

3 April 2020

The Hon. Michael Sukkar MP  
Assistant Treasurer and Minister for Housing  
PO Box 6022  
House of Representatives  
Parliament House  
CANBERRA ACT 2600

By email: michael.sukkar.mp@aph.gov.au

CC: Louise Clark, Deputy Commissioner of Taxation, Australian Taxation Office

Dear Assistant Treasurer,

**STEP Australia submission – Commissioner Remedial Power – Deceased Estates  
Endorsement of submission**

The National Tax Liaison Group (**NTLG**) is the Australian Taxation Office's (**ATO**) longest standing consultative forum, focusing on strategic taxation matters of national interest. The primary objective of the NTLG is to provide a wide range of stakeholders with the opportunity to discuss the strategic direction of the tax system and to deliver opportunities for improvements to the administration of the tax system. The NTLG's membership is comprised of senior ATO and Treasury officers and representatives of the major tax, law, and accounting professional associations. Details of the activities of the NTLG, including its membership, can be found [here](#).

Chartered Accountants Australia and New Zealand, Corporate Tax Association, CPA Australia, Institute of Public Accountants, Law Council of Australia and The Tax Institute (together **the Joint Bodies**) are the external members of the NTLG. We write to you as the peak professional accounting and tax practitioner bodies in Australia representing the tax profession at this critical time of Australia facing the COVID-19 crisis.

The Joint Bodies endorse the submission prepared by STEP Australia dated 2 April 2020 (**STEP Australia Submission**) concerning the *Taxation Administration (Remedial Power – Disclosure of Protected Information by Taxation Officers) Determination 2020*. The legislative instrument was originally anticipated to commence on 13 May 2020 on the basis that it would not be disallowed by either House of Parliament during the 15 consecutive sitting day period after the date the legislative instrument was first introduced into the Parliament. The effective date of the instrument is now uncertain and will be significantly delayed due to insufficient Parliamentary sitting days arising as a result of radical changes to the planned 2020 Parliamentary Sitting calendar in response to the COVID-19 crisis.

The STEP Australia Submission proposes a minor amendment to the existing legislation as a separate schedule to the amending legislation to be introduced into Parliament next week in respect of the 'Jobkeeper Payment' initiative announced by the Prime Minister on 30 March 2020. The Joint Bodies would support such an amendment being made in the circumstances.

More detailed information is contained in the STEP Australia Submission attached.

If you would like to discuss any of the above, please contact Tax Counsel Stephanie Caredes on 02 8223 0059 in the first instance.

Yours faithfully,



**Peter Godber**  
President  
The Tax Institute



**Michael Croker**  
Tax Leader Australia  
Chartered Accountants Australia and New Zealand



**Michelle de Niese**  
Executive Director  
Corporate Tax Association



**Dr Gary Pflugrath**  
Executive General Manager, Policy & Advocacy  
CPA Australia



**Greg Rodgers**  
Chair – Business Law Section  
Law Council of Australia



**Tony Greco**  
General Manager Technical Policy  
Institute of Public Accountants



2 April 2020

**The Hon. Michael Sukkar MP**

Assistant Treasurer and Minister for Housing  
PO Box 6022  
House of Representatives  
Parliament House  
Canberra ACT 2600

**By email: [Minister.sukkar@treasury.gov.au](mailto:Minister.sukkar@treasury.gov.au); [Michael.sukkar.mp@aph.gov.au](mailto:Michael.sukkar.mp@aph.gov.au)**

Dear Minister,

**Commissioner Remedial Power - Deceased Estates**

We the Society of Trust & Estate Practitioners Australia Pty Limited (STEP Australia) represent professionals from across Australia who are specialists in trusts, estate planning and in supporting the needs of families (young and old, wealthy and modest). The objective of a STEP Professional is to advance the interests of families across generations. This often involves us in identifying issues of relative importance to families and bringing these to the attention of those who can make a positive difference. This is the purpose of this submission.

STEP Australia's membership includes lawyers, accountants, financial wealth advisors and trustee company professionals from across Australia; our members bring a multi-disciplinary approach to the benefit of their clients. It is this unique multi-disciplinary approach that supports this submission.

The ATO tried to fix delays and doubts about handling deceased estates. The Commissioner made a "disallowable instrument". It was to fix a drafting problem. The drafting problem exposed ATO officers to prison sentences if they talked to a tax agent appointed by an executor.

The ATO "fix" has been nullified by Parliament's reduced sitting programme. Unusually, this "disallowable instrument" cannot commence until the 15 sitting days' scrutiny has ended. No one now knows when that might be.

There are about 160,000 deaths per year in Australia, subject to fluctuations. This is a big and continuing issue for ATO, and for loved ones and their advisers.

There is a simple fix. Tack the modification proposed by "disallowable instrument", already properly drafted and scrutinised, to one of the Bills proposed for next week.

More details, and alternative (less certain) solutions are annexed.

**Contact**

If you would like to discuss any of the above, please contact Ian Raspin TEP, Director and Treasurer of STEP Australia, principal technical author of the submission on +61 421 346 455, or Peter Bobbin TEP, STEP Australia Chair on +61 2 9895 9370.

Yours sincerely



Peter Bobbin

**Chair of STEP Australia**

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## **ANNEXURE**

We refer to the inevitable delay in commencement of the Taxation Administration (Remedial Power – Disclosure of Protected Information by Taxation Officers) Determination 2020 (CRP 2020/1) following an announcement on 23 March 2020 that the 2020 parliamentary calendar year had been modified to reduce the number of parliamentary sitting days in response to the COVID-19 emergency.<sup>1</sup>

A copy of CRP2020/1 and the explanatory statement to the earlier draft version of the legislative instrument are respectively attached as appendices.

The legislative instrument was originally anticipated to commence on 13 May 2020 on the basis that it would not be disallowed by either House of Parliament during the 15 consecutive sitting day period after the date the legislative instrument was introduced into the Parliament as required under section 42 the Legislation Act, C.f. section 370-20 of Schedule 1 to the Taxation Administration Act (1953) (TAA(1953)).

The above legislative instrument may not commence until the third week of August 2020 although it may be further postponed depending on the current COVID-19 crisis. Thus, it is unclear as to the date from which the legislative instrument will be potentially effective.

This delay will hamper accurate and timely resolution of tax issues for a deceased by registered tax agents and legal practitioners who are precluded from directly accessing a deceased person's information from the ATO given the current interpretation of section 355-25(2) of Schedule 1 of the TAA (1953). CRP 2020/1 was supposed to fix this.

The current, interim manual process set up to enable tax agents and legal practitioners to obtain information on a deceased via the Legal Personal Representative (LPR) of a deceased estate has proven protracted and inefficient. Thus, registered tax agents have typically chosen to defer completion of the date of death returns for deceased individuals until the commencement of the legislative instrument.

ATO and the profession have used their best endeavours to work the manual system. It has invariably created bottlenecks which have significantly impeded the finalisation of a deceased person's affairs. The burden is shared by the LPR, bereaved families, tax practitioners and ATO staff.

In short, the current processes are gridlocked due to the inability of practitioners to directly access ATO on-line systems. Moreover, given the current lockdown registered tax agents, legal practitioners and ATO staff are to a large extent working remotely. This has exacerbated the deficiencies of the current manual workaround.

This is a large and unavoidable issue demanding a real fix. Usually there are about 160,000 deaths in Australia each year, though the figure fluctuates.

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<sup>1</sup> We also refer to a related submission from BNR Partners dated 3 December 2019 in respect of the exposure draft version of the legislative instrument, and to related discussions between Mr. Mark Morris of BNR Partners and ATO representative members of the Tax Practitioner Stewardship Group (TPSG) at the teleconferences held on 25 March 2020 and 1 April 2020.

Issues encountered with a deceased estate can be complex requiring an LPR to take appropriate tax advice to ensure the deceased's affairs are accurately dealt with on a timely basis.

This is important as the LPR is personally liable under section 260-140 of Schedule 1 of the TAA (1953)<sup>2</sup> but also faces obligations to family members to expedite the finalisation of an estate<sup>3</sup>.

We therefore wish to canvass alternate strategies that could be considered by the ATO, Treasury and the profession to address the inability of registered tax agents to directly access a deceased person's information on the ATO's online systems so that reliance would no longer be placed on the current interim manual process and the uncertain timing of the passage of CRP 2020/1.

### **Preferred Fix**

Our preferred recommendation is a minor amendment as a separate schedule to the amending legislation to be introduced into Parliament next week in respect of the 'Jobkeeper Payment' initiative announced by the Prime Minister on 30 March 2020.

This amendment would take the form of the intended modification under item 5 of CRP 2020/1 to add a further category of covered entity under proposed paragraph (h) of section 355-25(2) of Schedule 1 of the TAA (1953) to include a registered tax agent, BAS agent or legal practitioner appointed by the LPR of a deceased estate where the primary entity was a deceased individual.

That drafting is done. The consultation was exhaustive. It's neat. It is simple and does not come at any cost to the revenue.

Similarly, we believe that explanatory material prepared in relation to the earlier draft legislative instrument could be incorporated into any accompanying explanatory memorandum.

We recognise that such a proposal is unexpected but are convinced that it should be considered given the detrimental impact if the resolution of deceased estates cannot be appropriately progressed during the current lockdown period.

Moreover, that amendment is tenable as it has been unanimously supported by registered tax agents, legal practitioners, professional bodies, Treasury and the ATO to ensure the efficient administration of deceased estates albeit without triggering any loss of revenue.

Indeed, revenue will likely be lost in the absence of such a measure.

### **Other Alternative**

Should this preferred approach not be adopted we would alternatively request that the ATO Tax Counsel Network consider whether the Commissioner could allow registered tax agents and legal practitioners direct access to a deceased person's information via

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<sup>2</sup> As well as section 254 of the Income Tax Assessment Act 1936

<sup>3</sup> And in the context of what is known as the 'Executor Year' has a timely obligation to the Court and to beneficiaries.

ATO online under the general power of administration (GPA) which for income tax purposes is principally included under section 8 of the Income Tax Assessment Act (1936).

The exercise of the GPA in such a way would only be required until the time at which the legislative instrument takes effect at some future date.

In this context we note that paragraph 3 of Practice Statement PS LA 2009/4 states that ‘... In the rare circumstances where the operation of the law is unclear or leads to unforeseen or unexpected consequences, it may be appropriate to consider whether the issue can be resolved using the Commissioner’s GPA’ (emphasis added).

We recognise that the above Practice Statement provides that reliance should be placed on the Commissioner’s remedial power to modify the operation of the tax law to ensure it can be administered in accordance with the law.

However, we respectfully contend that the current interpretation of section 355-25(2) denying registered tax agents and legal practitioners direct access to a deceased’s information is not working in the way section 355-25 was intended, given the unprecedented circumstances in which all stakeholders are effectively working in a lockdown environment which is of uncertain duration.

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Appendix 1



## **Taxation Administration (Remedial Power— Disclosure of Protected Information by Taxation Officers) Determination 2020**

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I, Louise Clarke, as delegate of the Commissioner of Taxation, make the following determination.

Dated 13<sup>th</sup> of January 2020

Louise Clarke  
Deputy Commissioner of Taxation

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<b>Contents</b>	2	Name.....	1
	3	Commencement .....	1
	4	Authority.....	1
	4	Definitions .....	1
1	5	Modification of subsection 355-25(2) in Schedule 1 to the Act.....	1
	6	Application of modification .....	2

**1 Name**

This instrument is the *Taxation Administration (Remedial Power—Disclosure of Protected Information by Taxation Officers) Determination 2020*.

**2 Commencement**

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The first day this instrument is no longer liable to be disallowed, or to be taken to have been disallowed, under section 42 (disallowance) of the <i>Legislation Act 2003</i> .	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

**3 Authority**

This instrument is made under section 370-5 in Schedule 1 to the *Taxation Administration Act 1953*.

**4 Definitions**

In this instrument:

*Act* means the *Taxation Administration Act 1953*.

**5 Modification of subsection 355-25(2) in Schedule 1 to the Act**

For the purposes of section 370-5 in Schedule 1 to the Act, subsection 355-25(2) in that Schedule operates as if the following paragraph were added at the end of that subsection:

; or (h) the primary entity is an individual who has died and the covered entity is:

- (i) a registered tax agent or BAS agent of an executor or administrator of the primary entity's estate; or
- (ii) a legal practitioner representing an executor or administrator of the primary entity's estate in relation to the primary entity's affairs relating to one or more taxation laws.

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## Section 6

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### **6 Application of modification**

The modification of subsection 355-25(2) in Schedule 1 to the Act made by this instrument applies in relation to a disclosure of information that occurs on or after the commencement of this instrument.

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## Appendix 2



Australian Government  
Australian Taxation Office

Australian Taxation Office Legislative Instrument  
**Instrument ID: YYYY/BSL/ID#**

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## Explanatory Statement

### Taxation Administration (Remedial Power- Disclosure of Protected Information by Taxation Officers) Determination 2019

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#### General outline of instrument

1. This instrument is made under section 370-5 of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953). All references to legislative provisions in this Explanatory Statement are references to Schedule 1 to the TAA 1953 unless otherwise stated.
2. This instrument modifies the operation of subsection 355-25(2) to ensure a taxation officer can disclose protected information to the registered tax agent or BAS agent, or legal practitioner of an executor or administrator of an estate of an individual who has died. This information assists an executor or administrator to attend to the affairs of the deceased. In this Explanatory Statement all references to representative(s) refer to a registered tax agent or BAS agent, or legal practitioner of an executor or administrator of an estate of an individual who has died unless otherwise stated.
3. This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
4. Section 370-15 allows the Commissioner to prepare another legislative instrument to repeal this instrument. Subsection 370-15(3) states that subsection 33(3) of the *Acts Interpretation Act 1901* applies only to the extent that it allows the Commissioner to amend or vary this instrument.

#### Date of effect

5. This draft determination commences on the first day the determination is no longer liable to be disallowed, or to be taken to have been disallowed, under section 42 of the *Legislation Act 2003*.

#### What is this instrument about

6. The purpose of this instrument is to allow a taxation officer to disclose protected information of a deceased person to:
  1. the registered tax agent or BAS agent; and
  2. a legal practitioner,of an executor or administrator of an estate of the individual who has died.

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## What is the effect of this instrument

7. This instrument ensures that the making of such disclosures will not be an offence.
8. The instrument recognises that an executor or administrator of a deceased estate effectively 'stands in the shoes' of the deceased person, in the sense that they assume the rights, burdens and obligations of the deceased person after death. By allowing taxation officers to disclose the deceased person's protected information to a representative; the executor or administrator is able to be represented in performing their duties in the same way that the deceased person could have if they were alive.
9. The instrument notionally amends subsection 355-25(2), it is not a textual amendment rather it modifies and clarifies the operation of subsection 355-25(2). The effect of this instrument is to provide for representatives of an executor or administrator of a deceased estate to be considered a covered entity for the purposes of subsection 355-25(2).

## Background

10. Taxation officers are bound by strict taxpayer confidentiality laws. These rules contain a general prohibition on the disclosure of protected information about a taxpayer's affairs to another person except in certain limited circumstances.
11. Under those rules, a taxation officer **can** provide protected information of a deceased person to an executor or administrator of an estate of an individual who has died. However, such information **cannot** be provided to a representative appointed by an executor or administrator of the deceased person's estate, except in limited circumstances.
12. This instrument has been developed to ensure a taxation officer does not commit an offence when protected information of the deceased is disclosed to a representative of an executor or administrator of the deceased person's estate.

## Explanation

13. The TAA 1953 generally prohibits taxation officers from disclosing taxpayer information except as permitted by Division 355. Subdivision 355-B contains provisions governing the disclosure of protected information by taxation officers.
14. Under section 355-25, a taxation officer is prohibited from disclosing protected information to another entity (other than the entity to which it relates or to a court or tribunal) unless the disclosure is to a covered entity, or unless another exception applies. Paragraphs (a) to (g) of subsection 355-25(2) specify the different types of entities which are considered covered entities.
15. A legal personal representative that is an executor or administrator of an estate of an individual who has died is, under paragraph (d) of that subsection, expressly an entity to whom the taxation officers can provide information about the deceased's tax affairs. There is no statutory permission for taxation officers to provide such information to representatives of those

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executors or administrators.

16. The restrictive nature of the covered entity definition means that a representative appointed by an executor or administrator cannot receive protected information about the deceased person directly from the ATO. An exception may be available under section 355-50, if a taxation officer can make an assessment that a specific disclosure is in the performance of their duties as a taxation officer. However, the circumstances in which this exception can be exercised are limited and must be assessed on a case by case basis.

17. As a result, an executor or administrator of a deceased estate is in a more disadvantageous position to other entities that are able to appoint such representatives to assist them in understanding and complying with their taxation obligations.

18. It is desirable that executors and administrators are able to obtain assistance from tax agents and legal practitioners in finalising the tax affairs of the deceased where needed. In many cases, it will be more efficient for those executors and administrators if their representatives were able to obtain that information directly from the ATO, including electronically through on-line services.

19. After the death of a person, the executor or administrator of the estate effectively 'stands in the shoes' of the deceased person. This can be a stressful and emotional period. Managing the affairs of the deceased includes a range of final tax obligations which can be complex. The tax obligations include lodging the final individual return for the deceased person, obtaining a tax file number for the deceased estate (which is a separate entity), lodging the tax return of the estate, paying any outstanding tax debts and ensuring that refunds, credits or other entitlements are paid to the estate for the benefit of the beneficiaries.

20. The modification made by this instrument will ensure that those representatives will be covered entities to which taxation officers can disclose protected information of a deceased person.

21. The modification provides a precise and narrow change to the disclosure provisions, ensuring that it does not provide any wider authority for a taxation officer to make a disclosure of information to another entity.

22. This modification does create a change to taxpayer confidentiality provisions. The key principle to be considered is the protection of taxpayer information. Any disclosure of information exceptions are only provided in instances where privacy concerns are outweighed by the public benefit of these disclosures. The Commissioner has carefully considered this issue in light of this principle and considers it reasonable to make this modification. The Commissioner has carefully weighed all the considerations which attach to confidentiality of taxpayer information and exhausted all other interpretative and administrative solutions available to solve this issue.

### **Modification is not inconsistent with intended purpose or object of the provision**

23. The Commissioner considers the modification is not inconsistent with the intended purpose or object of the provision, being subsection

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355-25(2). In ascertaining the intended purpose or object of the provision, consideration was given to:

1. the explanatory memorandum and second reading speeches to the *Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009*;
2. the inquiry into the *Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009* and the submissions;
3. the former taxation secrecy provision and the explanatory memorandum relating to those bills containing the provisions;
4. the consultation paper on 'The Review of Taxation Secrecy and Disclosure Provisions' and the submissions relating to this paper;
5. the submissions relating to the exposure draft of the Confidentiality of Taxpayer Information Bill.

24. The policy intent of Subdivision 355-B and in particular, subsection 355-25(2), indicates that the covered entity exceptions have been drafted as a practical pathway for taxation officers to determine whether an agency relationship exists. That is, the list of covered entities at subsection 355-25(2) is intended to eliminate or reduce the problems for taxation officers in determining whether someone is an entity's agent and the scope of that relationship; while still recognising the need for taxpayers to be able to be represented in their dealings with the Commissioner. It was also considered important to 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.

25. The Commissioner considers that had these particular circumstances been considered at the time the law was drafted, the law would have been drafted differently. It would have provided for this circumstance while still upholding the key principle of the protection of taxpayer information.

### **Modification is reasonable**

26. The Commissioner considers the modification to be a reasonable measure to ensure that the taxpayer confidentiality provisions avoid creating unintended outcomes for executors or administrators of a deceased estate.

27. The modification will significantly reduce the administrative burden for an executor or administrator of a deceased estate in finalising the tax affairs of the deceased. It will enable them to be represented by a registered tax agent, BAS agent or legal practitioner in their dealings with the Commissioner; placing them in a similar position to other taxpayers.

28. The Commissioner recognises that managing the affairs of the deceased can be complex, that the passing of a deceased person can be a stressful and emotional time, and that executors and administrators often need to be able to obtain assistance from their representatives in finalising those affairs.

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29. In light of the intended purpose of the taxpayer confidentiality provisions, the Commissioner considers it reasonable to exercise the Commissioner's discretion to use the remedial power for this issue.

### Compliance cost

30. Compliance cost impact: Minor – There will be minimal impact for both implementation and ongoing compliance costs. The legislative instrument is minor and machinery in nature.

### Budgetary impact

31. The Commissioner has received advice from the Department of the Treasury that the proposed exercise of the CRP would have a negligible cost to the budget.

### Consultation

32. Subsection 17(1) of the *Legislation Act 2003* requires, before the making of a determination, that the rule-maker is satisfied that appropriate and reasonably practicable consultation has been undertaken.

33. As part of the consultation process, you are invited to comment on the draft determination and its accompanying draft explanatory statement.

Please forward your comments to the contact officer by the due date.

<b>Due date:</b>	20 December 2019
<b>Contact officers:</b>	Stuart Atchison and Zoe Leonard
<b>Email address:</b>	<a href="mailto:CRPSecretariat@ato.gov.au">CRPSecretariat@ato.gov.au</a>
<b>Telephone:</b>	(02) 6216 5177 and (02) 6216 2044

### Consultation questions

1. Do you agree that the taxpayer confidentiality provisions under the taxation law, as enacted, are leading to, or could lead to, unintended outcomes in the context of representatives of executors and administrators of deceased estates?
2. Is the proposed Legislative Instrument reasonable and not inconsistent with the intended object or purpose of the law?
3. Is the proposed Legislative Instrument reasonable having regard to the cost of compliance?
4. Does the proposed Legislative Instrument result in outcomes for an entity that might be less favourable than those under existing law?
5. Does the proposed Legislative Instrument ensure that relevant provisions of Subdivision 355-B continue to operate in accordance with the intended purpose or object of the law?
6. Legislative instruments ordinarily apply prospectively and they cannot apply retrospectively to disadvantage an entity other than the Commonwealth or an authority of the Commonwealth (section 12 *Legislation Act 2003*). For the present proposal, prospective



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application is proposed. What application date should this instrument have?

Information, including your name, contained in submissions may be made available to the public in the explanatory statement unless you indicate that you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain in confidence should provide this information marked as such in a separate attachment.

Legal requirements, such as those imposed by the *Freedom of Information Act 1982*, may affect the confidentiality of your submission.

**Legislative references:**

*Acts Interpretation Act 1901*

*Human Rights (Parliamentary Scrutiny) Act*

*2011 Income Tax Assessment Act 1997*

*Legislation Act 2003*

*Taxation Administration Act 1953*

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

## **Statement of compatibility with Human Rights**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

### **Taxation Administration (Remedial Power- Disclosure of Protected Information by Taxation Officers) Determination 2019**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

This Legislative Instrument is made under section 370-5 of Schedule 1 to the *Taxation Administration Act 1953* (TAA 1953), known as the Commissioner's Remedial Power. It modifies the operation of the taxpayer confidentiality rules in Division 355 of Schedule 1 to the TAA 1953. The modification ensures that a taxation officer can disclose protected information of a deceased person to the registered tax agent, BAS agent, or legal practitioner of an executor or administrator of the estate of the individual who has died. Under current law, taxation officers can disclose such information directly to the executor or administrator but cannot disclose the information to their representatives, except in limited circumstances.

Managing the affairs of the deceased can be complex and the passing of a person can be a stressful and emotional time. An executor or administrator, who stands in the shoes of the deceased, may need to obtain assistance from their representatives in finalising those affairs.

In effect, the modification will enable an executor or administrator to obtain assistance from tax agents, BAS agents and legal practitioners in their dealings with the ATO.

#### **Human rights implications**

Article 17 of the International Covenant on Civil and Political Rights (ICCPR) prohibits the interference with privacy and attacks on reputation. This modification does modify taxpayer confidentiality provisions relating to personal information. The modification provides a precise and narrow change to those provisions, to allow a taxation officer to disclose protected information relating to a deceased person to a registered tax agent, BAS agent or legal practitioner of the executor or administrator of the individual's estate. It does not provide any wider authority for a taxation officer to make a disclosure of information to another entity. The modification will enable an executor or administrator to be represented in performing their duties in the same way that the deceased person could have if they were alive.

The modification is in accordance with the provisions, aims and objectives of the ICCPR and is reasonable in the particular circumstances. Taxation officers are bound by strict taxpayer confidentiality laws. The taxpayer confidentiality

provisions prohibit the disclosure of information about a taxpayer's tax affairs to another person, except in certain limited circumstances.

There are serious consequences for breaching those provisions, with such a breach being an offence punishable by up to 2 years imprisonment. The Commissioner has carefully considered the human rights implications as articulated in ICCPR and considers that the disclosure of protected information provisions in Division 355 of Schedule 1 to the TAA 1953 continue to provide proper safeguards. The key principle in these considerations is the protection of taxpayer information; any disclosure of information exceptions are only provided in instances where privacy concerns are outweighed by the public benefit of these disclosures.

### **Conclusion**

The Legislative Instrument is compatible with human rights because the modification enables the executor or administrator, who steps into the shoes of the deceased, to be represented in their dealings with the Commissioner, placing them in a similar position to other taxpayers.

The modification could significantly reduce the administrative burden for an executor or administrator of a deceased estate in managing the range of final tax obligations of the deceased.

To the extent it may limit human rights; those limitations are reasonable, necessary and proportionate. The executor or administrator of a deceased estate has a choice as to whether or not they would want to appoint a registered tax agent, BAS agent or legal practitioner. If they decide that they do not want the information disclosed to such a person, then they do not have to appoint such a representative in their dealings with the ATO.