&XUWDLOLQJ DJJUHVVLYH WD
LQWURGXFLQJ PDQGDWRU\ GLV
$XVWUDOLD SDUW

$QQHW :DQ\DQD DQG XWWXD\LV .XPDU

Abstract

*OREDOLVDWLRQ KDV LQFUHDVHG RQ QRQ RQW XSW\ WLHVHIRHUV DEJ\PNOWLYH WDWLRQ SDOO H
WD[DGPLQLVWUDWLRQV PD\ QRW DOXBDHK QYHWLPLQORUPDWULJRQ HDGERXQG WKHVH
D VWUXJJOH IURP D SROLF\ SHUVSHFODZHD VHL QHHVKRWLV WKDQLQQ SURWKXOKWHHYHH

2QH H[FHSWLRQ LV WKH XVH RI PDQG KMHRUU GHXEORIVXKH XSXORQ WO'GVVFORVXUH
UXOHV FDQ SURYLGH JRYHUQPHQWV ZLSWRQ OWKRUKUTDXLFSDUWHQF\WQDH HULGHVN WR U

7KLV DUWLFOH H[SORUHV WKH JHQHLUQ OSODFDWH IRUHLVOHQWQWLRQX FLDO FDVH 5 OWEXG\ RI $X
FRQVLGHULQJ ZKHWKHU WR DGRSWHGXFKQ DS SDUWL PH E\WK EH RPSDLODOO WL YHROOKRZO DQG
DSSO\ LQ WKH 8. DQG 6RXWK $IULFZQ FIFRQWDWHWLQ IVVKHDW LSVHU IILQQIFHDUPRQJ D UHJLF
LQ RWKHU &RPPRQZHDOWK ODZ MXULVGLFWLRQV VXFK DV $XVWUDOLD
                         LRQDOV LQWHUQDWL

1. INTRODUCTION

*OREDOLVDWLRQ KDV LQFUHDVHG RSSRUWXQLWLHV IRU
PXOWLQDWLRQDO HQWHUSULVHV ZKLFKHRIW\HQWDLOORSVWL
ORRSKROHV LQ WD[ODZV ZLRWZKLYHQOHWDKH SHUVDPHHPHVVPI
ZHOO EH\RQG ZKDW LV OHJDOO\ DQFFDSWDRQN EKDXWLQDYD
QR DFWXDO HFRQZKLFK SDUHFWWQDQWXUQ DW RGGV ZLWK WK
WD[OHJLVODWLRQ

%(36 ZKLFK UHFRPPHQGHG XVLQJ 0'5V WR FKDUWXDLO\ $73
LVVXHG D 'LVFXWVWDWRQVRXSJKW FRPPXQLW\ YLHZV RQ KR
IUDPHG LQ WKH $XVWUDOLDQ FRQWHUWUXOHDV DQJHHGDLUQ
$OWKRXJK WKH FORVLQJ GDWH IRU VREHULQPHQW DZWLFL
IXUWKHU FRQVXOWDWLRQV RQ LPSOHPHQWDWLRQ GHVLJ

7KLV WZR SDUW VWXG\ H[SORUHV WKHFWLVGJIRU LSODWWR
FDVH VWXG\ RI WKH $XVWUDOLDQ M[SHDUGLHSQWFVXKFRQVUH
WR EH IROORZHG LQ SDUW E\ D RZPSWKDUHDWHLYEXOOHVDDS
WKH 8. DQG 6RXWK $IULFD ZKRVH H[QHIUDPQQHVD PDUHJEHPH
VXLWDEOH IRU DERROXWLRQWLQODD&RPXULVGLFWLRQ

6SHFLILFDOO\ WKHD$XXLW<GFXVVLDRQQ 3DSHU VHUYHV DV D I
DQDO\VLV LQ WKLV DUWLFOH ZKPSJKZKHQ VSULYRUGHN SURHQV
WKH PDWWHUV UDLVHG LQ WKH FRQWZKHWWRKHD MRULLQWGU
0'5V ,W KLJKOLJKWV WKH REMHFWLYHLQ DQG SRQYDQWDJH
FRQFHUQV LQ WKH 'LVFXVVLRQ 3DSHUFHLWKDUHLUQHRVUWKW
DYDLODEOH WR WKH $XVWUDOLDQ 7DRQ SLRQ, WSULFRYLSGE
UHFRPPHQGDWLRQV WR HQVXUH WKDWWHUWKDS ZXOWKVHGRV
GLVFORVXUH UXOHV

KDYH VLQFH XQGHUJRQ ZHPOQ IRFXQ JHQV WKH XVH RI DEXVI
,W ZDV IROORZHG E\ &DQDGD ZKLFK HLJQPH IRQ DVSWHFG ID FV
SODQQLQJ DUUDQJHPHQWV LQYROYLQ XX LJV LWLRQ DU USDQRSH
DQG ZKLFK DOVR LQ -XQH HQDFWHG UHSRUWDEOH WD

WDNLQJ LQWR FRQVLGHUDWLRQ WKHILHHO W ZH OO UDWN
DGPLQLVWUDWLYH FRVWV IRU WD[DGPLQLVWUDWLRQV I

)RU FRPSOHWWKHQ WHVP µDJJUHVVLYH WD[SODQFRLQQLQJ G$73
E\ WKH 2(&')RUXP RQ 7D[$GPLQLVWUDWLKWLGRQQ 7KH \)RUXP
WR EULQJ WRJHWKHU WKH KHDGV RRXWWUIDXHWKRQGWLRHPH
2(&' FRXQWULRSVHWRHGWLYLH UHVSRQVH WR FXUUHQW WD[
FRROODERUDWLQLYH ZDK)RUXP KHOG D PHHWLQJILHHG 6RXWK
$73 DV RQH WKH LVVXHV WKH\ ZRXOGUHRFOXWLRQGVWRDFRW
ZLWK PHDVXUHV WR FROPXOHUVURWWVKND DRUXP H[SUHVVHG V

    (QIRUFHPHQW RI RXU UHVSHFWLYH WDDYODWZVUDZJGKHVDQ
    FDSLWDO OLEHUDOLVDWLRQ DQG DGYLDQFKDYLHQ FL
    RSHQHG WKH JOREDO PDUNHWSODFH WRLD ZLWKHLUVV
    PRUH RSHQ HFRQRPLF HQYLURQPHQW JLLURVRZWKG LRU E
    FDQ OHDG WR VWUXFWXUHV ZKLFK FKQGOHQJH
    DUUDQJHPHQWV E\ ERWK GRPHVWLF DWOQHG QRUQHLJQ
    FRPSOLDQFH ZLWK RXU QDWLRQDO WD[ODZV

7KH FRQFHSW RI $73 ZDV KRZHYHU RQO\ GHILQHG E\ W

7KLV GWLLRQQ VXJJHVWV WKDW WKH IRFXVWRR WKHU H2V&'I¶WVH

JHQHUDOO\ LQYROYH FODLPLQJ X\HFHW LV QWHH GHG XFWLRQDW
RU FRPSOH[ILQDQFLQ2J WHQ DWQKH VHQWFKHPHV LQYROYH µE
RII DUUDQJHPHQWV WDLORUHG IRU KFRULKSRQ DPRH HQG LW
ZHOO DV DUUDQJHPHQWV WKDW DUHRUVV KHP DXWW WDIOGLZI

SURPRWHUV D[QGUXGVOHUWKH\ DFW DV D GHWHUU7HQW WR W
VFKHPHV

Current disclosure regimes in Australia and how they differ from MDRs

2QH RI WKH NH\ DUJXPHQWV DJDLQVW FWRN XDUGHRSW LIRRQH F
$XVWUDOLD LV WKDW WKH FRXQWO\HDVO ZKHLDFN\ KLDV VYHDW RI
$73 $V QRWHG HDUOLHU RWKHU FRXQWXOHV DZKVLRFKK DWYH
2(&' UHYLHZXW WKH\ DOVR KDYH 0'5V

7KH 7UHD'LVVFX\VVLRQ 3DSHU OLVWV WKH FDRWZHRRRULHV I
GLVFORVXUH UXOHV WKDW DUH ,FXXULVHQRQWO\WKQH SLODFQWH LQV
DUWLFOH WR SURYLGH D GHWDLOOHHG 5DDQQWDKOH VLV VRLIKKRZZ RD
KLJKOLJKW WKH SXUSRVH RI WKH UDHHQQODHWYIDRQRQLIRUXZOZK V WKQ
UXOHV IDOO VKRUW RI WKH REMHFWLYHV RI 0'5V

6SHFLILFDOO\ WKLV DUWLFOH KUWKLQOFOXJKODDWUVV WWUXXOOHH V OLPPWWKHD
7D[3RVLWLRQ 6FKHGXOH DQG WKH 3RRQRRPRWHUDDQQGDOWO\ WLM
UHVSHFWLYHO\ 7KHVH KDYH PDQGDERWW\\ SOLRHISHSV ODRRQQ WW LM
SURYLGHG DV WR ZK\ WKHVH UXOHV IVV WWR L00 5 VDDOODQQ WV KLE
UHFRPPHQGDWLRQV DUH SURYLGHG DHVY WWR WKKRRZZ DDQ\ RYHU

4.1.1 Disclosures recommended by the OECD

OECD Common Reporting Standard 7KLV LV D IUDPHZRUN IRU H[FKDQ
DFFRXQW LQIRUPDWLRQ EHWZHHQ JRYHUHPQHQHPEWXVLUXHQLOGDW
XQGHUWDNH GXH GLOLJHQFH WR LWKHQOLWWKLKIHH\LUGSHRRUWWRWDEEW
E\ IRUHLJQHUV DQG WR UHSRUW WKHPHW\WFRKDQWKIH $7WR LV7I
LQIRUPDWLRQ ZLWK LQWHUQDWLRQDO WD[DXWKRULWLH

Country-by-country reports ,Q OLJKW RI $FWLRQ RI WKH 2(&'
PXOWLQDWLRQDO HQWHUSULVHV ZLW8K' DEQOLXDOOOR JRIO RDEODHRO
UHTXLUHG WR SURYLGH GHWDLOHGDDQQQ IYIRRUUP DDWLURLRRQQ LLSSURILRRSO
PHWKRGRORJLHV

8QOLNH WKH DERYH GLVFORVXUH DUXOOLHHVQ VZ ZLLWWKK FFRRWW DDRRUQQ IVVOO L&
5HSRUWLQJ 6WDQGDUG DQG ODUJH EXOFOWXWQ WDW HWUH DDSS RORHUUWVW
0'5V DUH EURDG-GWLKQHVV FFRRSSHFDSWXUH DQ\ W\SH RI WD[RU V

4.1.2 Disclosure before lodgement of tax returns

Tax rulings $ WD[SD\HU FDQ YROXQWDULO\ DSSR\WWKKHH WWDOODZZ $7
DSSOLHV WR D VSHFLILFPFUWDDOPPDD IIDDLLUU RQQ JHPUPHHQQWHW LK u$p G,à

DUUDQJHPHQWV WKDW KDYH QRW DO$UHDG\URRPJK WKWKLNO
DSSOLFDWLRQV

Annual compliance arrangements   7KHVH DUH YROXQWDU\ DGPLQLVWU
ZKLFK VHW RXW D IUDPHZRUN IRU PXQDJLQJ WZHHQ FRRSOL
DQG D WD[SD\HU $Q H[DPSOH LV WKHG YROXQWDOURS\H7D E 7W
%RDUG RI 7D[DWLRQWKH 7UHDVXUHU¶V UHTXHVW WR HQ
DYRLGDQFH LQIRUPDWLRQ E\ FRUSRUDWLRQV

Pre-lodgement compliance review   7KLV LV DQ DGPLQLVWUDWLYH SURF
WKH $72 IRU VRPH ODUJH SXEOLF FRPSDQ ERNV SODW FRY
DUUDQJHPHQW ,W LV DLPHG DW LGH@Q p%WUà

Z K L F K   Z D V   L V V X H G   R Q $ S U L O

H - R X U Q D O   R I   7 D [5 H V H D U F K

7 K H \ F O D L V H F O O R U V X Q W U R O X H F L Q Q P X Q G W U

Z K L F K   Z D V   L V V X H G   R Q $ S U L O

4.1.4   Disclosure after lodgement of tax returns

Exchange of information $XVWUDOLD KDV GRXEOH WD[DWLRQ LQIRUPDWLRQ H[FKDQJH WKRUHHPHQWV MXULVGLFWLRQV RI WD[SD\HU LQIRUPDWLRQ

Questionnaires sent by the ATO to selected taxpayers $Q H[DPSOH RI D TXHVWL

&RXUW RI $XVWUDOLD WR7KHSRNHLPXPLYHLODSOHQWDWWKH)HG FDQ LPSRVH LV WKH JUHDWHU RI

- x SHQDOW\ XQLWVXDFFWURUHS8SWWLLRQLQGLYLGXDO DQG

- x SHQDOW\ XQLWVTXDFFXUWURHSPLOOLRQ ERG\ FRUSRUDWH

RU WZLFH WKH FRQVLGHUDWLRQ LQGHUHFWRUEHWKHY RU LWV DVVRFLDWHV LQ UHVSHFW RI WKH VFKHPH

6LQFH WKH UXOHV ZHUH LQWURGXFHGVLVWKZKLFK $FK FKDVWLOO SHQDOWLHV ZHUH OHYLHG DJDLQVW WKHDWSURPRV 3ULFHZDWHUKRXVH&RRSHUV VXJJHVWVWKDWWWRWKHDSURELRU GHOLEHUDWHO\ SXW LQ SODFH LQ SUHUHHULPHFUWHFRPPHQ E\ WKH 2(&'D[SUDFWLWLRQHUV DVVHUW WKDW HYHQ WKH

> FRXOG FR H[LVW ZLWK WKH SURPRWHHUZKHHWODKHOW\ W\
> $72 ZLOO OHDUQ PRUH WKDQ LW DOOKHDOGLVGRHHFDXVHV
> WKH SURPRWHU SHQDOW\ UXOHV SURYH GHN D$ \WRRU
> UXOLQJV RU WR QRW HQJDJH LQ VFKHPHV ZKLFK FR

,W LV VXEPLWWHG KRZHYHU WKDWUWOWHQ SWOKDR\DXDKVWLJQLH UROH LQ GHWHUULQJ µSURWKKLWHDGY FSOQ XOW JLGXHLPSURV SURPRWHUV WKH SHQDOWLHV RQO\UDRSSROO\HOW HSU2WKH V H[SODLQV WKDW

> 7KH SURPRWHU SHQDOW\ ODZV DUH QRWHUVLQWDQJQGH
> LQWHUPHGLDULHV IURP JLYLQJ W\SHLWDPSPOOLHDGYWLFHUWH
> DUH H[FHSWLRQV IRU DGYLVHUV ZKRHURO\ZRKQR WKH
> PDNH UHDVRQDEOH PLVWDNHV RU QDOHVHXEOOLWWWRWR
> %XW IRU DGYLVHUV ZKR DUH PRUH LRONYHVOYOLQQ LQYRQQG
> LPSOHPHQWDWLRQ RI VFKHPHV WKDWWFODXPVWRRXOG
> FRQVLGHU WKH SURPRWHU SHQDOWHHQ ODEZD DQG SODUW
> JRYHUQDQFH ,Q LQWURGXFLQJ WKHH SRKHRUWOQ PHUQ SWH
> DGGUHVVHG WKH LPEDODQFH RI WKWKWHDVSHFK\HPHEH
> SURPRWHUV DYRLGHG SHQDOWLHV ODWWKH RODEDZLHFWWWY RI
> GHWHU WD[DYRLGDQFH DQG WD[HYDWLRQ LVFKWRRI
> HQKDQFH WKH LQWHJULW\ RI WKH LPSRODEXFFWQWXDOLQRI

Taxation Administration Act 1953 6 F K   V

Taxation Administration Act 1953 6 F K   V

Federal Commissioner of Taxation v Ludekens >   @) & $) &   *Federal Commissioner
of Taxation v Arnold* >   @) & $ $ 7 5   Pt Y@$ R Q   H) & L F

:LOVRQ 5RJHUV DQG 3KLOW RVXJJHVW WKDW DQ\ RYHUODSV
0'5V FRXOG EH DPHSSURSDWWLDGHE\OHJLRVOPHWL&RFPPDVWRRK
RI 7D[DWLRQ'¶$SLVFFKHLQHDRV QRWWKHWKHDWV DOZD\V WKH VU
GHILQLWLRQ DQG DOVR WKH SUHSDDWGQHVVFKDWRJHPDDQ
WLPHOLQHVV RI WWKDLW EDFNQRZOHGJHG WKDW FRXQWULD
SUDFWLFHV ZLWK UHVSHFW WR WDZV OHRIPLOFRXQWHULGHWL
YHU\ GHWDLOHG UXOHV DQG RWKHUFRQN WDUQLQGH LOPODXVHW
H[DPSOHKZLOH D SULQFLSOHV EDVH DSSURDFKOSLSVURGHDFKLU
DOVR UDLVHV D QXPEHU RI LQWHULQWLHYHHFKDWRHWQI
OHJLVODWLYH LQWHQWLRQ DV LW LV H[SUHVVHG

Issues pertaining to overlaps with anti-avoidance rules. 7KH 2(&' FODULILHV WKDW
FDQQRW UHSODFH DQL DYRLGDQFH UXOHV2(&KDQWRWHVR
WKDW WKHUH DUH VRPH LQHYLWDEOWKHDROSGHLDWLROQ EDQOGH
RI 0'5V DQG JHQHUDO DQWL DYRLGDQFH IUXOVVDQFH$5SURY
WD[DGPLQLVWUDWLRQV ZLWK DOQ EOVIRW\WWDR DYHRVSRQGQG
KDYH EHHQ GLVFORVHGKXOQGH'5V0'DQG *$$5V DUH PXW
FRPSOHPHQWDU\ IURP D FRPSOLDQFH SHOWWSQF5WKLYHV DFDQ
3LQWRVVHUW WKDW UDWKHU WKDQ FRQIOLFXODWLRQRZLV
IUDPHZRUN 0'5V ZHHXPOOQ WRSXVWUDOLD¶V H[LVWLQJ DUPH
UXOH,W VKRXOG KRZHYHU EH QRWHG WKDW LWL\ DG'GLVWL
SURYLGH D WD[DGPLQLVWUDWLRQZLWWLK SQ IRUPDWSSRUR

WKH $72 ZLOO KDYH WLPHO\ WDUJHWHGZKDLQJ ERPSVVKHQV
WR HQDEOH WKH JRYHUQPHQW WR TXLFNO\ DUHKHHO\ DWZLI\ DQ
&RXQFLO RI $XVJXHVWVDOLD DW D PDQGDWRU\ GLVFORVXUH UH
ZLWK PRUH WLPHO\ LQIRUPHDWLGRYDQ\RQWIH\ RI\FXOYHDDWUJH
WR WKLV LV WKDW WKH LQIRUPDWRRQ JLDWKWKWVUHHOOVKRR
DGPLQLVWUDWRU\ ZRXOG QHHG WR KHVHWWLYKHLV\ DRGLGLW
PDQGDWRU\ GLVFORVXUH UHJLPH WR EH HIIHFWLYH

4.2.4   *Ensuring MDRs are appropriately balanced with competing policy priorities*

$Q LPSRUWDQW PDWWHU KLJKOLJKWHGDSSE\R_SUHDDWYWHOO\\ LEDOOQ
FRPSHWLQJ SROLF\ SULRULWLHV ZLWKWKHDUHQ IHPSKRDXQ\ Q FRF
RYHUODS ZLWK H[LVWLQJ KLGVWHOORWIXRUH FRXQVHLGHUV WZR
SULRULWLHV WKDW QHHG WR EH RDIIOVDWKODWHLPDUDQWD WEDDU
NH\ SROLF\ REMHFWLYHV RI 0'5V DQWGV VDHQFRQOGLEYDOOHJHFLV

Balancing the trade-offs that emanate from the key policy objectives of MDRs

(IIHFWLYH 0'5V UHTXLUH VWULNLQJ DS EOODQLFFHSHHE\HLWWZ\HY
REWDLQLQJ UHOHYDQW LQIRUPDWLRURQ LW\ QRRQ RU RGHHQ KVDRQ SURF
PLQLPLVLQJ FRPSOLDQFH FRVWV RQD WKPH EKRRWKK LLV USKURDQVJEG QFH
SURFHVV RI UHGUDIWLQJ DQG FRQVROLQJWDY WRLLQ JQHJ ZLWV'6 WLQ
$XVWUDOLD VKRXOG DYRLG XQQHFHWR RU WDWH[SODLWWULRQDWV
EH GLVFXVVHG IXUWKHU LQ 3DUWD RWWVVWKKLDVWWWKK G\\0'5LWV
ILVFDO LQWHJULW\ DQG VXVWDLQ OGEYLEOMOLRVW\H E\W KSUHHTXLS7'E
SUHVHQW WKH ODFN RN HWW UDQWDVQVVSHDXUH\ OHHQ FLIFXOO IRU WD[D
WKH $72 WR REVHUYH ZKHWKHU DQDV KHRQZ ZD DLJPQ WLQ OGJ3D3DWL7RD
EDODQFH WKHVH FRPSHWLQJ SROLF\RLQPK SHDUD\D W LY\ IHHVV WWKGH
WKH 0'5V VKRXOG EH GHVLJQHG ZLWK WK WKWHHVW VWRRRROO GL QRR
GHWHUUHQFH VSHFLILFDOO\

     'HWHFWLRQ RI XQNQRZQ VFKHPHV ZKLFPK KVDDUHH DLIL
     LQFRQVLVWHQW ZLWK RU WKDW LUHR OHG H YD RQO QWG WWKHL OS
     – WKDW LV REWDLQLQJ LQWHOOLKHHQ OWHDUJ LJVDWGHI PDQD
     DQ HDUOLHU SRLQW LQ WLPH WKDQ XFKHQ VWWZKKHHQ VFK
     LW LV PDGH DYDLODEOH RU PDUNHWHG

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2 (& ' *Action Plan on Base Erosion and Profit Shifting*   DERYH Q
/DZ &RXQFLO RI $XVWUDOLD   DERYH Q
$XVWUDOLDQ *Australia's Proposals for Mandatory Disclosure of Tax Information*   DERYH Q   SDUD
&RQVLVWHQW ZLWK WKH 2(&')LQDO 5HSRUW WR WKHIHJ*HQQLQ OPDH QWZ\
DSSURSULDWHO\ EDODQFH FRPSHWLQJDQD OSRROLFLL\Q RURRUUDLWWLRLHHQV DYQDLOODEXOH
WR FUDFN GRF''0EEWA1(p'LWF W 'PLL%3

,GHQWLILFDWLRQ RI LQWHUPHGLDULFLHQVWZKURHDYH WQR
VKRXOG DOVR GHWHU LQWHUPHGLDULKHLSHOVDIURPGRHOOQ
IRU OHJLWLPDWH SURIHVVLRQDO DGYLVHUV

$Q 0'5 JURXQGHG LQ WKHVH SROLF\ REMOQHWWWLULYHW\ ZDRQXOO
WXUQ ILVFDO VX\OWRLREHDELQJLODLWHTZDKDLWHIDOO WDUJHWHG VX
DUH QRW XQGXO\ EXUGHQHG

,W LV DOVR LPSRUWDQW WR QRWH WKDPSHUEDOWDLQYHHLQ JR
PLQLPLVLQJ FRPSOLDQFH FRVWV RQ RWHJKDUWVG DQG ILUSUR
VXVWDLQDELOLW\ RQ WKH RWKHUKHDOQGUHHLTXHLUUHWDEOUUH
WKDW PD\ IRU H[DPSOH UHVXOW LQQDWWKHDGGHV RI ERH WZ
DQG HQVXULQJ HIILFLHQF\ RI WKH VDYPHRUZKRLOKFRIPDOHQH
GHVLJQLQJ 0'5V IRU PXOWLQDWLRQDOWKHWHUSWUDGH R,K
WKH WD[SROLF\ GHVLJQ FRQWH[WJKDOQ EHLOORRZXVWUDWH

),J 7D['HVLJQ 3ULQFLSOHV

VHOI LQFULPLQDWLRQ DQ\ PRUH WKDQKLVVSQHFRVVWURQ
DOVR EHHQ SXW IRUZDUGWDUGFRXQHWDQJ DGYLVRU\ ILUPV

Right to privacy. 5HTXLULQJ D WD[SD\HU WR *prima facie* OLR VXUHDFWKD[LI
RI WKH ULJKW ,WRVSKRULXYOGDF\ KRZHYHU EH QRWHG WKLV F
'LVFORVXUH RI FRQILGHQWLDO LQIRGPDQWHLRZLFKOO EYVM
GHPRFUDWLF VRFLHW\ WKDW DUH QDEOHVLQWHURIVWWKHVSX
WD[EDVH RI D FRXQWU\ WKLV ZRXOHGPDWHWVWKLGLDVYEO
WKHVH JURRKQGWHU WKHUH KDV WR EH D EDOOH QHLEHVW WZ
WR SULYDF\ DQG WKH SXEOLF LQWHHPHVVWR DQKWKLNHGVXF
EDODQFH ZH VXEPLW WKDW FDUH VKRXODU JHHVWRDQNOHQPW
PDUNHWHG VFKHPHV WKDW KDYH D VLJQWKLFDUQHWLLPPSDHF
WKH QHW WRR ZLGH WKHUH LV D GHDUQLJKWWVKRDWWWWKHWED
DQG WKH SURWHFWLRQ RI WKH SXQOSRLQWHUHVV PD\ E

Legal professional privilege. ,QKHUHQW LQ OHJDO SURIHVVLRQDO SUL
DQG UHFHLYH OHJDO DGYLFH DV ZYLHOOF\ DQ\WVKHQWLDGH[SQWH
$ PDQGDWRU\ GLVFORVXUH UHJLPH ZKXLFK RUHIWXHUUGHVVFRL
D WD[SODQQLQJ VFKHPH ZRXOG LQWDHUQGGHWHHZ LDWWWKDV
IURP WDNLQJ OHJDO DGYLFH DERXWWQWKHHFWLRQFRQVHGTKKL
SURIHVVLRQDO IURP JLYLQJ DGYLFHPRRUDDOQ\ WFWWRVDEOO\ XI
0'5V GR QRW WUDPSOH RQ WKH FRPPRQLRQOZDO SUULIQUFLFLSSOHJH
WKH $XVWUDOLD DQG *Baker v Campbell* WKH +LJK &RXUW KHOG WKDW

        7KH ODZ FDPH WR UHFRJQL]H WKDW QRHFHLWWDEHHWWWNK
        WKHUH VKRXOG EH IUHHGRP RI FRPPXQLFDWLRQQEH
        IRU WKH SXUSRVH RI JLYLQJ DQG UHHSFKKHLUYSLRQVJHORRIJD
        OLWLJDWLRQ DQG WKDW WKLV HQWDLXOFKHG LPPX
        FRPPXQLFDWLRQV EHWZHHQ WKHP

+RZHYHU *Mann v Carnell* DQ *Osland v Secretary, Department of Justice* WKH
+LJK &RXUW UXOHG WKDW DW FRPSPWROQUODXEWWIDDQGFLHVFD
RSLQLRQ PD\ DPRXQW WR ZDLYHU RIWROHHJJGGDOHSSURQWVVHWQLVWLRQWI
WHUPV RI WKH SULQFLSOH RI IDLUQQWVV WKKHHOHUQLQJ L
American Tobacco Australia Ltd v Secretary, Department of Health and Ageing LW
ZDV KHOG WKDW WKH GLVFORVXUH RULFWWKKHRQLWVGWRHHRI QD

/DZ &RXQFLO RI $XVWUDOLD DERYH Q   SDUD

µ7KH UHJLPH VKRXOG UHVSHFWLFWKHQFSOXGLYLQJOWLWKKHDWWWQDFL
FRQFHSWLQDWWWKH $72¶V $FFRXQWDQWV¶ &RQFHHUVEHLURQ PLWDWKHH)QZHRRKLOO
$GYLVRU RU $72 DQHERYHHHU

µ7UDQVDFWLRQV WKDW GR QRW LQWWKODWWH DERX\OGLUQODILLFHDFROQWDQYFO
RIWHQ LQFOXGH FRQILGHQWLDOLW\ RPPHHTXHLLUDPHQHQWDWRIQRUV VFRXKLSKFHWRLQWK
UHVWULFWLRQV DORQH VKRXOG QRW WER\JYHQ D GLVFORVXUH UHTXLU

$UWLFOH RI 6FKHGXOH ,QWHUQRQOLWWLRQDODOO&5LSJYKLWYWZLRZRQ&KHLYLO
Rights Commission Act 1986 &WK

%DNHU DERYH Q
%DNHU DERYH Q
>   @ +&$ &/5
>   @ +&$ &/5
>   @ +&$ &/5
>   @)&$)&   )&5

QHFHVVDULO\ DPRXQW WR D ZDLYHRIRWKHUSULYLOHJHVNHQN

UHO\ RQ WKH SULYLOHJH LV LQFRQMLVWUWLQWHZHWK WKH

,Q 6RXWK $IULFD WKH 5HSRUWGEOOR\SUURDQYHOHQWV WXO

WR FRQFHUQV RYHU VHOI LQFULPLQDDWLLVRHQ XRQOGWKHHUUWWKKHDIQ[
RI RWKHU LQIRUPDWLRQ FROOHFWLRQ SRZHUV

Legitimate expectations. :KHUH 0'5V DUH LQWURGXFHG WD[SD\HU
OHJLWLPDWH H[SHFWDWLRQ WKDWHDVQ OGLDGVFORRXXDQH LWPSN
DJUHHPHQW WKDW WKH VFKHPH LW KDOFIRRQQWWLUUDDWWKKHHURRIPLWW
DXWKRULW\ 7R DYRLG VXFK OHJLWQWWLPWDWWDHSWHHUUDDWWLLRRHQ
FOHDU WKDW WKH GLVFORVXUH GRVVFKHOQPPHHWRRLLUUPPWWOKK\HHDDWWQ DD PEE