



# OUTSCRIBE

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7 October 2018

Mr Jason Falinski MP  
Committee Chair  
Standing Committee on Tax and Revenue  
[TaxRev.reps@aph.gov.au](mailto:TaxRev.reps@aph.gov.au)

Dear Mr Falinski

RE SUBMISSION – ANNUAL REVIEW OF THE PERFORMANCE OF THE ATO

Please find enclosed our submission for the Committee's consideration.

If you require any further information please do not hesitate to contact me [REDACTED]

Kind Regards

[REDACTED]

[REDACTED]  
Managing Director  
OutScribe Pty Ltd

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[REDACTED]

# OUTSCRIBE PTY LTD

## SUBMISSION

### Standing Committee on Tax and Revenue

#### Annual Review

#### Performance of the Australian Taxation Office

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The Directors of OutScribe Pty Ltd wish to lodge a submission to be considered in the Annual Review of the Performance of the Australian Taxation Office. In particular we will be addressing the issue of fairness in the management of the dispute process.

#### **Background**

OutScribe Pty Ltd is a family owned and run small business, providing transcription services to Australian and overseas clients for over 13 years. As a family of faith it was determined that integrity would be OutScribe's foundation; integrity in client and contractor relationships and integrity in financial management. We believe that to date we have adhered to that maxim.

Early in OutScribe's growth it became a necessity to outsource transcription jobs. The Australian transcription industry as a general rule utilises the services of contractors due to the fluctuation of work flow and the general nature of remote work, and OutScribe adopted this model. The ATO's website contractor tool assisted us in determining the suitability of this business model and we adhered to the guidance provided by that tool. Contractors are their own small business enterprises and we are but one of their clients. They are therefore responsible for their own PAYG and superannuation contributions.

#### **ATO Audit**

In May 2017 our accountant was contacted by the Adelaide ATO office, initiating an audit of our business model. We were requested to provide details of our business processes and a list of all the contractors that we had utilised over the previous three years. Our chairman, [REDACTED], attended a meeting with [REDACTED] [ATO] and it became immediately apparent that an outcome had been pre-determined as to the status of the contractors. This manifested itself in the ATO officer's style of questioning and his apparent refusal to address our chairman's question regarding any changes that the ATO may require of OutScribe to satisfy the criteria for contractor status of the transcriptionists. [REDACTED] [ATO Officer] closed the meeting by advising that his conclusion was that the contractors were employees. Clearly this decision had been reached before considering all of the information. *(Complaint #1 page 4)*

#### **Contractors' ABNs Cancelled**

After many months we received the ATO's determination, which was that they considered the contractors to be employees. We disagreed with their findings based on numerous inaccuracies in their finding and requested a review. During this dispute process the ATO then cast their gaze on the individual contractors and after a very brief 'audit' cancelled many of their ABNs, or advised them via voicemail that they were able to retain their ABN but not utilise it to pick up jobs from OutScribe. *(Complaint #4 page 4)*

Our lawyer suggests that this action by the ATO doesn't appear to have any legal grounding, and we believe it was a blatant attempt to force OutScribe to acquiesce to their findings, despite the dispute process being underway. We decided to vigorously advocate for the continuation of our business, and the independence and wellbeing of the affected contractors, who were unable to afford the expense of legal representation. *(Complaint #2 page 4)*

For a small business to remain viable in an industry it has to be competitive and naturally this is true of the Australian transcription industry as well. Companies, small and large, use the contractor business model and client rates are set accordingly. For OutScribe to dramatically alter its business model to employ transcriptionists and manage them remotely puts us at a competitive disadvantage. We are a small company in the industry so may be seen as 'easy prey' or 'low-hanging fruit' for the ATO to test flex its muscle on the burgeoning gig economy, however, we ask the questions, will they be auditing the very large transcription companies in Australia who utilise contractors and exercise a large degree of control over them? Why is OutScribe being targeted and not larger companies such as Auscript? *(Complaint #3 page 4)*

### **Mediation Process**

We attended an in-house facilitation (mediation) in December, 2017 and due to a confidentiality agreement that was signed at the commencement of the session we are unable to state what was said or occurred during that session. However, prior to the mediation we were threatened twice that if we did not accept their findings that back-pay of tax and superannuation contributions would be meted out, which would effectively bankrupt OutScribe. *(Complaint #2 page 4)* One of the ensuing outcomes was that the ABNs of the contractors were reinstated, albeit temporarily and dependent on the outcome of OutScribe's audit. Timelines for evidence and correspondence from that mediation were kept by OutScribe but we are still waiting for the ATO to honour their commitment. *(Complaint #1 page 4)*

### **Commissioner Jordan's Comments**

We felt compelled to engage in a media campaign to highlight the injustice we had experienced to date and participated in a 4Corners/Fairfax report. We were quite concerned when we read Commissioner Jordan's comments to the Economics Legislation Committee regarding the media report, which were extremely unprofessional and certainly not model behavior for a public servant. The proverb "the fish rots from the head" comes to mind when reflecting on the kind of attitude and behaviour we have come to expect from the ATO during this audit process. While we have written to the Senate Estimates Committee requesting Mr Jordan to retract inaccuracies in his statement, he has refused to do so.

### **Ongoing Dispute and Business Viability**

Currently we are still in dispute with the ATO but are confident in the justice of our cause. Unfortunately our ability to continue to pay for legal representation will come to an end soon. Should the ATO then unilaterally enforce their opinion, then we would be forced to restructure our business and send our jobs offshore to remain financially viable because we would be at a distinct disadvantage in the Australian transcription industry where our competitors would continue to use the same business model that we would be forced to abandon. We would then hold the ATO, and ultimately Commissioner Chris Jordan, responsible for this travesty.

### **Recommendation**

To restore our confidence in the ATO there needs to be a truly independent body, outside of the ATO department, established to handle appeals and disputes. It is nonsensical to think that an

organisation is capable of fairly reviewing its own decisions. There is naturally a bias and culture that surpasses any good intentions and the average taxpayer is justifiably suspicious of receiving a just decision.

#### **Complaint #1: Timelines**

One of our complaints regarding the ATO is their use of deadlines to put us under pressure. During the last 18 months we have been subjected to extremely tight deadlines to produce documentation and evidence within 1 – 2 weeks. We have assiduously worked, to the detriment of our business operations, to meet these deadlines, however the ATO officers delay their responses by many months and repeatedly do not meet agreed deadlines themselves. This is a typical bullying tactic and not worthy of an Australian government department.

#### **Complaint #2: Aggressive Tactics**

OutScribe and individual contractors have been subjected to threats, however nicely worded, and intimidation because of our insistence of going through the dispute process rather than accepting their findings. Actions such as cancelling the independent contractors' ABNs is an extreme example of this behaviour.

#### **Complaint #3: Fairness**

Prior to May 2017 we held the view that the ATO was a just Commonwealth department doing an important service for the Australian economy. Over the past 18 months that belief has been tested and found wanting. There are officers within the ATO who are to be commended for performing their duties well but unfortunately OutScribe has been subjected to blatantly unfair treatment by a sector within the ATO, something which seems to be an entrenched culture emanating from the highest level. Surely it is the right of a taxpayer to appeal a decision and expect an independent reassessment, rather than be confronted with the toxic attitude that we have been subjected to. This treatment by the ATO would certainly not pass the pub test.

#### **Complaint #4: Lack of Legal Credibility**

Throughout the audit and dispute process we have found that the ATO's action in cancelling the contractors' ABNS and the use and application of case law to be legally flawed. For us this would attest not only to the relevant ATO officers' understanding and application of the legislation, but also to the apparent attitude that the ATO may be above the law and therefore can arbitrarily act as judge, jury and executioner.