

**SUBMISSION**

**INQUIRY INTO TAX FILE NUMBERS**

**NOVEMBER 1999**

**INQUIRY BY THE HOUSE OF REPRESENTATIVES  
STANDING COMMITTEE ON ECONOMICS, FINANCE  
AND PUBLIC ADMINISTRATION**

# **INQUIRY BY THE HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ECONOMICS, FINANCE AND PUBLIC ADMINISTRATION**

## **SUBMISSION FROM THE FEDERAL PRIVACY COMMISSIONER**

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### **INTRODUCTION**

The Australian National Audit Office (ANAO) recently conducted an audit to ascertain “how efficiently and effectively the Australian Taxation Office (ATO) administers the tax file number system and to identify opportunities for improvement of that system”.<sup>1</sup> The report of the audit includes recommendations that are primarily aimed at improving efficiency, but it also recognises that privacy considerations, client benefits and cost-effectiveness are factors that should be examined.<sup>2</sup>

The House of Representatives Standing Committee on Economics, Finance and Public Administration is conducting an inquiry into the ANAO report to review the administrative policy and client service issues of tax file numbers raised in the report. The inquiry is to consider these issues in light of the Australian Taxation Office’s (ATO) response to the recommendations. While the ATO agreed to the Auditor-General’s recommendations, there were some qualifications in the ATO’s response and legislative amendments would be necessary to implement some of the recommendations. The Committee announced that it will also investigate other aspects of the tax file number system.

The aims of this submission are to:

- advise the Committee on the privacy implications of changes to the tax file number system that may arise from implementation of the ANAO recommendations or suggestions made in the supporting discussion to the recommendations;
- assist the Committee by giving a concise account of the current tax file number system and the privacy concerns which had a bearing upon its formation; and
- provide the Committee with information about other privacy-related developments that may be relevant to this Inquiry.

The body of the submission first provides a brief overview of privacy and unique identification numbers, the scope of the current privacy legislation, the proposed extension of the legislation to the privacy sector and the tax file number system. It then goes on to discuss the ANAO recommendations that appear to have particular privacy implications. More information on the three points above is set out in the attachments that cover:

- A: What is privacy?
- B: Technology and Privacy
- C: Summary of Privacy Surveys
- D: The 1988 Tax File Number System
- E: Post 1988 Expansion of the System
- F: The Tax File Number Guidelines

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<sup>1</sup> The Auditor-General Audit Report No. 37 of 98/99. P 13

<sup>2</sup>; See, in particular, recommendation No.2.



Although not always reflected in the recommendations, the ANAO report canvasses changes to the tax file number system that promise optimum efficiency but would require some significant changes in policy. In summary, the changes canvassed would involve:

- a unique client services number allocated to all Australians, probably at birth;
- mandatory quotation of the number in certain circumstances, initially tax related;
- extension of the use of the tax file number (or the client services number, if introduced) to more aspects of the administration of the income taxation system; and
- extension of the use of the tax file number (or client services number, if introduced) into more non-tax areas of government administration.

Such fundamental changes in policy warrant consideration against a range of factors, which are broader than just administrative performance. The history of the tax file number system suggests that privacy issues have been particularly sensitive in this context.

Preservation of personal privacy should not unnecessarily impede efficient public administration, although the question of balance must be considered. Most Australians would agree that a tax reform measure would not be acceptable, for example, if it produced little new revenue and was very intrusive.

More specifically, this balance should test whether:

- alternative methods can be developed that are less privacy intrusive;
- proposals offer realistic benefits that are commensurate with the impact on individual privacy, and that those benefits are likely to be realised; and
- proposals are likely to be thwarted because alternatives exist for taxpayers who are determined to find them.

Finding the right balance can be very difficult and will ultimately be decided by Parliament. At the end of this process, for example, Parliament may decide to strike a new balance in the tax file number system between striving for optimal administrative efficiency and preserving individual privacy.

What is needed is to find privacy solutions that serve the public interest while protecting the privacy of individuals as far as possible. In the end, Australians expect a culture that respects their privacy.



## OVERVIEW

An individual's right to privacy is a fundamental human right. Privacy is a broad concept, one component of which is the protection of personal information. Here privacy considerations centre around giving individuals greater control over what happens to personal information about them through the exercise of choice. The right to privacy and the public's right to know are often cast as opposites but both are vital in a modern democracy. The right to privacy is not regarded as an absolute right but one that, in some circumstances, must be weighed against rights of others and matters that are to the benefit of society as a whole. Privacy is not about protecting wrongdoing or encouraging secrecy.

### **The *Privacy Act 1988* – Privacy Commissioner's Jurisdiction**

The right to privacy is recognised in a number of international instruments. In particular there are the International Covenant on Civil and Political Rights (Article 17) and the Organisation for Economic Cooperation and Development (OECD) Guidelines on the Protection of Transborder Flows of Personal Information. Australia adopted the OECD Guidelines in 1984 and the principles in those guidelines were incorporated in the federal *Privacy Act 1988* (the Privacy Act). The Act had two key objectives: the protection of personal information in the possession of federal government departments and agencies, and safeguards for the collection and use of tax file numbers.

Subsequent amendment of the Privacy Act and the enactment of other Commonwealth legislation have given the Commissioner additional functions in respect of:

- data-matching between Commonwealth agencies,<sup>3</sup>
- the Commonwealth Spent Conviction Scheme,<sup>4</sup>
- the reporting of credit worthiness information,<sup>5</sup>
- the operation of the eligibility checking system between pharmacists and the Health Insurance Commission,<sup>6</sup>
- records made by telecommunications carriers, carriage service providers and others of their disclosures of customer information.<sup>7</sup>

### **Extension of privacy protection to personal information held in the Private Sector**

The Government announced on 16 December 1998 that it intends to legislate to support and strengthen self-regulatory privacy protection in the private sector, and that a light-touch legislative regime would be introduced. The scheme will involve amendment of the Privacy Act and will be based on the revised *National Principles for the Fair Handling of Personal Information*, as released by the former Privacy Commissioner in January 1999. The National Principles are again based on the OECD principles, but were adapted to private sector application following extensive consultation with business and consumers.

For the past ten years, the public has enjoyed privacy protection in the public sector, and in relation to certain types of personal information including tax file numbers, in the private sector as well.

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<sup>3</sup> *Data-matching Program (Assistance and Tax) Act 1990*.

<sup>4</sup> Part VIIC of the *Crimes Act 1914*.

<sup>5</sup> Part IIIA of the *Privacy Act 1988*.

<sup>6</sup> *National Health Amendment Act 1993*.

<sup>7</sup> *Telecommunications Act 1997*.



There is no doubt that Australians are concerned to protect their privacy and that, as we move into the information age, this concern is having an impact on Australian businesses. The proposed private sector legislation responds to this concern.

### **The Tax file number System**

The tax file number system currently operates under rules, including rules for the protection of privacy, that are set out in taxation law, assistance agency and superannuation law, the Privacy Act, and binding Tax file number Guidelines (issued by the Privacy Commissioner). The combined effect of this legislative and guideline package is to limit the uses of tax file numbers to those authorised by Parliament, specify the authorised uses and set standards for the collection, management, use and disclosure of tax file numbers. In addition, the system includes two very important privacy protections:

- The tax file number is not to be used as a national identification system by whatever means.
- The rights of individuals under taxation, assistance agency or superannuation law to choose not to quote a tax file number shall be respected.

This latter protection, which forms the basis of what is known as the ‘voluntary quotation principle’, recognises that an individual is not legally obliged to quote a tax file number. Neither taxation nor assistance agency nor superannuation laws make the quotation of a tax file number a requirement, although the financial consequences of not quoting can be severe. Under assistance agency law, the quotation of a tax file number is a condition for the receipt of assistance payments.

### **Unique Identification Numbers**

Unique identification numbers, such as was proposed with the Australia Card, are unpalatable to many people because of concern that the number would become a pervasive feature of day-to-day life. Filing systems could be organised around the number which would greatly facilitate documentation of every facet of an individual’s life. The capacity for detailed surveillance by monitoring the activities of individuals in their dealings with government could become a reality.

Strong concerns also persist that once unique identifiers have widespread use in the public sector, there would be great pressure to extend the use of the numbers to dealings in the private sector. Producing a unique identification number could become an unavoidable part of every transaction and this is not desirable from a privacy point of view.



## THE ANAO RECOMMENDATIONS

The ANAO audit report, *Management of Tax File Numbers* was clearly an extensive and detailed examination of the operation of the tax file number system. It makes a number of formal recommendations that are generally aimed at improving the efficiency and effectiveness of the system within the current policy and legislative framework. However, the discussion in the body of the report supporting each of the recommendations sometimes canvasses suggested action which may lead to much more fundamental changes to the system.

In commenting on each of the recommendations, this submission focuses initially on the formal recommendation, however due to the significance of some other possibilities raised in the discussion, comment about them has been included where appropriate.

### Recommendation No. 1

**The ANAO recommends that the ATO :**

- a) **examine the cost-effectiveness of offering an electronic service to schools in regard to TFN applications;**
- b) **maximise the proportion of eligible 15 and 16 year olds enrolled at schools who choose to receive their TFN through the ATO's Students Education Program; and**
- c) **seek the support of the Department of Education, training and Youth Affairs in preparing a submission for ministerial consideration about obtaining the cooperation of peak school bodies to the conduct of the ATO's Schools Education Program in Year 9 classes on an annual basis.**

I am not opposed in principle to this recommendation, however it would need to be implemented carefully. For example, care would have to be taken to ensure that "maximis[ing] the proportion of eligible 15 or 16 year olds" does not lead to a coercive approach. In my view, it would also be opportune to review the processes utilised under the scheme to ensure that they pay proper attention to privacy.

For example, even under the current arrangements, one aspect that this Office has questioned in the past is that express consent of the parent is not sought for a student to apply for a tax file number. An 'opt-out' arrangement is used instead. The practice is for the school to send a note home to parents with the students. Parents may then inform the school that they do not wish their child to apply for a tax file number. However, there is a risk that parents will not receive information about this option for a number of reasons.

This was the case in a complaint to my Office from the parent of a student who had applied for a tax file number through the SEP. As it happened, the child was not at school on the day that the notice was sent home to parents or when the SEP was explained to the students. Consequently, the parent did not have the opportunity to indicate that they did not wish their child to apply for a tax file number and apparently, the child did not really know what he was applying for when he completed the forms at school.

I would see value in the arrangements for parental consent being re-considered in the context of implementation of the ANAO recommendation.



## Recommendation No. 2

**The ANAO recommends that the ATO in conjunction with other agencies research and report appropriately upon the privacy considerations, client benefits and cost-effectiveness of :**

- a) implementing an effective risk management process, including quantitative analyses of Proof of Identification (PoI) data;**
- b) delivering TFN client services through appropriate alternative means additional to the ATO;**
- c) providing a more secure, client focussed and cost-effective means of gathering / composing TFNs. The ATO should have regard to the widespread use of TFN (by employees, investment bodies and other government agencies) and to Defence Signals Directorate's advice concerning secure algorithms;**
- d) conducting PoI audits within and across government agencies; and**
- e) providing the client service number in a format which is easy for clients to access, use and maintain, while protecting their individual privacy.**

This recommendation could lead to improvements in the efficiency of administration of the tax file number system and, with the exception of comments below on (e), I do not have any particular comment. I strongly support the inclusion of privacy in the opening part of this recommendation as one of the matters that would need to be taken into account in assessing the proposals.

Part (e) of the recommendation, read with the supporting discussion, invites the consideration of the introduction of a client service number possibly by way of a 'client centred identification agency'. This is essentially a proposal for a unique identifying number, possibly allocated at birth, to be used for all dealings with government agencies.

The discussion refers to the recently introduced Australian Business Number (ABN). The Government introduced the ABN as a national identifier for business primarily to assist in administering the GST system. A sideline benefit envisaged for businesses is that eventually they may use the ABN in dealings with state and federal agencies. The ABN will be a publicly accessible number and will not have any of the privacy protections that are attached to tax file numbers. There is no intention for the ABN to be used by individuals to identify themselves, although administrative arrangements will have to be carefully devised to meet this objective in the case of sole traders or professional practitioners that operate businesses.

In its discussion of the ABN, the ANAO suggests that a client service number would result in similar benefits for individuals.

The history of the Australia Card debate in Australia suggests that the introduction of a client service number would require extensive privacy protection. The Australian community has demonstrated that it is very sensitive about this issue, possibly more so than people in some other OECD countries. In the case of the Australia Card, Parliament effectively decided that it was not possible to put in place acceptable privacy provisions and the Card was not introduced.



### **Recommendation No. 3**

**The ANAO recommends that the ATO ascertain the cost-effectiveness of assigning appropriate information technology resources to Interest Royalties and Withholding Branch.**

This recommendation does not raise any privacy issues.

### **Recommendation No. 4**

**The ANAO recommends that the ATO examine the risks to the integrity of tax administration and to the collection of revenue arising from transactions (for example, those listed in paragraph 3.30) being outside the TFN withholding arrangements and consider options for addressing these risks, such as their inclusion within the TFN withholding arrangements.**

I am not opposed in principle to this recommendation. However, recommendation 4 raises the question of whether the privacy implications of expanding the range of transactions where a tax file number might be quoted, can be justified by increased taxation revenue or savings in government outlays.

The discussion does not address detailed proposals but rather lists a range of areas that the ATO should consider, including:

- the purchase and sale of real estate,
- the renting of real estate,
- AUSTRAC transactions,
- the use of safety deposit box and similar services.

At this point, I would simply urge caution in implementing changes which would greatly extend the range of circumstances in which tax file numbers might be quoted and where the resulting increases in collection of tax may be marginal. Indeed, many of the individual transactions that would be included in the proposed changes, would have no tax implications at all. Yet the information would give the ATO an extraordinary, and possibly unwarranted, insight into the private lives of Australians.

### **Recommendation No. 5**

**The ANAO recommends that the ATO:**

- seek concurrence of relevant financial institutions regarding the data specification for Annual Investment Income Reports information that provides the ATO with accurate and valid data that minimises compliance costs;**
- investigate the disparity between the TFN withholding tax collected and the amounts remitted to taxpayers; and**
- reconcile remitter /investment body payments as appropriate and ascertain the level of tax payable having regard to the quality and timeliness of available data.**

This recommendation canvasses a range of possible efficiency improvements to the withholding tax administrative arrangements. I would not be concerned with this recommendation if it specifically required that privacy implications be assessed and addressed in any subsequent decisions.





## **Recommendation No. 6**

**The ANAO recommends that the ATO:**

- a) examines opportunities for simplifying the refund process for exempt investors who have incurred the tax file number withholding tax; and**
- b) examine the cost-effectiveness of establishing suitable arrangements to ensure the automatic identification of exempt investors.**

I support this recommendation as it would streamline the current tax file number withholding tax arrangements.

## **Recommendation No. 7**

**The ANAO recommends that the ATO:**

- a) improve client data quality throughout its business lines;**
- b) progress strategies for the resolution of duplicate, and the archival of inactive, records;**
- c) assess the cost-effectiveness of accessing and using additional data sets, such as those from the State Registrars-General; and**
- d) work with strategic partners to ensure that data sets conform to ATO standards before they are provided to the ATO.**

From a privacy perspective, part (c) of the recommendation deserves comment. It calls for the assessment of additional data sets and suggests as an example those held by State Registrars-General. The supporting discussion also particularly suggests greater access to data held by the Health Insurance Commission.

I urge caution in finding new unrelated uses of information collected for particular purposes, particularly where the information deals with sensitive matters such as health-related personal information or where the personal information is held on public registers. I am particularly concerned where this information is collected compulsorily. Public register information is often collected compulsorily and the individuals concerned will have little choice in, or knowledge of how it is later used.

I note that the discussion supporting this principle raises a range of concerns about the current 'voluntary quotation' element of the tax file number system.

The discussion suggests that voluntary quotation is creating inefficiencies that could be overcome by mandatory quotation. As discussed earlier, one of the most fundamental principles behind the tax file number system in Australia is the voluntary quotation principle. Introduction of mandatory quotation would represent a fundamental change in the underlying policy.

The real issue appears to be the need to improve current administrative arrangements rather than make changes with potentially adverse privacy implications.



The ANAO recommends that the ATO take steps to ensure that financial institutions provide reports which are more accurate by complying more fully with reporting standards set by the ATO, and to simplify the refund process for exempt investors who have incurred the tax file number withholding tax.<sup>8</sup> It would be a better solution from a privacy perspective if qualitative measures were implemented to improve the standard of reporting by financial institutions and improve the process for refunding withheld tax for all taxpayers, rather than moving to mandatory quotation of tax file numbers. There is little justification in proceeding to compulsion, at least until recommendations five and six have been tested and assessed.

The ANAO report argues that mandatory quotation is justifiable on three grounds, which I will comment upon in turn:

- *the majority of investors quote their tax file number*<sup>9</sup>

There is a range of possible reasons why an investor may quote their tax file number. These may include preferring not to be denied income earned during the financial year or to have to claim back any tax for which they are not liable at the end of the financial year or simply having no concern about the use of a tax file number. The important thing is that they quoted their tax file number in an environment of choice. If that choice is removed, there may be a significant backlash from the public.

- *non-quotation tends to be associated with complex tax affairs and where there are greater opportunities to evade, avoid or reduce the tax payable in other ways*<sup>10</sup>

If there are specific classes of activities identified as being problematic because tax file numbers are not quoted and individuals earning the income are more difficult to identify due to the legal arrangements, then that may be grounds for seeking legislative power to deal with them. Definable problems lend themselves to targeted legislative control, but they are not grounds to change a fundamental protection enjoyed by every individual most of whom are not engaging in the problematic activities.

- *inequity exists between persons who receive government benefits that require the quoting of a tax file number, and all other persons.*<sup>11</sup>

As noted earlier, the voluntary quotation principle is fundamental to acceptance by Australians of the tax file number arrangements. It should only be varied where very strong public interest arguments apply. While Parliament did vary the balance in favour of the public interest by making it a requirement to quote tax file numbers to receive assistance agency benefits, it did not overthrow the voluntary quotation principle.

The discussion in the report also canvasses the extension of data-matching activities using tax file numbers in a number of areas, including Centrelink carrying out matching in respect of employment declaration forms and child care cash rebates. The ANAO estimates savings in these areas that would need to be tested further. I would expect these proposals to be assessed in accordance with the principles established in the Data-matching Program (Assistance and Tax) Act and in the voluntary guidelines issued by the Privacy Commissioner under section 27 of the Privacy Act.<sup>12</sup>

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<sup>8</sup> Recommendations 5 and 6.

<sup>9</sup> Paragraph 4.61 of the ANAO Report

<sup>10</sup> Paragraph 4.62 of the ANAO Report

<sup>11</sup> Paragraph 4.64 of the ANAO Report

<sup>12</sup> *The Use of Data-matching in Commonwealth Administration Guidelines 1995*



In a famous article written in the 1890s by Louis Brandeis, an American Supreme Court Justice, he popularised the concept of privacy as “the right to be let alone”.<sup>13</sup> After some 100 years, many people would still accept that this definition goes to the heart of the issue. It encompasses the concept of freedom – freedom to retain our personal information when we want to be let alone, but also the freedom to disclose information about ourselves if that is what we choose to do.

Privacy is about giving each and every one of us the greatest control possible over what happens to our personal information. Exercising choice about our own information can also be an important aspect of retaining personal dignity and humanity in a relationship with another party. Privacy is not about protecting wrongdoing or encouraging secrecy.

While choice is extremely important, there is no absolute right to privacy. At least a certain amount of information sharing occurs in most relationships which individuals have with other people or organisations and a consequential reduction in control over that information occurs because someone else now holds it.

The right to privacy and the public’s right to know are often cast as opposites but both are vital in a modern democracy. Privacy invariably involves balancing the individual’s right to be let alone against either a particular benefit that the individual receives, or the broader rights of society, often referred to as the “public interest”.

This concept of choice, of balancing rights and obligations, is enshrined in the existing Federal Privacy Act in which Parliament directs the Privacy Commissioner in the performance of his or her functions, to:

“have due regard for the protection of important human rights and social interests that compete with privacy, including the general desirability of a free flow of information and the recognition of the right of government and business to achieve their objectives in an efficient way.”<sup>14</sup>

The intention is to find privacy solutions that serve the public interest while protecting the privacy of individuals to the optimum level. In the end, Australians expect a culture that respects their privacy.

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<sup>13</sup> *The Right to Privacy*, Warren S., Brandeis L. D., *4 Harvard Law Review* 193 (1890); or <http://www.louisville.edu/library/law/brandeis/privacy.html>

<sup>14</sup> Section 29(a) of the *Privacy Act 1988* (C’t)



It is now ten years since the Federal Privacy Act was first enacted, and society and business have undergone significant changes in that time. Technology is making it ever easier and less expensive to collect, collate, store, analyse and process personal data, on almost all aspects of a person's life, to such an extent that there are now organisations that specialise in the 'mining' of that data. The mined data can then be used to market goods or services to specific individuals that may be of interest to those individuals.

The current development of new technology, especially electronic commerce, is giving consumers unparalleled opportunity and range of choice. It is also providing business with excellent opportunities for growth well into the new millennium. However, this same technology is very quickly changing the ways that individuals and organisations can collect, store and process personal information about each other. These rapid changes are challenging everyone to pay closer attention to privacy issues.

These issues can be illustrated by briefly reviewing the privacy issues arising from the Internet and from the increasing use of surveillance technology.

### **Internet**

The development and use of the Internet has raised a number of major privacy concerns including:

- harassment by unsolicited e-mail, which can exceed any unsolicited mail left in the letterbox on the front fence at home;
- Extensive collection of personal information about a persons purchasing and other activities, often without their knowledge; and
- greater ease of identity theft that involves the appropriation of a person's identity usually for the purposes of credit card fraud. Identity theft has been made easier by the existence of a number of on-line databases that publish personal details about people who have used the Net.

In one recent example, *American Automated Systems*<sup>15</sup> launched a website that allows anyone to search for people using their Social Security numbers. For \$20, people can plug in a US Social Security number and have American Automated conduct a search of public-records databases. A journalist writing a story about this site reported that she searched her own Social Security number which yielded her current address, as well as four previous ones. The entire process took less than three minutes.

The discovery that the *Real Networks* multimedia Internet operation secretly gathered the listening habits of its twelve million *Real Jukebox* users has caused a furore. It is reported as having already inspired a \$780 million, class action law suit.<sup>16</sup>

### **Surveillance**

Electronic surveillance of the community by both public and private sector organisations is becoming increasingly frequent.

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<sup>15</sup> <http://www.americanautomated.com/>

<sup>16</sup> "Put the byte on shonky net operators", Australian Financial Review, 11 November 1999.



Our financial transactions, purchasing habits, and movements on the Internet can be monitored. Telephone companies are able to monitor and record the movements of mobile phones, provided they are turned on. Records about individuals are also created where intelligent transport systems are used to collect tolls. The records created are primarily for billing the customer but are also a record of the times and dates that the customer passed particular tollbooths.

Video surveillance is also being used in a wide variety of circumstances. In many cases, individuals are not made aware that a record is being made of their image or activities. Where notice is given there may be no real choice for individuals about being video taped if they need to be in the area under surveillance, for example in banks and at ATMs.

A large number of local councils have installed video surveillance cameras in strategic locations in an effort to reduce anti-social behaviour and deter crime in the area. Security cameras are being rapidly installed in many publicly accessible buildings such as retail shops, banks and theatres in an effort to achieve the same purposes.

### **Community Attitudes**

There is good evidence to suggest that technology is making people nervous about their privacy. For many people, technology represents a loss of control over their information, either because they just do not know what the intended recipient will do with their information or whether their information is secure from unintended recipients. See Attachment C for information on surveys about community attitudes to privacy concerns.

The underlying message is that people are still very concerned about their privacy, in spite of any benefits which may flow to them, let alone any public interest which might be served by entering a relationship which requires them to disclose their personal information.



### Privacy Commissioner's surveys

From 1990 to 1994 the Federal Privacy Commissioner commissioned surveys of community awareness and attitudes towards privacy and produced a consolidated report, *Community Attitudes to Privacy*, published in 1995.<sup>17</sup>

Key findings in the 1994 survey include:

- Confidentiality of information held by government and business organisations is considered a very important social issue. Privacy has grown in importance to a seventy four percent response.<sup>18</sup>
- Computers are seen as a major threat to privacy. Seventy per cent of respondents feel computers are reducing the level of privacy in Australia and eighty per cent think computers have made it easier for confidential information to fall into the wrong hands.<sup>19</sup>
- Ninety per cent of respondents want control over their information through legislated safeguards.<sup>20</sup>

### MasterCard

In 1996, MasterCard International conducted a survey of attitudes of the Australian public to privacy, particularly in relation to payment systems.<sup>21</sup>

Key findings include:

- Privacy is regarded as an important social issue amongst issues such as drug abuse, the environment, unemployment, and law and order. Eighty seven per cent of respondents were either 'concerned' or 'very concerned' about privacy.<sup>22</sup>
- Respondents expressed concern about organisations having access to various types of information, for example: banking transactions (83%), major purchases (car, house) (79%), medical history (70%), income (73%).<sup>23</sup>
- Eighty per cent of respondents perceived Government agencies having computer access to networks of personal information as being a threat to privacy.<sup>24</sup>
- Fifty seven per cent of respondents expressed concern about government agencies sharing information.<sup>25</sup>

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<sup>17</sup> *Information Paper Number Three - Community Attitudes to Privacy*, August 1995, HREOC

<sup>18</sup> Chart 1, page 8 *Information Paper Number Three*

<sup>19</sup> Page 10 *Information Paper Number Three*

<sup>20</sup> Chart 5, page 18 *Information Paper Number Three*.

<sup>21</sup> MasterCard International, *Privacy and Payments – A Study of Attitudes of the Australian Public to Privacy*.

<sup>22</sup> Figure 3,; page 10 MasterCard study

<sup>23</sup> Figure 4, page 11 MasterCard study

<sup>24</sup> Figure 3, page 12 MasterCard study

<sup>25</sup> Figure 5, page 14 MasterCard study



## Surveys of businesses

There are also a range of surveys of business attitudes to privacy, particularly focusing on whether businesses have an online privacy policy and how they handle personal information.

An Australian Business Advisers survey of top 100 Australian businesses showed a lack of attention to privacy on websites - few businesses with online privacy policies (5% of 79 companies with a website). This survey assessed 50 Australian sites most accessed by Australians and only twenty per cent mentioned anything about privacy of information.

Surveys of American businesses show mixed results about businesses online privacy policies - some surveys say about two thirds of leading sites have privacy policies, while Federal Trade Commission study believe this has increased to around ninety four per cent.

## Surveys of attitudes to online privacy

Surveys have been conducted to assess attitudes of the online community towards online privacy. Most of these surveys were conducted with the American public.

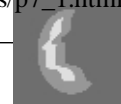
These surveys share common conclusions:

- Privacy is seen as the primary consumer issue facing the Net. A considerable proportion of net users sees the Internet as a threat to their privacy, particularly in the age group eighteen to twenty nine.
- A high proportion of the online population doesn't want to give up information in exchange for better-targeted marketing. Many online users do not fill out online registration forms because they are not given information about how their information will be used. Users are more likely to provide information when they are not identified.
- Privacy is preferred over convenience.
- People are particularly concerned about websites collecting information from children.
- Fear of spam<sup>26</sup> can hinder online buying activity.
- People believe that concerns about the lack of privacy are slowing the growth of e-commerce. Security was cited as the primary reason why, people do not make purchases on the Net.
- There is a lack of understanding about cookies<sup>27</sup> and the threat to privacy.
- People believe strongly that companies do not have the right to resell information about people collected online.
- People are concerned about being monitored online.
- Current website practices are not adequate.
- Consumer concerns about privacy inhibit electronic commerce.
- In surveys that asked about regulation, most respondents agreed that there should be Internet privacy law.

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<sup>26</sup> Definition of "spam" on the Privacy Commissioner's web site, see [http://www.privacy.com.au/issues/p7\\_1.html](http://www.privacy.com.au/issues/p7_1.html).

<sup>27</sup> Definition of "cookies" on the Privacy Commissioner's web site, see [http://www.privacy.com.au/issues/p7\\_1.html](http://www.privacy.com.au/issues/p7_1.html).



In the 10<sup>th</sup> Gvu User Survey<sup>28</sup> conducted in October 1998:

- Seventy per cent of consumers cited privacy concerns as the primary reason for not registering demographic information
- Of the respondents, forty per cent advised that they have provided false information at one time or another when asked to register at a Web site.
- Seventy seven percent of respondents valued privacy over convenience when it comes to buying goods or services via the Internet.

AT&T reported from a survey conducted by them that, “Overall, our respondents registered a high level of concern about privacy in general and on the Internet. Only 13% of respondents reported they were ‘not very’ or ‘not at all’ concerned.”<sup>29</sup>

According to a poll of Internet users conducted in 1998 by Louis Harris & Associates and Alan Westin for Business Week, seventy eight per cent of users said they would use the Internet more if privacy were guaranteed. The majority of respondents were more concerned about privacy than cost, ease of use, security, or spam.<sup>30</sup>

The most recent indication of community attitudes on privacy comes from the Roy Morgan survey of 25 August 1999 that found that “The majority of Australians (56%) are worried about invasion of privacy issues created by new information technologies”.<sup>31</sup>

## Conclusion

Existing surveys on attitudes to privacy reveal that privacy is an important issue for the public. It is matter of particular concern in the online environment.

## Sources of survey information

The Forrester Report, September 1999, *The Best Privacy Practice*  
<http://www.forrester.com>

<http://www.eprivacy.com.au/survey.html>

[http://www.gvu.gatech.edu/user\\_surveys/](http://www.gvu.gatech.edu/user_surveys/)

Thompson, M (May 1999) *The State of Online Privacy*  
<http://www.thestandard.net/metrics/display/0,1283,897,00.html?home.metf>

TechWeb (May 1999) *Sites improve Privacy Disclosure, Survey Says*  
<http://www.techweb.com/wire/story/TWB19990512S0023>

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<sup>28</sup> [www.gvu.gatech.edu/user\\_surveys/survey-1998-10/graphs/privacy/q13.htm](http://www.gvu.gatech.edu/user_surveys/survey-1998-10/graphs/privacy/q13.htm)

<sup>29</sup> *Beyond Concern: Understanding Net Users' Attitudes About Online Privacy*, AT&T Labs-Research Technical Report TR 99.4.3 (April 1999)  
<http://www.research.att.com/library/trs/TRs/99/99.4/99.4.3/report.htm>

<sup>30</sup> Business Week (Asian Edition) March 16, 1998, p.54 ; or via [www.businessweek.com](http://www.businessweek.com)

<sup>31</sup> [www.roymorgan.com/polls/1999/3221](http://www.roymorgan.com/polls/1999/3221)





Australian Business Advisers Privacy Surveys *Which Australian web sites care about your privacy?*  
<http://www.abaconsulting.com.au/privacyart.htm>

Privacy: Public Concern  
<http://www.unc.edu/~hempel/357/357surveys.htm>

Which Online, *Annual Internet Survey, UK*  
<http://www.which.net/nonsub/special/ispsurvey/executive.html>

Electronic Privacy Information Centre, *Privacy Surveys*  
<http://www.epic.org/privacy/survey/>

Electronic Privacy Information Centre, (June 1998)  
*Surfer Beware II: Notice is not enough*

US Federal Trade Commission (June 1998) *Privacy Online: A report to Congress*

Andersen Consulting (April 1998) *eCommerce: Our Future Today, A review of eCommerce in Australia*

Privacy Waterhouse *Privacy Surveys 1996 and 1997*

Roger Clarke, *Reference List: Surveys of Privacy Attitudes*  
<http://www.anu.edu.au/people/Roger.Clarke/DV/Surveys.html>



Prior to 1988, the tax file number was the key file identifier in the Australian Taxation Office (ATO). It was routinely provided by taxpayers in dealing with the ATO; and routinely used by the ATO in notices to and correspondence with taxpayers. It was merely an internal administrative tool. There were no legal restrictions on its use and tax agents sometimes used the number as their client number on their files.

The change in status of the tax file number can be understood by going back to the Australia Card debate of 1987. The Australia Card proposal was that every person would be required to have a plastic identification card bearing their signature, their photo and a unique identification number allocated to that person. The card would have to be produced to prove identity in dealings with government agencies. The card would also have to be renewed every five years in an effort to maintain its integrity. Various criminal offences would apply to those who failed to register or committed fraudulent practices in connection with card.

Strong public concern over the proposal under the Australia Card Bill caused it to be withdrawn. During the debate, most critics of the Government's policy acknowledged that improved systems were needed for dealing with abuse of taxation responsibilities. A political consensus developed around the proposition that the integrity of tax file numbers should be upgraded and this became government policy.<sup>32</sup> The compromise that followed was a strengthened tax file number system.

In December 1988, legislation was passed to create the new tax file number system with some fundamental privacy safeguards built into it. The Privacy Act 1988 was passed at the same time and contained supplementary privacy safeguards for the new system in the form of interim Tax File Number Guidelines in Schedule 2 of the Act. The interim Guidelines were replaced by Guidelines issued by the Privacy Commissioner under section 17 of the Privacy Act.

The new tax file number System came in to operation on 1 January 1989 and at that time had the following features:

### *Stage 1 of the System*

- New employees or those changing jobs were asked to supply a tax file number on new employment declaration forms as from 1 February 1989, and existing employees were to do the same as from 1 April 1989.

An employee who elected not to quote a tax file number would have PAYE tax deducted at the highest marginal rate on the whole income.

- New proof of identity procedures were introduced and were to be undertaken by the ATO or its agent, the Post Office.

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<sup>32</sup> Privacy Commissioner's submission to the Senate Standing Committee on Legal and Constitutional Affairs – Extended Uses of Tax file number and Data-matching, 16 November 1990, page 1 Appendix 3 Third Annual Report on the Operation of the Privacy Act.



## *Stage 2 of the System*

- Between 1 July 1990 and 30 June 1991, those who earn non-wage income (investors, etc) were encouraged to quote tax file numbers for relevant income-generating deposits (savings accounts and investment facilities). As from 1 July 1991, if a tax file number had not been quoted, tax would be withheld at the highest marginal rate.

The System also applied to:

- Some social security benefit recipients (unemployment and sickness beneficiaries and recipients of job search allowances). If they did not quote their tax file number, the benefit payment was reduced by the highest marginal rate of taxation.
- Students who had agreed to deferred payment of the levy under the Higher Education Contribution Scheme (HECS).
- Students in receipt of Austudy payment from the then, Department of Employment, Education and Training.
- Superannuants, but only in connection with the payment of benefits for taxation purposes.

Amendments to the tax file number System followed and are outlined in Attachment E.



Outlined below are the major changes to the 1988 tax file number System to date.

**Changes in Assistance Agency Payment Requirements.**

In November 1989, Parliament passed legislation that made changes to the System in relation to social security and other benefit recipients. By 1991, quoting a tax file number was a pre-requisite to receiving all classes of Commonwealth income support or similar payments.

This was a major change in policy, essentially making it mandatory for social security and other benefit recipients to quote a tax file number. Individuals claiming entitlement to payments also became subject to requirements to provide the tax file number of third parties whose circumstances were considered relevant to the claim, such as spouses or parents.

This change is also significant because it shifted the System from being a primarily tax-based one to one with application in the assistance agency area as well.

**Data-Matching between Agencies**

In 1991, there was another major change in connection with the new requirement to quote a tax file number to obtain Commonwealth payments. A major data-matching program relying on the tax file number was introduced. It became possible to use tax file numbers as a means of greater certainty in matching information about an individual held by the ATO and agencies which administer social welfare benefits and other forms of assistance. The data-matching program was aimed at reducing fraud and overpayments in the administration of assistance payments rather than tax collection. In recognition of the shift in emphasis of the tax file number system, and in response to the privacy risks associated with data-matching, stringent requirements for the conduct of the program were set down in legislation (see the *Data-matching Program (Assistance and Tax) Act 1990*).

**Changes in Superannuation Law**

There has also been an increasing use of tax file numbers in the administration of superannuation. The net result of these changes is that superannuants may be invited to quote their tax file number for a number of superannuation purposes. The main purpose was twofold: firstly, tax file numbers were considered necessary to facilitate the administration of the superannuation surcharge tax; and secondly, tax file numbers were a means of ascertaining whether different superannuation accounts were, in fact, held by the same superannuant. The latter was of benefit to the superannuant because it meant that small amounts held in a variety of funds due to changes in employment would not be overlooked. A number of privacy safeguards were built into the laws giving effect to these changes, including the preservation of the voluntary quotation principle and a prohibition on the use of tax file number as a general administrative number by superannuation bodies.



# Tax file number guidelines 1992

ATTACHMENT F

## Annotated version including all amendments as at July 1997

These Guidelines became law on 21 December 1992. They **replace** the previous Tax File Number Guidelines of October 1990. A set of annotations, in the form of Commissioner's Notes, appear underneath the Guidelines in *italics*. The annotations do not form part of the law and provide interpretive assistance only.

These Guidelines incorporate two sets of amendments issued on 9 October 1996.

*Commissioner's note: Interim Guidelines were contained in the Privacy Act 1988 and were replaced, first with the Tax File Number Guidelines 1990, and then with the 1992 Guidelines, issued in September 1992 and effective from 21 December 1992. A Table of Amendments since that time appears at the end of the Guidelines.*

*A set of annotations appear underneath the Guidelines in italics, each headed "Commissioner's Note". The annotations do not form part of the law and provide interpretive assistance only.*

## Introduction

These Guidelines are issued under Section 17 of the *Privacy Act 1988*. They are intended to protect the privacy of individuals by restricting the use of tax file number information. The Privacy Act provides that a breach of the Guidelines is an interference with the privacy of an individual. An affected individual may complain to the Privacy Commissioner. Where appropriate the individual may seek compensation. Unauthorised use or disclosure of tax file numbers is also an offence under the *Taxation Administration Act 1953* with a penalty of up to \$10,000 fine, two years imprisonment, or both.

*Commissioner's note: These Guidelines protect the tax file number information of natural persons only. They are not intended to protect tax file number information relating to other entities, such as corporate entities, partnerships, superannuation funds and trusts. The tax file number provisions in the Taxation Administration Act 1953 on the other hand protect all tax file numbers, including individuals'. Specifically, section 8WA places restrictions on unauthorised requirements or requests that a tax file number be quoted, while section 8WB places restrictions on the unauthorised recording, maintaining a record of, use or disclosure of a tax file number.*

In complying with these Guidelines, tax file number recipients should have regard to the Annotations and Compliance Notes issued by the Privacy Commissioner. The Guidelines are legally binding. The Annotations and any Compliance Notes are intended to assist those affected in interpreting the Guidelines, and do not have the force of law.

For the purposes of these Guidelines, the term "taxation law" has a meaning which is wider than its usual meaning under the *Taxation Administration Act 1953*. Its extended meaning is given in Guideline 9.8. The terms "taxation purpose" and "tax related purpose" carry a similar extended meaning. A complete list of definitions appears in Guideline 9, "Meaning Of Terms".

*Commissioner's note: These Guidelines were first applied for authorised assistance agency purposes in 1990, and authorised superannuation purposes in 1996. The terms 'assistance agency law' and 'superannuation law' are defined in Guidelines 9.9 and 9.10 respectively.*



# Guidelines

## 1. General

1.1 The tax file number is not to be used as a national identification system by whatever means.

*Commissioner's note: This does not preclude the use of the tax file number as an identifier for taxation law purposes by the Commissioner of Taxation.*

1.2 The rights of individuals under taxation, assistance agency or superannuation law to choose not to quote a tax file number shall be respected.

*Commissioner's note: This Guideline, which forms the basis of what is known as the 'voluntary quotation principle', recognises that an individual is not legally obliged to quote a tax file number. Neither taxation nor assistance agency nor superannuation laws make the quotation of a tax file number a requirement, although the financial consequences of not quoting can be severe. Under assistance agency law, the quotation of a tax file number is a condition for the receipt of assistance payments.*

## 2. Use and disclosure of tax file number information

2.1 The tax file number is not to be used or disclosed to establish or confirm the identity of an individual for any purpose not authorised by taxation, assistance agency or superannuation law.

*Commissioner's note: The purpose of the tax file number is to facilitate tax and certain aspects of assistance agency and superannuation administration, not to assist with the identification of individuals for other purposes.*

2.2 The tax file number is not to be used or disclosed to obtain any information about an individual for any purpose not authorised by taxation, assistance agency or superannuation law.

2.3 Tax file number information is not to be used or disclosed (whether directly or indirectly) to match personal information about an individual except as authorised by taxation, assistance agency or superannuation law. In particular, matching of tax file number information is not to be undertaken by government agencies, employers, investment bodies or the trustees of superannuation funds for any purpose not authorised by taxation, assistance agency or superannuation law.

*Commissioner's note: The tax file number can only be used or disclosed by tax file number recipients for reasons necessary to administer or comply with taxation, assistance agency, or superannuation law. A tax file number recipient may not match personal information by means of the tax file number for any other purpose.*

2.4 Tax file number information shall only be used or disclosed by tax file number recipients as authorised by taxation, assistance agency or superannuation law.



**Commissioner's note:** Only persons and organisations authorised by taxation, assistance agency, or superannuation law may use or disclose a tax file number. A list of classes of lawful tax file number recipients, current at the date of issue of these Guidelines, is appended. It was compiled jointly by the Commissioner of Taxation and the Insurance and Superannuation Commissioner under Tax File Number Guideline 3.1 and 3A.1.

### 3. Obligations of the Commissioner of Taxation

3.1 The Commissioner of Taxation shall publicise, in a generally available publication, information relating to:

- (a) the classes of persons or bodies who are authorised by law to request an individual to quote that individual's tax file number;

**Commissioner's note:** It is necessary for this publication to be made widely available so that individuals may be aware of those entitled to request tax file numbers and thus avoid unauthorised collection.

- (b) the specific purposes for which such a request may be made;

**Commissioner's note:** The Commissioner of Taxation must also publicise the circumstances under which those authorised may request tax file numbers so that requests may be limited to those circumstances alone.

- (c) the prohibitions upon the collection, recording, use and disclosure of tax file number information; and

**Commissioner's note:** The prohibitions on collection, recording, use and disclosure of tax file numbers must be publicised to assist in the prevention of misuse.

- (d) the penalties that apply to unauthorised acts and practices in relation to tax file number information;

**Commissioner's note:** Publicising the penalties against unauthorised acts and practices will act as a deterrent to misuse.

together with information as to where detailed particulars relating to these matters can be obtained.

**Commissioner's note:** The Commissioner of Taxation fulfils the obligation under Guideline 3.1 by the issuing of a document, 'Classes of Lawful Tax File Number Recipients' (appended to these Guidelines), in conjunction with the Insurance and Superannuation Commissioner (who has similar obligations set out at Guideline 3A). The ATO also includes notices on ATO forms and other publications, which may refer for detailed information to either (a) or (b) of this annotation. The ATO also publishes a number of Taxpayers Charter explanatory booklets.

3.2 Wherever practicable, publication by the Commissioner of Taxation pursuant to 3.1 shall be made prior to any new circumstances in which a tax file number may be requested arising as a result of an amendment to a taxation law.



3.3 The Commissioner of Taxation shall ensure that any practice involving the collection of tax file number information which has been prescribed or approved by him, provides for individuals to be informed:

- (a) of the legal basis for collection;
- (b) that declining to quote a tax file number is not an offence; and
- (c) of the consequences of not quoting a tax file number.

**Commissioner's note:** *The Australian Taxation Office has issued a document entitled "Guidance on the Preparation of Tax File Number Forms", which outlines the design requirements for forms used to collect tax file number information. Copies of this document are available from the Privacy Section of the National Office of the Australian Taxation Office in Canberra. This document should be read in conjunction with the Privacy Commissioner's Compliance Notes 1/90: "Collection of Tax File Numbers by Investment Bodies", 2/90: "New Investments - Further Advice on Collection of Tax File Numbers by Investment Bodies", and Supplementary Note to Compliance Notes 1/90 and 2/90: "Requests for TFNs in Connection with New Accounts or Investments".*

3.4 The Commissioner of Taxation shall also observe all other relevant obligations contained in these Guidelines.

**Commissioner's note:** *The obligations on the Commissioner of Taxation relating to collection, recording, use and disclosure of tax file numbers under the Tax File Number Guidelines and Taxation Administration Act 1953 are complementary to, but may overlap with, responsibilities under the Information Privacy Principles and other legislation eg. secrecy provisions, the Data-matching Program (Assistance and Tax) Act 1990.*

### **3A. Obligations of the Insurance and Superannuation Commissioner**

**Commissioner's note:** *This Part was added by Amendment 1996 No.2 in recognition of the greater role of tax file numbers in the administration of superannuation due to legislative changes in that area. The following Guidelines place responsibilities on the Insurance and Superannuation Commissioner to provide community information similar to the responsibility borne by the Commissioner of Taxation.*

3A.1 The Insurance and Superannuation Commissioner shall ensure that any practice involving the collection of tax file number information which has been prescribed or approved by him or her provides for individuals to be informed:

- (a) of the legal basis for collection;
- (b) that declining to quote a tax file number is not an offence; and
- (c) of the consequences of not quoting a tax file number.

**Commissioner's note:** *The Insurance and Superannuation Commissioner has issued Approvals of the manner of quoting, requesting, and transferring tax file numbers for the purposes and possible future purposes of the Superannuation Industry (Supervision) Act, pursuant to various sections in Part 25A of that Act, and pursuant to various sections of the Retirement Savings Accounts Act 1997. These Approvals are published in the Insurance and Superannuation Commission's Superannuation Digest. Copies of the approvals may also be obtained from ISC offices.*





3A.2 The Insurance and Superannuation Commissioner shall publicise, in a generally available publication, information relating to:

- (a) the bodies, including the trustees of superannuation funds and employers, who are authorised under superannuation law to request tax file numbers;
- (b) the specific purposes under superannuation law for which a tax file number may be requested;
- (c) the prohibitions upon the collection, recording, use and disclosure of tax file number information; and
- (d) the penalties that apply to unauthorised acts and practices in relation to tax file number information;

together with information as to where detailed particulars relating to these matters can be obtained.

**Commissioner's note:** *The Insurance and Superannuation Commissioner fulfils the obligation under Guideline 3A.2 by the issuing of a document 'Classes of Lawful Tax File Number Recipients' (appended to these Guidelines), in conjunction with the Commissioner of Taxation. In addition, by arrangement with the ISC, the ATO publishes a booklet entitled 'Tax File Numbers - Responsibilities of Superannuation Trustees' and a fact sheet entitled 'Tax File Numbers - Responsibilities of Employers'. These are both available by contacting ATO offices.*

3A.3 Wherever practicable, publication by the Insurance and Superannuation Commissioner pursuant to 3A.2 shall be made prior to any new circumstances in which a tax file number may be requested arising as a result of an amendment to superannuation law.

3A.4 The Insurance and Superannuation Commissioner shall observe all other relevant obligations contained in these Guidelines.

#### **4. Obligations of assistance agencies**

4.1 In cases where assistance agencies are entitled to require under assistance agency law or request under taxation law provision of a tax file number, they shall publicise, in a generally available publication, information relating to:

- (a) the specific purposes for which a tax file number may be required or requested by them;
- (b) the prohibitions upon the use and disclosure of tax file number information; and
- (c) the penalties that apply to unauthorised acts and practices in relation to tax file number information;

together with information as to where detailed particulars relating to these matters can be obtained.

**Commissioner's note:** *The obligations on assistance agencies relating to collection, recording, use and disclosure of tax file numbers under the Tax File Number Guidelines and Taxation Administration Act 1953 are complementary to, but may overlap with, responsibilities under the Information Privacy Principles and other legislation eg. secrecy provisions, the Data-matching Program (Assistance and Tax) Act 1990.*



4.2 Wherever practicable, publication by assistance agencies pursuant to 4.1 shall be made prior to any new circumstances in which a tax file number may be requested arising as a result of an amendment to assistance agency law.

**Commissioner's note:** *In practice assistance agencies fulfil the obligation under Guideline 4 in a number of ways. This may include: (a) by means of general privacy leaflets available on request; and (b) through notices included on assistance agency forms and other publications, which may refer for detailed information to general leaflets.*

4.3 Assistance agencies shall observe all other relevant obligations contained in these Guidelines.

## 5. Collection of tax file number information

5.1 Tax file number information shall only be requested or collected from individuals by tax file number recipients as authorised by taxation, assistance agency or superannuation law.

**Commissioner's note:** *Only persons and organisations authorised by taxation, assistance agency, or superannuation law may request or collect a tax file number. These are listed in 'Classes of Lawful Tax File Number Recipients', appended to this document. A request for a tax file number from any person or organisation other than those authorised is a criminal offence under the Taxation Administration Act and a breach of these Guidelines.*

*It is unlawful for any person or organisation to **require** an individual to provide that individual's tax file number. Assistance agencies, under assistance agency law, may make the provision of a tax file number a condition of assistance payments.*

5.2 Tax file number recipients shall take such steps as are reasonable in the circumstances to ensure:

- (a) that the individual is informed:
  - (i) of the legal basis for collection;
  - (ii) that declining to quote a tax file number is not an offence; and
  - (iii) of the consequences of not quoting a tax file number.

**Commissioner's note:** *Whenever a request for a tax file number is made, the individual should be informed of the taxation, assistance agency, or superannuation law which provides the tax file number recipient with the authority to make such a request. This could include oral notification but should also include stating the authority on any forms used to make the collection.*

- (b) that the manner of collection does not intrude to an unreasonable extent upon the affairs of the individual; and

**Commissioner's note:** *The manner in which tax file numbers are collected must not intrude upon the personal affairs of an individual except to the extent necessary to obtain the tax file number.*

- (c) that only information which is necessary and relevant in relation to whichever of taxation, assistance agency or superannuation laws applies to the tax file number recipient.



**Commissioner's note:** Collection of tax file numbers should not be used as an opportunity to collect other information required by or of interest to the collector, for purposes other than taxation, assistance agency, or superannuation administration.

## 6. Storage, security and disposal of tax file number information

6.1 Tax file number recipients shall ensure:

- (a) that tax file number information is protected, by such security safeguards as it is reasonable in the circumstances to take, to prevent loss, unauthorised access, use, modification or disclosure, and other misuse; and

**Commissioner's note:** Tax file number recipients need to be aware that tax file number information handling procedures and safeguards should anticipate all reasonably foreseeable risks to security. Some examples of tax file number security are physical and logical barriers such as building security, locked filing cabinets, user identity checks and password controls for computer systems.

- (b) that access to records that contain tax file number information is restricted, where practicable, to persons undertaking duties related to responsibilities arising under taxation, assistance agency or superannuation law which necessitate the use of tax file numbers.

**Commissioner's note:** Tax file number recipients should limit, where practicable, the persons who are able to have access to tax file number information to those who require access in order to carry out responsibilities under taxation, assistance agency, or superannuation law. To ensure that access to tax file number information is restricted to those requiring access, tax file numbers should, where practicable, be separately and securely stored. This Guideline also recognises that tax file number recipients may not strictly be administering the relevant law but may still be handling tax file numbers in accordance with the law.

6.2 Tax file number recipients may dispose of tax file number information when it is no longer required by law nor administratively necessary to be retained. Any disposal of tax file number information shall be by appropriately secure means.

## 7. Incidental provision of tax file numbers

7.1 Where an individual is required by law, or chooses, to provide information which contains a tax file number for a purpose not connected with the operation of a taxation, assistance agency or superannuation law:

- (a) that individual shall not be prevented from removing the tax file number; and
- (b) if the tax file number is not removed, the recipient shall not record, use or disclose the tax file number.

**Commissioner's note:** Parts (a) and (b) derive from s.8WA(2) and s.8WB of the Taxation Administration Act 1953. It reinforces the restrictions contained in those provisions on the recording, use and disclosure of tax file numbers. In particular, s.8WB makes it a criminal offence to record, maintain a record of, use or disclose another person's tax file number other than in specified circumstances.



*This means, for example, that where an individual chooses not to delete their tax file number from a document that they provide to another person or organisation, say a bank when applying for a loan, then that other person or organisation must delete the tax file number from the document.*

*In addition, tax agents should delete tax file numbers when providing tax-related documents to other persons on behalf of their clients, for example as proof of income in support of a loan application.*

## **8. Staff training**

8.1 Tax file number recipients shall take such steps as are reasonable in the circumstances:

- (a) to make all staff aware of the need to protect the privacy of individuals in relation to their tax file number information; and

*Commissioner's note: This responsibility will involve staff training and/or appropriate statements in publications or guidelines produced for all staff.*

**(b) to inform those staff whose duties include the collection of tax file number information, or access to tax file number information for the operation of taxation, assistance agency or superannuation law of:**

- (i) the circumstances in which tax file number information may be collected;
- (ii) the need to protect the privacy of the individuals to whom the tax file number information relates.
- (iii) the prohibitions on the use and disclosure of tax file number information; and
- (iv) the sanctions that apply to breaches of tax file number and privacy requirements.

*Commissioner's note: Employees who deal with tax file numbers shall not have access to or use tax file number information to which they may have access in the course of performing their duties other than for the purpose of performing those duties. The sanctions are outlined in the Introduction to these Guidelines.*

## **9. Meaning of terms**

9.1 Any term used in these Guidelines which is defined in the Privacy Act shall be interpreted in accordance with that definition.

9.2. "**Approved recipient**" means a tax file number recipient who:

- (a) has been engaged by an authorised recipient to provide services in circumstances where it is reasonably necessary to have access to tax file number information; or
- (b) has been permitted by an individual to have access to that individual's tax file number to assist in the management of that individual's taxation or assistance agency affairs

9.3 "**Authorised recipient**" means a tax file number recipient other than the Commissioner of Taxation and assistance agencies who has been authorised by taxation, assistance agency or superannuation law to receive tax file numbers.



- 9.4 **"Employer"** means an employer as defined in Section 221A of the *Income Tax Assessment Act 1936*.
- 9.5 **"Assistance agency"** means:
- (a) the Department of Health and Family Services;
  - (b) the Department of Employment, Education, Training and Youth Affairs;
  - (c) the Department of Social Security;
  - (d) the Department of Veterans' Affairs.
- 9.6 **"Investment body"** means a person who is an investment body within the meaning of Section 202D of the *Income Tax Assessment Act 1936*.
- 9.7 **"Tax file number recipient"** has the same meaning as "file number recipient", which is defined in Section 11 of the Privacy Act, and shall include:
- (a) the Commissioner of Taxation;
  - (b) an assistance agency as defined in 9.5 above;
  - (c) an approved recipient as defined in 9.2 above; and
  - (d) an authorised recipient as defined in 9.3 above.
  - (e) the trustee of a superannuation fund as defined in 9.11 below.
- 9.8 **"Taxation law"** for the purpose of these Guidelines means:
- (a) an Act for which the Commissioner of Taxation has the general administration; including the *Child Support (Registration and Collection) Act 1988* and the *Child Support (Assessment) Act 1989*;
  - (b) an Act under which the Commissioner of Taxation has powers and functions related to the use of tax file numbers; including the *Higher Education Funding Act 1988*;
  - (c) the; and
  - (d) regulations under any Act or provisions referred to in paragraphs (a) to (c) of this definition.
- 9.9 **"Assistance agency law"** for the purpose of these Guidelines means:
- (a) those sections of the following Acts that deal with the handling of tax file numbers for the purposes of data-matching as set down in the *Data-matching Program (Assistance and Tax) Act 1990*:
    - (i) the *Child Care Act 1972*;
    - (ii) the *Student and Youth Assistance Act 1973*;
    - (iii) the *Social Security Act 1991*;
    - (iv) the *Veterans' Entitlements Act 1986*;
  - (b) the *Data-matching Program (Assistance and Tax) Act 1990*;
  - (c) relevant regulations made under any provisions referred to in paragraphs (a) and (b) of this definition.



9.10 “**Superannuation law**” for the purposes of these guidelines means:

- (a) an Act for which the Insurance and Superannuation Commissioner has the general administration; including the *Superannuation Industry (Supervision) Act 1993*.

9.11 “**Trustee**” for the purposes of these guidelines and in relation to superannuation funds is given the same meaning as trustee is given in the *Superannuation Industry (Supervision) Act 1993*.

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## ***Table of amendments***

*Interim Guidelines were contained in the Privacy Act 1988 and came into effect 1 January 1989. These were replaced with the Tax File Number Guidelines 1990, issued in May 1990 and which came into effect October 1990. The 1990 Guidelines were replaced with the Tax File Number Guidelines 1992, issued in September 1992 and which came into effect 21 December 1992.*

*The 1992 Guidelines were amended by two sets of amendments. Amendment 1996 No 1 was issued on 9 October 1996 and commenced on 17 November 1996. Amendment 1996 No 2 was issued on 9 October 1996 and commenced on 16 February 1997, on the date of the commencement of Schedule 4 of the Taxation Laws Amendment (No.2) Act 1996. A notice regarding these two amendments was published in the Government Gazette, GN 8, on 26 February 1997.*

*Table over page.*



<b>Guideline affected</b>	<b>How affected</b>
Guideline 1.2	amended by 9.10.96 amendment (No.2) to include reference to superannuation law
Guideline 2.1	amended by 9.10.96 amendment (No.1) to include reference to superannuation law
Guideline 2.2	amended by 9.10.96 amendment (No.1) to include reference to superannuation law
Guideline 2.3 (a), (b), and (c)	amended by 9.10.96 amendment (No.1) to include reference to superannuation law
Guideline 2.4	amended by 9.10.96 amendment (No.1) to include reference to superannuation law
Guideline 3A	inserted by 9.10.96 amendment (No.2)
Guideline 5.1	amended by 9.10.96 amendment (No.1) to include reference to superannuation law
Guideline 5.2 (c)	amended by 9.10.96 amendment (No.1) to include reference to superannuation law
Guideline 6.1 (b)	amended by 9.10.96 amendment (No.1) to include reference to superannuation law
Guideline 7.1	amended by 9.10.96 amendment (No.1) to include reference to superannuation law
Guideline 8.1 (b)	amended by 9.10.96 amendment (No.1) to include reference to superannuation law
Guideline 9.3	amended by 9.10.96 amendment (No.1) to include reference to superannuation law
Guideline 9.5 (a) and (b)	amended by 9.10.96 amendment (No.1) to reflect Department name change
Guideline 9.7 (e)	inserted by 9.10.96 amendment (No.1)
Guideline 9.8 (c)	deleted by 9.10.96 amendment (No.1)
Guideline 9.9 (a)(i)	amended by 9.10.96 amendment (No.1) to reflect legislative changes
Guideline 9.9 (a)(ii)	amended by 9.10.96 amendment (No.1) to reflect Departmental name change
Guideline 9.9 (a)(iv)	deleted by 9.10.96 amendment (No.1)
Guideline 9.10	inserted by 9.10.96 amendment (No.1)
Guideline 9.11	inserted by 9.10.96 amendment (No.1)



## *Classes of lawful tax file number recipients*

### **Compiled by the Commissioner of Taxation and the Insurance and Superannuation Commissioner pursuant to Tax File Number Guideline 3.1 and 3A.1**

Sections 8WA and 8WB of the *Taxation Administration Act 1953* protect the privacy of tax file numbers by making it an offence to wrongfully request or receive tax file numbers, or to misuse or give them to anyone but the Australian Taxation Office or another authorised user. The maximum penalty that applies to offenders is a \$10,000 fine and two years imprisonment.

The following is a list of the classes of lawful tax file number recipients.

**The Australian Taxation Office** uses tax file numbers in accordance with taxation laws for the general administration of the income tax system. Tax file number information is used to administer the system efficiently and effectively within the provisions of those laws.

Disclosure: Under sections 16 and 16A of the *Income Tax Assessment Act 1936* and secrecy provisions in other laws that the Commissioner of Taxation administers, the Tax Office may disclose information to a range of bodies. Tax file number information may be disclosed to bodies where necessary in connection with the investigation of a suspected breach of privacy or security, for example the fraudulent use of tax file numbers. Tax file number information is also disclosed to higher education institutions under the *Higher Education Funding Act 1989*. These institutions appear elsewhere on this list.

**The Departments of Social Security, Employment, Education, Training and Youth Affairs, Veterans' Affairs, and Health and Family Services** have the authority to request a tax file number from recipients of assistance payments such as pensions, benefits and allowances. The Departments also use tax file numbers in carrying out matching activities under the *Data-matching Program (Assistance and Tax) Act 1990*.

Disclosure: to the Tax Office. Also to officers of the Department of Social Security who are responsible for the matching of data under the *Data-matching Program (Assistance and Tax) Act 1990*.

**Employers** who pay or are liable to pay salary or wages as defined in subsection 221A(1) of the *Income Tax Assessment Act 1936*. Salary or wages includes regular payments such as pensions, benefits, allowances, annuities, superannuation and workers compensation. Under Division 3 of Part VA of the Act employers collect tax file numbers from their employees' salary or wages under the pay-as-you-earn (PAYE) taxation system. Employers record the tax file numbers in their pay-roll system and use them to prepare their employees' group certificates or tax stamps sheets under the PAYE system.

Disclosure: to the Tax Office.

Employers can collect the tax file numbers of their employees under the *Superannuation Industry (Supervision) Act 1993* in connection with the operation or the possible future operation of that Act. The purpose of the collection is to pass the tax file number to the superannuation fund to which they contribute on the employee's behalf.

Disclosure: to the trustee of a superannuation fund to which they contribute on behalf of the employee.





**Paying authorities and eligible paying authorities** as authorised by the taxation laws in connection with payments made by them under the Prescribed Payments System (PPS). Paying authorities and eligible paying authorities collect tax file numbers on deduction forms and use them to help determine the rate of tax to be deducted from the prescribed payment. They record the tax file numbers with the payment details and report them to the Tax Office.

Disclosure: to the Tax Office.

**Payers under the Reportable Payments System.** These are persons who make reportable payments. The terms "payer" and "reportable payment" are defined in Section 220AC of the *Income Tax Assessment Act 1936*. Under Division 1AA of Part VA of the Act, payers record tax file numbers provided to them by their payees (a person who receives a reportable payment) via Reportable Payments Declarations. The Payer is required to send the Reportable Payments Declaration to the Tax Office and to provide the Tax Office with an Annual Report of all reportable payments made and details, including the tax file numbers, of payees.

Disclosure: to the Tax Office.

**The Department of Employment, Education, Training and Youth Affairs** in its capacity as an administrator of the Higher Education Contribution Scheme (HECS) authorised under subsection 78(8) of the *Higher Education Funding Act 1988*. The Department processes details containing tax file numbers on behalf of the Tax Office. It does not use, record or disclose the tax file numbers in any other way or for any other purpose.

Disclosure: to the Tax Office.

**Higher education institutions** as listed in section 4 of the *Higher Education Funding Act 1988* authorised under subparagraph 41B(2) of that Act for the purposes of administering the Higher Education Contribution Scheme (HECS). The institutions receive tax file numbers on Payment Option Forms from students, send forms to the Tax Office, and keep a record of the tax file numbers for notification of the HECS debt to the Tax Office. Students can also lodge tax file number applications/enquiry forms with institutions and the institutions receive lists from the Tax Office with the tax file number details of such students.

Disclosure: to the Tax Office. The institutions do not disclose the file numbers to the Department of Employment, Education, Training and Youth Affairs.

**Superannuation bodies, Employers and the Superannuation Holding Accounts Reserve** can collect tax file numbers for taxation purposes under the *Small Superannuation Accounts Act 1995* and the *Income Tax Assessment Act 1936*.

Disclosure: Employers can disclose tax file number to superannuation bodies and the Superannuation Holding Accounts Reserve. Superannuation bodies can disclose tax file numbers to the Tax Office.



**Regulated Superannuation Funds, Regulated Exempt Public Sector Superannuation Schemes (as defined for the purposes of Part 25A of the *Superannuation Industry (Supervision) Act 1993*), and Approved Deposit Funds** can collect tax file numbers of beneficiaries and applicants to become beneficiaries in connection with the operation or the possible future operation of that Act. The purpose of the collection is to allow the location and identification of member's benefits where other identification material is insufficient to do so. The fund can also use the tax file number for the purpose of deducting correct taxation from eligible termination payments, and for making reports to the unclaimed money register administered by the Tax Office.

Disclosure:

- to other regulated superannuation funds, regulated exempt public sector superannuation schemes, and approved deposit funds, when the benefits of members are transferred to the other fund, unless the owner of the tax file number requests in writing that the number not be disclosed.
- to the Tax Office when reporting for the purposes of the unclaimed money register, or for eligible termination payment administration.

**The Child Support Agency** collects child and spouse maintenance payment from non-custodial parents as authorised under the *Child Support (Registration and Collection) Act 1988* and the *Child Support (Assessment) Act 1989*. The Agency collects tax file numbers on application forms from parents and uses them to identify payments and generally administer the Act.

Disclosure: Nil.

**Tax agents, solicitors and accountants.** Tax agents registered under Part VIIA of the *Income Tax Assessment Act 1936*, solicitors and accountants and other people acting on behalf of an individual may collect the tax file numbers of their clients and use them as necessary to conduct the client's affairs.

Disclosure: to the Tax Office and the client only.

**Investment bodies** authorised to receive tax file number information under section 202DB of the *Income Tax Assessment Act 1936* for the purpose of providing investment income reports to the Tax Office under taxation laws. The following organisations are examples of investment bodies:

**Banks** within the meaning of the *Banking Act 1959*.

Disclosure: to the Tax Office.

**The Reserve Bank of Australia**

Disclosure: to the Tax Office.

**State Banks** within the meaning of paragraph 51 (xiii) of the *Constitution*.

Disclosure: to the Tax Office.

**Building societies, cooperative housing societies or similar societies** which are registered or incorporated under a law relating to such societies that is in force in a State or Territory.

Disclosure: to the Tax Office.

**Credit Unions** which are registered or incorporated under a law relating to credit unions that is in force in a State or Territory.



Disclosure: to the Tax Office.

**Government bodies or Authorities of the Commonwealth, a State or Territory** in their capacity as investment bodies as explained in subsection 202D(1) in the *Income Tax Assessment Act 1936*.

Disclosure: to the Tax Office.

**Managers of unit trusts** to which a unit trust scheme relates as defined in section 202A of the *Income Tax Assessment Act 1936*.

Disclosure: to the Tax Office.

**Public companies** within the meaning of the *Companies Act 1981* or a law in force in a State or Territory that corresponds to that Act.

Disclosure: to the Tax Office.

**Security dealers** for the purposes of the *Corporations Law*.

Disclosure: to the Tax Office. A securities dealer may also disclose tax file number information to investment bodies when making investments on behalf of a client.

**Solicitors** as defined in section 202A of the *Income Tax Assessment Act 1936*.

Disclosure: to the Tax Office. A solicitor may also disclose tax file number information to investment bodies when making investments on behalf of a client.

In addition to the classes of lawful tax file number recipients listed above, paragraphs 8WA(1)(a), (b) and (c) of the *Taxation Administration Act 1953* provide that in certain circumstances, other people and organisations can require or request tax file numbers. Generally, the reason for the requirement or request would need to be a taxation related one. For example, the Administrative Appeals Tribunal may request a tax file number when it receives an appeal from a taxpayer against a taxation assessment. People appointed to perform a duty arising from any Act administered by the Commissioner of Taxation may in certain circumstances also request a tax file number. An example of this are members of the Tax Agents' Board in their capacity as members of that Board.

In addition, a person's representative could require or request a tax file number when acting on behalf of that person, providing the proper authority has been given. This is consistent with part (b) of the definition of "approved recipient" described at 9.2 of the Tax File Number Guidelines 1996.

