

# Tax Office's civil war over PwC puts spotlight on the failure of neoliberalism

13 Feb.—The corruption and conflict-of-interests scandal surrounding global professional services firm PricewaterhouseCoopers' misuse of privileged information on planned federal taxation laws continues to spread. The rest of the consulting and auditing sector had already been caught up in the scandal, but now it has also spread to the Australian Taxation Office itself. The ATO has previously expressed frustration at the overweening official secrecy laws which for several years prevented it from sharing evidence of PwC's criminal misconduct with other government agencies. Yet in the past week it has been revealed in media reports, and subsequently confirmed during hearings of the Senate inquiry into the PwC affair, that the ATO's leaders themselves were abusing those very same secrecy provisions in an attempt both to limit and control the investigation of PwC by federal regulatory body the Tax Practitioners Board (TPB) that eventually brought the company's wrongdoing to light, and to destroy the career of the lead investigator.

Key to the issue is that whereas the latter, TPB chief executive Michael O'Neill, is a career ATO officer with a record of involvement in high-level investigations and tough enforcement actions going back more than 30 years, the people trying to take him down are all former partners of the "Big Four" international consulting firms—including two *who were still receiving payments from PwC* at the time—who appear to have been more concerned with protecting their own and their industry's reputation, and the privileged position therein that the Big Four (PwC, KPMG, EY and Deloitte) enjoy, than with enforcing the law or protecting the national interest. The exposure of such a blatant conflict of interest inside the ATO highlights once again the abject failure of the neoliberal model of governance the Labor/Liberal political duopoly has inflicted upon Australia, in which many essential functions of government have effectively been outsourced to the private sector—either directly, or by hiring so-called "poachers-turned-gamekeepers" to run government departments and agencies. It also invites the question of how many previous instances of similar corruption have been swept under the carpet, and indeed whether this one would ever have seen the light of day either, before the growth of the Senate crossbench in recent years which has at last begun to weaken the twoparty stranglehold.



Tax Practitioners Board CEO Michael O'Neill. Photo: Screenshot

## A brief recap

The root of the scandal is that beginning in 2013, PwC Australia's then-head of global tax practice Peter-John Collins illegally shared information he obtained as an advisor to Treasury during the development of the *Tax Law Amendment (Combating Multinational Tax Avoidance) Act 2015* (a.k.a. the "Multinational Anti-Avoidance Law", MAAL) with his colleagues, so PwC could develop strategies for its clients—principally US tech companies—to sidestep the law the moment it came into effect in

January 2016.<sup>1</sup> Collins and PwC then did likewise regarding the Diverted Profits Tax in 2017, and various subsequent measures pertaining to so-called "hybrid structures" whereby companies dodge taxes by exploiting the differences in the treatment of a financial instrument or business entity in different countries. On 23 January 2023 the TPB, the national body responsible for registration and regulation of tax agents, announced in a press release that in December 2022 Collins (who by then had left the firm) had "been deregistered as a tax agent for integrity breaches" and banned from the industry for two years. "In addition", the release stated, "the TPB investigation determined that PwC had failed to properly manage conflicts of interest, ... [and had] breached its obligations under the law and the Code of Professional Conduct."

The TPB's revelation sparked a still ongoing inquiry into the affair by the Senate Standing Committees on Finance and Public Administration, initiated by Greens Senator Barbara Pocock of South Australia, which has also spilled over into Senate Estimates. On 30 May 2023, Commissioner of Taxation Chris Jordan and Second Commissioner Jeremy Hirschhorn told the Senate the ATO had become aware of Collins' and PwC's breach of confidentiality by late 2017, and had shared its evidence to that effect with the Australian Federal Police (AFP) early the

following year.<sup>2</sup> But after more than a year of "considering" the case, they said, during which the AFP repeatedly requested further information the ATO was either not legally able to acquire or was constrained by secrecy provisions from sharing, the investigating officers informed the ATO that they had dropped the case for want of evidence. The fallback option was to refer a misconduct complaint to the TPB, which the ATO duly did in July 2020.



ATO Second Commissioner Jeremy Hirschhorn and Commissioner of Taxation Chris Jordan, both formerly KPMG. Photo: Screenshots

Jordan and Hirschhorn implicitly blamed the almost two-and-a-half-year delay between referral and result on similar tardiness by the TPB, unfortunately likewise exacerbated by ATO secrecy rules. An 8 February exposé in the *Australian Financial Review*, however, tells a very different story. According to *AFR* senior investigative reporter Neil Chenoweth, whose reporting a year ago helped blow up the scandal and get the Senate inquiry rolling, Jordan and other ATO officers in fact weaponised those secrecy provisions against the TPB, and also “made multiple attempts to sideline or to engineer the dismissal of board chief executive Michael O’Neill because of his team’s actions in investigating PwC”. Their apparent aim was to restrict the TPB’s investigation to Collins as an individual, thereby protecting PwC and by extension the neoliberal government-by-consultant model from scrutiny.

## A house divided

The stoush between the TPB and ATO is essentially a civil war within the latter, given that O’Neill and the rest of the Board’s approximately 150 staff are in fact on secondment from the ATO anyway. As Chenoweth put it, “The pursuit of O’Neill, a career tax officer, reflects cultural tensions within the Tax Office, where three of the four top positions are held by former partners of the big consulting or law firms”—including Jordan and Hirschhorn, both of whom held senior roles at KPMG before they joined the ATO in 2012 and 2014 respectively. “Senior tax officers are said to be deeply unhappy over the public revelations last year about the PwC tax leaks and ongoing Senate inquiries, which raised questions about the Tax Office’s relations with big four firms and why it took six years to bring the PwC tax scandal to light.”

O’Neill is described as having had a “stellar career” as an investigator for the ATO going back to 1988, when he “was reportedly one of ‘Boucher’s raiders’ (named after tax commissioner Trevor Boucher), the 37 tax officers who raided Citibank and seized hundreds of documents regarding an alleged tax avoidance scheme.” Later he headed the ATO’s decade-long Project Wickenby that chased down the offshore accounts of wealthy individuals, one of whose success stories was forcing a (confidential) settlement for tax avoidance out of billionaire Australian-Israeli shopping mall mogul Frank Lowy in 2011. “O’Neill went on to work on Australia’s response to the international profit-shifting laws targeting multinationals”, Chenoweth reported, “including sitting on consultation committees with PwC partner Peter Collins.” He was appointed chief executive of the TPB in 2018.

The TPB formally opened its investigation of Collins in January 2021, six months after the ATO’s referral. “But the two regulators fell out after the board broadened its investigation to include PwC”, wrote Chenoweth. “The Tax Office considers that the board *should be restricted to regulating individual accountants and small firms, leaving the major firms to the larger agency.*” (Emphasis added.) So when the TPB in June 2021 asked for “documents about PwC’s engagement with multinational clients”, he reported, the ATO refused to provide them. Evidently O’Neill found a way to get hold of them anyway—whereupon Jordan went ballistic. “By late August 2021, the commissioner asked to address the board”, wrote Chenoweth. “Jordan appeared at the board’s 1 September meeting where he launched a ferocious attack on what he described as an illegal investigation by board officers, who he said had accessed ATO records without consent. ... Jordan had not disclosed what he planned to speak about and board members have described being blindsided by the attack.”

## Poachers-turned- ... nope, still poachers

Two days later “the board met confidentially without O’Neill present to discuss the commissioner’s serious concerns”, Chenoweth reported. “Several members pressed for O’Neill to be sacked.... The split in the eight-member board was deepened by the

*involvement of two former*

*PwC partners, Judy Sullivan and Peter Hogan. They had recently been appointed to the board by Assistant Treasurer Michael Sukkar. He and his chief of staff Barmak Amini are both PwC alumni.*” (Emphasis added.) At the time they were appointed, both Sullivan (who has since left) and Hogan were recipients of PwC’s pension scheme, which reportedly averages \$140,000 a year. The pair had therefore been excluded from the Collins/PwC investigation, per standard conflict-management procedures; however “Jordan’s failure to notify the board about what he intended to discuss meant that [they] were both allowed to be at the 1 September meeting. As a consequence, they were an active part of the discussion two days later ... [on] whether to discipline O’Neill and whether the PwC investigation should be reined in.” Jordan followed up three weeks later with a “scathing” letter to then-TPB Chairman Ian Klug “accusing the board’s team of misleading the ATO, accessing confidential settlement agreements with PwC’s multinational clients, and sending production orders [i.e. legal orders to hand over company records] to the US multinationals”, reported Chenoweth. “The board’s staff’s actions were ‘inexplicable’, ‘extraordinary’, ‘highly inappropriate’, ‘serious overreach’ and ‘a deliberate disregard for the Tax Office concerns and an attempt to conceal these notices from us’, Jordan wrote. He would ‘strongly suggest’ winding back the PwC investigation by ‘withdrawing the



Senators Deb O'Neill, Richard Colbeck, and Barbara Pocock are all asking hard-hitting questions. Photo: Screenshots

notices' sent to the multinationals."

In response to Jordan's complaints, the TPB reportedly mounted an internal review of its investigators, by two (unconflicted) board members. The ATO meanwhile lodged a separate complaint "that O'Neill had been bullying ATO staff with unreasonable demands for documents", wrote Chenoweth. "This was a serious charge which triggered a separate review. However, no substantiation was offered, and no tax officer was identified as the victim of bullying." When that claim failed and neither review found any wrongdoing, the ATO demanded a third review of the PwC investigation, this time by an independent mediator. "Richard Oliver, a former public servant, spent several months conducting a workplace assessment.... This too came to nothing." But the ATO still wasn't finished: Chenoweth reports that it also fought strenuously to stop the TPB complying with the Senate inquiry's request early last year for what turned out to be very incriminating internal PwC emails, "citing secrecy laws, risks to ongoing investigations and the dangerous precedent for breaching taxpayer confidentiality"; and after that, too, failed, an unnamed senior ATO official in June last year, apparently out of pure vindictiveness, pressed the agency's fraud prevention team to open an investigation into the TPB for supposedly leaking protected information to the AFR. The fraud team declined.

At the 9 February hearing of the Senate inquiry into the PwC affair, Hirschhorn and new TPB chairman Peter de Cure (Jordan and Hirschhorn's former colleague at KPMG) "both denied that tension between the ATO and the board had impacted the investigation", Chenoweth reported in a follow-up article that evening, with Hirschhorn calling his exposé "fundamentally misleading at best. ... I dispute that some of [the events described] happened. I dispute the characterisations of others." O'Neill however, in response to a question from Senator Pocock, confirmed that the article—including the bit about the abortive attempt to have him investigated for fraud—was "essentially true", and that the ATO's actions had "'certainly' affected his team's ability to investigate the PwC matter in a range of ways".

Pocock, a genuine subject-matter expert who before her election to the Senate in 2022 was a professor of economics at the University of South Australia, was particularly scathing that Sullivan and Hogan had taken part in the 1 September 2021 board meeting Jordan had ambushed—let alone been allowed to join the discussion of O'Neill's potential sacking, two days later. "It was something of critical importance to PwC and its leadership and its financial outcome", she said. "And they did not say to the chair of the meeting, 'This is PwC, I'm out of here.' That is a major problem. And any member of any board across the country, public or private organisation, would know that's something where you put your hand up, declare your interest and get out of there." De Cure could only reply, "I agree"; and also acknowledged, in what might be the understatement of the year, that (per Chenoweth's paraphrase) it "was an unusual arrangement for people to be on a government board like the TPB when they were receiving remuneration" from entities it regulates.

The question is, what will the Senate committee propose to do about it? Happily, the major-party senators involved also appear increasingly disturbed at the implications of the ever-widening scandal. New South Wales Labor Senator Deborah O'Neill, whose questions in Senate Estimates forced the release of the PwC emails last year, has from the outset been as dogged and unflinching in pursuit of PwC as has Pocock herself. And Tasmanian Liberal Senator Richard Colbeck, who chairs the committee, thanked Michael O'Neill profusely at last week's hearing, telling him that "We do appreciate very much the tenacity of the work that you've done in dealing with this matter. It's an extremely important piece of work. It has driven and derived reform to the way the system works, for the better." As always, however, one should not count unhatched chickens. The inquiry was originally due to conclude by 26 September last year, but has since been extended (twice) and will now present its final report on 28 March. We await its findings with interest.

#### **Footnotes:**

- [1.](#) "Outsourcing of government made PwC scandal inevitable", AAS, 24 May 2023.
- [2.](#) "PwC scandal enabled by perverse secrecy laws", AAS, 31 May 2023.

*By Richard Bardon, Australian Alert Service, 14 February 2024*