have over 18,000 employees – there can't be grey areas, or space for people to interpret things as they see fit, contrary to the requirements of the taxation secrecy laws, the Privacy Act and the Public Interest Disclosure Act.

Imagine, for a second, how you would feel, if any one of our employees could start shopping your private information around to media outlets?

Imagine if you knew your data and records were subject to the individual discretion of some unknown tax officer?

That's exactly what happened to a real taxpayer, who had to reach out to us for assurance that we would take action to protect their affairs from being made public, when they were contacted by Four Corners, who were looking to use their details in their story.

The ATO was first made aware of alleged privacy breaches to media not through the media itself, but through being contacted by an affected taxpayer, asking for our assurance that we protect their private tax affairs from being made public.

The disciplinary process for Mr Boyle was substantially completed before we knew anything about the alleged disclosure of taxpayer files.

I feel compelled to speak out for ordinary taxpayers who don't want their private data stolen and used in a manner contrary to both law and good ethical judgement.

For taxpayers who expect us to fulfil our obligations and collect the revenue that keeps this country running.

Taxpayers expect us to create a level playing field, and to use – with empathy and appropriate consideration – tools like garnishee notices when needed to ensure compliance.

I am not telling you these things to deflect from honest and useful criticism of where we could be operating better. We know we don't always get things right, and we are committed to acting on constructive criticism, correcting and repairing mistakes, and improving where improvement is needed. But the current commentary has simply got out of control. It is an unbalanced depiction of our organisation and does a disservice to the important role we play in upholding a fair and effective tax and superannuation system for all Australians.

So, to be clear: there are alleged breaches by Mr Boyle of the taxation secrecy and listening device laws that are criminal in nature.

But Mr Boyle's whistle-blowing allegations of garnishee practices that were found to have no substance by the IGTO -do not carry any potential for a prison term.

Those are two separate matters.

Given the ongoing criticism of our powers, and the seriousness of these claims by commentators, I would expect them to use their own substantial powers for influence with much greater accuracy and faithfulness to the facts. And where they don't, we believe people have a right to know.