



Australian Government
Australian Taxation Office

Australian Taxation Office Submission

Response to public submission – Blackwater Treatment Systems (BTS)

Inquiry into Commonwealth Model Litigant Obligations

June 2018

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Introduction

1. We refer to your letter of 7 June 2018 attaching a submission received in relation to the Committee's Inquiry into the Judiciary Amendment (Commonwealth Model Litigant Obligations) Bill 2017 (JACMLO Bill). That submission is from Blackwater Treatment Systems (BTS).
2. You have invited a reply to adverse comments made about the Australian Taxation Office (ATO) and its officers in this submission, in accordance with Senate resolutions in relation to parliamentary privilege.
3. We note that the Committee is inquiring into JACMLO Bill, which would enact legally enforceable obligations in respect of the Commonwealth Model Litigant Obligations (MLOs). The MLOs are an Appendix to the Legal Services Directions, which govern how the Commonwealth and its agencies should conduct litigation.

ATO response to the Blackwater Treatment Systems (BTS) submission

4. The ATO rejects the adverse comments and allegations made in the BTS submission. They have no basis.
5. The ATO does not intend to engage with BTS as part of the conduct of this inquiry, it is not an appropriate forum to discuss individual matters.
6. BTS has never been involved in litigation with the ATO in a court or tribunal. BTS was subject to taxation audit activity by the ATO in respect of substantiation of expenses and the claiming of tax credits, objected to assessments, and has made claims under the Scheme for Compensation for Detriment Arising from Defective Administration (CDDA).
7. The content of the BTS submission (including the adverse comments, allegations and assertions as to facts and conduct, and any alleged conclusions that might be drawn) does not relate to litigation with the Commonwealth. In view of that, this submission does not address the terms of reference of the committee's inquiry into a bill to make the MLO's legally enforceable, and is irrelevant to the subject matter of the Committee's inquiry.

ATO general comments on conduct as a model litigant

8. Conducting ourselves as a 'model litigant' is both a mandatory requirement for Commonwealth agencies and a natural extension of the ATO's dispute resolution approaches.
9. Being a model litigant requires the ATO to act with complete propriety, fairness, and in accordance with the highest professional standards in handling claims and litigation brought by or against it.
10. Incidence of alleged model litigant breaches by the ATO is very small, and the number of confirmed findings against the ATO even smaller. In 2016-17 the Commissioner of Taxation was a party to over 5,000 legal proceedings including 456 tax or administrative law appeals. Fourteen breaches of the model litigant obligation were investigated and finalised, with two confirmed findings of model litigant breaches by the ATO. In both cases these were procedural issues and were not systemic in nature.

ATO comments on Alternative Dispute Resolution (ADR)

11. The ATO is committed to avoiding litigation. To this end we offer a number of alternative dispute resolution services tailored to the small business market and the nature and complexity of their disputes, including our:
 - external Review service where an independent external practitioner is engaged to review the case,
 - free In-House Facilitation service where a trained ATO facilitator, who has no prior knowledge or involvement in the case, facilitates discussions between the ATO and taxpayer to help both parties find a solution, and
 - free Dispute Assist service where an independent disputes guide provides support and assistance through the dispute process.
12. These services are designed to guide small business owners through the disputes process, in particular those affected by significant personal circumstances in their lives.
13. From 1 Jul 2018 the ATO will commence a pilot of its Independent Review process for small business. The pilot, based on the processes and procedures in place for taxpayers in the large market, will run for 12 months, commencing from 1 July 2018. The pilot will assess the feasibility of extending Independent Review to small business taxpayers (those with income or turnover of less than \$10 million) who have had income tax audits undertaken by the ATO's Small Business line.

Conclusion

14. The ATO takes compliance with the MLO's very seriously, always endeavours to uphold them, and thoroughly investigates alleged breaches, and makes reports the Office of Legal Services Directions as required.
15. We would like to reiterate that no review, scrutineer or credible source has ever found a pattern of abuse towards small business owners by the ATO.
16. The ATO is committed to supporting small businesses to meet their obligations; and working with them upfront and early, to get things right from the beginning, and to avoid the need for litigation of disputes.

