



OFFICE OF THE
DIRECTOR OF PUBLIC PROSECUTIONS
QUEENSLAND

RECEIVED

14 JAN 1998

LEGAL, CONSTITUTIONAL AND
ADMINISTRATIVE REVIEW
COMMITTEE

Nb. 6.

Director of Public Prosecutions - R N Miller QC Deputy Director - Michael Byrne QC

Name: Mr R N Miller QC
Telephone: 3239 6114
Our Ref: RNM:gsb

13 January 1998

The Secretariat
Legal, Constitutional & Administrative Review Committee
Legislative Assembly of Queensland
Parliament House
George Street
BRISBANE Q 4000

Dear Sir/Madam

I am responding to an invitation extended to me by Mrs Judy Gamin MLA, Chairperson of the Legal, Constitutional and Administrative Review Committee of the Parliament, to provide written comment on the *Criminal Law (Sex Offenders Reporting) Bill 1997*.

My comments are as follows:

At first sight this proposed legislation would seem attractive and to command community support but after careful consideration of its terms I have real concerns as to its utility and question whether it might do more harm than good. It is in the interests of society that offenders reform and I am wondering whether the implementation of the proposals in the Bill will militate against reform and even foster in some a resolve to re-offend.

Questions that have occurred to me are:

Whether the reporting requirement will have any significant effect in reducing re-offending.

Whether the reporting requirements, if complied with, will assist the police in "keeping an eye on" the person, but in such a way that that will not interfere in the person's ability to live down the past and to put it behind him, and whether, in the event that a person who has reported has reoffended, the fact of the reporting will assist the police in discovering his identity as the offender and bringing him to justice.

Has research been carried out elsewhere, where such legislation is in force, to determine whether it has resulted in a decrease in re-offending or in assisting police in discovering a particular culprit? I should think that in most cases of serious sex offending the offender and the victim are members of the same household or are related or are neighbours. True it is that some very serious rapes and sodomies are perpetrated by strangers, but I have to wonder whether where the offender is a stranger the fact that he is required to report will really assist the police in discovering the identity of any particular offender. The police may be able to point to cases where had a report of the offender's residential address been made they would have been so assisted, but I am not personally aware of any such case.

Having passed these remarks, I turn to consider some of the proposals in the Bill as drafted.

Serious sex offence

Serious sex offence is defined in the Dictionary but does not include, for example, attempted rape, though it includes attempted sodomy. Why is attempted rape excluded?

Any why is not section 219 included?

Section 3

I notice in section 3 that a sex offender is an adult who has been convicted of a serious sex offence in relation to a child and who has been sentenced to serve a term of imprisonment of at least 6 months for the offence. Your attention needs to be drawn to the fact that a person might be sentenced to a term of imprisonment for 5 years or less, but the court is empowered to order that the whole or part of the term be suspended: see section 144 of the *Penalties & Sentences Act*. Is it the intention that a person sentenced say to a term of 4 years, but ordered to serve only 4 months of that term with the balance to be suspended, should not be required to report?

Still with section 3, reference needs to be made to a person acquitted of an offence on the ground of unsoundness of mind. The Committee's attention needs to be drawn to the fact that an "offender" might prefer to go to the Mental Health Tribunal and gain a finding of unsoundness of mind rather than go to trial and there plead and succeed in establishing, that he is not guilty of say rape of a child on the ground of unsoundness of mind. Should such a person escape the reporting requirement?

Reporting Requirements

Reporting requirements are contained in sections 5 and 6.

Section 5

Section 5 applies to a sex offender who is convicted after the coming into operation of the Act, but it also applies to a person whose conviction happened within 10 years before the commencement of the Act and whose reporting period has not, according to section 7, expired.

Section 12 provides that a sex offender required to notify the commissioner of the police service of his presence in Queensland under section 5 does not contravene section 5(2) or (3)(a) if he complies with section 5(2) within 3 months after the commencement of the section. Section 12 also provides that the section has a time limit of 6 months after its commencement.

Section 5(2) does not itself prescribe any time limit for compliance, whereas section 5(3)(a) does. In the latter case the requirement is that the reporting be made within 7 days after the offender's discharge from custody in Queensland. In the case then of an offender being discharged from custody in Queensland section 12(1) gives him 3 months after the commencement of the section to comply with the requirement.

I can see the good sense in such a provision for otherwise a person discharged from prison just very shortly before or after the Act comes into operation might, without knowledge of this requirement to report, allow the 7 days to go by without reporting and be liable for a breach of section 5(3)(a). Although the words "unless the sex offender has a reasonable excuse" are contained in section 5(3)(a) lack of knowledge of the law does not provide an excuse, section 22(1) of the Criminal Code providing that "ignorance of the law does not provide any excuse for an act or omission which would otherwise constitute an offence, unless knowledge of the law by the offender is expressly declared to be an element of the offence".

However, whilst section 12 is clearly intended to give some leeway to a person who is discharged from custody in Queensland either shortly before or shortly after the coming into operation of the Act, it will provide none at all in respect of other persons not so discharged. I am finding it difficult to understand why section 12 provides that, for the limited period, a person is said to have not contravened section 5(2) if he complies with that provision within 3 months of its commencement, no time being specified in section 5(2) for compliance otherwise. I am also finding it difficult to understand why it is provided that section 12 expires 6 months after the commencement of the section in the circumstance that only a 3 month period is mentioned in section 12(1). And I am bewildered that no time has been prescribed in section 5(2) for compliance. A time for compliance must be set.

Subsection (3)(b) of section 5 poses problems. It provides that unless the sex offender has a reasonable excuse, the offender must give the details (the details are set forth in subsection 12) to the police officer on the offender entering Queensland temporarily or to take up residency in Queensland within 7 days after entering Queensland. Subsection 5 then provides that for subsection (3)(b) a sex offender enters Queensland "temporarily" if the offender enters Queensland and

stays or intends staying in Queensland for a period of not less than 14 days. With regard then to a person entering Queensland "temporarily" who in a period of 12 months comes here initially for 7 days, then comes again for 4 days and still later comes again for 4 days (a total of 15 days), he has, according to subsection (3)(b), 7 days after his third visit commencing to give the details to a police officer. But by that time he will have left Queensland and his residential address will not be in Queensland. Are we not taking reporting much too far? What purpose will this requirement serve?

Section 6

Section 6 applies to changes of particulars. It creates 3 offences, time limits being imposed by subsection (3) and subsection (5), but none being prescribed in subsection (4). Surely subsections (4) and (5) should be amalgamated so that there is one subsection which reads:

"If the sex offender intends to leave Queensland the sex offender, unless he or she has a reasonable excuse, must personally report at the police station nearest the offender's residential address and give a police officer at the station notice in the approved form not more than 14 days or less than 3 days before the offender intends to leave Queensland.

Maximum penalty - 30 penalty units"

I notice that subsection (4) begins with the words "If the sex offender intends to leave Queensland". I therefore presume that the intention is that the section have application only in circumstances where the sex offender moves from one residential address in Queensland to another residential address in another part of Australia or elsewhere.

The nearest police station

Various provisions require reporting to "the nearest police station". What then is the nearest police station? Is it the nearest police station as the crow flies, or is it the nearest police station reckoned by the shortest distance the sex offender has to walk to a police station? One police station might be across a river or creek just a kilometre away but there is no bridge, and another might be on the same side but 3 kilometres away. The person might have a dinghy to cross the river. Which is the nearest police station?

Where there is no reporting the prosecution must nominate the police station to which the reporting should have been made. It cannot allege in the alternative. Practical difficulties will arise for police and the prosecuting authority unless the term "nearest police station" is defined.

Section 8

I note with regard to section 8(1) it is provided that the commissioner may keep a register. Surely it is the intention that the commissioner must keep the register.

Again in (2) the word 'may' is used where surely it should be 'must'. With regard to subclause (3) of clause 8, it is provided that the commissioner must remove the sex offender's name etc from the register immediately after the offender stops being subject to the reporting requirement. But no penalty is provided for his failure to do so. His failure, according to section 204 of the Criminal Code, would leave him open to prosecution, for the section provides as follows:

"Disobedience to statute law.

204(1) Any person who without lawful excuse, the proof of which lies on the person, does any act which the person is, by the provisions of any public statute in force in Queensland, forbidden to do, or omits to do any act which the person is, by the provisions of any such statute, required to do, is guilty of a misdemeanour, unless some mode of proceeding against the person for such disobedience is expressly provided by statute, and is intended to be exclusive of all other punishment.

(2) The offender is liable to imprisonment for 1 year."

This issue must be addressed.

Disclosure by the commissioner under section 8(4)

If there is a provision in this Act which will find many opponents it will be the provision in subsection (4) of section 8, which permits the commissioner of the police service to disclose information in the register to the persons or entities in (a) to (d). No conditions have to be satisfied at all. In various Commonwealth legislation some restrictions are imposed. For your assistance and the assistance of the Committee I am enclosing copies of 3 such Acts.

I hope that my comments are of assistance.

Yours faithfully,

R N MILLER QC
DIRECTOR OF PUBLIC PROSECUTIONS

COMPUTER LAW SERVICES - TAXATION LAW
INCOME TAX ASSESSMENT ACTS
INCOME TAX ASSESSMENT ACT 1936
BODY
PART II - ADMINISTRATION
16. OFFICERS TO OBSERVE SECRECY

1936-027

TOP CURRENCY REFERENCES AMEND SEE ALSO

16. OFFICERS TO OBSERVE SECRECY

(1)

In this section, unless the contrary intention appears -

"Director of Public Prosecutions" means a person holding office as, or acting as, the Director of Public Prosecutions under the Director of Public Prosecutions Act 1983 ;

"officer" means a person who is or has been appointed or employed by the Commonwealth or by a State, and who by reason of that appointment or employment, or in the course of that employment, may acquire or has acquired information respecting the affairs of any other person , disclosed or obtained under the provisions of this Act or of any previous law of the Commonwealth relating to income tax ;

"Royal Commission" means a Commission that has been commissioned by the Governor-General, by Letters Patent in pursuance of the Royal Commissions Act 1902 or of any other power, to conduct an inquiry, and includes any member of such a Commission.

"Special Prosecutor" means a person holding office as, or acting as, a Special Prosecutor under the Special Prosecutors Act 1982 ;

"tax-related offence" means -

(a) an offence against -

(i) an Act of which the Commissioner has the general administration or regulations under such an Act;
or

(ii) the Crimes (Taxation Offences) Act 1980 ; or

(b) an offence against the Crimes Act 1914 relating to a law referred to in paragraph (a).

(1A)

For the purposes of this section, a person who, although not appointed or employed by the Commonwealth, performs services for the Commonwealth shall be taken to be employed by the Commonwealth.

(2)

Subject to this section, an officer shall not either directly or indirectly, except in the performance of any duty as an officer , and either while he is, or after he ceases to be an officer , make a record of, or divulge or communicate to any person any information respecting the affairs of another person acquired by the officer as mentioned in the definition of " officer " in subsection (1).

(3)

An officer shall not be required to produce in Court any return, assessment or notice of assessment , or to divulge or communicate to any Court any matter or thing coming under his

notice in the performance of his duties as an officer ,
except when it is necessary to do so for the purpose of
carrying into effect the provisions of this Act or of any
previous law of the Commonwealth relating to Income Tax .

(4)

Nothing in the section shall be deemed to prohibit the
Commissioner , a Second Commissioner , or a Deputy
Commissioner , or any person thereto authorized by him, from
communicating any information to -

- (a) any person performing, in pursuance of any appointment or
employment by the Commonwealth, any duty arising under
any Act administered by the Commissioner of Taxation for
the purpose of enabling that person to carry out any such
duty;
- (b) any board exercising any function under any Act
administered by the Commissioner of Taxation, or any
member of any such Board;
- (c) the Tribunal in connection with proceedings under an Act
of which the Commissioner has the general administration;
- (ca) the Chief Collector of Taxes for Papua New Guinea if the
Chief Collector is authorized by a law of Papua New
Guinea to afford similar information to the
Commissioner , a Second Commissioner or a Deputy
Commissioner ;
- (d) the Repatriation Commission for the purpose of the
administration of any law of the Commonwealth relating to
pensions;
- (e) the Secretary to the Department of Social Security for
the purpose of the administration of any law of the
Commonwealth relating to pensions, allowances or benefits;
- (ea) the Secretary to the Department of Employment, Education
and Training for the purpose of the administration of any
law of the Commonwealth relating to pensions, allowances
or benefits;
- (f) the Secretary to the Department of Health for the purpose
of the administration of any law of the Australian
Capital Territory or of the Northern Territory which is
administered by the Minister of State for Health;
- (fa) the Health Insurance Commission, being information, for
the purpose of the administration of the Childcare Rebate
Act 1993, as to whether a registered carer (within the
meaning of that Act) or an applicant for registration as
a registered carer has a tax file number;
- (fb) the Health Insurance Commission for the purpose of the
administration of the Private Health Insurance Incentives
Act 1997;
- (g) the Commission for the Safety, Rehabilitation and
Compensation of Commonwealth Employees established by
section 68 of the Commonwealth Employees' Rehabilitation
and Compensation Act 1988 for the purposes of that Act;
- (ga) the Australian Statistician for the purposes of the
Census and Statistics Act 1905 , being -
 - (i) in relation to a person who is an employer (whether
or not the person is also a business person),
information as to -
 - (A) the name and address of the person ;

- (B) the name or description of the industry, trade, business, calling, service, profession or occupation in which the person is an employer; and
 - (C) the number of males and the number of females who are employees of the person for the purposes of Division 2 of Part VI of this Act; and
- (ii) in relation to a person who is a business person (whether or not the person is also an employer) -
 - (A) information as to the name and address of the person;
 - (B) information as to the name or description of the business;
 - (BA) such information in relation to the business as the Australian Statistician requires for or in connection with the conduct of periodic surveys of research and development activities;
 - (C) such information in relation to the gross receipts of the business as the Australian Statistician requires for or in connection with the conduct of periodic surveys of industries; and
 - (D) such other information in relation to the business as the Australian Statistician requires for or in connection with the compilation of the Australian national accounts;
- (h) the Secretary, Department of Defence, for the purpose of the administration of any law of the Commonwealth relating to payments in respect of dependants of members of the Defence Force;
- (ha) the authorized person holding office under the Loan (Income Equalization Deposits) Act 1976 for the purposes of the administration of that Act;
- (hb) the Secretary to the Department of Education for the purpose of the administration of any law of the Commonwealth relating to financial assistance to students;
- (hba) the Development Allowance Authority, for the purpose of the administration of the Development Allowance Authority Act 1992 or of the prosecution provisions within the meaning of Chapter 4 of that Act;
- (hc) the Insurance and Superannuation Commissioner, for the purpose of the administration of the Superannuation Entities (Taxation) Act 1987 (including a repealed provision of that Act as that provision continues to apply because of the Taxation Laws Amendment (Superannuation) Act 1992 or the Occupational Superannuation Standards Amendment Act 1993) or of the prosecution provisions within the meaning of that Act;
- (hca) the Insurance and Superannuation Commissioner, for the purpose of the administration of the Superannuation Industry (Supervision) Act 1993;
- (hd) the Secretary to the Department of Immigration and Ethnic Affairs, for the purpose of assisting in locating persons who are unlawfully in Australia;
- (j) the Secretary to the Department of Housing and

Construction, for the purpose of the administration of any law of the Commonwealth having an object of assisting persons to purchase or build their own homes;

- k) a Royal Commission in respect of which Letters Patent issued by the Governor-General declare that the Royal Commission is a Royal Commission to which this paragraph applies, for the purpose of conducting its inquiry; or
- (l) the Treasurer, for the purpose of exercising his or her powers under subsection 128AE(2A) or (2C).

(4AA)

In paragraph (4)(ga) -

"business person" means a person who is carrying on a business, whether alone, in partnership or otherwise;

"description", in relation to a business, includes a description or specification of a category in which the business is included;

"employer" means a person who is an employer within the meaning of Division 2 of Part VI;

"research and development activities" has the same meaning as in section 73B.

(4A)

Subject to subsections (4B) and (4C), where information respecting the affairs of a person is communicated to a Royal Commission in pursuance of paragraph (4)(k) -

- (a) the Royal Commission may, in a manner that does not identify, and is not reasonably capable of being used to identify, the person to whom the information relates -
 - (i) communicate the information to the Governor-General in a report by the Royal Commission; or
 - (ii) divulge the information in the course of a proceeding conducted by the Royal Commission, other than a proceeding conducted in private;
- (aa) the Royal Commission may divulge the information in the course of a proceeding conducted in private by the Royal Commission;
- (b) the Royal Commission may communicate the information to the Attorney-General if the Royal Commission is of the opinion that the information indicates that a person may have committed an offence against an Act, being an offence the punishment, or maximum punishment, for which is or includes imprisonment for life or for a period exceeding 6 months;
- (ba) the Royal Commission may communicate the information to the Director of Public Prosecutions or a Special Prosecutor if the Royal Commission is of the opinion that the information relates or may relate to an investigation of a tax-related offence;
- (c) subject to the preceding paragraphs, the Royal Commission shall not divulge or communicate the information except to a person or employee under the control of the Royal Commission for the purposes of, or in connection with, the inquiry being conducted by the Royal Commission;
- (d) a person who has ceased to be the person constituting, or to be a member of, the Royal Commission shall not make a record of the information, or divulge or communicate the

information, in any circumstances; and

- (e) a person to whom information has been communicated in accordance with paragraph (c) or this paragraph shall not -
 - (i) while he is a person or employee under the control of the Royal Commission - divulge or communicate the information except to the Royal Commission or a person or employee under the control of the Royal Commission for the purposes of, or in connection with, the inquiry being conducted by the Royal Commission ; or
 - (ii) after he ceases to be a person or employee under the control of the Royal Commission - make a record of the information, or divulge or communicate the information, in any circumstances.

(4B)

Where information respecting the affairs of a person is communicated to a Royal Commission in pursuance of paragraph (4)(k), nothing in subsection (4A) prevents the communication of the information to -

- (a) if the person to whose affairs the information relates is not a company - that person ;
- (b) if the person to whose affairs the information relates is a company -
 - (i) any person who is, or has been, a director or officer of the company ; or
 - (ii) any person who is, or has been, directly involved in, or responsible for, the preparation of information furnished to the Commissioner on behalf of the company ; or
- (c) the person who furnished the information to the Commissioner of Taxation.

(4C)

where subsection (4B) permits the communication of information to a person , nothing in subsection (4A) prevents the communication of the information to a barrister or solicitor appearing before the Royal Commission for the purpose of representing the person .

(4D)

Where information is communicated to a person in accordance with subsection (4B) or (4C) or paragraph (4A)(aa), being information that was not furnished to the Commissioner of Taxation by the person and does not relate to the affairs of the person , the person shall not make a record of the information, or divulge or communicate the information, in any circumstances.

(4E)

Where information is communicated to the Attorney-General under paragraph (4A)(b) -

- (a) the Attorney-General may communicate the information to the Commissioner of the Australian Federal Police;
- (b) subject to paragraph (a), the Attorney-General shall not divulge or communicate the information except to a person or employee under his control for the purposes of, or in connection with, the performance by the Attorney-General of his function under paragraph (a);

- (c) a person who has ceased to be the Attorney-General shall not make a record of the information, or divulge or communicate the information, in any circumstances; and
- d) a person to whom information has been communicated in accordance with paragraph (b) or this paragraph shall not -
 - (i) while he is a person or employee under the control of the Attorney-General - divulge or communicate the information except to the Attorney-General or another person or employee under the control of the Attorney-General for the purposes of, or in connection with, the performance by the Attorney-General of his function under paragraph (a); or
 - (ii) after he ceases to be a person or employee under the control of the Attorney-General - make a record of the information, or divulge or communicate the information, in any circumstances.

(4F)

Where information is communicated to the Commissioner of the Australian Federal Police under paragraph (4E)(a) -

- (a) the Commissioner of the Australian Federal Police shall not divulge or communicate the information except to a person or employee under his control for the purposes of, or in connection with, the performance by that person or employee of the duties of his office or employment;
- (b) a person who has ceased to be the Commissioner of the Australian Federal Police shall not make a record of the information, or divulge or communicate the information, in any circumstances; and
- (c) a person to whom information has been communicated in accordance with paragraph (a) or this paragraph shall not -
 - (i) while he is a person or employee under the control of the Commissioner of the Australian Federal Police - divulge or communicate the information except to the Commissioner of the Australian Federal Police or another person or employee under the control of the Commissioner of the Australian Federal Police for the purposes of, or in connection with, the performance by the Commissioner of the Australian Federal Police of the duties of his office, or the performance by that person or employee of the duties of his office or employment, as the case may be; or
 - (ii) after he ceases to be a person or employee under the control of the Commissioner of the Australian Federal Police - make a record of the information, or divulge or communicate the information, in any circumstances.

(4FA)

Where information is communicated to the Director of Public Prosecutions under paragraph (4A)(ba) -

- (a) the Director of Public Prosecutions shall not divulge or communicate the information except to a person or employee under his or her control for the purposes of, or in connection with, the performance by that person or employee of the duties of his or her office or employment;
- (b) a person who is no longer the Director of Public Prosecutions shall not make a record of the information,

or divulge or communicate the information, in any circumstances; and

(c) a person to whom information has been communicated in accordance with paragraph (a) or this paragraph shall not -

(i) while he or she is a person or employee under the control of the Director of Public Prosecutions - divulge or communicate the information except to the Director of Public Prosecutions, or to another person or employee under the control of the Director of Public Prosecutions, for the purposes of, or in connection with, the performance by the Director of Public Prosecutions of the duties of his or her office, or the performance by that other person or employee of the duties of his or her office or employment, as the case may be; or

(ii) when he or she is no longer a person or employee under the control of the Director of Public Prosecutions - make a record of the information, or divulge or communicate the information, in any circumstances.

(4FB)

Where information is communicated to a Special Prosecutor under paragraph (4A)(ba) -

(a) the Special Prosecutor shall not divulge or communicate the information except to a person or employee under his or her control for the purposes of, or in connection with, the performance by that person or employee of the duties of his or her office or employment;

(b) a person who is no longer a Special Prosecutor shall not make a record of the information, or divulge or communicate the information, in any circumstances; and

(c) a person to whom information has been communicated in accordance with paragraph (a) or this paragraph shall not -

(i) while he or she is a person or employee under the control of the Special Prosecutor - divulge or communicate the information except to the Special Prosecutor, or to another person or employee under the control of the Special Prosecutor, for the purposes of, or in connection with, the performance by the Special Prosecutor of the duties of his or her office, or the performance by that other person or employee of the duties of his or her office or employment, as the case may be; or

(ii) when he or she is no longer a person or employee under the control of the Special Prosecutor - make a record of the information, or divulge or communicate the information, in any circumstances.

(4G)

A reference in subsection (4A) to a person under the control of a Royal Commission includes a reference to -

(a) a barrister or solicitor appointed by the Attorney-General to assist the Royal Commission;

(b) a person assisting a barrister or solicitor so appointed; and

(c) a member or special member of the Australian Federal Police, or a member of a police force of a State or

Territory, assigned to the Royal Commission to carry out an investigation on behalf of, or under the control of, the Royal Commission .

i)

A reference in subsection (4E) to a person under the control of the Attorney-General includes a reference to -

- (a) an officer of, or person employed in, the Attorney-General's Department;
- (b) a person holding office, or employed, under an Act administered by the Attorney-General; and
- (c) a person under the control of a person to whom paragraph (b) applies.

(4J)

A person to whom information has been communicated under paragraph (4)(k) or under subsection (4A), (4E), (4F), (4FA) or (4FB) shall not be required to divulge or communicate that information to any court.

(4JA)

Where information is communicated to a person under paragraph (4A)(ba) or subsection (4FA) or (4FB), nothing in subsection (4FA) or (4FB) prevents -

- (a) the communication of the information to another person for the purposes of, or in connection with, the prosecution of a person for a tax-related offence ; or
- (b) if the information is admissible in a prosecution of a person for a tax-related offence - the communication of the information to a court in the course of proceedings before that court against the last-mentioned person for that offence.

(4JB)

A person to whom information has been communicated in accordance with paragraph (4JA)(a) shall not make a record of the information, or divulge or communicate the information, except for the purposes of, or in connection with, the prosecution of a person for a tax-related offence .

(5)

Any person to whom information is communicated under subsection (4) other than paragraph (4)(k) or (4)(l), and any person or employee under his control shall, in respect of that information, be subject to the same rights, privileges, obligations and liabilities, under subsections (2) and (3), as if he were an officer .

(5A)

For the purposes of subsections (2) and (5), an officer or person shall be deemed to have communicated such information to another person in contravention of those subsections if he communicates that information to any Minister or to any Minister of the Crown of a State.

(5B)

Where the Treasurer is satisfied that it is desirable to do so for the purpose of enabling the Government of the Commonwealth to review the operation of the provisions of this Act providing for rebates of tax by reference to export market development expenditure, he may, by writing under his hand, request the Commissioner to communicate to him, or to a person specified in the request, being a Minister of State, the Secretary to the Department of the Treasury or the Secretary to the Department of Trade, information relating to such matters as are specified in the request, and,

notwithstanding anything contained in this section, the Commissioner, or an officer authorized by him, shall communicate information relating to those matters to the person specified in the request.

(5BA)

Where the Treasurer is satisfied that it is desirable to do so for the purpose of enabling the Government of the Commonwealth to review the operation of the provisions of this Act providing for allowable deductions in respect of moneys paid on shares in companies that hold licences in force under the Management and Investment Companies Act 1983, he may, by writing signed by him, request the Commissioner to communicate to him or to another person specified in the request, being a Minister of State, the Secretary to the Department of the Treasury or the Secretary to the Department of Science, information relating to such matters as are specified in the request, and, notwithstanding anything contained in this section, the Commissioner, or an officer authorized by him, shall communicate information relating to those matters to the person specified in the request.

(5C)

The Secretary to the Department of the Treasury, the Secretary to the Department of Trade, the Secretary to the Department of Science or any other officer or employee of the Commonwealth shall not, either while he is, or after he ceases to be, such an officer or employee -

- (a) except in the performance of a duty as an officer or employee of the Commonwealth, make a record of, or divulge or communicate to a Minister of State or any other officer or employee of the Commonwealth, any information relating to the affairs of a person acquired by him by reason, directly or indirectly, of a communication in accordance with subsection (5B) or (5BA); or
- (b) divulge or communicate any such information to any person who is not a Minister of State or officer or employee of the Commonwealth.

(5D)

A person to whom subsection (5C) applies shall not be required to produce in a court a document containing information referred to in that subsection or to divulge or communicate to a court any such information.

(6)

Any officer shall, if and when required by the Commissioner, a Second Commissioner or a Deputy Commissioner to do so, make an oath or declaration, in the manner and form prescribed, to maintain secrecy in conformity with the provisions of this section.

Penalty: \$10,000 or imprisonment for 2 years, or both.

ACTS

ACTS BEGINNING WITH S

SOCIAL SECURITY ACT 1991

BODY

CHAPTER 7 - ADMINISTRATION

PART 7.2 - INFORMATION MANAGEMENT

DIVISION 2 - CONFIDENTIALITY

1312. PROTECTION OF PERSONAL INFORMATION

Division 2 - Confidentiality

1991-046

TOP CURRENCY AMEND SEE ALSO

1312. Protection of personal information

- (1) A person may obtain protected information if the information is obtained for the purposes of this Act or the Farm Household Support Act 1992.

Note: In certain circumstances it is an offence for a person to obtain protected information without authority (see section 1312A).

(1A) A person may:

- (a) make a record of protected information ; or
- (b) disclose such information to any person; or
- (c) otherwise use such information;

if the record, disclosure or use made of the information by the person is made:

- (d) for the purposes of this Act or the Farm Household Support Act 1992; or
- (e) for the purpose for which the information was disclosed to the person under section 1313 or 1314 of this Act .

Note: In certain circumstances it is an offence for a person to use protected information without authority (see section 1312B).

- (2) Nothing in this Division prevents a person from disclosing information to another person if the information is disclosed for the purposes of the Child Support (Registration and Collection) Act 1988 or the Child Support (Assessment) Act 1989.

1991-046

TOP CURRENCY AMEND SEE ALSO

1312A. Offence - unauthorised access to protected information

If:

- (a) a person intentionally obtains information; and
- (b) the person:
 - (i) is not authorised or required by or under this Act or the Farm Household Support Act 1992; and

(ii) has no other lawful authority;

to obtain the information; and

- (c) the person knows or ought reasonably to know that the information is protected information ;

the person is guilty of an offence.

Penalty: Imprisonment for 2 years.

Note 1: Subsection 4B (2) of the Crimes Act 1914 allows a court that convicts an individual of an offence to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on the individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the resulting number by the amount of a penalty unit. The amount of a penalty unit is stated in section 4AA of that Act.

Note 1A: If a body corporate is convicted of the offence, subsection 4B(3) of the Crimes Act 1914 allows a court to impose a maximum fine of an amount that is 5 times the maximum fine that could be imposed on an individual convicted of the same offence.

Note 2: A person, including an officer , is authorised to obtain protected information for the purposes of this Act or the Farm Household Support Act 1992 (see subsection 1312(1)).

Note 3: For " protected information " see subsection 23(1).

Note 4: If a person is guilty of an offence under this section and the person is an employee or agent of another person, the other person may also be guilty of the offence (see sections 1358A and 1358B).

1991-046

TOP CURRENCY AMEND SEE ALSO

1312B. Offence - unauthorised use of protected information

If:

- (a) a person intentionally:

(i) makes a record of; or

(ii) discloses to any other person; or

(iii) otherwise makes use of;

information; and

- (b) the person is not authorised or required by or under this Act or the Farm Household Support Act 1992 to make the record, disclosure or use of the information that is made by the person; and

- (c) the person knows or ought reasonably to know that the information is protected information ;

the person is guilty of an offence.

Penalty: Imprisonment for 2 years.

Note 1: Subsection 4B (2) of the Crimes Act 1914 allows a court that convicts an individual of an offence to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine that a

court can impose on the individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the resulting number by the amount of a penalty unit. The amount of a penalty unit is stated in section 4AA of that Act.

Note 1A: If a body corporate is convicted of the offence, subsection 4B(3) of the Crimes Act 1914 allows a court to impose a maximum fine of an amount that is 5 times the maximum fine that could be imposed on an individual convicted of the same offence.

Note 2: A person, including an officer, is authorised to use information only if it is used for certain purposes (see subsection 1312(1A)). In certain circumstances an officer is required under this Act to disclose information (see section 1313). The Secretary can disclose certain information (see section 1314).

Note 3: For "protected information" see subsection 23(1).

Note 4: If a person is guilty of an offence under subsection (1) and the person is an employee or agent of another person, the other person may also be guilty of the offence (see sections 1358A and 1358B).

1991-046

TOP CURRENCY SEE ALSO

1313. Protection extends to court, tribunal etc. proceedings

An officer must not, except for the purposes of this Act or the Farm Household Support Act 1992, be required:

- (a) to produce any document in his or her possession; or
- (b) to disclose any matter or thing of which he or she had notice;

by reason of the performance or exercise of his or her duties, functions or powers under this Act, the 1947 Act or the Farm Household Support Act 1992. to:

- (c) a court; or
- (d) a tribunal; or
- (e) an authority; or
- (f) a person;

that has power to require the production of documents or the answering of questions.

1991-046

TOP CURRENCY AMEND SEE ALSO

1314. Secretary's certificate

(1) Despite sections 1312B and 1313, the Secretary may:

- (a) if the Secretary certifies that it is necessary in the public interest to do so in a particular case or class of cases - disclose information acquired by an officer in the performance of his or her functions or duties or in the exercise of his or her powers under this Act or the Farm Household Support Act 1992 to such persons and for such purposes as the Secretary determines; or
- (b) disclose any such information to the Secretary of a

Department of State of the Commonwealth or to the head of an authority of the Commonwealth for the purposes of that Department or authority; or

- (ba) disclose any such information to a contracted case manager within the meaning of the Employment Services Act 1994 for the purposes of that Act; or
- (c) disclose any such information to a person who is expressly or impliedly authorised by the person to whom the information relates to obtain it.

Note: A person to whom information is disclosed may commit an offence if the person uses the information without authority (see section 1312B).

- (2) In giving certificates for the purposes of paragraph (1) (a), the Secretary must act in accordance with guidelines from time to time in force under subsection 1315 (1).
- (3) In disclosing information under paragraph (1) (b), the Secretary must act in accordance with guidelines from time to time in force under subsection 1315(1).

1991-046

TOP CURRENCY AMEND SEE ALSO

1315. Guidelines for exercise of Secretary's certificate power

- (1) The Minister, by determination in writing:
 - (a) is to set guidelines for the exercise of the Secretary's power to give certificates for the purposes of paragraph 1314 (1) (a); and
 - (aa) is to set guidelines for the exercise of the Secretary's power under paragraph 1314(1) (b); and
 - (b) may revoke or vary those guidelines.
- (2) A determination made under subsection (1) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act

1901 .

1991-046

TOP CURRENCY AMEND SEE ALSO

1316. Offence - soliciting disclosure of protected information

- (1) If:
 - (a) a person solicits the disclosure of protected information from an officer or another person; and
 - (b) the disclosure would be in contravention of this Division; and
 - (c) the first-mentioned person knows or ought reasonably to know that the information is protected information ;

the first-mentioned person is guilty of an offence, whether or not any protected information is actually disclosed.

Penalty: Imprisonment for 2 years.

Note 1: Subsection 4B (2) of the Crimes Act 1914 allows a court that convicts an individual of an offence to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on the individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the resulting number by the amount of a penalty unit. The amount of a penalty unit is stated in section 4AA of that Act.

Note 1A: If a body corporate is convicted of the offence, subsection 4B(3) of the Crimes Act 1914 allows a court to impose a maximum fine of an amount that is 5 times the maximum fine that could be imposed on an individual convicted of the same offence.

Note 2: For " protected information " see subsection 23(1).

Note 3: If a person is guilty of an offence under subsection (1) and the person is an employee or agent of another person, the other person may also be guilty of the offence (see sections 1358A and 1358B).

1991-046

TOP CURRENCY AMEND
1316A. Protected Information

(1) If:

- (a) a person solicits the disclosure of protected information from an officer ; and
- (b) for that purpose makes representations which the person knows or ought reasonably to know are untrue;

the person is guilty of an offence, whether or not any protected information is actually disclosed. Penalty: Imprisonment for 2 years.

Note 1: Subsection 4B (2) of the Crimes Act 1914 allows a court that convicts an individual of an offence to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on the individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the resulting number by the amount of a penalty unit. The amount of a penalty unit is stated in section 4AA of that Act.

Note 1A: If a body corporate is convicted of the offence, subsection 4B(3) of the Crimes Act 1914 allows a court to impose a maximum fine of an amount that is 5 times the maximum fine that could be imposed on an individual convicted of the same offence.

Note 2: For " protected information " and " officer " see subsection 23(1).

Note 3: If a person is guilty of an offence under subsection (1) and the person is an employee or agent of another person, the other person may also be guilty of the offence (see sections 1358A and 1358B).

1991-046

TOP CURRENCY AMEND
1318. Offences - offering to supply protected information

(1) A person who:

- (a) offers to supply (whether to a particular person or otherwise) information about another person; and

(b) knows that the information is protected information ;
is guilty of an offence.

) A person who:

(a) holds himself or herself out as being able to supply
(whether to a particular person or otherwise)
information about another person; and

(b) knows that the information is protected information ;
is guilty of an offence. Penalty: Imprisonment for 2 years.

Note 1: Subsection 4B (2) of the Crimes Act 1914 allows a court that convicts an individual of an offence to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on the individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the resulting number by the amount of a penalty unit. The amount of a penalty unit is stated in section 4AA of that Act.

Note 1A: If a body corporate is convicted of the offence, subsection 4B(3) of the Crimes Act 1914 allows a court to impose a maximum fine of an amount that is 5 times the maximum fine that could be imposed on an individual convicted of the same offence.

Note 2: For " protected information " see subsection 23(1).

Note 3: If a person is guilty of the offence under subsection (1) and the person is an employee or agent of another person, the other person may also be guilty of the offence (see sections 1358A and 1358B).

(3) Nothing in subsection (1) or (2) renders an officer acting in the exercise or performance of his or her duties, functions or powers under this Act or the Farm Household Support Act 1992 guilty of an offence.

Note: For " officer " see subsection 23(1).

1991-046

TOP CURRENCY AMEND

1321. Officer's oath or declaration

An officer must make an oath or declaration in a form approved by the Minister or the Secretary if required to do so by the Minister or the Secretary .

Note: For " officer " see subsection 23(1).

1991-046

TOP CURRENCY

1321A. Freedom of Information Act not affected

The provisions of this Division that relate to the disclosure of information do not affect the operation of the Freedom of Information Act 1982.

COMPUTER LAW SERVICES - TAXATION LAW
OTHER COMMONWEALTH ACTS
ACTS BEGINNING WITH T
TAXATION ADMINISTRATION ACT 1953
BODY
PART IA - ADMINISTRATION
3E. PROVISION OF TAXATION INFORMATION TO LAW ENFORCEMENT AGENCIES
AND TO ELIGIBLE ROYAL COMMISSIONS

1953-001

TOP CURRENCY SEE ALSO

3E. Provision of taxation information to law enforcement agencies
and to eligible Royal Commissions

- (1) Notwithstanding any taxation secrecy provision, the Commissioner may disclose information acquired by the Commissioner under the provisions of a tax law to an authorised law enforcement agency officer, or to an authorised Royal Commission officer, if the Commissioner is satisfied that the information is relevant to:
 - (a) establishing whether a serious offence has been, or is being, committed; or
 - (b) the making, or proposed or possible making, of a proceeds of crime order.
- (2) Where information is communicated to an authorised law enforcement agency officer, or to an authorised Royal Commission officer, under subsection (1):
 - (a) the officer shall not divulge or communicate the information to another person, or make a record of the information, except for the purposes of, or in connection with:
 - (i) the investigation of a serious offence; or
 - (ii) an investigation relating to the making, or proposed or possible making, of a proceeds of crime order; and
 - (b) a person to whom information has been communicated in accordance with paragraph (a) or this paragraph shall not divulge or communicate the information to another person, or make a record of the information, except for the purposes of, or in connection with, that investigation.
- (3) Where information is communicated to a person under subsection (1) or (2), the person-
 - (a) shall not voluntarily give the information in evidence in a proceeding before a court; and
 - (b) shall not be required to divulge or communicate the information to a court.
- (4) Where information is communicated to an authorised law enforcement agency officer, or to an authorised Royal Commission officer, under subsection (1), nothing in subsection (2) or (3) prohibits:-
 - (a) the communication of the information to a person, or the making of a record of the information, for the purposes of, or in connection with:-
 - (i) the prosecution, or proposed or possible prosecution, of a person for a tax-related offence; or

- (ii) proceedings, or proposed or possible proceedings, for the making of a proceeds of crime order ; or
- b) the voluntary communication of the information to a court in the course of either of the following proceedings before that court:
 - (i) a prosecution of a person for a tax-related offence ;
 - (ii) proceedings for the making of a proceeds of crime order .
- (5) A person to whom information has been communicated in accordance with paragraph (4) (a) or this subsection shall not divulge or communicate the information, or make a record of the information, except for the purposes of, or in connection with-
 - (a) the prosecution referred to in subparagraph (4) (a) (i); or
 - (b) the proceedings referred to in subparagraph (4) (a) (ii).
- (6) A person to whom information is communicated in accordance with paragraph (4) (a) or subsection (5) shall not be required to divulge or communicate that information to a court.
- (6A) If information is communicated to an authorised Royal Commission officer under subsection (1):
 - (a) the person or persons constituting the eligible Royal Commission concerned may, in a manner that does not identify, and is not reasonably capable of being used to identify, the person to whom the information relates-
 - (i) communicate the information to the appropriate executive authority in a report by the eligible Royal Commission ; or
 - (ii) divulge the information in the course of a proceeding conducted by the eligible Royal Commission , other than a proceeding conducted in private; and
 - (b) the person or persons constituting the eligible Royal Commission concerned may communicate the information to the appropriate executive authority in a report by the eligible Royal Commission ; and
 - (c) the person or persons constituting the eligible Royal Commission concerned may divulge the information in the course of a proceeding conducted in private by the eligible Royal Commission where each person present is covered by one of the following categories-
 - (i) the person or persons constituting the eligible Royal Commission ;
 - (ii) an official of the eligible Royal Commission ;
 - (iii) if the person to whose affairs the information relates is a company :
 - (A) a person who is, or has been, a director or officer of the company ; or
 - (B) a person who is, or has been, directly involved in, or responsible for, the preparation of information given to the

Commissioner on behalf of the company ;

(iv) if the person to whose affairs the information relates is not a company - that person;

(v) the person who gave the information to the Commissioner ;

(vi) a barrister or solicitor representing either of the following in relation to the proceeding:

(A) a company covered by subparagraph (iii);

(B) a person covered by sub-subparagraph (iii) (A) or (B) or subparagraph (iv) or (v).

(6B) A person does not contravene subsection (2) because of anything done for the purposes of enabling a thing mentioned in paragraph (6A) (a), (b) or (c) to happen.

(6C) If information is communicated to the appropriate executive authority under paragraph (6A) (b), the executive authority-

(a) must not divulge or communicate the information to another person, or make a record of the information, except for the purposes of, or in connection with, the disclosure of the information to an authorised law enforcement agency officer ; and

(b) must not voluntarily give the information in evidence in a proceeding before a court; and

(c) is not to be required to divulge or communicate the information to a court.

(6D) If information is communicated to an authorised law enforcement agency officer under paragraph (6C) (a), this section has effect as if the information had been communicated to the officer under subsection (1).

(7) A person who divulges or communicates information, or makes a record of information, in contravention of this section is guilty of an offence punishable, upon conviction, by a fine not exceeding \$10,000 or imprisonment for a period not exceeding 2 years, or both.

(8) Subsection (1) is in addition to, and not in derogation of, any other provision of this Act or of any other law relating to the communication of information.

(9) For the purposes of this section, the communication of information to, or the making of a record of information by, a barrister or a solicitor representing a person in relation to a particular prosecution or other proceedings shall be taken to be the communication of the information, or the making of a record of the information, as the case requires, for the purposes of, or in connection with, that prosecution or those proceedings, as the case may be.

(10) A reference in this section to:-

(a) the possible making of a proceeds of crime order in respect of a person ; or

(b) possible proceedings for the making of a proceeds of crime order in respect of a person;

includes a reference to the making of an order that is only a possibility, or to proceedings that are only a possibility, at the time in question because the person has not been convicted (within the meaning of section 5 of the Proceeds of Crime Act 1987) of an offence to which the order relates.

(11) In this section:-

"appropriate executive authority" , in relation to an eligible Royal Commission , means:

- (a) in the case of an eligible Royal Commission of the Commonwealth - the Governor-General; or
- (b) in the case of an eligible Royal Commission of a State - the Governor of the State; or
- (c) in the case of an eligible Royal Commission of the Northern Territory - the Administrator, or acting Administrator, of the Northern Territory; or
- (d) in the case of an eligible Royal Commission of the Australian Capital Territory - the Chief Minister, or acting Chief Minister, of that Territory; or
- (e) in any other case - the person specified in the regulations;

"company" has the same meaning as in section 6 of the Income Tax Assessment Act 1936;

"proceeds of crime order" means-

- (a) an order under Part II or III of the Proceeds of Crime Act 1987 or under a corresponding law of a State or Territory; or
- (b) an order under Division 3 of Part XIII of the Customs Act 1901; being an order-
- (c) made in respect of a person who has been convicted (within the meaning of section 5 of the Proceeds of Crime Act 1987) of a serious offence ; and
- (d) that relates to that offence;

"serious offence" means an offence against a law of the Commonwealth, of a State or of a Territory that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence);

"taxation secrecy provision" means a provision of a tax law that prohibits the communication or divulging of information;

"tax law" means-

- (a) a taxation law ;
- (b) any other Act of which the Commissioner has the general administration;
- (c) a repealed Act of which the Commissioner had the general administration; or
- (d) regulations under an Act referred to in paragraph (b) or (c);

"tax-related offence" means:

- (a) an offence against:
 - (i) a tax law ; or
 - (ii) the Crimes (Taxation Offences) Act 1980;

- (b) an offence against the Crimes Act 1914 relating to a law referred to in paragraph (a); or
- (c) an offence against section 29D or 86A of the Crimes Act 1914, being an offence that relates to a liability to the Commonwealth arising under, or by virtue of, a tax law .

1953-001

TOP CURRENCY

3F. Provision of taxation information to Comptroller-General of Customs

- (1) Notwithstanding any taxation secrecy provision , the Commissioner may disclose to the Comptroller-General of Customs any information that has come to the knowledge of the Commissioner in the performance of the Commissioner's official duties.
- (2) Subsection (1) is in addition to, and not in derogation of, any other provision of this Act or of any other law relating to the communication of information.
- (3) In this section:

"taxation secrecy provision" has the same meaning as in section 3E.
