

Chapter 1

Introduction

The Referral

1.1 On Thursday, 18 March, 2010, the Senate referred the provisions of the Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009 to the Privileges Committee for inquiry and report.¹

Reason for the referral of the provisions of the bill

1.2 The Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009 was referred to the committee with particular reference to the provisions in the bill relating to the disclosure of taxpayer information to parliamentary committees and the conflict which these provisions may have with the *Parliamentary Privileges Act 1987* (the Privileges Act).

1.3 Specifically, the bill seeks to place conditions on the access by parliamentary committees to certain information, and in so doing, fundamentally undermines both the powers and immunities of parliamentary committees and the rights of unfettered access by witnesses to parliamentary committees.

1.4 A further feature of the provisions in question is the application of a criminal sanction to a witness who gives evidence to a parliamentary committee in other than defined circumstances, in contradiction of three and a half centuries of parliamentary law.²

1.5 The particular provisions of concern to the committee are contained in Subdivision 355-B and 355-C of Schedule 1 of the bill. These provisions are set out at Appendix 3.

1.6 These provisions place limitations on the information tax officers can provide to parliamentary committees and the circumstances in which it can be provided. Furthermore, in the event of legal proceedings arising out of the operation of the provisions, either proceedings in Parliament would necessarily be called into question, in contravention of the Privileges Act, or the Privileges Act would have to be read down so as to permit such questioning.

1 *Journals of the Senate*, 18 March 2010, p.3399.

2 Article 9, Bill of Rights 1689, "...proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament".

1.7 The committee notes that it is the purpose of the Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009 to amend a range of secrecy and disclosure provisions applying to taxation information to provide a consolidated and standardised statutory framework with the objective of protecting the privacy of taxpayer information.³ The committee has no concern with the overall purpose and approach of the bill.

1.8 What is of concern to the committee is that, in addition to this purpose, the bill includes a new policy departure by placing limits on access to information by parliamentary committees and by imposing criminal sanctions on witnesses who disclose information to parliamentary committees other than in prescribed terms.

Background

1.9 The Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009 was introduced in the House of Representatives on 19 November 2009 and is still before that House.

1.10 The bill as introduced is the result of a review and consultation process to consolidate and standardise the existing secrecy provisions in taxation legislation by introducing a new framework into Schedule 1 to the *Taxation Administration Act 1953*. These aspects of the bill are dealt with in detail by the Senate Economics Legislation Committee in its report on all of the provisions of the bill.⁴

Other Senate consideration of the bill

1.11 Two Senate committees have examined the bill. The Senate Standing Committee for the Scrutiny of Bills commented on the bill in November 2009⁵ and reported on it in February 2010.⁶ The Economics Legislation Committee reported on the provisions of the Bill on 11 March 2010.⁷ Neither committee addressed the particular issues of interest to this committee.

3 Explanatory Memorandum, p.3.

4 Economics Legislation Committee, Report, *Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009 [Provisions]*, March 2010.

5 Scrutiny of Bills Committee, Alert Digest No 15 of 2009, 25 November, p.23.

6 Scrutiny of Bills Committee, Report No.1, p 32.

7 Economics Legislation Committee, Report, *Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009 [Provisions]*, March 2010.

Conduct of the inquiry

1.12 The committee advertised the inquiry in the national press, on its web page and contacted a number of individuals and organisations inviting submissions to be lodged by 9 April 2010.

1.13 Nine submissions were received. A public hearing was held in Canberra on the evening of 13 May 2010, at which evidence was heard from the Clerk of the Senate, Dr Rosemary Laing, Mr Paul McCullough, Mr Raphael Cicchini and Mr Ashley Bell of the Department of the Treasury and Associate Professor, Dr Anne Twomey of the University of Sydney.

1.14 A list of submissions to the inquiry received by the committee is at Appendix 2.

1.15 The committee would like to thank all those who contributed to and participated in the inquiry.

1.16 In examining the proposed bill, the committee has referred to the submissions received in response to this inquiry as well as to the deliberations of the Senate Standing Committee for the Scrutiny of Bills and the Economics Legislation Committee.

