

Dissenting Report by Labor Senators and the Australian Greens

1.1 Labor and Greens Senators stand proudly by their record of increasing the level of tax transparency and scrutiny that large Australian private companies are subjected to.

1.2 Introducing this bill will erode public confidence not just in the transparency of our tax system, which has been the subject of unprecedented scrutiny over the past 12 months, but it should also have the effect of undermining any public confidence in the integrity of this government.

1.3 The ATO gave evidence during this inquiry that one in five private companies earning over \$100 million do not pay *any* tax. This government should be making scrutiny of large Australian private companies a higher priority.

1.4 The arguments being wielded clumsily in defence of this bill are absurd, illogical, and often lacking any evidence.

1.5 This bill has few supporters, and the government is evidently doing the bidding of a tiny number of very wealthy individuals. There were just a handful of submissions to this inquiry, and other than tax consultants and tax lawyers servicing large private companies, the only corporation to make a contribution was Teys Australia, a privately owned meat processing joint venture with the American company Cargill, based in Brisbane.

1.6 As noted in the Chairs draft, under the existing provisions of section 3C(3) of the Tax Administration Act, from December this year the ATO will be required to publish the following basic information about large privately owned Australian corporations with revenue in excess of \$100 million:

1. Australian Business Number (ABN)
2. Total income
3. Taxable income or net income (if any), and
4. Income tax payable.

1.7 Much of this information is already a matter of public record, and its availability will not be affected by the introduction of this bill.

1.8 The public can easily find a corporations ABN by searching the Australian Business Register. Teys also published theirs (38 009 872 600) in a privacy policy document on their own website.¹

1.9 All Australian corporations must provide copies of their financial reports to ASIC (though there are some exceptions for small proprietary companies). The public can access a wide range of often detailed personal and financial information, including copies of documents lodged with ASIC. Financial reports can be purchased by the public, their competitors, nouse senators, or any other interested party (although we wish anyone trying to navigate the ASIC register the best of luck).

1.10 A copy of Teys 2014 financial report (7E7239508) is included as an appendix to this dissenting report. As anyone reading the summary on page 5 can quickly identify, Teys total income in 2014 was \$52,161,000, its net income was a loss of \$7,925,000, and its income tax payable was \$14,881,000.²

Unfounded logic

1.11 Labor and Greens Senators reject the ridiculous arguments the government is mustering to conceal this information.

1.12 Firstly, an individual's right to privacy of their income and tax information remains preserved under current legislation. Private corporations with revenues in excess of \$100 million and a single shareholder are not subject to current disclosure requirements. Corporations do not enjoy the rights and privileges of natural people.

1.13 It is important to note with respect to any allegations that privacy would be violated that the name and address of any current or past company directors are already available from ASIC. For example, according to the current company extract, the following information is available for the four Teys brothers:

Name: ROBIN WINSTON TEYS 00987260F

Address: 45 George Street, BEENLEIGH QLD 4207

Born: 06/07/1944, BRISBANE, QLD

Appointment date: 25/01/1995

1 <http://www.teysaust.com.au/wp-content/uploads/2014/12/Teys-Privacy-Policy-2015-final1.pdf>

2 There is a discrepancy in the report: total finance income is listed as \$375,000 on page 5, and \$376,000 on page 24.

Name: GARY CHARLES TEYS 018325757

Address: 20 Eastbank Terrace, HELENSVALE QLD 4212

Born: 05/12/1941, BRISBANE, QLD

Appointment date: 04/12/1986

Name: CLIFFORD GEOFFREY TEYS 7E1128498

Address: 16 Garvary Street, HOLLAND PARK QLD 4121

Born: 16/07/1955, BRISBANE, QLD

Appointment date: 25/01/1995

Name: ALLAN WALTER TEYS 7E1319642

Address: Unit 8E, 39 Castlebar Street, KANGAROO POINT QLD 4169

Born: 05/04/1935, BRISBANE, QLD

Appointment date: 16/04/1975

1.14 The press have rightly mocked the government's claims that making information about total income, taxable income, and taxes paid more readily accessible will somehow lead to an increased personal security risk for wealthy people. No evidence has been presented by any government Minister or agency, including the Australian Federal Police, of any increased risk to person or property. The claim is preposterous and remains utterly unfounded.

1.15 Changing existing legislation will not prevent access to personal and financial information, but it will simply make it more difficult to access, identify, and scrutinise.

Special criticism

1.16 Of the many criticisms Labor and Greens Senators have with the strawman logic being used to justify the introduction of this bill, none are in poorer taste than invoking section 17 of the International Covenant on Civil and Political Rights, the ICCPR.

1.17 Drafted at the United Nations General Assembly in 1966, section 17 of the ICCPR was drafted to prevent governments arbitrarily or unlawfully invading the privacy of people's homes and bedrooms:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

1.18 In 1994, Nicholas Toonen challenged the Tasmanian government under section 17 at the United Nations Human Rights Committee in Geneva, overturning state laws criminalising consensual sexual activities between same-sex couples.³ Section 17 was used as a defence in *Griffiths v Rose*, when an employer revealed that an employee was watching pornography at home after working hours on a company laptop.⁴ It has also been used as a defence in immigration cases where a deportation would result in the separation of parents from children, including *Winata*,⁵ and *Madaferri*.⁶

1.19 In evaluating the limits of the application section 17, the Australian Human Rights Commission observes that “the protection of privacy is necessarily relative. Balancing the rights to privacy and/or protection of reputation with the rights to freedom of information and expression presents challenges.”⁷

1.20 In case it needed any further emphasis, the Chairs draft (1.13-1.16) clarifies that both the Senate Standing Committee for the Scrutiny of Bills, and the Parliamentary Committee on Human Rights scrutinised the Bill and found no evidence that any human rights would be violated.

1.21 Labor Senators object to the invocation of section 17 of the ICCPR in the strongest possible terms. Invoking this instrument is an obnoxious attempt to misguide the public, press, and the parliament. It has no connection to tax privacy, and the claim deserves both derision and ridicule.

3 <http://www1.umn.edu/humanrts/undocs/html/vws488.htm>

4 <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FCA/2011/30.html>

5 <http://www1.umn.edu/humanrts/undocs/930-2000.html>

6 <http://www1.umn.edu/humanrts/undocs/html/1011-2001.html>

7 <https://www.humanrights.gov.au/publications/background-paper-human-rights-cyberspace/4-permissible-limitations-iccpr-right-freedom>

Recommendation 1

The Labor and Greens Senators recommend that the bill not proceed.

Senator Sam Dastyari

Deputy Chair

Senator Peter Whish-Wilson

Australian Greens Senator for Tasmania

**APPENDIX: copy of Teys Australia Pty Ltd
financial statements (40 pages)**

