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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TAX LAWS AMENDMENT (CONFIDENTIALITY OF TAXPAYER
INFORMATION) BILL 2010

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Deputy Prime Minister and Treasurer, the Hon
Wayne Swan MP)

Glossary

The following abbreviations and acronyms are used throughout this revised explanatory memorandum.

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

General outline and financial impact

Confidentiality of taxpayer information

This Bill amends the secrecy and disclosure provisions applying to taxation information that are currently spread over many taxation law Acts. Over the years numerous amendments to them have resulted in unclear and inconsistent rules for the protection of taxpayer information, as well as increased privacy risks.

This Bill consolidates and standardises these various enactments into a single new framework in Schedule 1 to the *Taxation Administration Act 1953*. The new framework is designed to provide clarity and certainty to taxpayers, the Australian Taxation Office and users of taxpayer information and to provide guiding principles to assist in framing any future additions.

The key principle of the new framework is the protection of taxpayer information. Disclosures of information are, however, permitted in instances where privacy concerns are outweighed by the public benefit of those disclosures.

Date of effect: These amendments apply to disclosures of protected information made on or after the day of Royal Assent.

Proposal announced: This measure was announced in the then Assistant Treasurer and Minister for Competition Policy and Consumer Affairs' Media Release No. 015 of 13 March 2009.

Financial impact: Nil.

Compliance cost impact: Nil.

Chapter 1

Introduction to the new framework for the protection of taxpayer information

Outline of chapter

- 1.1 This chapter:
- outlines the background to the new framework governing the secrecy and disclosure of taxpayer information; and
 - provides an overview of the key elements of the new framework.

History and background

Operation of current provisions

1.2 In order to maintain taxpayer privacy and confidence, the secrecy provisions in Australia's tax legislation impose strict obligations on taxation officers and others who receive taxpayer information. Serious sanctions are imposed for breaches of these obligations.

1.3 There is a general rule prohibiting 'officers' from disclosing information that would identify a taxpayer. The prohibition is, however, not absolute. Exceptions to the obligation not to disclose taxpayer information are permitted because information obtained by the Australian Taxation Office (ATO) needs to be used by the ATO to fulfil its role and can often be vital to other arms of government in performing their functions effectively. So, for instance, existing exceptions allow:

- 'officers' to use taxpayer information in the performance of their duties;
- law enforcement agencies to use information obtained by the ATO for certain criminal investigations; and
- other government departments and agencies to use taxpayer information for specific purposes.

Problems with the current law

1.4 At present, taxation secrecy and disclosure provisions are found across some 20 different taxation law Acts, contributing to the overall complexity and volume of the taxation law.

1.5 Successive ad-hoc amendments have complicated the application of the existing provisions and increased the volume of the taxation laws. Although certain basic principles have been replicated across the provisions, the use of disparate drafting styles have resulted in inconsistent protection of taxpayer information and uncertainty for taxation officers, other government officers, and taxpayers.

The Review of Taxation Secrecy and Disclosure Provisions

1.6 The *Review of Taxation Secrecy and Disclosure Provisions* (the Review) undertaken by Treasury in 2006 examined the operation of the various secrecy and disclosure provisions in Australia's taxation laws. The primary objective of the Review was to investigate the potential for standardising the secrecy and disclosure provisions found across the taxation laws into one piece of legislation, to increase certainty for taxpayers and for users of tax information.

1.7 The Review recommended standardising the various secrecy and disclosure provisions in the taxation laws into a single framework.

1.8 The Review also proposed some new disclosures in areas where the existing rules were impeding a legitimate need to access taxpayer information. The proposed new disclosures were:

- to law enforcement and intelligence agencies;
- to third parties where a duty is owed to them; and
- to agencies, such as the Australian Securities and Investments Commission and the Australian Bureau of Statistics, which would otherwise collect the same information directly from the taxpayers concerned.

1.9 Submissions from government agencies, professional associations and the public were sought in response to the Review. Following consultation, some of the proposed disclosures presented in the Review were not pursued and are therefore not included in the new framework. These include:

- disclosures to the Commissioner of Taxation (Commissioner) as an employer; and
- disclosures to third party where a duty is owed to them.

Key elements of the new framework

1.10 The new framework will consolidate the existing secrecy and disclosure provisions found in 18 taxation law Acts and standardise the provisions into a single framework. The Acts and provisions being amended by this Bill are listed in Chapter 8 (along with the provisions in the new framework which replace those provisions being repealed).

1.11 The tax secrecy provisions in two taxation law Acts are being retained — these are the *A New Tax System (Australian Business Number) Act 1999* (ABN Act) and the *Tax Agent Services Act 2009* (TAS Act). The reasons for this are explained further in paragraphs 1.20 to 1.26.

1.12 Some new disclosures of information are also being introduced in instances where privacy concerns are outweighed by the public benefit of those disclosures.

1.13 The secrecy and disclosure provisions in this Bill are divided into five Subdivisions within Division 355 of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953):

- Subdivision A outlines the objects of the framework, how the Division applies to certain entities and sets out some basic principles to guide the consideration of future proposed disclosure provisions.
- Subdivision B contains the provisions governing the disclosure of taxpayer information by taxation officers.
- Subdivision C contains the provisions governing the disclosure of taxpayer information by non-taxation officers where that information was obtained legally.

- Subdivision D contains the provisions governing the disclosure of taxpayer information by non-taxation officers where that information was obtained unlawfully.
- Subdivision E contains provisions relating to the taking of oaths by taxation officers and provisions relating to injunctions.

1.14 The majority of the provisions refer to both the disclosure and recording of taxpayer information. For the purposes of this explanatory memorandum, a reference to the disclosure of taxpayer information is to be taken as a reference to the recording of that information unless the context demonstrates otherwise.

Objectives of the new framework

1.15 The primary objective of the new framework is to protect the confidentiality of taxpayer information. Compliance with taxation laws could be adversely affected if taxpayers thought that their information could be readily disclosed. *[Schedule 1, item 1, paragraph 355-10(a)]*

1.16 The new framework gives effect to this primary objective by placing a general prohibition on the disclosure of taxpayer information. However, in recognition of the importance that taxpayer information can play in facilitating efficient and effective government administration and law enforcement, disclosures of taxpayer information are permitted in certain specified circumstances. As a guide for future policy consideration, the disclosure of taxpayer information should be permitted only where the public benefit associated with the disclosure clearly outweighs the need for taxpayer privacy. *[Schedule 1, item 1, section 355-1 and paragraph 355-10(b)]*

1.17 In determining this balance, a range of factors may need to be considered. These include

- the purpose for which the information is to be used;
- the potential impact on the individual from the disclosure and subsequent use of the information;
- the nature and amount of information likely to be provided under any new provision;
- whether the information can be obtained from other sources;
- whether the new disclosure would represent a significant departure from existing disclosure provisions; and

- whether not providing the information would significantly undermine the ability of Government to effectively deliver services or enforce laws.

1.18 In terms of framing new disclosure provisions, where the purpose for the disclosure is remote or disconnected from the reason that a taxpayer provided the information in the first place (for example, for use in locating people who are unlawfully in Australia), then the disclosure provision should generally be very precisely targeted, allowing for the disclosure of taxpayer information only for a strictly defined purpose. On the other hand, where a disclosure is closely aligned with or connected to the purpose for which the Commissioner obtained the information in the first place (for example, for use in administering a taxation law), then the disclosure provision can be framed more broadly.

1.19 While the framework broadly retains the existing level of disclosures, it seeks to clarify ambiguities in the current law. Moreover, the standardisation and harmonisation of different provisions across the taxation law will necessarily involve some changes to current disclosures. These changes are discussed in detail in the following chapters.

Exclusions from the new framework

1.20 While there are 20 taxation law Acts containing taxation secrecy and disclosure provisions, the new framework replaces only 18 of these, with the provisions in the ABN Act (section 30) and the TAS Act (section 70-35) being retained.

Maintaining the secrecy and disclosure provisions in the A New Tax System (Australian Business Number) Act 1999

1.21 The ABN Act establishes the Australian Business Register (the Register) on which all Australian Business Numbers (ABNs) are recorded. The Register and ABNs were introduced as a whole-of-government initiative to make it easier for businesses to interact with government agencies across all levels of government. This is reflected in the very broad disclosures that are permitted under the ABN Act.

1.22 While the Commissioner currently oversees the Register and ATO staff administer ABNs, these roles are intended to be quite separate from the roles that the Commissioner and ATO staff fulfil under other taxation laws. As a consequence of this and the fact that the broad disclosures in section 30 of the ABN Act are largely at odds with the more restrictive provisions in other taxation laws, it is appropriate for section 30 of the ABN Act to remain separate.

1.23 As a result, taxation officers involved in administering the ABN Act will therefore be able to disclose information as a taxation officer in line with the provisions in the new framework (see Chapter 5), as well as under section 30 of the ABN Act. Note, however, that section 30 of the ABN Act only permits the disclosure of information or documents that are protected within the meaning of that Act. This Bill amends this provision to include both documents and information that were obtained under or for the purposes of the ABN Act. *[Schedule 2, item 2]*

Maintaining the secrecy and disclosure provisions in the Tax Agent Services Act 2009

1.24 The TAS Act establishes a new regime for the regulation and registration of tax agents. It also creates the Tax Practitioners Board which has the general administration of the TAS Act. Despite the general administration of the TAS Act not being vested in the Commissioner, the TAS Act will, with the enactment of the Tax Agent Services (Transitional Provisions and Consequential Amendments) Bill 2009, also be a taxation law.

1.25 In developing the TAS Act, there has been a greater emphasis placed on the independence of the Tax Practitioners Board from the ATO. This is reflected in the Board being set up under legislation over which it has the general administration. As a consequence of this greater independence, it is appropriate for the Board to be treated as a separate entity from the ATO (and therefore keep its own secrecy and disclosure provisions). As such officers (who may be ATO officers provided by the Commissioner to assist the Board) performing services under the TAS Act will be subject to the secrecy provisions contained in that Act rather than this consolidated framework.

1.26 As the existing TAS Act secrecy provisions currently link into other secrecy provisions in the taxation law that will be repealed as a part of this Bill, it is necessary to update the TAS Act accordingly. This also provides an opportunity to amend the TAS Act secrecy provisions so that they are drafted in a manner that is consistent with the consolidated framework in this Bill. *[Schedule 2, items 92 to 95]*

Tax file numbers

1.27 While the taxation laws include a number of provisions designed to ensure the security of tax file numbers (TFNs) (see Subdivision BA of Division 2 of Part III of the TAA 1953) the protection of TFNs does not form part of the framework. This is because TFN offences are drafted very differently from other taxation secrecy and disclosure provisions due to the manner in which TFNs are transmitted. Normally taxpayer information is not protected until it comes into the ATO. However, TFNs

need to be protected in the hands of employers, banks, superannuation funds, etc, before they reach the ATO. Consequently, the format of the new framework would not provide an appropriate level of protection for TFNs. Therefore, TFNs will continue to be protected by the existing provisions in the taxation laws and through the legally binding guidelines on the use, disclosure and storage of TFNs that are issued by the Office of the Privacy Commissioner.

Interaction with other laws

1.28 This Bill complies with Australia's obligations under:

- the Organisation for Economic Co-operation and Development *Guidelines for the Protection of Privacy and Transborder Flows of Personal Data*;
- the Asia-Pacific Economic Cooperation *Privacy Framework*; and
- the United Nations *International Covenant on Civil and Political Rights*.

1.29 While the provisions in the new framework provide overarching protection of taxpayer information, that information is also protected in other ways. For instance, personal information is also protected under the *Privacy Act 1988* (Privacy Act) and by the Office of the Privacy Commissioner. Of note, both the National Privacy Principles (which apply to certain private sector organisations) and the Information Privacy Principles (applying to Government agencies) enable organisations and agencies to use and disclose personal information where this is authorised under law. As a consequence, where this new framework authorises the disclosure of information, such a disclosure will also be consistent with obligations under the Privacy Act.

1.30 While the ATO also has its own administrative procedures for staff, that restrict access to taxpayer information on a need-to-know basis, unauthorised access to taxpayer information will also continue to be an offence under section 8XA of the TAA 1953.

1.31 The amendments in this Bill contain the main circumstances in which taxpayer information may legally be disclosed [*Schedule 1, item 1, section 355-1*]. There are, however, a number of non-taxation Acts that effectively override the secrecy and disclosure provisions contained in the framework. These permit other Commonwealth entities such as the Auditor-General or the Inspector-General of Taxation to obtain taxpayer

information, or access such information, in certain clearly defined circumstances.

Examples include:

- sections 32 and 33 of the *Auditor-General Act 1997*;
- section 15 of the *Inspector-General of Taxation Act 2003*;
- section 9 of the *Ombudsman Act 1976*;
- section 44 of the *Privacy Act*; and
- Schedule 6 to the *Anti-Terrorism Act (No. 2) 2005*.

1.32 The *Parliamentary Privileges Act 1987*, can also operate to protect the disclosure of information. The Act authorises disclosure of information where it is relevant to parliamentary proceedings. This Bill, however, imposes limitations on the operation of parliamentary privilege in the context of disclosures to Ministers.

1.33 Most of these provisions have the effect that, if a taxation officer or another entity in receipt of taxpayer information is compelled to provide taxpayer information, they cannot be prosecuted for any offence contained within the framework.

Chapter 2

Key definitions

Outline of chapter

2.1 The new framework covers the release of ‘protected information’ by ‘taxation officers’ and other entities. ‘Protected information’ means, amongst other things, information obtained under a ‘taxation law’.

2.2 This chapter provides detailed information on these three key terms around which the new framework has been structured.

Context of amendments

Operation of current provisions

2.3 The current secrecy and disclosure provisions adopt different drafting styles in identifying the information that they protect. Some, such as section 16 of *Income Tax Assessment Act 1936* (ITAA 1936) and section 3C of the *Taxation Administration Act 1953*, define both the individual subject to the provisions and the information subject to protection together. Other provisions specifically define what constitutes ‘protected information’ (and, in some cases, ‘protected documents’). However, they all have the same effect of either protecting information obtained by the Australian Taxation Office (ATO) under the particular Act in which the definition is found, or protecting a subset of information obtained by the ATO.

2.4 The current provisions apply to ATO officers as well as others who receive taxpayer information from the ATO. While the current provisions have the effect of permitting ATO officers to make a broader range of disclosures than other recipients of taxpayer information, there is generally no clear distinction in the manner in which the two are defined (section 16 of the ITAA 1936, for instance, refers to both collectively as ‘officers’).

Summary of new law

2.5 In order to consolidate all of the existing taxation secrecy and disclosure provisions into a single framework, a single definition of ‘protected information’ is necessary. The creation of this single definition relies on the definition of a ‘taxation law’.

2.6 As further explained in Chapter 3 of this explanatory memorandum, the new framework will draw a distinction between those individuals working for the ATO that obtain taxpayer information and those who receive the information from the ATO. For this purpose, a definition of ‘taxation officer’ is introduced.

2.7 A ‘taxation officer’ is defined as an individual holding a statutory position within the ATO (such as the Commissioner of Taxation (Commissioner) or public servants employed by the ATO. In addition, other non-ATO public servants who have a particular function under a taxation law and non-public service entities performing services for or in relation to the ATO (such as contractors) are, for the purposes of this framework, treated as if they were taxation officers.

Detailed explanation of new law

Definition of 'taxation officer'

2.8 A *taxation officer* is defined to mean:

- an individual filling the statutory appointments of Commissioner or Second Commissioner;
- an individual directly engaged under the *Public Service Act 1999*, and performing duties in the ATO.

[Schedule 1, item 1, subsection 355-25(2)]

2.9 This includes the statutory officers created by the taxation law, as well as public servants working in the ATO. It would also include public servants from other departments who may be working within the ATO for a limited period of time.

Example 2.1

Alicia is employed by the Australian Bureau of Statistics (ABS), but is temporarily seconded to the ATO. Alicia would be considered a taxation officer as she is a Commonwealth public servant and is performing duties in the ATO, even though she is employed by the ABS.

2.10 In recognition of the fact that the Commissioner, the Second Commissioners and public servants working for the ATO are not the only persons likely to have access to taxpayer information obtained in the course of administering the taxation system, the framework is also applied to certain other entities in the same manner as it applies to taxation officers.

2.11 Contractors, for instance, may be engaged to provide services to assist the ATO in the performance of its functions. The Bill ensures that such individuals and entities are subject to the same strict obligations that taxation officers are subject to. *[Schedule 1, item 1, paragraphs 355-15(a) and (b)]*

Example 2.2

Simon works at a private debt collection company that is contracted by the ATO to follow up on outstanding taxpayer debts. Simon's role is to contact taxpayers and attempt to arrange for payment. As an entity contracted to provide services to the ATO, the private debt collection company would be a taxation officer. As an individual employed by

the private agency to provide these services, Simon would also be considered a taxation officer.

Example 2.3

The ATO seeks legal advice about a complex case of international tax evasion from a private law firm that specialises in international taxation. The law firm seeks the services of Marcus, a barrister, for an opinion on various matters. The law firm is considered a taxation officer as it is an entity engaged to perform services for the ATO. Marcus is also considered a taxation officer as he has been engaged by an entity that has itself been engaged to provide services for the ATO.

2.12 In some circumstances, Commonwealth employees (including employees of Commonwealth authorities) outside of the ATO are given functions or powers to perform under the taxation law. This is the case, for instance, with a number of tax offsets (such as the water tax offset and the film tax offset) that are in part administered by other portfolio agencies. Where such individuals perform functions or exercise powers under a taxation law, they are also considered to be taxation officers for the purposes of this framework. *[Schedule 1, item 1, paragraph 355-15(c)]*

Example 2.4

Melanie donates a rare artwork to a public Sydney art gallery. The Minister for the Environment, Water, Heritage and the Arts, or a delegate, is required to certify its value for tax purposes as part of the Cultural Bequests Program under section 30-235 of the *Income Tax Assessment Act 1997* (ITAA 1997). When the Minister or delegate certifies the value of the painting for tax purposes, the Minister or delegate is considered to be a taxation officer as this particular function is performed under a taxation law.

Example 2.5

Megan is an officer in the Department of Environment, Heritage, Water and the Arts and is involved in administering the Location Offset for eligible Australian films under Division 376 of the ITAA 1997. Part of her role involves briefing the Arts Minister on whether to issue a certificate for a particular film (the certificate is required for the company to claim the offset). The Minister must then make a decision in whether to issue such a certificate.

In performing these functions, the new framework applies to both Megan and the Minister in the same way as it applied to taxation officers.

2.13 There may be a range of individuals whose functions relate to the administration of the taxation law, but who do not perform functions

or exercise powers under a taxation law. In these circumstances, the new framework does not apply to them in the same way as it applies to taxation officers.

Example 2.6

Ron is employed by the Department of the Treasury and, in the course of his duties, analyses the policy behind an existing taxation law, provides advice to the Government as to whether the law needs to be amended and liaises with the Office of Parliamentary Counsel drafters in designing new legislation. Although Ron and the Office of Parliamentary Counsel drafters are assisting with the design of the taxation laws they are not performing functions or exercising powers under or for the purposes of a taxation law. Instead, Ron is merely providing advice to the Government about a potential change to an existing taxation law and, together with the drafters, is working to draft the necessary changes.

Example 2.7

Ambrosia is a member of the Board of Taxation. The Board of Taxation has been set up by the Government (not under a taxation law) to provide advice on the operation of the taxation laws and their administration. Ambrosia is not a taxation officer because, although she is assisting the Government with general policy issues affecting the tax system as a whole, she is not exercising any function under or for the purposes of an existing taxation law.

Example 2.8

David works at the Commonwealth Ombudsman's Office as part of a team that investigates taxpayer complaints. He receives a complaint from Linda about how the ATO has handled her tax affairs. Although David liaises with the ATO concerning Linda's complaint, he is not a taxation officer, as he is not acting under or for the purposes of a taxation law. He is acting under and for the purposes of the *Ombudsman Act 1976*.

Definition of 'protected information'

2.14 ***Protected information*** of taxpayers (referred to in this explanatory memorandum as 'taxpayer information') is defined to mean information disclosed or obtained under or for the purposes of a taxation law (other than the *Tax Agent Services Act 2009* (TAS Act)) which relates to the affairs of an entity (including but not limited to the entity's tax affairs) and which can identify the entity. [*Schedule 1, item 1, subsection 355-30(1)*]

2.15 Information that is obtained under or for the purposes of the TAS Act is excluded from the definition of protected information to enable the TAS Act secrecy provisions to operate independently of the new framework. The reason for this is explained in more detail in paragraphs 1.24 to 1.26.

2.16 Of note, to be protected, the information need not relate to an individual, but can relate to a whole range of ‘entities’ that are required to interact with the tax system. **Entity** is defined in section 960-100 of the ITAA 1997 to mean, amongst other things:

- an individual;
- a body corporate;
- a body politic;
- a partnership;
- any other unincorporated association or body of persons;
- a trust;
- a superannuation fund; or
- an approved deposit fund.

2.17 These amendments in the Bill provide broader protection than the *Privacy Act 1988*, which only protects personal information about natural persons (that is, individuals). Taxation secrecy provisions recognise the need to protect information provided by any taxpayer, including information about an individual’s annual income, a company’s wage bill or a superannuation fund’s rate of return.

2.18 To be protected, information must have been obtained under a law that was a taxation law (other than the TAS Act) when the information was obtained. [*Schedule 1, item 1, paragraph 355-30(1)(a)*]

Example 2.9

Before 2001, the *Child Support (Registration and Collection) Act 1988* was administered by the Commissioner. Information obtained under that law while the Commissioner administered it is protected information. Information obtained under that law since 2001 when the General Manager of the Child Support Agency administered it is not protected information for the purposes of these provisions (although it would still be protected under the secrecy provision in the *Child Support (Registration and Collection) Act 1988*).

2.19 Protected information is information which identifies (or is reasonably capable of being used to identify) an entity. Accordingly, information that in no way identifies an entity will not fall within the scope of the new framework. [*Schedule 1, item 1, paragraph 355-30(1)(c)*]

Example 2.10

Each year the ATO publishes *Taxation Statistics* — a comprehensive statistical publication that informs the community about what taxpayers have been reporting to the ATO. *Taxation Statistics* is a valuable resource for academics, researchers, scrutineers and the media. Because the information presented in *Taxation Statistics* is in aggregate statistical form, it is not possible to identify any particular taxpayer from the publication. Hence, this information is not protected information.

2.20 Information that, at first glance, is incapable of identifying a taxpayer may still be protected information if the identity of the taxpayer can be ascertained by a process of deduction.

Example 2.11

The ATO collects information on the volume of production of haysnorkels in Australia. Because haysnorkel production is a very specialised industry, only three firms manufacture haysnorkels in Australia. One major producer, meeting the needs of most of the Australian market, and two very much smaller boutique producers manufacture only a small number of haysnorkels each year. If the ATO were to disclose information on the aggregate production of haysnorkels in Australia, then it would be possible for anyone with a general knowledge of the haysnorkel market to deduce (with a fair degree of accuracy) how many haysnorkels were being manufactured by each producer. In this case, the disclosure of aggregate production information would, though not explicitly identifying a particular taxpayer, allow a particular haysnorkel producer to be identified. Such aggregate information would therefore be protected information.

2.21 Protected information includes written documents, conversations, electronic recordings, transcripts or any other form in which information can be recorded. It includes information obtained directly from a taxpayer or information generated by the ATO (for instance, through the collating, cross-referencing or summarising of information from a variety of sources). It would also include information about ATO compliance activity against a particular taxpayer.

Example 2.12

The ATO is auditing Ian. The ATO has obtained a variety of information about Ian including information from his annual tax

returns and information from the pay as you go withholding statement provided by his employer. The ATO collates a file on Ian that summarises the information from these different sources. All information summarised on Ian's audit file is protected information. The fact that the ATO is auditing Ian would also constitute protected information.

Tax file numbers are not 'protected information'

2.22 Tax file numbers are not 'protected information' within the meaning of the new framework because they cannot of themselves identify a taxpayer. The reasons for not including tax file numbers in the framework are outlined in paragraph 1.27.

'Protected information' under the Excise Act 1901

2.23 The Bill maintains the savings provision that were enacted when the *Taxation Laws Amendment (Excise Arrangements) Act 2001* transferred the administration of excise from the Australian Customs Service to the Commissioner.

2.24 Without the saving provision, information that was obtained under the *Excise Act 1901* prior to the introduction of this change would no longer be protected information. The savings provision ensures the secrecy provisions in section 159 of the *Excise Act 1901* continue to apply to information obtained before the administrative change, despite section 159 being repealed. [*Schedule 2, Part 2, item 126*]

2.25 Information obtained by the ATO after the transfer would be protected information for the purposes of these provisions. Information obtained by the Australian Customs Service before the transfer is not protected information. However, that information is still protected under the secrecy provision in the *Excise Act 1901* as in force before its repeal.

Definition of 'taxation law'

2.26 As noted above, whether information is protected depends on whether it was disclosed or obtained under a taxation law.

2.27 A **taxation law** is currently defined in section 995-1 of the ITAA 1997 as:

- an Act of which the Commissioner has the general administration (including a part of an Act to the extent to which the Commissioner has the general administration of the Act); or

- regulations made under such an Act, including a part of an Act.

2.28 The Bill will introduce a minor amendment to the second tier of this definition by replacing the reference to ‘regulations’ with one to ‘legislative instruments’ to ensure that all legislative instruments (and not just regulations) made under an Act of which the Commissioner has the general administration also constitute taxation laws. *[Schedule 2, item 51]*

2.29 As noted above, the Tax Agent Services (Transitional Provisions and Consequential Amendments) Bill 2009 amends the definition of taxation law to include the TAS Act. However, the TAS Act is specifically excluded from the definition of ‘protected information’. *[Schedule 1, item 1, paragraph 355-30(1)(a)]*

Chapter 3

Offences

Outline of chapter

3.1 This chapter outlines the basic prohibition on the disclosure of information by both taxation officers and non-taxation officers. Specifically, it provides details on the offence provisions that apply to:

- the unauthorised disclosure of taxpayer information by taxation officers (Subdivision 355-B);
- the unauthorised disclosure of taxpayer information by non-taxation officers who receive information lawfully (Subdivision 355- C); and
- the unauthorised disclosure of taxpayer information by non-taxation officers who receive the information because of another entity's breach of the new framework (Subdivision 355-D).

Context of amendments

Operation of current provisions

3.2 Across the 18 taxation law Acts containing taxation secrecy and disclosure provisions that are being standardised there are numerous offences for the disclosure of taxpayer information. These provisions generally do not distinguish between taxation officers and other Commonwealth and State officers who are in receipt of taxpayer information.

3.3 The offence provisions in the current Acts generally apply to the disclosure of taxpayer information obtained under that particular Act or under a group of tax Acts.

3.4 The current law contains a specific offence provision that prohibits on-disclosure of taxpayer information by non-taxation officers who have received the information because of a breach of the law.

3.5 The penalties imposed where a person has committed an offence vary from Act to Act.

3.6 Under the interpretation of the existing law, taxpayer information can be disclosed to the taxpayer concerned or to their agent.

Summary of new law

3.7 There are three offence provisions in this Bill that together protect taxpayer information. Unlike the current law, no distinction is made as to which taxation law Act the information is obtained. Rather, the offence provisions prohibit the disclosure of all protected information (see Chapter 2 for a further explanation of the definition of ‘protected information’).

3.8 Also, unlike the current law, the offence provisions in the new framework draw a distinction between disclosures by taxation officers and disclosures by non-taxation officers (see Chapter 2 for a further explanation of the definition of ‘taxation officer’). The new framework also retains a discrete offence provision for non-taxation officers who have received taxpayer information because of another entity’s breach of a taxation law.

3.9 The new framework prohibits the disclosure of taxpayer information:

- by current and former taxation officers who acquire that information as a taxation officer;
- by non-taxation officers who acquire the information as a result of a lawful disclosure under one of the exceptions in the new framework; and
- by non-taxation officers who acquire the information because of a breach of a provision in the new framework.

3.10 Collectively, these offence provisions ensure that all taxpayer information that satisfies the definition of ‘protected information’ is indeed protected. The information remains protected even if it has been disclosed outside of the ATO and has been on-disclosed numerous times.

Comparison of key features of new law and current law

| <i>New law</i> | <i>Current law</i> |
|---|--|
| There are separate offence provisions for taxation officers and for non-taxation officers that are in receipt of taxpayer information. | Generally, offence provisions apply to 'officers' which includes both taxation officers and other Government officers who are in receipt of taxpayer information from a taxation officer. |
| It is an offence for <i>all</i> entities that are in receipt of taxpayer information to disclose that information, except in certain specified circumstances. | It is an offence for a Government officer (other than a taxation officer) who is in receipt of taxpayer information to disclose that information, except in certain specified circumstances. |

Detailed explanation of the new law

3.11 This part of this chapter provides an explanation of common elements of the offence provisions as well as a guide as to how each of the three offence provisions operate.

Common elements of the offence provisions

Offences apply to 'entities'

3.12 The new framework prohibits the disclosure of protected information by an entity, whether that entity is a taxation officer or not. While a taxation officer will generally be an individual, the framework also applies to entities engaged to provide services relating to the ATO, as if they are taxation officers (see Chapter 2).

3.13 The use of the term 'entity' is intended to ensure that the application of the offence provisions is as wide as possible. Whilst the offence provision will generally be directed at the individual offender, the entity that the individual is employed or contracted by or otherwise associated with may be prosecuted where the individual's actions were at the behest of that other entity. While this would not enable entities without a legal personality to be prosecuted under a criminal offence provision (for instance, a partnership could not be prosecuted) there are specific provisions in the taxation law that permit individuals to be prosecuted for an offence committed by an entity in certain circumstances.

For example:

- partners can be prosecuted for an offence committed by the partnership (see section 444-30 of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953)); and
- members of the Committee of Management of unincorporated associations or bodies can be prosecuted for an offence committed by that association or body (see section 444-5 of Schedule 1 to the TAA 1953).

3.14 As the definition of taxation officer includes both entities engaged to provide services relating to the ATO and individuals employed by those entities, penalties can be imposed upon any legal person involved in any unlawful disclosure of taxpayer information. [*Schedule 1, item 1, paragraphs 355-15(a) and (b)*]

Example 3.1

Extra Spandy-Clean Cleaning Service Pty Ltd was contracted to undertake cleaning services for a Melbourne office of the ATO. Michael, one of the cleaners engaged by Extra Spandy-Clean Cleaning Services to clean the office had access to some unsecured files and subsequently disclosed publicly a taxpayer's information. As taxation officers, both Extra Spandy-Clean Cleaning Service and Michael can be prosecuted.

Offences relate to the disclosure and the recording of taxpayer information

3.15 The offence provisions apply not only to the disclosure of taxpayer information, but also to the recording of that information. This recognises that it is important not only to ensure that information is not disclosed unlawfully, but that the information is not recorded in another form that can be readily accessed by others. Including a sanction for the recording of information recognises the vast amount of sensitive information that is collected in the course of administering the taxation system and the importance of ensuring the confidentiality of that information is maintained. [*Schedule 1, item 1, subparagraphs 355-25(1)(b)(i), 355-155(a)(i) and 355-265(a)(i)*]

Example 3.2

In the course of performing his duties as a taxation officer, Brendan found himself working with the taxation files of a musical artist whom he very much admired. Brendan copied some details from the taxation files into his private diary which he thought might be useful later, but not for a work related purpose. Even though Brendan has not disclosed that information, he has still committed an offence through the recording of the information for an unofficial purpose.

Penalties for breach

3.16 If an entity breaches an offence provision, a court can impose a penalty of imprisonment of up to two years. For a natural person subsection 4B(2) of the *Crimes Act 1914* allows a court to impose a fine up to 120 penalty units (currently \$13,200) as well, or instead of, the imprisonment penalty. The Crimes Act also prescribes rules for converting penalties for natural persons into a penalty that applies to a body corporate. [*Schedule 1, item 1, sections 355-25, 355-155 and 355-265*]

Provision of taxpayer information to the taxpayer

3.17 It is not an offence for a taxation officer to disclose information to the taxpayer themselves. [*Schedule 1, item 1, subparagraphs 355-25(1)(b)(ii), 355-155(a)(ii) and 355-265(a)(ii)*]

Example 3.3

Brian rings the ATO seeking assistance with his tax affairs. It is not an offence for the taxation officer addressing Brian's inquiry to make available to Brian, after confirming his identity, any information about Brian's affairs that is on ATO files.

Provision of taxpayer information to entities representing the taxpayer

3.18 The existing law has been interpreted to permit the disclosure of taxpayer information to a taxpayer's agent. This is appropriate as there are many circumstances in which the taxpayer cannot deal with their own tax affairs, or otherwise wishes to appoint someone to assist them in doing so (for example, professional agents of the taxpayer, such as a legal representative or a tax agent or a friend or family member). The ATO currently has in place formal procedures to authorise representatives.

3.19 The new framework retains the principle that a representative of a taxpayer should be able to access the taxpayer's information. For non-taxation officers that have received taxpayer information (whether lawfully or otherwise), the framework makes it clear that a disclosure to the entity's agent (in relation to the information) will never be an offence. *[Schedule 1, item 1, subparagraphs 355-155(a)(ii) and 355-265(a)(ii)]*

3.20 For disclosures by taxation officers, a different approach that does not rely exclusively on the common law concept of agency is adopted. The new framework includes an exhaustive list of entities that can represent a taxpayer and access that taxpayer's information. *[Schedule 1, item 1, subparagraph 355-25(1)(b)(ii) and subsection 355-25(2)]*

3.21 A taxation officer does not commit an offence if they disclose taxpayer information to such an entity. Moreover, upon receiving the information, such entities are not bound by the on-disclosure restrictions contained in the framework (in the same way as the Bill does not seek to regulate what a taxpayer can do with their own information). However, the representative may have other statutory obligations in the way they treat their client's information and, if acting as an agent, may have fiduciary obligations that limit what they can do with the information.

3.22 The move away from relying on a common law concept of agency is designed to overcome the practical problems of determining whether someone is an entity's agent and what the scope of that agency relationship is. It will also permit disclosures to representatives who might not be considered an agent under the common law, but who otherwise might have a legitimate need to access a taxpayer's information in their capacity as a representative of a taxpayer.

Tax agents and BAS agents

3.23 Many Australians use tax agents (or BAS agents) to assist them comply with their taxation obligations. It is therefore appropriate to enable such representatives to be able to receive taxation information on behalf of their client. *[Schedule 1, item 1, paragraph 355-25(2)(a)]*

Example 3.4

After several years of submitting his own tax returns, Liam decides to use a tax agent to prepare and submit his tax return for this financial year. Liam signs a change of details form appointing Amelie, a registered tax agent, as his agent to manage all his taxation affairs. Amelie submits this to the ATO. Amelie contacts Will, a taxation officer, to ask for copies of Liam's previous tax returns, in order to ascertain what deductions Liam had previously claimed. It is not an offence for Will to provide information about Liam to Amelie.

Legal practitioners

3.24 In addition to tax agents and BAS agents, taxpayers will often employ the services of legal practitioners such as a solicitor or a barrister, to represent them in the conduct of their tax affairs. [*Schedule 1, item 1, paragraph 355-25(2)(b)*]

Example 3.5

Sarah appoints Ashley, a solicitor, to act on her behalf in seeking a review of her taxation assessment under Part IVC of the TAA 1953. In the course of preparing for the hearing, it becomes apparent that Sarah has misplaced copies of her assessments for the previous three years which are necessary for the case. Ashley contacts the ATO to obtain copies of Sarah's assessments. It is not an offence for the ATO to provide this information to Ashley.

Insolvency practitioners

3.25 Where an insolvency practitioner (which could include a trustee in bankruptcy, a liquidator, a voluntary administrator, a receiver or an administrator of a deed of company arrangement) is appointed to oversee the affairs of a particular taxpayer, one of their roles is to investigate their affairs. For instance, a trustee in bankruptcy has a duty to investigate the bankrupt's financial affairs (section 19AA of the *Bankruptcy Act 1966*). Where the records of the taxpayer have not been maintained well, the insolvency practitioner may need to access information held by the ATO to fulfil their role. [*Schedule 1, item 1, paragraph 355-25(2)(c)*]

Example 3.6

Haysnorkels Pty Ltd has become insolvent as a result of a global downturn in haysnorkel demand. Jeremy, a liquidator, is appointed by the Court to wind up the affairs of the company. Jeremy contacts the ATO to request copies of the company's tax returns for the past five years which will enable him to complete his job as a liquidator. The provision of these returns by the ATO is not an offence.

Legal personal representatives and guardians

3.26 The new framework also allows certain representatives such as a legal personal representative (defined by section 995.1 of the ITAA 1997) or guardian to access a taxpayer's information where that taxpayer is unable to appoint a representative. This includes circumstances where the taxpayer is a minor or otherwise has an incapacity rendering them unable, by law, to appoint someone to act on their behalf or where the taxpayer is deceased, is under a legal disability or has granted a general power of attorney. [*Schedule 1, item 1, paragraphs 355-25(2)(d) and (e)*]

Consolidated and multiple entry consolidated groups

3.27 The taxation law allows wholly-owned groups of companies to consolidate for tax purposes. As a consequence they are treated as a single entity. In recognition of this, rather than requiring each entity in a consolidated (or multiple entity consolidated group) to nominate each other as a representative, the new framework recognises each entity in such a group as the same entity. *[Schedule 1, item 1, paragraphs 355-25(2)(f)]*

Example 3.7

Company ABC is a member of a tax consolidated group of which Company XYZ is the head company. It is not an offence for the ATO to supply information about Company ABC to Company XYZ as they are, for tax purposes, treated as the same entity.

Representatives appointed by the taxpayer in the approved form

3.28 To ensure that there is sufficient flexibility to enable a taxpayer to appoint a range of entities as their representative, the new framework will permit disclosure of information to anyone that the taxpayer has appointed, in an approved form (see section 388-55 of the TAA 1953), to act on their behalf in relation to their information. This could include friends and family or other professional representatives not otherwise specifically provided for. *[Schedule 1, item 1, paragraph 355-25(2)(g)]*

Example 3.8

Hans is recovering from an operation at home. He notifies the ATO in the approved form that his son, Frederic, will be completing his tax return for the past financial year. It is not an offence for a taxation officer to provide Frederic with information about Hans that is necessary for Frederic to complete Hans' tax return. However, because Hans has only authorised Frederic to be his representative in completing the past financial year's tax return, it is an offence if a taxation officer provides information about Hans that is not relevant for that tax return.

Example 3.9

Desmond is the taxation manager of a large, well respected, accounting firm XYZ Accounting. The firm completes an approved form for Desmond, permitting him to receive information from the ATO regarding the firm's taxation affairs. It is not an offence for the ATO to disclose information to Desmond.

3.29 A taxpayer could appoint anyone to access their information as their representative in the approved form. This is not the same as allowing an individual to consent to the release of their information to a third party who is not acting at their representative with respect to their information. Under the new framework, a taxpayer's consent to the disclosure of information does not authorise the disclosure of that taxpayer's information. The new framework therefore draws a distinction between providing information to an entity that has been appointed a taxpayer's representative (in which case the disclosure of information would be permitted to the extent of a representative's authority to act for that taxpayer) and to someone who has merely obtained the consent of the taxpayer to access their information (in which case disclosure would not be authorised as the person seeking access is not appointed as the taxpayer's representative). This is discussed further in Chapter 4.

Specific elements of the offence provisions

Relating to taxation officers and former taxation officers

3.30 It is an offence for a taxation officer or a former taxation officer to disclose taxpayer information if they acquired that information as a taxation officer. [*Schedule 1, item 1, paragraph 355-25(1)(d)*]

Example 3.10

Olivia is a taxation officer, employed in the ATO library. One weekend, she was discussing with her neighbour, Sally, the financial affairs of Sally's new home business. If Olivia were to disclose the information she learned from Sally, it would not be an offence under these provisions because Olivia acquired the information in a private capacity and not in her capacity as a taxation officer (although it may be a common law breach of confidence).

3.31 There will be entities who acquire taxpayer information as a taxation officer, and who then subsequently cease to be taxation officers. However, regardless of their present status, if they acquired information while working as a taxation officer it is an offence to disclose that information. [*Schedule 1, item 1, paragraph 355-25(1)(d)*]

Example 3.11

Kate worked at the ATO for a number of years before moving on to a lucrative career in the private sector as a real estate agent. If Kate discloses protected information that she acquired as a taxation officer at any time during her life (whether in a work or non-work context) then she is committing an offence unless a relevant exception applies.

Relating to non-taxation officers

3.32 Taxpayer information continues to be protected even when that information has been disclosed to a non-taxation officer. The new framework makes it an offence for a non-taxation officer who has received taxpayer information, either lawfully or unlawfully, to on-disclose that information.

3.33 This does not include non-taxation officers who acquired the protected information while they were a taxation officer. Such people will continue to be subject to the offence provision described above. *[Schedule 1, item 1, paragraphs 355-155(1)(c) and 355-265(1)(d)]*

Non-taxation officers in lawful receipt of taxpayer information

3.34 It is an offence for a non-taxation officer who has received taxpayer information lawfully (that is, under one of the disclosure provisions in the new framework) to on-disclose that information (unless a relevant exception applies). *[Schedule 1, item 1, section 355-155]*

Example 3.12

Raul, an employee of the Australian Prudential Regulation Authority, receives taxpayer information from the ATO for the purposes of administering the *Superannuation Industry (Supervision) Act 1993* (SIS Act). Raul discloses the information to a journalist and to another Australian Prudential Regulation Authority employee for a purpose that is unconnected to the administration of the SIS Act. In both cases, the disclosure of the information is an offence.

3.35 The on-disclosure of taxpayer information will continue to be subject to this offence even if that information has been on-disclosed by non-taxation officers on numerous occasions. Regardless of how many on-disclosures there are in the chain, any protected information originally disclosed by a taxation officer remains protected. *[Schedule 1, item 1, paragraph 355-155(b)]*

Example 3.13

Timothy, a taxation officer, discloses information to Jackie, an officer in the Australian Prudential Regulation Authority (APRA) for the purpose of administering the SIS Act. Jackie on-discloses the information to Jim, another APRA officer, also for the purpose of administering the SIS Act. Jim discloses the information to Bob, a barrister, for the purpose of briefing Bob on an upcoming civil proceeding that had arisen under the SIS Act. Though the information has been on-disclosed outside of the ATO a number of times, Jackie, Jim and Bob (as well as Timothy) must all ensure that their disclosure of the information is authorised by the new framework.

Non-taxation officers not in lawful receipt of taxpayer information

3.36 A distinction is made between non-taxation officers who receive information lawfully (that is, under an exception in the new framework) and those who receive the information unlawfully. This is because what such entities can do with the information is different. While it is not an offence to merely receive information unlawfully (though the person disclosing it would have committed an offence), those non-taxation officers who are in receipt of such information are limited in what they can then do with the information. This is discussed further in Chapter 6.

3.37 It is an offence for a non-taxation officer to on-disclose taxpayer information that they themselves have received as a result of a breach of a taxation law. [*Schedule 1, item 1, section 355-265*]

Example 3.14

Jordan, a taxation officer, discloses taxpayer information relating to the financial affairs of a prominent business person to Ken, a friend of his who is a journalist. This disclosure is unlawful. It is an offence for Ken to disclose or record this information (unless a relevant exception applies).

Transitional provisions relating to offences

3.38 The transitional provisions in the Bill ensure that any protected information disclosed to an entity under a taxation disclosure provision that is being repealed as a consequence of this Bill will continue to be protected. [*Schedule 2, item 124*]

Example 3.15

In 2007, the ATO provided taxpayer information to the Repatriation Commissioner for the purpose of administering a law of the Commonwealth relating to pensions. Notwithstanding that the original disclosure by the ATO was made before the commencement of the new framework, the information is deemed to have been obtained under the new framework and the Repatriation Commissioner must only disclose or record that information in a manner consistent with the new framework.

Chapter 4

General qualifications on disclosure provisions

Outline of chapter

4.1 This chapter outlines:

- qualifications on the disclosure provisions that permit taxpayer information to be disclosed lawfully; and
- authorised disclosures of information lawfully available to the public,

that are common to both taxation officers and non-taxation officers.

Context of amendments

Operation of current provisions

4.2 As noted previously, the current disclosure provisions permit both taxation officers and non-taxation officers to disclose taxpayer information in certain specified circumstances. This recognises that there are circumstances in which the public benefit from disclosure outweighs taxpayer privacy.

4.3 Most of the current disclosure provisions only apply to taxation officers because they require the disclosure to be made by the Commissioner of Taxation (Commissioner) or a person authorised by the Commissioner. However, because the current provisions do not distinguish between taxation officers and non-taxation officers, there are certain qualifications on what would otherwise be a lawful disclosure for both taxation officers and non-taxation officers alike.

4.4 The current secrecy and disclosure provisions provide that taxation officers and other recipients of taxpayer information cannot be compelled to provide taxpayer information to a court unless it is for the purposes of a taxation law.

4.5 Section 16 of the *Income Tax Assessment Act 1936* (ITAA 1936) has been interpreted in such a way that any information obtained by the Australian Taxation Office (ATO) *from a public source* is not caught. Therefore, if the ATO obtains information from a public source, taxation officers (and those who receive the information from them) are not prevented by section 16 from disclosing that information. On the other hand, taxpayer information obtained from ATO sources, may not be disclosed, even if it is otherwise in the public domain.

4.6 Section 16 of the ITAA 1936 has also been interpreted such that the consent of the taxpayer to a disclosure does not, in and of itself, authorise the disclosure of taxpayer information.

4.7 All current secrecy and disclosure provisions contain some prohibition on the disclosure of protected information to ministers (both Commonwealth and State). This recognises the importance of ensuring that taxpayer information is not released in the course of parliamentary proceedings and recognises the separation of the administration of the taxation laws from the Government. However, as a result of the interpretation of various secrecy provisions, disclosures to ministers are currently permitted, in some circumstances, depending on the type of taxation information involved.

4.8 For instance, under the current provisions, there is a blanket prohibition on the provision of indirect tax information to a minister, while income tax information can be disclosed to a minister in the course of a taxation officer's duties.

Summary of new law

4.9 The new framework contained in the Bill largely retains these existing qualifications on disclosure and seeks to clarify and resolve ambiguities in the current law.

4.10 Of note, the new framework removes the requirement that information that is publicly available can only be disclosed where it is sourced from the public. Under the new framework, information that is lawfully available to the public can be disclosed regardless of the source of the information.

4.11 The new framework confirms that a taxpayer's consent to a disclosure does not, in and of itself, authorise that disclosure.

4.12 The new framework overcomes ambiguities as to when information can be provided to a minister, by providing an exhaustive list of circumstances where this can lawfully occur. The list of disclosures largely reflects the circumstances in which taxpayer information can currently be provided to a minister under one or more current Acts.

Comparison of key features of new law and current law

| <i>New law</i> | <i>Current law</i> |
|---|--|
| Consent, of itself, does not operate as an exception to the prohibition on disclosing taxpayer information. | There is no general provision in the current law allowing a taxpayer to consent to the disclosure of their taxation information. |
| Taxpayer information already lawfully made available to the public may be disclosed regardless of its source. | Taxpayer information sourced from the public record may be disclosed. |
| Disclosure to ministers is permitted in certain prescribed circumstances (regardless of the type of taxation information involved). | Whether taxation information can be disclosed to a minister and the extent to which it can be disclosed depends on the type of taxation information involved. |
| Parliamentary privilege cannot be used to authorise a disclosure of taxpayer information to a minister. | Parliamentary privilege could, theoretically, authorise the disclosure of taxpayer information to a minister or a parliamentary committee, notwithstanding that there is no specific provision in the taxation law to this effect. |

Detailed explanation of new law

Qualifications on disclosure

4.13 The following provides an explanation of the new framework's approach to the consent of the taxpayer to disclosure, limitations on disclosure to courts and tribunals, and disclosures to ministers.

Consent to disclosure not a defence

4.14 While the new framework recognises that there are legitimate circumstances in which a person representing the taxpayer can access that taxpayer's information (for instance, where the taxpayer has appointed

another entity to act on their behalf in dealings with the ATO), it is not otherwise a defence that the taxpayer has consented to the record or disclosure. [*Schedule 1, item 1, sections 355-35 and 355-160*]

4.15 This approach avoids issues of whether the consent is informed and voluntary (as opposed to, for instance, being a precondition for a particular good or service). It also recognises the fact that, if any entity requires the taxpayer's information, the taxpayer is able to obtain that information and pass it on. There is no prohibition on a taxation officer or a non-taxation officer in lawful receipt of taxpayer information from disclosing that information to the taxpayer and there are no limits on what a taxpayer may do with their own information. This approach ensures that the taxpayer knows precisely what information is being provided.

Example 4.1

Amy went to her bank seeking a loan to purchase a residential unit. The bank asked for copies of her last three tax returns. Amy says that she is happy for the bank to obtain that information from the ATO. Amy tells the ATO this. It is an offence for a taxation officer to provide Amy's tax returns to the bank even though Amy has consented to the disclosure. However, a taxation officer may provide that information to Amy (if she requests it), and she could pass it on to the bank.

4.16 Disallowing consent as a defence ensures that the ATO is not treated generally as a central repository of financial information to be accessed for purposes unrelated to the tax system or to government administration.

Limit on disclosures to courts and tribunals

4.17 Under the new framework and consistent with the current law, a taxation officer or another recipient of taxpayer information cannot be compelled to provide information to a court or tribunal. This recognises the significant loss of privacy that would result in the release of a taxpayer's information in an open court. [*Schedule 1, item 1, sections 355-75 and 355-205, section 355-280*]

4.18 As an exception, however, a taxation officer or another recipient of taxpayer information *can* be compelled to disclose taxpayer information to a court or tribunal where it is necessary for the purpose of carrying into effect a provision of a taxation law. Such a disclosure is closely aligned with the purpose for which the information is given and recognises that in some circumstances a court's powers to compel the production of information should be invoked to give effect to a provision of a taxation law. [*Schedule 1, item 1, sections 355-75 and 355-205, section 355-280*]

4.19 Another exception allows a taxation officer to disclose taxpayer information to a court or tribunal for the purpose of investigating a serious offence, enforcing a law, the contravention of which is a serious offence, or for the making or proposed or possible making of a proceeds of crime order. *[Schedule 1, item 1, item 1 in the table in section 355-70]*

Example 4.2

A taxation officer lawfully discloses taxpayer information to a law enforcement agency officer to establish whether a serious offence prescribed by the taxation law has been committed. In the course of prosecuting the offence, a taxation officer is asked to present this evidence to a court. It is not an offence for a taxation officer to do so.

Disclosure to ministers

4.20 The only circumstances in which taxpayer information can be disclosed by taxation officers and other lawful recipients of taxpayer information to a minister, is where the information is publicly available, or where the Bill specifically provides for it. *[Schedule 1, item 1, subsections 355-60(1) and 355-210(1)]*

4.21 The disclosure of publicly available information is discussed below. The specific disclosures permitted to ministers are discussed further in the following chapters.

4.22 The general provisions are limited by the provisions governing disclosures to ministers. *[Schedule 1, item 1, sections 355-40 and 355-165]*

4.23 For instance, it is an offence for a taxation officer to disclose information to a minister unless that disclosure is explicitly authorised as one that can be made to a minister, even if the disclosure is in the performance of their duties as a taxation officer. *[Schedule 1, item 1, sections 355-55 and 355-60]*

Example 4.3

An article on the front page of a major Australian newspaper discussed the capital gains tax affairs of Mr John Doe, and insinuated that he had been poorly treated by the ATO. The ATO considers preparing a briefing for the Treasurer in relation to the article, to assist the Treasurer to respond to any questions about the article.

As there is no explicit provision allowing for disclosure of taxpayer information to a minister under these circumstances, it is an offence for a taxation officer to make such a disclosure, notwithstanding the fact that Mr Doe may have already provided his own tax information to a major newspaper with the expectation that it would be published.

4.24 These limitations on disclosures to ministers only apply to the extent that the disclosures would otherwise be captured by the offence provision (and would therefore require an exception to the offence to authorise disclosure). As disclosing information to the entity to whom the information relates or to their representative is *never* an offence, disclosures to ministers in these circumstances can also be made (see paragraph 3.17). As such, the ATO would not be prevented from disclosing to a minister their own information or the information of another entity where that entity has appointed the Minister as their representative. [*Schedule 1, item 1, subsections 355-60(1) and 355-210(1)*]

Example 4.4

The Minister for Mines and Orchards completed her own tax return early and her husband asked her to complete his tax return as well. After being nominated in the approved form to act as her husband's representative, the Minister rang the ATO to ask for information about her husband's tax affairs. It is not an offence for a taxation officer to provide taxpayer information to the Minister about her husband's tax affairs because she is acting in her capacity as agent for her husband rather than in her capacity as a minister.

Parliamentary privilege and its interaction with disclosures to ministers

4.25 Parliamentary privilege is commonly considered to protect disclosures of information made during parliamentary proceedings. Such privilege also protects disclosures of information for the purpose of such proceedings. For instance, under parliamentary privilege the ATO could, theoretically, currently provide taxpayer information to ministers for the purpose of briefing the Minister to respond to questions in Parliament (in the form of questions on notice and in question time briefs). However, in practice such information is only disclosed rarely, if ever.

4.26 As the Bill provides the only circumstances in which taxpayer information can be disclosed to ministers, the operation of parliamentary

privilege is specifically excluded in this respect. The effect of sections 355-60 and 355-201 is to act as a declaration for the purposes of section 49 of the Constitution, and therefore all disclosures of taxpayer information to a minister are guided by the taxation law. [*Schedule 1, item 1, sections 355-60 and 355-210*]

4.27 The circumstances in which taxation officers and non-taxation officers are permitted to disclose information to a minister are outlined in Chapters 5 and 6 respectively. [*Schedule 1, item 1, sections 355-60 and 355-210*]

Example 4.5

The Treasurer is asked a question about the tax affairs of a particular taxpayer and seeks to obtain this information for the purpose of responding to that question during the sitting of Parliament. The ATO cannot provide any taxpayer information to the Treasurer for this purpose, because such disclosures are not permitted by the Bill.

4.28 The limitations on parliamentary privilege only apply with respect to the disclosure of information to ministers. There has been no attempt to limit the operation of parliamentary privilege to the extent that it protects the disclosure of information to the Parliament more broadly, notably to committees.

4.29 Maintaining the operation of parliamentary privilege as it applies in relation to disclosures of information to parliamentary committees recognises that these committees have already developed rules and procedures designed to protect the confidentiality of personal and other sensitive information (for further information see Chapter 2 of Odgers' *Australian Senate Practice, 12th Edition*).

4.30 Although it is uncommon for ministers to serve on parliamentary committees (see Odgers' *Australian Senate Practice, 12th Edition* page 376), where this occurs, a taxation officer can still disclose taxpayer information as the Minister is present in the capacity as a member of the committee, not as a Minister of the Parliament.

4.31 Similarly, if a minister is present as a spectator when a taxation officer is providing information to a committee, the restrictions on the operation of parliamentary privilege will not apply as the disclosure by the tax officer is one to the committee and is therefore protected by parliamentary privilege.

General operation of disclosure provisions

4.32 The disclosure provisions in the framework *permit* taxation officers and non-taxation officers to disclose taxpayer information in certain circumstances. However, they do not *require* them to do so. For information to be disclosed it must be an authorised disclosure *and* the entity with the information must exercise their discretion to disclose the information.

4.33 The disclosure provisions described are designed as exceptions to the offence provisions so, in each case, the entity disclosing the information bears the evidential burden in relation to the disclosure. The reason that the burden is placed on the disclosing entity is that the purpose for which the entity made the disclosure (which determines whether it is authorised or not) is a matter that is uniquely within the knowledge of the entity themselves. [*Schedule 1, item 1, sections 355-45 to 355-75*]

Disclosure of publicly available information

4.34 It is not an offence for a taxation officer or non-taxation officer in receipt of taxpayer information to disclose that information if it is lawfully available to the public (that is, it has not been disclosed as a result of a breach of one of the offence provisions in the framework). [*Schedule 1, item 1, sections 355-45, 355-170 and 355-270*]

4.35 A publicly available source would include things such as the electoral role, open court records, books, the Internet, newspapers and other material that is generally available to the public. The information does not cease to be ‘publicly available’ if a member of the public has to pay a fee to access that information.

4.36 While this new framework recognises that taxpayer privacy is paramount, it also recognises that issues surrounding the privacy of taxpayer information are less significant when that information is already available to the public.

4.37 Information that is in the public domain may be disclosed. However, entities will not be able to use non-public taxpayer information to supplement or qualify the information that is publicly available.

Example 4.6

The New South Wales Bar Association has a statutory responsibility under the *Legal Profession Act 2004* (NSW) to satisfy itself that a barrister is a fit and proper person to hold a practicing certificate. It is not an offence for a taxation officer to disclose to the New South Wales Bar Association that a NSW barrister has been convicted of a taxation offence in an open court. However, the ATO would not be

able to supplement that information with, say, a copy of the barrister's tax return, which was not available to the public.

Example 4.7

Brendan works in the ATO Media Liaison Centre and posts a media release on the ATO website detailing a recent successful prosecution of a taxpayer, Tony, for goods and services tax fraud. The media release also insinuates that Tony may have been involved in tax evasion with respect to which he is still being investigated by the ATO. While Brendan can disclose information that is on the court record in relation to the goods and services tax fraud, it is an offence for him to disclose information relating to Tony's alleged involvement in other possible taxation evasion.

Chapter 5

Authorised disclosures by taxation officers

Outline of chapter

5.1 This chapter outlines the disclosures that ‘taxation officers’ are authorised to make under the new framework. These are in addition to disclosures of publicly available information outlined in Chapter 4 and the disclosures able to be made to a taxpayer or their representative outlined in Chapter 3.

Context of amendments

Operation of current provisions

5.2 The current disclosure provisions authorise taxation officers and certain other persons who are recipients of taxpayer information to disclose the information in a range of circumstances. While some of these disclosures are phrased generally so as to apply to both taxation and non-taxation officers, others are more specific in only authorising disclosures by taxation officers (notably, by only permitting the Commissioner of Taxation (Commissioner), Second Commissioner or Deputy Commissioner or a person authorised by them to make the disclosure).

5.3 As noted in the Chapter 4, different taxation laws permit taxation officers to disclose information to ministers in different circumstances and to varying degrees.

5.4 While the various provisions are drafted in a range of different styles, common throughout are provisions authorising officers to disclose taxpayer information in the performance of their duties as an officer. This is a commonly used phrase in Commonwealth laws and has been the subject of judicial consideration.

5.5 The current taxation disclosure provisions also permit a taxation officer who receives taxpayer information under one taxation law to disclose the information to another taxation officer to perform their duties under a different taxation law.

5.6 Specific disclosures for taxation officers are found across the taxation laws. These generally provide for disclosures to be made by the Australian Taxation Office (ATO) to another Government agency in circumstances in which taxpayer information will be used to enable that other agency to fulfil some aspect of its function more effectively.

Summary of new law

5.7 The new framework largely retains the existing permitted disclosures made by taxation officers, with some amendments.

5.8 Taxation officers will continue to be able to disclose taxpayer information in the performance of their duties as a taxation officer. The new framework clarifies some existing ambiguities as to the breadth of such disclosures by providing a non-exhaustive list of disclosures that fall within the ‘performance of duties’ exception.

5.9 The new framework also introduces some new disclosures in instances where the public benefit in disclosing information outweighs the loss of taxpayer privacy.

5.10 As noted in Chapter 4, the new framework also removes any uncertainty as to when taxpayer information can be disclosed to a minister by providing an exhaustive list of circumstances where such disclosures can be made.

Comparison of key features of new law and current law

| <i>New law</i> | <i>Current law</i> |
|---|---|
| Taxation officers may disclose taxpayer information to a law enforcement agency, or a court or tribunal, for both the investigation and prosecution of a serious offence. | Taxation officers may disclose information to a law enforcement agency for establishing whether a serious offence has been committed. However, that information cannot be used in the prosecution of that offence, unless it is a taxation offence. |

| <i>New law</i> | <i>Current law</i> |
|---|--|
| Taxpayer information may be disclosed to the Office of Police Integrity Victoria as a law enforcement agency. | No equivalent. |
| Taxpayer information will be able to be provided to a law enforcement agency for the making or possible making of an unexplained wealth order. | No equivalent. |
| A 'serious offence' is defined to mean an offence against a law of the Commonwealth, State or Territory that is punishable by more than 12 months imprisonment. | A 'serious offence' is defined to mean an offence against a law of the Commonwealth, State or Territory that may be dealt with as an indictable offence. What is indictable varies, depending on the jurisdiction. |
| Taxation officers may disclose taxpayer information to an Australian Government agency to prevent or lessen: <ul style="list-style-type: none"> • a serious threat to an individual's life, health or safety; or • a serious threat to public health or public safety. | It is not an exception to the prohibition on the disclosure of taxpayer information that such a disclosure would save a life or prevent a threat to public health or safety. |
| Taxation officers can disclose taxpayer information that does not include the taxpayer's name, Australian Business Number or contact details, to the Department of the Treasury (Treasury) for the purpose of analysing taxation revenue or costing policies, even where the information is reasonably capable of identifying a taxpayer. | Taxation officers cannot disclose information to Treasury for general budgetary or policy analysis purposes which, while provided in 'de-identified' form, is still reasonably capable of identifying a taxpayer. |
| Taxation officers can disclose information to the Treasury for the purposes of briefing the Treasurer on decisions he may make under the <i>Foreign Acquisitions and Takeovers Act 1975</i> . | No equivalent. |
| Taxation officers can disclose taxpayer information to the Australian Securities and Investments Commission (ASIC) for the purpose of enforcing a law administered by ASIC that is an offence or that imposes a pecuniary penalty. | A taxation officer can disclose information to ASIC as a law enforcement agency if it relates to a serious offence. |

| <i>New law</i> | <i>Current law</i> |
|---|--|
| Taxation officers can disclose taxpayer information to ASIC for the purposes of the administration of the <i>Superannuation Industry (Supervision) Act 1993</i> as well as those parts of the <i>Corporations Act 2001</i> and the <i>Australian Securities and Investment Commission Act 2001</i> which under which ASIC has powers to regulate the Superannuation industry. | Taxation officers can disclose taxpayer information to ASIC for the purposes of the administration of the <i>Superannuation Industry (Supervision) Act 1993</i> . |
| Taxation officers can disclose limited information to the Fair Work Ombudsman to enable the Fair Work Ombudsman to better target compliance activity with the <i>Fair Work Act 2009</i> . | No equivalent. |
| Taxation officers can disclose to State Revenue Officers administering the first home owner grant residential address and rental information, in addition to information obtained under the <i>First Home Savers Account Act 2008</i> . | Taxation officers can only disclose information to State Revenue Offices information obtained under the <i>First Home Savers Account Act 2008</i> for the purposes of administering first home owner grants. |
| Limited taxpayer information, being information obtained under the pay as you go (withholding system) can be provided to State and Territory bodies administering worker's compensation law to ensure that employers comply with their worker's compensation obligations. | No equivalent. |

Detailed explanation of new law

5.11 The following explanation provides detail on disclosures that taxation officers can make in the performance of their duties, disclosures that can be made to ministers, as well as other disclosures that taxation officers can make to government agencies. The explanation is focused on areas where the new framework differs from the existing law or where there is a need to clarify any current ambiguity as to how the law operates.

Disclosures in the performance of a taxation officer's duties

5.12 Disclosure of taxpayer information by a taxation officer is permitted where the disclosure is made in the course of the taxation officer's duties. Generally, such disclosures facilitate the officer carrying out their responsibilities. For the avoidance of doubt, the new framework provides a non-exhaustive list of disclosures that fall within the scope of such a disclosure. These are further described below. [*Schedule 1, item 1, section 355-50*].

5.13 These disclosures are only relevant to current taxation officers. As former taxation officers are no longer performing duties as a taxation officer, they cannot disclose information that they obtained as a taxation officer in the 'performance of their duties'.

5.14 As part of the standardisation process, and to reduce the volume of the taxation laws, some specific disclosure provisions in the existing law have not been replicated as they are captured by the 'performance of duties' exception. Examples of this include subparagraphs 159(3)(c)(ia) and 159(3)(d)(ia) and subsection 159(3A) of the *Excise Act 1901*.

Administering a taxation law

5.15 It is not an offence for a taxation officer to disclose taxpayer information for the purpose of administering a taxation law. Taxpayers provide information to taxation officers in order to meet their obligations under taxation laws. It is therefore important that taxpayer information be made available to relevant officers to enable them to administer those taxation laws. [*Schedule 1, item 1, subsection 355-50(2), item 1 in the table*]

5.16 Information that a taxpayer provides for the purposes of one taxation law can be used to administer another taxation law (or another part of the same law). In this way, taxpayers are not required to provide the same information multiple times and taxation officers can utilise data from different sources effectively.

5.17 Taxpayer information may also need to be disclosed by a taxation officer to non-taxation officers for the purposes of administering a taxation law.

Example 5.1

Leo contacts the ATO in relation to his unclaimed superannuation. He fills out the appropriate forms, which include his name, address, date of birth and details relating to his superannuation, and provides these to the ATO. Megan, a taxation officer working in the superannuation area, provides these forms to the superannuation fund holding Leo's unclaimed money. Megan does this for the purpose of reuniting Leo with his unclaimed money, which is one of the objects of the *Superannuation (Unclaimed Moneys and Lost Members) Act 1999*.

Proceeds of crime order related to a taxation law

5.18 It is not an offence for a taxation officer to disclose taxpayer information where it is for the purpose of the making, or possible making, of an order under the *Proceeds of Crime Act 2002* that is related to a taxation law. [*Schedule 1, item 1, subsection 355-50(2), item 2 in the table*]

5.19 Such circumstances include where the ATO provides the Australian Federal Police with information necessary to prevent an individual from profiting from an offence committed under a taxation law. In addition, as the ATO is an enforcement agency for the purposes of the *Proceeds of Crime Act 2002* (under the *Proceeds of Crime Regulations 2002*) taxation officers may disclose information in accordance with this role where this is related to a taxation law.

Judicial and administrative proceedings related to a taxation law

5.20 It is not an offence for a taxation officer to disclose taxpayer information for the purposes of proceedings related to a taxation law. Disclosures to Courts, external legal advisers and to the Commonwealth Director of Public Prosecutions in relation to proceedings that are directly or indirectly related to a taxation law are therefore allowed. [*Schedule 1, item 1, subsection 355-50(2), item 3 in the table*]

Example 5.2

An individual knowingly lodges an incorrect tax return. The ATO decides to prosecute the individual under an offence provision in the *Taxation Administration Act 1953* (TAA 1953) and commences an action in the Supreme Court of New South Wales. The disclosure of taxpayer information in the course of these proceedings is not an offence as it is for the purpose of criminal proceedings related to a taxation law.

Example 5.3

Instead of prosecuting the individual for an offence under the TAA 1953, the ATO decides to refer the matter to the CDPP for prosecution under a provision in the *Criminal Code Act 1995*. It is not an offence for the ATO to disclose information to the CDPP, even though the offence provision is not in a taxation law, because the proceedings relate to a taxation law.

Example 5.4

In a case between the Commissioner and Mr Doe, Mr Doe's legal team undertake a process of discovery to obtain information about Mr Doe from the ATO. It is not an offence for a taxation officer to disclose information to Mr Doe's legal team if the proceedings are related to a taxation law.

Providing a statement of reasons under the Administrative Appeals (Judicial Review) Act 1977

5.21 A taxation officer is authorised to disclose taxpayer information in the performance of their duties, even where such a disclosure is not directly contemplated by a provision in a taxation law. For instance, it is not an offence for a taxation officer to disclose taxpayer information in response to a request for a statement of reasons by the *Administrative Appeals (Judicial Review) Act 1977*. [Schedule 1, item 1, subsection 355-50(2), item 4 in the table]

Example 5.5

In the course of an audit of a taxpayer (in their capacity as an individual), a taxation officer issues an information-gathering notice under section 264 of the *Income Tax Assessment Act 1936* (ITAA 1936) to obtain information relevant to the audit. The taxpayer applies, under section 13 of the *Administrative Appeals (Judicial Review) Act 1977*, for a copy of the statement of reasons for this decision. The statement of reasons contains information relating to both the taxpayer as an individual and a company of which the taxpayer is a shareholder. In providing this information relating to the company, the taxation officer is not committing an offence because, although the information is requested under an Act that is not a taxation law, the taxation officer is merely fulfilling their duty as a taxation officer under a statutory obligation.

Ex-gratia payments

5.22 Ex-gratia payments are a discretionary compensation mechanism available to the Australian Government under section 61 of the Australian Constitution. Such payments can be used, usually in the

absence of any existing legislative compensation scheme, to compensate individuals for a particular loss. While a decision to make such a payment rests with the Prime Minister and/or Cabinet (see disclosures to ministers below), taxation officers may be required to analyse and administer payments that are connected to the taxation law. A payment will be connected to a taxation law when the need to make the payment arises, for instance, as a result of the manner in which the taxation law has been applied. [*Schedule 1, item 1, subsection 355-50(2), item 5 in the table*]

5.23 This disclosure provides an example of where the impetus for the disclosure lies outside of the taxation law (in this case, the impetus is the discretionary compensation mechanism provided for in the Constitution), but which still falls within a taxation officer's duties.

Example 5.6

The Cabinet meets to decide whether or not to provide an ex-gratia payment to taxpayers that were inadvertently affected to their detriment by a change in a taxation law. In the course of preparing a brief for Cabinet to provide advice on such a payment, a taxation officer discloses information to the Department of the Prime Minister and Cabinet. It is not an offence for a taxation officer to make such a disclosure.

Compliance with obligations under a taxation law

5.24 The new framework recognises that in some circumstances, for a taxpayer to fulfil or to understand their tax obligations, they may require the information of another taxpayer. It is not an offence for a taxation officer to disclose taxpayer information in these circumstances. [*Schedule 1, item 1, subsection 355-50(2), item 6 in the table*]

5.25 It is important to note that a taxation officer may only disclose information where that information is *required* by a taxpayer to meet their taxation obligations. It is not sufficient that the information may be of interest to a taxpayer or would be useful for them.

Example 5.7

Tanisha and Ben are joint trustees and are jointly liable for a debt of \$10,000 owed to the ATO. Tanisha makes a payment of \$3,000 without informing Ben. Ben contacts the ATO to settle the debt. The ATO can inform Ben that Tanisha has paid part of the debt, and the remaining balance is \$7,000 as this allows him to understand the extent of his tax obligation (that is, how much is owed) and to satisfy it.

Example 5.8

Anthony and Linda are married. Anthony pays for all the living costs and supports Linda while she is studying. Anthony wants to claim the dependent spouse offset and for this, requires Linda's income. Linda is overseas, cannot be contacted, and has not appointed Anthony as her representative in the approved form. It is not an offence for a taxation officer to provide details of Linda's income to Anthony to enable him to prepare his tax return and claim the offset.

Example 5.9

Raul is licensed under the *Excise Act 1901* to manufacture spirits. Tim has an approval issued under section 77FD of the *Excise Act 1901* to use spirits for fortifying Australian wine. Tim wants to buy 1,000 litres of spirit from Raul. Raul contacts the ATO to check that Tim's approval allows for 1,000 litres of spirit and that it is still current. The taxation officer is permitted to divulge details of Tim's approval to Raul to allow Raul to fulfil his obligations under the *Excise Act 1901*.

Design or amendment of a taxation law

5.26 It is not an offence for a taxation officer to disclose taxpayer information to the Treasury for the purpose of designing or amending a taxation law. This reflects the fact that, under current administrative arrangements, the Government has determined that other agencies (notably the Treasury) are to have the design and amendment responsibilities with respect to taxation laws. [*Schedule 1, item 1, subsection 355-50(2), item 7 in the table*]

5.27 Treasury does not require identifiable information on individual taxpayers and, accordingly, most of the information provided for purposes related to the design or amendment of the taxation law would not be 'protected information' within the meaning of the new framework. However, in some circumstances, even 'de-identified' information may still be capable of identifying particular taxpayers and would therefore be protected. For instance, where the de-identified information concerns an industry with few participants and is dominated by one or a handful of competitors, it may still be readily apparent that the information relates to a specific entity.

5.28 Contact details and Australian Business Numbers (ABNs) of taxpayers cannot be provided to Treasury in any circumstances. The provisions relating to TFNs also prevent these from being provided.

Example 5.10

The Government has announced a new taxation law that will only apply to certain workers. Treasury requires additional information about these workers in order to prepare drafting instructions for the Office of Parliamentary Counsel. Because there are so few people in Australia who are in this field of work, it is reasonably possible that information about individual workers could be ascertained from any data provided by the ATO. It is not an offence for a taxation officer to disclose information for the purpose of providing drafting instructions for the new legislation, even though that information could be used to identify individual taxpayers. The information cannot include the name, contact details or the ABNs of individual taxpayers.

Boards performing a function or exercising a power under a taxation law

5.29 It is not an offence for a taxation officer to disclose taxpayer information to a board (or any member of a board) so that the board can perform a function or exercise a power under a taxation law. This provision will, for instance, facilitate the disclosure of taxpayer information to the Tax Practitioners Board established under the *Tax Agent Services Act 2009* (TAS Act). As noted in paragraph 2.29, although the TAS Act is not an Act administered by the Commissioner of Taxation, it will nonetheless be a taxation law as a consequence of amendments being made by the Tax Agent Services (Transitional Provisions and Consequential Amendments) Bill 2009. [*Schedule 1, item 1, subsection 355-50(2), item 8 in the table*]

Example 5.11

Kyle, a taxation officer, determines that a taxpayer is not liable to an administrative penalty for failing to lodge their income tax return by the required date. This is because the taxpayer engaged a registered tax agent and the failure to provide the return in time was a result of the carelessness of the agent. Kyle recognises that the evidence of the tax agent's negligence would be relevant to the exercise of the Tax Practitioners Board's functions under the TAS Act. Of note the Board has the function under the Act of investigating conduct of tax agents and to do anything incidental to this.

Kyle provides the information to Bryce, a member of the Tax Practitioners Board so that Bryce can consider whether or not to take any further action relating to the tax agent. It is not an offence for Kyle to provide this information.

Exchange of information under an international tax agreement

5.30 It is not an offence for a taxation officer to disclose taxpayer information for the purpose of meeting the Commissioner's obligations to exchange information under an international agreement. [*Schedule 1, item 1, section 355-45(2), item 9 in the table*]

Example 5.12

The New Zealand Inland Revenue Department lodges a request with the ATO for income tax information relating to a New Zealand resident (for tax purposes), currently working in Australia. The request is for the purpose of determining how much income tax the resident should pay in New Zealand. Under the agreement with New Zealand, the Commissioner is required to provide this information. It is not an offence to provide the requested information.

Disclosures to ministers

5.31 As noted in Chapter 4, there are particular sensitivities associated with a minister's access to a taxpayer's taxation information and, accordingly, disclosure of taxpayer information to ministers is limited.

5.32 In addition to information that is publicly available being able to be provided, the new framework provides for an exhaustive list of circumstances in which a taxation officer is able to disclose information to a minister. These permitted disclosures are broadly consistent with those permitted under the current law and seek to remove inconsistencies and ambiguities in the current law. [*Schedule 1, item 1, section 355-55 and subsection 355-60(1)*]

Ministers performing functions under a taxation law

5.33 It is not an offence for a taxation officer to provide taxpayer information to a minister for the purpose of enabling the minister to exercise a power or perform a function under a taxation law. In the majority of cases, the Treasurer will be the minister with specified powers under a taxation law (however, there may be other ministers either within or outside the Treasury portfolio with a function under a taxation law). [*Schedule 1, item 1, section 355-55, item 1 in the table*]

Example 5.13

Subdivision CB, Part III of Division 3 of the ITAA 1936 provides that the Treasurer may determine that a company is a regional headquarters company and is eligible to claim a tax deduction for certain expenditures incurred. It is not an offence for a taxation officer to provide information about a company to the Treasurer to enable him to determine whether or not that company is a regional headquarters company.

Example 5.14

Under subsection 14(2) of the ITAA 1936, the Minister has the function of tabling a copy of the Commissioner's annual report outlining the operation of that Act. This report may include taxpayer information relating to any breaches of the Act over the course of the year (see subsection 14(1)). It is not an offence for the Commissioner to disclose taxpayer information in the annual report to the Minister as the Minister has the function under a taxation law of tabling that report in each House of the Parliament.

Ministerial correspondence

5.34 Taxpayers who want assistance or clarification in relation to their taxation affairs often write to the Treasurer, or to their local member (who usually forwards such letters to the Treasurer). It is not an offence for a taxation officer to provide information to enable the Treasurer to respond directly to these taxpayer requests, either in writing or in person. *[Schedule 1, item 1, section 355-55., item 2 in the table]*

Example 5.15

Fred writes to his local member (who is also the Minister for Defence) saying that the ATO has charged him a penalty for late payment, when his payment was only slightly overdue and for a very good reason. His local member forwards the letter to the Treasurer. It is not an offence for a taxation officer to provide information about Fred's tax affairs to the Treasurer to enable the Treasurer to respond to Fred's concerns.

Note that Fred's taxpayer information cannot be provided to his local member. A letter may be provided to Fred's local member noting that the Treasurer has responded directly to Fred, provided that letter does not disclose any taxpayer information about Fred.

Compensation for Detriment Caused by Defective Administration scheme

5.35 The Compensation for Detriment Caused by Defective Administration scheme allows Government portfolio ministers to compensate individuals or other bodies who have experienced losses

caused by agencies' maladministration (though in practice this power is often delegated to relevant departments). It is not an offence for a taxation officer to provide taxpayer information to the Treasurer to inform decisions the Treasurer makes under the Compensation for Detriment Caused by Defective Administration scheme. [*Schedule 1, item 1, section 355-55, item 3 in the table*]

Disclosures to the Finance Minister

5.36 The *Financial Management and Accountability Act 1997* allows the Finance Minister, currently the Minister for Finance and Deregulation to make 'act of grace' payments, or waive debts owed to the Commonwealth. An 'act of grace' payment is usually a one-off or periodic payment made, for instance, where an entity has suffered a loss that was unintended as a result of an Australian Government action. Similarly, debts owed to the Commonwealth are waived in circumstances where the debt has been inappropriately imposed or in cases of extreme financial hardship.

5.37 In instances where the Finance Minister is considering making an act of grace payment to compensate an entity that has incurred a loss because of the administration of a taxation law, or where the Minister is considering waiving a taxation debt, it is not an offence for taxation officers to provide the taxpayer's information to the Minister. [*Schedule 1, item 1, section 355-55, item 4 in the table*]

5.38 This provision does not allow the disclosure of taxpayer information to assist the Finance Minister in making decisions in relation to non-tax debts to the Commonwealth. Nor does it allow the disclosure of taxpayer information to assist with act of grace payments that are unrelated to the administration of a taxation law.

Example 5.16

In a particular instance, the application of a taxation law had an unintended effect on a small group of taxpayers, resulting in economic losses for those taxpayers. The Government amended the legislation on a prospective basis. The Minister for Finance and Deregulation decided to make an act of grace payment under section 33 of the *Financial Management and Accountability Act 1997* to those taxpayers who had suffered a loss. It is not an offence for a taxation officer to provide information to the Minister for Finance and Deregulation identifying who the affected taxpayers were and the extent of their losses.

Ex-gratia payments

5.39 If the Prime Minister or Cabinet is considering whether an entity should be entitled to an ex-gratia payment, it is not an offence for a taxation officer to provide them with information about that entity in order to assist their decision-making. Similarly, if the Prime Minister or Cabinet decides that an entity should be entitled to an ex-gratia payment, it is not an offence for a taxation officer to provide information about that entity to the relevant minister in order to facilitate the delivery of the ex-gratia payment. *[Schedule 1, item 1, section 355-55, item 5 in the table]*

5.40 There is no requirement that the ex-gratia payment be referable to the administration of the taxation law. Information held by the ATO may be relevant to the decision to make ex-gratia payments (or administering such payments) that are themselves unrelated to the taxation law.

Example 5.17

The Prime Minister and Cabinet determine that an ex-gratia payment should be granted to certain family members of former Australian servicemen. The Department of Defence does not have up to date contact information for these individuals and is unable to get in touch with them. The ATO, which does have current contact details for the relevant individuals, is able to provide this information to the Defence Minister to allow these payments to be made.

Disclosures for other Government purposes

Retention of existing disclosure provisions

5.41 While taxpayer information is used primarily by taxation officers for purposes connected with the administration of the taxation laws, such information is also useful for other Government agencies in administering their laws. As noted in Chapter 1 of this explanatory memorandum, taxpayer information can play an integral role in facilitating efficient and effective government administration and law enforcement.

5.42 Over time, various taxation laws have specified a range of circumstances in which taxpayer information may be disclosed to assist with the administration of other laws. These disclosures are usually limited to a particular purpose and reflect situations where Parliament believes that the loss to taxpayer privacy is outweighed by the public benefit resulting from the disclosure.

5.43 These various disclosure provisions have now been combined in a single provision enabling them to be found and understood easily by all relevant stakeholders. In doing so, the framework seeks to provide greater transparency about the circumstances in which taxpayer information can be disclosed. [Schedule 1, item 1, section 355-65]

5.44 Chapter 8 (Finding Tables) provides a comprehensive list of all provisions in the existing law and their corresponding provision in the new framework.

5.45 In moving the disclosure provisions from 18 different taxation law Acts into one provision, there has been some level of harmonisation and standardisation of the disclosures. For instance, under existing taxation secrecy and disclosure provisions, taxation officers are permitted to disclose taxpayer information relating to businesses, employers, indirect tax, superannuation and product grants to the Australian Bureau of Statistics (ABS), for purposes associated with the *Census and Statistics Act 1905*. These separate disclosures have all now been combined into a single provision that permits all taxpayer information to be provided to the ABS for the administration of the *Census and Statistics Act 1905*. [Schedule 1, item 1, subsection 355-65(1), item 1 in table 7]

5.46 The disclosure explained above provides a good example of where the benefit of disclosure outweighs the impact on taxpayer privacy. By allowing the ABS to access all taxpayer information, the ABS will be able to effectively produce aggregate statistics that are of relevance and use to policy makers and researchers, particularly if taxpayer data is coupled with existing ABS data. Examples of such statistics include regional estimates of income of older Australians, by income and age ranges. Longitudinal studies useful for policy development will also be possible, such as income patterns over time for particular groups. Moreover, by allowing a wide range of taxpayer information to be provided to the ABS, the ABS will be able to reduce the amount of duplicate information it currently collects from Australian individuals and entities.

5.47 Balanced against the public benefit is the impact on an entity's privacy. In this instance, the impact is minimal, as the ABS has strict mechanisms in place for the protection of information it receives in the course of its duties (see section 19 of the *Census and Statistics Act 1905*). Furthermore, the ABS cannot publish statistics that are likely to identify an entity (see subsection 12(2) of the *Census and Statistics Act 1905*).

5.48 In contrast to the ABS example, the disclosure provisions in some circumstances retain a restriction on the type of information that can be disclosed. This is particularly the case where the purposes for which disclosure can be made are wide. It is therefore appropriate to maintain

the limitation on the type of information that may be accessed. For example, section 38 of the *Superannuation (Unclaimed Moneys and Lost Members Act) 1999* (SUMLA) permits information obtained under that Act to be disclosed to a range of agencies (for instance, the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC)) to help them perform their functions. Given the breadth of the purpose of the disclosure, it is appropriate to maintain the limitation that the information be obtained under that Act. [*Schedule 1, item 1, subsection 355-65(1), item 3 in table 2 and item 2 in table 3*]

References to Secretaries of Departments

5.49 Most of the new disclosure provisions to Commonwealth departments are drafted in such a way that the information must be provided to the Secretary of the relevant department (for instance, the Education Secretary or the Immigration Secretary). This has been done to ensure consistency and to clearly identify who the information can be provided to.

5.50 Often it is not practical to provide the information to the Secretary themselves and it may be provided to a Departmental officer on behalf of the Secretary. This is consistent with general principles of law such as those put forward in *Carltona Ltd v Commissioner of Works* [1943] 2 All ER560. In practice, the purpose for which the disclosure can be made will also limit the recipients of the information, as the taxation officer can only disclose the information if the purpose tests in law are met. It would be difficult for a taxation officer to argue, for instance, that disclosing information to a Centrelink officer for the purpose of locating persons unlawfully in Australia was authorised under the framework.

Example 5.18

The Department of Immigration and Citizenship requests taxpayer information from the ATO that will enable it to ensure that sponsors of '457' visa-holders comply with their obligations under the *Migration Act 1953*. Brendan, a taxation officer, discloses the information to Lavinia, a migration officer working in the sponsorship compliance area of the Department. As the purpose of the disclosure is consistent with an exception in the new framework (which enables taxpayer information to be disclosed to the Immigration Secretary for purposes relating to ensuring compliance by '457' visa-sponsors), the disclosure of information to Lavinia is not an offence.

New disclosure provisions

5.51 The new framework also includes some clearly targeted disclosure provisions not contained in the current legislation. Broadly, these reflect cases where:

- the taxation secrecy provisions have yet to be updated to take into account changes in administrative arrangements;
- to facilitate the disclosure of taxpayer information which will be invaluable in the administration of new law enforcement regimes;
- existing disclosure provisions need to be amended to give effect to the original policy intent of the provision; and
- otherwise where the public benefit of disclosure outweighs taxpayer privacy.

Disclosure to Australian Securities and Investment Commission in relation to administering superannuation funds

5.52 Under the current taxation secrecy and disclosure provisions, in recognition of the role that the ASIC has in regulating superannuation entities, taxation officers are permitted to disclose relevant taxpayer information to ASIC for the purposes of its administration of the SIS Act. Since the enactment of this provision, however, part of ASIC's role in regulating superannuation entities has shifted to other Acts — notably the *Corporations Act 2001* and the *Australian Securities and Investments Commission Act 2001*.

5.53 In recognition of this legislative shift in ASIC's role in relation to superannuation entities, under this Bill it is not an offence for a taxation officer to provide superannuation information to ASIC for the purposes of administering Chapter 7 of the *Corporations Act 2001* (relating to financial services and markets) or Part 2 of Division 2 of the *Australian Securities and Investments Commission Act 2001* (relating to unconscionable conduct and consumer protection in relation to financial services). [*Schedule 1, item 1, subsection 355-65(1), item 3 in table 3*]

Disclosure to ASIC to pursue breaches of ASIC-administered legislation

5.54 Under the current taxation secrecy provisions, ASIC is able to obtain taxpayer information to fulfil its role as a law enforcement agency for the purpose of establishing whether a serious offence has taken place or for the making of a proceeds of crime order in relation to a serious offence (see below for further information). The new framework expands the disclosures that can be made to ASIC in order for it to fulfil its law

enforcement role. Disclosures will be permitted to ASIC for the investigation or enforcement of a law administered by ASIC that is a criminal law or that imposes a monetary penalty. [*Schedule 1, item 1, subsection 355-65(1), item 1 in table 3*]

5.55 This new disclosure recognises that the role of ASIC in regulating companies and financial services is integral to maintaining and protecting the integrity of the market. The ATO may provide information to ASIC where it is apparent that breaches of ASIC-administered legislation are occurring. The ability of ASIC to identify and penalise breaches of corporate law discourages corporate mismanagement and significant financial losses to investors and consumers. Information held by the ATO may be invaluable for ASIC in pursuing action against directors who may repeatedly be engaged in fraudulent phoenix activity. Examples of breaches include trading while insolvent, misleading and deceptive conduct and market misconduct such as insider trading.

Disclosures to prevent or lessen serious threats

5.56 The new framework recognises that, where the disclosure of taxpayer information by a taxation officer to another Commonwealth or State government agency would enable that agency to identify and better address a serious threat, that disclosure should not be an offence. [*Schedule 1, item 1, section 355-65, item 9 in table 1*]

5.57 This new disclosure recognises that the public interest in allowing government agencies to use information where this would prevent harm to an individual or to the public, outweighs any loss of privacy. This disclosure is based on paragraph 1(c) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988* and on a similar provision in Information Privacy Principle 2.1(d) in Schedule 1 to the *Information Privacy Principle Act 2000* (Vic).

5.58 One distinction between the approach in the *Privacy Act 1988* and the new framework is that there is no requirement in this Bill that the threat to an individual be imminent. In the *Privacy Act 1988*, if the threat is not imminent, the consent of the individual concerned can always be obtained to authorise the disclosure of their information. However, as taxpayer consent is specifically excluded under this framework, it is appropriate not to have a requirement for the threat to be imminent.

5.59 The fact that there is a threat is not enough to justify disclosure — the disclosure must be necessary to prevent or lessen the threat. A taxation officer must therefore consider whether the disclosure will have any real impact on the threat or whether there are alternatives other than the disclosure of taxpayer information that could achieve the same result.

5.60 A threat to life or health includes threats to safety and would include bushfires, industrial accidents and direct threats to individuals or groups. Health includes mental as well as physical health, although a threat of stress or anxiety would generally not be sufficiently serious.

5.61 What is a 'serious' threat will depend on the particular circumstances, but would certainly include a threat of bodily harm or assault.

Example 5.19

Aaron, who works in an ATO call centre, receives a call from a disgruntled taxpayer who is angry at the ATO and a number of Government agencies at the perceived injustices he has suffered. The taxpayer tells Aaron that he is going to go down to the nearest Centrelink office with a baseball bat to 'settle the score'. From the conversation Aaron forms the view that the taxpayer is about to carry out the threat. It is not an offence for Aaron to pass on the details of the taxpayer to the Australian Federal Police and Centrelink.

5.62 Threats to public health or safety are those that have the potential to affect the public (both in Australia and overseas) more generally rather than just a specific individual or group of individuals. A possible outbreak of an infectious disease is one such example, and an example of where a threat to the public health or safety would be serious.

Example 5.20

Michael, a taxation officer working in the excise area, obtains information about possible fuel tampering that could pose a serious safety risk if the fuel is used in machinery. While it is not clear that the threat is imminent, as it is a serious threat to public health, Michael can disclose the information to the relevant State and/or Commonwealth authorities.

5.63 The gravity of the outcome and the likelihood of its occurrence are factors to take into account when determining whether there is a serious threat.

Example 5.21

Ray, a taxation officer is asked by a state government department to disclose the names and addresses of taxpayers who live in a certain area given that the department wishes to warn people that there is a potential, but low risk of soil contamination of a type that would cause minor temporary illness. A disclosure would not be lawful in these circumstances as there is not a serious threat to the taxpayers.

Disclosures to Treasury for estimation and analysis

5.64 As noted in paragraphs 5.26 to 5.28, a taxation officer can disclose information to Treasury where this is relevant to the design or amendment of a taxation law as long as the information does not contain the name, contact details or ABN of any entity. In addition, to fulfil its broader role to Government, Treasury also obtains data from the ATO to analyse and predict revenue flows, as well as cost policy proposals that do not necessarily result in the creation of a new taxation law.

5.65 Also as noted above, Treasury does not require information that identifies that taxpayer. In some cases however, aggregate information on classes of taxpayer or a sample of de-identified individual taxpayer information might allow the probable identity of an individual taxpayer to be inferred. As a consequence such information will be protected information and its disclosure limited by this secrecy framework.

5.66 The new framework permits the ATO to provide information to Treasury for the purpose of analysing and predicting revenue flows and costing policy proposals even where there is the chance of deducing the identity of the taxpayer. To make it clear that Treasury does not need to receive, as a general rule, identifying information about individual taxpayers, the name, contact details and ABN are specifically excluded from being able to be provided (TFNs can also not be provided). 'Contact details' refers to the address, telephone, email and other such details of an entity and would not prevent very broad information such as the State or Territory. [*Schedule 1, item 1, subsection 355-65(1), item 8 in table 3*].

Disclosures for the purposes of the Foreign Acquisition and Takeovers Act 1975

5.67 The *Foreign Acquisition and Takeovers Act 1975* gives the Treasurer powers in relation to certain foreign investment proposals. These powers include prohibiting a proposal on the basis that it is not in the national interest (sections 18 to 21A) or to impose conditions on a proposal to remove any national interest issues (section 25). It also permits the Treasurer to make orders for foreign persons to divest shares, assets or interests in urban land where the acquisition is decided to be contrary to the national interest. What the Treasurer can take into account in determining the 'national interest' is broad.

5.68 Currently, in briefing the Treasurer to make a decision under the *Foreign Acquisition and Takeovers Act 1975*, the Treasury forwards foreign investment applications to key Government agencies for comment. While the ATO is one such agency, because of the operation of taxation secrecy provisions, the ATO cannot provide the Treasury with any identifiable information that may be of relevance to the Treasurer's

decision, including revenue impacts of a particular proposal. Impacts on the Government revenue was specifically included as one factor to be included in assessing 'national interest' as outlined in 'Guidelines for foreign government investment proposals' released by the Treasurer in Media Release No. 009 of 17 February 2008.

5.69 To overcome these problems, this framework introduces a new disclosure provision that will permit the disclosure of taxpayer information to the Treasury for the purposes of briefing the Treasurer in relation to decisions the Treasurer is empowered to make under the *Foreign Acquisition and Takeovers Act 1975*. [Schedule 1, item 1, subsection 355-65(1), item 7 in table 3]

Disclosures for the purposes of the First Home Owner Grant Scheme

5.70 To ensure that those claiming the first home owner grant (FHOG) are indeed eligible (that is, it is genuinely their first home), the existing tax secrecy provisions enable taxpayer information obtained under the *First Home Savers Account Act 2009* (FHSA Act) to be provided to the state agencies administering the FHOG scheme.

5.71 In addition to information obtained under the FHSA Act, rental and residential address information obtained under other taxation laws may also be invaluable in assisting state agencies to identify genuine first home buyers. Accordingly, the new framework expands the existing disclosure. [Schedule 1, item 1, subsection 355-65(1), item 2 in table 4].

Disclosures to ensure compliance with workers' compensation obligations

5.72 The non-compliance of employers under State and Territory worker's compensation laws has been identified as a persistent problem. Accordingly, the new framework includes a limited disclosure provision to assist the workers' compensation bodies responsible for administering such regimes.

5.73 Taxpayer information obtained under the pay as you go (withholding) system will assist workers' compensation authorities identify the salary and wages being paid by employers and therefore determine whether employers are complying with their obligations regarding the payment of workers' compensation premiums. [Schedule 1, item 1, subsection 355-65(1), item 3 in table 5].

5.74 This new disclosure provision provides an example of the importance of balancing the interests of maintaining taxpayer privacy with the public benefit in disclosure. The information being provided relates to the amounts being withheld from an employee's wage or salary. While on-disclosing the employee's information will obviously have some implications for the privacy of the information, there is a significant

public interest, and arguably an interest for the employee, to ensure that employers comply with their workers' compensation obligations.

5.75 Nonetheless, the on-disclosure of information for this purpose obviously entails the use of information for a purpose other than for which it was provided. Accordingly, it is appropriate to limit this provision, clearly specifying the circumstances in which it can be disclosed.

Limited disclosures to the Fair Work Ombudsman

5.76 The *Fair Work Act 2009* establishes the Fair Work Ombudsman whose role it is to ensure compliance with Australia's workplace laws under that Act. In many instances, an entity's non-compliance with taxation laws may be an indication of their non-compliance with workplace laws (and vice versa), particularly when it comes to cash payments and superannuation. As a consequence, information about the non-compliance of an entity with taxation laws may assist the Fair Work Ombudsman to target its own compliance program.

5.77 The new framework therefore seeks to facilitate the sharing of compliance information gained by the ATO with the Fair Work Ombudsman. However, it is not the intention of this new disclosure provision to permit disclosure of a broad range of unnecessary taxpayer information to the Fair Work Ombudsman (for example, information on their taxable income or deductions etc). As noted in Chapter 2, while the majority of 'protected information' captured by the framework will be information provided by taxpayers to the ATO, it will also include information generated by the ATO — this would include the ATO's view that an entity is not complying with its obligations under a taxation law. *[Schedule 1, item 1, subsection 355-65(1), item 5 in table 7].*

Example 5.22

The Fair Work Ombudsman is preparing to conduct an audit of the building and construction industry with respect to its compliance with obligations under the *Fair Work Act 2009*, the Fair Work Ombudsman seeks information from the ATO on entities that the ATO knows or reasonably suspects are non-compliant with their taxation obligations in order to assist it to better target its own compliance program. It is not an offence to provide this information to the Fair Work Ombudsman. However, it is an offence for the ATO to provide additional information, such as the taxable income of the specific entities.

Disclosures for law enforcement and related purposes

5.78 The Bill creates a distinction between the disclosures for various Government purposes as noted above, and certain other disclosures that are made for law enforcement and related purposes. These disclosures are to law enforcement agencies, to multi-agency taskforces set up to combat tax evasion, to the Australian Security Intelligence Organisation (ASIO) and to Commonwealth Royal Commissions and similar State inquiries.

5.79 For an individual, the consequences of these disclosures could potentially be quite significant. In recognition of this, the existing law has additional integrity provisions with respect to these disclosures. The first is the requirement that the Commissioner, under section 3B of the TAA 1953, identify in his annual report the number of times that he was requested by these agencies/bodies to provide information and the number of times information was actually provided. Secondly, the individuals between whom disclosures can be made is more strictly controlled (generally requiring the disclosure to be made by the Commissioner to officers in other agencies that have been specifically authorised to receive information). The new framework retains these additional integrity provisions.

5.80 More information on each of the law enforcement and related disclosures is found below.

Disclosures to law enforcement agencies

5.81 This Bill adopts the current provisions that permit disclosure of information to certain prescribed law enforcement agencies, into the new framework, with some changes.

5.82 Under the existing law, taxpayer information can be disclosed by the Commissioner or an authorised taxation officer to the head of prescribed law enforcement agencies or similarly authorised officers. This can be done for the purpose of establishing whether a serious offence has been or is being committed, or for the making of, or proposed or possible making of, a proceeds of crime order. A 'serious offence' is defined to be an indictable offence and a 'proceeds of crime order' must relate to the commission of a serious offence.

5.83 Moreover, under the existing provisions a law enforcement agency that receives taxpayer information for the purposes of investigating a serious offence cannot use that information for the prosecution of that offence (unless it is a taxation offence).

5.84 The new framework will continue to ensure that such disclosures can only be made by the Commissioner, or taxation officers authorised by the Commissioner, and that the disclosure can only be made to the head of a law enforcement agency, an officer of that agency authorised by that agency head or a court or tribunal. [*Schedule 1, item 1, section 355-70*]

5.85 One change made by the new framework is removing the limitation on the law enforcement agencies' use of taxpayer information. Under the new framework, law enforcement agencies will be able to access taxpayer information for both the investigation and subsequent enforcement (including prosecution) of serious offence provisions in the law. Moreover, as taxation officers are also authorised to disclose taxpayer information directly to a court or tribunal under the new framework, this will assist in the successful prosecution of serious offences.

5.86 These changes have been made because the public interest in the disclosure of information for this purpose outweighs any corresponding loss of taxpayer privacy. Taxpayer information has proved to be a valuable source of intelligence information for the investigation of activities such as money laundering and social security fraud. Furthermore, such information is also invaluable for and could form the basis of related prosecutions. This broadening of the disclosure also recognises the changing nature of crime and the need for flexible, whole-of-government responses. It will also ensure that law enforcement agencies can rely on the best evidence in a prosecution.

5.87 The new framework also amends the definition of 'serious offence'. A *serious offence* now means an offence that is punishable by more than twelve months' imprisonment (consistent with the Commonwealth definition of an indictable offence). This is a departure from the current definition of serious offence, that is based on whether an offence is indictable. Whether an offence is indictable changes between jurisdictions, so the move to a definition based on a term of imprisonment ensures greater consistency.

5.88 The new framework expands the list of law enforcement agencies that are able to access taxpayer information to include the Office of Police Integrity Victoria. This Office plays an important role in detecting, investigating and preventing police corruption and misconduct in Victoria. Access to taxation information will provide a significant resource for the Office of Police Integrity Victoria to investigate and prosecute serious criminal offences.

5.89 The new framework amends the definition of 'authorised law enforcement agency officer' to overcome problems associated with only permitting 'officers' to be authorised. The use of the term 'officer' has

been interpreted to mean only those individuals employed formally under a public service Act, such as the Commonwealth *Public Service Act 1999*. However, there may be instances where individuals not employed formally under such Acts may need to be authorised. For instance, section 4 of the *Australian Federal Police Act 1979* defines 'commissioned police officer' to mean 'any member in respect of whom a declaration under s 40D (of the *Australian Federal Police Act 1979*) is in force'. However, not all commissioned Australian Federal Police officers are appointed under the *Public Service Act 1999*. [Schedule 1, item 1, paragraph 355-70(3)(b)]

5.90 The new framework introduces an amendment to the definition of a 'proceeds of crime order' to reflect recent Commonwealth initiatives to tackle organised crime. Through the Crimes Legislation Amendment (Serious and Organised Crime) Act 2010 the Government introduced an unexplained wealth regime to enable the restraint and forfeiture of unlawful wealth on the basis that the total wealth of an individual exceeds their lawfully acquired wealth. To obtain an order, the Commonwealth Director of Public Prosecutions needs to show that there are reasonable grounds to suspect that a person's total wealth exceeds the value of the person's wealth that was lawfully acquired.

5.91 Clearly, information provided to the ATO in the course of administering the taxation laws will greatly assist in identifying the source of an individual's wealth. However, as the existing definition of a 'proceeds of crime' order in the taxation law is an order that is referable to the commission of a serious offence, disclosures to law enforcement agencies for the purposes of an unexplained wealth regime would not be permitted (because unexplained wealth orders will not be directly referable to the commission of any offence).

5.92 Accordingly, the new framework amends the definition of a 'proceeds of crime order' to include unexplained wealth orders under the *Proceeds of Crime Act 2002* and any equivalent State legislation. [Schedule 3, item 19]

5.93 There is ostensibly some overlap in the disclosure provisions that relate to ASIC in its law enforcement role and with respect to its other roles (for example, superannuation) (see paragraphs 5.54 to 5.55). However, where ASIC obtains information relating to a serious offence as a prescribed law enforcement agency, the information *must* be disclosed by and to authorised officers (or the head of the agency).

Disclosures to intelligence agencies

5.94 The new framework preserves the existing provisions relating to the disclosure of information by the ATO to an authorised Australian

Security Intelligence Organisation officer (section 3EA of the TAA 1953). The Commissioner, or a taxation officer authorised by the Commissioner, can disclose taxpayer information to an authorised ASIO officer for the purpose of enabling ASIO's functions (listed under subsection 17(1) of the *Australian Security Intelligence Organisation Act 1979*) to be performed. [Schedule 1, item 2, subsection 355-70(1), item 2 in table 1]

Disclosure to Project Wickenby Taskforce and other prescribed taskforces

5.95 In 2007 amendments were made to the secrecy and disclosure provisions in the TAA 1953 to allow the Commissioner to disclose taxpayer information to Project Wickenby Taskforce officers and officers in other taskforces that may be established in the future to protect public finances.

5.96 Project Wickenby is a multi-agency taskforce addressing tax avoidance and evasion involving the use of offshore entities. The 2007 amendments allowed the Commissioner to share information with other government agencies in limited circumstances, in order to facilitate concerted enforcement of Australia's laws.

5.97 These 2007 amendments are replicated in the new framework. For a detailed explanation of these provisions refer to the explanatory memorandum accompanying the Tax Laws Amendment (2007 Measures No. 1) Bill 2007. [Schedule 1, item 1, subsection 355-70(1), item 3 in table 1]

5.98 Both the Project Wickenby and 'other taskforce' disclosures rely on Regulations (at least to some extent). The Project Wickenby disclosure allows agencies to be added to the Project Wickenby taskforce by regulation, thereby allowing officers of those agencies to be given access to taxpayer information. The 'other taskforce' disclosure requires the purposes and agencies of that taskforce to be prescribed.

5.99 When these provisions were first enacted in 2007, the reliance on Regulations in this manner was designed to enable the Government to respond quickly to possible future developments and ensure that taxation secrecy provisions do not impede whole-of-government initiatives to address issues relating to the public revenue. As was recognised with the creation of the Project Wickenby taskforce, legislative secrecy provisions can act as an impediment to timely whole-of-government action to respond to significant problems such as the threat to public finances. The ability to prescribe taskforces is not unfettered — a major purpose of any future taskforce must, like Project Wickenby, be the protection of public finances.

5.100 The new framework makes one minor change to the Project Wickenby provision. The time limit in which disclosures will be authorised under these provisions will be extended from 1 July 2012 to 1 July 2013. This reflects the Government's commitment to fund the Project Wickenby taskforce up until this time.

Disclosures to Royal Commissions

5.101 The existing taxation law secrecy and disclosure provisions permit the disclosure of taxpayer information to both Commonwealth Royal Commissions and prescribed State Royal Commissions (as well as prescribed state boards and commissions of inquiry). Paragraph 16(4)(k) of the ITAA 1936 permits disclosure to Commonwealth Royal Commissions for the purpose of assisting them in the conduct of their inquiry and section 3E of the TAA 1953 permits disclosures to both Commonwealth and State Royal Commissions on the same basis as law enforcement agencies (see above).

5.102 These disclosures are replicated in the new framework.
[Schedule 1, item 1, subsection 355-70(1), items 5 and 6 in table 1]

5.103 Consistent with the existing provisions, the new framework does not allow all Commonwealth Royal Commissions and State Royal Commissions (and boards and commissions of inquiry) to access taxpayer information. This reflects the fact that not all such Commissions will need taxpayer information and that it is important to determine, on a case by case basis, whether such a need exists.

5.104 This is achieved in two ways. Consistent with paragraph 16(4)(k), a Royal Commission that requires access to taxpayer information to conduct its inquiry must have this specified in the Letters Patent issued by the Governor-General that establishes the Royal Commission. Any State Royal Commission, Board or Commission of Inquiry must be prescribed by the Regulations.

5.105 The disclosures to the Fitzgerald Inquiry that were previously contained in section 16A of the ITAA 1936 are repealed by this Bill because the inquiry is no longer active. *[Schedule 2, item 32]*

Chapter 6

Authorised on-disclosures by recipients of taxpayer information

Outline of chapter

- 6.1 This chapter outlines what recipients of taxpayer information who are not taxation officers can do with the information that they receive.
- 6.2 Reference to recipients who are not taxation officers includes both:
- non-taxation officers in lawful receipt of taxpayer information; and
 - non-taxation officers who receive taxpayer information as a result of a breach of a taxation law.

Context of amendments

Operation of current provisions

6.3 Under the current law, taxation secrecy provisions generally continue to control the use and disclosure of taxpayer information, where this information is disclosed outside of the Australian Taxation Office (ATO).

6.4 In governing the on-disclosure of information by non-taxation officers, the current law contains a variety of rules. Some provisions permit on-disclosure in a wide range of circumstances (for example, subsection 16(2A) of the *Income Tax Assessment Act 1936* (ITAA 1936) allows a Commonwealth or State officer who is in receipt of taxpayer information to on-disclose information in the performance of their duties as an officer). In contrast, some provisions detail to whom and in what circumstances on-disclosures are allowed (for example, permitted on-disclosures by Royal Commissions are specified in subsections 16(4A) through to 16(4JC) of the ITAA 1936).

6.5 The current law also recognises that entities that acquire information because of a breach of a taxation law should only be able to disclose that information in limited circumstances.

Summary of new law

6.6 The new framework continues to recognise that the taxation secrecy and disclosure provisions should apply to and limit disclosures of taxpayer information even when that information has been disclosed outside of the ATO.

6.7 In distinguishing between taxation officers and non-taxation officers, the framework also recognises that where taxpayer information is disclosed to a non-taxation officer, such an entity should be able to on-disclose that information for the purpose for which the information was originally disclosed by a taxation officer or for a connected purpose. This is consistent with one of the objectives of the framework as outlined in Chapter 1, to facilitate effective and efficient Government administration and law enforcement.

6.8 The new framework also recognises that in some limited circumstances a non-taxation officer should be able to on-disclose taxpayer information for a purpose that is unconnected to the purpose for which information was disclosed by a taxation officer.

6.9 Consistent with the current law, the new framework provides that where an entity receives taxpayer information in breach of a taxation law, the circumstances in which they can disclose that information should be limited.

Comparison of key features of current law and new law

| <i>New law</i> | <i>Current law</i> |
|---|---|
| Taxpayer information can not be on-disclosed unless under an exception. Anyone (other than a taxation officer) who lawfully acquires taxpayer information under an exception in the new framework may disclose that information for, or in connection with, the original purpose for which the information was disclosed by a taxation officer. | Under a number of taxation secrecy provisions, an 'officer' who lawfully obtains taxpayer information may disclose that information in the performance of their duties as an officer. |

| <i>New law</i> | <i>Current law</i> |
|--|---|
| Commonwealth Royal Commissions, in addition to being able to use information for the purpose of or in connection with the conduct of their inquiries, will also be able to on-disclose taxpayer information in accordance with their own secrecy provisions. | The on-disclosure of taxpayer information obtained by a Royal Commission is prescribed in detail. |

Detailed explanation of new law

Non-taxation officers who lawfully acquire the information

6.10 The explanation below provides guidance on the restrictions placed on the on-disclosure of information provided by the ATO to a non-taxation officer. While most non-taxation officers are limited to only on-disclosing information for the purpose for which the information was originally disclosed (or a connected purpose), in limited circumstances the on-disclosure is not so limited.

6.11 As described in Chapter 3, the offence provisions for non-taxation officers who have received taxpayer information do not capture the disclosure of information to the entity to whom the information relates, or their agent. This recognises the lack of harm in making such disclosures.

On-disclosures for original or connected purpose

6.12 Under the new framework, where taxpayer information is disclosed by a taxation officer to another entity (a non-taxation officer) for a particular purpose, it is not an offence for that entity to on-disclose that information for, or in connection with, the original purpose. [*Schedule 1, item 1, subsection 355-175(1)*]

6.13 Non-taxation officers may on-disclose information acquired from a taxation officer (or from a non-taxation officer) provided that each on-disclosure is for the same purpose as that for which the information was originally disclosed or a connected purpose.

Example 6.1

A taxation officer lawfully disclosed taxpayer information to the Child Support Registrar for the purpose of administering the *Child Support Assessment Act 1989*. It is not an offence for the Registrar to on-disclose that taxpayer information to the Secretary of the Department of Human Services for the purpose of administering the *Child Support Assessment Act 1989* or a connected purpose, or for the Secretary to on-disclose the information to a General Manager within the department for the purpose of administering the *Child Support Assessment Act 1989* or a connected purpose, or for the General Manager to on-disclose the information to a policy officer for the purpose of administering the *Child Support Assessment Act 1989* or a connected purpose. All of these on-disclosures are authorised disclosures as they are made for the same purpose for which the information was originally disclosed by a taxation officer, or for a connected purpose.

Original purpose

6.14 The relevant original purpose is the purpose for which the information was initially disclosed by the taxation officer under an exception in Subdivision 355-B. [*Schedule 1, item 1, paragraph 355-175(1)(a)*]

Example 6.2

Ari, an ATO officer, discloses information to Waleed, an officer of the Australian Securities and Investment Commission (ASIC) for the purpose of enforcing a law ASIC administers that imposes a pecuniary penalty. Waleed can on-disclose the information he receives from Ari, for the purpose of the enforcement of a law ASIC administers that imposes a pecuniary penalty.

Example 6.3

The Australian Federal Police believes that Mr X has stolen property belonging to the Commonwealth and requests copies of Mr X's recent tax returns from the ATO. This information is provided to the Australian Federal Police. After obtaining further information, the Australian Federal Police decide to prosecute Mr X for receiving stolen goods (rather than theft). The Australian Federal Police can on-disclose the information it has obtained from the ATO in the course of prosecuting Mr X (for instance to the Commonwealth Director of Public Prosecutions). While the Australian Federal Police originally received the information for the purpose of investigating whether Mr X had committed theft, the relevant purpose is the enforcement of a law 'the contravention of which is a serious offence'. The on-disclosure, while technically relating to a different offence, is still made for the original purpose (the receipt of stolen goods, like theft, is a serious offence under the *Criminal Code*).

Connected purpose

6.15 A ‘connected purpose’ is one that relates to the original purpose and is incidental to, or arises as a consequence of, any action taken in pursuance of the original purpose.

Example 6.4

A taxation officer lawfully disclosed taxpayer information to the Development Allowance Authority for the purpose of administering the *Development Allowance Authority Act 1992*. It is not an offence for an officer with the delegated responsibilities of the Development Allowance Authority to on-disclose that information for the purpose of administering any regulations associated with the *Development Allowance Authority Act 1992*, as this is connected to the original purpose for which the information was disclosed by the taxation officer.

6.16 A connected purpose includes the purpose of criminal, civil or administrative proceedings related to the original purpose. This extends to disclosures to Courts, external legal advisers or to the Commonwealth Director of Public Prosecutions in relation to proceedings that arise in connection with the original purpose. [*Schedule 1, item 1, subsection 355-175(2)*]

Multiple purposes

6.17 As noted in paragraph 5.81, the new framework facilitates the disclosure of taxpayer information for law enforcement and related purposes. Sometimes there are a number of purposes for which information can be provided to law enforcement agencies, taskforces and certain State Royal Commissions, including the purpose of enforcing a law the contravention of which is a serious offence, investigating the commission of such an offence or the making of a proceeds of crime order. In addition, there are a number of ‘purposes’ of the Project Wickenby taskforces for which taxpayer information can be disclosed.

6.18 While the ‘connected purpose’ should enable an agency or body that received information for one purpose to use that information for another closely related purpose, the new framework puts this result beyond doubt. It does this by ensuring that these agencies or bodies are able to on-disclose taxpayer information they received for one purpose for another purpose for which they could have acquired the information. [*Schedule 1, item 1, subsection 355-175(3)*]

Example 6.5

A taxation officer lawfully discloses taxpayer information to a Project Wickenby officer for the purpose of detecting the promotion of an international tax avoidance arrangement. It is not an offence for that Project Wickenby officer to on-disclose that information for the purpose of investigating an international money laundering arrangement even though that is a different Project Wickenby purpose.

Example 6.6

Taxpayer information is disclosed to Geoff, an Australian Federal Police officer and an authorised law enforcement agency officer under the new framework. The disclosure is made for the purpose of enabling the Australian Federal Police to investigate a suspected case of fraud against the Commonwealth. After investigation, the Australian Federal Police determine that there is sufficient evidence to seek a prosecution for the offence. Geoff discloses the information to Ben, a Crown Prosecutor, for this purpose. After a successful prosecution, Geoff further decides that there is sufficient evidence to seek a proceeds of crime order in relation to the commission of the offence.

While the information was originally obtained from the ATO for the purpose of 'investigating' whether a serious offence has been committed, Geoff is able to on-disclose the information for the purpose of prosecuting (that is, enforcing) the offence and also for the purpose of seeking a proceeds of crime order in relation to the commission of the offence.

On-disclosures to ministers

6.19 As noted in Chapter 4, consistent with the existing law, the new framework limits the circumstances in which taxpayer information can be provided to ministers. However, as with taxation officers, there are legitimate circumstances in which taxpayer information should be able to be provided by non-taxation officers to a minister.

6.20 The new framework recognises this. It is not an offence to on-disclose taxpayer information to a minister who has a statutory power or function in relation to the original purpose where that on-disclosure is to enable the Minister to exercise the power or perform the function (or to decide whether to exercise the power or perform the function). [*Schedule 1, item 1, section 355-180*]

On-disclosures not limited by original or connected purpose

6.21 In addition to the more general on-disclosure provision for the original or a connected purpose, the new framework also permits, in certain limited circumstances, the on-disclosure of taxpayer information for a purpose that may be unconnected to the purpose for which the taxation officer provided the information. These circumstances either reflect on-disclosures permitted by the current law or reflect circumstances where there is a public interest in permitting such on-disclosures.

Australian Security Intelligence Organisation

6.22 Where an authorised Australian Security Intelligence Organisation (ASIO) officer has lawfully obtained taxpayer information under the new framework, the officer is able to on-disclose that information to the Inspector-General of Intelligence and Security (or a member of their staff), for the purpose of enabling the Inspector-General's or the officer's duties to be performed in relation to ASIO (or in relation to ASIO officers and employees). This replicates an on-disclosure provision in the law (section 3EA of the *Taxation Administration Act 1953* (TAA 1953)) which would not necessarily fall within the general on-disclosure provision. [*Schedule 1, item 1, subsection 355-185(1)*]

6.23 Once the information is received by the Inspector-General (or staff members), they may use the information to perform their duties with respect to ASIO. [*Schedule 1, item 1, subsection 355-185(2)*]

6.24 The Inspector-General of Intelligence and Security is also able to lawfully receive information disclosed for the purpose of performing the Inspector-General's or the disclosing officer's duties in relation to ASIO or officers or employees of ASIO. [*Schedule 1, item 1, subsection 355-185(2)*]

Example 6.7

Steve, an ATO officer, discloses taxpayer information under Subdivision 355-B to Alex, an authorised ASIO officer, for the purpose of performing ASIO's functions under the *Australian Security Intelligence Organisation Act 1979*. Alex on-discloses the information to the Inspector-General of Intelligence and Security for the purpose of assisting the Inspector-General to perform his duties in relation to ASIO. It is not an offence for Alex to on-disclose information for this purpose, notwithstanding that it is not the original purpose for which information was originally disclosed by the ATO.

6.25 The framework replicates existing provisions that enable an authorised ASIO officer to on-disclose information to a law enforcement agency for the purposes of investigating or enforcing a law the contravention of which is a serious offence or for the making of a proceeds of crime order. *[Schedule 1, item 1, section 355-190]*

Commonwealth Royal Commissions

6.26 Currently, information that is disclosed to Commonwealth Royal Commissions is subject to very prescriptive on-disclosure provisions. Generally, however, these provisions permit such Commissions to disclose taxpayer information to a range of entities listed in section 6P of the *Royal Commissions Act 1902*. These include a variety of agencies and officers involved in law enforcement, such as the Attorney-General, the Australian Federal Police, the Australian Crime Commission and the Law Enforcement Integrity Commissioner. To substantially simplify these provisions, and ensure that all information that a Commonwealth Royal Commission receives in the course of its inquiry can be disclosed in the same manner, the new framework specifically allows such Royal Commissions to on-disclose taxpayer information in accordance with section 6P. *[Schedule 1, item 1, section 355-195]*

6.27 This change broadens the scope of the use to which Commonwealth Royal Commissions can put taxpayer information, again recognising that the public interest outweighs the impact on a taxpayer's privacy. Royal Commissions occupy a unique place in Australia's system of government, being the highest form of inquiry available to executive government. Royal Commissions are traditionally reserved for rare matters of national significance. As noted above, entities that receive protected information from a Commonwealth Royal Commission will receive that information to assist in law enforcement activities against relevant individuals or corporations. Information is expected to be on-disclosed in rare instances, at the discretion of the Royal Commission, where public interest served by the on-disclosure outweighs the entity's privacy.

Records made in compliance with Australian laws

6.28 In performing its role in administering the Australian taxation system, the ATO may obtain information from a variety of sources. In some limited instances, entities that provide information to the ATO may be required by law to make a record of the disclosure of that information. For instance, where the ATO obtains information about a taxpayer from a credit reporting agency (through issuing an information gathering notice under section 264 of the ITAA 1936), the credit reporting agency is required, under the *Privacy Act 1988 (Cwth)* to make a record of that disclosure.

6.29 Since ‘protected information’ takes a broad meaning and would include ATO compliance activity against a particular taxpayer (see paragraph 2.21) the fact that the ATO has issued a section 264 notice with respect to a particular taxpayer will be protected information. It is not the intent to prevent entities (such as, in the example above, a credit reporting agency) from complying with its other legal obligations. [*Schedule 1, item 1, section 355-200*]

Non-taxation officers who are not in lawful receipt of the information

6.30 As described in Chapter 3, the offence provisions for non-taxation officers who have received taxpayer information do not capture the disclosure of information to the entity to whom the information relates, or their agent. Furthermore, it is an exception to the offence provision if the information is already lawfully available to the public.

6.31 In addition, non-taxation officers who receive taxpayer information because of a breach of a taxation law (that is, one of the offence provisions in the new framework) can only on-disclose that information:

- to the extent that the disclosure is required or permitted by a taxation law; or
- where the disclosure is to a taxation officer for a purpose connected with administering a taxation law.

[*Schedule 1, item 1, section 355-275*]

6.32 Limiting the circumstances in which information that has been acquired as a consequence of a breach of a taxation law recognises the importance of ensuring that the chain of lawful disclosures is maintained.

Example 6.8

Tuan, a journalist, receives taxpayer information as a result of a breach of a taxation law. Being aware that the information has been unlawfully disclosed to him, Tuan decides not to publish the information and instead returns it to the ATO. It is not an offence to on-disclose taxpayer information to the ATO in these circumstances, notwithstanding that it has been unlawfully obtained.

If Tuan were to disclose the information to a non-taxation officer, for example to a journalist for media publication, this would be an offence.

Chapter 7

Other matters

Outline of chapter

7.1 This chapter outlines the provisions in the new framework that relate to:

- oaths and affirmations to be taken by taxation officers; and
- injunctions that can be sought to prevent the disclosure of taxpayer information.

7.2 This chapter also provides information on the application and transitional provisions.

Context of amendments

Operation of current provisions

7.3 Under the current law, taxation officers can be required to take oaths or make affirmations relating to the protection of taxpayer information.

7.4 There are also provisions in the current law that permit the Commissioner of Taxation (Commissioner) to seek an injunction in the Federal Court of Australia to prevent an unauthorised disclosure of taxpayer information.

Summary of new law

7.5 The new framework adopts the existing provisions relating to oaths, affirmations and injunctions.

Detailed explanation of new law

Oaths and affirmations

7.6 The Commissioner has the power to require a taxation officer to make an oath or affirmation to protect information in accordance with the secrecy and disclosure rules. The form of this oath or affirmation is determined by the Commissioner in writing. [*Schedule 1, item 1, section 355-325*]

7.7 The oath or affirmation plays an important role in reminding taxation officers of the importance of maintaining the appropriate confidentiality of an entity's information. As it can be required by the Commissioner as a condition of employment, it ensures that all taxation officers are given the opportunity to understand the serious consequences of any breach of a taxation secrecy provision.

Injunctions

7.8 If an entity has engaged, is engaging, or is proposing to engage, in a breach of the new framework, the Commissioner can apply to the Federal Court for an injunction. The Federal Court may grant an injunction restraining the entity from engaging in a breach or compelling the entity to do a particular thing. [*Schedule 1, item 1, subsection 355-330(1)*]

Example 7.1

Jerome, a journalist, unlawfully obtains information regarding the financial affairs of a prominent business person and decides to include that information in his newspaper article the following day. The Commissioner, who has become aware of this impending unlawful disclosure of taxpayer information, applies to the Federal Court for an injunction. The Federal Court issues an injunction against Jerome and the newspaper preventing them from publishing that information and compelling Jerome to return the information to the ATO.

7.9 The circumstances in which an injunction can be sought replicate the injunction provisions in section 98 of the *Privacy Act 1988* (Privacy Act). The tests for the award of an injunction in both the new framework and in the Privacy Act are materially identical and ensure a

consistent approach to the manner in which taxpayer information under the new framework and personal information under the Privacy Act are protected through application of an injunction.

7.10 The Federal Court can issue an interim injunction pending the determination of the Commissioner's application for an injunction. *[Schedule 1, item 1, subsections 355-330(2) and (3)]*

7.11 The Federal Court also has the power to discharge or vary an injunction previously awarded. *[Schedule 1, item 1, subsections 355-330(2) and (3)]*

7.12 The Federal Court must not require the Commissioner (or any other entity) to give any undertakings as to damages as a condition of the granting of an interim injunction. *[Schedule 1, item 1, subsection 355-330(6)]*

Application and transitional provisions

7.13 The secrecy and disclosure provisions contained in this Bill apply to records and disclosures of taxpayer information after the commencement of this Bill, irrespective of when that information was obtained. *[Schedule 2, item 123]*

7.14 To ensure that all on-disclosures of taxpayer information by non-taxation officers are governed by the on-disclosure provisions (irrespective of when the information was obtained) information obtained before the commencement of the new framework is taken to be information obtained in accordance with the disclosure provisions. *[Schedule 2, item 124]*

7.15 To ensure that there is as little disruption as possible caused by the introduction of the new framework, ASIO officers and law enforcement officers currently authorised to receive information under the existing law, will continue to be able to receive information under the new law. *[Schedule 2, item 125]*

7.16 Until 2001, the *Excise Act 1901* was administered by the Chief Executive Officer of Customs. It was therefore not administered by the Commissioner and was, consequently, not a taxation law. If not for a transitional provision, information obtained under that Act before the administrative responsibility for the *Excise Act 1901* changed would not be subject to any secrecy and disclosure provisions. It is therefore necessary for the secrecy provisions in the *Excise Act 1901* (section 159) to continue to operate with respect to such information. *[Schedule 2, item 126]*

7.17 A similar result is achieved with respect to the *Superannuation Industry (Supervision) Act 1993* (SIS Act). When the Commissioner took over responsibility for the regulation of self-managed superannuation funds, section 252C of the SIS Act was introduced to protect information provided to the Commissioner in the course of performing this function and to other officers who received this information from the Commissioner.

7.18 Information disclosed after the enactment of section 252C is taxpayer information within the new law and is therefore covered by item 124. However, section 252C also included within its own definition of ‘taxpayer information’, information that was obtained or disclosed prior to the commencement of section 252C. Such information would not have been obtained or disclosed under a taxation law (as the Commissioner did not have administration of SIS Act provisions at that time) and it is therefore necessary for section 252C to continue to operate with respect to such information. [*Schedule 2, item 127*]

Regulations

7.19 In making the numerous amendments required under the new framework, any additional transitional provisions that become necessary to ensure a smooth transition can be made by way of regulations. This approach will ensure that there is as little disruption as possible in the transition to the new regime. [*Schedule 5, item 1*].

Repeal of Acts

7.20 The *A New Tax System (Bonuses for Older Australians) Act 1999* was introduced to provide for a one-off bonus for certain taxpayers. It has no ongoing impact. Rather than merely repealing the taxation secrecy provisions contained in that Act, the creation of the new framework provided an opportunity to repeal it in its entirety. [*Schedule 4, item 1*]

Key consequential amendments

7.21 Most of the consequential amendments in the Bill simply update existing references to taxation secrecy and disclosure provisions (either in the taxation law or in other Commonwealth laws) with references to the appropriate provisions in the new framework or repeal existing taxation secrecy and disclosure provisions that are being replaced by the new framework.

7.22 One exception is that the introduction of this framework provides an opportunity to remove certain redundant provisions in the

Privacy Act. Section 17 of that Act provides that the Privacy Commissioner is to publish guidelines on the collection, storage, use and security of tax file numbers (TFN). Subsection 17(4) provides that the interim guidelines in Schedule 2 to the Act would be in effect until such time as the Commissioner has issued new guidelines.

7.23 As new TFN guidelines have, since the enactment of this provision, been published by the Privacy Commissioner, both subsection 17(4) and Schedule 2 to the Privacy Act have no ongoing effect. This Bill repeals those provisions. *[Schedule 2, items 62 and 63]*

Chapter 8

Finding tables

Outline of chapter

8.1 This chapter contains the finding tables.

Finding table

8.2 The following tables list the existing secrecy provisions and disclosure provisions, by Act, and the replacement provisions in the new framework by which they are proposed to be replaced (and vice versa). Note that while there are 20 different taxation laws that contain secrecy and disclosure provisions, only 18 have been amended and are listed below. This is because this framework does not include the *A New Tax System (Australian Business Number) Act 1999* and the *Tax Agent Services Act 2009* provisions for reasons outlined in Chapter 1.

8.3 While the secrecy and disclosure provisions in the various taxation law Acts listed below generally have their own definition sections, these are generally not listed below (though they will be repealed as a consequence of this Bill). This is because many of the definitions are no longer necessary as a consequence of the new framework and have therefore not been replicated. Of note however, many of the provisions listed below refer to both ‘protected information’ and ‘protected documents’. These have now been amalgamated into a single definition of ‘protected information’ found in subsection 355-25(2) of this Bill.

8.4 In addition, the definitions of ‘officer’ and ‘persons to whom this section applies’ (and other such definitions that identify which persons are subject to the secrecy provisions) have not been listed below. These have been replaced with definitions of ‘taxation officer’ in subsection 355-25(1) and the use of the term ‘entity’ in section 355-155.

Finding table — Current law/new law

Table 8.1: *Excise Act 1901*

| <i>Current law</i> | <i>New law</i> |
|--------------------|--------------------------------|
| 159(2) | 355-25 and 355-155 |
| 159(3)(a) | 355-50 |
| 159(3)(b) | 355-50 (for taxation officers) |
| 159(3)(c)(i) | 355-65 (table 7 item 2) |
| 159(3)(c)(ii) | 355-65 (table 7 item 1) |
| 159(3)(c)(ia) | 355-50 |
| 159(3)(c)(iii) | 355-50 |
| 159(3)(c)(iv) | 355-50 |
| 159(3)(c)(v) | 355-65 (table 1 item 1) |
| 159(3)(c)(vi) | 355-65 (table 1 item 1) |
| 159(3)(d)(i) | 355-65 (table 7 item 2) |
| 159(3)(d)(ii) | 355-65 (table 7 item 1) |
| 159(3)(d)(ia) | 355-50 |
| 159(3)(d)(iii) | 355-50 |
| 159(3)(d)(iv) | 355-65 (table 1 item 1) |
| 159(3)(d)(v) | 355-65 (table 1 item 1) |
| 159(3A) | 355-50 |
| 159(3B) | 355-30(2) |
| 159(4) | 355-60(1) and 355-210(1) |
| 159(5) | 355-75 and 355-205 |

Table 8.2: *First Home Saver Accounts Act 2008*

| <i>Current law</i> | <i>New law</i> |
|--------------------|--|
| 70(2) | 355-25, 355-155 and 355-50 (for taxation officers) |
| 70(3) | 355-50 |
| 70(4) | 355-60(1) and 355-210(1) |
| 70(5) | 355-75 and 355-205 |
| 70(6) | 355-50 |
| 70(7) | 355-50 |
| 70(7A) | 355-65 (table 2 item 6 and table 3 item 5) |
| 70(8) | 355-325 |

Table 8.3: Fringe Benefits Tax Assessment Act 1986

| <i>Current law</i> | <i>New law</i> |
|--------------------|--------------------------|
| 5(2) | 355-15 |
| 5(3) | 355-25 and 355-155 |
| 5(3A) | 355-50 |
| 5(4) | 355-75 and 355-205 |
| 5(5)(a) | 355-50 |
| 5(5)(b) | 355-50 |
| 5(5)(c) | 355-65 (table 1 item 1) |
| 5(5)(d) | 355-65 (table 1 item 1) |
| 5(6) | 355-60(1) and 355-210(1) |
| 5(7) | 355-325 |

Table 8.4: Income Tax Assessment Act 1936

| <i>Current law</i> | <i>New law</i> |
|--------------------|--------------------------------|
| 16(1A) | 355-15 |
| 16(2) | 355-25 and 355-155 |
| 16(2A) | 355-50 (for taxation officers) |
| 16(3) | 355-75 and 355-205 |
| 16(4)(a) | 355-50 |
| 16(4)(b) | 355-50 |
| 16(4)(c) | 355-50 |
| 16(4)(d) | 355-65 (table 1 item 3) |
| 16(4)(e) | 355-65 (table 1 item 1) |
| 16(4)(ea) | 355-65 (table 1 item 4) |
| 16(4)(eb) | 355-65 (table 1 item 1) |
| 16(4)(f) | 355-65 (table 1 item 2) |
| 16(4)(fa) | Nil. No longer necessary. |
| 16(4)(fb) | 355-65 (table 1 item 8) |
| 16(4)(fc) | 355-65 (table 1 item 6) |
| 16(4)(fd) | 355-65 (table 5 item 1) |
| 16(4)(g) | 355-65 (table 5 item 1) |
| 16(4)(gaa) | 355-65 (table 5 item 1) |
| 16(4)(ga) | 355-65 (table 7 item 1) |
| 16(4)(gb) | 355-65 (table 7 item 1) |
| 16(4)(h) | 355-65 (table 5 item 2) |
| 16(4)(ha) | Nil. No longer necessary. |

| <i>Current law</i> | <i>New law</i> |
|--------------------|--|
| 16(4)(hb) | 355-65 (table 1 item 5) |
| 16(4)(hba) | 355-65 (table 4 item 3) |
| 16(4)(hc) | Nil. No equivalent. |
| 16(4)(hca) | 355-65 (table 2 item 4 and table 3 item 3) |
| 16(4)(hcaa) | 355-65 (table 2 item 6 and table 3 item 5) |
| 16(4)(hcb) | 355-65 (table 2 item 4) |
| 16(4)(hd) | 355-65 (table 7 item 3) |
| 16(4)(j) | Nil. No longer necessary. |
| 16(4)(ja) | 355-65 (table 1 item 7) |
| 16(4)(k) | 355-70(1) (table 1 item 5) |
| 16(4)(l) | 355-55 (item 1) |
| 16(4)(m) | 355-65 (table 3 item 6) |
| 16(4AA) to 16(4JC) | On disclosure of information obtained by a Commonwealth Royal Commission is governed by 355-195. |
| 16(5) | 355-155 |
| 16(5A) | 355-60(1) and 355-210(1) |
| 16(5B) | 355-50 (other than to a minister) |
| 16(5C) | 355-155 and 355-210(1) |
| 16(5CA) | 355-50 (for taxation officers) |
| 16(5D) | 355-75 and 355-205 |
| 16(6) | 355-325 |
| 16A | Nil. No longer necessary. |

Table 8.5: *Income Tax Assessment Act 1997*

| <i>Current law</i> | <i>New law</i> |
|--------------------|---|
| 30-229(5) | 355-50 |
| 396-95(1) | 355-50 (table item 1) and 355-55 (table item 1) |
| 396-95(2) | 355-25 and 355-155 |
| 396-100 | Nil. No longer necessary. |

Table 8.6: *International Tax Agreements Act 1953*

| <i>Current law</i> | <i>New law</i> |
|--------------------|----------------|
| 23(2) | 355-50 |

Table 8.7: Petroleum Resource Rent Tax Assessment Act 1987

| <i>Current law</i> | <i>New law</i> |
|--------------------|--------------------------|
| 17(3) | 355-25 and 355-155 |
| 17(3A) | 355-50 |
| 17(4) | 355-75 and 355-205 |
| 17(5)(a) | 355-50 |
| 17(5)(b) | 355-50 |
| 17(6) | 355-60(1) and 355-210(1) |
| 17(7) | 355-325 |
| 18(1) | Nil. No equivalent. |
| 18(2) | 355-50 and 355-55 |
| 18(3) | 355-25 |

Table 8.8: Product Grants and Benefits Administration Act 2000

| <i>Current law</i> | <i>New law</i> |
|--------------------|--------------------------------|
| 47(2) | 355-25 and 355-155 |
| 47(3)(a) | 355-50 |
| 47(3)(b) | 355-50 (for taxation officers) |
| 47(3)(c)(i) | 355-65(1) (table 7 item 1) |
| 47(3)(c)(ib) | 355-65(1) (table 6 item 2) |
| 47(3)(c)(ic) | 355-65(1) (table 6 item 1) |
| 47(3)(c)(ii) | 355-50 |
| 47(3)(c)(iii) | 355-50 |
| 47(3)(c)(iv) | 355-65 (table 1 item 1) |
| 47(3)(c)(v) | 355-65 (table 1 item 1) |
| 47(3)(d)(i) | 355-65(table 7 item 1) |
| 47(3)(d)(ib) | 355-65 (table 6 item 2) |
| 47(3)(d)(ic) | 355-65(1) (table 6 item 1) |
| 47(3)(d)(ii) | 355-50 |
| 47(3)(d)(iii) | 355-65 (table 1 item 1) |
| 47(3)(d)(iv) | 355-65 (table 1 item 1) |
| 47(4) | 355-60(1) and 355-210(1) |

Table 8.9: Superannuation Contributions Tax (Assessment and Collection) Act 1997

| <i>Current law</i> | <i>New law</i> |
|--------------------|--|
| 32(2) | 355-25, 355-155 and 355-50 (for taxation officers) |
| 32(3) | 355-50 |
| 32(4) | 355-60(1) and 355-210(1) |
| 32(5) | 355-75 and 355-205 |
| 32(6) | 355-50 |
| 32(7) | 355-50 |
| 32(8) | 355-65 (table 2 item 4 and table 3 item 3) |
| 32(9) | 355-325 |

Table 8.10: Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997

| <i>Current law</i> | <i>New law</i> |
|--------------------|--|
| 28(2) | 355-25, 355-155 and 355-50 (for taxation officers) |
| 28(3) | 355-50 |
| 28(4) | 355-60(1) and 355-210(1) |
| 28(5) | 355-75 and 355-205 |
| 28(6) | 355-50 |
| 28(7) | 355-50 |
| 28(8) | 355-65 (table 2 item 4 and table 3 item 3) |
| 28(9) | 355-325 |

Table 8.11: Superannuation (Government Co-contributions for Low Income Earners) Act 2003

| <i>Current law</i> | <i>New law</i> |
|--------------------|--|
| 53(2) | 355-25, 355-155 and 355-50 (for taxation officers) |
| 53(3) | 355-50 |
| 53(4) | 355-60(1) and 355-210(1) |
| 53(5) | 355-75 and 355-205 |
| 53(6) | 355-50 |

| <i>Current law</i> | <i>New law</i> |
|--------------------|--|
| 53(7) | 355-50 |
| 53(8) | 355-65 (table 2 item 4 and table 3 item 3) |
| 53(9) | 355-325 |

Table 8.12: Superannuation Guarantee (Administration) Act 1992

| <i>Current law</i> | <i>New law</i> |
|--------------------|--------------------------------|
| 45(2) | 355-25 and 355-155 |
| 45(2A) | 355-50 (for taxation officers) |
| 45(3) | 355-50 |
| 45(4) | 355-60(1) and 355-210(1) |
| 45(5) | 355-75 and 355-205 |
| 45(6) | 355-50 |
| 45(7) | 355-50 |
| 45(8) | 355-325 |
| 45A | 355-65 (table 2 item 7) |

Table 8.13: Superannuation Industry (Supervision) Act 1993

| <i>Current law</i> | <i>New law</i> |
|--------------------|----------------------------------|
| 252C(2) | 355-25 and 355-155 |
| 252C(3) | 355-50 |
| 252C(4)(a) | 355-25(b)(ii) and 355-155(a)(ii) |
| 252C(4)(b) | Nil. No equivalent. |
| 252C(5)(a) | 355-65 (table 2 item 2) |
| 252C(5)(b) | Nil. No equivalent. |
| 252C(6) | 355-50 |
| 252C(7) | 355-30(1)(c) |
| 252C(7A) | 355-65 (table 2 item 8) |
| 252C(7B) | 355-50 |
| 252C(8) | 355-75 and 355-205 |
| 252C(9) | Nil. No equivalent. |
| 252C(10) | Nil. No equivalent. |
| 252C(11) | Schedule 2, item 26 |

Table 8.14: Superannuation (Unclaimed Money and Lost Members) Act 1999

| <i>Current law</i> | <i>New law</i> |
|--------------------|--|
| 31(2) and (3) | 355-325 |
| 32 | 355-25, 355-155 and 355-50 (for taxation officers) |
| 33 | 355-75 and 355-205 |
| 34 | 355-50 |
| 35 | 355-50 |
| 36 | 355-50 |
| 38(a) | 355-65 (table 2 item 5) |
| 38(b) | 355-50 and 355- 55 (table item 1) |
| 38(c) | 355-65 (table 2 item 3) |
| 38(d) | 355-65 (table 3 item 2) |
| 38(e) | 355-65 (table 2 item 1) |
| 38(f) | 355-65 (table 7 item 1) |
| 39 | 355-175 |

Table 8.15: Taxation Administration Act 1953

| <i>Current law</i> | <i>New law</i> |
|--------------------|-----------------------|
| 3C(1AB) | Nil. No equivalent. |
| 3C(1A) | 355-15 |
| 3C(2) | 355-25 and 355-155 |
| 3C(2A) | 355-50 |
| 3C(3) | 355-75 and 355-205 |
| 3C(4) | 355-50 |
| 3C(5) | 355-60(1) and 355-210 |
| 3C(6) | 355-325 |
| 3C(7) | 355-30(1) |
| 3C(8) | Nil. No equivalent. |
| 3C(9) | Nil. No equivalent. |
| 3D(1) | 355-50 |
| 3D(2)(a) | 355-195 |
| 3D(2)(b) | Nil. No equivalent. |
| 3D(4) to (10) | Nil. No equivalent. |
| 3D(11)(ba) | 355-30(1) |
| 3D(11)(c) | 355-30(1) |

| <i>Current law</i> | <i>New law</i> |
|--------------------|--|
| 3D(11)(ca) | 355-175 |
| 3D(11)(d) | 355-175 |
| 3D(11)(e) | 355-175 |
| 3D(11)(f) | 355-175 |
| 3D(11)(g) and (h) | 355-155 |
| 3D(11)(j)(i) | 355-155 |
| 3D(11)(j)(ii) | 355-155 |
| 3D(12)(a) | 355-155(a)(ii) |
| 3D(12)(b)(i) | 355-155(a)(ii) |
| 3D(12)(b)(ii) | 355-155(a)(ii) |
| 3D(12)(c) | 355-155(a)(ii) |
| 3D(13) | 355-155(a)(ii) |
| 3D(14) | 355-155 |
| 3D(15) | 355-155 |
| 3D(15A) | 355-175 |
| 3D(15B) | 355-175 |
| 3D(16) | 355-175 |
| 3D(17) | 355-155 |
| 3D(18) | 355-155 |
| 3D(19) | 355-205 |
| 3E(1) | 355-70(1) (table 1, items 1, 5 and 6) |
| 3E(2) | 355-155 |
| 3E(2A) | 355-175 |
| 3E(2B) | 355-155 |
| 3E(2C) | 355-175 |
| 3E(3) | 355-205 |
| 3E(4)(a) | 355-175 |
| 3E(4)(b) | 355-175 and 355-205 |
| 3E(5) | 355-155 |
| 3E(5A) | 355-175 |
| 3E(6) | 355-205 |
| 3E(6A) to 3E(6D) | On-disclosures by Commonwealth Royal Commissions governed by 355-175 and 355-210. On-disclosures by State Royal Commissions governed by 355-175. |
| 3E(7) | 355-25 and 355-155 |
| 3E(8) | Nil. No equivalent. |

| <i>Current law</i> | <i>New law</i> |
|--------------------|----------------------------|
| 3E(9) | 355-175 |
| 3E(10) | 355-175 |
| 3EA(1) | 355-70(1)(table 1, item 2) |
| 3EA(2) | 355-155 |
| 3EA(3)(a) | 355-175 |
| 3EA(3)(b) | 355-175 |
| 3EA(3)(c) | 355-175 |
| 3EA(3)(d) | 355-185 |
| 3EA(3)(e) | 355-175 |
| 3EA(4) | 355-205 and 355-155 |
| 3EA(5) | 355-175 |
| 3EB(1) | 355-155 |
| 3EB(2) | 355-175 |
| 3EB(3) | 355-205 |
| 3EC(1) | 355-155 |
| 3EC(2)(a) and (b) | 355-175 |
| 3EC(2)(c) | 355-175 |
| 3EC(3) | 355-205 and 355-155 |
| 3F(1) | 355-65 (table 7 item 2) |
| 3F(2) | Nil. No equivalent. |
| 3G(1) | 355-70(1) (table 1 item 3) |
| 3G(2) | 355-70(6) |
| 3G(3) | 355-70(7) |
| 3G(4) | 355-70(8) |
| 3G(5) | 355-70(9) |
| 3G(6) | 355-155 |
| 3G(7) | 355-175 |
| 3G(8) | 355-175 |
| 3G(9) | 355-155 |
| 3G(10) | 355-175 |
| 3G(11) | 355-205 |
| 3G(12) | Nil. No equivalent. |
| 3H(1) | 355-70(1) (table 1 item 4) |
| 3H(2) | 355-70(11) |
| 3H(3) | 355-70(12) |
| 3H(4) | 355-70(13) |
| 3H(5) | 355-155 |

| <i>Current law</i> | <i>New law</i> |
|-------------------------|--------------------------|
| 3H(6) | 355-175 |
| 3H(7) | 355-175 |
| 3H(8) | 355-155 |
| 3H(9) | 355-175 |
| 3H(10) | 355-205 |
| 3H(11) | Nil. No equivalent. |
| 8XB(1) | 355-265 |
| 8XB(1A) | 355-275 |
| 8XB(2) | 355-265 |
| 8XB(3) | 355-275 |
| 8XB(4) | 355-280 |
| 13H(1) | 355-155 |
| 13H(1A) | 355-175 |
| 13H(2) | 355-75 and 355-205 |
| 13H(3) | 355-60(1) and 355-210(1) |
| 13J(1) | 355-65 (table 4 item 1) |
| 13J(2) | 355-155 |
| 13J(2A) | 355-175 |
| 13J(3) | 355-205 |
| 13J(4) | 355-210(1) |
| 13J(5) | Nil. No equivalent. |
| 13J(8) | Nil. No equivalent. |
| 13J(9) | 355-65 (table 4 item 2) |
| 355-5(1) of Schedule 1 | Nil. No equivalent. |
| 355-5(2) | 355-25 and 355-155 |
| 355-5(3) | Nil. No equivalent. |
| 355-(4) | 355-50 |
| 355-5(5) (table item 1) | 355-50 |
| 355-5(5) (table item 2) | 355-50 (table item 3) |
| 355-5(5) (table item 3) | 355-65 (table 7 item 1) |
| 355-5(5) (table item 4) | 355-65 (table 1 item 1) |
| 355-5(5) (table item 5) | 355-65 (table 7 item 2) |
| 355-5(5) (table item 6) | 355-65 (table 1 item 1) |
| 355-5(5) (table item 7) | 355-65 (table 4 item 4) |
| 355-5(6) | 355-75 and 355-205 |

Table 8.16: Taxation (Interest on Overpayments and Early Payments) Act 1983

| <i>Current law</i> | <i>New law</i> |
|--------------------|--------------------------|
| 8(2) | 355-25 and 355-155 |
| 8(2A) | 355-50 |
| 8(3) | 355-75 and 355-205 |
| 8(4) | 355-50 |
| 8(5) | 355-60(1) and 355-210(1) |
| 8(6) | 355-325 |

Table 8.17: Termination Payments Tax (Assessment and Collection) Act 1997

| <i>Current law</i> | <i>New law</i> |
|--------------------|--|
| 23(2) | 355-25, 355-155 and 355-50 (for taxation officers) |
| 23(3) | 355-50 |
| 23(4) | 355-60(1) and 355-210(1) |
| 23(5) | 355-75 and 355-205 |
| 23(6) | 355-50 |
| 23(7) | 355-50 |
| 23(8) | 355-325 |

Table 8.18: A New Tax System (Bonuses for older Australians) Act 1999

| <i>Current law</i> | <i>New law</i> |
|--------------------|---|
| Section 54 | This Act is being repealed in its entirety. |

Finding tables — New law/current law

Table 8.19: Excise Act 1901

| <i>New law</i> | <i>Current law</i> |
|--------------------------------|--------------------|
| 355-25 and 355-155 | 159(2) |
| 355-30(2) | 159(3B) |
| 355-50 | 159(3)(a) |
| 355-50 | 159(3)(c)(ia) |
| 355-50 | 159(3)(c)(iii) |
| 355-50 | 159(3)(c)(iv) |
| 355-50 | 159(3)(d)(ia) |
| 355-50 | 159(3)(d)(iii) |
| 355-50 | 159(3A) |
| 355-50 (for taxation officers) | 159(3)(b) |
| 355-60(1) and 355-210(1) | 159(4) |
| 355-65 (table 1 item 1) | 159(3)(c)(v) |
| 355-65 (table 1 item 1) | 159(3)(c)(vi) |
| 355-65 (table 1 item 1) | 159(3)(d)(iv) |
| 355-65 (table 1 item 1) | 159(3)(d)(v) |
| 355-65 (table 7 item 1) | 159(3)(c)(ii) |
| 355-65 (table 7 item 1) | 159(3)(d)(ii) |
| 355-65 (table 7 item 2) | 159(3)(c)(i) |
| 355-65 (table 7 item 2) | 159(3)(d)(i) |
| 355-75 and 355-205 | 159(5) |

Table 8.20: First Home Saver Accounts Act 2008

| <i>New law</i> | <i>Current law</i> |
|--|--------------------|
| 355-25, 355-155 and 355-50 (for taxation officers) | 70(2) |
| 355-50 | 70(3) |
| 355-50 | 70(6) |
| 355-50 | 70(7) |
| 355-60(1) and 355-210(1) | 70(4) |
| 355-65 (table 2 item 6 and table 3 item 5) | 70(7A) |
| 355-75 and 355-205 | 70(5) |
| 355-325 | 70(8) |

Table 8.21: Fringe Benefits Tax Assessment Act 1986

| <i>New law</i> | <i>Current law</i> |
|--------------------------|--------------------|
| 355-15 | 5(2) |
| 355-25 and 355-155 | 5(3) |
| 355-50 | 5(3A) |
| 355-50 | 5(5)(a) |
| 355-50 | 5(5)(b) |
| 355-60(1) and 355-210(1) | 5(6) |
| 355-65 (table 1 item 1) | 5(5)(c) |
| 355-65 (table 1 item 1) | 5(5)(d) |
| 355-75 and 355-205 | 5(4) |
| 355-325 | 5(7) |

Table 8.22: Income Tax Assessment Act 1936

| <i>New law</i> | <i>Current law</i> |
|--|--------------------|
| 355-15 | 16(1A) |
| 355-25 and 355-155 | 16(2) |
| 355-50 | 16(4)(a) |
| 355-50 | 16(4)(b) |
| 355-50 | 16(4)(c) |
| 355-50 (for taxation officers) | 16(2A) |
| 355-50 (for taxation officers) | 16(5CA) |
| 355-50 (other than to a minister) | 16(5B) |
| 355-55 (item 1) | 16(4)(l) |
| 355-60(1) and 355-210(1) | 16(5A) |
| 355-65 (table 1 item 6) | 16(4)(fc) |
| 355-65 (table 1 item 1) | 16(4)(e) |
| 355-65 (table 1 item 1) | 16(4)(eb) |
| 355-65 (table 1 item 2) | 16(4)(f) |
| 355-65 (table 1 item 3) | 16(4)(d) |
| 355-65 (table 1 item 4) | 16(4)(ea) |
| 355-65 (table 1 item 5) | 16(4)(hb) |
| 355-65 (table 1 item 7) | 16(4)(ja) |
| 355-65 (table 1 item 8) | 16(4)(fb) |
| 355-65 (table 2 item 4 and table 3 item 3) | 16(4)(hca) |
| 355-65 (table 2 item 4) | 16(4)(hcb) |

| <i>New law</i> | <i>Current law</i> |
|--|--------------------|
| 355-65 (table 2 item 6 and table 3 item 5) | 16(4)(hcaa) |
| 355-65 (table 3 item 6) | 16(4)(m) |
| 355-65 (table 4 item 3) | 16(4)(hba) |
| 355-65 (table 5 item 1) | 16(4)(fd) |
| 355-65 (table 5 item 1) | 16(4)(g) |
| 355-65 (table 5 item 1) | 16(4)(gaa) |
| 355-65 (table 5 item 2) | 16(4)(h) |
| 355-65 (table 7 item 1) | 16(4)(ga) |
| 355-65 (table 7 item 1) | 16(4)(gb) |
| 355-65 (table 7 item 3) | 16(4)(hd) |
| 355-70(1) (table 1 item 5) | 16(4)(k) |
| 355-75 and 355-205 | 16(3) |
| 355-75 and 355-205 | 16(5D) |
| 355-155 | 16(5) |
| 355-155 and 355-210(1) | 16(5C) |
| 355-325 | 16(6) |
| Nil. No equivalent. | 16(4)(hc) |
| Nil. No equivalent. | 16(4)(fa) |
| Nil. No equivalent. | 16(4)(j) |
| Nil. No equivalent. | 16A |
| Nil. No equivalent. | 16(4)(ha) |
| On disclosure of information obtained by a Commonwealth Royal Commission is governed by 355-195. | 16(4AA) to 16(4JC) |

Table 8.23: *Income Tax Assessment Act 1997*

| <i>New law</i> | <i>Current law</i> |
|---|--------------------|
| 355-25 and 355-155 | 396-95(2) |
| 355-50 | 30-229(5) |
| 355-50 (table item 1) and 355-55 (table item 1) | 396-95(1) |
| Nil. No longer necessary. | 396-100 |

Table 8.24: *International Tax Agreements Act 1953*

| <i>New law</i> | <i>Current law</i> |
|----------------|--------------------|
| 355-50 | 23(2) |

Table 8.25: Petroleum Resource Rent Tax Assessment Act 1987

| <i>New law</i> | <i>Current law</i> |
|--------------------------|--------------------|
| 355-25 | 18(3) |
| 355-25 and 355-155 | 17(3) |
| 355-50 | 17(3A) |
| 355-50 | 17(5)(a) |
| 355-50 | 17(5)(b) |
| 355-50 and 355-55 | 18(2) |
| 355-60(1) and 355-210(1) | 17(6) |
| 355-75 and 355-205 | 17(4) |
| 355-325 | 17(7) |
| Nil. No equivalent. | 18(1) |

Table 8.26: Product Grants and Benefits Administration Act 2000

| <i>New law</i> | <i>Current law</i> |
|--------------------------------|--------------------|
| 355-25 and 355-155 | 47(2) |
| 355-50 | 47(3)(a) |
| 355-50 | 47(3)(c)(ii) |
| 355-50 | 47(3)(c)(iii) |
| 355-50 | 47(3)(d)(ii) |
| 355-50 (for taxation officers) | 47(3)(b) |
| 355-60(1) and 355-210(1) | 47(4) |
| 355-65 (table 1 item 1) | 47(3)(c)(iv) |
| 355-65 (table 1 item 1) | 47(3)(c)(v) |
| 355-65 (table 1 item 1) | 47(3)(d)(iii) |
| 355-65 (table 1 item 1) | 47(3)(d)(iv) |
| 355-65 (table 6 item 2) | 47(3)(d)(ib) |
| 355-65(1) (table 6 item 1) | 47(3)(c)(ic) |
| 355-65(1) (table 6 item 1) | 47(3)(d)(ic) |
| 355-65(1) (table 6 item 2) | 47(3)(c)(ib) |
| 355-65(1) (table 7 item 1) | 47(3)(c)(i) |
| 355-65 (table 7 item 1) | 47(3)(d)(i) |

Table 8.27: Superannuation Contributions Tax (Assessment and Collection) Act 1997

| <i>New law</i> | <i>Current law</i> |
|--|--------------------|
| 355-25, 355-155 and 355-50 (for taxation officers) | 32(2) |
| 355-50 | 32(3) |
| 355-50 | 32(6) |
| 355-50 | 32(7) |
| 355-60(1) and 355-210(1) | 32(4) |
| 355-65 (table 2 item 4 and table 3 item 3) | 32(8) |
| 355-75 and 355-205 | 32(5) |
| 355-325 | 32(9) |

Table 8.28: Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997

| <i>New law</i> | <i>Current law</i> |
|--|--------------------|
| 355-25, 355-155 and 355-50 (for taxation officers) | 28(2) |
| 355-50 | 28(3) |
| 355-50 | 28(6) |
| 355-50 | 28(7) |
| 355-60(1) and 355-210(1) | 28(4) |
| 355-65 (table 2 item 4 and table 3 item 3) | 28(8) |
| 355-75 and 355-205 | 28(5) |
| 355-325 | 28(9) |

Table 8.29: Superannuation (Government Co-contributions for Low Income Earners) Act 2003

| <i>New law</i> | <i>Current law</i> |
|--|--------------------|
| 355-25, 355-155 and 355-50 (for taxation officers) | 53(2) |
| 355-50 | 53(3) |
| 355-50 | 53(6) |
| 355-50 | 53(7) |
| 355-60(1) and 355-210(1) | 53(4) |

| <i>New law</i> | <i>Current law</i> |
|--|--------------------|
| 355-65 (table 2 item 4 and table 3 item 3) | 53(8) |
| 355-75 and 355-205 | 53(5) |
| 355-325 | 53(9) |

Table 8.30: Superannuation Guarantee (Administration) Act 1992

| <i>New law</i> | <i>Current law</i> |
|--------------------------------|--------------------|
| 355-25 and 355-155 | 45(2) |
| 355-50 | 45(3) |
| 355-50 | 45(6) |
| 355-50 | 45(7) |
| 355-50 (for taxation officers) | 45(2A) |
| 355-60(1) and 355-210(1) | 45(4) |
| 355-65 (table 2 item 7) | 45A |
| 355-75 and 355-205 | 45(5) |
| 355-325 | 45(8) |

Table 8.31: Superannuation Industry (Supervision) Act 1993

| <i>New law</i> | <i>Current law</i> |
|----------------------------------|--------------------|
| 355-25 and 355-155 | 252C(2) |
| 355-25(b)(ii) and 355-155(a)(ii) | 252C(4)(a) |
| 355-30(1)(c) | 252C(7) |
| 355-50 | 252C(3) |
| 355-50 | 252C(6) |
| 355-50 | 252C(7B) |
| 355-65 (table 2 item 2) | 252C(5)(a) |
| 355-65 (table 2 item 8) | 252C(7A) |
| 355-75 and 355-205 | 252C(8) |
| Schedule 2, item 26 | 252C(11) |
| Nil. No equivalent. | 252C(5)(b) |
| Nil. No equivalent. | 252C(9) |
| Nil. No equivalent. | 252C(10) |
| Nil. No equivalent. | 252C(4)(b) |

Table 8.32: Superannuation (Unclaimed Money and Lost Members) Act 1999

| <i>New law</i> | <i>Current law</i> |
|--|--------------------|
| 355-25, 355-155 and 355-50 (for taxation officers) | 32 |
| 355-50 | 34 |
| 355-50 | 35 |
| 355-50 | 36 |
| 355-50 and 355- 55 (table item 1) | 38(b) |
| 355-65 (table 2 item 1) | 38(e) |
| 355-65 (table 2 item 3) | 38(c) |
| 355-65 (table 2 item 5) | 38(a) |
| 355-65 (table 3 item 2) | 38(d) |
| 355-65 (table 7 item 1) | 38(f) |
| 355-75 and 355-205 | 33 |
| 355-175 | 39 |
| 355-325 | 31(2) and (3) |

Table 8.33: Taxation Administration Act 1953

| <i>New law</i> | <i>Current law</i> |
|--------------------------|-------------------------|
| 355-15 | 3C(1A) |
| 355-25 and 355-155 | 3C(2) |
| 355-25 and 355-155 | 3E(7) |
| 355-25 and 355-155 | 355-5(2) |
| 355-30(1) | 3C(7) |
| 355-30(1) | 3D(11)(ba) |
| 355-30(1) | 3D(11)(c) |
| 355-50 | 3C(2A) |
| 355-50 | 3C(4) |
| 355-50 | 3D(1) |
| 355-50 | 355-5(4) |
| 355-50 | 355-5(5) (table item 1) |
| 355-50 (table item 3) | 355-5(5) (table item 2) |
| 355-60(1) and 355-210(1) | 3C(5) |
| 355-60(1) and 355-210(1) | 13H(3) |
| 355-65 (table 1 item 1) | 355-5(5) (table item 4) |
| 355-65 (table 1 item 1) | 355-5(5) (table item 6) |

| <i>New law</i> | <i>Current law</i> |
|----------------------------|-------------------------|
| 355-65 (table 4 item 1) | 13J(1) |
| 355-65 (table 4 item 2) | 13J(9) |
| 355-65 (table 4 item 4) | 355-5(5) (table item 7) |
| 355-65 (table 7 item 1) | 355-5(5) (table item 3) |
| 355-65 (table 7 item 2) | 3F(1) |
| 355-65 (table 7 item 2) | 355-5(5) (table item 5) |
| 355-70(1) (table 1 item 3) | 3G(1) |
| 355-70(1) (table 1 item 4) | 3H(1) |
| 355-70(1) (table 1 item 5) | 3E(1) |
| 355-70(11) | 3H(2) |
| 355-70(12) | 3H(3) |
| 355-70(13) | 3H(4) |
| 355-70(2) | 3EA(1) |
| 355-70(6) | 3G(2) |
| 355-70(7) | 3G(3) |
| 355-70(8) | 3G(4) |
| 355-70(9) | 3G(5) |
| 355-75 and 355-205 | 355-5(6) |
| 355-75 and 355-205 | 3C(3) |
| 355-75 and 355-205 | 13H(2) |
| 355-155 | 13H(1) |
| 355-155 | 3D(11)(g) and (h) |
| 355-155 | 3D(14) |
| 355-155 | 3D(15) |
| 355-155 | 3D(17) |
| 355-155 | 3E(2) |
| 355-155 | 3E(2B) |
| 355-155 | 3E(5) |
| 355-155 | 3EA(2) |
| 355-155 | 3EB(1) |
| 355-155 | 3EC(1) |
| 355-155 | 3G(6) |
| 355-155 | 3G(9) |
| 355-155 | 3H(5) |
| 355-155 | 3H(8) |
| 355-155 | 13J(2) |
| 355-155 and 355-155 | 3D(11)(j)(ii) |

| <i>New law</i> | <i>Current law</i> |
|---------------------|--------------------|
| 355-155(a)(ii) | 3D(12)(a) |
| 355-155(a)(ii) | 3D(12)(b)(i) |
| 355-155(a)(ii) | 3D(12)(b)(ii) |
| 355-155(a)(ii) | 3D(12)(c) |
| 355-155(a)(ii) | 3D(13) |
| 355-175 | 3D(11)(ca) |
| 355-175 | 3D(11)(d) |
| 355-175 | 3D(11)(e) |
| 355-175 | 3D(11)(f) |
| 355-175 | 3D(16) |
| 355-175 | 3D(15A) |
| 355-175 | 3D(15B) |
| 355-175 | 3D(18) |
| 355-175 | 3E(2A) |
| 355-175 | 3E(2C) |
| 355-175 | 3E(4)(a) |
| 355-175 | 3E(5A) |
| 355-175 | 3E(9) |
| 355-175 | 3E(10) |
| 355-175 | 3EA(3)(a) |
| 355-175 | 3EA(3)(b) |
| 355-175 | 3EA(3)(c) |
| 355-175 | 3EA(3)(e) |
| 355-175 | 3EA(5) |
| 355-175 | 3EB(2) |
| 355-175 | 3EC(2)(a) and (b) |
| 355-175 | 3EC(2)(c) |
| 355-175 | 3G(7) |
| 355-175 | 3G(8) |
| 355-175 | 3G(10) |
| 355-175 | 3H(6) |
| 355-175 | 3H(7) |
| 355-175 | 3H(9) |
| 355-175 | 13J(2A) |
| 355-175 | 13H(1A) |
| 355-175 and 355-155 | 3D(11)(j)(i) |
| 355-175 and 355-205 | 3E(4)(b) |

| <i>New law</i> | <i>Current law</i> |
|--|------------------------|
| 355-185 | 3EA(3)(d) |
| 355-205 | 3D(19) |
| 355-205 | 3E(3) |
| 355-205 | 3E(6) |
| 355-205 | 3EB(3) |
| 355-205 | 3G(11) |
| 355-205 | 3H(10) |
| 355-205 | 13J(3) |
| 355-205 and 355-155 | 3EA(4) |
| 355-205 and 355-155 | 3EC(3) |
| 355-210 | 3D(2)(a) |
| 355-210(1) | 13J(4) |
| 355-265 | 8XB(1) |
| 355-265 | 8XB(2) |
| 355-275 | 8XB(1A) |
| 355-275 | 8XB(3) |
| 355-280 | 8XB(4) |
| 355-325 | 3C(6) |
| Nil. No equivalent. | 13J(8) |
| Nil. No equivalent. | 3D(2)(b) |
| Nil. No equivalent. | 3D(4) to (10) |
| Nil. No equivalent. | 3E(8) |
| Nil. No equivalent. | 3F(2) |
| Nil. No equivalent. | 3G(12) |
| Nil. No equivalent. | 3H(11) |
| Nil. No equivalent. | 13J(5) |
| Nil. No equivalent. | 355-5(1) of Schedule 1 |
| Nil. No equivalent. | 355-5(3) |
| Nil. No equivalent. | 3C(8) |
| Nil. No equivalent. | 3C(9) |
| Nil. Not replicated. | 3C(1AB) |
| On-disclosures by Commonwealth Royal Commissions governed by 355-175 and 355-210. On-disclosures by State Royal Commissions governed by 355-175. | 3E(6A) to 3E(6D) |

**Table 8.34: Taxation (Interest on Overpayments and Early Payments)
Act 1983**

| <i>New law</i> | <i>Current law</i> |
|--------------------------|--------------------|
| 355-25 and 355-155 | 8(2) |
| 355-50 | 8(2A) |
| 355-50 | 8(4) |
| 355-60(1) and 355-210(1) | 8(5) |
| 355-75 and 355-205 | 8(3) |
| 355-325 | 8(6) |

**Table 8.35: Termination Payments Tax (Assessment and Collection)
Act 1997**

| <i>New law</i> | <i>Current law</i> |
|--|--------------------|
| 355-25, 355-155 and 355-50 (for taxation officers) | 23(2) |
| 355-50 | 23(3) |
| 355-50 | 23(6) |
| 355-50 | 23(7) |
| 355-60(1) and 355-210(1) | 23(4) |
| 355-75 and 355-205 | 23(5) |
| 355-325 | 23(8) |

**Table 8.36: A New Tax System (Bonuses for older Australians)
Act 1999**

| <i>New law</i> | <i>Current law</i> |
|---|--------------------|
| This Act is being repealed in its entirety. | Section 54 |

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