



AFP
AUSTRALIAN FEDERAL POLICE

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

**Submission by the
Australian Federal Police (AFP)**

December 2009

Introduction

The Australian Federal Police welcomes the opportunity to make a submission to the Senate inquiry into the *Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009*.

The AFP supports the measures contained in the Bill that will enhance AFP operational capacity to investigate and prosecute serious offences with the assistance of taxpayer information.

This submission focuses on five key provisions contained in the Bill that will enhance AFP operational capability.

Schedule 1 - Confidentiality of taxpayer information

1. S 355-70 Disclosures for law enforcement and related purposes

The AFP supports the removal of limitations on law enforcement agencies' use of taxpayer information.

Under the old provisions taxpayer information received for the purposes of investigating a serious offence could not be used for the prosecution of that offence unless it was a taxation offence.

The new disclosure provisions will enable the AFP to access taxpayer information for the enforcement of serious offence provisions in the law. (Enforcement captures investigating breaches of that law, prosecuting any offences committed under that law and gathering information to support those investigation and prosecution functions.)

As the explanatory memorandum explains:

“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. Such information would also be 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 prosecution.”

The AFP has identified a number of recent money laundering prosecutions where these new disclosure provisions would have proven useful. In one case, the ability to produce taxpayer information as part of the prosecution evidence would have assisted in establishing that suspected proceeds of crime, dealt with by a suspect, were not consistent with that person's declared income, thus increasing the chances of a successful prosecution for money laundering offences.

2. s 355-70(3) definition of "Authorised law enforcement agency officer"

The AFP supports the revised definition of "authorised law enforcement agency officer" in s 355-70(3). (The new text is underlined below)

(3) Authorised law enforcement agency officer means:

- (a) *the head of a *law enforcement agency; or*
- (b) *an officer of a law enforcement agency, or a person engaged by, or otherwise performing services for, a law enforcement agency, authorised in writing by the head of the agency to perform the functions of an authorised law enforcement agency officer under this Act.*

The revision of this definition clarifies where the authority to request and receive information under the *Taxation Administration Act 1953* lies.

Specifically, the revised definition of "authorised law enforcement agency officer" clarifies that the delegation of power to request and receive disclosures under the *Taxation Administration Act 1953* is not limited to AFP officers who are appointed or engaged under the Public Service Act.

The original definition permitted only an "officer of a law enforcement agency" to be authorised to request and receive disclosures under the legislation.

The term "officer" is further separately defined under the current provisions to confine the term to "a person appointed or engaged under the Public Service Act 1999".

As AFP officers are not persons appointed under the *Public Service Act 1999*, the Commissioner's ability to delegate the power to request and receive disclosures under the Act to all commissioned AFP officers is uncertain.

3. 355-65 Disclosures to prevent or lessen serious threats [item 9-table 1]

The AFP supports the new provision which enables disclosure of taxpayer information to an Australian Government agency to prevent or lessen:

- a serious threat to an individual's life, health or safety; or
- a serious threat to public health or public safety.

In addition to the prevention of threats to public safety, the AFP envisages that disclosures under these provisions may, in serious circumstances, provide some benefit in the execution of a Family Law Recovery Order where there is a serious threat to the safety of a child who has been taken by a parent in breach of a family law order. In such circumstances, the ATO may hold information that could identify possible lines of inquiry assisting, in the location of a child.

4. Subdivision 355-175—On-disclosure of protected information

The purpose for which taxpayer information can be on-disclosed by a law enforcement agency will be altered under the proposed amendments.

The AFP supports the new provisions relating to the on-disclosure of taxpayer information for the clarity that they bring to the legislation, whilst noting that they may result in some narrowing of the on-disclosure available under the current provision.

The current law provides that an officer who lawfully obtains taxpayer information may disclose that information in the performance of their duties as an officer.

Under the new provisions taxpayer information may only be on-disclosed for, or in connection with, the original purpose for which the information was disclosed by a taxation officer.

A connected purpose includes one which is for the purpose of criminal or civil proceedings that are 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)]

The Table at s 355-175(3) together with the Table at s 335-70(1) set out further situations in which on-disclosures can be made by authorised law enforcement agency officers.

The effect of these two tables together is that information received for one purpose can be on-disclosed for another purpose for which the information could have originally been legitimately acquired.

There are three relevant additional circumstances in the framework where on-disclosure can take place. These are as follows:

- An authorised law enforcement agency officer may on-disclose taxpayer information received for the purpose of investigating whether a serious offence has been committed either for the prosecution/enforcement of 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 in relation to the commission of the offence.
- A Project Wickenby officer may on-disclose taxpayer information received for a particular purpose of the Project Wickenby taskforce for another purpose of that taskforce; and
- A taskforce officer of a prescribed taskforce may on-disclose taxpayer information received for a particular purpose of the prescribed taskforce for another purpose of that taskforce.

Schedule 3 - Other amendments

5. Item 19 – Amendments to Subsection 355-70(5) – definition of “proceeds of crime order”

The AFP supports the amendments to the definition of “proceeds of crime order” which will enable the disclosure of taxpayers’ information in relation to the investigation of unexplained wealth matters.

This item will substitute the definition of “proceeds of crime order” in subsection 355-70(5) to further include:

- (b) an unexplained wealth order (within the meaning of the Proceeds of Crime Act 2002); or
- (c) an order under a State law or Territory law corresponding to an order referred to in paragraph (b).

This amendment takes place in the context of the proposal to introduce unexplained wealth provisions into the *Proceeds of Crime Act 2002*. Unexplained wealth provisions are proposed to be introduced by the *Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009* which was introduced into Parliament on 15 June 2009.

To obtain an unexplained wealth order under the new unexplained wealth provisions the Commonwealth Director of Public Prosecutions will need 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.

The AFP believes that the unexplained wealth provisions will have limited utility unless investigators are able to access taxpayers’ information under the provisions of the *Taxation Administration Act*. Access to taxpayers’ information will be vital in enabling an investigator to demonstrate a disparity between apparent assets and declared taxable income.

In any investigation relating to unexplained wealth, the first step in working out whether a person’s wealth can be explained will be to work out what legitimate income the person has received. Investigators would generally begin this task by looking at what income the person has declared to the ATO.

Where investigators do not have access to taxpayer’s information they could be placed in the difficult position of asserting that a person has more wealth than they can explain from lawful sources without knowing what lawful sources the person has disclosed to the ATO. The investigators could potentially end up asserting that a person has unexplained wealth when in fact another arm of the Commonwealth holds information showing that the relevant wealth has been declared and can be explained.

Currently, section 3E of the *Taxation Administration Act* allows disclosure of taxpayer information for law enforcement purposes where that

information is relevant to “the making, or proposed or possible making, of a proceeds of crime order”: s 3E(1)(b).

The term “proceeds of crime order” currently requires a connection with a serious offence before taxation information can be released for use in a Proceeds of Crime action.

The current legislation presents a difficulty for the investigation of unexplained wealth matters as these matters will not be based on an allegation that an offence has been committed.