



PRIME MINISTER

STATEMENT BY THE PRIME MINISTER THE HON P J KEATING, MP

ACCESS TO TAX FILES

The Government's decision to maintain the confidentiality of taxpayers' files despite a request from the West Australian Royal Commission into Commercial Activities of Government was based entirely on advice from the Australian Taxation Office.

The principal solicitor assisting the commission asked me in a letter dated April 15, 1991, for an amendment to the Income Tax Assessment Act to enable the commission to investigate taxpayers' files.

As Treasurer, I sought advice from the Australian Taxation Office. The Commissioner's reply was received in my office on May 3, 1991 and is attached to this statement.

Mr Boucher advised that a similar request for access from the Gyles Royal Commission in New South Wales had been denied some months earlier, and referred to his minute on that subject.

He was also of the view that the WA Commission should be denied access to income tax information.

He wrote that, for reasons of good tax administration, he was strongly of the view that the current level of secrecy of income tax information should not be disturbed.

"The decision by the Government to allow the Fitzgerald Inquiry access to income tax information in 1987 was taken to meet a special need of the time. I would be most concerned if that decision is seen as a precedent to allow access for all future State Royal Commissions," he wrote.

This "special need" resulted from the fact that the Fitzgerald Inquiry preceded legislative measures to allow State police commissioners to seek tax information from the Taxation Commissioner within the framework of existing law.

The Commissioner concluded with his recommendation, "that the Government not support the WA Commission's request for access to income tax information."

Mr Boucher's advice and recommendation were accepted, and I signed a letter, dated May 21 and embodying his advice, to the Royal Commission.

I stressed in that letter that there was a capacity for law enforcement officers to obtain tax information pertaining to specific cases.

Any suggestion that there was a party political motivation in my decision is ludicrous.

I not only accept but I support Mr Boucher's recommendation because the Income Tax Assessment Act states that tax files should remain confidential.

The onus is on those who want access to them to establish why they should have it, not on the Treasurer or the Taxation Office to establish why they should not.

Finally, I refuse to accept Mr Templeman's excuse that any inadequacy or failings of the Commission process are a result of the view of the Tax Commissioner. I find that implication both offensive and self-serving.

As I have made clear, if the Commission believes there are outstanding matters which would be assisted by the availability of more tax information there is a mechanism available for these issues to be raised with the Australian Tax Office.

Indeed, if any authorised law enforcement agency were to seek tax information to assist them in any investigations or prosecutions prompted by the report of the Royal Commission then the Tax Commissioner is empowered to provide such relevant information under the amendments to the secrecy provisions of tax law made after the Fitzgerald Royal Commission.

CANBERRA
May 13 1992

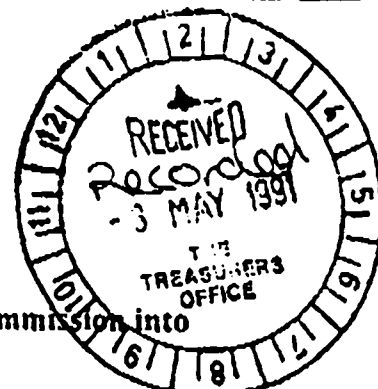
No. 133

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CONFIDENTIAL
AUSTRALIAN TAXATION OFFICE
MINUTE PAPER

Agreed as recommended
 for signed.
 21/5/91
 PJK.

27.1.90/ETC :
 Treasurer



Access to income tax information by the WA Royal Commission into Commercial Activities of Government

You have received a request from the West Australian Royal Commission into Commercial Activities of Government (the WA Commission) that they be allowed access to income tax information (copy attached). The WA Commission would like access along similar lines to the access given to the Fitzgerald Royal Commission in 1987. A similar request for access for the Gyles Royal Commission of New South Wales was recently rejected by the Government (our minute No. 177 of 19 December 1990 refers - relevant papers also attached).

2. I am also of the view that the WA Commission should be denied access to income tax information. For reasons of good tax administration, I am still strongly of the view that the current level of secrecy of income tax information should not be disturbed.

3. As I said in my minute of 19 December, the continued confidentiality of income tax information is important to the gathering of such information from taxpayers and other persons. Those people are, I believe, more likely to disclose information voluntarily where they can be confident that the use of the information, other than for tax purposes, is limited.

4. The omnibus provisions for Royal Commissions are longstanding ones limited to those Commissions established by the Commonwealth, and our consistent position has been to advise against any widening of them. The decision by the Government to allow the Fitzgerald Inquiry access to income tax information in 1987 was taken to meet a special need of the time. I would be most concerned if that decision is seen as a precedent to allow access for all future State Royal Commissions. It is our experience that once a Royal Commissioner makes the claim that he needs information for purposes of his enquiry, we cannot look behind the request even though it is of a wide ranging (even "fishing") nature.

5. I should also point out that we already help certain State (and other) law enforcement agencies, within the framework of the existing law, wherever possible. For example, income tax information may be communicated to State Police Commissioners in certain circumstances, either on my own initiative or in response to a request by an authorised law enforcement officer. In the latter case, the request could be made in the context of an investigation subsequent to the completion of a Royal Commission, provided the information sought relates to a particular offence by a specified person - "fishing" exercises are not permitted.

CONFIDENTIAL

Recommendation

6. It is recommended that the Government not support the WA Commission's request for access to income tax information. A draft reply to the Commission is attached for your signature, if you approve of the recommendation.



(T.P. Boucher)
COMMISSIONER OF TAXATION

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*Refer to document
now done 7/5/91*