



Blackwater Treatment Systems

PTY LIMITED

ACN 114 428 090 ABN 15 114 428 090

Water Security & Sustainable Environmental Solutions

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Committee Secretariat
Legal and Constitutional Affairs Committee
The Senate
Parliament House
CANBERRA
legcon.sen@aph.gov.au

Att Mr Timothy Watling

RE: BTS Submission to Senate inquiry Judiciary Amendment Bill 2017

Dear Mr Watling,

Thank you for the opportunity to provide a submission to the Senate inquiry regarding the observed and the experienced misconduct of the ATO`s senior officers.

Acting commissioner of taxation Andrew Mills asserts "Australians must have a tax administration that they can trust and the people of the ATO must be of the utmost integrity and good judgement. This is even more important for those in leadership positions." Unfortunately the actuality of having to contend with a tax administration that has a predetermined outcome, ensures a struggle of epic proportions and extreme financial pressures and hardships.

Fittingly it is not unreasonable for the public to expect that the ATO audit compliance assists the ATO to detect alleged frauds that occur external to the tax administration or internal as being inside the tax administration.

The external fraud is defined as being outside the tax administration and is detected after the fact with the extent being known as the evidential material is examined.

The internal fraud within the tax administration`s audit compliance is much more serious as it occurs by those abusing their position as a public official relating to the alleged fraud. Extensive time and cost is required to expose an alleged conspiracy as it is usually concealed behind a pretence of integrity and good judgement. Subsequently the validity and accuracy of ATO audit outcomes can be reasoned to be questionable

This submission is being presented in four sections,

1. Preface,
2. Background
3. Allegations of the ATO`s Targeted Malice
4. Conclusion

1: PREFACE-

The public expectation of the ATO is that it is administration that can be trusted and the tax systems is administered fairly, efficiently and causes the least pain for all that participate.

Therefore the alleged abuse of a public office is regrettable, the fact that there has been persons in the ATO that are associated or involved is of a great concern.

The important point is that the system has worked for conspiracy`s external to the ATO but does the system work when the conspiracy is an ATO internal conspiracy? Particularly as the conspiracy as an alleged abuse of public office is within a government department that is presently only under an internal review system; that in turn appears to facilitate a sense of immunity.

Typically an ATO complaint against Senior ATO officials as an internal review, has a systematic pre-determined outcome. As it is common knowledge with the Senior ATO officials, that the outcome of complaints cannot be reversed no matter how biased the ATO`s internal review process is shown to be.

Fittingly it is reasonable to expect that when a conspiracy has been uncovered, particularly when an internal conspiracy has been uncovered, the people who are alleged to be involved in it are being brought to justice. Malcolm Turnbull states "no-one could escape law enforcement agencies no matter how high they may be in a government department".

The attached information reveals Senior ATO officials abusing their positions as public officials. This well-established mind-set by Senior ATO officials is usually concealed behind a systemic pretence of integrity and good judgement. With the intention of enabling;

- The concealment of providing false information to mislead Ministerial reviews.
- Provide advice that was knowingly incorrect and or ambiguous.
- Defamation of an enterprise by withholding supporting documents.
- Fabrication of audit outcomes by omitting and manipulating information.
- The ongoing systematic failure to admit and or accept defective administration.

2: BACKGROUND-

Blackwater Treatment Systems P/L (**BTS**) sole enterprise is research and development (**R&D**), in order to advance onsite wastewater treatment, recycling and reuse technology at a PhD level of field research. As such BTS has been a collaborate research partner with the University of NSW. Furthermore the Australian Research Council recognised a component of the BTS technology as a discovery. BTS does not make a profit, the R&D it is reliant on Director contributions, Innovation Australia R&D certification for R&D tax refunds, overdrafts and credit providers.

It is alleged that for the past 7 years the ATO`s senior officers, have abused their position relating to enterprise of BTS and the R&D Tax Incentive scheme and audit compliance.

It is alleged that the ATO's senior officers abuse of their positions includes,

- The withholding and concealment of relevant information.
- Providing false and or misleading information to BTS.
- Falsify ATO auditor minute notes
- Manipulate audit information to facilitate a fabricated audit debt.
- Improperly issue a Garnishee Order and fabricate an indemnity clause.
- Mislead Ministerial (Assistant Treasurer) reviews, with the intention of concealing deceitful and defective administration and the abuse of their positions.
- Intentionally ignoring mandatory legislated guidelines when determining suffered financial loss and the right amount of compensation.

It is alleged that the ATO's senior officers abuse of their positions has set back the BTS research up to 4 years.

3: ALLEGATIONS of the ATO's TARGETED MALICE-

When the Assistant Treasurer's (Hon Kelly O'Dwyer) Chief of Staff provided to Blackwater Treatment Systems(BTS) written advice 23November 2015 that the Commissioner of Taxation had apologised for the errors identified during the audit process and rectified during the objection process. The rectification resulted in the BTS audit debt of almost \$250,000 reduced to nil. Given that no payments were made towards the debt it can only be reduced to nil if the debt was fictitious. BTS maintains that [redacted] manipulated and fabricated the audit debt. Therefore the Deputy Commissioner's declared dedication (February 2018) to thoroughness and attention to detail must include the provision of answers to the following questions; in order to explain that it is not a targeted malice being directed at BTS by the ATO's senior officers:-

- A.** Based on the only BTS correspondence 27/10/2009 to the ATO seeking clarification (as attached). The ATO not BTS made the decision 28 October 2009 and advised BTS of this February 2010 as to not to proceed with the July - September BAS discussions and to declare that BAS as nil. It should be noted that prior to BTS seeking clarification, the ATO had already decided not to proceed this BAS. It should be noted that once the Innovation Australia (IA) certification for R&D is known this automatically deletes all of the claimed GST refunds for the financial year and for every financial year where an IA approval is given. Simply put, prior to a BTS R&D refund claim being submitted to the ATO all of the GST refunds are refunded in full from that R&D claim. The ATO is fully aware of this procedure, otherwise 2 claims for refunds would be made on the same R&D equipment. Why then does the ATO pursue a course of action to reduce BTS compensation by referencing GST payments that do not exist?
- B.** The ATO [redacted] has been provided with the BTS invoices in July 2011 and they lost them. Why was this allowed to happen? If the ATO had promptly advised of their defective administration the invoices could have been replaced prior to the sponsors going overseas. It should be noted that the sponsors are not *secret sponsors* and only provided materials, BTS covered the costs of the research program and that program was approved by Innovation Australia.
- C.** The ATO contends that it completed the BTS 2011 audit on the 31st August 2011. This information failed to be revealed for 7 years, that

included 2 years of ATO audits, almost 2 years of BTS objections and 2 years of ATO compensation reviews. At best it is considered as an unreasonable failure by the ATO to withhold the proper advice that was within the ATO's power and knowledge to give, or was reasonably capable of being obtained by the ATO to give. At worst the ATO is giving advice that was in all circumstances incorrect.

- D.** Why was BTS allowed to believe that as of September 28, 2011 the ATO continued the audit, as it had received the requested documents? Why was BTS allowed to believe that the ATO had then completed the 2011 ATO audit, and approved the requested documents by way of the November/December 2011 release of BTS refunds dating back to the 1st October 2010? Why did the ATO conceal the failure to complete their 2011 audit, why conceal the loss of BTS documents and why conceal all of this from BTS for 12 months?
- E.** Why did the ATO commence a May 2012 audit whilst still concealing the defective administration of the 2011 audit? Why provide false information to justify this audit? Why did the ATO falsify July notes *that evidence will be sought to prove an enterprise exists* when third party evidence had already been provided.
- F.** Why did provide misleading information to the Assistant Treasurer the Hon David Bradbury September 2012 review?
- G.** Why did provide to BTS at an October 2012 meeting, incorrect advice as to why the 2011 ATO audit was stopped and why BTS is not an enterprise due to lack of sales and as such is not entitled to have GST registration? It should be noted that no minutes of this meeting can be located by the ATO.
- H.** Why prior to re-commencing the November 2012 ATO audit, did the ATO expand without a reason the audit from a 3 month audit to a 3 year audit?
- I.** November 20 2012 ATO field audit meeting at Ulladulla attended by where at revealed the loss of the BTS requested information from the 2011 ATO audit. Why did it take 12 months to reveal the loss of the BTS requested information from the 2011 ATO audit. Why was it necessary for the ATO to conceal this information from BTS. Why does meeting notes falsely state that BTS's accountant had not familiarised himself with the BTS's R&D activities when in fact he answered yes to this question?
- J.** Why does meeting notes for 6 December 2012 falsely state that BTS (Mark Freeman) admitted expenditure was mostly for private use and not R&D. BTS did not attend this meeting nor has ever made this statement to . All BTS expenditure was for R&D and was upheld by the ATO March 2015. BTS's accountant disputes assertion of requesting a copy of the Contract between BTS and Mark Freeman. Furthermore the office of the Inspector General of Taxation (**IGT**) states; *It should be noted that we have been unable to locate any specific request for the contract, albeit the file notes indicate that did ask whether a contract exists.*
- K.** The ATO as of 13 December 2012 concluded that the "taxpayer is carrying on an enterprise. Why did the ATO conceal this information from BTS and then leave BTS amending GST claims based on false ATO advice? Why was this conclusion concealed from BTS for 5 years? It should also

- be noted that the statement directly contradicts an ATO April 2017 statement to the IGT and BTS.
- L.** August 7 2013 it is noted that prior to the presentation of interim assessment (September 2013) was advised to commence a rewrite as an assessment was not strong enough nor properly focused. Can the ATO confirm if there was a rewrite?
- M.** Why did commence the 2013 audit without all of the pivotal information? Why did the ATO reject objection documents without a reason. Why did the ATO proceed with a Garnishee Order when the debt was knowingly under dispute? Why did the ATO falsify the indemnity clause relating to ANZ as BTS's banking institution?
- N.** Why did again provide misleading information to the then Acting Assistant Treasurer the Hon Mathias Cormann June 2014 review?
- O.** March 2015 after 18 months of objections the BTS debt of more than \$180k was reduced to nil. Given that no audit debt payments were made, is it fair to conclude that the ATO audit debt was fabricated? Why has the ATO continually failed to provide a requested explanation to BTS?
- P.** November 2015 a letter to BTS from the office of the Hon Kelly O`Dwyer provides an apology from the Commissioner of Taxation for the errors identified during the audit process. Why then was it necessary for the ATO to falsely advise that the aforementioned information had been communicated to BTS accountants?
- Q.** Why has the ATO as the authorised decision making authority, during 2016, 2017 and 2018 contravened and ignored the integrity of the legislation, by denying mandatory procedural fairness to the BTS claim for compensation? Why was BTS denied the opportunity to view and comment on documents that will be considered by the decision maker, during their reviews for Compensation for Detriment caused by Defective Administration(CDDA).
- R.** Why has the ATO continually ignored the examples of the ATO providing misleading information to Ministers of the Crown? These examples of misconduct were presented to the ATO in 2016 by BTS within the then provided BTS file.
- S.** Why for more than 12 months has the ATO continually avoided addressing the subject matter of the complaint issues being put to them by the Office of the Inspector General of Taxation?
- T.** Why does the ATO's system of self reviews appear predisposed to provide senior ATO officers with an immunity from accountability of their deceitful and defective administration and the associated misuse of public funds?
- U.** Why did the ATO find it necessary to conceal their defective audit administration of the BTS 2011 and 2013 ATO audits by way of providing misleading information to the Assistant Treasurer the Hon David Bradbury September 2012 inquiry, the Acting Assistant Treasurer the Hon Mathias Cormann June 2014 inquiry and the Assistant Treasurer the Hon Kelly O`Dwyer November 2015 inquiry?
- V.** Why at a meeting February 2018 with the Federal Member for Gilmore and representatives from the office of the Hon Kelly O`Dwyer did the ATO's Deputy Commissioner find it necessary to provide misleading information in order to slander BTS and facilitate a financial advantage for the ATO?
- W.** Why is a complaint made against the ATO always referred back to the offending agency (ATO) or referred to an agency that does not have the

power to enforce a change. Why does it appear that the scrutiny of the ATO lacks independence and is ineffectual to enforce accountability? Why does it appear that the public is denied the right to procedural fairness and justice when making a complaint against the misconduct of ATO's senior officers?

- X. Why does it appear that the ATO failed to address the above breaches of the Australian Public Service's Values and Code of Conduct, as set down by the Australian Public Service Act 1999 No. 147, 1999?

It must be noted that all of the aforementioned statements and allegations of the misconduct of the ATO's senior officers are substantiated and documented within the BTS file and this file is available as a hard copy if and when required.

4: CONCLUSION-

It is not unreasonable to presume that the public has a desire for the provision of services and the attaining of the funds to provide those services must in-turn be achieved within a proficient, effective and fair minded ATO.

However at present it appears that small business does not have the ability to access an independent body, whereby complaints of ATO wrong doing can be heard and acted upon to reverse wrong decisions.

The scrutiny that the ATO alludes to be regulated by, has shown for the most part to be ineffectual to implement change and or as a scrutiny process is being controlled by a system of self reviews; that has shown a willingness to sacrifice ethics and good judgement in order to achieve a pre-determined outcome of avoiding accountability.

Regretfully it is very much apparent to members of the public that there is at present an unfulfilled need for greater transparency and oversight of the ATO.

Consequently it is with the greatest hope and desire that the Judiciary Amendment Bill is a step forward to providing an improved and cost-effective ATO with a focus on good communication and accountability.

Sincerely Yours

Mark Freeman
Director