

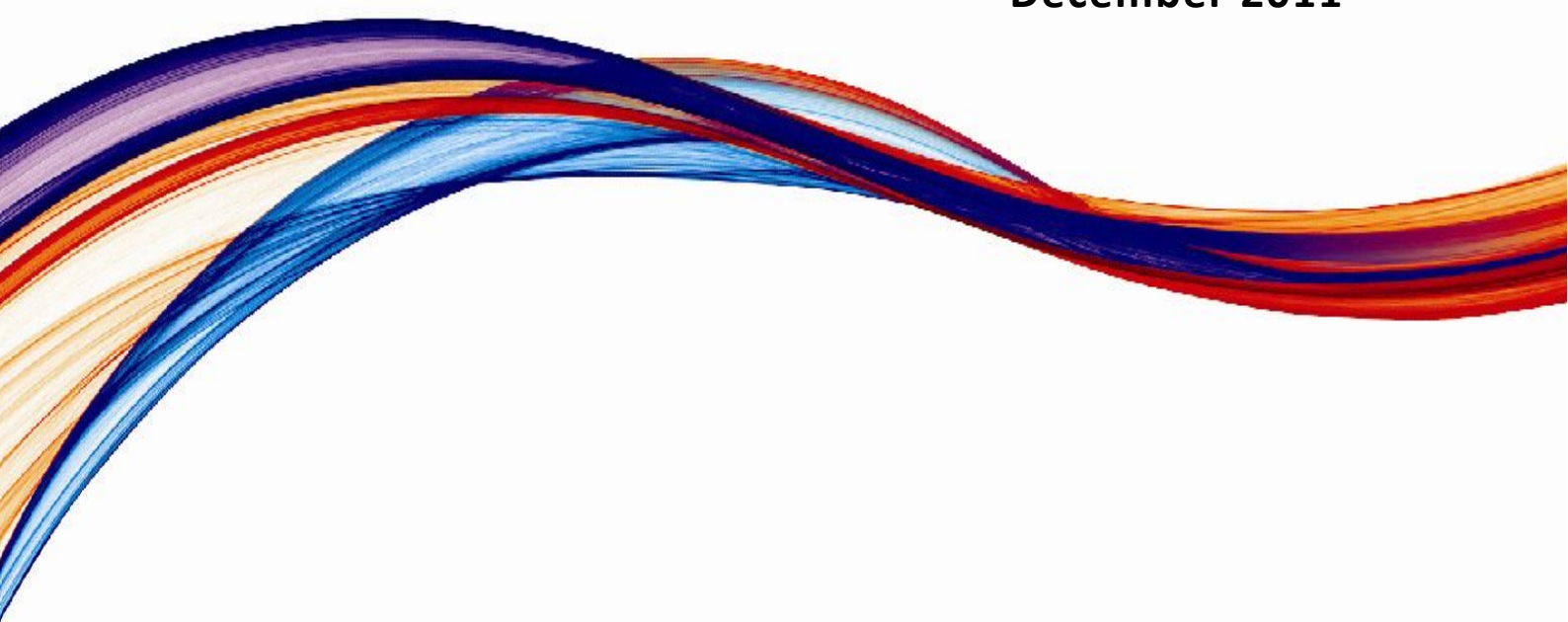


**Australian Government**

**Office of the Australian Information Commissioner**

# **Explanatory Statement Tax File Number Guidelines 2011**

**December 2011**



## Explanatory Statement

### Tax File Number Guidelines 2011

This explanatory statement fulfils the Australian Privacy Commissioner's obligations under section 26(1) of the *Legislative Instruments Act 2003*.

This explanatory statement relates to the *Tax File Number Guidelines 2011* (TFN Guidelines) made under section 17 of the *Privacy Act 1988* (Privacy Act). The TFN Guidelines replace the previous *Tax File Number Guidelines 1992* (TFN Guidelines 1992).

#### Authority for making the Guidelines

The authority to issue the TFN Guidelines is contained in sections 17(1) and 28(1)(a) of the Privacy Act.

Section 17(1) of the Privacy Act states:

- (1) The Commissioner shall, by notice in writing, issue guidelines concerning the collection, storage, use and security of tax file number information.

Section 28(1)(a) of the Privacy Act states that the Commissioner has the following functions in relation to tax file numbers:

- (a) to issue guidelines under section 17;

Section 6 of the Privacy Act defines 'Commissioner' to mean 'the Information Commissioner within the meaning of the *Australian Information Commissioner Act 2010*'.

Section 12 of the *Australian Information Commissioner Act 2010* (AIC Act) provides that the Australian Privacy Commissioner has the 'privacy functions' (which are defined in section 9(1) of the AIC Act). However, section 12(4)(d) of the AIC Act relevantly provides that the Australian Privacy Commissioner may only undertake the issuing, variation or revocation of guidelines for the purposes of paragraph 28(1)(a) of the Privacy Act with the approval of the Australian Information Commissioner.

The Australian Privacy Commissioner has issued the TFN Guidelines. For the purposes of section 12(4)(d) of the AIC Act, the Australian Information Commissioner has approved the Australian Privacy Commissioner issuing the TFN Guidelines.

#### Background to the Guidelines

Tax file numbers (TFNs) are unique numbers issued by the Australian Taxation Office (ATO) to identify individuals, companies and others who lodge income tax returns with the ATO.

The TFN Guidelines, which are legally binding, regulate the collection, storage, use, disclosure, security and disposal of individuals' TFN information.

The TFN Guidelines only apply to the TFN information of individuals and do not apply to TFN information about other legal persons including corporations, partnerships, superannuation funds and trusts.

A breach of the TFN Guidelines is an interference with privacy under the Privacy Act. Individuals who consider that their TFN information has been mishandled may make a complaint to the Australian Information Commissioner.

As well as constituting a breach of the TFN Guidelines, unauthorised use or disclosure of TFNs is also an offence under the *Taxation Administration Act 1953*.

## Consultation

Prior to issuing the TFN Guidelines, the Office of the Australian Information Commissioner (OAIC) undertook a review of the TFN Guidelines 1992.

In 2008, the Australian Law Reform Commission's Report (ALRC Report) made a recommendation that the former Office of the Privacy Commissioner (OPC) review the TFN Guidelines 1992 in consultation with the Australian Taxation Office (ATO) and other relevant stakeholders.<sup>1</sup> The Australian Government accepted these recommendations in its first stage response to the ALRC Report, noting that the review of the TFN Guidelines 1992 was a decision for the Australian Privacy Commissioner.<sup>2</sup>

Following the ALRC's recommendation, the former OPC commenced a review of the TFN Guidelines 1992 in 2009-10 with the intention of updating the language, structure and terminology while maintaining the existing policy intent of the TFN Guidelines 1992. That policy intent is to protect individual's privacy by restricting the use and ensuring the careful handling of TFNs. The former OPC prepared a revised set of draft TFN Guidelines which was the subject of a targeted consultation with key Australian Government stakeholders in December 2009.

The OAIC incorporated feedback received during the targeted consultation and released draft revised TFN Guidelines and draft guidance material for public consultation in August 2011. Comment was invited from industry participants, peak industry bodies, advocacy groups and Australian Government agencies. Consultation documents were made available on the OAIC's website during the four week consultation period.

The OAIC received 17 written submissions in response to the consultation documents. The submissions are available on the OAIC website.<sup>3</sup>

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<sup>1</sup>ALRC Report 108 *For Your Information, Privacy Law and Practice* (ALRC Report), recommendation 30-7, available at: <http://www.alrc.gov.au/publications/report-108>

<sup>2</sup> Australian Government, *Enhancing National Privacy Protection – Australian Government First Stage Response to the ALRC Report 108* (2009), pages 76 and 85, available at: <http://www.pmc.gov.au/privacy/alrc.cfm>.

<sup>3</sup> The consultation documents and submissions are available at: [http://www.oaic.gov.au/news/consultations.html#previous\\_consultations](http://www.oaic.gov.au/news/consultations.html#previous_consultations)

## Reasons for issuing the TFN Guidelines

In comparison to the previous TFN Guidelines 1992, the language and format of the TFN Guidelines has been simplified to make them easier to read, understand and interpret. Some differences include:

- The TFN Guidelines have been reordered to generally reflect the information handling cycle depicted in the privacy principles in the Privacy Act.
- Former TFN Guidelines 3 and 3A which relate to the obligations of the Commissioner of Taxation and the Australian Prudential Regulation Authority (APRA) have been combined and are now TFN Guideline 8. This makes the TFN Guidelines more concise and enhances their readability while still delineating the obligations of the ATO and APRA.
- Relevant material from the advisory Commissioner's Notes has been incorporated into the TFN Guidelines. This will make relevant material from the Commissioner's Notes legally binding.
- Terminology in the TFN Guidelines has been updated by changing or removing references to agencies and legislation that no longer exist and to legislation which has been amended or repealed.
- The definitions of 'assistance agency law' (now renamed 'personal assistance law'), 'superannuation law', and 'taxation law' have been updated so that they are consistent with relevant legislation and flexible enough to capture new legislation relating to the handling of TFNs.
- The 'assistance agency law' definition (now renamed 'personal assistance law') has also been changed so that the TFN Guidelines also apply to laws which authorise TFN handling that is outside the scope of the *Data-matching Program (Assistance and Tax) Act 1990*.

The changes to the TFN Guidelines are designed to maintain their underlying policy intent which is to protect individuals' privacy by restricting the use and ensuring the careful handling of TFNs.