

Ms Helen Petaia

Pursuant to Resolution 5(7)(b) of the Senate of 25 February 1988 Reply to speech by ATO Commissioner Mr Chris Jordan

May 30 2018 to the Senate Economics Committee

I wish to bring to the attention of the Senate Economics Legislation Committee statements made by Australian Taxation Office (ATO) Commissioner Chris Jordan (the Commissioner) on 30 May 2018 during Senate Estimates. As such, I seek, as permitted under (Protection of persons referred to in the Senate) Resolution 5(1)(a) and (b) and 5(7)(b) to make a submission to amend or incorporate in the parliamentary record in order to protect my personal and professional reputation and ensure emotional stability for my family. I also wish to express my disappointment that one of the most powerful public officials has used parliamentary privilege to spread false allegations.

Following the Senate Economics Legislation Committee's 30 May 2018 Senate Estimates hearing, I wrote to the Commissioner, on advice from a senior ATO officer (in the ATO dispute resolution area) where I raised my concerns and asked him would he correct his statements if I could detail to him some factual inaccuracies that implied association to me. I received a response on 1 June 2018 from Deputy Commissioner for Small Business, Ms Deborah Jenkins, stating that:

“the ATO absolutely stands by the Commissioner’s statements” and “at no stage did the Commissioner make any statements directly referencing you or divulging any taxpayer information”.

My reasons for disagreeing with the ATO on the above statement are as follows. I am concerned that the statements made by the Commissioner regarding what he said was a “**handful**” of taxpayer cases as reported on the *Four Corners* program, of which mine was one, was done in a way that completely misrepresents my case. Further, there was no separate recognition of my case to differentiate it from the limited cases as reported on *Four Corners*, (five in total) allowing me to be readily identifiable. As per Resolution 5(1), 'Where a person who has been referred to by name, or in such a way as to be readily identified, in the Senate... I contend I have been made readily identifiable by the Commissioner's actions.

Of particular concern is the accuracy of the Commissioner's opening statement, where he disclosed to the Senate in response to allegations reported on the *Four Corners* program that:

“...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 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, saying the invoices were secret, even though they were given a number of opportunities to show the necessary paperwork over a period of time.*
- *They could not 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 they did not have to pay tax on their income, and*
- *Expenses were concocted and invoices falsified...*

My fundamental concerns about the above statements made by the Commissioner are:

- he reasonably identifies my case notwithstanding the fact that he did not expressly name me personally, as my case was one of the five reported on *Four Corners*—this information is publicly available.
- he inappropriately associates my case with the spectrum of behaviours and actual examples set out above without any differentiation at all;
- he makes adverse inferences about my personal affairs and negatively impugns on my integrity;
- his statement is incorrect or misleading and, if not immediately corrected or publicly withdrawn, will cause further reputational damage to me personally and my business credibility as well as additional emotional disruption to my family who featured;
- he seeks to marginalise more vulnerable small business taxpayers in a manner that is reflective of an unfair or abusive application of power imbalance certainly suggesting you should not publicly challenge the ATO on any matter; and
- it should be noted, that information obtained under Freedom of Information describes my business in the ATO officers case notes as *“the taxpayer has a good compliance record”* and I further received an apology from ATO Assistant Commissioner Darryl Richardson which said: *“As stated during the 20 November 2014 telephone call, the audit result should not be taken to be an indication of incompetence or dishonesty on your part. In contrast, the results of the review confirm the legitimacy of making the claim for the Research and Development concession...I apologise for the stress the audit result has caused you and thank you for your cooperation during the review”* (5 December 2014).

The Commissioner also stated that the cases reported on *Four Corners* were:

“...a dossier of five or six mostly old cases that were known to us and mostly also known to the Inspector-General of Taxation.”

In response to these statements:

- the Commissioner has sought to present my case as an “old” and “known” case that is one of a “dossier” with emotive language that is inappropriate as I am a taxpayer, a person and a family member, not a dossier; and
- I understand that all complaints made to the Inspector General of Taxation (IGT) are confidential. The Commissioner in making this disclosure has sought to impugn the taxpayer in an inappropriate and unfair manner and is another example of the power imbalance noted above.
- My case is still current as my compensation matter has not being finalised.

In addition, I have concerns about the response I received from the ATO's Deputy Commissioner of Small Business Ms Deborah Jenkins, in relation to contacting the Commissioner to discuss the accuracy of his facts in the statement made before the senate. In her response to me she stated that:

"your appearance on the program and the airing of your personal tax matters was at your discretion"

Which implies to me that I am somewhat at fault for the situation been discussed before the Senate committee and publicly. I consider that the Commissioner's statements are inconsistent and irreconcilable as the ATO has clearly acknowledged its errors in my case.

ATO Apology

I have received an apology from the then Assistant Commissioner of Small Business for the manner in which the ATO had conducted its audit of my companies as well as the impact it had on me personally. He also made a public apology to my key stakeholders and in the presence of the ATO Audit Review Team. (I hold on record copies of these statements both written and verbal).

ATO Compensation

As a result of the ATO's handling of my tax affairs, I have had several offers of compensation by the ATO with discussions ongoing to find a settlement that is fair and reasonable. The most recent being shortly prior to the airing of the 4 Corners show.

Given the above, it is outrageous that the Commissioner would categorise any of my case history into his statements to the Senate as leverage for his response and inappropriate outburst to the media teams involved. With regards to my matters, the media coverage (4 Corners) was fair and accurate. The ABC professionals involved ensured accuracy by verifying my facts with evidence that is available. I also believe they have done a great service to our nation and to our government in drawing attention to the behaviour of some, not all ATO officers. I did not just wake up one morning and say, "I am going to go on national television, lie about my experience and make a public fool of myself". However after trying many avenues to engage with the ATO, I believed and still believe it is in the public interest to understand the unfair treatment by the ATO of small business in Australia.

The Commissioner also went on further to say:

"...most certainly do not just make up debts, add 90% penalties and sell people's homes without them being able to dispute the debt. These are such ridiculous allegations ...that it beggars belief that the ABC would present them as somehow the result of an investigation..."

...For a start, you need a court order to seize a property, and 90% penalties are generally for organised criminal activities and severe offshore tax evasion. "

Loss of my home

There has been commentary by both Fairfax and Four Corners, with regards to my home and the penalties I received in the incorrectly raised assessments. I am not comfortable with this public discussion, but it is important for people to know the extreme impacts of system breakdowns by the ATO. By inference it would appear the statement above is in regards to my matters with the ATO as none of the other cases discussed talked about a "house".

At no time did I ever say, "the ATO forced me to sell my home or threatened to sell my home".

ATO statutory demand letter

On receiving a hand delivered statutory demand Form 459E at my front door step from the ATO, I was aware that if there was not an intervention, the ATO may well proceed to such measures if they deemed it necessary in their debt collection process. This would be a normal thought to anyone presented with this level of aggressive debt recovery and only allowed 35 days to comply, (it also came without warning that is detailed further below).

I believe the Commissioner's comments are in reference to what was reported in the media where I said "I have lost my home" and *at no time* did I ever reference that the ATO threatened to sell my home. His comments are completely contradictory to the spirit of private discussions I had with the ATO in trying to save my family home from a forced bank sale. To use his words, "these are such ridiculous allegations" when in fact these allegations were never made; that the ATO sold my home.

Like many small business owners who find themselves in a situation where your cash flow dries up (due to unforeseen disruptions—in our case a completely defective ATO process and aggressive debt recovery action) this is your lifeblood. A consequence was falling into arrears on our mortgage that culminated in an emergency sale to avoid a bank repossession, as we were still waiting for restoration of our business and pursuing compensation is a lengthy and onerous process.

90% penalties

With regards to his comments on "90% penalties" once again I have publically disclosed to the media that I was given 50% penalties for allegedly making false and misleading statements and for recklessness, (later to be withdrawn by the ATO) but at no time have I ever claimed this to be 90%.

These statements in reference to any reporting by Fairfax or Four Corners by the Commissioner are completely fabricated by him, to use his own words it "beggars belief"—of course because it was never said nor was it ever reported.

I would also like to address this comment by the Commissioner below:

*"...No, because when we found out that basically this was a regurgitation of a dossier that has been flogged around town for a **number of years and the particular person behind that**, I didn't think it was something I should engage with at that low level. "*

- Firstly, the person referred to does not represent me or my dealings with the ATO, although clearly our paths have now crossed and we are both witnesses to ATO actions. I am represented by my own legal and accounting advisors and I also represent the interests of my shareholders.
- Secondly, I have only known this person for just over a year so they could not have been "flogging" my dossier regurgitation around town for "a number of years" - whatever that even means.
- Finally, I find it offensive that the ATO Commissioner, by inference would imply my matter is "**low level and therefore not something he should be wasting his time on**", as if to suggest one has to be a high level taxpayer to be of importance to the

Commissioner. This reinforces my belief that a separate agency should perhaps deal with the large and valuable segment of the SME Taxpayer Community who can be focused and specialised in dealing with in particular, disputes that do arise. This is my personal view based on my experience.

I would like to also address the comments made in respect of Debt Recovery. In the subsequent Estimates discussions with the Committee, questions arose with regards to the debt recovery processes. My experience with the ATO involved two separate companies who both had incorrectly raised amended assessments, resulting in debts that the ATO said were “recoverable”. There are details, for the sake of time I am skimming over, (I have provided full details to the Inspector General of Taxation re debt recovery investigation) which no doubt will frustrate the ATO's interpretation, putting that aside, here is a table summary of my experience.

Action	Company 1	Company 2
Disputed Debt Raised	Yes	Yes
Telephone calls from debt recovery	No	No
Garnishee Orders Issued	Yes	No
Debt Case Manager Assigned	Yes	No
Directors Security Requested	Yes	No
Ongoing Communication to Debt Manager	Yes	None appointed
459E Stat Dec hand delivered	No	Yes
Debt Firmer Team Actioned	No	Yes

The above table illustrates, that even in the answers to the Committee by both the Commissioner and his Senior Team, that there is no process that is precisely followed, despite their comments to the contrary. Given the steps taken in Company 1, at least it alerted us to call the ATO and discuss, however in Company 2, there was no process, only a service delivery to my home address of a the 459E statutory demand notice. At least if we had been sent a garnishee we could have actioned a response.

In conclusion, prior to tabling this submission to the Senate Economics Committee, I requested the Inspector General of Taxation (IGT) to formally investigate the comments made by the Commissioner to the Senate. I did this after also respectfully approaching the Commissioner directly to request he retract his statements if I could substantiate to him why I believe he was wrong. As already indicated, he has declined this offer.

I respectfully draw this response from the ATO to the Senate Economics Committee for consideration to also refer to the Privileges Committee per advice from the IGT. If there is a suggestion of possible breach of privilege by the ATO Commissioner then I would like the matter to be examined by the Privileges Committee.

I am now in a position to table the result of the complaint investigation undertaken by the Inspector General of Taxation that I received on 24 July 2018, see Appendix A. Inspector General of Taxation response to Helen Petaia.

I seek the right of reply and ask that my response be published by the Senate and/or be incorporated into Hansard as per Senate Resolution 5(7)(b).

Helen Petaia

27 July 2018



Australian Government
Inspector-General of Taxation

Telephone: 1300 44 88 29
Facsimile: 02 8239 2100

GPO Box 551
Sydney NSW 2001

Our reference number: IGT/18/01066

24 July 2018

By email only to: [REDACTED]

Dear Mrs Petaia,

RE: UPDATE ON THE PROGRESS OF YOUR COMPLAINT

As previously advised, we had a meeting with the ATO on 18 July 2018 to discuss the concerns you have raised in relation to the Commissioner's opening statement to the Senate Committee on 30 May 2018 (Issue 1) and Deputy Commissioner Jenkins' response of 1 June 2018 (Issue 2).

A summary of the discussion points from our meeting, so far as they relate to Issue 1, are set out below.

During our meeting with the ATO, we raised your concern that the Commissioner's opening statement could be seen as having disclosed protected taxpayer information and that you have requested the IGT to independently investigate this matter for you.

The ATO considered your concern and informed us that parliamentary privilege applies in relation to the Commissioner's opening statement. The Appendix below contains an excerpt from the response received from ATO General Counsel.

As parliamentary privilege is claimed, it is beyond the IGT's powers to investigate the matter further. However, we have sought to assist you by considering the other avenues that may be available to you. We note that the Senate Standing Committee of Privileges may be able to assist you, as the appropriate body to inquire into matters of privilege. In this respect, you may wish to contact the Committee Secretariat directly about your matter through the following channels:

Website: https://www.aph.gov.au/senate_privileges

Phone: +61 2 6277 3360

Fax: +61 2 6277 3199

Email: priv.sen@aph.gov.au

If you have any questions or would like to discuss this email further, please do not hesitate to contact me by dialling 1300 44 88 29, choosing Option 1 and entering the extension [REDACTED]. Alternatively, you can email me at service@igt.gov.au ensuring you include our reference number in the subject line of your email.

Yours sincerely,

[REDACTED]
Director – Tax Complaints and Review

Appendix – Excerpt from the ATO’s response

Section 15 of the *Inspector-General of Taxation Act 2003* (the IGT Act) provides that subsection 5(2) of the *Ombudsman Act 1976* applies to the Inspector-General.

Subsection 5(2)(aa) of the *Ombudsman Act* provides that the Ombudsman is not authorized to investigate action that constitutes proceedings in Parliament for the purposes of section 16 of the *Parliamentary Privileges Act 1987*. Therefore, the Inspector-General is not authorized to investigate action that constitutes proceedings in Parliament for the purposes of section 16 of the *Parliamentary Privileges Act*.

Section 16 of the *Parliamentary Privileges Act* provides that proceedings in Parliament means all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of a House or of a committee, and includes:

- The giving of evidence before a House or a committee, and evidence so given;
- The presentation or submission of a document to a House or a committee;
- The preparation of a document for purposes of or incidental to the transacting of any such business; and
- The formulation, making or publication of a document, including a report, by or pursuant to an order of a House or a committee and the document so formulated, made or published.

It appears to us that the Commissioner’s opening statement to a Senate Committee on 30 May 2018 constitutes ‘words spoken in the course of, or for purposes of or incidental to, the transacting of the business of a committee’ or ‘the giving of evidence before a committee, and evidence so given’, and so it constitutes the transacting of the business of a committee, and any information surrounding the Commissioner’s opening statement, for instance preparatory activity and material, would be incidental to the transacting of the business of a committee.

Accordingly, any investigation related to the Commissioner’s opening statement would be unlawful. We understand that Ms Petaia has already been in contact with the relevant parliamentary staff about this issue.