

ASSISTANT TREASURER

BILL SHORTEN

DISCUSSION PAPER RELEASED ON PRIVILEGE FOR TAX ADVICE

The Federal Government is exploring the merits of making tax advice privileged, similar to the way legal advice is privileged, following the release of a discussion paper today.

The Assistant Treasurer, Bill Shorten, today released a discussion paper titled *Privilege in relation to tax advice*, in response to recommendations of the Australian Law Reform Commission.

"The discussion paper investigates the pros and cons of giving clients of professional tax advisers privilege for tax advice documents prepared for them, which currently have to be disclosed to the Tax Office," Mr Shorten said.

"While the Government has yet to make a decision on this issue, thousands of taxpayers use the services of accountants when preparing their tax returns, so it makes sense for the Government to consider it."

The Commissioner of Taxation has wide ranging statutory powers to access the information of Australian taxpayers. These powers are of fundamental importance to performing the Tax Office's statutory functions.

The statutory powers are subject to legal professional privilege, which shields clients from disclosure of documents created for the dominant purpose of obtaining legal advice or in preparation for litigation.

While there is no privilege that applies specifically to advice on tax law provided by professional accountants, the Tax Office does provide an administrative concession that in practice provides significant protection for the clients of accountants.

In 2007, the Australian Law Reform Commission conducted an inquiry into the operation of legal professional privilege in relation to the coercive information gathering powers of various Commonwealth bodies (*Privilege in Perspective: Client Legal Privilege and Federal Investigatory Bodies*).

The report recommended establishing tax advice privilege to protect tax advice given by independent professional accounting advisers against the coercive information gathering power of the Commissioner of Taxation.

"This discussion paper considers the recommendation in greater detail by exploring the implications for stakeholders if a privilege is established, and seeks stakeholder and community feedback," Mr Shorten said.

The discussion paper can be accessed from the Treasury website (www.treasury.gov.au).

The closing date for submissions is 15 July 2011.

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