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**Supplementary Submission
to the
Senate Legal and Constitutional Affairs Committee
Inquiry into the
Judiciary Amendment (Commonwealth Model Litigant Obligations)
Bill 2017**

13 June 2018

Explanation for this Supplementary Submission

In our submission to this Senate Inquiry we have explained that to understand whether the Australian Taxation Office is compliant with their model litigant obligations or not, it is helpful, almost necessary to understand the ATO's behaviour prior to litigation. We said, "...how the ATO behaves in its internal review processes flows through and is replicated when litigation occurs."

Relevant to model litigant behaviour is understanding whether ATO statements of 'fact' can be relied upon to be wholly correct or not.

In a hearing before the Economic Legislation Committee on Wednesday 30 May 2018, the Tax Commissioner, Mr Chris Jordan and other ATO officials made certain statements that are not correct. These incorrect statements by the ATO provide an insight into and understanding of the behaviour of the ATO and hence an insight into whether the ATO can be relied upon to comply with its model litigant obligations.

This supplementary submission quotes the Tax Commissioner or tax official and provides the relevant fact or facts to correct the record.

We make this supplementary submission late, because the statements by the Commissioner were made on the 30th of May, the day we lodged our submission to the Committee. We request the indulgence of Committee to accept this supplementary submission and for its inclusion in the Hansard.

**1. Incorrect statement: The Four Corners, *Mongrel Bunch of Bastards* show.
Was the Commissioner invited to appear?**

This example relates to whether the Tax Commissioner was factual in his description of why he did not appear on the Four Corners show of 9th April 2018. The Commissioner stated in the Senate hearing of 30th May 2018 that he was not formally invited to appear on the show. According to the Fairfax journalist, Adele Ferguson, this is incorrect.

The Hansard reads

Senator WILLIAMS: Mr Jordan, my apologies, I saw some of your opening statement from my office, but I had meetings to attend. If I'm going over old ground, please forgive me. You're aware of the combined ABC-Fairfax *Four Corners* story. Were you offered an interview with that story?

Mr Jordan: We went through this before. It was not a formal offer. It was discussions between our organisations as to who, what and where...

Adele Ferguson, stated in an article of 31st May,

“He also made the incredible statement to the inquiring senators that he had not been formally offered an interview...

This is an incredible thing to say because it is so palpably wrong.

For the record, Four Corners and Fairfax Media did put in an official request for an interview with Jordan. An email was sent on March 13 to his media handlers with the subject line: “Interview request with Chris Jordan”.

<https://www.smh.com.au/business/companies/ato-s-chris-jordan-seeks-to-shoot-the-messenger-20180531-p4z1qh.html>

**2. Incorrect statements: The Four Corners, *Mongrel Bunch of Bastards*,
Alleged bad behaviour of the persons profiled on the show.**

This example relates to whether the Tax Commissioner was factual in his description of the cases that were highlighted in the Four Corners show, *Mongrel Bunch of Bastards* of 9th April 2018.

Taken from the Hansard of 30th May 2018 the Tax Commissioner said,

“There is not much more to say, but the various cases you saw reported on Four Corners represent the spectrum of behaviour that we see: those who just don't understand what they're meant to do; those who get in a mess because they leave things too late or long; those who don't pay attention to their admin, put their head in the sand or are struggling without the right help; or, worse, those who are deliberately being evasive.

Let me just explain some of the behaviours we saw in this group of mainly old cases.

Some people claimed significant expenses and did not provide proof of their expenditure, in one case saying the invoices were secret, even though they were given the opportunity a number of times to show the necessary paperwork over

a period of time. It would be all too convenient if invoices were secret from the tax office.

In the same case, they couldn't show us the assets that related to these expenses. The assets had apparently been destroyed.

They did not respond to repeated attempts by us to contact them or their agent.

There was abuse of company and trust structures so that they did not pay tax on their income, and expenses were simply concocted and false invoices created.”

Correcting the incorrect statement/s

The identities of the persons the Tax Commissioner referred to are clearly known through the Four Corners show. In the statements above the Tax Commissioner has allegedly impugned the good names and reputations of those persons. The statements by the Tax Commissioner are wrong. To correct the record the parties identified by the Tax Commissioner assert that;

- All of the cases were and are current cases. They are not ‘old’ cases.
- Invoices were not kept secret from the ATO.
- Assets were not destroyed and assets could be shown.
- All parties responded to the ATO at all times.
- There were not company or trust structure abuses.
- Expenses were not concocted or false invoices created.

3. Incorrect Statement: Does the ATO initiate recovery on disputed debt?

This example relates to whether the ATO was factual in it’s description of its policy on enforcing disputed debt.

Taken from the Hansard of 30th May 2018 the following exchange occurred
Senator LEYONHJELM: So you're saying that, where the amount claimed by the ATO is disputed by the taxpayer, you don't initiate recovery action?

Mr Mills: We don't. That doesn't mean people won't pay voluntarily or think that they need to pay if they don't understand that they can leave it outstanding while the dispute is resolved.

Correcting the incorrect statement.

We can confidently assert that the ATO regularly initiates debt recovery on debts disputed by a taxpayer. The statement by Mr Mills is incorrect.

A primary example is in the court record and judgment of *Bosanac v Commissioner of Taxation [2017] FCA 1057 (5 September 2017)*. The court record and judgment shows that the trial to determine the disputed debt was set for the 20th March 2017. Yet some forty (40) days before trial on 8th February 2017 the ATO issued a garnishee against Mr Bosanac for \$14,000 a month. That is, the debt of Mr Bosanac was clearly disputed yet the ATO initiated debt recovery action by issuing a garnishee.

4. Incorrect Statement: False mixed metaphor, roasting-boiling

The following is perhaps somewhat trite and silly but non-the-less contributes to understanding the reliability and accuracy or otherwise of ATO evidence.

The Hansard reads,

Senator KENEALLY: I note your language in your opening statement. You said that people at the ATO do not get up in the morning thinking, 'Who can I destroy today or boil to death?' Did the ABC assert that the ATO got up in the morning and sought to boil people to death?

Mr Jordan: There was a person on *Four Corners* who said that the people at the ATO—he had a bit of a mixed metaphor here—slowly boil people until we roast them to death. I can cook, so I know you don't roast when you boil, but nonetheless that's what he said. So, yes, he said that, and that was on the ABC *Four Corners* program—entirely inappropriate—

Senator KENEALLY: A person who was being interviewed said that.

Mr Jordan: to actually put someone on—notwithstanding who said it—to put a camera in front of someone, to say that we slowly boil people until they're roasted to death. How ridiculous. How ludicrous and absurd is such a statement.

Correcting the incorrect statement

The Tax Commissioners statement was wrong. The transcript of the Four Corners show, *Mongrel Bunch of Bastards* Mon 9 Apr 2018, reads

“They play games with you. They just pull you in, and then they cook you slowly, effectively until you are roasted and you are dead.”

There was no mixed metaphor in the Four Corners show.

Summary: Reason for highlighting the ATO incorrect statements

We have stated in submissions that we have lost faith in the integrity of the Australian Taxation Office. The trust of the Australian people in the Australian tax collection system is heavily dependent on perceptions that the ATO acts strictly honestly and truthfully in all its dealings. Our experiences over many years and many cases have caused us to no longer trust the ATO to be strictly truthful.

The four examples cited above individually could perhaps be excused. But together, they are an indicator of a pattern of behaviour where the truth of the ATOs statements cannot be relied upon. Each of the examples above involves situations where the truth should have been clearly known by the ATO.

The public expectation would be that incorrect statements, particularly before a Senate Committee are unacceptable. The 30th of May performance puts on display the ATO's approach to truth. This display we contend flows through into the ATO's approach to its model litigant obligations. The ATO's approach to its model litigant obligations we submit is all too often lax at best and dismissive at worst.

We strongly support the Judiciary Amendment (Commonwealth Model Litigant Obligations) Bill 2017.