





# **Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010**

**No. 145, 2010**

**An Act to amend the law relating to confidentiality  
of information acquired under the taxation laws,  
and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010**

**No. 145, 2010**

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**An Act to amend the law relating to confidentiality of information acquired under the taxation laws, and for other purposes**

*[Assented to 16 December 2010]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| <b>Commencement information</b>   |   |                     |
|---|---|---------------------|
| <b>Column 1</b>   | <b>Column 2</b>                                   | <b>Column 3</b>     |
| <b>Provision(s)</b>   | <b>Commencement</b>                               | <b>Date/Details</b> |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent.       | 16 December 2010    |
| 2. Schedules 1 to 5   | The day after this Act receives the Royal Assent. | 17 December 2010    |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in Column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Confidentiality of taxpayer information**

### **Part 1—Main amendment**

#### ***Taxation Administration Act 1953***

#### **1 Division 355 in Schedule 1**

Repeal the Division, substitute:

### **Division 355—Confidentiality of taxpayer information**

#### **Table of Subdivisions**

|       |   |
|-------|---|
|       | Guide to Division 355   |
| 355-A | Objects and application of Division                                   |
| 355-B | Disclosure of protected information by taxation officers              |
| 355-C | On-disclosure of protected information by other people                |
| 355-D | Disclosure of protected information that has been unlawfully acquired |
| 355-E | Other matters   |

#### **Guide to Division 355**

##### **355-1 What this Division is about**

The disclosure of information about the tax affairs of a particular entity is prohibited, except in certain specified circumstances.

Those exceptions are designed having regard to the principle that disclosure of information should be permitted only if the public benefit derived from the disclosure outweighs the entity's privacy.

Note: This Division contains the main circumstances in which protected tax information can be disclosed. A number of other Commonwealth laws also allow for the disclosure of, or access to, such information in limited circumstances. Some of these other laws are as follows:

- 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 1988*.

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

### **Table of sections**

|        |                         |
|--------|-------------------------|
| 355-10 | Objects of Division     |
| 355-15 | Application of Division |

### **355-10 Objects of Division**

The objects of this 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; and
- (b) to facilitate efficient and effective government administration and law enforcement by allowing disclosures of protected tax information for specific, appropriate purposes.

### **355-15 Application of Division**

This Division applies in relation to the following entities in the same way as it applies in relation to \*taxation officers:

- (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.

## **Subdivision 355-B—Disclosure of protected information by taxation officers**

### **Guide to Subdivision 355-B**

#### **355-20 What this Subdivision is about**

The main protection for taxpayer confidentiality is in this Subdivision. 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.

#### **Table of sections**

##### **Operative provisions**

|        |   |
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| 355-25 | Offence—disclosure of protected information by taxation officers    |
| 355-30 | Meaning of <i>protected information</i> and <i>taxation officer</i> |
| 355-35 | Consent is not a defence  |
| 355-40 | Generality of Subdivision not limited                               |
| 355-45 | Exception—disclosure of publicly available information              |
| 355-50 | Exception—disclosure in performing duties                           |
| 355-55 | Exception—disclosure to Ministers                                   |
| 355-60 | Limits on disclosure to Ministers                                   |
| 355-65 | Exception—disclosure for other government purposes                  |
| 355-70 | Exception—disclosure for law enforcement and related purposes       |
| 355-75 | Limits on disclosure to courts and tribunals                        |

#### **Operative provisions**

##### **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.

- (2) An entity (the ***covered entity***) is covered by this subsection in relation to \*protected information that relates to another entity (the ***primary entity***) if:
  - (a) the covered entity is the primary entity's \*registered tax agent or BAS agent; or
  - (b) the covered entity is a \*legal practitioner representing the primary entity in relation to the primary entity's \*tax affairs; or
  - (c) the primary entity is an \*incapacitated entity and the covered entity is a \*representative of the incapacitated entity; or
  - (d) the covered entity is the primary entity's \*legal personal representative; or
  - (e) the covered entity is the primary entity's guardian where the primary entity is a minor or suffers from mental incapacity; or
  - (f) the covered entity and the primary entity are members of the same \*consolidated group or \*MEC group; or
  - (g) the covered entity is a representative of the primary entity who has been nominated by the primary entity in the \*approved form to act on that entity's behalf with respect to protected information.

### **355-30** Meaning of ***protected information*** and ***taxation officer***

- (1) ***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.

Note: Tax file numbers do not constitute protected information because they are not, by themselves, reasonably capable of being used to identify an entity. For offences relating to tax file numbers, see Subdivision BA of Division 2 of Part III.

(2) **Taxation officer** means:

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

Note: This Division applies to certain other entities as if they were taxation officers: see section 355-15.

### **355-35 Consent is not a defence**

It is not a defence to a prosecution for an offence against section 355-25 that the entity to whom the information relates has consented to:

- (a) the making of the record; or  
(b) the disclosure of the information.

### **355-40 Generality of Subdivision not limited**

Except as provided by section 355-60, nothing in this Subdivision limits the generality of anything else in it.

Note: This means that each provision in this Subdivision (other than section 355-60) has an independent operation and is not to be interpreted by reference to any other provision within the Subdivision.

### **355-45 Exception—disclosure of publicly available information**

Section 355-25 does not apply if the information was already available to the public (otherwise than as a result of a contravention of section 355-25, 355-155 or 355-265).

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

### **355-50 Exception—disclosure in performing duties**

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

**Schedule 1** Confidentiality of taxpayer information  
**Part 1** Main amendment

- (a) the entity is a \*taxation officer; and
- (b) the record or disclosure is made in performing the entity's duties as a taxation officer.

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

- (2) Without limiting subsection (1), records or disclosures made in performing duties as a \*taxation officer include those mentioned in the following table:

| <b>Records or disclosures in performing duties</b> |   |   |
|--|---|---|
| <b>Item</b>  | <b>The record is made for or the disclosure is to ...</b> | <b>and the record or disclosure ...</b>   |
| 1  | any entity, court or tribunal                             | is for the purpose of administering any *taxation law.  |
| 2  | any entity, court or tribunal                             | is for the purpose of the making, or proposed or possible making, of an order under the <i>Proceeds of Crime Act 2002</i> that is related to a *taxation law.                                       |
| 3  | any entity, court or tribunal                             | is for the purpose of criminal, civil or administrative proceedings (including merits review or judicial review) that are related to a *taxation law.   |
| 4  | any entity  | is for the purpose of responding to a request for a statement of reasons under the <i>Administrative Decisions (Judicial Review) Act 1977</i> in relation to a decision made under a *taxation law. |
| 5  | any entity  | is for the purpose of:<br>(a) determining whether to make an ex gratia payment; or<br>(b) administering such a payment;<br>in connection with administering a *taxation law.                        |
| 6  | any entity  | is for the purpose of enabling the entity to understand or comply with its obligations under a *taxation law.   |
| 7  | the Secretary of the Department of the Treasury           | (a) is of information that does not include the name, contact details or  |

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**Records or disclosures in performing duties**

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| Item | The record is made for or the disclosure is to ...  | and the record or disclosure ...   |
|------|---|--|
|      |   | *ABN of any entity; and<br>(b) is for the purpose of:<br>(i) the design of a *taxation law;<br>or<br>(ii) the amendment of a taxation law. |
| 8    | any board or member of a board performing a function or exercising a power under a *taxation law  | is for the purpose of performing that function or exercising that power.   |
| 9    | a competent authority referred to in an international agreement (within the meaning of section 23 of the <i>International Tax Agreements Act 1953</i> ) | is for the purpose of exchanging information under such an international agreement.  |

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**355-55 Exception—disclosure to Ministers**

- (1) Section 355-25 does not apply if:
- (a) the entity is a \*taxation officer; and
  - (b) an item in the table in this subsection covers the making of the record or the disclosure; and
  - (c) if the entity is not the Commissioner, a Second Commissioner or an SES employee or acting SES employee of the Australian Taxation Office—one of the following has agreed that the record or disclosure is covered by the item:
    - (i) the Commissioner;
    - (ii) a Second Commissioner;
    - (iii) an SES employee or acting SES employee of the Australian Taxation Office who is not a direct supervisor of the taxation officer.

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**Records or disclosures to Ministers**

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| 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 |

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**Part 1** Main amendment

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**Records or disclosures to Ministers**

| <b>Item</b> | <b>The record is made for or the disclosure is to ...</b> | <b>and the record or disclosure ...</b>  |
|-------------|---|--|
|             |   | Minister to exercise a power or perform a function under a *taxation law.  |
| 2           | the Minister  | (a) is about an entity; and<br>(b) is for the purpose of enabling the Minister to respond directly to the entity in relation to a representation made by the entity to:<br>(i) the Minister; or<br>(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:<br>(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<br>(b) the waiver, or possible waiver, of a *tax debt under section 34 of that Act. |
| 5           | any Minister  | is for the purpose of:<br>(a) determining whether to make an ex gratia payment; or<br>(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) The \*taxation officer is entitled to rely on the exception in subsection (1) even if the agreement referred to in paragraph (1)(c) has not been obtained in relation to the record or disclosure.

### **355-60 Limits on disclosure to Ministers**

- (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, whether or not provided to a Minister in the course of, or for the purposes of or incidental to, the transacting of the business of a House of the Parliament or of 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 section 16 of the *Parliamentary Privileges Act 1987*, and that section does not operate to the extent that it would otherwise apply to a disclosure of \*protected information by a \*taxation officer to a Minister.

Note: This subsection does not limit the operation of section 16 of the *Parliamentary Privileges Act 1987* in any other respect. That section continues to operate, for example, to enable taxation officers to disclose protected information to a committee of one or both Houses of the Parliament.

### **355-65 Exception—disclosure for other government purposes**

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

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

*Table 1—Records or disclosures relating to social welfare, health or safety*

- (2) Table 1 is as follows:
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**Schedule 1** Confidentiality of taxpayer information  
**Part 1** Main amendment

**Table 1: Records or disclosures relating to social welfare, health or safety**

| <b>Item</b> | <b>The record is made for or the disclosure is to ...</b>   | <b>and the record or disclosure ...</b>  |
|-------------|---|--|
| 1           | an Agency Head (within the meaning of the <i>Public Service Act 1999</i> ) of an agency (within the meaning of that Act) dealing with matters relating to the social security law (within the meaning of subsection 23(17) of the <i>Social Security Act 1991</i> ) | is for the purpose of administering that law.  |
| 2           | the *Health Secretary   | is for the purpose of administering any law of the Australian Capital Territory or of the Northern Territory which is administered by the *Health Minister.  |
| 3           | the Repatriation Commission   | is for the purpose of administering any *Commonwealth law relating to pensions.  |
| 4           | the *Education Secretary  | is for the purpose of administering any *Commonwealth law relating to pensions, allowances or benefits.  |
| 5           | the *Education Secretary  | is for the purpose of administering any *Commonwealth law relating to financial assistance to students.  |
| 6           | the *Families Secretary   | is for the purpose of administering the <i>A New Tax System (Family Assistance) (Administration) Act 1999</i> .  |
| 7           | the Child Support Registrar   | is for the purpose of administering the <i>Child Support (Registration and Collection) Act 1988</i> or the <i>Child Support (Assessment) Act 1989</i> .  |
| 8           | the Chief Executive Officer of Medicare Australia   | is for the purpose of administering Part 2-2 (about premiums reduction and incentive payment schemes) or 6-4 (about administration of those schemes) of the <i>Private Health Insurance Act 2007</i> . |
| 9           | an *Australian government agency  | is necessary for the purpose of preventing or lessening:   |

**Table 1: Records or disclosures relating to social welfare, health or safety**

| Item | The record is made for or the disclosure is to ... | and the record or disclosure ...  |
|------|--|---|
|      |  | (a) a serious threat to an individual's life, health or safety; or<br>(b) a serious threat to public health or public safety. |

*Table 2—Records or disclosures relating to superannuation or finance*

(3) Table 2 is as follows:

**Table 2: Records or disclosures relating to superannuation or finance**

| Item | The record is made for or the disclosure is to ...  | and the record or disclosure ...  |
|------|---|---|
| 1    | a financial sector supervisory agency (within the meaning of section 3 of the <i>Australian Prudential Regulation Authority Act 1998</i> )  | (a) is of information that was obtained under or in relation to the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> ; and<br>(b) is for the purpose of the agency performing any of its functions or exercising any of its powers.  |
| 2    | (a) an agency having the function, in Australia or in a foreign country, of supervising or regulating *financial institutions; or<br>(b) any other agency (including a foreign agency) specified in the regulations | (a) is of information that was obtained under or in relation to the <i>Superannuation (Self Managed Superannuation Funds) Taxation Act 1987</i> or the <i>Superannuation Industry (Supervision) Act 1993</i> ; and<br>(b) is for the purpose of performing any of its functions or exercising any of its powers; and<br>(c) is made in accordance with the conditions (if any) imposed by the regulations in relation to the disclosure of information under this item. |
| 3    | the Superannuation Complaints Tribunal established by section 6 of the <i>Superannuation</i>  | (a) is of information that was obtained under or in relation to the <i>Superannuation (Unclaimed Money</i>  |

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**Part 1** Main amendment

**Table 2: Records or disclosures relating to superannuation or finance**

| <b>Item</b> | <b>The record is made for or the disclosure is to ...</b>  | <b>and the record or disclosure ...</b>  |
|-------------|--|--|
|             | <i>(Resolution of Complaints) Act 1993</i>   | <i>and Lost Members) Act 1999; and</i><br>(b) is for the purpose of the Tribunal performing any of its functions or exercising any of its powers.  |
| 4           | the Australian Prudential Regulation Authority ( <i>APRA</i> )   | is for the purpose of administering:<br>(a) the <i>Financial Institutions Supervisory Levies Collection Act 1998</i> ; or<br>(b) the <i>Superannuation Industry (Supervision) Act 1993</i> .   |
| 5           | APRA   | (a) is of information that was obtained under or in relation to the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> ; and<br>(b) is for the purpose of APRA performing any of its functions or exercising any of its powers.   |
| 6           | APRA   | is for the purpose of APRA performing any of its functions or exercising any of its powers in relation to *FHSAs.  |
| 7           | an individual who is or was an employee (within the meaning of the <i>Superannuation Guarantee (Administration) Act 1992</i> ) | (a) is of information that relates to the Commissioner's response to a complaint by the individual about a failure by the individual's employer or former employer to comply with the employer's obligations under the <i>Superannuation Guarantee (Administration) Act 1992</i> in relation to the employee; and<br>(b) does not relate to the general financial affairs of the employer. |
| 8           | any entity, court or tribunal  | is of information that was obtained under, or for the purposes of the <i>Superannuation (Self Managed Superannuation Funds) Taxation Act 1987</i> or the <i>Superannuation Industry (Supervision) Act 1993</i> and is for the purpose of all or any of the following:  |

**Table 2: Records or disclosures relating to superannuation or finance**

| <b>Item</b> | <b>The record is made for or the disclosure is to ...</b> | <b>and the record or disclosure ...</b>   |
|-------------|---|---|
|             |   | <ul style="list-style-type: none"> <li>(a) identifying a particular self-managed superannuation fund;</li> <li>(b) enabling members of the public to contact persons who perform functions in relation to a particular self-managed superannuation fund;</li> <li>(c) enabling the Commissioner to provide an opinion to members of the public as to whether or not a particular self-managed superannuation fund is a complying superannuation fund in relation to a particular income year for the purposes of Division 2 of Part 5 of the <i>Superannuation Industry (Supervision) Act 1993</i>;</li> <li>(d) describing activity engaged in, or proposed to be engaged in, by the Commissioner in relation to a breach or suspected breach by a person of a provision of the <i>Superannuation (Self Managed Superannuation Funds) Taxation Act 1987</i> or the <i>Superannuation Industry (Supervision) Act 1993</i>.</li> </ul> |

*Table 3—Records or disclosures relating to corporate regulation, business, research or policy*

(4) Table 3 is as follows:

**Table 3: Records or disclosures relating to corporate regulation, business, research or policy**

| <b>Item</b> | <b>The record is made for or the disclosure is to ...</b>            | <b>and the record or disclosure ...</b>                                     |
|-------------|--|---|
| 1           | the Australian Securities and Investments Commission ( <i>ASIC</i> ) | is for the purpose of investigation or enforcement activities relating to a |

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**Part 1** Main amendment

**Table 3: Records or disclosures relating to corporate regulation, business, research or policy**

| <b>Item</b> | <b>The record is made for or the disclosure is to ...</b>   | <b>and the record or disclosure ...</b>   |
|-------------|---|---|
|             |   | provision of a law that:<br>(a) is administered by ASIC; and<br>(b) imposes a pecuniary penalty or creates an offence.  |
| 2           | ASIC  | (a) is of information that was obtained under or in relation to the <i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> ; and<br>(b) is for the purpose of ASIC performing any of its functions or exercising any of its powers.  |
| 3           | ASIC  | is of information relating to superannuation and is for the purpose of administering:<br>(a) the <i>Superannuation Industry (Supervision) Act 1993</i> ; or<br>(b) Chapter 7 of the <i>Corporations Act 2001</i> (about financial services and markets); or<br>(c) Division 2 of Part 2 of the <i>Australian Securities and Investments Commission Act 2001</i> (about unconscionable conduct and consumer protection in relation to financial services). |
| 4           | ASIC  | is for the purpose of administering Chapter 5A of the <i>Corporations Act 2001</i> (relating to deregistration, and transfer of registration, of companies).  |
| 5           | ASIC  | is for the purpose of ASIC performing any of its functions or exercising any of its powers in relation to *FHSAs.   |
| 6           | Innovation Australia established under section 6 of the <i>Industry Research and Development Act 1986</i> | is for the purpose of administering any *Commonwealth law relating to venture capital.  |
| 7           | the Secretary of the Department   | is for the purpose of briefing the  |

**Table 3: Records or disclosures relating to corporate regulation, business, research or policy**

| <b>Item</b> | <b>The record is made for or the disclosure is to ...</b> | <b>and the record or disclosure ...</b>  |
|-------------|---|--|
|             | of the Treasury   | Treasurer in relation to a decision that the Treasurer may make under the <i>Foreign Acquisitions and Takeovers Act 1975</i> .   |
| 8           | the Secretary of the Department of the Treasury           | (a) is of information that does not include the name, contact details or *ABN of any entity; and<br><br>(b) is for the purpose of that Department estimating or analysing taxation revenue or estimating the cost of policy proposals. |

*Table 4—Records or disclosures relating to other taxation matters*

(5) Table 4 is as follows:

**Table 4: Records or disclosures relating to other taxation matters**

| <b>Item</b> | <b>The record is made for or the disclosure is to ...</b>  | <b>and the record or disclosure ...</b>   |
|-------------|--|---|
| 1           | a State taxation officer, or a Territory taxation officer, within the meaning of subsection 13D(1) of this Act | is for the purpose of administering a *State law or *Territory law relating to taxation, if a State taxation officer or a Territory taxation officer is authorised by law to communicate information obtained under the State law or Territory law to the Commissioner.   |
| 2           | a State taxation officer, or a Territory taxation officer, within the meaning of subsection 13D(1) of this Act | is of:<br><br>(a) information obtained under or in relation to the <i>First Home Saver Accounts Act 2008</i> ; or<br><br>(b) rental information or residential address information;<br><br>and is for the purpose of administering the <i>First Home Owner Grant Act 2000</i> of New South Wales, or a similar *State |

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**Table 4: Records or disclosures relating to other taxation matters**

| <b>Item</b> | <b>The record is made for or the disclosure is to ...</b>  | <b>and the record or disclosure ...</b>   |
|-------------|--|---|
|             |  | law or *Territory law.  |
| 3           | the Development Allowance Authority established by section 94 of the <i>Development Allowance Authority Act 1992</i>     | is for the purpose of:<br>(a) administering that Act; or<br>(b) Part III of this Act (prosecutions and offences), in so far as that Part applies in relation to the <i>Development Allowance Authority Act 1992</i> .                                 |
| 4           | an individual who holds an office of a State or Territory, being an office prescribed for the purpose of this table item | (a) is of information that relates to alcoholic beverages; and<br>(b) is for the purpose of the individual administering an *arrangement for the rebate, refund or other payment or credit by a State or Territory in respect of alcoholic beverages. |

*Table 5—Records or disclosures relating to rehabilitation or compensation*

(6) Table 5 is as follows:

**Table 5: Records or disclosures relating to rehabilitation or compensation**

| <b>Item</b> | <b>The record is made for or the disclosure is to ...</b>   | <b>and the record or disclosure ...</b>  |
|-------------|---|--|
| 1           | an authority of the Commonwealth established under a *Commonwealth law relating to rehabilitation or compensation | is for the purpose of performing any of its functions or exercising any of its powers under that law.                                    |
| 2           | the *Defence Secretary  | is for the purpose of administering any *Commonwealth law relating to payments in respect of dependants of members of the Defence Force. |
| 3           | an authority of a State or Territory that administers a *workers' compensation law                                | (a) is of information that relates to amounts withheld under Part 2-5 in Schedule 1 to this Act (about PAYG                              |

**Table 5: Records or disclosures relating to rehabilitation or compensation**

| Item | The record is made for or the disclosure is to ... | and the record or disclosure ...   |
|------|--|--|
|      |  | withholding); and<br>(b) is for the purpose of ensuring that employers comply with their obligations relating to insurance or the imposition of a levy under that law. |

*Table 6—Records or disclosures relating to the environment*

(7) Table 6 is as follows:

**Table 6: Records or disclosures relating to the environment**

| Item | The record is made for or the disclosure is to... | and the record or disclosure...   |
|------|---|---|
| 1    | the *Environment Secretary                        | is for the purpose of administering cleaner fuel grants.                |
| 2    | the *Environment Secretary                        | is for the purpose of administering product stewardship (oil) benefits. |

*Table 7—Records or disclosures relating to miscellaneous matters*

(8) Table 7 is as follows:

**Table 7: Records or disclosures relating to miscellaneous matters**

| Item | The record is made for or the disclosure is to ... | and the record or disclosure ...  |
|------|--|---|
| 1    | the Australian Statistician                        | is for the purpose of administering the <i>Census and Statistics Act 1905</i> .   |
| 2    | the Chief Executive Officer of Customs             | is for the purpose of administering a law of customs (within the meaning of the <i>Customs Administration Act 1985</i> ). |
| 3    | the *Immigration Secretary                         | is for the purpose of assisting in locating persons who are unlawfully in Australia.                                      |

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**Table 7: Records or disclosures relating to miscellaneous matters**

| <b>Item</b> | <b>The record is made for or the disclosure is to ...</b>                      | <b>and the record or disclosure ...</b>   |
|-------------|--|---|
| 4           | the *Immigration Secretary   | <p>(a) is of information that relates to a holder or former holder of a visa, or an approved sponsor (within the meaning of the <i>Migration Act 1958</i>) or former approved sponsor of a person for a visa, whose identity is disclosed to a *taxation officer under section 140V of that Act; and</p> <p>(b) is for a purpose that is relevant to:</p> <ul style="list-style-type: none"> <li>(i) the exercise of the Minister's powers under Division 3A of Part 2 of that Act or regulations made under that Division; or</li> <li>(ii) the exercise of the Minister's powers under Part 8D of that Act, to the extent that it relates to a contravention of a civil penalty provision in Division 3A of Part 2 of that Act; or</li> <li>(iii) the administration of Division 3A of Part 2 of that Act or regulations made under that Division.</li> </ul> |
| 5           | the Fair Work Ombudsman (within the meaning of the <i>Fair Work Act 2009</i> ) | <p>(a) is of the fact of an entity's actual or reasonably suspected non-compliance with a *taxation law; and</p> <p>(b) is for the purpose of ensuring the entity's compliance with the <i>Fair Work Act 2009</i>.</p>  |
| 6           | the Attorney-General of a State or Territory                                   | <p>(a) is of information that relates to non-compliance of a private ancillary fund or charity with an *Australian law; and</p> <p>(b) is for the purpose of the administration of an Australian law governing trusts and charities.</p>  |

- (9) To avoid doubt, the exception in table item 7 in table 2 in subsection (3) has effect even if at the time the complaint referred to in that item is made it is in dispute or uncertain whether the individual is an employee or former employee of the employer.

**355-70 Exception—disclosure for law enforcement and related purposes**

- (1) Section 355-25 does not apply if:
- (a) the entity is the Commissioner or a \*taxation officer authorised by the Commissioner to make the record or disclosure; and
  - (b) an item in the table in this subsection covers the making of the record or the disclosure; and
  - (c) if the entity is not the Commissioner, a Second Commissioner or an SES employee or acting SES employee of the Australian Taxation Office—one of the following has agreed that the record or disclosure is covered by the item:
    - (i) the Commissioner;
    - (ii) a Second Commissioner;
    - (iii) an SES employee or acting SES employee of the Australian Taxation Office who is not a direct supervisor of the taxation officer.

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: The Commissioner is required to include in an annual report information about disclosures made under this subsection: see section 3B.

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**Records or disclosures for law enforcement and related purposes**

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| Item | The record is made for or the disclosure is to ...                    | and the record or disclosure ...   |
|------|---|--|
| 1    | an *authorised law enforcement agency officer, or a court or tribunal | is for the purpose of: <ul style="list-style-type: none"> <li>(a) investigating a *serious offence; or</li> <li>(b) enforcing a law, the contravention of which is a serious offence; or</li> <li>(c) the making, or proposed or possible making, of a *proceeds of crime</li> </ul> |

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| <b>Records or disclosures for law enforcement and related purposes</b> |   |  |
|--|---|--|
| <b>Item</b>  | <b>The record is made for or the disclosure is to ...</b>   | <b>and the record or disclosure ...</b>  |
|  |   | order.   |
| 2  | an *authorised ASIO officer   | is for the purpose of performing ASIO's functions under subsection 17(1) of the <i>Australian Security Intelligence Organisation Act 1979</i> .  |
| 3  | a *Project Wickenby officer, or a court or tribunal   | (a) is for or in connection with a *purpose of the Project Wickenby taskforce; and<br>(b) is made before 1 July 2013, or a later prescribed day.   |
| 4  | a *taskforce officer of a prescribed taskforce, or a court or tribunal  | (a) is for or in connection with a purpose of the prescribed taskforce; and<br>(b) is made within the time limit, if any, prescribed by the regulations.   |
| 5  | a Royal Commission in respect of which Letters Patent issued by the Governor-General declare that the Royal Commission is a Royal Commission to which this table item applies, or a member of such a Royal Commission   | is for the purpose of the Royal Commission conducting its inquiry.   |
| 6  | one or more of the following bodies:<br>(a) a Royal Commission of a State or a Territory prescribed by the regulations for the purposes of this table item;<br>(b) a commission of inquiry of a State or a Territory prescribed by the regulations for the purposes of this table item;<br>(c) a board of inquiry of a State or a Territory prescribed by the regulations for the purposes of this table item | is for the purpose of:<br>(a) investigating a *serious offence; or<br>(b) enforcing a law, the contravention of which is a serious offence; or<br>(c) the making, or proposed or possible making, of a *proceeds of crime order. |

- (2A) The \*taxation officer is entitled to rely on the exception in subsection (1) even if the agreement referred to in paragraph (1)(c) has not been obtained in relation to the record or disclosure.

*Meaning of various terms*

- (2) **Authorised ASIO officer** means:
- (a) the Director-General of Security holding office under the *Australian Security Intelligence Organisation Act 1979*; or
  - (b) any other individual employed under paragraph 84(1)(a) or (b) of that Act who has been authorised in writing by the Director-General of Security to perform the functions of an authorised ASIO officer under this Act.
- (3) **Authorised law enforcement agency officer** means:
- (a) the head of a \*law enforcement agency; or
  - (b) an officer of a law enforcement agency, or a person engaged by, or otherwise performing services for, a law enforcement agency, authorised in writing by the head of the agency to perform the functions of an authorised law enforcement agency officer under this Act.
- (4) **Law enforcement agency** means:
- (a) the Australian Federal Police; or
  - (b) the police force of a State or Territory; or
  - (c) the Office of the Director of Public Prosecutions established by section 5 of the *Director of Public Prosecutions Act 1983*; or
  - (d) the Australian Commission for Law Enforcement Integrity; or
  - (e) the Australian Crime Commission; or
  - (f) the Independent Commission Against Corruption established by the *Independent Commission Against Corruption Act 1988* of New South Wales; or
  - (g) the New South Wales Crime Commission; or
  - (h) the Police Integrity Commission of New South Wales; or
  - (i) the Office of Police Integrity of Victoria; or
  - (j) the Crime and Misconduct Commission of Queensland; or
  - (k) the Corruption and Crime Commission of Western Australia; or

- (l) the Australian Securities and Investments Commission.
  - (5) ***Proceeds of crime order*** means an order, relating to an entity's commission of a \*serious offence, under:
    - (a) Chapter 2 (about confiscation of property in relation to certain offences) or Division 1 of Part 3-1 (about examination orders) of the *Proceeds of Crime Act 2002*; or
    - (b) Part II (about confiscation) or III (about control of property liable to confiscation) of the *Proceeds of Crime Act 1987*; or
    - (c) a \*State law or \*Territory law corresponding to a law referred to in paragraph (a) or (b); or
    - (d) Division 3 of Part XIII (about recovery of pecuniary penalties for dealings in narcotic goods) of the *Customs Act 1901*.
  - (6) An entity is a ***Project Wickenby officer*** if the entity:
    - (a) holds an office in, is employed in, or is performing services for:
      - (i) a \*Project Wickenby taskforce agency; or
      - (ii) a \*Project Wickenby taskforce supporting agency; and
    - (b) performs duties that relate to a \*purpose of the Project Wickenby taskforce.
  - (7) The following agencies are ***Project Wickenby taskforce agencies***:
    - (a) the Australian Taxation Office;
    - (b) the Australian Crime Commission;
    - (c) the Australian Federal Police;
    - (d) the Australian Securities and Investments Commission;
    - (e) the Office of the Director of Public Prosecutions;
    - (f) a prescribed agency.
  - (8) The following agencies are ***Project Wickenby taskforce supporting agencies***:
    - (a) the Attorney-General's Department;
    - (b) the Australian Transaction Reports and Analysis Centre;
    - (c) the Australian Government Solicitor;
    - (d) a prescribed agency.
  - (9) The ***purposes of the Project Wickenby taskforce*** are to:
    - (a) detect; and
    - (b) deter; and
-

- (c) investigate; and
  - (d) enforce the law relating to;
- the promotion of or participation in \*arrangements of an international character, or purported international character, that relate to one or more of the following:
- (e) tax avoidance or evasion;
  - (f) breaches of laws regulating financial markets and corporations;
  - (g) criminal activity in the nature of fraud or obtaining benefits by deception (including deceiving investors or creditors);
  - (h) money laundering;
  - (i) concealing income or assets.
- (10) ***Serious offence*** means an offence against an \*Australian law that is punishable by imprisonment for a period exceeding 12 months.
- (11) An entity is a ***taskforce officer*** of a prescribed taskforce if:
- (a) the entity holds an office in, is employed in, or is performing services for, an agency in the prescribed taskforce; and
  - (b) the entity's duties relate to a purpose of the prescribed taskforce.
- (12) The regulations may prescribe a taskforce for the purposes of item 4 of the table in subsection (1). A major purpose of the taskforce must be protecting the public finances of Australia.
- (13) Without limiting subsection (12), regulations made for the purposes of item 4 of the table in subsection (1) may deal with the following matters:
- (a) the purposes of the taskforce;
  - (b) the agencies in the taskforce.

### **355-75 Limits on disclosure to courts and tribunals**

An entity who is or was a \*taxation officer is not to be required to disclose to a court or tribunal \*protected information that was acquired by the entity as a taxation officer except where it is necessary to do so for the purpose of carrying into effect the provisions of a \*taxation law.

Note: See also section 8ZK of this Act (about protection of witnesses).

## **Subdivision 355-C—On-disclosure of protected information by other people**

### **Guide to Subdivision 355-C**

#### **355-150 What this Subdivision is about**

|   |
|---|
| Someone who is not a taxation officer is prohibited from disclosing protected information, except in certain specified circumstances. |
|---|

#### **Table of sections**

##### **Operative provisions**

- 355-155 Offence—on-disclosure of protected information by other people
- 355-160 Consent is not a defence
- 355-165 Generality of Subdivision not limited
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- 355-175 Exception—on-disclosure for original purpose
- 355-180 Exception—on-disclosure to Ministers in relation to statutory powers or functions
- 355-185 Exception—on-disclosure in relation to IGIS
- 355-190 Exception—on-disclosure in relation to ASIO
- 355-195 Exception—on-disclosure by Royal Commissions
- 355-200 Exception—records made in compliance with Australian laws
- 355-205 Limits on on-disclosure to courts or tribunals
- 355-210 Limits on on-disclosure to Ministers

#### **Operative provisions**

##### **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 2010*.

### **355-160 Consent is not a defence**

It is not a defence to a prosecution for an offence against section 355-155 that the entity to whom the information relates has consented to:

- (a) the making of the record; or
- (b) the disclosure of the information.

### **355-165 Generality of Subdivision not limited**

Except as provided in section 355-210 (about limits on disclosure to Ministers), nothing in this Subdivision limits the generality of anything else in it.

Note: This means that each provision in this Subdivision (other than section 355-210) has an independent operation and is not to be interpreted by reference to any other provision within the Subdivision.

### **355-170 Exception—on-disclosure of publicly available information**

Section 355-155 does not apply if the information was already available to the public (otherwise than as a result of a contravention of section 355-25, 355-155 or 355-265).

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

### **355-175 Exception—on-disclosure for original purpose**

- (1) Section 355-155 does not apply if:

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- (a) the information was originally disclosed under an exception in Subdivision 355-B for a purpose specified in that exception (the *original purpose*); and
- (b) the information was acquired by the entity under this section or an exception in Subdivision 355-B; and
- (c) the record or disclosure is made by the entity for the original purpose, or in connection with the original purpose.

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

*Instances of disclosures in connection with the original purpose*

- (2) Without limiting subsection (1), a record or disclosure is made by the entity in connection with the original purpose if:
  - (a) the record is made for, or the disclosure is to, any entity, court or tribunal; and
  - (b) the record or disclosure is for the purpose of criminal, civil or administrative proceedings (including merits review or judicial review) that are related to the original purpose.

*Multiple purposes*

- (3) Subsection (1) has effect as if a record or disclosure made by the entity for a purpose specified in column 3 of the following table were made in connection with the original purpose:

---

| <b>Records or disclosures for purpose connected with the original purpose</b> |  |  |
|---|--|--|
| <b>Item</b>   | <b>Original purpose</b>  | <b>Purpose connected with the original purpose</b>                       |
| 1   | a *purpose of the Project Wickenby taskforce   | another purpose of that taskforce.                                       |
| 2   | a purpose of a prescribed taskforce  | another purpose of that taskforce.                                       |
| 3   | one of the purposes specified in column 3 of item 1 of the table in subsection 355-70(1) | the other of those purposes.   |
| 4   | one of the purposes specified in column 3 of item 6 of the table in subsection 355-70(1) | one of the other purposes specified in column 3 of item 6 of that table. |

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**355-180 Exception—on-disclosure to Ministers in relation to statutory powers or functions**

Section 355-155 does not apply if:

- (a) the information was originally disclosed under an exception in Subdivision 355-B for a purpose specified in that exception (the *original purpose*); and
- (b) the record is made for, or the disclosure is to, a Minister who has a statutory power or function in relation to the original purpose; and
- (c) the record or disclosure is for the purpose of enabling the Minister to:
  - (i) decide whether to exercise the power or perform the function; or
  - (ii) exercise the power or perform the function.

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

**355-185 Exception—on-disclosure in relation to IGIS**

(1) Section 355-155 does not apply if:

- (a) the entity is an \*authorised ASIO officer; and
- (b) the record is made for, or the disclosure is to, the Inspector-General of Intelligence and Security holding office under the *Inspector-General of Intelligence and Security Act 1986* or a member of staff appointed to assist the Inspector-General under that Act; and
- (c) the record or disclosure is for the purpose of performing the Inspector-General's, or the member of staff's, duties in relation to ASIO or officers or employees of ASIO.

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

(2) Section 355-155 does not apply if:

- (a) the entity is the Inspector-General of Intelligence and Security holding office under the *Inspector-General of Intelligence and Security Act 1986* or a member of staff appointed to assist the Inspector-General under that Act; and
- (b) the information was acquired by the entity under subsection (1) or this paragraph; and

- (c) the record or disclosure is for the purpose of performing the Inspector-General's, or the officer's, duties in relation to ASIO or officers or employees of ASIO.

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

### **355-190 Exception—on-disclosure in relation to ASIO**

- (1) Section 355-155 does not apply if:
  - (a) the entity is an \*authorised ASIO officer; and
  - (b) the record is made for, or the disclosure is to, an officer of a \*law enforcement agency; and
  - (c) the record or disclosure is for the purpose of, or in connection with:
    - (i) investigating a \*serious offence; or
    - (ii) enforcing a law, the contravention of which is a serious offence; or
    - (iii) the making, or proposed or possible making, of a \*proceeds of crime order.

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

- (2) Section 355-155 does not apply if:
  - (a) the entity is an officer of a \*law enforcement agency; and
  - (b) the information was acquired by the entity under subsection (1) or this paragraph; and
  - (c) the record or disclosure is for the purpose of, or in connection with:
    - (i) investigating a \*serious offence; or
    - (ii) enforcing a law, the contravention of which is a serious offence; or
    - (iii) the making, or proposed or possible making, of a \*proceeds of crime order.

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

### **355-195 Exception—on-disclosure by Royal Commissions**

- (1) Section 355-155 does not apply if:
-

- (a) the entity is a member of a Royal Commission to which column 2 of item 5 of the table in subsection 355-70(1) relates; and
- (b) the information was acquired by the entity under item 5 of the table in subsection 355-70(1); and
- (c) the record or disclosure is in accordance with section 6P of the *Royal Commissions Act 1902*.

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 6P of the *Royal Commissions Act 1902* sets out the circumstances in which a Royal Commission covered by that Act may disclose information it acquires in the course of its inquiry.

- (2) Section 355-155 does not apply to particular information if the information was disclosed under subsection (1).

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

### **355-200 Exception—records made in compliance with Australian laws**

Section 355-155 does not apply if the record is made in compliance with a requirement of an \*Australian law.

Example: The Australian Taxation Office obtains information about an entity from a credit reporting agency by giving a notice under section 264 of the *Income Tax Assessment Act 1936*. The agency is not committing an offence under section 355-155 by making a record of the disclosure in the entity's credit information file, as required by subsection 18K(5) of the *Privacy Act 1988*.

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

### **355-205 Limits on on-disclosure to courts or tribunals**

An entity is not to be required to disclose to a court or tribunal \*protected information that was acquired by the entity under Subdivision 355-B or this Subdivision, except where it is necessary to do so for the purpose of carrying into effect the provisions of a \*taxation law.

Note: See also section 8ZK of this Act (about protection of witnesses).

### 355-210 Limits on on-disclosure to Ministers

- (1) Sections 355-170, 355-180 and 355-195 are the only exceptions to the prohibition in section 355-155 on which an entity who has acquired \*protected information (otherwise than as a \*taxation officer) can rely in making a record of the information for, or disclosing the information to, a Minister, whether or not provided to a Minister in the course of, or for the purposes of or incidental to, the transacting of the business of a House of the Parliament or of a committee of one or both Houses of the Parliament.

Note: Disclosures that are not prohibited by section 355-155 are not affected by this subsection. For example, an entity may disclose information to a Minister if the Minister is the entity to whom the information relates, or is another entity's agent in relation to the information.

- (2) Subsection (1) has effect despite section 16 of the *Parliamentary Privileges Act 1987*, and that section does not operate to the extent that it would otherwise apply to a disclosure of \*protected information by the entity to a Minister.

Note: This subsection does not limit the operation of section 16 of the *Parliamentary Privileges Act 1987* in any other respect. That section continues to operate, for example, to enable an entity to disclose protected information to a committee of one or both Houses of the Parliament.

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

#### Guide to Subdivision 355-D

#### 355-260 What this Subdivision is about

The disclosure of protected tax information that has been unlawfully acquired is prohibited.

#### Table of sections

##### Operative provisions

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| 355-265 | Offence—disclosure of protected information acquired in breach of a taxation law |
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| 355-275 | Exception—disclosure in relation to a taxation law                               |

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355-280 Limits on disclosure to courts and tribunals

## **Operative provisions**

### **355-265 Offence—disclosure of protected information acquired in breach of a taxation law**

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 is \*protected information; and
- (c) the information was acquired by the entity in breach of a provision of a \*taxation law (including this provision); and
- (d) the information was not acquired by the entity as a \*taxation officer.

Penalty: Imprisonment for 2 years.

### **355-270 Exception—disclosure of publicly available information**

Section 355-265 does not apply if the information was already available to the public (otherwise than as a result of a contravention of that section, or section 355-25 or 355-155).

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

### **355-275 Exception—disclosure in relation to a taxation law**

Section 355-265 does not apply:

- (a) to the extent that the entity's actions are required or permitted by a \*taxation law or reasonably necessary in order to comply with an obligation imposed by a taxation law; or
- (b) if the record was made for or the information was disclosed:
  - (i) to a \*taxation officer; and
  - (ii) for a purpose connected with administering a \*taxation law.

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

### **355-280 Limits on disclosure to courts and tribunals**

An entity is not to be required to disclose to a court or tribunal \*protected information that was acquired by the entity under this Subdivision, except where it is necessary to do so for the purpose of carrying into effect the provisions of a \*taxation law.

Note: See also section 8ZK of this Act (about protection of witnesses).

## **Subdivision 355-E—Other matters**

### **Guide to Subdivision 355-E**

#### **355-320 What this Subdivision is about**

The Commissioner may require a taxation officer to make an oath of affirmation to protect information.

The Federal Court has power to grant an injunction restraining an entity from engaging in conduct that would constitute an offence against this Division.

The Commissioner must issue instructions relating to the disclosure of protected tax information.

#### **Table of sections**

##### **Operative provisions**

- 355-325 Oath or affirmation to protect information
- 355-330 Injunctions to prevent contravention of non-disclosure provisions

#### **Operative provisions**

##### **355-325 Oath or affirmation to protect information**

- (1) A \*taxation officer must, if and when required by the Commissioner to do so, make an oath or affirmation to protect information in accordance with this Division.

- (2) The Commissioner may determine, in writing:
  - (a) the form of the oath or affirmation; and
  - (b) the manner in which the oath or affirmation must be made.

### **355-330 Injunctions to prevent contravention of non-disclosure provisions**

#### *Injunctions*

- (1) If an entity has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute an offence against this Division, the Federal Court of Australia may, on the application of the Commissioner, grant an injunction:
  - (a) restraining the entity from engaging in the conduct; and
  - (b) if in the court's opinion it is desirable to do so—requiring the entity to do any act or thing.

#### *Interim injunctions*

- (2) If an application is made to the court for an injunction under subsection (1), the court may, before considering the application, grant an interim injunction restraining an entity from engaging in conduct of the kind referred to in that subsection pending the determination of the application.

#### *Discharge or variation of injunctions*

- (3) The court may discharge or vary an injunction granted under this section.

#### *Exercise of power to grant injunctions*

- (4) If an application is made to the court for the grant of an injunction restraining an entity from engaging in conduct of a particular kind, the power of the court to grant the injunction may be exercised:
  - (a) if the court is satisfied that the entity has engaged in conduct of that kind—whether or not it appears to the court that the entity intends to engage again, or to continue to engage, in conduct of that kind; or
  - (b) if it appears to the court that, in the event that an injunction is not granted, it is likely that the entity will engage in conduct of that kind—whether or not the entity has previously

engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any other entity if the entity engages in conduct of that kind.

- (5) The power of the court to grant an injunction requiring an entity to do a particular act or thing may be exercised:
- (a) if the court is satisfied that the entity has refused or failed to do that act or thing—whether or not it appears to the court that the entity intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
  - (b) if it appears to the court that, in the event that an injunction is not granted, it is likely that the entity will refuse or fail to do that act or thing—whether or not the entity has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any other entity if the entity refuses or fails to do that act or thing.

*No undertakings as to damages*

- (6) If the Commissioner makes an application to the court for the grant of an injunction under this section, the court must not require the Commissioner or any other entity, as a condition of the granting of an interim injunction, to give any undertakings as to damages.

*Other powers of the court unaffected*

- (7) The powers conferred on the court under this section are in addition to, and not in derogation of, any other powers of the court, whether conferred by this Act or otherwise.

**355-335 Procedures for disclosing protected information**

- (1) The Commissioner must issue instructions in relation to the procedures to be followed by \*taxation officers in disclosing \*protected information under the exceptions in sections 355-55 (about disclosures to Ministers), 355-65 (about disclosures for other government purposes) and 355-70 (about disclosures for law enforcement and related purposes).
- (2) The instructions must:
- (a) be issued within 6 months after the commencement of this section; and

- (b) be in writing; and
  - (c) provide for the matters mentioned in subsection (3); and
  - (d) be published on the Australian Taxation Office website.
- (3) The matters are:
- (a) the processes to be followed before \*protected information can be disclosed by a \*taxation officer under the exceptions in sections 355-55, 355-65 and 355-70; and
  - (b) the processes involved in obtaining and giving the agreement mentioned in paragraphs 355-55(1)(c) and 355-70(1)(c); and
  - (c) other matters the Commissioner considers appropriate.
- (4) Without limiting subsection 33(3) of the *Acts Interpretation Act 1901*, the Commissioner may vary or revoke the instructions.
- (5) A failure to comply with the time limit in paragraph (2)(a) does not:
- (a) prevent the Commissioner from issuing the instructions after this time; or
  - (b) affect the validity of the instructions when issued.
- (6) A failure to comply with the instructions does not, of itself, mean that a \*taxation officer is not entitled to rely on the exceptions in sections 355-55, 355-65 and 355-70.
- (7) The instructions are not a legislative instrument.

## **Part 2—Application of amendment**

### **2 Application of amendment**

The amendment made by item 1 of this Schedule applies to records and disclosures of information made on or after the commencement of this Schedule (whenever the information was acquired).

### **3 Transitional—authorised representatives**

- (1) If:
  - (a) at any time before the commencement of this item, an entity (the *covered entity*) had been nominated by another entity (the *primary entity*) to act on the primary entity's behalf with respect to protected information that relates to the primary entity; and
  - (b) immediately before the commencement of this item, the nomination was in force;the covered entity is taken, on and after that commencement, to be an entity covered by subsection 355-25(2) in Schedule 1 to the *Taxation Administration Act 1953*.
- (2) To avoid doubt, subitem (1) does not prevent the primary entity from revoking the nomination.

## **Schedule 2—Consequential amendments**

### **Part 1—Amendments**

#### *Administrative Decisions (Judicial Review) Act 1977*

##### **1 Paragraph (f) of Schedule 1**

Repeal the paragraph.

#### *A New Tax System (Australian Business Number) Act 1999*

##### **2 Section 41 (paragraph (c) of the definition of *protected information*)**

After “obtained under”, insert “, or in relation to,”.

#### *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

##### **3 Subsection 125(3)**

Repeal the subsection, substitute:

*Application of Division 355 in Schedule 1 to the Taxation Administration Act 1953*

- (3) Division 355 in Schedule 1 to the *Taxation Administration Act 1953* applies in relation to AUSTRAC information obtained by the Commissioner of Taxation or a taxation officer under subsection (1) or (2) of this section as if a reference in that Division to a taxation law included a reference to this Act or the *Financial Transaction Reports Act 1988*.

Note: Division 355 in Schedule 1 to the *Taxation Administration Act 1953* deals with confidentiality of taxation information.

##### **4 Subsection 125(4)**

Omit “Section 3C of”, substitute “Division 355 in Schedule 1 to”.

## ***Australian Crime Commission Act 2002***

### **5 At the end of subsection 19A(5)**

Add:

Note: If the information is protected information (within the meaning of section 355-30 in Schedule 1 to the *Taxation Administration Act 1953*), the officer or person may decline to disclose that information unless an exception in Division 355 in that Schedule covers the disclosure.

### **6 At the end of subsection 20(4)**

Add:

Note: If the information is protected information (within the meaning of section 355-30 in Schedule 1 to the *Taxation Administration Act 1953*), the officer or person may decline to disclose that information unless an exception in Division 355 in that Schedule covers the disclosure.

## ***Australian Securities and Investments Commission Act 2001***

### **7 Subsection 127(1AA)**

Repeal the subsection.

## ***Crimes (Taxation Offences) Act 1980***

### **8 Section 4**

Repeal the section, substitute:

#### **4 Secrecy**

Division 355 in Schedule 1 to the *Taxation Administration Act 1953* has effect as if this Act were part of that Act.

## ***Customs Administration Act 1985***

### **9 Section 16A**

Repeal the section.

***Development Allowance Authority Act 1992***

**10 Section 93AA (definition of *State taxation officer disclosure provision*)**

Repeal the definition.

**11 Paragraph 108(c)**

Repeal the paragraph.

**12 After section 114**

Insert:

**114A Disclosure of commercial-in-confidence information obtained in breach of this Act**

- (1) A person commits an offence if the person:
- (a) makes a record of, discloses or otherwise makes use of information; and
  - (b) the information is commercial-in-confidence information for the purposes of section 114; and
  - (c) the information was disclosed to or obtained by the person in breach of section 114; and
  - (d) the information was not disclosed to or obtained by the person because of performing duties or functions under this Act.

Penalty: Imprisonment for 2 years.

- (2) Subsection (1) does not apply:
- (a) to the extent that the person's actions are required or permitted by this Act or reasonably necessary in order to comply with an obligation imposed by this Act; or
  - (b) to a disclosure if the disclosure is:
    - (i) to the DAA or a person who is performing duties or functions under this Act; and
    - (ii) for a purpose connected with administering this Act.

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

- (3) Except where it is necessary to do so for the purpose of carrying into effect the provisions of this Act, a person must not be required to disclose to a court or tribunal a matter or thing with respect to information in relation to which subsection (1) applies.

**13 Paragraph 118(b)**

Repeal the paragraph.

***Energy Grants (Cleaner Fuels) Scheme Act 2004***

**14 Section 3 (at the end of the note)**

Add “This means, for example, that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.”

***Energy Grants (Credits) Scheme Act 2003***

**15 At the end of section 3**

Add:

Note: An effect of this provision is that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

***Excise Act 1901***

**16 At the end of section 7**

Add:

Note: An effect of this provision is that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

**17 Section 159**

Repeal the section.

### ***First Home Saver Accounts Act 2008***

#### **18 At the end of subsection 3(1)**

Add:

Note: An effect of this subsection is that people who acquire information under the specified provisions are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

#### **19 Section 18 (definition of *protected information*)**

Repeal the definition.

#### **20 Section 70**

Repeal the section.

### ***Franchise Fees Windfall Tax (Collection) Act 1997***

#### **21 At the end of section 5**

Add:

Note: An effect of this provision is that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

### ***Freedom of Information Act 1982***

#### **22 Schedule 3**

Omit “*Crimes (Taxation Offences) Act 1980*, subsections 4(1A), (1) and (1AA)”, substitute “*Crimes (Taxation Offences) Act 1980*, section 4”.

#### **23 Schedule 3**

Omit “*Fringe Benefits Tax Assessment Act 1986*, subsection 5(3)”.

#### **24 Schedule 3**

Omit “*Income Tax Assessment Act 1936*, subsections 16(2), (4F), (4FA), (4JB) and (5C)”.

#### **25 Schedule 3**

**Schedule 2** Consequential amendments  
**Part 1** Amendments

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Omit “*Petroleum Resource Rent Tax Assessment Act 1987*, subsection 17(3)”.

**26 Schedule 3**

Omit “*Taxation Administration Act 1953*, section 355-5 in Schedule 1”, substitute “*Taxation Administration Act 1953*, sections 355-25, 355-155 and 355-265 in Schedule 1”.

**27 Schedule 3**

Omit “*Taxation Administration Act 1953*, subsections 3C(2), 3G(6) and (9) and 3H(5) and (8), paragraph 8WB(1)(c) and subsection 8XB(1)”, substitute “*Taxation Administration Act 1953*, paragraph 8WB(1)(c)”.

**28 Schedule 3**

Omit “*Taxation (Interest on Overpayments and Early Payments) Act 1983*, subsection 8(2)”.

***Fringe Benefits Tax Assessment Act 1986***

**29 At the end of section 3**

Add:

Note: An effect of this provision is that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

**30 Section 5**

Repeal the section.

***Income Tax Assessment Act 1936***

**31 At the end of section 8**

Add:

Note: An effect of this provision is that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

**32 Sections 16 and 16A**

Repeal the sections.

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**33 Paragraph 202(n)**

Repeal the paragraph.

***Income Tax Assessment Act 1997***

**34 At the end of section 1-7**

Add:

Note: An effect of this provision is that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

**35 Section 11-55 (table item headed “social security or like payments”)**

Repeal the item.

**36 Subsection 30-229(5)**

Repeal the subsection.

**37 Section 59-5**

Repeal the section.

**38 Sections 396-95 and 396-100**

Repeal the sections.

**39 Subsection 995-1(1)**

Insert:

*authorised ASIO officer* has the meaning given by section 355-70 in Schedule 1 to the *Taxation Administration Act 1953*.

**40 Subsection 995-1(1)**

Insert:

*authorised law enforcement agency officer* has the meaning given by section 355-70 in Schedule 1 to the *Taxation Administration Act 1953*.

**41 Subsection 995-1(1)**

Insert:

*law enforcement agency* has the meaning given by section 355-70 in Schedule 1 to the *Taxation Administration Act 1953*.

**42 Subsection 995-1(1)**

Insert:

*proceeds of crime order* has the meaning given by section 355-70 in Schedule 1 to the *Taxation Administration Act 1953*.

**43 Subsection 995-1(1)**

Insert:

*Project Wickenby officer* has the meaning given by section 355-70 in Schedule 1 to the *Taxation Administration Act 1953*.

**44 Subsection 995-1(1)**

Insert:

*Project Wickenby taskforce agency* has the meaning given by section 355-70 in Schedule 1 to the *Taxation Administration Act 1953*.

**45 Subsection 995-1(1)**

Insert:

*Project Wickenby taskforce supporting agency* has the meaning given by section 355-70 in Schedule 1 to the *Taxation Administration Act 1953*.

**46 Subsection 995-1(1)**

Insert:

*protected information* has the meaning given by section 355-30 in Schedule 1 to the *Taxation Administration Act 1953*.

**47 Subsection 995-1(1)**

Insert:

*purposes of the Project Wickenby taskforce* has the meaning given by section 355-70 in Schedule 1 to the *Taxation Administration Act 1953*.

**48 Subsection 995-1(1)**

Insert:

*serious offence* has the meaning given by section 355-70 in Schedule 1 to the *Taxation Administration Act 1953*.

**49 Subsection 995-1(1)**

Insert:

*taskforce officer* of a prescribed taskforce has the meaning given by section 355-70 in Schedule 1 to the *Taxation Administration Act 1953*.

**50 Subsection 995-1(1) (paragraph (b) of the definition of *taxation law*)**

Omit “regulations”, substitute “legislative instruments made”.

**51 Subsection 995-1(1)**

Insert:

*taxation officer* has the meaning given by section 355-30 in Schedule 1 to the *Taxation Administration Act 1953*.

***Income Tax (Transitional Provisions) Act 1997***

**52 At the end of section 1-7**

Add:

Note: An effect of this provision is that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

***Inspector-General of Intelligence and Security Act 1986***

**53 Subsection 22(3)**

Omit “tax law (within the meaning of section 3E of the *Taxation Administration Act 1953*)”, substitute “taxation law (within the meaning of the *Income Tax Assessment Act 1997*)”.

**54 Subsection 22(3) (note)**

Omit “Section 3EC of”, substitute “section 355-185 in Schedule 1 to”.

**55 Section 25A (note)**

Omit “Section 3EC of”, substitute “Subdivision 355-C in Schedule 1 to”.

***International Tax Agreements Act 1953***

**56 At the end of subsection 4(1)**

Add:

Note: An effect of this provision is that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

**57 Subsection 23(2)**

Repeal the subsection.

**58 Subsection 23(3)**

Omit “Subsections (1) and (2) have”, substitute “Subsection (1) has”.

***Petroleum Resource Rent Tax Assessment Act 1987***

**59 At the end of section 15**

Add:

Note: An effect of this provision is that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

**60 Sections 17 and 18**

Repeal the sections.

***Pooled Development Funds Act 1992***

**61 Subsection 71(3)**

Omit all the words after “for the purposes of”, substitute “Division 355 in Schedule 1 to the *Taxation Administration Act 1953*, to be protected information within the meaning of that Act”.

***Privacy Act 1988***

**62 Subsection 17(4)**

Repeal the subsection.

**63 Schedule 2**

Repeal the Schedule.

***Product Grants and Benefits Administration Act 2000***

**64 Section 7 (at the end of the note)**

Add “This means, for example, that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.”.

**65 Section 47**

Repeal the section.

***Product Stewardship (Oil) Act 2000***

**66 Section 7 (at the end of the note)**

Add “This means, for example, that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.”.

***Retirement Savings Accounts Act 1997***

**67 At the end of subsection 3(1)**

Add:

**Schedule 2** Consequential amendments  
**Part 1** Amendments

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Note: An effect of paragraph (e) is that people who acquire information under Divisions 2 and 4A of Part 11 are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

**68 Section 16 (definition of *taxation officer*)**

Repeal the definition.

***Small Superannuation Accounts Act 1995***

**69 At the end of section 6**

Add:

Note: An effect of this provision is that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

***Superannuation Contributions Tax (Assessment and Collection) Act 1997***

**70 At the end of section 30**

Add:

Note: An effect of this provision is that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

**71 Section 32**

Repeal the section.

***Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997***

**72 At the end of section 26**

Add:

Note: An effect of this provision is that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

**73 Section 28**

Repeal the section.

***Superannuation (Government Co-contribution for Low Income Earners) Act 2003***

**74 At the end of section 46**

Add:

Note: An effect of this provision is that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

**75 Section 53**

Repeal the section.

**76 Section 56 (definition of *Deputy Commissioner*)**

Repeal the definition.

**77 Section 56 (definition of *protected document*)**

Repeal the definition.

**78 Section 56 (definition of *protected information*)**

Repeal the definition.

**79 Section 56 (definition of *Second Commissioner*)**

Repeal the definition.

***Superannuation Guarantee (Administration) Act 1992***

**80 Subsection 6(1) (definition of *taxation officer*)**

Repeal the definition.

**81 At the end of section 43**

Add:

Note: An effect of this provision is that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

**82 Sections 45 and 45A**

Repeal the sections.

***Superannuation Industry (Supervision) Act 1993***

**83 At the end of subsection 6(1)**

Add:

Note: An effect of paragraphs (e), (f) and (g) is that people who acquire information under those provisions (to the extent that they relate to self-managed superannuation funds) are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

**84 Subsection 131A(1) (note)**

Omit all the words after “APRA is the Regulator”, substitute “or Division 355 in Schedule 1 to the *Taxation Administration Act 1953* (if the Commissioner of Taxation is the Regulator). In particular, see paragraph (c) of the definition of *officer* in subsection (1), and subsections (2), (9) and (10), of section 56 of the *Australian Prudential Regulation Authority Act 1998* and sections 355-15 and 355-25 in Schedule 1 to the *Taxation Administration Act 1953*”.

**85 Division 2 of Part 24B**

Repeal the Division.

***Superannuation (Self Managed Superannuation Funds)  
Taxation Act 1987***

**86 At the end of section 9**

Add:

Note: An effect of this provision is that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

***Superannuation (Unclaimed Money and Lost Members) Act  
1999***

**87 Section 8 (definition of court)**

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Repeal the definition.

**88 Section 8 (definition of *protected document*)**

Repeal the definition.

**89 Section 8 (definition of *protected information*)**

Repeal the definition.

**90 Part 6**

Repeal the Part.

**91 At the end of section 40**

Add:

Note: An effect of this provision is that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

***Tax Agent Services Act 2009***

**92 Subsection 60-130(2) (including the note)**

Repeal the subsection, substitute:

- (2) The \*Chair must also set out in the report, in relation to each general category of offence and in relation to each \*law enforcement agency:
- (a) the number of occasions (if any) during the year on which the Board was requested by, or on behalf of, the head of the agency to disclose information under subsection 70-40(4) to \*authorised law enforcement agency officers; and
  - (b) the number of occasions (if any) during the year on which information was disclosed under that subsection to authorised law enforcement agency officers.

**93 Sections 70-35, 70-40 and 70-45**

Repeal the sections, substitute:

## 70-35 Official information not to be disclosed

### *Offence—recording or disclosing official information*

- (1) A person commits an offence if:
- (a) the person:
    - (i) is or has been a \*Board member or a member of a \*committee; or
    - (ii) is or has been an APS employee whose services were made available to the Board by the Commissioner; or
    - (iii) is or has been a person appointed or employed by, or a provider of services for, the Commonwealth; and
  - (b) the person:
    - (i) makes a record of information; or
    - (ii) discloses information to another person (other than the person to whom the information relates or that person's \*agent in relation to the information) or to a court or tribunal; and
  - (c) the information is \*official information; and
  - (d) the information was acquired by the first-mentioned person in the course of, or because of, his or her duties under or in relation to this Act or the regulations.

Penalty: Imprisonment for 2 years.

### *Consent is not a defence*

- (2) It is not a defence to a prosecution for an offence against subsection (1) that the entity to whom the information relates has consented to:
- (a) the making of the record; or
  - (b) the disclosure of the information.

### *Limits on disclosure to courts and tribunals*

- (3) A person mentioned in paragraph (1)(a) is not required to disclose to a court or tribunal \*official information that was acquired by the person in the course of, or because of, his or her duties under or in relation to this Act or the regulations except if it is necessary to do so for the purpose of carrying into effect the provisions of this Act or the regulations.

**70-40 Exceptions to the prohibition on disclosure of official information**

*Disclosure in the performance of duties*

- (1) Subsection 70-35(1) does not apply if the record or disclosure is made in performing the person's duties under or in relation to this Act or the regulations.

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

*Disclosure of publicly available information*

- (2) Subsection 70-35(1) does not apply if the information was already available to the public (otherwise than as a result of a contravention of subsection 70-35(1) or 70-45(1)).

Note: A defendant bears an evidential burden in relation to the matters in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

*Disclosures to the Commissioner of Taxation*

- (3) Subsection 70-35(1) does not apply if the record or disclosure:
- (a) is to the Commissioner; and
  - (b) is for the purpose of:
    - (i) investigating a \*taxation offence; or
    - (ii) enforcing a law, the contravention of which is a taxation offence; or
    - (iii) investigating the contravention of, or enforcing a provision of, a \*taxation law that imposes a civil penalty; or
    - (iv) the making, or proposed or possible making, of a \*proceeds of crime order relating to a taxation offence.

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

*Disclosure in relation to serious offences and proceeds of crime orders*

- (4) Subsection 70-35(1) does not apply if:
- (a) the record is made for, or the disclosure is to, an \*authorised law enforcement agency officer; and

- (b) the record or disclosure is for the purpose of:
  - (i) investigating a \*serious offence; or
  - (ii) enforcing a law, the contravention of which is a serious offence; or
  - (iii) the making, or proposed or possible making, of a \*proceeds of crime order.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

## **70-45 On-disclosure of official information**

### *Offence—on-disclosure of information*

- (1) A person commits an offence if:
  - (a) the person:
    - (i) makes a record of information; or
    - (ii) discloses information to another person (other than a person to whom the information relates or the person's \*agent in relation to the information) or to a court or tribunal; and
  - (b) the information was acquired by the first-mentioned person under an exception in section 70-40 or in this section; and
  - (c) the first-mentioned person did not acquire the information in the course of, or because of, his or her duties under or in relation to this Act or the regulations.

Penalty: Imprisonment for 2 years.

### *Consent is not a defence*

- (2) It is not a defence to a prosecution for an offence against subsection (1) that the entity to whom the information relates has consented to:
  - (a) the making of the record; or
  - (b) the disclosure of the information.

### *Exceptions*

- (3) Subsection (1) does not apply if the information was already available to the public (otherwise than as a result of a contravention of subsection (1) or 70-35(1)).

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

- (4) Subsection (1) does not apply if:
- (a) the information was originally disclosed under an exception in section 70-40 for a purpose specified in that exception (the *original purpose*); and
  - (b) the information was acquired by the person under this section or an exception in section 70-40; and
  - (c) the record or disclosure is made by the person for the original purpose, or in connection with the original purpose.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4); see subsection 13.3(3) of the *Criminal Code*.

- (5) Without limiting subsection (4), a record or disclosure is made by the person in connection with the original purpose if the record or disclosure is for purposes of criminal, civil or administrative proceedings (including merits review or judicial review) that are related to the original purpose.

*Limit on on-disclosure to courts or tribunals*

- (6) A person is not to be required to disclose to a court or tribunal information that was acquired by the person under this section, except if it is necessary to do so for the purpose of carrying into effect the provisions of this Act or the regulations.

#### **94 Subsection 90-1(1)**

Insert:

*official information* means information that:

- (a) was disclosed or obtained under or for the purposes of this Act; and
- (b) relates to the affairs of a person; and
- (c) identifies, or is reasonably capable of being used to identify, the person.

#### **95 Subsection 90-1(1) (definition of *proceeds of crime order*)**

Repeal the definition.

***Taxation Administration Act 1953***

**96 Subsection 2(1) (definition of *ASIO officer*)**

Repeal the definition.

**97 Subsection 2(1) (definition of *authorised ASIO officer*)**

Repeal the definition.

**98 Subsection 2(1) (definition of *authorised law enforcement agency officer*)**

Repeal the definition.

**99 Subsection 2(1) (definition of *authorised Royal Commission officer*)**

Repeal the definition.

**100 Subsection 2(1) (definition of *Chairperson*)**

Repeal the definition.

**101 Subsection 2(1) (definition of *eligible Royal Commission*)**

Repeal the definition.

**102 Subsection 2(1) (definition of *head*)**

Repeal the definition.

**103 Subsection 2(1) (definition of *IGIS officer*)**

Repeal the definition.

**104 Subsection 2(1) (definition of *Inspector-General*)**

Repeal the definition.

**105 Subsection 2(1) (definition of *law enforcement agency*)**

Repeal the definition.

**106 Subsection 2(1) (definition of *official*)**

Repeal the definition.

**107 At the end of section 3A**

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Add:

Note: An effect of this provision is that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1.

### **108 Paragraphs 3B(1AA)(b) to (f)**

Repeal the paragraphs, substitute:

- (b) set out:
  - (i) the number of occasions (if any) during the year on which a request was made to disclose information under subsection 355-55(1) in Schedule 1 (about disclosures to Ministers); and
  - (ii) the number of occasions (if any) during the year on which information was disclosed under that subsection; and
  - (iii) the Ministers to whom the information was disclosed; and
- (c) set out:
  - (i) the number of occasions (if any) during the year on which a request was made to disclose information under subsection 355-70(1) in Schedule 1 (about disclosures for law enforcement and related purposes); and
  - (ii) the number of occasions (if any) during the year on which information was disclosed under that subsection; and
  - (iii) the types of entities and the names of the courts and tribunals to which the information was disclosed; and
  - (iv) if the information was disclosed under table item 1 or 6 in subsection 355-70(1)—the general categories of offences in relation to which the information was disclosed; and
- (d) set out the number (if any) of \*taxation officers found guilty of the offence in section 355-25 in Schedule 1 (about disclosure of protected information).

### **109 Subsection 3B(1B)**

Omit “13J,”.

### **110 Sections 3C to 3H**

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Repeal the sections.

**111 Paragraph 8WA(1AA)(b)**

Omit “, (m) or (n)”, substitute “or (m)”.

**112 Paragraphs 8WB(1A)(a) and (b)**

Omit “(n),”.

**113 Section 8XB**

Repeal the section.

**114 Section 13H**

Repeal the section.

**115 Division 3 of Part IIIA**

Repeal the Division.

**116 Sections 17B and 17C**

Repeal the sections.

**117 Subsection 426-65(4) in Schedule 1**

Omit all the words after “contravene”, substitute “section 355-25 or 355-155”.

***Taxation (Interest on Overpayments and Early Payments) Act  
1983***

**118 At the end of section 4**

Add:

Note: An effect of this provision is that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

**119 Section 8**

Repeal the section.

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***Termination Payments Tax (Assessment and Collection) Act  
1997***

**120 At the end of section 21**

Add:

Note: An effect of this provision is that people who acquire information under this Act are subject to the confidentiality obligations and exceptions in Division 355 in Schedule 1 to the *Taxation Administration Act 1953*.

**121 Section 23**

Repeal the section.

***Trust Recoupment Tax Assessment Act 1985***

**122 Subsection 4(4)**

Omit “16 of the Assessment Act or section 3C”, substitute “355-25 or 355-155 in Schedule 1”.

## Part 2—Application, transitional and savings provisions

### 123 Application of amendments

- (1) The amendments made by items 3, 4 and 93 of this Schedule apply to records and disclosures made on or after the commencement of those items (whenever the information was obtained).
- (2) The amendment made by item 12 of this Schedule applies to records, disclosures and uses made on or after the commencement of that item (whenever the information was obtained).
- (3) The amendment made by item 26 of this Schedule applies to exempt documents on or after the commencement of that item, whether the documents came into existence before, on or after commencement of that item.

### 124 Transitional—information obtained under amended or repealed provisions before commencement

If:

- (a) before the commencement of this item, information was acquired by an entity under, or for the purposes of, a taxation law (within the meaning of the *Income Tax Assessment Act 1997*), other than as a taxation officer; and
- (b) the information is protected information within the meaning of section 355-30 of Schedule 1 to the *Taxation Administration Act 1953* (as inserted by item 1 of Schedule 1 to this Act);

then, after that commencement, the information is taken to be information acquired by the entity under an exception in Subdivision 355-B or 355-C in Schedule 1 to the *Taxation Administration Act 1953* (as inserted by item 1 of Schedule 1 to this Act).

### 125 Transitional provision—authorisations

- (1) If, immediately before the commencement of this item, an officer of a law enforcement agency was an authorised law enforcement agency
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officer within the meaning of the *Taxation Administration Act 1953* (as in force at that time), the officer is taken, on and after that commencement, to be an authorised law enforcement agency officer within the meaning of the *Income Tax Assessment Act 1997*.

- (2) If, immediately before the commencement of this item, a person employed under paragraph 84(1)(a) or (b) of the *Australian Security Intelligence Organisation Act 1979* was an authorised ASIO officer within the meaning of the *Taxation Administration Act 1953* (as in force at that time), the person is taken, on and after that commencement, to be an authorised ASIO officer within the meaning of the *Income Tax Assessment Act 1997*.

**126 Saving—section 159 of the *Excise Act 1901***

- (1) This item applies to an entity who acquired protected information (within the meaning of section 159 of the *Excise Act 1901* as in force immediately before the commencement of item 17 of this Schedule) when the excise law (within the meaning of that Act) was not administered by the Commissioner of Taxation.
- (2) Despite the repeal of section 159 of the *Excise Act 1901* by item 17 of this Schedule, that section continues to apply to the entity after the commencement of this item, in relation to the information, as if the repeal had not happened.

**127 Saving—section 252C of the *Superannuation Industry (Supervision) Act 1993***

- (1) This item applies to an entity who acquired, before 8 October 1999, protected information (within the meaning of section 252C of the *Superannuation Industry (Supervision) Act 1993* as in force immediately before the commencement of item 85 of this Schedule).
- (2) Despite the repeal of section 252C of the *Superannuation Industry (Supervision) Act 1993* by item 85 of this Schedule, that section continues to apply to the entity after the commencement of this item, in relation to the information, as if the repeal had not happened.

## Schedule 3—Other amendments

### *Income Tax Assessment Act 1936*

**1 Subsection 6(1) (definition of *Defence Department*)**

Repeal the definition.

**2 Subsection 6(1) (definition of *Defence Minister*)**

Repeal the definition.

**3 Subsection 6(1) (definition of *Defence Secretary*)**

Repeal the definition.

**4 Subsection 6(1) (definition of *Education Secretary*)**

Repeal the definition, substitute:

*Education Secretary* has the meaning given by the *Income Tax Assessment Act 1997*.

**5 Subsection 6(1) (definition of *Health Department*)**

Repeal the definition, substitute:

*Health Department* has the meaning given by the *Income Tax Assessment Act 1997*.

**6 Subsection 6(1) (definition of *Health Minister*)**

Repeal the definition, substitute:

*Health Minister* has the meaning given by the *Income Tax Assessment Act 1997*.

### *Income Tax Assessment Act 1997*

**7 Subsection 995-1(1)**

Insert:

*Defence Department* means the Department that:

- (a) deals with matters arising under section 1 of the *Defence Act 1903*; and
- (b) is administered by the Defence Minister.

**8 Subsection 995-1(1)**

Insert:

*Defence Secretary* means the Secretary of the Defence Department.

**9 Subsection 995-1(1)**

Insert:

*Education Secretary* means the Secretary of the Education Department.

**10 Subsection 995-1(1)**

Insert:

*Health Department* means the Department that:

- (a) deals with matters arising under section 1 of the *National Health Act 1953*; and
- (b) is administered by the Health Minister.

**11 Subsection 995-1(1)**

Insert:

*Health Minister* means the Minister administering section 1 of the *National Health Act 1953*.

**12 Subsection 995-1(1)**

Insert:

*Health Secretary* means the Secretary of the Health Department.

**13 Subsection 995-1(1)**

Insert:

*Immigration Department* means the Department that:

- (a) deals with matters arising under section 1 of the *Migration Act 1958*; and

(b) is administered by the Immigration Minister.

**14 Subsection 995-1(1)**

Insert:

*Immigration Minister* means the Minister administering section 1 of the *Migration Act 1958*.

**15 Subsection 995-1(1)**

Insert:

*Immigration Secretary* means the Secretary of the Immigration Department.

***Taxation Administration Act 1953***

**16 Subsection 2(1) (definition of *Immigration Department*)**

Repeal the definition, substitute:

*Immigration Department* has the meaning given by the *Income Tax Assessment Act 1997*.

**17 Subsection 2(1) (definition of *Immigration Minister*)**

Repeal the definition, substitute:

*Immigration Minister* has the meaning given by the *Income Tax Assessment Act 1997*.

**18 Subsection 2(1) (definition of *Immigration Secretary*)**

Repeal the definition, substitute:

*Immigration Secretary* has the meaning given by the *Income Tax Assessment Act 1997*.

**19 Subsection 355-70(5)**

Repeal the subsection, substitute:

(5) *Proceeds of crime order* means:

(a) an order, relating to an entity's commission of a \*serious offence, under:

- (i) Chapter 2 (about confiscation of property in relation to certain offences) or Division 1 of Part 3-1 (about examination orders) of the *Proceeds of Crime Act 2002*; or
  - (ii) Part II (about confiscation) or III (about control of property liable to confiscation) of the *Proceeds of Crime Act 1987*; or
  - (iii) a \*State law or \*Territory law corresponding to a law referred to in subparagraph (i) or (ii); or
  - (iv) Division 3 of Part XIII (about recovery of pecuniary penalties for dealings in narcotic goods) of the *Customs Act 1901*; or
- (b) an unexplained wealth order (within the meaning of the *Proceeds of Crime Act 2002*); or
- (c) an order under a State law or Territory law corresponding to an order referred to in paragraph (b).

## **Schedule 4—Repeal**

### *A New Tax System (Bonuses for Older Australians) Act 1999*

#### **1 The whole of the Act**

Repeal the Act.

## **Schedule 5—Regulations about transitional matters**

### **1 Transitional regulations**

- (1) The Governor-General may make regulations prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, regulations may be made prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Act.

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*[Minister's second reading speech made in—  
House of Representatives on 29 September 2010  
Senate on 23 November 2010]*