



## Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009

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## Glossary<sup>1</sup>

<b>Abbreviation</b>	<b>Definition</b>
ATO	Australian Taxation Office
ABS	Australian Bureau of Statistics
ABN	Australian Business Number
ABN Act	<i>A New Tax System (Australian Business Number Act) 1999</i>
ACCC	Australian Competition and Consumer Commission
APEC	Asia-Pacific Economic Cooperation
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ASIO	Australian Security Intelligence Organisation
Commissioner	Commissioner of Taxation
ITAA 1936	<i>Income Tax Assessment Act 1936</i>
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
OECD	Organisation for Economic Co-operation and Development
Privacy Act	<i>Privacy Act 1988</i>
SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>
TAA 1953	<i>Taxation Administration Act 1953</i>
TAS Act	<i>Tax Agent Services Act 2009</i>
TFN	tax file number
the Register	Australian Business Register
the Review	<i>Review of Taxation Secrecy and Disclosure Provisions</i>

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1. Glossary from Explanatory Memorandum, Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009, p. 1

## Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009

**Date introduced:** 19 November 2009

**House:** House of Representatives

**Portfolio:** Treasury

**Commencement:** Schedules 1, 2, 3 (items 1 to 18), 4 and 5 commence the day after Royal Assent. Item 19 of Schedule 3 commences on the day after Royal Assent or at the same time as Part 1 of Schedule 1 to the *Crimes Legislation (Serious and Organised Crime) Act 2009*, whichever occurs later.<sup>2</sup>

**Links:** The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

### Purpose

The purpose of the Bill is to consolidate and standardise the provisions applying to the recording and disclosure of information about the tax affairs of an entity that are currently spread over 18 taxation laws.<sup>3</sup> It provides a single framework in new Division 355 in Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953) for the protection of taxation information, and prohibits the disclosure of such information by taxation officers and others except in certain specified circumstances.

The new framework does not cover the secrecy and disclosure provisions in the *Tax Agent Services Act 2009* and in the *A New Tax System (Australian Business Number) Act 1999* which remain unchanged. The existing regime relating to the security of tax file numbers (TFNs) in Subdivision BA of Division 2 of Part III of the TAA 1953 is also not within the new framework.

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2. The Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009 was first introduced in the House of Representatives on 16 September 2009. It is due to commence on Royal Assent but is still before the Senate at the time of writing.
  3. See Attachment A for a list of the affected Acts and the Finding Tables in the Explanatory Memorandum.

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## Background

The Bill is the result of the Review of Taxation Secrecy and Disclosure Provisions undertaken by Treasury in 2006.<sup>4</sup> The object of this review was to investigate the potential for standardising the secrecy and disclosure provisions and to enact them in a single piece of legislation.

An Exposure Draft of the Bill was made available for public comment in March 2009.<sup>5</sup> The acceptance of the recommendations of the Treasury review by Government was announced by Chris Bowen MP (then Assistant Treasurer and Minister for Competition Policy and Consumer Policy), in a media release at the same time.<sup>6</sup>

### Committee consideration

The Bill has been referred to the Senate Economics Committee for inquiry and report by 25 February 2010. Details of the inquiry are at: [http://www.aph.gov.au/senate/committee/economics\\_ctte/tlab\\_confidentiality\\_09/info.htm](http://www.aph.gov.au/senate/committee/economics_ctte/tlab_confidentiality_09/info.htm)

### Position of significant interest groups/press commentary

The initial Review of Taxation Secrecy and Disclosure Provisions received 38 submissions. All of these submissions supported the intent to consolidate taxation secrecy and disclosure provisions, although some raised the following general concerns:

- taxpayer privacy should be the primary principle of the new regime, weighed up against the public interest in the disclosure of information (for example, to aid law enforcement)
- the inclusion of a consent principle could lead to a taxpayer being pressured to give consent

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4. Department of the Treasury, *Discussion paper for the review of taxation secrecy and disclosure provisions*, Australian Government, 17 August 2006, viewed 28 January 2010, <http://www.treasury.gov.au/contentitem.asp?ContentID=1121&NavID=066>
  5. Department of the Treasury, *Exposure Draft Confidentiality of Taxpayer Information Bill and Explanatory Material*, Australian Government, 13 March 2009, viewed 28 January 2010, <http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=1489> See also the submissions made about this exposure draft: Department of the Treasury, 'Submissions: Exposure Draft Confidentiality of Taxpayer Information Bill and Explanatory Material', *Treasury website*, viewed 28 January 2010, <http://www.treasury.gov.au/contentitem.asp?ContentID=1569&NavID=037>
  6. C Bowen MP (Assistant Treasurer), *Government moves to consolidate the taxation secrecy and disclosure provisions*, media release, no. 15, 13 March 2009, viewed 28 January 2010, <http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2009/015.htm&pageID=003&min=ceb&Year=&DocType=0>

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- the Australian Taxation Office (ATO) should freely disclose information which is publicly available elsewhere, without charging for the cost of providing that information, and
- specific disclosure provisions that are currently working should be maintained under the new framework.<sup>7</sup>

These concerns were incorporated into changes to the legislation, which were presented in the exposure draft. The exposure draft received an additional 12 submissions which raised the following concerns:

- the circumstances in which taxpayer information could be disclosed to Ministers of Parliament were becoming too broad
- the need for proposed disclosures of identifiable information to Treasury for costing and analysis purposes was questionable
- only enabling the appointment of an ‘agent’ to represent a taxpayer in dealings with the ATO limited other genuine representatives such as family and friends from being able to receive information on behalf of the taxpayer
- the definition of a ‘taxation officer’ was too broad and could be extended to such positions as contractors performing services for the ATO.<sup>8</sup>

A report in the *Australian Financial Review* in May 2009 raised similar concerns about the extent to which Ministers could access confidential taxpayer information and potentially exploit the rules. In particular, Taxation Institute of Australia president Joan Roberts is quoted as supporting the consolidation of the laws but stating that disclosure should be permitted in specified circumstances where the public benefit outweighs the particular taxpayer’s privacy interests.

‘Disclosure to a parliamentary committee should only be permitted where the relevant committee compels the provision of that information and only in circumstances where that information will subsequently be afforded parliamentary privilege,’ Ms Roberts said.

‘The Taxation Institute does not support the proposed permitting of disclosure to the Australian Securities and Investments Commission for the purpose of enforcing laws imposing pecuniary penalties or creating an offence.’<sup>9</sup>

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7. Department of the Treasury, *Consolidation of the taxation secrecy and disclosure provisions: summary of consultation process*, Australian Government, pp. 1–2, viewed 28 January 2010, [http://www.treasury.gov.au/documents/1489/PDF/Taxation\\_Secrecy\\_Disclosure\\_Provisions\\_Consultation\\_Summary.pdf](http://www.treasury.gov.au/documents/1489/PDF/Taxation_Secrecy_Disclosure_Provisions_Consultation_Summary.pdf)
  8. *Ibid.*, pp. 2–4.

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These concerns have been addressed at varying levels by the current Bill.

Submissions to the current Senate Economics Committee inquiry into the Bill included the following comments:

- considerations as to whether certain disclosures should be made in relation to a serious threat, could also include ‘proximity in time’ as a factor<sup>10</sup>
- the term ‘publicly available information’ should be defined within the legislation,<sup>11</sup> and
- the effect of the Bill on the relationship between the Commonwealth Ombudsman, the ATO and taxpayers should be looked at to make sure it is not made more difficult by the provisions in the Bill.<sup>12</sup>

## Financial implications

The Explanatory Memorandum to the Bill states that the financial impact is nil.<sup>13</sup>

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9. J Kehoe, ‘Tax law proposals ‘a threat to privacy’’, *Australian Financial Review*, 28 May 2009, p. 5, viewed 28 January 2010, [http://parlinfo.aph.gov.au/parlInfo/download/media/pressclp/BSOT6/upload\\_binary/bsot60.pdf](http://parlinfo.aph.gov.au/parlInfo/download/media/pressclp/BSOT6/upload_binary/bsot60.pdf)
  10. Office of the Privacy Commissioner, *Inquiry into the Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009*, submission to the Senate Standing Committee on Economics, December 2009, viewed 29 January 2010, [http://www.aph.gov.au/senate/committee/economics\\_ctte/tlab\\_confidentiality\\_09/submissions.htm](http://www.aph.gov.au/senate/committee/economics_ctte/tlab_confidentiality_09/submissions.htm)
  11. Office of the Victorian Privacy Commissioner, *Inquiry into the Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009*, submission to the Senate Economic Legislation Committee, 18 December 2009, viewed 29 January 2010, [http://www.aph.gov.au/senate/committee/economics\\_ctte/tlab\\_confidentiality\\_09/submissions.htm](http://www.aph.gov.au/senate/committee/economics_ctte/tlab_confidentiality_09/submissions.htm)
  12. Commonwealth Ombudsman, *Inquiry into the Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009*, submission to the Senate Economic Legislation Committee, January 2010, viewed 29 January 2010, [http://www.aph.gov.au/senate/committee/economics\\_ctte/tlab\\_confidentiality\\_09/submissions.htm](http://www.aph.gov.au/senate/committee/economics_ctte/tlab_confidentiality_09/submissions.htm)
  13. Explanatory Memorandum, Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009, p. 3.

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## Main provisions

### Schedule 1—Confidentiality of taxpayer information

#### Part 1—Main amendment

**Item 1 of Schedule 1** to the Bill repeals Division 355 of the TAA 1953 and substitutes **proposed Division 355** titled **Confidentiality of taxpayer information**.

**Proposed Division 355** replaces the myriad of provisions in 18 taxation laws with a single framework for the confidentiality of taxpayer information. It contains five subdivisions which are summarised below.

#### Subdivision 355-A—Objects and application of Division 355

**Proposed subdivision 355-A** outlines the objects of the single framework, and the persons to whom it applies, namely taxation officers and others who acquire or have acquired protected tax information (**proposed sections 355-10 and 355-15**).

**Proposed section 355-10** states that the objects of the proposed Division are:

- (a) to protect the confidentiality of taxpayers' affairs by imposing strict obligations on taxation officers (and others who acquire protected tax information), and so encourage taxpayers to provide correct information to the Commissioner [of Taxation]; and
- (b) to facilitate efficient and effective government administration and law enforcement by allowing disclosures of protected tax information for specific, appropriate purposes.

#### Subdivision 355-B—Offence of disclosure of protected information by taxation officers

**Proposed subdivision 355-B** contains the main provisions for the protection of taxpayer confidentiality. It is an offence for taxation officers to make a record of or disclose protected tax information that identifies an entity, or is reasonably capable of being used to identify an entity (**proposed section 355-25**).<sup>14</sup>

The offence carries a maximum penalty of two years' imprisonment.

Disclosure is permitted in certain specified circumstances, being:

- disclosure of publicly available information (**proposed section 355-40**)

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14. When this Bills Digest refers to the offence of disclosure it will cover both the recording and disclosure of protected information.

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- disclosure in performing duties (**proposed section 355-50**)
- disclosure to Ministers and committees of Parliament (**proposed section 355-55**)
- disclosure for other government purposes (**proposed section 355-65**), and
- disclosure for law enforcement and related purposes (**proposed section 355-70**).

There are also limits on:

- disclosure to courts and tribunals (**proposed section 355-75**), and
- disclosure to Ministers and Parliament (**proposed section 355-60**).

Subdivision 355-C—Offence of on-disclosure of protected information by other people

**Proposed subdivision 355-C** contains provisions to protect taxpayer information in the possession of persons other than taxation officers. It is an offence for such persons to make a record of or disclose information except in certain specified circumstances (**proposed section 355-155**).

Specifically, **proposed subsection 355-155** provides that an entity commits an offence if:

- the entity:
  - makes a record of information, or
  - discloses such information to another entity (other than the entity to whom the information relates or that entity's agent in relation to the information) or to a court or tribunal, and
- the information was acquired by the first-mentioned entity under an exception in Subdivision 355-B or 355-C, and
- the first-mentioned entity did not acquire the information as a taxation officer.

The offence carries a maximum penalty of two years' imprisonment.

**Proposed section 355-155** does not apply where the disclosure involves:

- disclosure of publicly available information (**proposed section 355-170**)
- disclosure for original purpose (that is, the information was originally disclosed under an exception in Subdivision 355-B) (**proposed section 355-175**)
- disclosure to Ministers in relation to statutory powers or functions (**proposed section 355-180**)
- disclosure in relation to Inspector-General of Intelligence and Security (IGIS) (**proposed section 355-185**)

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- disclosure in relation to Australian Security Intelligence Organisation (ASIO) (**proposed section 355-190**)
- disclosure by Royal Commission (**proposed section 355-195**), and
- records made in compliance with Australian laws (**proposed section 355-200**).

There are also limits on:

- disclosure to courts and tribunals (**proposed section 355-205**), and
- disclosure to Ministers and Parliament (**proposed section 355-210**).

Subdivision 355-D—Disclosure of protected tax information that has been unlawfully acquired

Under **proposed section 355-265** in Subdivision 355-D, it is an offence to make a record or disclose protected information acquired in breach of a taxation law except in certain specified circumstances.

Specifically, **proposed section 355-265** provides that an entity commits an offence if:

- the entity
  - makes a record of information, or
  - discloses such information to another entity (other than the entity to whom the information relates or that entity's agent in relation to the information or to a court or tribunal, and
- the information is protected information, and
- the information was acquired by the entity in breach of a provision of a taxation law (including this provision), and
- the information was not acquired by the entity as a taxation officer.

The offence carries a maximum penalty of two years' imprisonment.

**Proposed section 355-265** does not apply in relation to:

- disclosure of publicly available information (**proposed section 355-270**), and
- disclosure in relation to or in compliance with a taxation law (**proposed section 355-275**).

There are also limits on disclosure to courts and tribunals (**proposed section 355-280**). That is, where an entity acquires protected information under the proposed Subdivision, the entity is not to be required to disclose the information to a court or tribunal 'except where it is necessary to do so for the purpose of carrying into effect the provisions of a taxation law'.

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### Subdivision 355-E—Other matters

The other matters dealt with in **proposed Subdivision 355-E** are:

- giving the Commissioner the authority to require a taxation officer to make an oath or affirmation to protect information in accordance with Division 355 (**proposed section 355-325**), and
- giving power to the Federal Court of Australia to grant an injunction restraining an entity from engaging in conduct that would constitute an offence against Division 355 (**proposed section 355-330**).

### Application

**Item 2 of Part 2 of Schedule 1** provides that the amendments made by **Schedule 1** apply to records and disclosures of information made on or after the commencement of this Schedule. Item 2 of the table in **clause 2** of the Bill provides that **Schedule 1** will commence on the day after this Act receives the Royal Assent.

### Definitions and common features in the offences in proposed Division 355 of Schedule 1 of the TAA 1953

This part of the Bills Digest will briefly consider certain definitions and common features of the offences dealt with in **proposed Division 355**. It was seen from the outline of Division 355 given above that there are three offence provisions in **proposed Subdivisions 355-B, 355-C and 355-D**.

What is the meaning of 'protected information'?

**Proposed subsection 355-30(1) of Subdivision 355-B** states that 'protected information' means information that:

- (a) was disclosed or obtained under or for the purposes of a law that was a taxation law (other than the *Tax Agent Services Act 2009*) when the information was disclosed or obtained; and
- (b) relates to the affairs of an entity; and
- (c) identifies or is reasonably capable of being used to identify, the entity.

The Explanatory Memorandum in paragraphs 1.24 to 1.26 explains that it has been decided to make ATO officers provided by the Commissioner to assist the Tax Practitioners Board subject to the secrecy provisions contained in that *Tax Agent Services Act 2009* rather than the single framework proposed in this Bill.

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A note to **proposed subsection 355-30(1)** states that tax file numbers do not constitute protected information because ‘they are not by themselves, reasonably capable of being used to identify an entity’. The offences regime relating to tax file numbers is in Subdivision BA of Division 2 of Part III of the TAA 1953 and will continue to apply.

What is the meaning of ‘taxation law’?

‘Taxation law’ is defined in subsection 995-1(1) of the *Income Tax Assessment Act 1997* (ITAA 1997) as:

- an Act of which the Commissioner has the general administration (including a part of an Act to the extent to which the Commissioner has the general administration of the Act), or
- regulations made under such an Act, including a part of an Act.

**Item 50 of Schedule 2** of the Bill amends this definition of taxation law by omitting ‘regulations’ and substituting ‘legislative instruments made’ in this definition.

Who is a ‘taxation officer’?

**Proposed subsection 355-30(2)** states that ‘taxation officer’ means:

- the Commissioner or a Second Commissioner of Taxation, or
- an individual appointed or engaged under the *Public Service Act 1999* and performing duties in the Australian Taxation Office.

Thus statutory officers created by a taxation law, as well as public servants working in the ATO, are included in the definition of ‘taxation officer’. The definition also would include public servants from other departments who may be working within the ATO for a limited period of time.

**Proposed paragraphs 355-25(1)(a) and (d)** make it an offence for a former taxation officer to disclose protected information. This prohibition applies to all categories of former statutory officers and public servants who may have been included in the definition of ‘taxation officer’.

A note to **proposed subsection 355-30(2)** states that Division 355 applies to certain other entities as if they were taxation officers. These entities are considered in the following paragraph.

What are the entities to which Division 355 applies in the same way as it applies in relation to taxation officers?

**Proposed section 355-15** deals with the application of Division 355 and states that it applies to the following entities in the same way as it applies in relation to taxation officers:

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- (a) an entity engaged to provide services relating to the Australian Taxation Office;
- (b) an individual employed by, or otherwise performing services for, an entity referred to in paragraph (a);
- (c) an individual:
  - (i) appointed or employed by, or performing services for, the Commonwealth or an authority of the Commonwealth; and
  - (ii) performing functions or exercising powers under or for the purposes of a taxation law.

The Explanatory Memorandum states that the use of the term ‘entity’ in the definition of the offence under **proposed section 355-25** is intended to give the offence a wide coverage. At paragraph 3.13 on page 23 it states:

The use of the term ‘entity’ is intended to ensure that the application of the offence provisions is as wide as possible. Whilst the offence provision will generally be directed at the individual offender, the entity that the individual is employed or contracted by or otherwise associated with may be prosecuted where the individual’s actions were at the behest of that other entity.

The offence of unauthorised recording and disclosure of protected information by taxation officers and penalty

**Proposed subsection 355-20** states that the main protection for taxpayer confidentiality is in Subdivision 355-B. As mentioned, it is an offence for taxation officers to disclose tax information that identifies an entity, or is reasonably capable of being used to identify an entity, except in certain specified circumstances. This Bills Digest now will briefly outline the elements of this offence and the specified exceptions.

**Proposed subsection 355-25(1)** provides that an entity commits an offence if:

- the entity is or was a taxation officer, and
  - the entity makes a record of information, or
  - discloses such information to another entity (other than the entity to whom the information relates or an entity covered by **proposed subsection 355-25(2)**) or to a court or tribunal, and
- the information so disclosed is protected information, and
- the information was acquired by the entity as a taxation officer.

The offence carries a maximum penalty of two years’ imprisonment.

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What is an entity covered by subsection 355-25(2) to whom protected information may be disclosed by a taxation officer?

It was seen above that the offence of disclosure of protected information by taxation officers excludes information disclosed by a taxation officer to an entity to whom the information relates or to an entity covered by **proposed subsection 355-25(2)**.

To enable information in relation to a taxpayer to be disclosed to a representative of a taxpayer, **proposed subsection 355-25(2)** lists the following categories of entities covered by the provision (covered entities) in relation to protected information that relates to another entity (the primary entity):

- registered tax agents and BAS agents
  - where the covered entity is the primary entity's registered tax agent or BAS agent (**proposed paragraph 355-25(2)(a)**). This enables a registered tax agent or BAS agent to receive protected information from a taxation officer on behalf of his or her clients
- legal practitioners
  - where the covered entity is a legal practitioner such as a solicitor or barrister representing the primary entity in relation to the primary entity's tax affairs (**proposed paragraph 355-25(2)(b)**)
- insolvency practitioners
  - where the primary entity is an 'incapacitated entity' and the covered entity is a representative of the incapacitated entity under **proposed paragraph 355-25(2)(c)**. Thus an insolvency practitioner such as a trustee in bankruptcy, a liquidator, a voluntary administrator, a receiver or an administrator of a deed of company arrangement may access and receive protected information from a taxation officer for performing the function of a representative
- legal personal representatives and guardians
  - where the covered entity is a legal personal representative of the primary entity under **proposed paragraph 355-25(2)(d)**. A 'legal personal representative' is defined in section 995-1 of the ITAA 1997 to mean:
    - (a) an executor or administrator of an estate of a person who has died; or
    - (b) a trustee of an estate of a person who is under a legal disability; or
    - (c) a person who holds a general power of attorney that was granted by another person
  - **proposed paragraph 355-25(2)(e)** also enables a minor to be legally represented by a guardian and access information from a taxation officer
- consolidated and multiple entry consolidated groups

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- wholly-owned groups of companies can consolidate and be treated as a single entity under current tax law. The single framework recognises that each entity in a consolidated (multiple entity consolidated (MEC) group) can nominate each other as a representative with the ATO. Effect is given to it by **proposed paragraph 355-25(2)(f)**
- representatives nominated by the taxpayer in the approved form
  - **proposed paragraph 355-25(2)(g)** permits a taxpayer to nominate any person in the approved form to make representations on their behalf with the ATO.

Further details of the exceptions to the offences under Subdivisions 355-B, 355-C and 355-D

The exceptions to the offences in Subdivisions 355-B, 355-C and 355-D were briefly listed above. It is not within the scope of the Bills Digest to give details of the various exceptions. However, brief comments will be made below on aspects of the disclosure to Ministers and committees of Parliament. For further information on the other exceptions, the reader is referred to the following Chapters of the Explanatory Memorandum for detailed explanations with examples:

- General qualifications on disclosure provisions – Chapter 4, pages 33 to 40
- Authorised disclosures by taxation officers – Chapter 5, pages 41 to 68, and
- Authorised on-disclosures by recipients of taxpayer information – Chapter 6, pages 69 to 77.

Disclosures to Ministers and committees of Parliament

**Proposed subsection 355-55(1)** in Subdivision 355-B provides that disclosure to Ministers and committees of Parliament is permitted by a taxation officer if the records disclosed are specifically listed in the table therein.

**Proposed subsection 355-55(2)** gives the circumstances when disclosures could be made to committees of Parliament.

**Proposed section 355-60** sets the limits on the disclosures that can be made by a taxation officer to Ministers and Parliament.

A taxation officer may only disclose taxpayer information to Ministers, Parliament and committees when provision is made under the law. Such provision in **proposed section 355-55** includes:

- when a Minister needs the information to exercise a power or perform a function under taxation law
- when a taxpayer is writing to a Minister to request direct assistance

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- when the information is to inform a decision the Treasurer makes about the Compensation for Detriment Caused by Defective Administration scheme
- when the information is to inform the Finance Minister when considering making an act of grace payment or waiving debts owed to the Commonwealth
- when the information is to inform Prime Minister or Cabinet on decisions regarding *ex gratia* payments, or
- when the information is being provided to a committee *in camera*.<sup>15</sup>

According to **proposed section 355-60**, the information a taxation officer can supply to Ministers and Parliament is limited to those provided for in **proposed section 355-55**. For example, even if a taxation officer wishes to disclose information in the performance of his or her duties as a taxation officer (under **proposed section 355-50**), it is an offence for that taxation officer to disclose the information to a Minister or Parliament unless it can be made under the instances explicitly authorised by **proposed section 355-55**.<sup>16</sup>

**Proposed subsection 355-180** of Subdivision 355-C provides on-disclosure to Ministers in relation to the exercise of statutory powers or functions where that on-disclosure is to enable the Minister to exercise that power or perform the function.<sup>17</sup>

## Schedule 2—Consequential amendments

Most of the consequential amendments in **Schedule 2** repeal the existing taxation secrecy and disclosure provisions in the 18 taxation laws listed in Attachment A to this Bills Digest and make the new Division 355 of Schedule 1 of the *Taxation Administration Act 1953*, namely, the new framework, applicable to these taxation laws.

### Application

**Item 123** of **Schedule 2** provides that the secrecy and disclosure provisions of taxpayer information in the Bill apply from the day after the Act receives Royal Assent, regardless of when that information was obtained.<sup>18</sup>

## Schedule 3—Other amendments

The amendments in **Schedule 3** include updating the Dictionary provisions in subsection 995-1(1) of the ITAA 1997 with consequential repeal of the definitions of the same terms in the ITAA 1936. It also inserts certain new definitions into the TAA 1953.

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15. Explanatory Memorandum, pp. 51–55, paragraphs 5.31–5.43.

16. Explanatory Memorandum, pp. 37–39, paragraphs 4.19–4.27.

17. Explanatory Memorandum, p. 74.

18. Item 2 in the table in subclause 2(1) of the Bill provides that Schedule 2 to the Bill commences on the day after Royal Assent.

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**Item 3** of the table in **subclause 2(1)** provides that these changes commence on the day after Royal Assent.

#### Schedule 4—Repeal

**Item 1** of **Schedule 4** repeals the *A New Tax System (Bonuses for Older Australians) Act 1999*.

The Explanatory Memorandum in paragraph 7.20 at page 82 states that it is being repealed as it has no ongoing impact.

**Item 5** of **subclause 2(1)** of the Bill provides that **Schedule 4** shall commence the day after Royal Assent.

#### Schedule 5— Regulations about transitional matters

This Schedule provides for the making of regulations to ensure a smooth transition to the new framework.

**Item 5** of **subclause 2(1)** of the Bill provides that this Schedule commences on the day after Royal Assent.

## Concluding comments

### The scope of the new framework and its limitations

The new framework proposed in Division 355 of Schedule 1 of the *Taxation Administration Act 1953* will provide overarching protection for taxpayer information in a uniform manner. As mentioned above, the secrecy and disclosure provisions in the *Tax Agent Services Act 2009* and the provisions relating to the security of tax file numbers (TFNs) in Subdivision BA of Division 2 of Part III of the TAA 1953, are outside the new framework. The administration of all these provisions will be the responsibility of the Commissioner of Taxation.

In addition, personal information, which includes taxpayer information, may also be protected by other legislation such as the *Privacy Act 1988* (the Privacy Act) and is the responsibility of the Office of the Privacy Commissioner.

The Explanatory Memorandum to the Bill points out in paragraph 1.31 on pages 11 and 12 that there is a number of non-taxation Acts that effectively override the secrecy and disclosure provisions contained in the new framework, and permit other Commonwealth entities such as the Auditor-General to obtain taxpayer information, or access such information, in certain clearly defined circumstances.

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They include:

- sections 32 and 33 of the *Auditor-General Act 1997*
- section 15 of the *Inspector-General of Taxation Act 2003*
- section 9 of the *Ombudsman Act 1976*
- section 44 of the *Privacy Act*
- Schedule 6 to the *Anti-Terrorism Act (No. 2) 2005*, and
- the power of Parliament to compel the production of information under the *Parliamentary Privileges Act 1987* (though note that the new framework does limit the application of Parliamentary privilege).

If a taxation officer or another entity in receipt of taxpayer information is compelled to provide taxpayer information under these provisions, they cannot be prosecuted for any offence contained in **proposed Division 355** of the TAA 1953.

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## Attachment A

### Taxation laws in the framework for confidentiality of taxpayer information

<b>Name of Act</b>	<b>Current Law/ New Law</b>	<b>New Law/ Current Law</b>
<i>Excise Act 1901</i>	Table 8.1, p. 86	Table 8.19, p. 97
<i>First Home Saver Accounts Act 2008</i>	Table 8.2, p. 86	Table 8.20, p. 97
<i>Fringe Benefits Tax Assessment Act 1986</i>	Table 8.3, p. 87	Table 8.21, p. 98
<i>Income Tax Assessment Act 1936</i>	Table 8.4, p. 87	Table 8.22, p. 98
<i>Income Tax Assessment Act 1997</i>	Table 8.5, p. 88	Table 8.23, p. 99
<i>International Tax Agreements Act 1953</i>	Table 8.6, p. 88	Table 8.24, p. 99
<i>Petroleum Resource Rent Tax Assessment Act 1987</i>	Table 8.7, p. 89	Table 8.25, p. 100
<i>Product Grants and Benefits Administration Act 2000</i>	Table 8.8, p. 89	Table 8.26, p. 100
<i>Superannuation Contributions Tax (Assessment and Collection) Act 1997</i>	Table 8.9, p. 90	Table 8.27, p. 101
<i>Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997</i>	Table 8.10, p. 90	Table 8.28, p. 101
<i>Superannuation (Government Co-contributions for Low Income Earners) Act 2003</i>	Table 8.11, p. 90	Table 8.29, p. 101
<i>Superannuation Guarantee (Administration) Act 1992</i>	Table 8.12, p. 91	Table 8.30, p. 102
<i>Superannuation Industry (Supervision) Act 1993</i>	Table 8.13, p. 91	Table 8.31, p. 102
<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i>	Table 8.14, p. 92	Table 8.32, p. 103
<i>Taxation Administration Act 1953</i>	Table 8.15, p. 92	Table 8.33, p. 103
<i>Taxation (Interest on Overpayments and Early Payments) Act 1953</i>	Table 8.16, p. 96	Table 8.34, p. 107
<i>Termination Payments Tax (Assessment and Collection) Act 1997</i>	Table 8.17, p. 96	Table 8.35, p. 107
<i>A New Tax System (Bonuses for older Australians) Act 1999</i>	Table 8.18, p. 96	Table 8.36, p. 107

Source: Parliamentary Library

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**Notes to Attachment A:**

1. This table lists in the first column the 18 taxation laws which will come within the new framework and become subject to the confidentiality obligations and exceptions in proposed Division 355 of Schedule 1 of the *Taxation Administration Act 1953*.
2. The second column gives the reference to the table in the Explanatory Memorandum in Chapter 8 (pp. 85–96) to trace the new law from the current law in each of these taxation laws.
3. The third column gives the reference to the table in the Explanatory Memorandum in Chapter 8 (pp. 97–107) to trace the current law from the new law for each of these taxation laws.

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