

22 January 2016



Tom Reid
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The Treasury
Langton Crescent
PARKES ACT 2600

By email: taxlawdesign@treasury.gov.au

Dear Mr Reid

Exposure Draft Taxation Administration Amendment (Disclosure of Information) Regulation 2016

Thank you for the opportunity to comment on the Exposure Draft Taxation Administration Amendment (Disclosure of Information) Regulation 2016 (the Exposure Draft Regulation).

The Law Council acknowledges the assistance of its Business Law Section's Privacy Law Committee, the Migration Law Committee and the Law Institute of Victoria (LIV) in the preparation of this submission.

The Law Council recognises the importance of effectively detecting, investigating and prosecuting the exploitation of vulnerable visa holders in the workplace, including the exploitation of workers to perform unlawful unpaid work. However, it considers that any such law enforcement operations that come into contact with victims of trafficking, slavery, or slavery-like offences must allow victims to recover wages and seek compensation in circumstances where such victims would otherwise be deported. The Law Council notes that some victims may not be aware that they are engaged in illegal activities.

The proposal in the Exposure Draft Regulation is to list Taskforce Cadena as a prescribed taskforce for the purposes of the *Taxation Administration Act 1953* (Cth) (TAA). This would enable authorised taxation officers to share taxpayer information, which may include personal information, with Taskforce Cadena agencies on an ongoing basis. Current Taskforce Cadena agencies include: the Department of Immigration and Border Protection (DIBP), the Australian Border Force (ABF) and the Fair Work Ombudsman (FWO).

Information sharing is part of an increasingly robust framework for achieving law enforcement objectives.

Privacy considerations

Taxpayer information is likely to include personal information which may relate to vulnerable visa holders. In this respect, the information sharing is likely to take place between relevant government agencies, which are subject to the *Privacy Act 1988* (Cth) (the Privacy Act). However, to protect the privacy of any affected individuals in the event that personal information is disclosed under section 355-25 and subsection 355-70(12) in

Schedule 1 of the TAA, the Law Council recommends that the legislation should expressly require that the entity to which the information is disclosed:

- only use that information for the direct purposes of the prescribed Taskforce Cadena; and
- not make any other or secondary disclosures of that personal information.

The LIV has noted that subsection 355-70(12) of the TAA provides:

The regulations may prescribe a taskforce for the purposes of item 4 of the table in subsection (1). A major purpose of the taskforce must be protecting the public finances of Australia.

The LIV has queried whether there should be greater connection with the objectives and purposes of the various prescribed taskforces, including Taskforce Cadena.

Government proposals to regulate matters that impact on privacy should also be accompanied by a Privacy Impact Assessment in accordance with the Australian Information Commissioner's Guide to undertaking privacy impact assessments (May 2014). The Law Council and LIV recommend that a PIA should be undertaken if one has not already been done.

Furthermore, the proposed amendment should accord with Australia's international human rights law obligations in respect of privacy, pursuant to the *International Covenant on Civil and Political Rights*.¹

Vulnerable visa holders

The measures may impact on the ability of Taskforce Cadena officers to detect, investigate and prosecute not only those that exploit vulnerable visa holders in the workplace, but the vulnerable visa holders themselves. To the extent that in some circumstances the visa holders are 'employees' and some personal information excluded from the operation of the Privacy Act by virtue of the 'employee records' exemption, the proposed legislation should expressly address that the personal information is protected by the Privacy Act.

Any measures must also ensure that protective policies and procedures are in place for workers who have been coerced into a cash-in-hand arrangement. In such circumstances, the Law Council considers it would be inappropriate to impose additional penalties on these vulnerable workers, who may not be aware that they are engaging in illegal activity.

The Law Council would support further discussion on increasing reparation and protections for victims of federal offences such as victims of trafficking and forced labour. At present, the Federal Government provides assistance to trafficking victims through its Support for Trafficked People Program. The Australian Federal Police (AFP) determine a person's eligibility for the Program. Victims who are unwilling or unable to assist the AFP in its prosecutions against traffickers are ineligible for the Program. The Law Council has consistently advocated for 'de-linking' such support services from compliance with the AFP. It welcomes reforms to the People Trafficking Visa Framework, effective from 1 January 2016, but remains concerned that to become eligible for visas, victims are generally still required to comply with police investigations. We would suggest that these

¹ Article 17 provides that: (1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. (2) Everyone has the right to the protection of the law against such interference or attacks.

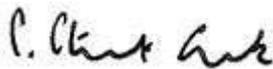
issues be given special consideration in the context of the current reform where vulnerable visa holders may be implicated in federal offences.

The Law Council supports greater coordination and inter-agency collaboration to enable victims of trafficking and forced labour to pursue appropriate avenues for redress. . As a member of the National Roundtable on Human Trafficking and Slavery, the Law Council has consistently advocated for the establishment of a national compensation scheme for victims of human trafficking, slavery and slavery-like offences. It considers that the variation in victims of crime schemes across States and Territories prevent victims of these Commonwealth offences from receiving adequate compensation over some forms of human trafficking and slavery. The Law Council is currently working with Anti-Slavery Australia on a Report supporting the establishment of such a scheme to present to the Minister for Justice, the Hon Michael Keenan MP, at the next Roundtable, due to be held mid-2016.

The action officer for this matter is Dr Natasha Molt, Senior Policy Lawyer (02 6246 3754 or natasha.molt@lawcouncil.asn.au).

Thank you again for the opportunity to provide these observations.

Yours sincerely



S. Stuart Clark AM
President

Attachment A: Profile of the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Law Firms Australia, which are known collectively as the Council's Constituent Bodies. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Bar
- Law Firms Australia
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of more than 60,000 lawyers across Australia.

The Law Council is governed by a board of 23 Directors – one from each of the constituent bodies and six elected Executive members. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive members, led by the President who normally serves a 12 month term. The Council's six Executive members are nominated and elected by the board of Directors.

Members of the 2015 Executive as at 1 July 2015 are:

- Mr S. Stuart Clark AM, President
- Ms Fiona McLeod SC, President-Elect
- Mr Morry Bailes, Treasurer
- Mr Arthur Moses SC, Executive Member
- Mr Konrad de Kerloy, Executive Member
- Mr Michael Fitzgerald, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.