

# **Government Senators' dissenting report**

## **Interim Report of the Select Committee on the Scrutiny of New Taxes—Report on the progress of proceedings: new taxes monitoring database**

On Thursday 30 September 2010 the Senate established the Select Committee on the Scrutiny of New Taxes (the Committee) to inquire into the following matters:

- (a) New taxes proposed for Australia, including:
  - (i) the minerals resource rent tax and expanded petroleum resource rent tax;
  - (ii) a carbon tax, or any other mechanism to put a price on carbon, and
  - (iii) any other new taxes proposed by Government, including significant changes to existing tax arrangements;
- (b) the short and long term impact of those new taxes on the economy, industry, trade, jobs, investment, the cost of living, electricity prices and the Federation;
- (c) estimated revenue from those new taxes and any related spending commitments;
- (d) the likely effectiveness of these taxes and related policies in achieving their stated policy objectives;
- (e) any administrative implementation issues at a Commonwealth, state and territory level;
- (f) an international comparison of relevant taxation arrangements;
- (g) alternatives to any proposed new taxes, including direct action alternatives; and
- (h) any other related matter.

The terms of reference of the committee have been the subject of disagreement between members of the committee. Coalition members of the committee have taken the view that the committee has a broad remit to inquire into a range of matters, the range and scope of which shall be determined by the Coalition members of the committee, despite this type of remit having not necessarily been contemplated by the Senate when it resolved to establish the committee.

The decision of the Coalition members of the committee to inquire into the Higher Education Legislation Amendment (Student Services and Amenities) Bill 2010 was, in the opinion of government Senators, a case in point.

It was then and it remains the view of the government members of the committee, based on the advice the committee received on the nature of the student services and

amenities charge, that it is not a tax and the inquiry into it was in all likelihood beyond the committee's terms of reference. We have outlined our reasons for this view in our dissenting report on the outcome of that inquiry and there is no need to canvass it in any further detail in this report, other than to provide background to our view on this latest interim report.

In what the Coalition Senators describe in their report as a measure to assist the committee's inquiries, "the committee has been monitoring Government announcements of policy and legislative change as well as media articles that suggest policy change. This information is being collated and is circulated periodically to inform the committee's discussions."

It will do nothing of the sort.

What the so-called database set out in Chapter 2 does is merely provide references to a series of Australian Taxation Office rulings and determinations along with references to media reports and court judgements. It takes no account of the accuracy or otherwise of what are, at times, speculative media reports and we fail to see how a reference to an ATO decision impact statement on whether or not a stretched Hummer vehicle is a limousine or more akin to a bus will assist the committee or the Senate in deliberating over tax policy.

Government Senators seriously question the practical value of the so-called database to the deliberations of the committee and the Senate. We also note that the compilation of the database also places what we believe to be a burden on the already heavily stretched resources of the Committee secretariat. With this in mind, government Senators moved the following at a recent meeting of the Committee:

*The Committee notes the extensive workloads placed on Senate committee secretariats due to the increasing number of references to committees.*

*The Committee notes the resources available to Senators both through their own research staff and the Parliamentary Library.*

*The Committee therefore resolves in the interest of reducing workload and allowing the Secretariat to focus on key priorities to relieve the Secretariat of the task of collating news articles on new taxes and ATO determinations and to discontinue the new taxes database as this information can be readily accessed through other means.*

This motion was defeated however, our concerns remain.

In relation to whether or not tax rulings and determinations are relevant to the committee's terms of reference, the following correspondence from the Commissioner of Taxation, Mr. Michael D'Ascenzo to the committee chair, Senator Cormann is instructive. It is as well to set out Mr. D'Ascenzo's correspondence in full:

Senator Mathias Cormann

Chair

Senate Select Committee on the Scrutiny of New Taxes

PO Box 6100

Parliament House

Canberra ACT 2600

Dear Senator

***Draft Taxation Rulings and Determinations***

*Thank you for your letter of 13 December 2010 seeking additional information in relation to the ATO's recently published draft taxation rulings and determinations.*

*In your letter you note that the terms of reference for the Senate Select Committee on the Scrutiny of New Taxes "...include inquiring into any new taxes proposed by the government, including significant changes to existing tax arrangements".*

*It is unclear to me why the Committee would be considering taxation rulings and determinations because they do not impose new taxes or make significant changes to existing arrangements – they merely clarify my view of how existing tax arrangements work.*

*The view of rulings as law making is a common misconception. Taxation rulings and determinations are an expression of my view on the interpretation of the existing law. They do not change the law. However, they do influence taxpayer behaviour and therefore we are very careful to ensure they are of the highest integrity.*

*Draft rulings such as those referred to in your letter are published in order to enable consultation with the community before they are finalised. For example, we consult widely in their development and benefit from the views of private sector experts in our Public Rulings Panels.*

*A comprehensive review of our public rulings program by the Australian National Audit Office found public rulings to be of a high integrity.*

*As final public rulings represent the Commissioner's authoritative view of how the existing law applies, it is then the duty of the Commissioner to apply the law in a manner consistent with those rulings.*

*Where policy considerations apply, we often benefit from the views of Treasury. However, it remains our duty to interpret the statute in accordance with its tenor. It is then a matter for government whether any legislative amendment is appropriate.*

*For these reasons, in my view your request does not relate to new taxes but to administrative matters that fall within my statutory responsibility. However if you consider it desirable, I would be pleased to meet with you and your Committee on this matter. I have attached material that more fully explains Australia's public ruling system. However, I and my officers are available to clarify for your Committee the role which rulings play, both generally and in relation to the draft and final rulings referred to in your letter of 13 December 2010. I have asked my people to arrange such a meeting at your convenience, subject of course to your thoughts.*

*Yours sincerely*

*(signed)*

*Michael D'Ascenzo*

*Commissioner of Taxation*

*22 December 2010*

Based on the explanation provided by the Commissioner of Taxation and having regard to the actual content of the so-called database, government members of the committee are of the view that it serves no useful purpose and only places an administrative burden on the committee secretariat.

In their report, the Coalition Senators state, “As the Government has introduced more than \$40 billion of new or increased taxes over the past three years the committee views this process as a means of identifying and scrutinising new and increased taxes as they are introduced by the government. Reporting these findings on a regular basis will further expose the government's clandestine efforts to increase the tax burden on all Australians.”

Firstly, government members of the committee take issue with the figure of \$40 billion. It is an unsubstantiated claim in the Coalition Senators' report without anything which would allow anyone reading the report to verify it. As is the case with the Coalition's entire approach to such things, it is merely a figure plucked from the air.

Secondly, as discussed above, any reading of chapter 2 reveals that contrary to the claim of Coalition Senators, the process adopted in compiling the so-called database does nothing to identify and scrutinise “new and increased taxes”.

Thirdly, to the extent that Coalition Senators actually believe that this process will somehow, “further expose the government's clandestine efforts to increase the tax burden on all Australians”, suggests merely a tendency toward conspiracy theory. As is clear from Chapter 2 of the majority report and for the reasons we outline, the

process adopted by Coalition Senators does nothing to inform, expose or educate anyone, the Senate included, about taxation policy clandestine or otherwise.

**Senator Steve Hutchins**

**Deputy Chair**

**Senator Doug Cameron**