



18 December 2009

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Dear Sir/Madam,

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

I refer to the above-mentioned Senate inquiry into the *Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009* ('the Bill'). My comments in relation to the Bill are as follows:

'Publicly Available Information'

Section 355-25 (which is the general provision prohibiting entities disclosing or making records of protected information); and section 355-155 and 355-265 (the general provisions preventing on-disclosures of information) have no application where the information in question is 'publicly available information.' This is set out in sections 355-45; 355-170; and 355-270.

The term 'publicly available information' does not appear to be defined by the Bill. As a result, there may be a lack of clarity around when it is appropriate for an entity to disclose information and how much information is able to be disclosed.

Under the *Privacy Act 1988 (Cwth)* the disclosure of information contained in a 'generally available publication' is defined as 'a magazine, book, newspaper or other publications (however published) that is or will be generally available to members of the public.'

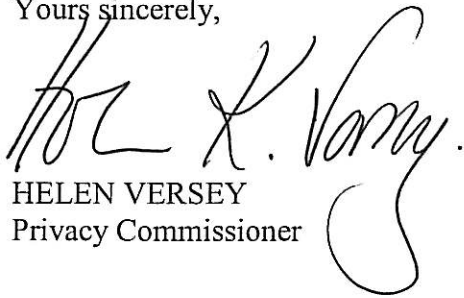
Similarly under the *Information Privacy Act 2000 (Vic)* (the IPA), section 11 provides that nothing in the IPA or the Information Privacy Principles applies to personal information contained in a document that is a 'generally available publication': this is defined to include a publication that is generally available to members of the public, whether free of charge or not. A telephone directory is a common example.

Section 11 of the IPA – like the definition under the Federal Privacy Act – is therefore concerned with *documents* that are generally available – not *information* that is generally available. Technically, to allow the disclosure of ‘publicly available information’ may allow government organisations to disclose the name, address and contact numbers of any of its clients, provided that these details appear in a telephone directory.

What section 11 of the IPA does allow is for the following: Say a newspaper publishes an article that contains quotations from private correspondence in possession of a government organisation. The act of the government organisation disclosing contents of the correspondence is not exempt under section 11, but the act of it circulating a copy of the original newspaper article is, because the newspaper is a generally available publication. The correspondence is not.

Therefore, consideration should be given to defining the term ‘publicly available information’ in the Bill, and for this definition to be in line with the definitions set out in the Federal Privacy Act and the IPA. This will ensure that the information that entities are able to disclose will be better clarified, and in line with current privacy protections.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Helen Versey', written in a cursive style. The signature is positioned to the right of the typed name and title.

HELEN VERSEY
Privacy Commissioner