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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

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

No. , 2009

(Treasury)

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

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1 **A Bill for an Act to amend the law relating to**
2 **confidentiality of information acquired under the**
3 **taxation laws, and for other purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Tax Laws Amendment (Confidentiality*
7 *of Taxpayer Information) Act 2009*.

8 **2 Commencement**

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

13

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedules 1 and 2	The day after this Act receives the Royal Assent.	
3. Schedule 3, items 1 to 18	The day after this Act receives the Royal Assent.	
4. Schedule 3, item 19	The later of: (a) the day after this Act receives the Royal Assent; and (b) the commencement of Part 1 of Schedule 1 to the <i>Crimes Legislation Amendment (Serious and Organised Crime) Act 2009</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
5. Schedules 4 and 5	The day after this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally
2 passed by both Houses of the Parliament and assented to. It will not be
3 expanded to deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not
5 part of this Act. Information in this column may be added to or
6 edited in any published version of this Act.

7 **3 Schedule(s)**

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9 repealed as set out in the applicable items in the Schedule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

1
2 **Schedule 1—Confidentiality of taxpayer**
3 **information**

4 **Part 1—Main amendment**

5 *Taxation Administration Act 1953*

6 **1 Division 355 in Schedule 1**

7 Repeal the Division, substitute:

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

9 **Table of Subdivisions**

10 Guide to Division 355

11 355-A Objects and application of Division

12 355-B Disclosure of protected information by taxation officers

13 355-C On-disclosure of protected information by other people

14 355-D Disclosure of protected information that has been unlawfully
15 acquired

16 355-E Other matters

17 **Guide to Division 355**

18 **355-1 What this Division is about**

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

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

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

- sections 32 and 33 of the *Auditor-General Act 1997*;

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- 1 • section 15 of the *Inspector-General of Taxation Act 2003*;
2 • section 9 of the *Ombudsman Act 1976*;
3 • section 44 of the *Privacy Act 1988*.

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

5 **Table of sections**

6 355-10 Objects of Division
7 355-15 Application of Division

8 **355-10 Objects of Division**

9 The objects of this Division are:

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

18 **355-15 Application of Division**

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

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

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

3 **Guide to Subdivision 355-B**

4 **355-20 What this Subdivision is about**

5 The main protection for taxpayer confidentiality is in this
6 Subdivision. It is an offence for taxation officers to disclose tax
7 information that identifies an entity, or is reasonably capable of
8 being used to identify an entity, except in certain specified
9 circumstances.

10 **Table of sections**

11 **Operative provisions**

12	355-25	Offence—disclosure of protected information by taxation officers
13	355-30	Meaning of <i>protected information</i> and <i>taxation officer</i>
14	355-35	Consent is not a defence
15	355-40	Generality of Subdivision not limited
16	355-45	Exception—disclosure of publicly available information
17	355-50	Exception—disclosure in performing duties
18	355-55	Exception—disclosure to Ministers and committees of Parliament
19	355-60	Limits on disclosure to Ministers and Parliament
20	355-65	Exception—disclosure for other government purposes
21	355-70	Exception—disclosure for law enforcement and related purposes
22	355-75	Limits on disclosure to courts and tribunals

23 **Operative provisions**

24 **355-25 Offence—disclosure of protected information by taxation**
25 **officers**

- 26 (1) An entity commits an offence if:
27 (a) the entity is or was a *taxation officer; and
28 (b) the entity:
29 (i) makes a record of information; or
30 (ii) discloses information to another entity (other than the
31 entity to whom the information relates or an entity
32 covered by subsection (2)) or to a court or tribunal; and
-

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Part 1 Main amendment

- 1 (c) the information is *protected information; and
2 (d) the information was acquired by the first-mentioned entity as
3 a taxation officer.

4 Penalty: Imprisonment for 2 years.

5 (2) An entity (the **covered entity**) is covered by this subsection in
6 relation to *protected information that relates to another entity (the
7 **primary entity**) if:

- 8 (a) the covered entity is the primary entity's *registered tax agent
9 or BAS agent; or
10 (b) the covered entity is a *legal practitioner representing the
11 primary entity in relation to the primary entity's *tax affairs;
12 or
13 (c) the primary entity is an *incapacitated entity and the covered
14 entity is a *representative of the incapacitated entity; or
15 (d) the covered entity is the primary entity's *legal personal
16 representative; or
17 (e) the covered entity is the primary entity's guardian where the
18 primary entity is a minor or suffers from mental incapacity;
19 or
20 (f) the covered entity and the primary entity are members of the
21 same *consolidated group or *MEC group; or
22 (g) the covered entity is a representative of the primary entity
23 who has been nominated by the primary entity in the
24 *approved form to act on that entity's behalf with respect to
25 protected information.

26 **355-30 Meaning of *protected information* and *taxation officer***

27 (1) **Protected information** means information that:

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

35 Note: Tax file numbers do not constitute protected information because they
36 are not, by themselves, reasonably capable of being used to identify an

1 entity. For offences relating to tax file numbers, see Subdivision BA
2 of Division 2 of Part III.

3 (2) **Taxation officer** means:

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

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

10 **355-35 Consent is not a defence**

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

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

16 **355-40 Generality of Subdivision not limited**

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

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

22 **355-45 Exception—disclosure of publicly available information**

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

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

28 **355-50 Exception—disclosure in performing duties**

- 29 (1) Section 355-25 does not apply if:
30 (a) the entity is a *taxation officer; and
31 (b) the record or disclosure is made in performing the entity's
32 duties as a taxation officer.

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

3 (2) Without limiting subsection (1), records or disclosures made in
 4 performing duties as a *taxation officer include those mentioned in
 5 the following table:
 6

Records or disclosures in performing duties		
Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
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: (a) determining whether to make an ex gratia payment; or (b) administering such a payment; 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 *ABN of any entity; and (b) is for the purpose of: (i) the design of a *taxation law; or

Records or disclosures in performing duties

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
		(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.

1 **355-55 Exception—disclosure to Ministers and committees of**
2 **Parliament**

- 3 (1) Section 355-25 does not apply if:
4 (a) the entity is a *taxation officer; and
5 (b) an item in the following table covers the making of the record
6 or the disclosure:
7

Records or disclosures to Ministers

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
1	any Minister	is for the purpose of enabling the Minister to exercise a power or perform a function under a *taxation law.
2	the Minister	(a) is about an entity; and (b) is for the purpose of enabling the Minister to respond directly to the entity in relation to a representation made by the entity to: (i) the Minister; or (ii) another member of a House of the Parliament.
3	the Minister	is for the purpose of informing decisions made under the scheme known as the Compensation for

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Records or disclosures to Ministers

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

- 1 Note 1: A defendant bears an evidential burden in relation to the matters in
 2 this subsection: see subsection 13.3(3) of the *Criminal Code*.
- 3 Note 2: Section 19A of the *Acts Interpretation Act 1901* provides that the
 4 expression “the Minister”, as used in table items 2 and 3, refers to the
 5 Minister or Ministers administering the relevant provision.
- 6 (2) Section 355-25 does not apply if:
- 7 (a) the record is made for, or the disclosure is to, a committee of
 8 one or both Houses of the Parliament; and
- 9 (b) the making of the record or the disclosure is in response to a
 10 request of the committee for the record or the information;
 11 and
- 12 (c) the record or disclosure is for the purpose of the committee
 13 performing any of its functions or exercising any of its
 14 powers; and
- 15 (d) in the case of a written disclosure—the disclosure is treated
 16 as evidence taken in camera; and
- 17 (e) in the case of an oral disclosure—the disclosure is made in
 18 camera.

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

3 **355-60 Limits on disclosure to Ministers and Parliament**

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

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

15 (2) Subsection (1) has effect despite any power, privilege or immunity
16 of either House of the Parliament, of the members of either House
17 of the Parliament or the committees of either or both Houses of the
18 Parliament, except to the extent that those powers, privileges or
19 immunities can be invoked to compel the disclosure of *protected
20 information.

21 (3) However, nothing in this Subdivision affects the law relating to the
22 powers, privileges or immunities of either House of the Parliament,
23 of the members of either House of the Parliament or of the
24 committees of either or both Houses of the Parliament in relation to
25 the recording or disclosure of particular *protected information if
26 the information has been disclosed in accordance with
27 section 355-45 or 355-55.

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

30 **355-65 Exception—disclosure for other government purposes**

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

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

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Part 1 Main amendment

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

3 (2) Table 1 is as follows:
 4

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 ...
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</i>

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 ...
		2007.
9	an *Australian government agency	is necessary for the purpose of preventing or lessening: (a) a serious threat to an individual's life, health or safety; or (b) a serious threat to public health or public safety.

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Table 2—Records or disclosures relating to superannuation or finance

4

(3) Table 2 is as follows:

5

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 (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 (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 (b) is for the purpose of performing any of its functions or exercising any of its powers; and (c) is made in accordance with the conditions (if any) imposed by the regulations in relation to the disclosure of information under this item.

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Part 1 Main amendment

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 ...
3	the Superannuation Complaints Tribunal established by section 6 of the <i>Superannuation (Resolution of Complaints) Act 1993</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 (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: (a) the <i>Financial Institutions Supervisory Levies Collection Act 1998</i> ; or (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 (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 (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</i>

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 ...
		<p><i>(Supervision) Act 1993</i> and is for the purpose of all or any of the following:</p> <p>(a) identifying a particular self-managed superannuation fund;</p> <p>(b) enabling members of the public to contact persons who perform functions in relation to a particular self-managed superannuation fund;</p> <p>(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>;</p> <p>(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>.</p>

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

4

(4) Table 3 is as follows:

5

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

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
1	the Australian Securities and	is for the purpose of investigation or

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Part 1 Main amendment

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

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
	Investments Commission (<i>ASIC</i>)	enforcement activities relating to a provision of a law that: (a) is administered by ASIC; and (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 (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: (a) the <i>Superannuation Industry (Supervision) Act 1993</i> ; or (b) Chapter 7 of the <i>Corporations Act 2001</i> (about financial services and markets); or (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.

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

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
7	the Secretary of the Department of the Treasury	is for the purpose of briefing the 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 (b) is for the purpose of that Department estimating or analysing taxation revenue or estimating the cost of policy proposals.

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3
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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

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
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: (a) information obtained under or in relation to the <i>First Home Saver Accounts Act 2008</i> ; or (b) rental information or residential address information; and is for the purpose of administering the <i>First Home Owner Grant Act 2000</i>

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Table 4: Records or disclosures relating to other taxation matters

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
		of New South Wales, or a similar [*] State 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: (a) administering that Act; or (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 (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.

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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

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
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	(a) is of information that relates to amounts withheld under Part 2-5 in

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 ...
	*workers' compensation law	Schedule 1 to this Act (about PAYG withholding); and (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.

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Table 6—Records or disclosures relating to the environment

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(7) Table 6 is as follows:

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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.

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Table 7—Records or disclosures relating to miscellaneous matters

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(8) Table 7 is as follows:

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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

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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 ...
Australia.		
4	the *Immigration Secretary	(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 (b) is for a purpose that is relevant to: <ul style="list-style-type: none"> (i) the exercise of the Minister's powers under Division 3A of Part 2 of that Act or regulations made under that Division; or (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 (iii) the administration of Division 3A of Part 2 of that Act or regulations made under that Division.
5	the Fair Work Ombudsman (within the meaning of the <i>Fair Work Act 2009</i>)	(a) is of the fact of an entity's actual or reasonably suspected non-compliance with a *taxation law; and (b) is for the purpose of ensuring the entity's compliance with the <i>Fair Work Act 2009</i> .
6	the Attorney-General of a State or Territory	(a) is of information that relates to non-compliance of a private ancillary fund or charity with an *Australian law; and (b) is for the purpose of the administration of an Australian law

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 ...
		governing trusts and charities.

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(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.

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.

Records or disclosures for law enforcement and related purposes

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

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Records or disclosures for law enforcement and related purposes

Item	The record is made for or the disclosure is to ...	and the record or disclosure ...
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 (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 (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: (a) a Royal Commission of a State or a Territory prescribed by the regulations for the purposes of this table item; (b) a commission of inquiry of a State or a Territory prescribed by the regulations for the purposes of this table item; (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: (a) investigating a *serious offence; or (b) enforcing a law, the contravention of which is a serious offence; or (c) the making, or proposed or possible making, of a *proceeds of crime order.

1 *Meaning of various terms*

2 (2) **Authorised ASIO officer** means:

3 (a) the Director-General of Security holding office under the
 4 *Australian Security Intelligence Organisation Act 1979*; or

- 1 (b) any other individual employed under paragraph 84(1)(a) or
2 (b) of that Act who has been authorised in writing by the
3 Director-General of Security to perform the functions of an
4 authorised ASIO officer under this Act.
- 5 (3) **Authorised law enforcement agency officer** means:
6 (a) the head of a *law enforcement agency; or
7 (b) an officer of a law enforcement agency, or a person engaged
8 by, or otherwise performing services for, a law enforcement
9 agency, authorised in writing by the head of the agency to
10 perform the functions of an authorised law enforcement
11 agency officer under this Act.
- 12 (4) **Law enforcement agency** means:
13 (a) the Australian Federal Police; or
14 (b) the police force of a State or Territory; or
15 (c) the Office of the Director of Public Prosecutions established
16 by section 5 of the *Director of Public Prosecutions Act 1983*;
17 or
18 (d) the Australian Commission for Law Enforcement Integrity;
19 or
20 (e) the Australian Crime Commission; or
21 (f) the Independent Commission Against Corruption established
22 by the *Independent Commission Against Corruption Act 1988*
23 of New South Wales; or
24 (g) the New South Wales Crime Commission; or
25 (h) the Police Integrity Commission of New South Wales; or
26 (i) the Office of Police Integrity of Victoria; or
27 (j) the Crime and Misconduct Commission of Queensland; or
28 (k) the Corruption and Crime Commission of Western Australia;
29 or
30 (l) the Australian Securities and Investments Commission.
- 31 (5) **Proceeds of crime order** means an order, relating to an entity's
32 commission of a *serious offence, under:
33 (a) Chapter 2 (about confiscation of property in relation to
34 certain offences) or Division 1 of Part 3-1 (about examination
35 orders) of the *Proceeds of Crime Act 2002*; or
36 (b) Part II (about confiscation) or III (about control of property
37 liable to confiscation) of the *Proceeds of Crime Act 1987*; or
-

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- 1 (c) a *State law or *Territory law corresponding to a law referred
2 to in paragraph (a) or (b); or
3 (d) Division 3 of Part XIII (about recovery of pecuniary penalties
4 for dealings in narcotic goods) of the *Customs Act 1901*.
- 5 (6) An entity is a ***Project Wickenby officer*** if the entity:
6 (a) holds an office in, is employed in, or is performing services
7 for:
8 (i) a *Project Wickenby taskforce agency; or
9 (ii) a *Project Wickenby taskforce supporting agency; and
10 (b) performs duties that relate to a *purpose of the Project
11 Wickenby taskforce.
- 12 (7) The following agencies are ***Project Wickenby taskforce agencies***:
13 (a) the Australian Taxation Office;
14 (b) the Australian Crime Commission;
15 (c) the Australian Federal Police;
16 (d) the Australian Securities and Investments Commission;
17 (e) the Office of the Director of Public Prosecutions;
18 (f) a prescribed agency.
- 19 (8) The following agencies are ***Project Wickenby taskforce***
20 ***supporting agencies***:
21 (a) the Attorney-General's Department;
22 (b) the Australian Transaction Reports and Analysis Centre;
23 (c) the Australian Government Solicitor;
24 (d) a prescribed agency.
- 25 (9) The ***purposes of the Project Wickenby taskforce*** are to:
26 (a) detect; and
27 (b) deter; and
28 (c) investigate; and
29 (d) enforce the law relating to;
30 the promotion of or participation in *arrangements of an
31 international character, or purported international character, that
32 relate to one or more of the following:
33 (e) tax avoidance or evasion;
34 (f) breaches of laws regulating financial markets and
35 corporations;
-

- 1 (g) criminal activity in the nature of fraud or obtaining benefits
2 by deception (including deceiving investors or creditors);
3 (h) money laundering;
4 (i) concealing income or assets.
- 5 (10) **Serious offence** means an offence against an *Australian law that
6 is punishable by imprisonment for a period exceeding 12 months.
- 7 (11) An entity is a **taskforce officer** of a prescribed taskforce if:
8 (a) the entity holds an office in, is employed in, or is performing
9 services for, an agency in the prescribed taskforce; and
10 (b) the entity's duties relate to a purpose of the prescribed
11 taskforce.
- 12 (12) The regulations may prescribe a taskforce for the purposes of
13 item 4 of the table in subsection (1). A major purpose of the
14 taskforce must be protecting the public finances of Australia.
- 15 (13) Without limiting subsection (12), regulations made for the
16 purposes of item 4 of the table in subsection (1) may deal with the
17 following matters:
18 (a) the purposes of the taskforce;
19 (b) the agencies in the taskforce.

20 **355-75 Limits on disclosure to courts and tribunals**

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

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

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

3 **Guide to Subdivision 355-C**

4 **355-150 What this Subdivision is about**

5

Someone who is not a taxation officer is prohibited from disclosing 6 protected information, except in certain specified circumstances.
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7 **Table of sections**

8 **Operative provisions**

9	355-155	Offence—on-disclosure of protected information by other people
10	355-160	Consent is not a defence
11	355-165	Generality of Subdivision not limited
12	355-170	Exception—on-disclosure of publicly available information
13	355-175	Exception—on-disclosure for original purpose
14	355-180	Exception—on-disclosure to Ministers in relation to statutory powers or 15 functions
16	355-185	Exception—on-disclosure in relation to IGIS
17	355-190	Exception—on-disclosure in relation to ASIO
18	355-195	Exception—on-disclosure by Royal Commissions
19	355-200	Exception—records made in compliance with Australian laws
20	355-205	Limits on on-disclosure to courts or tribunals
21	355-210	Limits on on-disclosure to Ministers and Parliament

22 **Operative provisions**

23 **355-155 Offence—on-disclosure of protected information by other**
24 **people**

25 An entity commits an offence if:

26 (a) the entity:

27 (i) makes a record of information; or

28 (ii) discloses information to another entity (other than the
29 entity to whom the information relates or that entity's
30 agent in relation to the information) or to a court or
31 tribunal; and

- 1 (b) the information was acquired by the first-mentioned entity
2 under an exception in this Subdivision or in
3 Subdivision 355-B; and
4 (c) the first-mentioned entity did not acquire the information as a
5 *taxation officer.

6 Penalty: Imprisonment for 2 years.

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

12 **355-160 Consent is not a defence**

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

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

18 **355-165 Generality of Subdivision not limited**

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

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

25 **355-170 Exception—on-disclosure of publicly available information**

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

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

31 **355-175 Exception—on-disclosure for original purpose**

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

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

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

10 *Instances of disclosures in connection with the original purpose*

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

18 *Multiple purposes*

- 19 (3) Subsection (1) has effect as if a record or disclosure made by the
20 entity for a purpose specified in column 3 of the following table
21 were made in connection with the original purpose:
22

Records or disclosures for purpose connected with the original purpose		
Item	Original purpose	Purpose connected with the original purpose
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.

1 **355-180 Exception—on-disclosure to Ministers in relation to**
2 **statutory powers or functions**

3 Section 355-155 does not apply if:

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

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

17 **355-185 Exception—on-disclosure in relation to IGIS**

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

- 19 (a) the entity is an *authorised ASIO officer; and
20 (b) the record is made for, or the disclosure is to, the
21 Inspector-General of Intelligence and Security holding office
22 under the *Inspector-General of Intelligence and Security Act*
23 *1986* or a member of staff appointed to assist the
24 Inspector-General under that Act; and
25 (c) the record or disclosure is for the purpose of performing the
26 Inspector-General's, or the member of staff's, duties in
27 relation to ASIO or officers or employees of ASIO.

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

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

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

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

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

6 **355-190 Exception—on-disclosure in relation to ASIO**

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

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

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

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

33 **355-195 Exception—on-disclosure by Royal Commissions**

- 34 (1) Section 355-155 does not apply if:
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- 1 (a) the entity is a member of a Royal Commission to which
2 column 2 of item 5 of the table in subsection 355-70(1)
3 relates; and
4 (b) the information was acquired by the entity under item 5 of
5 the table in subsection 355-70(1); and
6 (c) the record or disclosure is in accordance with section 6P of
7 the *Royal Commissions Act 1902*.

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

10 Note 2: Section 6P of the *Royal Commissions Act 1902* sets out the
11 circumstances in which a Royal Commission covered by that Act may
12 disclose information it acquires in the course of its inquiry.

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

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

17 **355-200 Exception—records made in compliance with Australian** 18 **laws**

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

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

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

29 **355-205 Limits on on-disclosure to courts or tribunals**

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

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

355-210 Limits on on-disclosure to Ministers and Parliament

- (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, a House of the Parliament or a committee of one or both Houses of the Parliament.

Note: Disclosures that are not prohibited by section 355-155 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 any power, privilege or immunity of either House of the Parliament, of the members of either House of the Parliament or the committees of either or both Houses of the Parliament, except to the extent that those powers, privileges or immunities can be invoked to compel the disclosure of *protected information.

- (3) However, nothing in this Subdivision affects the law relating to the powers, privileges or immunities of either House of the Parliament, of the members of either House of the Parliament or of the committees of either or both Houses of the Parliament in relation to records or disclosures made of particular *protected information if the information has been disclosed in accordance with section 355-45, 355-55, 355-170, 355-180 or 355-195.

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

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

1	Operative provisions
2	355-265 Offence—disclosure of protected information acquired in breach of a
3	taxation law
4	355-270 Exception—disclosure of publicly available information
5	355-275 Exception—disclosure in relation to a taxation law
6	355-280 Limits on disclosure to courts and tribunals

7 **Operative provisions**

8 **355-265 Offence—disclosure of protected information acquired in**
9 **breach of a taxation law**

10 An entity commits an offence if:

- 11 (a) the entity:
- 12 (i) makes a record of information; or
 - 13 (ii) discloses information to another entity (other than the
 - 14 entity to whom the information relates or that entity's
 - 15 agent in relation to the information) or to a court or
 - 16 tribunal; and
- 17 (b) the information is *protected information; and
- 18 (c) the information was acquired by the entity in breach of a
- 19 provision of a *taxation law (including this provision); and
- 20 (d) the information was not acquired by the entity as a *taxation
- 21 officer.

22 Penalty: Imprisonment for 2 years.

23 **355-270 Exception—disclosure of publicly available information**

24 Section 355-265 does not apply if the information was already

25 available to the public (otherwise than as a result of a

26 contravention of that section, or section 355-25 or 355-155).

27 Note: A defendant bears an evidential burden in relation to the matters in

28 this section: see subsection 13.3(3) of the *Criminal Code*.

29 **355-275 Exception—disclosure in relation to a taxation law**

30 Section 355-265 does not apply:

- 31 (a) to the extent that the entity's actions are required or permitted
- 32 by a *taxation law or reasonably necessary in order to comply
- 33 with an obligation imposed by a taxation law; or

- 1 (b) if the record was made for or the information was disclosed:
2 (i) to a *taxation officer; and
3 (ii) for a purpose connected with administering a *taxation
4 law.

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

7 **355-280 Limits on disclosure to courts and tribunals**

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

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

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

14 **Guide to Subdivision 355-E**

15 **355-320 What this Subdivision is about**

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

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

21 **Table of sections**

22 **Operative provisions**

- 23 355-325 Oath or affirmation to protect information
24 355-330 Injunctions to prevent contravention of non-disclosure provisions

1 **Operative provisions**

2 **355-325 Oath or affirmation to protect information**

- 3 (1) A *taxation officer must, if and when required by the
4 Commissioner to do so, make an oath or affirmation to protect
5 information in accordance with this Division.
- 6 (2) The Commissioner may determine, in writing:
7 (a) the form of the oath or affirmation; and
8 (b) the manner in which the oath or affirmation must be made.

9 **355-330 Injunctions to prevent contravention of non-disclosure**
10 **provisions**

11 *Injunctions*

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

19 *Interim injunctions*

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

25 *Discharge or variation of injunctions*

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

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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.

1

2 **Part 2—Application of amendment**

3 **2 Application of amendment**

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

1
2 **Schedule 2—Consequential amendments**

3 **Part 1—Amendments**

4 *Administrative Decisions (Judicial Review) Act 1977*

5 **1 Paragraph (f) of Schedule 1**

6 Repeal the paragraph.

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

8 **2 Section 41 (paragraph (c) of the definition of *protected***
9 ***information*)**

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

11 *Anti-Money Laundering and Counter-Terrorism Financing*
12 *Act 2006*

13 **3 Subsection 125(3)**

14 Repeal the subsection, substitute:

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

- 17 (3) Division 355 in Schedule 1 to the *Taxation Administration Act*
18 *1953* applies in relation to AUSTRAC information obtained by the
19 Commissioner of Taxation or a taxation officer under
20 subsection (1) or (2) of this section as if a reference in that
21 Division to a taxation law included a reference to this Act or the
22 *Financial Transaction Reports Act 1988*.

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

25 **4 Subsection 125(4)**

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

1 ***Australian Crime Commission Act 2002***

2 **5 At the end of subsection 19A(5)**

3 Add:

4 Note: If the information is protected information (within the meaning of
5 section 355-30 in Schedule 1 to the *Taxation Administration Act*
6 *1953*), the officer or person may decline to disclose that information
7 unless an exception in Division 355 in that Schedule covers the
8 disclosure.

9 **6 At the end of subsection 20(4)**

10 Add:

11 Note: If the information is protected information (within the meaning of
12 section 355-30 in Schedule 1 to the *Taxation Administration Act*
13 *1953*), the officer or person may decline to disclose that information
14 unless an exception in Division 355 in that Schedule covers the
15 disclosure.

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

17 **7 Subsection 127(1AA)**

18 Repeal the subsection.

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

20 **8 Section 4**

21 Repeal the section, substitute:

22 **4 Secrecy**

23 Division 355 in Schedule 1 to the *Taxation Administration Act*
24 *1953* has effect as if this Act were part of that Act.

25 ***Customs Administration Act 1985***

26 **9 Section 16A**

27 Repeal the section.

1 ***Development Allowance Authority Act 1992***

2 **10 Section 93AA (definition of *State taxation officer***
3 ***disclosure provision*)**

4 Repeal the definition.

5 **11 Paragraph 108(c)**

6 Repeal the paragraph.

7 **12 After section 114**

8 Insert:

9 **114A Disclosure of commercial-in-confidence information obtained**
10 **in breach of this Act**

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

21 Penalty: Imprisonment for 2 years.

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

30 Note: A defendant bears an evidential burden in relation to the matters in

31 this subsection: see subsection 13.3(3) of the *Criminal Code*.

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

5 **13 Paragraph 118(b)**

6 Repeal the paragraph.

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

8 **14 Section 3 (at the end of the note)**

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

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

14 **15 At the end of section 3**

15 Add:

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

20 ***Excise Act 1901***

21 **16 At the end of section 7**

22 Add:

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

27 **17 Section 159**

28 Repeal the section.

29 ***First Home Saver Accounts Act 2008***

30 **18 At the end of subsection 3(1)**

Schedule 2 Consequential amendments
Part 1 Amendments

1 Add:

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

6 **19 Section 18 (definition of *protected information*)**

7 Repeal the definition.

8 **20 Section 70**

9 Repeal the section.

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

11 **21 At the end of section 5**

12 Add:

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

17 ***Freedom of Information Act 1982***

18 **22 Schedule 3**

19 Omit “*Crimes (Taxation Offences) Act 1980*, subsections 4(1A), (1) and
20 (1AA)”, substitute “*Crimes (Taxation Offences) Act 1980*, section 4”.

21 **23 Schedule 3**

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

23 **24 Schedule 3**

24 Omit “*Income Tax Assessment Act 1936*, subsections 16(2), (4F),
25 (4FA), (4JB) and (5C)”.

26 **25 Schedule 3**

27 Omit “*Petroleum Resource Rent Tax Assessment Act 1987*, subsection
28 17(3)”.

29 **26 Schedule 3**

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

4 **27 Schedule 3**

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

8 **28 Schedule 3**

9 Omit “*Taxation (Interest on Overpayments and Early Payments) Act*
10 *1983*, subsection 8(2)”.

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

12 **29 At the end of section 3**

13 Add:

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

18 **30 Section 5**

19 Repeal the section.

20 ***Income Tax Assessment Act 1936***

21 **31 At the end of section 8**

22 Add:

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

27 **32 Sections 16 and 16A**

28 Repeal the sections.

29 **33 Paragraph 202(n)**

30 Repeal the paragraph.

1 ***Income Tax Assessment Act 1997***

2 **34 At the end of section 1-7**

3 Add:

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

8 **35 Section 11-55 (table item headed “social security or like
9 payments”)**

10 Repeal the item.

11 **36 Subsection 30-229(5)**

12 Repeal the subsection.

13 **37 Section 59-5**

14 Repeal the section.

15 **38 Sections 396-95 and 396-100**

16 Repeal the sections.

17 **39 Subsection 995-1(1)**

18 Insert:

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

21 **40 Subsection 995-1(1)**

22 Insert:

23 *authorised law enforcement agency officer* has the meaning given
24 by section 355-70 in Schedule 1 to the *Taxation Administration Act*
25 *1953*.

26 **41 Subsection 995-1(1)**

27 Insert:

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

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

2 Insert:

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

5 **43 Subsection 995-1(1)**

6 Insert:

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

9 **44 Subsection 995-1(1)**

10 Insert:

11 *Project Wickenby taskforce agency* has the meaning given by
12 section 355-70 in Schedule 1 to the *Taxation Administration Act*
13 *1953*.

14 **45 Subsection 995-1(1)**

15 Insert:

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

19 **46 Subsection 995-1(1)**

20 Insert:

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

23 **47 Subsection 995-1(1)**

24 Insert:

25 *purposes of the Project Wickenby taskforce* has the meaning given
26 by section 355-70 in Schedule 1 to the *Taxation Administration Act*
27 *1953*.

28 **48 Subsection 995-1(1)**

29 Insert:

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

3 **49 Subsection 995-1(1)**

4 Insert:

5 *taskforce officer* of a prescribed taskforce has the meaning given
6 by section 355-70 in Schedule 1 to the *Taxation Administration Act*
7 *1953*.

8 **50 Subsection 995-1(1) (paragraph (b) of the definition of**
9 ***taxation law*)**

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

11 **51 Subsection 995-1(1)**

12 Insert:

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

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

16 **52 At the end of section 1-7**

17 Add:

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

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

23 **53 Subsection 22(3)**

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

27 **54 Subsection 22(3) (note)**

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

29 **55 Section 25A (note)**

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

3 ***International Tax Agreements Act 1953***

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

5 Add:

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

10 **57 Subsection 23(2)**

11 Repeal the subsection.

12 **58 Subsection 23(3)**

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

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

15 **59 At the end of section 15**

16 Add:

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

21 **60 Sections 17 and 18**

22 Repeal the sections.

23 ***Pooled Development Funds Act 1992***

24 **61 Subsection 71(3)**

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

1 ***Privacy Act 1988***

2 **62 Subsection 17(4)**

3 Repeal the subsection.

4 **63 Schedule 2**

5 Repeal the Schedule.

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

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

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

12 **65 Section 47**

13 Repeal the section.

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

15 **66 Section 7 (at the end of the note)**

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

20 ***Retirement Savings Accounts Act 1997***

21 **67 At the end of subsection 3(1)**

22 Add:

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

27 **68 Section 16 (definition of *taxation officer*)**

28 Repeal the definition.

1 ***Small Superannuation Accounts Act 1995***

2 **69 At the end of section 6**

3 Add:

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

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

10 **70 At the end of section 30**

11 Add:

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

16 **71 Section 32**

17 Repeal the section.

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

21 **72 At the end of section 26**

22 Add:

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

27 **73 Section 28**

28 Repeal the section.

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

3 **74 At the end of section 46**

4 Add:

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

9 **75 Section 53**

10 Repeal the section.

11 **76 Section 56 (definition of *Deputy Commissioner*)**

12 Repeal the definition.

13 **77 Section 56 (definition of *protected document*)**

14 Repeal the definition.

15 **78 Section 56 (definition of *protected information*)**

16 Repeal the definition.

17 **79 Section 56 (definition of *Second Commissioner*)**

18 Repeal the definition.

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

20 **80 Subsection 6(1) (definition of *taxation officer*)**

21 Repeal the definition.

22 **81 At the end of section 43**

23 Add:

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

28 **82 Sections 45 and 45A**

29 Repeal the sections.

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

2 **83 At the end of subsection 6(1)**

3 Add:

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

9 **84 Subsection 131A(1) (note)**

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

17 **85 Division 2 of Part 24B**

18 Repeal the Division.

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

21 **86 At the end of section 9**

22 Add:

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

27 ***Superannuation (Unclaimed Money and Lost Members) Act***
28 ***1999***

29 **87 Section 8 (definition of *court*)**

30 Repeal the definition.

31 **88 Section 8 (definition of *protected document*)**

32 Repeal the definition.

1 **89 Section 8 (definition of *protected information*)**

2 Repeal the definition.

3 **90 Part 6**

4 Repeal the Part.

5 **91 At the end of section 40**

6 Add:

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

11 ***Tax Agent Services Act 2009***

12 **92 Subsection 60-130(2) (including the note)**

13 Repeal the subsection, substitute:

14 (2) The *Chair must also set out in the report, in relation to each
15 general category of offence and in relation to each *law
16 enforcement agency:

17 (a) the number of occasions (if any) during the year on which the
18 Board was requested by, or on behalf of, the head of the
19 agency to disclose information under subsection 70-40(4) to
20 *authorised law enforcement agency officers; and

21 (b) the number of occasions (if any) during the year on which
22 information was disclosed under that subsection to authorised
23 law enforcement agency officers.

24 **93 Sections 70-35, 70-40 and 70-45**

25 Repeal the sections, substitute:

26 **70-35 Official information not to be disclosed**

27 *Offence—recording or disclosing official information*

28 (1) A person commits an offence if:

29 (a) the person:

30 (i) is or has been a *Board member or a member of a
31 *committee; or

- 1 (ii) is or has been an APS employee whose services were
2 made available to the Board by the Commissioner; or
3 (iii) is or has been a person appointed or employed by, or a
4 provider of services for, the Commonwealth; and
5 (b) the person:
6 (i) makes a record of information; or
7 (ii) discloses information to another person (other than the
8 person to whom the information relates or that person's
9 *agent in relation to the information) or to a court or
10 tribunal; and
11 (c) the information is *official information; and
12 (d) the information was acquired by the first-mentioned person
13 in the course of, or because of, his or her duties under or in
14 relation to this Act or the regulations.

15 Penalty: Imprisonment for 2 years.

16 *Consent is not a defence*

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

22 *Limits on disclosure to courts and tribunals*

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

29 **70-40 Exceptions to the prohibition on disclosure of official**
30 **information**

31 *Disclosure in the performance of duties*

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

Schedule 2 Consequential amendments
Part 1 Amendments

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

3 *Disclosure of publicly available information*

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

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

9 *Disclosures to the Commissioner of Taxation*

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

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

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

25 (4) Subsection 70-35(1) does not apply if:
26 (a) the record is made for, or the disclosure is to, an *authorised
27 law enforcement agency officer; and
28 (b) the record or disclosure is for the purpose of:
29 (i) investigating a *serious offence; or
30 (ii) enforcing a law, the contravention of which is a serious
31 offence; or
32 (iii) the making, or proposed or possible making, of a
33 *proceeds of crime order.

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

1 **70-45 On-disclosure of official information**

2 *Offence—on-disclosure of information*

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

15 Penalty: Imprisonment for 2 years.

16 *Consent is not a defence*

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

22 *Exceptions*

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

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

- 28 (4) Subsection (1) does not apply if:
29 (a) the information was originally disclosed under an exception
30 in section 70-40 for a purpose specified in that exception (the
31 *original purpose*); and
32 (b) the information was acquired by the person under this section
33 or an exception in section 70-40; and

1 (c) the record or disclosure is made by the person for the original
2 purpose, or in connection with the original purpose.

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

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

10 *Limit on on-disclosure to courts or tribunals*

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

15 **94 Subsection 90-1(1)**

16 Insert:

17 *official information* means information that:

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

23 **95 Subsection 90-1(1) (definition of *proceeds of crime order*)**

24 Repeal the definition.

25 ***Taxation Administration Act 1953***

26 **96 Subsection 2(1) (definition of *ASIO officer*)**

27 Repeal the definition.

28 **97 Subsection 2(1) (definition of *authorised ASIO officer*)**

29 Repeal the definition.

30 **98 Subsection 2(1) (definition of *authorised law enforcement* 31 *agency officer*)**

1 Repeal the definition.

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

4 Repeal the definition.

5 **100 Subsection 2(1) (definition of *Chairperson*)**

6 Repeal the definition.

7 **101 Subsection 2(1) (definition of *eligible Royal Commission*)**

8 Repeal the definition.

9 **102 Subsection 2(1) (definition of *head*)**

10 Repeal the definition.

11 **103 Subsection 2(1) (definition of *IGIS officer*)**

12 Repeal the definition.

13 **104 Subsection 2(1) (definition of *Inspector-General*)**

14 Repeal the definition.

15 **105 Subsection 2(1) (definition of *law enforcement agency*)**

16 Repeal the definition.

17 **106 Subsection 2(1) (definition of *official*)**

18 Repeal the definition.

19 **107 At the end of section 3A**

20 Add:

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

24 **108 Paragraphs 3B(1AA)(b) to (f)**

25 Repeal the paragraphs, substitute:

26 (b) set out, in relation to each general category of offence and in
27 relation to each law enforcement agency (within the meaning
28 of the *Income Tax Assessment Act 1997*):

Schedule 2 Consequential amendments
Part 1 Amendments

- 1 (i) the number of occasions (if any) during the year on
2 which the Commissioner was requested by, or on behalf
3 of, the head of the agency to disclose information under
4 subsection 355-70(1) in Schedule 1 to authorised law
5 enforcement agency officers (within the meaning of that
6 Act) representing the agency; and
- 7 (ii) the number of occasions (if any) during the year on
8 which information was disclosed under that subsection
9 to authorised law enforcement agency officers; and
- 10 (c) set out, in relation to each general category of offence and in
11 relation to each Royal Commission or other body mentioned
12 in column 2 of table item 6 in subsection 355-70(1) in
13 Schedule 1:
- 14 (i) the number of occasions (if any) during the year on
15 which the Commissioner was requested by the
16 Commission or body to disclose information under
17 subsection 355-70(1) in Schedule 1 to the Commission
18 or body; and
- 19 (ii) the number of occasions (if any) during the year on
20 which information was disclosed under that subsection
21 to the Commission or body; and
- 22 (d) set out, in relation to ASIO:
- 23 (i) the number of occasions (if any) during the year on
24 which the Commissioner was requested by, or on behalf
25 of, the Director-General of Security to disclose
26 information under subsection 355-70(1) to an authorised
27 ASIO officer (within the meaning of the *Income Tax*
28 *Assessment Act 1997*); and
- 29 (ii) the number of occasions (if any) during the year on
30 which information was disclosed under that subsection
31 to an authorised ASIO officer; and
- 32 (e) set out:
- 33 (i) the number of occasions (if any) during the year on
34 which the Commissioner or a taxation officer was
35 requested to disclose documents under subsection
36 355-70(1) in Schedule 1 in relation to a purpose of the
37 Project Wickenby taskforce; and
- 38 (ii) the number of occasions (if any) during the year on
39 which the Commissioner or a taxation officer disclosed
40 documents under that subsection; and
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- 1 (f) set out, in relation to a taskforce that has been prescribed for
2 the purposes of subsection 355-70(1) in Schedule 1:
3 (i) the number of occasions (if any) during the year on
4 which the Commissioner or a taxation officer was
5 requested to disclose documents under subsection
6 355-70(1) in relation to a purpose of the taskforce; and
7 (ii) the number of occasions (if any) during the year on
8 which the Commissioner or a taxation officer disclosed
9 documents under that subsection.

10 **109 Subsection 3B(1B)**

11 Omit “13J,”.

12 **110 Sections 3C to 3H**

13 Repeal the sections.

14 **111 Paragraph 8WA(1AA)(b)**

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

16 **112 Paragraphs 8WB(1A)(a) and (b)**

17 Omit “(n),”.

18 **113 Section 8XB**

19 Repeal the section.

20 **114 Section 13H**

21 Repeal the section.

22 **115 Division 3 of Part IIIA**

23 Repeal the Division.

24 **116 Sections 17B and 17C**

25 Repeal the sections.

26 **117 Subsection 426-65(4) in Schedule 1**

27 Omit all the words after “contravene”, substitute “section 355-25 or
28 355-155”.

1 ***Taxation (Interest on Overpayments and Early Payments) Act***
2 ***1983***

3 **118 At the end of section 4**

4 Add:

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

8 **119 Section 8**

9 Repeal the section.

10 ***Termination Payments Tax (Assessment and Collection) Act***
11 ***1997***

12 **120 At the end of section 21**

13 Add:

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

17 **121 Section 23**

18 Repeal the section.

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

20 **122 Subsection 4(4)**

21 Omit “16 of the Assessment Act or section 3C”, substitute “355-25 or
22 355-155 in Schedule 1”.

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Part 2—Application, transitional and savings provisions

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123 Application of amendments

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(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).

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(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).

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(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.

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

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If:

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(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

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(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);

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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).

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125 Transitional provision—authorisations

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(1) If, immediately before the commencement of this item, an officer of a law enforcement agency was an authorised law enforcement agency officer within the meaning of the *Taxation Administration Act 1953* (as

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1 in force at that time), the officer is taken, on and after that
2 commencement, to be an authorised law enforcement agency officer
3 within the meaning of the *Income Tax Assessment Act 1997*.

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

11 **126 Saving—section 159 of the *Excise Act 1901***

12 (1) This item applies to an entity who acquired protected information
13 (within the meaning of section 159 of the *Excise Act 1901* as in force
14 immediately before the commencement of item 17 of this Schedule)
15 when the excise law (within the meaning of that Act) was not
16 administered by the Commissioner of Taxation.

17 (2) Despite the repeal of section 159 of the *Excise Act 1901* by item 17 of
18 this Schedule, that section continues to apply to the entity after the
19 commencement of this item, in relation to the information, as if the
20 repeal had not happened.

21 **127 Saving—section 252C of the *Superannuation Industry***
22 ***(Supervision) Act 1993***

23 (1) This item applies to an entity who acquired, before 8 October 1999,
24 protected information (within the meaning of section 252C of the
25 *Superannuation Industry (Supervision) Act 1993* as in force
26 immediately before the commencement of item 85 of this Schedule).

27 (2) Despite the repeal of section 252C of the *Superannuation Industry*
28 *(Supervision) Act 1993* by item 85 of this Schedule, that section
29 continues to apply to the entity after the commencement of this item, in
30 relation to the information, as if the repeal had not happened.

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Schedule 3—Other amendments

Income Tax Assessment Act 1936

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

6 Repeal the definition.

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

8 Repeal the definition.

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

10 Repeal the definition.

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

12 Repeal the definition, substitute:

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

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

16 Repeal the definition, substitute:

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

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

20 Repeal the definition, substitute:

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

Income Tax Assessment Act 1997

7 Subsection 995-1(1)

25 Insert:

26 *Defence Department* means the Department that:

- 1 (a) deals with matters arising under section 1 of the *Defence Act*
2 *1903*; and
3 (b) is administered by the Defence Minister.

4 **8 Subsection 995-1(1)**

5 Insert:

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

8 **9 Subsection 995-1(1)**

9 Insert:

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

12 **10 Subsection 995-1(1)**

13 Insert:

14 *Health Department* means the Department that:

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

18 **11 Subsection 995-1(1)**

19 Insert:

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

22 **12 Subsection 995-1(1)**

23 Insert:

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

25 **13 Subsection 995-1(1)**

26 Insert:

27 *Immigration Department* means the Department that:

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

1 (b) is administered by the Immigration Minister.

2 **14 Subsection 995-1(1)**

3 Insert:

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

6 **15 Subsection 995-1(1)**

7 Insert:

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

10 ***Taxation Administration Act 1953***

11 **16 Subsection 2(1) (definition of *Immigration Department*)**

12 Repeal the definition, substitute:

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

15 **17 Subsection 2(1) (definition of *Immigration Minister*)**

16 Repeal the definition, substitute:

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

19 **18 Subsection 2(1) (definition of *Immigration Secretary*)**

20 Repeal the definition, substitute:

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

23 **19 Subsection 355-70(5)**

24 Repeal the subsection, substitute:

25 (5) *Proceeds of crime order* means:

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

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

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Schedule 4—Repeal

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

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1 The whole of the Act

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Repeal the Act.

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Schedule 5—Regulations about transitional matters

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1 Transitional regulations

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- (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.

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- (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.