

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Assistant Treasurer**

*Taxation Administration Act 1953*

*Taxation Administration Amendment (Disclosure of Information) Regulation 2016*

Section 18 of the *Taxation Administration Act 1953* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Taxation Administration Amendment (Disclosure of Information) Regulation 2016* (Regulation) is to amend the *Taxation Administration Regulations 1976* to allow taxation officers to disclose protected information to taskforce officers in Taskforce Cadena.

Under the Act, it is an offence for a taxation officer to record or disclose protected information that they acquired in their role as a taxation officer.

There are various exceptions to this offence, including disclosure for law enforcement and related purposes. In particular, taxation officers can share protected information with a taskforce officer of a prescribed taskforce if the record or disclosure is for or in connection with a purpose of the prescribed taskforce. A major purpose of the taskforce must be protecting the public finances of Australia. The *Taxation Administration Regulations 1976* prescribe taskforces for the purposes of this exception.

The Regulation amends the *Taxation Administration Regulations 1976* to add Taskforce Cadena to the list of prescribed taskforces. This will allow taxation officers to disclose protected information to taskforce officers in Taskforce Cadena.

Taskforce Cadena was established for the purposes of reducing visa fraud, illegal work and the exploitation of foreign workers in Australia. A major purpose of Taskforce Cadena is to protect the public finances of Australia, including by deterring visa fraud, fraudulent phoenix activity, and unlawful employer and labour hire practices.

Details of the Regulation are set out in the [Attachment](#).

The Act does not specify any conditions that need to be met before the power to make the Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

An exposure draft of this Regulation and accompanying Explanatory Statement were released for public consultation from 6 to 22 January 2016. Three submissions were received and were generally supportive of the amendment. Some concerns were raised about the privacy of vulnerable visa holders, however the Government considers that the privacy of these visa holders will be protected by existing safeguards in the *Privacy Act 1988* and the *Taxation Administration Act 1953*.

A Regulation Impact Statement has not been prepared for this Regulation because it is not likely to have a regulatory impact on business, community organisations or

individuals. This has been confirmed by the Office of Best Practice Regulation (OBPR reference 20104).

The Regulation commences the day after it is registered.

**Details of the *Taxation Administration Amendment (Disclosure of Information) Regulation 2016***

**Section 1 – Name of Regulation**

This section provides that the title of the Regulation is the *Taxation Administration Amendment (Disclosure of Information) Regulation 2016* (the Regulation).

**Section 2 – Commencement**

This section provides that the Regulation will commence the day after it is registered.

**Section 3 – Authority**

This section provides that the Regulation is made under the *Taxation Administration Act 1953* (TAA).

**Section 4 – Schedule**

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

**Schedule 1 – Amendments**

**Taskforce Cadena**

The Regulation amends the *Taxation Administration Regulations 1976* to allow taxation officers to disclose protected information to taskforce officers in Taskforce Cadena.

Section 355-25 in Schedule 1 to the TAA provides that it is an offence for a taxation officer (an ATO employee, Commissioner or Second Commissioner) to record or disclose protected information (information obtained under a taxation law that relates to an entity and could be used to identify that entity) that the taxation officer acquired in their role as a taxation officer.

Section 355-70 in Schedule 1 to the TAA provides exceptions to this offence for records or disclosures made for law enforcement and related purposes. This includes, under item 4 of the table in subsection 355-70(1) in Schedule 1 to the TAA, records made or disclosures to a taskforce officer of a prescribed taskforce that is for or in connection with a purpose of the prescribed taskforce.

A taskforce officer is an entity who holds an office in, is employed in, or is performing services for, an agency in the prescribed taskforce (subsection 355-70(11) in Schedule 1 to the TAA).

Pursuant to subsection 355-70(12) in Schedule 1 to the TAA, the regulations may prescribe a taskforce for the purposes of item 4 of the table in subsection 355-70(1) in Schedule 1 to the TAA. A major purpose of the taskforce must be protecting the public finances of Australia.

Regulation 48 of the *Taxation Administration Regulations 1976* contains a list of prescribed taskforces for the purposes of subsection 355-70(12) in Schedule 1 to the TAA.

Item 1 of the Regulation adds Taskforce Cadena to that list so that taxation officers will be able to share protected information with taskforce officers of Taskforce Cadena.

Taskforce Cadena brings together key Government agencies to investigate allegations of fraud and worker exploitation involving temporary visa holders. The objectives of Taskforce Cadena are to:

- reduce visa fraud, illegal work and the exploitation of foreign workers in Australia;
- utilise intelligence from a range of sources to identify and investigate major targets of interest; and
- influence Australian businesses in order to enhance compliance with Australian workplace laws and regulations in relation to foreign worker rights and obligations.

Agencies currently in Taskforce Cadena are the Department of Immigration and Border Protection, Australian Border Force and the Fair Work Ombudsman.

A major purpose of Taskforce Cadena is the protection of the public finances of Australia. Taskforce Cadena will promote this purpose by deterring visa fraud, fraudulent phoenix activity and unlawful employer and labour hire practices. Unlawful, unpaid or cash work affects Australia's tax revenue (and therefore public finances). Accordingly, Taskforce Cadena meets the requirement in subsection 355-70(12) in Schedule 1 to the TAA that a major purpose of the taskforce be the protection of Australia's public finances.

The Regulation amends regulation 48 of the *Taxation Administration Regulations 1976* to add Taskforce Cadena to the list of prescribed taskforces. This will allow taxation officers to share protected information with taskforce officers of Taskforce Cadena where the record or disclosure is for or in connection with a purpose of the taskforce.

## **Statement of Compatibility with Human Rights**

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

*Taxation Administration Amendment (Disclosure of Information) Regulation 2016*

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

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

It is an offence for a taxation officer to record or disclose protected information (information obtained under a taxation law that relates to an entity and could be used to identify that entity) that the taxation officer acquired in their role as a taxation officer (section 355-25 of Schedule 1 to the *Taxation Administration Act 1953* (TAA)).

There are various exceptions to this offence, including exceptions for law enforcement purposes under subsection 355-70(1) to Schedule 1 to the TAA. Taxation officers can record or disclose protected information in accordance with these exceptions without committing an offence under section 355-25.

This Regulation prescribes Taskforce Cadena as a taskforce for the purpose of the law enforcement exception under item 4 of the table in subsection 355-70(1) of Schedule 1 to the TAA. That existing exception allows taxation officers to make records for or disclosures to taskforce officers of a prescribed taskforce where the record or disclosure is for or in connection with a purpose of the prescribed taskforce.

Taskforce Cadena was established for the purposes of reducing visa fraud, illegal work and the exploitation of foreign workers in Australia. A major purpose of Taskforce Cadena is to protect the public finances of Australia, including by deterring visa fraud, fraudulent phoenix activity, and unlawful employer and labour hire practices.

### **Human rights implications**

This Legislative Instrument engages, and is compatible with, the prohibition on interference with privacy and attacks on reputation. Article 17 of the International Covenant on Civil and Political Rights (ICCPR) prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence.

The amendment made by this Regulation is not arbitrary, and is in pursuit of a legitimate objective. The amendment allows law enforcement agencies to effectively combat visa fraud, illegal work and the exploitation of foreign workers. The records or disclosures of information made to a taskforce officer of Taskforce Cadena under the exception in subsection 355-70(1) of the TAA must be for or in connection with a purpose the taskforce.

Recipients of records or disclosures made in accordance with one of these exceptions are also subject to strict rules governing any further disclosure of the information received. It is an offence for a recipient to record or disclose the information received

(section 355-155 of Schedule 1 to the TAA, although there are exceptions. For example, one exception allows a recipient to make further records or disclosures of the information received if those records or disclosures are made for the same purpose as the original record or disclosure (section 355-175 of Schedule 1 to the TAA).

This provides a limited, reasonable and lawful basis for recording or disclosing of protected information to taskforce officers of Taskforce Cadena, in pursuit of the legitimate objective of reducing visa fraud, illegal work and the exploitation of foreign workers in Australia.

### **Conclusion**

This Legislative Instrument is compatible with human rights.