

Appendix 3

Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009

1. For the text of the bill, refer to:

http://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r4238_first/oc_pdf/09229b01.pdf;fileType%3Dapplication%2Fpdf

2. For the text of the explanatory memorandum refer to:

http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4238_ems_cf637609-f8c1-4931-a8cb-ed345fec3764/upload_pdf/336493.pdf;fileType=application%2Fpdf

3. Provisions of concern to the Committee

355-25 Offence—disclosure of protected information by taxation officers

- (1) An entity commits an offence if:
 - (a) the entity is or was a *taxation officer; and
 - (b) the entity:
 - (i) makes a record of information; or
 - (ii) discloses information to another entity (other than the entity to whom the information relates or an entity covered by subsection (2)) or to a court or tribunal; and
 - (c) the information is *protected information; and
 - (d) the information was acquired by the first-mentioned entity as a taxation officer.

Penalty: Imprisonment for 2 years.

355-55 Exception—disclosure to Ministers and committees of Parliament

- (1) Section 355-25 does not apply if:
 - (a) the entity is a *taxation officer; and
 - (b) an item in the following table covers the making of the record or the disclosure:

Records or disclosures to Ministers		
Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
1	any Minister	is for the purpose of enabling the Minister to exercise a power or perform a function under a *taxation law.
2	the Minister	(a) is about an entity; and (b) is for the purpose of enabling the Minister to respond directly to the

Records or disclosures to Ministers

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
		entity in relation to a representation made by the entity to: (i) the Minister; or (ii) another member of a House of the Parliament.
3	the Minister	is for the purpose of informing decisions made under the scheme known as the Compensation for Detriment Caused by Defective Administration Scheme.
4	the *Finance Minister	is for the purpose of: (a) the making, or possible making, of a payment referred to in section 33 of the <i>Financial Management and Accountability Act 1997</i> (about act of grace payments) in connection with administering a *taxation law; or (b) the waiver, or possible waiver, of a *tax debt under section 34 of that Act.
5	any Minister	is for the purpose of: (a) determining whether to make an ex gratia payment; or (b) administering such a payment.

Note 1: A defendant bears an evidential burden in relation to the matters in this subsection: see subsection 13.3(3) of the *Criminal Code*.

Note 2: Section 19A of the *Acts Interpretation Act 1901* provides that the expression “the Minister”, as used in table items 2 and 3, refers to the Minister or Ministers administering the relevant provision.

(2) Section 355-25 does not apply if:

- (a) the record is made for, or the disclosure is to, a committee of one or both Houses of the Parliament; and
- (b) the making of the record or the disclosure is in response to a request of the committee for the record or the information; and
- (c) the record or disclosure is for the purpose of the committee performing any of its functions or exercising any of its powers; and
- (d) in the case of a written disclosure—the disclosure is treated as evidence taken in camera; and
- (e) in the case of an oral disclosure—the disclosure is made in camera.

Note: A defendant bears an evidential burden in relation to the matters in this subsection: see subsection 13.3(3) of the *Criminal Code*.

355-60 Limits on disclosure to Ministers and Parliament

- (1) Sections 355-45 and 355-55 are the only exceptions to the prohibition in section 355-25 on which an entity who has acquired *protected information as a *taxation officer can rely in making a record of the information for, or disclosing the information to, a Minister, a House of the Parliament or a committee of one or both Houses of the Parliament.

Note: Disclosures that are not prohibited by section 355-25 are not affected by this subsection. For example, a taxation officer may disclose information to a Minister if the Minister is the entity to whom the information relates, or is an entity covered by subsection 355-25(2) in relation to the information.

- (2) Subsection (1) has effect despite any power, privilege or immunity of either House of the Parliament, of the members of either House of the Parliament or the committees of either or both Houses of the Parliament, except to the extent that those powers, privileges or immunities can be invoked to compel the disclosure of *protected information.
- (3) However, nothing in this Subdivision affects the law relating to the powers, privileges or immunities of either House of the Parliament, of the members of either House of the Parliament or of the committees of either or both Houses of the Parliament in relation to the recording or disclosure of particular *protected information if the information has been disclosed in accordance with section 355-45 or 355-55.

Note: A reference in subsection (3) to members of either House of the Parliament includes a reference to Ministers.

355-155 Offence—on-disclosure of protected information by other people

An entity commits an offence if:

- (a) the entity:
- (i) makes a record of information; or
 - (ii) discloses 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
- (b) the information was acquired by the first-mentioned entity under an exception in this Subdivision or in Subdivision 355-B; and
- (c) the first-mentioned entity did not acquire the information as a *taxation officer.

Penalty: Imprisonment for 2 years.

Note: This section also covers information acquired by an entity (other than as a taxation officer) before the commencement of this section under certain repealed or amended provisions: see item 124 of Schedule 2 to the *Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2009*.

