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Senator the Hon Trish Crossin
Chair, Senate Legal and Constitutional Committee
Parliament House
Canberra ACT 2600

Dear Senator Crossin

SENATE LEGAL AND CONSTITUTIONAL COMMITTEE INQUIRY INTO THE MIGRATION LEGISLATION AMENDMENT (WORKER PROTECTION) BILL 2008

The Office of the Privacy Commissioner (the Office) welcomes the opportunity to comment on the Migration Legislation Amendment (Worker Protection) Bill 2008 (the Bill). The Office's comments deal with two specific matters relating to information privacy.

1. The Bill should require the Department of Immigration and Citizenship ('DIAC') to seek initial information from the Tax Commissioner by way of verification, rather than permitting broader disclosure

The proposed new section 3ED of the *Taxation Administration Act 1953* (TAA) deals with the tax-related disclosures to migration officers by the Commissioner of Taxation (Schedule 2, Part 1, Item 1 of the Bill). The Office suggests that the expressed intent of limiting disclosures by initially verifying information rather than seeking broader disclosure should be reflected in the legislative provision itself, rather than the Explanatory Memorandum (EM).

Currently, the Bill's section 3ED would provide an exception to the taxation secrecy provisions, and permit the Commissioner of Taxation to 'disclose information acquired under a taxation law to a migration officer', where requirements relating to identity and relevance are satisfied (pp 76-77 of the EM refer). The EM (para 521) explains that:

> To ensure that only the minimum necessary information is collected, it is intended that the department will request specific information from the Commissioner of Taxation in relation to a particular approved sponsor or visa holder... rather than requesting all information which may be relevant to the matters listed in new paragraph 3ED(1)(b). [emphasis added]

The example provided in the subsequent paragraph of the EM (522) seems to contemplate an initial verification process rather than broader disclosure. Initially, '[DIAC] would request that the Commissioner of Taxation advise whether the amount that the department has been advised has been paid is consistent...'. However, the text of proposed section 3ED does not appear to limit the provision's operation in this way.

The Office suggests the amendment could be recast to initially require DIAC to provide certain details to the Commissioner of Taxation for the Commissioner to verify. This verification could be done in the form of a 'Yes/No' response. If the Commissioner of Taxation confirmed that the details held by each agency did not match, DIAC could then seek further relevant information about those details. This could be described as a 'verification model' instead of the broader 'disclosure model' proposed.

Recasting section 3ED in this way would minimise the information collected under this provision to that which is necessary in the circumstances which is, in itself, an important privacy safeguard. It may also assist to reinforce consumer confidence in the taxation system and the protection of individuals' financial information, which ranks highly amongst the privacy concerns of Australians.[1]

Further, in the context of section 3ED(1)(b) it is unclear what limits (if any) are placed around the type of information that may be considered 'relevant'. For example, does this include unconfirmed information acquired from preliminary or ongoing tax investigations, or information acquired prior to enactment of the Bill? If it is deemed necessary that the provisions operate retrospectively, a 'verification model' involving yes/no responses may reduce concerns about such retrospectivity.

2. The Bill should require that DIAC consult with the Privacy Commissioner in developing the regulations for disclosures under proposed section 140ZA

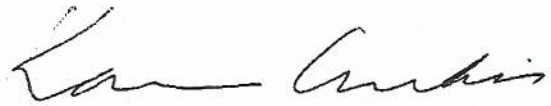
The Office suggests that the Bill provide for the Privacy Commissioner to be consulted on the development of regulations on disclosure of information by inspectors (section 140ZA of the Bill).

Consultation with the Office on the type of information that should be prescribed, and the purposes of its disclosure, could help to identify potential privacy issues and assist in ensuring that a balance is achieved between the objectives of the legislation and good privacy practice.

The Office also notes that some entities in receipt of information under this regulation may not be covered by the Privacy Act or a similar State or Territory law. While subsection 140ZA(4) of the Bill provides some limitation on entities' subsequent use and disclosure of the information they receive, this limitation refers back to the prescribed purposes that will be determined by the regulation.

It is important that consistent protection is applied to the information handled by these entities, wherever it is held. One option to ensure that this occurs, could be to redraft subsection 140ZA(3) so that the regulations require that prescribed State, Territory and Commonwealth entities comply with the federal Information Privacy Principles (IPPs) where those entities are not otherwise bound by the Privacy Act or a similar State or Territory law.

Yours sincerely



Karen Curtis
Privacy Commissioner
29 October 2008

[1] For example, when individuals were surveyed in the Office's *Community Attitudes to Privacy Survey 2007* about what information they were most reluctant to provide to 'any organisation', financial details and details about income were the most frequently cited category (by 43% of those surveyed). The survey is available at www.privacy.gov.au/publications/rcommunity07.pdf, see pp 22-24).