

**Invitation to submit to the
Inquiry into Treasury Laws Amendment
(Tax Accountability and Fairness) Bill 2023
submission by
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Senate Standing Committees on Economics

PO Box 6100

Parliament House

Canberra ACT 2600

Due 9 February 2024

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Stated objectives of the proposed bill:

Amends the: *Tax Agent Services Act 2009* and *Taxation Administration Act 1953*: to expand the operation of the promoter penalty provisions; and enable the sharing of certain protected information; *Taxation Administration Act 1953* to extend whistleblower protections to eligible whistleblowers who make disclosures to the Tax Practitioners Board (TPB); and reverse the burden of proof for certain claims of protection; *Tax Agent Services Act 2009* in relation to the TPB Register and the TPB's delegation powers; and *Petroleum Resource Rent Tax Assessment Act 1987* to limit the proportion of petroleum resource rent tax assessable income that can be offset by deductions to 90 per cent.

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BIOGRAPHICAL DETAILS

Emeritus Professor James Guthrie, AM, Department of Accounting and Corporate Governance, Macquarie University. Professor Guthrie has held positions at various Australian and Italian universities in a career in accounting education that spans more than 40 years. He is a founding member of the Centre for Social and Environmental Accounting Research and joint founding editor of the highly regarded *Accounting, Auditing and Accountability Journal*, which is consistently ranked in the top 5 per cent of accounting journals. He has been recognised in *The Australian* newspaper as Australia's Top Researcher in Business, Economics & Management (general) and has published more than 220 articles, 20 books and 45 book chapters.

Dr Adam Lucas is a senior lecturer in science and technology studies at the University of Wollongong. Dr Lucas is currently a co-investigator on a Leverhulme Trust project grant based at the University of Glasgow. He is also a founding member of Academics for Public Universities and Public Universities Australia. Prior to taking up his current position at UOW, he was a researcher and policy analyst in the NSW Cabinet Office and the Departments of State and Regional Development, Aboriginal Affairs and Housing. He has published extensively on the history and sociology of technology, social and economic history, and the political economy of climate change and energy policy. His research includes detailed studies of political donations, lobbying, and revolving door activities between government and the fossil fuel industry in Australia.

Inquiry into Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023

PREAMBLE

This submission builds upon our first submission in 2022 (Guthrie and Lucas, 2022).

There are three parts to our submission which respond to the following issues.

1. *Tax Agent Services Act 2009* and *Taxation Administration Act 1953*.
2. *Petroleum Resource Rent Tax Assessment Act 1987* to limit the proportion of petroleum resource rent tax assessable income.
3. Whistleblower protections, transparency and accountability.

We provide responses to the proposed changes to the *Tax Agent Services Act 2009* and *Taxation Administration Act 1953* and the recommendations associated with the Bill, as well as analysis, comment and recommendations related to the *Petroleum Resource Rent Tax Assessment Act 1987* and a number of comments and recommendations relating to whistleblower protection and associated transparency and accountability concerns. We note that much of our research on this score is informed by the work of investigative journalists working for mainstream and independent media outlets.

In our recent study of the role of the Big Four accountancy firms – Deloitte, KPMG, PwC and EY – in developing the relevant regulatory and legal structures surrounding the global taxation industry (Lucas & Guthrie, 2024 at **Appendix B**), we draw on parliamentary inquiries and submissions together with the work of investigative journalists to examine PwC’s breach of confidentiality in relation to the Multinational Anti-Avoidance Law (MAAL). Our analysis is based on data gathered from various print and online media sources, including *The Australian Financial Review*, *The Guardian*, *The Saturday Paper*, *The Conversation*, *Michael West Media*, *Financial Times*, *The Sydney Morning Herald*, *The New Daily*, *The Canberra Times*, *The Mandarin*, *Crikey*, and *ABC News*. In agreement with most media and communication research, we found that newspapers and online news websites are better than broadcast (television and

radio) services in covering some issues (McCombs, 2005). Given the recent and emerging nature of the revelations about consulting partnerships, our focus on print and online news media made perfect sense because it was investigative journalists who uncovered much of the available information. This work is of a high standard and driven by principles with which most academics would agree, as the following statement from the International Consortium of Investigative Journalists (ICIJ) indicates:

[the ICIJ is] driven by the belief that citizens have the right to be better informed, that access to independently-sourced facts is not only essential for democracy but is also a fundamental human right. Transparency is at the centre of everything we do. We are operating at a time when investigative journalism has never been more important or more challenged ... Vital public interest reporting must compete against a flood of misinformation that confuses, alienates and divides.

- <https://www.icij.org/about/>

Collecting, analysing, and verifying evidence from primary sources is the foundation of investigative reporting. Journalists dedicated to this type of reporting invest significant time in research, consulting with sources, formulating pointed questions, exploring new approaches, and conducting thorough and critical investigations. Furthermore, an investigative story does not leave the news desk until it is approved by a legal team and several editors to ensure it is factually correct and cannot expose the media organisation concerned to libel. These processes are therefore somewhat analogous to those of peer-review for academic publication.

Before we examine the proposed bill and the relevant amendments, we note our agreement with the Honourable Zali Steggall and Helen Haines that the Government should refrain from introducing omnibus bills to Parliament that relate to two unrelated yet important issues, as this practice is not consistent with the principles of good governance. We also support several of the suggested amendments to the bill made by Dr Haines, Ms Steggall and the Honourable Allegra Spender. We also recommend that financial rewards should be paid to whistleblowers in certain circumstances, in addition to any compensation they receive if their employers are found to have engaged in bullying and harassment of the whistleblower. We also recommend carceral punishment for employers, their executives and senior managers if they are found to have engaged in retribution against whistleblowers.

Proposed changes to the *Taxation Administration Act 1953*

Schedule 1 to the proposed Bill amends the *Taxation Administration Act 1953* to increase the time the Commissioner has to bring an application for civil penalty proceedings to the Federal Court of Australia, as well as increasing the maximum penalty applicable, while expanding the application of the promoter penalty laws.

Recommendation 1:

We fully support the Government's efforts to expand tax promoter penalty laws to ensure that promoters of tax exploitation schemes face significant consequences for their actions, including the extension of penalties to significant global entities, to ensure that both corporate entities, and non-corporate entities like partnerships, are captured by these laws.

Recommendation 2:

We fully support the Government's proposed amendments to increase 100-fold the maximum penalties for these entities from the current \$7.8 million to as much as \$780 million, especially in the wake of the PwC scandal of 2023.

Recommendation 3:

We fully support the Government's proposed amendments to make it easier for the Australian Taxation Office (ATO) to apply the promoter penalty laws by broadening the scope of important definitions and providing an additional two years for the ATO to gather information and evidence.

Schedule 3 of the proposed Bill amends the *Tax Agent Services Act 2009* to allow the Tax Practitioners Board to publish more details of its investigations and its decisions publicly, while requiring it to keep those details published for up to five years. It will also increase the investigation time frame from six months to two years.

Recommendation 4:

We fully support the Government's proposed amendments to the *Tax Agent Services Act 2009* as it will not only make the investigations and decisions of the Tax Practitioners

Board (TPB) more open to public scrutiny, it will also empower the TPB to investigate a wider scope of issues raised by a potential breach.

Schedule 4 of the proposed Bill is intended to remove limitations on information sharing between tax regulators, Treasury, other agencies and relevant ministers about confidentiality breaches by entities engaging with the Australian Government, including information sharing with professional disciplinary bodies when there are suspected instances of breaches of relevant professional codes or standards.

Recommendation 5:

We fully support the Government's proposed amendments to increase information sharing between relevant bodies and authorities regarding suspected breaches of the law, professional codes and standards with respect to taxation matters.

1. Proposed changes to the *Petroleum Resource Rent Tax Assessment Act 1987* to limit the proportion of PRRT assessable income

In the fiscal year of 2023, the Australian Taxation Office (ATO) collected a record \$4.9 billion from students' HELP-SFSS loans, including HECS. We draw attention to the fact that the Petroleum Resource Rent Tax (PRRT), which is imposed on companies extracting Australian petroleum and gas resources, only generated \$2.2 billion in FY 2023. In other words, the Government has generated more than twice as much revenue from HECS-HELP student loans than from taxes on the extraction of fossil fuel resources via the PRRT. This is despite the fact that Australia is currently the largest exporter of liquefied natural gas worldwide and the nations of Qatar and Norway draw exponentially more tax revenue from these sources than does Australia. Revenue growth from tertiary student loans is primarily due to the recent indexation of HECS-HELP to inflation by the Australian Government. According to the latest figures from the ATO, about \$74.4 billion of HECS-HELP debt is owed by three million young Australians, and these citizens paid 7.1% interest (or tax) on these loans in 2023. This is a highly inequitable situation that demands immediate attention.

As we have stated in a previous submission to the Education and Employment Legislation Committee of the Australian Senate's inquiry into the *Education and Other Legislation Amendment (Abolishing Indexation and Raising the Minimum Repayment Income for Education and Training Loans) Bill 2022*, this taxation should be scrapped (Guthrie et al., 2023).

Recommendation 6:

While we acknowledge that this issue is not in the scope of the current bill, we nevertheless strongly recommend that current levels of taxation on HECS-HELP debt should be scrapped: indexation is not appropriate for these debts.

A report published in 2023 by the Global Alliance for Tax Justice reveals that corporate profit shifting, also known as tax avoidance, has resulted in significant losses of tax revenue for many countries. This behaviour is particularly evident in the global fossil fuel industry, which has been widely documented to engage in tax avoidance practices while generating enormous revenues and profits from publicly owned resources. The industry's ability to evade corporate tax is facilitated by government legislation that: a) permits corporations to establish offshore tax havens into which they can funnel revenue; b) allows foreign-owned and located corporations to engage in transfer pricing to their subsidiaries; and c) encourages the grandfathering of tax losses for an indefinite period (Guthrie and Lucas, 2022, 2022a, 2022b).

Annual tax revenue figures published by the Australian Taxation Office for the last decade highlight the fact that only a handful of fossil fuel companies operating in Australia pay the Petroleum Resource Rent Tax (PRRT) or company income tax while also receiving substantial government subsidies. The former issue has been thoroughly documented in [numerous stories](#) published by the former chief finance editor for Fairfax and NewsCorp, [Michael West](#). It has also been reported by [ABC News](#), [The Guardian](#), and several other [Australian media outlets](#). This includes [stories showing that 61% of around 2,700 Australians surveyed in 2022](#) by The Australia Institute support taxing the super profits of the oil and gas industry. The relevant data and the issue of government subsidies to the fossil fuel industry are discussed in detail in Lucas and Guthrie (2024, forthcoming).

The Grattan Institute (2024) has highlighted the flawed design of the PRRT, stating that although it was intended to benefit all Australians from resource extraction, it falls far short of

achieving this goal. The PRRT only applies to profits earned by the companies concerned, rather than on revenues generated. As a consequence, these firms and their Big Four accounting advisors structure their accounts to minimise their profits and the amount of tax paid to the Australian Government. This includes writing off the cost of significant infrastructure investments over decades until the capital cost is returned while simultaneously taking advantage of uplift factors that go up yearly (SBS News, 2024).

Schedule 5 of the proposed bill will limit the proportion of PRRT assessable income that can be offset to a maximum deduction of 90 per cent, ensuring that most LNG projects will begin paying PRRT before the 2030s.

Recommendation 7:

While we support the Government's efforts to strengthen the laws and regulations around the *Petroleum Resource Rent Tax Assessment Act 1987* and associated taxation matters, we agree with the Hon. Zali Steggall that the bill should ‘adopt an 80 per cent deductions cap for the PRRT, lowered from the current 90 per cent, which would double the amount of revenue subject to the 40 per cent PRRT for that year and remain consistent with Treasury advice provided to the Government.’

Recommendation 8:

We also agree with the Hon. Zali Steggall that the bill should ‘abolish the seven-year exemption to the deductions cap which supports the development of new oil and gas projects and is contrary to the Government’s claim to be committed to the Paris Agreement and keeping global warming below two degrees.’

Recommendation 9:

Furthermore, we agree with the Hon. Allegra Spender that Schedule 5 of the bill should include a clause requiring the Minister to conduct a review of the relevant amendments ‘without limiting the matters that may be considered when conducting the review’, and that it should start no later than 1 July 2026 and be submitted to the Minister no later than 1 January 2027.

The Australia Institute (TAI) (2024) has called for the reform of Australia's tax system, which it described as being akin to that of a Third World country. TAI outlines four steps that it

believes should be taken to rectify the situation. First, it argues that Australia should cease subsidising fossil fuels, as this contradicts the basic principles of economics, which suggest that subsidies should be given to desirable industries and taxed on undesirable industries. Currently, Australia spends over \$11 billion annually on fossil fuel subsidies. Second, it highlights the disparity between Australia's status as the world's third-largest exporter of fossil fuels and the relatively low tax revenue generated from this industry compared to countries like Qatar. TAI suggests that increasing the PRRT would be a simple way to address this issue. Third, TAI points out that inequality is rising in Australia and that market forces alone will not rectify this. While the Government's proposed changes to the Stage 3 tax cuts are a step in the right direction, TAI argues that more needs to be done. It proposes that collecting more tax from the PRRT while reducing energy, medicine, childcare, and healthcare prices would be an economically efficient and popular solution to address inequality and other societal issues. Finally, TAI advocates for expanding the public sector in Australia rather than its contraction. TAI argues that cutting taxes and privatising services has not improved productivity or service quality but increased inequality. As evidence of the negative consequences of such policies, it cites the current shortage of teachers in Australia during a skills crisis. TAI concludes by stating that choices matter and that Australia's current choices, such as subsidising the fossil fuel industry while burdening students with unwarranted high-interest charges on their already high university fees, have had detrimental effects on society and the economy.

In summary, we acknowledge the Treasury's assessment that a change to the Resource Profit Margin (RPM) should not be the sole factor in fossil fuel investment decisions. Other factors, such as project costs, oil prices, and global LNG demand, should also be considered. However, when looking at changes to the PRRT regarding the overall investment landscape and the sector's role in transitioning to a lower-emission economy, placing a cap on deductions could strike a balance in ensuring Australians receive a reasonable return for the resources extracted.

Recommendation 10: With regard to existing and any proposed fossil fuel extraction projects, project costs, oil and gas prices, and global LNG demand should all be factors considered by government when assessing levels at which the PRRT should be set, which should be reviewed at least biennially.

Recommendation 11: Caps on the duration and dollar amounts allowed for grandfathering of capital expenditure deductions by fossil fuel companies should be set following best practice examples from Qatar and Norway.

3. Whistleblower protections, transparency and accountability

Schedule 2 of the proposed Bill amends the *Tax Agent Services Act 2009* to strengthen and extend whistleblower protections to eligible whistleblowers who make disclosures to the Tax Practitioners Board.

One of the main concerns expressed by community groups in the initial round of submissions was the need for increased transparency and accountability in taxation rules and corporate transparency to ensure that Australians can trust they are receiving a fair and satisfactory return for the country's resources. While the ATO may have access to information about the activities of major players in the fossil fuel industry, there remains a significant lack of transparency and public visibility about those activities. This lack of transparency continues to erode public confidence in the fairness of the financial returns received from transnational corporations which disproportionately benefit from the exploitation of Australian resources.¹

If our political leaders refuse to prioritise transparency and accountability in government decision-making more generally, we risk losing control over critical national assets, including our resource wealth and the associated benefits they provide. Additionally, we may face international condemnation for failing to uphold our climate change obligations as the resource extraction industries continue to exert unwarranted influence on Australia's climate, transport and energy policies (Lucas, 2021, 2022).

With respect to the oil and gas industry, there are two main activities in which they are engaged that require far more transparency and accountability:

- A. The probity and value of transfer pricing arrangements by these firms lacks transparency and undermines both Parliament's and the public's ability to evaluate their legitimacy. Many of the firms involved in offshore gas exploration and extraction in

¹ Tax Justice Network – Australia, Submission to the GTP Review, p. 9.

Australia have a long track record of using transfer mispricing and other aggressive tax planning strategies designed and promoted by the Big Four accountancy firms.²

- B. Public reporting on the gas price at the taxing point should be required of all businesses engaged in gas extraction and show reasonable calculation details.³

The LNG industry has responded to calls for greater transparency around its reporting requirements that price and costs should not be released as they would ‘impact markets and investments’. It claims that the further release of information by the ATO without important supporting contextual information has the potential to cause more confusion rather than providing clarity. In its statement to the GTP Review, APPEA (2022) claimed that:

Suggestions that taxpayers should be compelled to release pricing information associated with PRRT calculations would present significant challenges. In terms of the GTP, there will be a range of factors leading to variations in prices for different projects (and in some cases, for participants within projects). These factors are likely to be understood by the ATO, however public disclosure would merely create confusion with little or no public benefit. Furthermore, Australia’s ability to effectively compete in global markets would be significantly eroded if taxpayers were required to publicly release price or cost information.⁴

We submit that the claims of the LNG industry and its peak body APPEA are disingenuous and simply constitute an effort by the fossil fuel industry to obfuscate its questionable record of paying appropriate levels of taxation for decades. These statements have nothing to do with ensuring ‘Australia’s ability to compete in global markets’. Any confusion that such disclosure might produce can easily be rectified by clear guidelines and criteria for reporting, with appropriate explanatory material provided in public disclosures. Furthermore, improving whistleblower protections will go some way to empowering employees in these firms to come forward with any information relating to unethical and illegal behaviour by their employers, including financial reporting irregularities.

² Professor Richard Eccleston and Mr Lachlan Johnson, Institute for the Study of Social Change, Submission to the GTP Review, p. 2.

³ Dr Diane Kraal, Submission to the GTP Review, p. 14.

⁴ APPEA, Submission to the GTP Review, pp. 41-42.

Recommendation 12:

We fully support the Government's proposed amendments to the *Tax Agent Services Act 2009* to extend whistleblower protections to eligible whistleblowers who make disclosures to the Tax Practitioners Board (TPB), while reversing the burden of proof for certain claims of protection.

Recommendation 13:

We fully support the Government's proposed amendments to protect tax-related whistleblowers from detrimental conduct, such as termination or litigation, in response to a disclosure, as well as providing opportunities for whistleblowers to seek compensation if detriment is suffered.

Recommendation 14:

We recommend in addition that whistleblowers be eligible for financial rewards in certain circumstances where significant costs to government and/or the public have been averted through their actions, or significant benefits to government and/or the public flow from their actions.

Recommendation 15:

We recommend, furthermore, that carceral punishment (i.e. jail time) be legislated as an additional disincentive to employers, executives and senior managers who engage in bullying, harassment or other forms of retribution against whistleblowers who are working or have worked for them.

These last two recommendations would go a long way to improving attitudes toward whistleblowers in Australia. They would provide suitable rewards and incentives to those employees prepared to speak out against wrongdoing in their workplaces as well as suitable punishments for those employers and officials who seek to silence or intimidate them.

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