



**Australian Government**  
**The Treasury**



# Response to PwC – tax regulator information gathering powers review

Consultation paper

May 2024

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# Consultation Process

## Request for feedback and comments

The purpose of this consultation paper is to seek views and feedback on whether the Australian Taxation Office's (ATO) formal information gathering powers are fit for purpose to enable the ATO to perform its role effectively, and to support law enforcement agencies to investigate serious criminal offences perpetrated against the tax and superannuation systems.

The consultation paper contemplates if the ATO's existing information gathering powers should be expanded to enhance its ability to investigate criminal offences perpetrated against the tax and superannuation systems, and to enable it to independently receive telecommunications data and stored communications in such criminal investigations.

The paper also considers a recommendation of the 2019 Independent Review of the Tax Practitioners Board and *Tax Agent Services Act 2009* (2019 TPB Review) that the limitations on the Tax Practitioners Board (TPB) gathering information prior to commencing a formal review be removed.

While submissions may be lodged electronically or by post, electronic lodgement is preferred. For accessibility reasons, please submit responses sent via email in a Word or RTF format. An additional PDF version may also be submitted. All information (including name and address details) contained in submissions will be made available to the public on the Treasury website unless you indicate that you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails are not sufficient for this purpose. If you would like only part of your submission to remain confidential, please provide this information clearly marked as such in a separate attachment.

### Closing date for submissions: 31 May 2024

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The principles outlined in this paper have not received Government approval and are not yet law. As a consequence, this paper is merely a guide as to how the principles might operate.

## Part 1: Introduction

The disclosure of confidential information by PwC exposed limitations in the current regulatory framework for tax practitioners and the broader system in which they operate. On 6 August 2023, the Government announced a significant package of reforms to crack down on misconduct and rebuild confidence in the systems and structures that keep our tax system and capital markets strong.

The first stage of the government response introduced enhancements to the tax agent regulatory framework that have recently been implemented (as part of *Treasury Laws Amendment (2023 Measures No.1) Act 2023*) including:

- requiring tax and BAS agents, collectively referred to as tax practitioners, not to employ, use or enter into arrangements with a disqualified entity without TPB approval;
- changing the registration period for tax practitioners from 3 years to an annual renewal; and
- enabling the relevant minister to supplement the Code of Professional Conduct for tax practitioners.

The second stage of the Government's response includes measures to strengthen the integrity of the tax system and increase the powers of relevant regulators. These measures were introduced into Parliament on 16 November 2023 as part of Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023 (Cth). These measures will:

- increase the scope and penalty amount of penalty provisions that apply to promoters of tax exploitation schemes;
- enable the ATO and TPB to disclose suspected misconduct of professionals to their professional associations or professional disciplinary bodies;
- enable the ATO and TPB to disclose suspected breaches in confidence against government agencies to the Treasury;
- extend whistleblower protection for eligible whistleblowers who wish to disclose alleged misconduct of tax practitioners to the TPB;
- extend the timeframe the TPB has to complete investigations into tax practitioners suspected of misconduct and breaching registration requirements; and
- lift the functionality and utility of the TPB Register and enhance information about tax agent misconduct, improving transparency of the regulation of tax advisers.

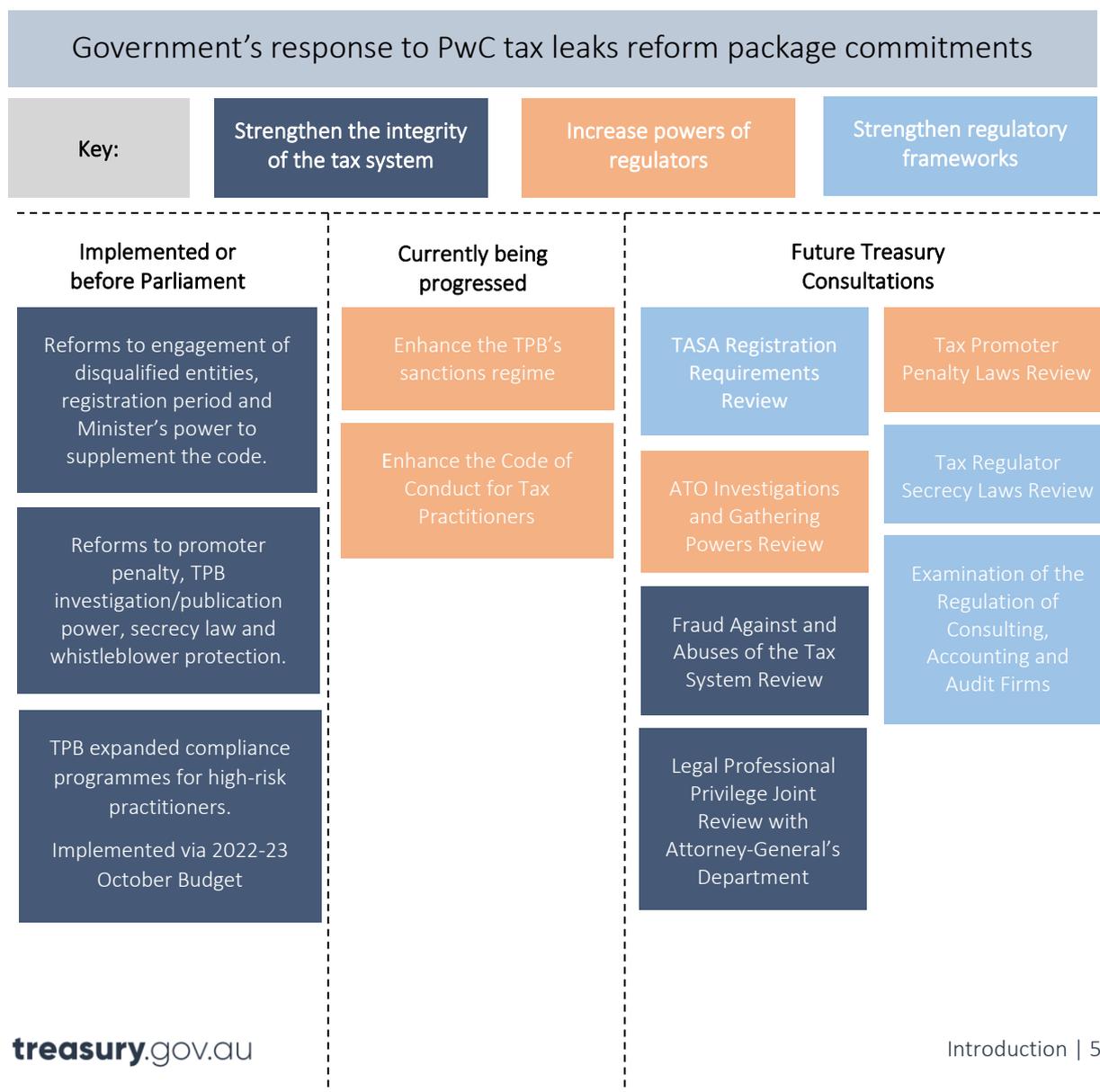
The next phase of the government response is a suite of consultations that focus on proposals to further strengthen the integrity and regulatory frameworks of the tax and superannuation system. In this stage of the response, Treasury has and will be undertaking the following:

- a review of the sanctions regime that the TPB administers (consultation paper released in December 2023);
- a review of the tax practitioner registration requirements;

- a review of the penalty regime that applies to promoters of tax schemes, and penalties applicable to practitioners who knowingly allow false and misleading statements to be given to the Commissioner of Taxation (the Commissioner) by their clients;
- a review of the ATO's and TPB's respective investigation and information gathering powers (the focus of this consultation paper);
- a review of emerging fraud and systemic abuse of the tax and superannuation systems;
- a review of the secrecy provisions that apply to the ATO and TPB to consider whether there are further circumstances in which it is in the broad public interest for information obtained by these regulators to be shared with other bodies;
- a joint review with the Attorney-General's Department (AGD) of the use of legal professional privilege in Commonwealth investigations; and
- an examination of the regulation of consulting, accounting and audit firms.

Figure 1 summarises past, current, and future work Treasury is undertaking to strengthen the regulatory framework.

**Figure 1: Work being undertaken by Treasury to strengthen the regulatory framework.**



## 1.1 Information gathering review

The ATO is the Australian Government's principal revenue collection agency, administering the legislation governing tax and significant aspects of superannuation, and supporting the delivery of government benefits to the community.

The work of the 2016-17 Black Economy Taskforce and the PwC tax leaks matter have highlighted potential gaps in the ATO's information gathering powers, including for serious tax and superannuation offences that the ATO may refer to the Australian Federal Police (AFP) for investigation of possible criminal conduct. In response, the Government has tasked Treasury to undertake a review of the ATO's formal information gathering powers to ensure it has the right tools, and appropriate safeguards in place both to perform its role effectively, and enable the ATO to assist law enforcement agencies to investigate serious criminal offences perpetrated against the tax and superannuation systems. Broadly the review considers that there is scope to expand the ATO's powers so that it can independently gather information in its criminal investigations, better positioning it to detect, respond to, and deter the type of conduct that occurred in the PwC matter.

As part of administering tax and superannuation legislation, the ATO may pursue 3 broad types of enforcement action: criminal proceedings, civil proceedings, or administrative actions. The ATO may conduct investigations on its own as well as in conjunction with, or with the support of, other law enforcement agencies. Further, where offences against the tax and superannuation system are more appropriately dealt with by another law enforcement agency, or certain professional bodies, the ATO may refer the matter for investigation. This paper examines the information gathering powers currently available to the ATO when conducting its criminal, civil and administrative investigations. Based on this analysis, the paper sets out, and seeks feedback on, proposals, and poses questions to assist Treasury to further develop potential reforms to the ATO's information gathering powers.

In developing this paper, Treasury has drawn on the work from past reviews that have examined the ATO information gathering powers, including the 2016-17 Black Economy Taskforce and the 2018 Inspector-General of Taxation Review into the ATO's Fraud Control Management (2018 IGOT Review).

This paper also considers recommendation 6.2(b) of the 2019 TPB Review that the limitation on the TPB formally gathering information prior to commencing, and notifying a tax practitioner of, an investigation be removed.

# Part 2: ATO information gathering in civil and administrative investigations

## 2.1 Civil and administrative investigations

The ATO's civil and administrative investigations are its investigations related to the administration or operation of a tax law that are not 'tax-related offences'.<sup>1</sup> These investigations include the calculation and assessment of an accurate tax liability, the making of payments under taxation laws, the application of civil and administrative penalties and interest (where appropriate) and debt recovery action. Information gathering is often undertaken through a review or audit using a cooperative approach. Where taxpayers choose not to cooperate, the ATO has broad formal notice and access powers.

## 2.2 Current information gathering powers

The ATO has established information gathering principles to help ensure information is gathered in a fair and professional manner. The ATO's preference is to seek taxpayers' cooperation in making information available.

However, for a variety of reasons –including non-cooperation, sensitivity of information, or need for covert information gathering –the ATO may also use formal information gathering powers to obtain information for civil matters. The legislative framework for the ATO's information gathering powers is set out in the *Taxation Administration Act 1953* (TAA 1953)<sup>2</sup>. These information gathering powers are long-standing, with the Commissioner holding these powers (in some from) for many decades with relatively few substantial legislative amendments. The purposes of the powers are to allow the ATO to obtain information and evidence, and they can be broadly categorised into formal notice powers and formal access powers.

The ATO's formal notice powers allow the ATO to issue a formal notice that compels an entity to undertake certain actions. A formal notice under the TAA 1953 may require that an entity:

- give information;<sup>3</sup>
- if the entity is a natural person – attend and give evidence;<sup>4</sup> and
- produce documents.<sup>5</sup>

The ATO's formal access powers in TAA 1953<sup>6</sup> permit authorised officers to enter and remain in a premise, and to access documents, goods, or property while there. This access extends to ancillary functions such as making copies or taking extracts from documents or weighing testing or analysing goods or other property.

The ATO's formal notice powers extend to gathering information overseas, one of these mechanisms is through an offshore information notice.<sup>7</sup> These request that an entity provide relevant information,

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<sup>1</sup> See section 3.1.

<sup>2</sup> Schedule 1.

<sup>3</sup> Section 353-10(1)(a) in Schedule 1.

<sup>4</sup> Section 353-10(1)(b) in Schedule 1.

<sup>5</sup> Section 353-10(1)(c) in Schedule 1.

<sup>6</sup> Section 353-15 in Schedule 1.

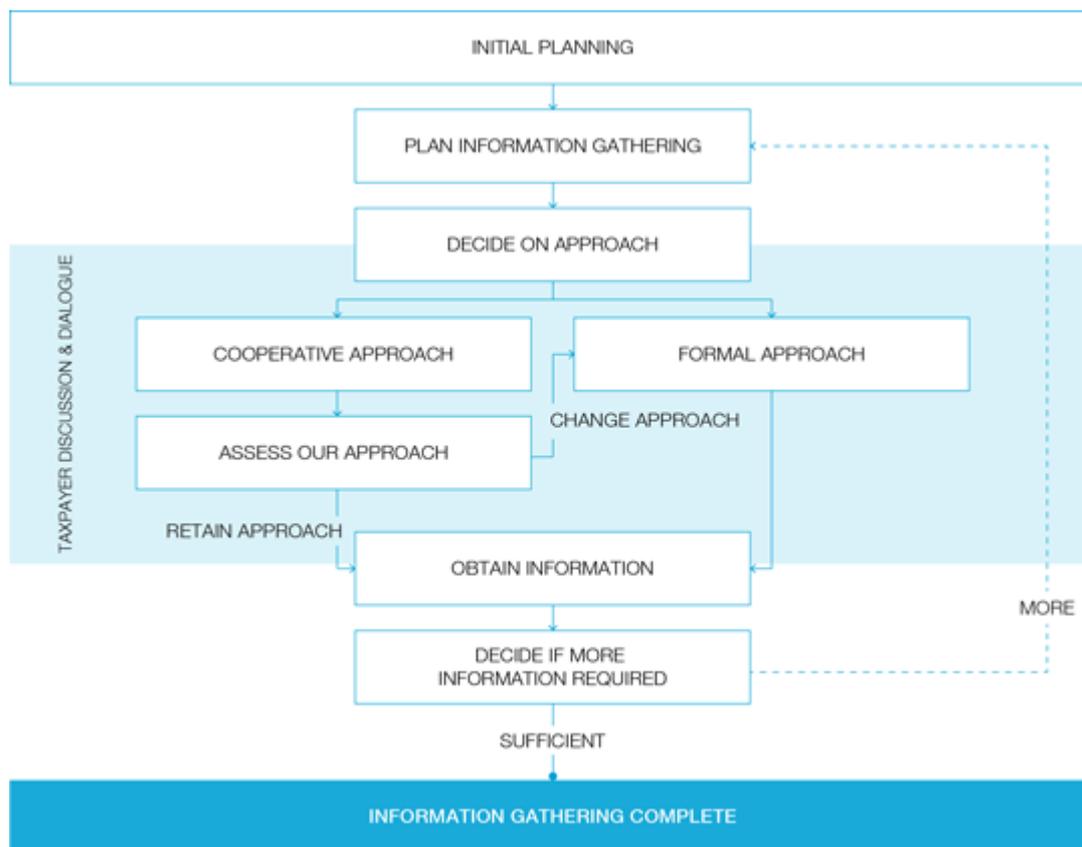
<sup>7</sup> Section 353-25 in Schedule 1.

produce relevant documents, and make copies of those documents available to the ATO. The ATO must give a minimum of 90 days to comply with an offshore information notice.

Unless the ATO provides consent, information or documents not provided in response to the notice are inadmissible in later proceedings relating to the entity’s tax-related liabilities. An offshore information notice creates a different incentive for entities to comply with an ATO demand to produce documents or give information where traditional penalties for non-compliance with an ordinary formal notice are difficult to enforce.

The ATO’s [Our approach to information gathering](#) provides the following diagram of the information gathering process:

**Figure 2: The ATO’s formal notice process**



### Scope of powers

The ATO’s formal notice powers can only be used for the purpose of the administration or operation of a taxation law. Where that purpose is absent the powers are not enlivened.

The ATO’s information gathering powers allow the ATO to properly assess taxpayers’ liabilities or recover debt, and are distinct from other investigative powers in several ways (for example, warrants undertaken in criminal investigations by law enforcement agencies such as state police).

- Notices are not limited by claims of confidentiality. They override claims of third-party confidentiality<sup>8</sup>.
- In responding to a notice, there is no protection against self-incrimination.

<sup>8</sup> Claims of confidentiality do not include claims of legal professional privilege.

- The ATO can issue notices directly to third-parties (such as lawyers, accountants, tax agents, employers, suppliers, and banks).

### Technological neutrality

The ATO's formal powers to obtain information and evidence are broad and enable the ATO to access (but not confiscate) any documents, goods, and other property. Documents are defined to include anything on which there is writing, or from which sounds, images or writings can be reproduced with or without the aid of anything else.<sup>9</sup> This means that the ATO can seek information stored electronically such as data on computer hard drives.

### Access to telecommunications data and stored communications in civil and administrative investigations

Fast-evolving digitalisation, online service offerings, and more technology-driven cyber fraud and crime mean there is an increasing focus on the importance of telecommunications data. In the current digitalised environment, telecommunications data provides important evidence to ATO audits.

The *Telecommunications (Interception and Access) Act 1979* (TIA Act) prohibits the interception of telecommunications, and access to stored communications and telecommunications data except in a number of narrowly defined circumstances. This includes circumstances where a prescribed law-enforcement agency or Australian Security Intelligence Organisation (ASIO) is legally authorised to obtain these types of data through a warrant or authorisation.

The TIA Act separately defines which agencies can apply to gain access to intercepted communications, access telecommunications data or access stored communications. The ATO is not currently a prescribed law enforcement agency under the TIA Act so is prohibited from independently intercepting or accessing any data otherwise available through the Act.

Eligibility to intercept and access these communications is separately defined to reflect the greater privacy sensitivity of communications as compared to telecommunications data. Access to the substance of a communications represents a more significant privacy consideration. For example, the authority to read the content of a text message (a stored communication) is more invasive than the authority to see the time a phone call was made or the phone number it was made from (telecommunications data).

While the ATO does not have the ability to access any type of data made available through the TIA Act, for civil or administrative matters, the ATO can use one of the ATO's information gathering powers in conjunction with the *Telecommunications Act 1997*<sup>10</sup> to request telecommunications data. Telecommunications data obtained through these powers cannot be requested or passed on (e.g., by an auditor) for the purpose of a criminal investigation. Currently, the ATO cannot access stored communications for the purpose of civil and administrative investigations.

Australia's electronic surveillance framework, which governs access to telecommunications data, is currently being considered as a part of the AGD's *Reform of Australia's electronic surveillance framework*. Law enforcement and security agencies require electronic surveillance powers to investigate serious crime and respond to national security threats. Electronic surveillance reforms aim to repeal existing legislation regulating government agencies' access to electronic surveillance powers under the TIA Act, the *Surveillance Devices Act 2004* and relevant parts of the *Australian Security Intelligence Organisation Act 1979* and replace the current patchwork of laws with a single Act.

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<sup>9</sup> Section 2B of the *Acts Interpretation Act 1901*.

<sup>10</sup> Section 280 or other specific provisions.

## Privacy and confidentiality

Any information gathered by the ATO as part of its formal information gathering powers is subject to taxpayer confidentiality provisions set out in the TAA 1953.<sup>11</sup> ATO officials are prohibited from disclosing taxpayer information except in limited circumstances set out in the TAA 1953 or where sharing that information is authorised under the *Data Availability and Transparency Act 2022* for the limited purposes set out in that Act. The information is also subject to the [ATO Privacy Policy](#), consistent with the ATO's obligations under the *Privacy Act 1988*. ATO officials may not access personal information unless it is while exercising their powers or performing their functions under or in relation to tax, super or other relevant laws. Procedures for disclosing taxpayer information are outlined in [Procedures for disclosing protected information](#).

## Collection and use of information obtained under the ATO's formal powers

The ATO's powers to obtain information for the purposes of administering the tax and superannuation systems are not limited by the privilege against self-incrimination. It is an offence under the TAA 1953<sup>12</sup> to refuse to answer a question or produce a record when requested by ATO officials, and the privilege against self-incrimination cannot be used as a defence for failing to answer.

The ATO does not use its formal powers to obtain information for the purpose of a criminal investigation. That said, information that the ATO gathers during a civil or administrative investigation using its formal powers may be shared internally with its criminal investigation teams for intelligence purposes.

The courts have, at their discretion, allowed information gathered by the ATO using its formal powers to be admissible as evidence in criminal matters. This has generally been limited to circumstances where ATO officials encounter criminal conduct inadvertently. This can include false representations to ATO officials in an interview conducted under formal powers.<sup>13</sup> It can also include situations where suspected tax crimes are compulsorily disclosed as part of a civil investigation, but criminal search warrant powers are subsequently used to gather evidence of the criminal tax offence.<sup>14</sup>

Information obtained by the ATO using its information gathering powers is stored separately to information obtained under a search warrant executed by the Australian Federal Police (AFP) or state or territory police. The latter is stored according to the *Evidence Act 1995* and managed in accordance with the [Australian Government Investigation Standards 2022](#).

## 2.3 Preliminary finding: civil and administrative investigation powers are broadly fit for purpose

### Preliminary finding

The ATO's existing formal powers are broadly fit for purpose for conducting its civil and administrative investigations.

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<sup>11</sup> Subdivision 355-B of Schedule 1.

<sup>12</sup> Subsection 8D(1).

<sup>13</sup> *R v Kinghorn* [2021] NSWCCA 313.

<sup>14</sup> *R v Leach* (2022) 10 QR 40.

The ATO's existing information gathering powers are broad and long-standing, enabling it to properly and effectively assess all taxpayers' liabilities. The formal powers are not restricted by claims of confidentiality or privilege against self-incrimination and there are penalties for non-compliance. The ATO's existing formal powers appear suitable to enable the ATO to conduct civil and administrative investigations.

Currently, entities are given at least 90 days to respond to an offshore information notice. Noting that it can be more difficult to gathering information located outside Australia and return it to Australia, and a failure to provide information requested in a notice cannot later be admitted in proceedings related to a tax liability, a lengthy period must be given to allow for compliance with the notice. This ensures that respondents are able to make a thorough assessment of their records. However, with digitisation and technological advances there are concerns that respondents are using the whole 90-day period as a means to delay investigations, especially in instances where the response is that no information or documents can be provided.

## Questions

- Are there gaps or issues that have not been identified in the ATO's existing formal powers for civil and administrative investigations?
- Should the minimum response period for an offshore information notice be reduced and if so, what would be an appropriate period?

# Part 3: ATO information gathering in criminal investigations

## 3.1 Criminal investigations

The ATO has an important role in undertaking criminal investigations as part of its remit for protecting Australia's taxation and superannuation systems. Under the *Public Governance Performance and Accountability Act 2013* (PGPA Act), the Commissioner, as the accountable authority of a Commonwealth entity, must take all reasonable measures to prevent, detect and deal with fraud relating to the entity. The ATO's remit is limited to suspected fraud in or on the tax and superannuation systems.

In the context of its criminal investigations, the ATO undertakes investigations into 'tax-related criminal offences'. The ATO breaks down 'tax-related criminal offences' into 3 categories (with increasing seriousness); 'prescribed taxation offences'; 'other taxation offences', and 'serious taxation crimes'.

### Prescribed taxation offences (Part III of the TAA 1953)

Minor offences against taxation laws or associated *Crimes Act 1914* (Crimes Act) and the *Criminal Code Act 1995* (Criminal Code) provisions.<sup>15</sup>

Summary prosecutions for these offences are usually brought by the Commissioner in accordance with a memorandum of understanding between the ATO and the Commonwealth Department of Public Prosecutions (CDPP).

A prescribed taxation offence is broadly a taxation offence that is committed by:

- a natural person and punishable only by a fine and not by imprisonment; or
- a corporation.

Examples of a prescribed taxation offence include:

- recklessly making false or misleading statements; and
- recklessly keeping records incorrectly.

### Other taxation offences

These 'other offences' are potentially punishable by imprisonment.

Summary prosecutions for these offences are usually brought by the Commissioner in accordance with a memorandum of understanding between the ATO and the CDPP.

Sometimes these are reserved for prosecution by the CDPP, for example, where they are indictable offences.

Taxation offences that are committed by a natural person and potentially punishable by imprisonment.

Examples of these 'other offences' include the above examples, where they are second time offences committed by natural persons, as at that point they become potentially punishable by imprisonment.

Further examples include:

- incorrectly keeping records with the intention of deceiving or misleading the Commissioner; and
- falsifying or concealing your identity with the intention of deceiving or misleading the Commissioner.

<sup>15</sup> Section 8A of the TAA 1953 states that a taxation offence includes an offence against sections 11.1, 11.4 or 11.5 of the Criminal Code.

### **Serious taxation offences (*Criminal Code*)**

More serious offences that are prosecuted by the CDPP under the Crimes Act and Criminal Code.

Offences not covered by Part III of the TAA 1953, that relate to or arise in relation to taxation matters.

Examples of these more serious offences include the following fraudulent conduct offences, which are each potentially punishable by imprisonment for a maximum of 10 years:

- dishonestly obtaining Commonwealth property;
- obtaining financial advantage by deception;
- dishonestly causing a loss to the Commonwealth; and
- conspiracy to defraud the Commonwealth.

The ATO may conduct its own criminal investigations or undertake investigations in conjunction with, or with the support of, law enforcement agencies. Where the ATO requires information to support its criminal investigations, and a search warrant is required, it must engage the assistance of the AFP, or state and territory police.

Distinct from the investigation of the tax-related criminal offences is the prosecution of those offences. The manner of prosecution is dependent upon the category of offence. Prescribed taxation offences are less serious offences and are usually instituted by the Commissioner in accordance with a memorandum of understanding between the ATO and the CDPP. Other taxation offences and serious taxation crimes are prosecuted by the CDPP. Prosecutions of tax-related criminal offences are undertaken through a brief of evidence referred to the CDPP.

## **3.2 Current information gathering powers**

The ATO is required to investigate suspected fraud, including investigating some offences contained in the Criminal Code, but it does not have direct access to the same criminal investigation tools as the AFP or state or territory police. It is reliant on other law enforcement agencies, such as the AFP, to obtain search warrants, exercise other information gathering powers on banks and other third-parties, or to access telecommunications data.

The ATO, via its Criminal Law Program (CLP), undertakes some law enforcement functions of investigating criminal offences perpetrated against the tax and superannuation laws. Significantly, the ATO does not use its formal information gathering power in criminal investigations, which are otherwise available in its civil and administrative investigations.

Following an investigation, the ATO prepares a brief of evidence which is referred to the CDPP for an independent assessment and decision as to whether to prosecute the matter. While the ATO investigates a range of TAA 1953 offences ('prescribed taxation offences' and 'other taxation offences'), including offences that carry lower-level sanctions, and has a direct role in investigating and prosecuting serious taxation crimes (serious taxation crimes), the ATO cannot execute search warrants outside of the powers delegated to it under Section 107BA of the *Excise Act 1901*.

## ATO's use of Crimes Act search warrants

During a criminal investigation the ATO may ask the AFP or state or territory police to execute a search warrant.<sup>16</sup> Search warrants can be essential to gather basic evidence in respect of an offence. This can include searches on residential premises, business premises, and financial institutions, or third parties that will not voluntarily supply documents.

The Crimes Act<sup>17</sup> authorises an 'issuing officer' such as a magistrate to issue a warrant to search a premises if the officer is satisfied that there are reasonable grounds for suspecting that there is, or there will be within the next 72 hours, any 'evidential material' at the premises. 'Evidential material' includes a thing relevant to an indictable or a summary offence.<sup>18</sup>

The ATO can only utilise a search warrant by requesting search warrant assistance from the AFP. This is because a sworn AFP member is required to be the warrant holder, who is responsible for the execution of the warrant. If the AFP accepts the assistance request and allocates a sworn AFP member as the warrant holder for the search warrant, then an agreed time of warrant execution is planned between the ATO and the AFP. The ATO case officer is the applicant for the search warrant, and prepares an affidavit in support of the application and submits it to a magistrate or justice of the peace, who will then decide whether to issue the warrant. ATO officers may assist the AFP with executing the search warrant as a 'constable assisting'. Material seized under the search warrant can be made available to the ATO.<sup>19</sup> The Crimes Act outlines the powers related to the execution of search warrants.<sup>20</sup>

For context, during the 2022-23 financial year, the ATO sought AFP assistance to execute more than 100 search warrants. This required the ATO to work with the AFP to negotiate and coordinate the involvement of serving AFP members and plan the investigative scope and timing in addition to resource availability, while balancing ongoing AFP investigations. This represents a significant administrative burden on both the ATO and the AFP.

Given that the ATO cannot execute a Crimes Act search warrant on its own and must rely on a member of the AFP to do so, the ATO is reliant on police resources and inter-agency cooperation. Unlike some other regulatory agencies such as Australian Securities and Investments Commission (ASIC) and the Australian Competition and Consumer Commission (ACCC), the ATO has no other avenue to obtain and execute a search warrant except in very limited circumstances. ASIC<sup>21</sup> and the ACCC<sup>22</sup> also have wide ranging civil investigation powers available to them.

The limited circumstances in which the ATO can apply and execute warrants are under the *Excise Act 1901*.<sup>23</sup> These are search and seizure warrants able to be executed by ATO staff, for offences that relate to excise laws only (illicit tobacco, illicit alcohol, or petroleum). Although the ATO are the warrant holders for these matters, support from law enforcement agencies is still used to ensure safety of ATO officers.

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<sup>16</sup> A search warrant is an instrument authorising an officer to enter a premises or detain a person to search for and obtain evidential material. Search warrants are a commonly used tool to gather evidentiary material for a criminal investigation.

<sup>17</sup> Subsection 3E(1).

<sup>18</sup> Section 3C.

<sup>19</sup> Section 3ZQU.

<sup>20</sup> Division 2 of Part IAA.

<sup>21</sup> Section 13 of the *Australian Securities and Investments Commission Act 2001*.

<sup>22</sup> Section 155 of the *Competition and Consumer Act 2010*.

<sup>23</sup> Section 107BA.

## ASIC search warrants

Under the *Australian Securities and Investments Commission Act 2001* (ASIC Act), ASIC may conduct investigations into various matters administered by it.<sup>24</sup> ASIC is granted powers<sup>25</sup> to apply for and execute modified Crimes Act search warrants to investigate indictable offences under:

- the corporations legislation;
- a provision of a law concerning the management or affairs of a body corporate or managed investment scheme, or involves fraud or dishonesty and relates to a body corporate or managed investment scheme or to financial products;
- *Retirement Savings Accounts Act 1997*;
- *Superannuation Industry (Supervision) Act 1993*.

Material seized under a search warrant executed by ASIC may be used for the purpose of performing any of ASIC's functions and duties, including to investigate breaches of offence provisions, civil penalty provisions and obligations.<sup>26</sup>

## ACCC search warrants

The ACCC is responsible for enforcing the *Competition and Consumer Act 2010* (CCA) and other legislation relating to competition, fair trading, product safety, consumer protection and regulation of national infrastructure.

To carry out its investigative functions, the ACCC may apply to a for a search warrant.<sup>27</sup> These search warrants are specific to the CCA for execution by the ACCC inspectors. Under a search warrant, the ACCC inspector can seize goods or documents, inspect, handle and measure the goods and equipment, take samples of the goods and make copies or extracts from documents.<sup>28</sup> The ACCC inspector may also require any person on the premises to answer any questions and produce any documents that relate to the reasons for the entry of the premise.

Following an investigation, the ACCC may use the material seized under the search warrant to criminal and civil proceedings.

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<sup>24</sup> Part 3.

<sup>25</sup> Division 3A.

<sup>26</sup> Section 3ZQU.

<sup>27</sup> Sections 135Z and 136.

<sup>28</sup> [https://www.accc.gov.au/system/files/1553\\_Accountability%20Framework%20for%20Investigations\\_FA.pdf](https://www.accc.gov.au/system/files/1553_Accountability%20Framework%20for%20Investigations_FA.pdf).

## ATO access to telecommunications data and stored communications data in criminal investigations

Criminal investigators rely on telecommunications data and stored communications for many of their investigations to uncover true identities, identify connections between contacts within syndicates and their controllers, and to verify the location of suspects at the time of key actions. Examples of telecommunications data include subscriber details, call time and location details but not the contents of the communication. Examples of stored communications include historical text messages, voicemails, and emails.

The TIA Act prohibits the interception of communications, access to telecommunications data and stored communications, except to certain Australian law enforcement and security agencies listed in the TIA Act for a narrowly defined set of circumstances. The TIA Act separately defines which agencies can apply to intercept communications, access telecommunications data and access stored communications. These include police forces, certain regulatory bodies (such as the ACCC and ASIC) and the Department of Home Affairs.

Agencies specified under the TIA Act are able to apply to an issuing authority for stored communications warrants.<sup>29</sup> They are also able to directly access telecommunications data via voluntary disclosures<sup>30</sup> and make authorisations for the disclosure of telecommunications data for the enforcement of criminal law<sup>31</sup> and enforcement of a law imposing a pecuniary penalty or protection of the public revenue<sup>32</sup>.

While the ATO can access telecommunications data in its civil investigations, it is not currently listed as a law enforcement agency or enforcement agency under the TIA Act. Consequently, ATO criminal investigators do not have the ability to independently access telecommunications data or stored communications. Instead, telecommunications data and stored communications can only be accessed by the ATO when disclosed by an enforcement agency in certain circumstances. For example, telecommunications data may be shared with the ATO by a law enforcement agency through a joint investigation in accordance with the secondary use and disclosure provisions in the TIA Act.

### 3.3 Comparison with overseas regulators

Several overseas tax or revenue system regulators have both civil and administrative as well as criminal investigation powers. Most OECD agencies responsible for tax crimes have the power to directly investigate tax-related criminal matters<sup>33</sup>.

Most jurisdictions around the world have segregated civil and criminal enforcement functions within the tax system so that procedural protections for citizens are not undermined. This is the case even if civil and criminal investigative functions for tax administration and crimes are within the same regulatory body. Two examples of the regulatory powers of tax bodies from similar common law countries are set out below.

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<sup>29</sup> Section 110.

<sup>30</sup> Section 177.

<sup>31</sup> Section 178.

<sup>32</sup> Section 179.

<sup>33</sup> Organisation for Economic Co-operation and Development's (OECD's) 2021 publication *Fighting Tax Crime – Ten Global Principles, second edition*.

## HM Revenue and Customs

HM Revenue and Customs (HMRC) is the United Kingdom's payments and customs authority. HMRC has civil and criminal investigative powers set out in different legislative schemes to investigate fraud and tax disputes.

Civil investigation powers are contained within the *Finance Act 2008* (UK). Criminal investigation powers are separately granted through a specific provision in police powers legislation that grants HMRC officials certain police powers.<sup>34</sup> Electronic surveillance powers, including access to telecommunications data, have also been granted to HMRC for investigating serious crime.<sup>35</sup>

Criminal investigation powers are broad and include obtaining executing search warrants, the ability to make arrests and searching suspects. Criminal investigation powers are only exercised by specifically trained HMRC officials with a broad range of subjects covered during training. These include: entry, search and seizures; cautioning and interviews; power of arrests; and personal safety and use of handcuffs.<sup>36</sup>

## Canada Revenue Agency

The Canada Revenue Agency (CRA) administers tax law and programs delivered through the tax system in Canada. The CRA has separate civil and criminal investigative powers within the *Income Tax Act*<sup>37</sup> and the *Excise Tax Act*<sup>38</sup>.

The CRA can conduct audits and enforcement activities for enforcement of tax laws in civil investigations. There is a separate Criminal Investigations Program responsible for investigating criminal tax offences under the CRA's legislative schemes.<sup>39</sup> Investigative powers include obtaining and executing search warrants to enter a premises to search and seize documents.

There is a clear separation between civil audit and criminal investigative functions to ensure that legal rights under the Canadian Charter of Rights and Freedoms are not abrogated. Evidence used in a criminal investigation must be gathered using a search warrant.<sup>40</sup>

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<sup>34</sup> For example, in England, section 114 of the *Police and Criminal Evidence Act 1984* (UK); in Northern Ireland, section 85 of the *Police and Criminal Evidence (Northern Ireland) Order 1989* (NI); and Part III of the *Criminal Law (Consolidation) (Scotland) Act 1995* (Scot).

<sup>35</sup> For example, *Investigatory Powers Act 2016* (UK).

<sup>36</sup> <https://www.gov.uk/government/publications/criminal-investigation/criminal-investigation>.

<sup>37</sup> RSC 1985, c 1 (5th Supp).

<sup>38</sup> RSC 1985, c E-15.

<sup>39</sup> <https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/compliance/combat-tax-crimes/criminal-investigation-process.html>.

<sup>40</sup> Section 231.3 of the *Income Tax Act*, RSC 1985, c. 1 (5th Supp) and section 290 of the *Excise Tax Act*, RSC 1985, c E-15.

## 3.4 Preliminary proposal: Notice to produce power for criminal investigations

### Proposal

The ATO be given the power to issue notices to produce documents, or give information, in its investigations into tax-related criminal offences.

Prompt prosecution of tax offences relies on the timely collection and corroboration of evidence. This information is often critical to building prosecution cases with a reasonable prospect of conviction. While the ATO can independently investigate criminal matters, it does not have the necessary formal information gathering powers to effectively investigate these matters and gather potentially important information in a timely manner. It must either engage the AFP or state or territory police to support its investigation. This is despite a clear responsibility under the PGPA Act to take all reasonable measures to prevent, detect and deal with fraud against the tax and superannuation systems.

The Black Economy Taskforce's 2018 consultation paper on Improving Black Economy Enforcement and Offences noted that while the ATO can rely on the AFP to execute a search warrant to obtain important information from third parties, it leads to delays in investigations and diverts AFP resources away from the investigation of other criminal activities. This paper also noted that approximately half of the warrants issued in tax-related criminal investigations are to gather bank account information. These findings were consistent with the 2018 IGOT Review which found that 85% of the search warrants sought by the ATO are served on third-party record holders, such as financial institutions, which do not pose major safety risks and are issued to address third-party concerns with confidentiality constraints. The ATO's need to seek assistance from the AFP or state or territory police to conduct search warrants to obtain critical information can create administrative and resource burdens for police and prevent the ATO from acting swiftly. Generally, it takes some time for the police to organise for a person to physically attend and execute a warrant on a bank and further time for the bank to respond which may lead to critical delays in investigations.

Treasury proposes that the ATO be given information gathering powers to issue notices to produce documents or information for ATO investigations into tax-related criminal offences (which includes prescribed taxation offences, other taxation offences and serious taxation crimes). The notice to produce would allow the ATO to require a person to produce information or documents during a criminal investigation.

Consistent with AGD's *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*, the proposed notice power could have the following elements:

- the Commissioner would have the authority to issue notices, which the Commissioner is expected to delegate to certain senior ATO officers;
- notices could only be issued in circumstances where the Commissioner (or his or her delegate) reasonably believes the person can provide information, or has custody or control of documents, which would assist the ATO in its investigation of 'tax-related criminal offences';

- legal protections of legal professional privilege and the privilege against self-incrimination would be available to be exercised by respondents when presented with a notice to produce for an investigation into tax-related criminal offences; and
- failure to comply would attract a maximum penalty of 6 months imprisonment or a 30 penalty unit fine or both.

This power would enable the ATO to issue a notice to produce for investigations into tax-related criminal offences. Further, any information obtained under the power would be subject to the tax secrecy regime in the TAA 1953, and the ATO could only share the information to the extent that an authorised disclosure category applies (for example in relation to the investigation of a serious crime). Where the ATO identifies potential serious misconduct that is not a tax-related criminal offence, it would not be able to use the proposed power, and the matter should continue to be referred to the AFP or other appropriate law enforcement agencies for consideration and potential action, consistent with current practices.

Treasury's proposal is similar to the 2018 IGOT Review into the ATO's Fraud Control Management, which also recommended that the ATO should be allowed to issue production orders to third-parties such as financial institutions who hold relevant information about entities or transactions of interest.<sup>41</sup> However, this proposal does not go as far as the recommendation made by the Black Economy Taskforce. The Black Economy Taskforce Final Report recommended providing the ATO with a criminal investigative power to issue search warrants to source bank data directly from banks.<sup>42</sup>

A clear separation between civil or administrative and criminal investigative functions will need to be maintained if criminal investigation powers are granted to the ATO. The ATO has existing mechanisms which should be utilised to ensure that information gathered from civil or administrative and criminal investigations are quarantined and only shared if they meet certain criteria under the TAA 1953.<sup>43</sup> For example, information gained during a civil process using the ATO's formal information gathering powers can be shared with its criminal investigation teams for intelligence purposes only, with the information generally not admissible as evidence.

Treasury's preliminary view is that providing the ATO with a notice to produce power is an appropriate step that would support the ATO to gather critical information during the investigation of a criminal matter. In certain circumstances, such as where the ATO has concerns that an individual may destroy information, the ATO can apply for, and request the AFP execute a search warrant, consistent with current practices.

Within Australia's legal system, it is critical that powers provided to government officials do not unduly trespass on personal rights and liberties of individual citizens. Where a power is granted, the power is both justified as necessary for the proper functioning of a regulatory regime and properly and adequately safeguarded. While further alternative investigative powers have been considered as part of the review, those power are not currently proposed at this time as necessary for the proper functioning of the tax and superannuation systems. This includes, for example, providing the ATO with the power to attend and give evidence in relation to a tax-related criminal matter, or an investigative search warrant power.

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<sup>41</sup> Recommendation 7.1(e).

<sup>42</sup> Recommendation 8.2.

<sup>43</sup> Section 355 of Schedule 1.

## Questions

- What are the benefits or risks associated with expanding the ATO's investigation power to require the production of a documents in its investigations into tax-related criminal offences?
- Having regard to other legislative regulatory regimes, should any further restrictions or limitations be placed on the ability of the ATO to require the production of documents in its investigations into tax-related criminal offences?

## 3.5 Preliminary proposal: Access to telecommunications data and stored communications

### Proposal

The Government consider enabling the ATO to access telecommunications data and stored communications, as part of the framework that exists for other law enforcement agencies, as part of its reforms to electronic surveillance laws.

In an increasingly digital environment, telecommunications data and stored communications can play a significant role in supporting the ATO's timely investigation of frauds being committed against the tax and superannuation systems. For example, telecommunications data can enable the ATO to make critical links between electronic devices and the commission of an offence.

For criminal matters, the ATO is not currently listed as an enforcement agency under the TIA Act. This means the ATO cannot independently access either telecommunications data or stored communications for the purposes of criminal investigations. This is a result of the recommendations made by the Parliamentary Joint Committee on Intelligence and Security (PJCIS) in 2015 in its Advisory Report on the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014. The PCJIS recommended reducing the range of agencies with authority to access to telecommunications data and stored communications to those with a demonstrated need to access the context and which are subject to appropriate safeguards.

Due to the subsequent changes, the ATO can only access telecommunications data and stored communications for the purposes of criminal matters when disclosed by a law-enforcement agency or enforcement agency in certain circumstances. Consequently, the ATO is reliant upon other law enforcement agencies and their resources to access critical information during a criminal investigation. In a real-time investigation of fraud being committed against the tax system, timeliness of receiving information is crucial. For example, telecommunications data may ultimately be obtained three to six months too late to identify and take appropriate action against multimillion dollar fraud on the Commonwealth.<sup>44</sup>

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<sup>44</sup> ATO Submission (submission 37), Parliamentary Joint Committee on Intelligence and Security (PJCIS) Review of the Mandatory Data Retention Regime 2019.

Numerous inquiries have reflected on the impacts of the 2015 changes, considering the impediments this has placed on fighting tax and financial crime. The 2015 Parliamentary Joint Committee on Law Enforcement Inquiry into Financial Related Crimes and the 2017 Black Economy Taskforce Final Report recommended designating the ATO as a criminal law enforcement agency for the purposes of the TIA Act. The 2018 IGOT Review also recommended the Government consider a broad review of the current arrangements for interagency collaboration for combating tax fraud including permitting the ATO to use telecommunication interception information obtained in joint investigations.

However, while previous governments have agreed in principle with these recommendations, a 2019 comprehensive review of the legal framework of the national intelligence community recommended that the TIA Act be repealed, and replaced with a single tech-neutral Act. It was therefore appropriate that this work to the underlying legislative framework be progressed before adding additional agencies to the TIA Act.

An interagency taskforce in the AGD is progressing work to reform Australia's electronic surveillance legislative frameworks, including the TIA Act, with an aim to establish clear laws to enable law enforcement and intelligence agencies to access information in response to serious crime and threats to national security. In particular, this work will ensure the new Act contains appropriate and proportionate thresholds, as well as robust, effective and consistent controls, limits, safeguards and oversight of the use of TIA Act type powers. This includes a framework that can provide enforcement agencies with access to some, but not all of the powers currently available under the TIA Act. This work enables a decision as to whether the ATO should be able to access telecommunications data and stored communications for criminal investigations, with appropriate safeguards and oversight applied, as part of this long-term reform work on electronic surveillance.

Treasury does not propose that AGD consider as part of its reform whether the ATO should be able to exercise telecommunications interception powers. It is appropriate that the exercise of these more intrusive powers is restricted to agencies whose exclusive area of operation is the investigation of serious criminal offences and threats to national security.

Electronic surveillance reforms will consider the most appropriate legal thresholds for agencies to access privacy-sensitive information and consider which agencies should have the ability to access electronic surveillance powers with strict safeguards and oversight mechanisms. A discussion paper on the proposed reforms to Australia's electronic surveillance framework did not specifically seek public views on ATO access to stored communications. This consultation process will assist in informing the AGD electronic surveillance reforms.

## Questions

- Should the ATO be able to independently receive stored communications while undertaking criminal investigations for the purpose of administering tax legislation?
- If the ATO can receive telecommunications data and / or stored communications, would any additional oversight mechanisms or safeguards be appropriate?

## Part 4: ATO information gathering to assist other law enforcement bodies

The ATO works closely with law enforcement agencies, at both the Commonwealth and state and territory level, to support the Commonwealth's strategic, capability-led approach to combat serious and organised financial-related crime. The ATO assists law enforcement agencies to undertake criminal investigations in a variety of ways, including through making referrals, working in joint investigations, and participating in taskforces. This assistance can include the ATO sharing information it has collected using its formal powers, or via a search warrant.

Treasury's view is that it is appropriate that the ATO's information gathering powers are limited to the purposes of the legislation it administers. In that context, beyond proposals in this paper to strengthen aspects of the ATO's criminal investigative powers, Treasury has not identified any gaps in the ATO's ability to gather information to support law enforcement agencies to investigate serious criminal offences perpetrated against the tax and superannuation systems.

### 4.1 ATO referrals and contribution to taskforces

The ATO can only use its information gathering powers for the purpose of the administration or operation of a taxation law. This means that the ATO's scope to assist law enforcement agencies through formal information gathering is limited to circumstances where:

- the ATO, in the course of investigating a tax offence, has identified information about potential misconduct that is not a tax offence; or
- tax offences (including tax-related criminal offences) are being investigated by a law enforcement agency, or a taskforce.

If the ATO uncovers information that is relevant to misconduct that does not constitute a tax offence, it can disclose that information to law enforcement agencies for the purpose of a criminal investigation. The ATO manages these disclosures through a dedicated team. Disclosures to law enforcement agencies in support of investigations involving serious offences (offences against Australian law punishable by more than 12 months imprisonment) require approval from a member of the Senior Executive Service of the ATO for release.

The ATO may also refer tax offence matters to the AFP, for example, where a matter is nationally significant or requires investigation tools the ATO does not have. In these circumstances the ATO can share information with the AFP that it has already gathered using its formal powers.

Joint investigations may be undertaken through a taskforce consisting of different agencies or through a Joint Agency Agreement (JAA). Taskforces are generally only entered into when the strategic priorities of the partnering agencies are aligned. The ATO participates in a number of specific taskforces, such as the Serious Financial Crimes Taskforce (SFCT), Illicit Tobacco Taskforce, Fraud Fusion Taskforce Criminal Asset Confiscation Taskforce and Phoenix Taskforce.

Where a taskforce cannot be relied upon, the ATO can arrange a JAA with a law enforcement agency where specific resourcing and responsibilities are defined. This is done on a case-by-case basis and is subject to the relevant information disclosure legislative framework of each law enforcement agency.

The ATO can use its information gathering powers to support the work of a Taskforce (if authorised by the Governor-General by being prescribed). Treasury's view is that the proposed notice to produce power could also be used to gather information for criminal investigations, or proceeds of crime investigations, to support the work of a Taskforce, to the extent it is investigating a tax offence.

## 4.2 Interagency collaboration

The strengthening of the ATO's formal powers for criminal investigation through the proposed notice to produce power<sup>45</sup> will improve the ability of the ATO to investigate tax-related criminal offences, and also to provide effective referrals on these matters to the AFP or another law enforcement agency where appropriate.

Improving the ATO's information gathering powers is only one component of the broader response to serious criminal offences perpetrated against the tax and superannuation systems. As noted in the 2018 IGOT Review into the ATO's Fraud Control Management, no single agency has the requisite knowledge, skills, resources and powers to address the sophisticated arrangements that may be utilised by those perpetrating tax-related offences, in particular fraud offences.

Cooperation between agencies is critical to appropriately address and respond to tax-related offences. The ability to share information is an important component of effective cooperation. For example, there is currently legislation before Parliament that would enable the ATO to share protected information with Treasury about misconduct arising out of breaches or suspected breaches of confidence by intermediaries engaging with the Commonwealth for the purpose of the Commonwealth appropriately responding to the breach or suspected breach. Once provided with the relevant information, Treasury would be in a position make a broad assessment of the seriousness of the matter, and take further action as necessary, including facilitating interagency cooperation as required.

Treasury will also be undertaking a broader review of secrecy provisions that apply to the ATO and the TPB to test whether there are further circumstances where these tax regulators should be able to share information with regulatory agencies where it is the public interest to do so.

### Question

- Are there gaps or issues that have not been identified in the ATO's ability to gather information to support law enforcement agencies to investigate serious criminal offences perpetrated against the tax and superannuation systems, that are appropriate to consider further as part of this review?

## 4.3 ATO issues not considered in this paper

The focus of this review is on the formal information gathering powers of the ATO to ensure it has the right tools to perform its role effectively and enable it to assist law enforcement agencies to investigate serious criminal offences perpetrated against the tax and superannuation systems in a domestic context. The review has not considered the ATO's information gathering powers in the context of Australia's obligations under international tax treaties to provide certain types of information collected domestically which relate, or may relate to foreign civil and criminal matters. This paper also does not consider the ATO's access to information under mutual assistance procedures with foreign revenue authorities.

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<sup>45</sup> See section 3.4.

# Part 5: Tax Practitioners Board information gathering powers

## 5.1 Introduction

The TPB is the national regulatory body responsible for registering and regulating tax practitioners, protecting consumers by ensuring that tax practitioners meet appropriate standards of professional and ethical conduct in Australia.

The *Tax Agent Services Act 2009* (TASA) enables the TPB to investigate applications for registration, any conduct that might be in breach of the TASA and any matters prescribed by the regulations.<sup>46</sup> As part of its investigations, the TPB may issue a notice that requires:

- a person to produce a document or thing, and
- a witness to appear before the TPB.

As with the ATO's formal access powers, self-incrimination cannot be used as grounds not to comply with a notice.

Currently, the TPB may only exercise the above investigation powers after it commences a formal investigation. The TPB must notify the entity under investigation within 2 weeks after the decision on whether to commence an investigation is made, and the investigation is taken to commence on the date of the notice. A decision must be made after an investigation has been finalised, which generally must be done within 6 months of the investigation commencing.

There is currently a proposed amendment before Parliament in the Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023 to increase the TPB's investigation period to 24 months. The purpose of this amendment is to provide the TPB with sufficient time to conduct detailed reviews of misconduct cases, to address risks and to address a wider scope of issues once an investigation has commenced.

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<sup>46</sup> Section 60-95.

## 5.2 Preliminary proposal: Enable the TPB to require the production of documents prior to commencing an investigation

### Proposal

The TPB be permitted to use its information gathering power to require the production of a document (or thing) without the need to commence a formal investigation.

### 2019 TPB Review

The 2019 TPB Review considered the effectiveness of the TPB and the TASA and whether they were fit for purpose.<sup>47</sup> The discussion paper<sup>48</sup> raised the possibility of enabling the TPB to use investigation powers before a formal investigation is triggered. This recommendation dealt with difficulties arising from a 6-month timeframe to complete formal investigations.

Recommendation 6.2(b) of the Final Report into the 2019 TPB Review recommended removing the limitations on formal information gathering prior to the commencement of an investigation and notification of the relevant entity under investigation. This was because timely information gathering would support efficient investigations, and may also assist in reducing the number of instances where the TPB needed to formally commence an investigation.

### Broader scope for the TPB to require the production of documents

The TPB has raised concerns that its inability to use information gathering powers without first initiating a formal investigation impacts its ability to investigate alleged misconduct. The information available to the TPB when assessing whether to pursue an investigation is usually limited (comprising, for example, of information provided by a complainant or through sharing of protected information from the ATO). In circumstances where the TPB is considering an investigation, and is unable to obtain information voluntarily, the TPB may not be able to clearly assess whether an investigation is warranted, or have the minimum information required to commence an investigation. The following examples illustrate the barriers associated with the current settings:

- **Obtaining information from a third party:** The TPB was making preliminary enquiries into a tax practitioner and sent a request to obtain information from a bank. The bank advised the TPB that it required a formal notice before it could respond to the request due to *Privacy Act 1988* requirements. It was not until a number of months later, after the TPB had commenced an investigation and provided a formal notice that the bank was able to respond to the TPB notice.
- **Obtaining information from a state-based agency:** A state-based agency advised the TPB that they held information regarding potential broad scale misconduct by multiple registered tax practitioners in relation to applications for state government grants. However, the state-based agency was not permitted to advise the TPB as to the details of the registered tax practitioners without the TPB issuing a formal notice compelling the provision of that information (which can only be issued once an investigation into a specified entity has been commenced by TPB).

<sup>47</sup> Review of the Tax Practitioners Board – Final Report.

<sup>48</sup> Review of the Tax Practitioners Board – Discussion Paper.

Consequently, the TPB was not able to commence an investigation to obtain the required information as it was not aware of who the implicated registered tax practitioners were.

Treasury proposes that the TPB should be able to use its power to require the production of documents without the need to commence a formal investigation. This would enhance the TPB's ability to effectively assess the available information and identify relevant entities to determine whether to commence a formal investigation. The use of the TPB's broader information gathering powers (such as requiring a person to attend and give evidence) would continue to be triggered through the commencement of a formal investigation. This proposed approach is consistent with the powers of other regulators such as ASIC, whose power to compel the production of documents plays a critical role in supporting an assessment of whether to commence a formal investigation.

The threshold for the TPB using its notice to produce power prior to commencing a formal investigation could be where the documents are necessary for the assessment of whether to commence a formal investigation. This approach would be consistent with principles for minimum statutory thresholds set out in AGD's [Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers](#).

## Questions

- What are the benefits or risks associated with expanding the TPB's investigation power to require the production of a document, or thing prior to commencing a formal investigation?
- Having regard to other legislative regulatory regimes, should any further restrictions or limitations be placed on the ability of the TPB to require the production of documents for the purposes of administering the TASA?

## Part 6: Annexures

### Annexure A – Summary of preliminary findings and proposals

Current requirement	Preliminary Finding/Proposal
The ATO may exercise formal notice powers and formal access powers to obtain information and evidence for civil and administrative investigations.	Finding: The ATO's existing formal powers are broadly fit for purpose for conducting its civil and administrative investigations.
The ATO does not exercise formal information gathering powers for criminal investigations. To obtain evidence and information, the ATO relies on voluntary disclosure or applies for a section 3E Crimes Act search warrant to be administered by the AFP or state or territory police.	Proposal: The ATO be given the power to issue notices to produce documents, or give information, in its investigations into tax-related criminal offences.
The ATO cannot access telecommunications data or stored communications for criminal investigations.	Proposal: The Government consider enabling the ATO to access telecommunications data and stored communications, as part of the framework that exists for other law enforcement agencies, as part of its reforms to electronic surveillance laws.
The TPB cannot exercise any information gathering powers prior to initiating a formal investigation.	Proposal: The TPB be permitted to use its information gathering power to require the production of a document (or thing) without the need to commence a formal investigation.

## Annexure B – Summary of questions

<p><b>Part 2 – Civil investigations</b></p> <ul style="list-style-type: none"> <li>• Are there gaps or issues that have not been identified in the ATO’s existing formal powers for civil and administrative investigations?</li> <li>• Should the minimum response period for an offshore information notice be reduced and if so, what would be an appropriate period?</li> </ul>
<p><b>Part 3 – Criminal Investigations</b></p> <ul style="list-style-type: none"> <li>• What are the benefits or risks associated with expanding the ATO’s investigation power to require the production of a documents in its investigations into tax-related criminal offences?</li> <li>• Having regard to other legislative regulatory regimes, should any further restrictions or limitations be placed on the ability of the ATO to require the production of documents in its investigations into tax-related criminal offences?</li> <li>• Should the ATO be able to independently receive stored communications while undertaking criminal investigations for the purpose of administering tax legislation?</li> <li>• If the ATO can receive telecommunications data and / or stored communications, would any additional oversight mechanisms or safeguards be appropriate?</li> </ul>
<p><b>Part 4 – Assistance with law enforcement agencies</b></p> <ul style="list-style-type: none"> <li>• Are there gaps or issues that have not been identified in the ATO’s ability to gather information to support law enforcement agencies to investigate serious criminal offences perpetrated against the tax and superannuation systems, that are appropriate to consider further as part of this review?</li> </ul>
<p><b>Part 5 – Tax Practitioners Board</b></p> <ul style="list-style-type: none"> <li>• What are the benefits or risks associated with expanding the TPB's investigation power to require the production of a document, or thing prior to commencing a formal investigation?</li> <li>• Having regard to other legislative regulatory regimes, should any further restrictions or limitations be placed on the ability of the TPB to require the production of documents for the purposes of administering the TASA?</li> </ul>