

Chapter 4

Conclusions and recommendations

Conclusions

4.1 The committee does not accept that it is necessary to overturn centuries of accepted law and practice in relation to parliamentary privilege in order to safeguard the privacy of individual taxpayer information.

4.2 Having examined the provisions closely and taken evidence from expert witnesses, the committee is not satisfied that the need for the provisions has been demonstrated. In response to direct questioning by both the Economics Legislation Committee and this committee on this point, Treasury officials were unable to provide a clear and demonstrated need for the provisions. No precedents were cited and no examples given that any protected taxpayer information had ever been provided to a parliamentary committee. Further, in relation to the key policy of the bill, the maintenance of the privacy of taxpayers' information, no evidence was forthcoming that there has ever been either a request for, or an attempt to present, such information to a parliamentary committee.

4.3 On the contrary, the committee is satisfied that the rigours of the existing controls operating within the Parliament are more than sufficient to maintain and protect the privacy of taxpayers' information.

4.4 In considering whether or not the provisions are workable, the committee has received abundant evidence to indicate that they are complex and confusing and would present significant difficulties of application and interpretation to both taxation officials and courts that would have to deal with them.

4.5 It is on the last question, dealing with the principle of the provisions and the potential they have to set a bad precedent for inroads into the powers of the Parliament and its committees that the committee has the greatest concern. To have statutory provisions interfering in the powers and operations of the Parliament is obnoxious in principle. In view of the very large number of statutory secrecy provisions already enacted at the Commonwealth level, the committee draws the attention of senators to the real danger of a creeping reduction in the areas of Parliamentary inquiry as one area after another of Commonwealth government activity seeks exemptions for itself from providing information to Parliamentary committees.

Solutions to the Problem

4.6 The committee is of the view that a solution is required which both preserves the Parliament's need to safeguard its privileges and the integrity of its committee operations and to protect the rights of senators and witnesses on the one hand and on the other, meets the policy requirement to ensure the protection of the privacy of taxpayer information. The committee has considered a variety of solutions to this problem and believes that both of these outcomes are achievable.

4.7 The simplest solution is to remove any reference to Parliament and its committees from the bill and allow the existing law to operate in conjunction with the existing procedural protections provided by standing and other orders of the Houses. Amendments required to give effect to this solution are in Appendix 4. A second option, contained in Appendix 4, takes into account the views expressed by Treasury officers that the bill seeks to provide guidance to taxation officers in their dealings with parliamentary committees. Option 2, therefore, while removing the application of the offence provisions to dealings between officers and committees, inserts a declaration near the beginning of proposed new Division 355 that disclosures to Parliament and its committees are not affected by anything in the new Division.

4.8 The committee has drawn attention to the operation of the standing orders, the privileges resolutions and to the resolution of the Senate relating to public interest immunity claims, all of which provide a sound structure for committees to either handle sensitive information and retain it on in camera basis or, in cases where a claim of public interest immunity has been made out, to decide to not receive the information at all.

In any case, if a committee were to request information of this nature, it would be open to a witness to follow the normal procedures leading to a claim of public interest immunity on the ground that disclosure of the information would amount to an unreasonable invasion of the privacy of an individual and could cause harm to that individual as a result. This is a well-established ground of public interest immunity and committees have had no difficulty in the past in accommodating privacy concerns while still obtaining the evidence they require¹.

4.9 The committee has considered the use of the existing procedures to maintain and protect privacy. In the course of the hearing, the former Chair noted that if the existing procedures were not considered sufficient, a possible solution could be to deal with the matter by a more specific resolution of the Senate:

1 Clerk of the Senate, *Submission 1*, p.13, see also paragraphs 3.33-3.35 & 3.61 above.

one useful recommendation of this inquiry might be for the Senate procedure committee to look at this question and consider including confidential taxpayers' information in the express exemptions for information to be taken in camera only—basically having the issue dealt with by either a standing order or a privilege resolution. If there were congruent amendments to this bill, that might well meet the mischief here.²

Conclusions and recommendations

4.10 The committee has considered proposed sections 355-55, 355-60 and 355-155 of the Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009 and concludes that the provisions are:

- unnecessary and without justification;
- confusing, unworkable and ineffectual in achieving their objective;
- a bad precedent; and
- above all, contrary to fundamental principles of parliamentary privilege and set a bad precedent.

4.11 The committee therefore **recommends** that the Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009 be amended to remove the offending provisions along the lines of the amendments in Appendix 4, thereby leaving the existing law in this area to continue to operate.

4.12 This recommendation proposes two options for amendments to achieve this end:

Option (1) removes any reference to Parliament and its committees from the bill, thereby allowing the existing law to operate in conjunction with the existing procedural protections provided by standing and other orders of the Houses.

Option (2) removes the application of the offence provisions to dealings between taxation officers and Parliamentary committees and provides guidance to taxation officers in their dealings with Parliamentary committees and declares that disclosures to Parliament and its committees are not affected by the bill.

4.13 The committee further **recommends** that the Procedure Committee consider whether it is necessary to strengthen guarantees to safeguard the privacy of taxpayer information by means of a resolution of the Senate.

4.14 The committee further **recommends** that the Clerk of the Senate write to the Commissioner of Taxation drawing attention to the training provided by the

2 Senator Brandis, *Evidence*, p.11.

Department of the Senate in parliamentary matters and the availability of the Department of the Senate to work with the Australian Taxation Office in developing appropriate in-house training materials.

Senator David Johnston

Chair