



Review of Tax Regulator Secrecy Exceptions

Consultation paper

December 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 there are circumstances, beyond those currently permitted, in which it would be in the public interest for information obtained by the Australian Taxation Office (ATO), or the Tax Practitioners Board (TPB) to be shared with a specified body or agency for a specified non-tax purpose. The consultation paper also considers the ability of the ATO and TPB to disclose suspected serious misconduct of an official or other trusted professional to agencies responsible for investigating serious misconduct to support the right action being taken at the right time to protect public trust in our public institutions and trusted professions. It also considers the ATO and TPB's ability to disclose information to other entities for certain purposes where it is in the public interest, including to other Commonwealth agencies to support effective and efficient administration of government programs and services.

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: 28 February 2025

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The proposals 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 these proposals might operate, and not all proposals may proceed.

Part 1: Introduction

The PwC tax leaks matter 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 included enhancements to the regulatory framework through the *Treasury Laws Amendment (2023 Measures No.1) Act 2023* (Cth).

The second stage of the government response included measures that strengthen the integrity of the tax system and increase the powers of relevant regulators. These measures were recently implemented via *Treasury Laws Amendment (Tax Accountability and Fairness) Act 2024* (Cth) (TAF Act), which received Royal Assent on 31 May 2024.

The next phase of the government response is a suite of consultations that focus on proposals to further strengthen the regulatory framework and the broader system in which tax intermediaries operate.¹

Additionally, the Government has:

- provided \$30.4 million in funding to the TPB over the four years from 1 July 2023 in the 2022-23 October Budget to enable the roll out of an expanded compliance program, targeting higher risk tax practitioners who may be unregistered, designing schemes, driving tax avoidance, or promoting tax evasion or other criminality; and
- provided \$187.0 million in funding to the ATO over the four years from 1 July 2024 in the 2024-25 Budget to strengthen its ability to detect, prevent and mitigate fraud against the tax and superannuation systems.

1.1 Review of Tax Regulator Secrecy Exceptions

Australia's tax secrecy framework imposes strict obligations on the sharing of tax information. This maintains the privacy, integrity and confidence of entities interacting with the tax system and to support high levels of voluntary compliance with the tax system. It prohibits the disclosure of tax information, except in certain specified circumstances and only where Parliament has determined that the public benefit derived from the disclosure outweighs the impact on the entity's privacy and the potential impact on voluntary tax law compliance.

The PwC matter highlighted that the tax secrecy framework may, in some circumstances, prevent the ATO and TPB from disclosing suspected serious misconduct to relevant agencies to take appropriate action. The TAF Act amended the tax secrecy framework to enable the regulators to disclose suspected breaches of obligations of confidence against the Commonwealth or a Commonwealth entity to Treasury, who can then properly and promptly respond to the breach, including by disclosing

¹ Additional information can be found at the ['Government response to PwC tax leaks scandal' factsheet](#).

information to other agencies and certain ministers where required. The TAF Act also amended ATO and TPB secrecy provisions to enable the regulators to disclose suspected misconduct of professionals to their professional associations or professional disciplinary bodies, enabling the relevant entity to take appropriate disciplinary action under their respective professional codes of conduct.

In addition to these immediate reforms, the Government tasked Treasury to undertake a review of ATO and TPB legislative secrecy provisions to consider whether there are further circumstances where the ATO or TPB should be able to disclose information they have obtained.

This paper considers circumstances where it may be appropriate for the ATO or TPB to disclose protected tax information, including:

- to support the investigation of serious offences;
- to support professional integrity;
- to prevent, identify and respond to fraud; and
- for specified government purposes in the broad public interest.

The review has not considered the appropriateness of the broader 'tax secrecy' framework, nor the operation of existing exceptions.

Part 2: Information disclosure under the ATO and TPB tax secrecy frameworks

2.1 Overview of TAA 1953 and TASA secrecy framework

The primary goal of the secrecy provisions in the *Taxation Administration Act 1953* (Cth) (TAA 1953) and *Tax Agent Services Act 2009* (TASA) is to protect the confidentiality of taxpayer information, by ensuring that disclosure of this information is generally only permitted where the impact on taxpayer privacy is outweighed by the public benefit resulting from the disclosure.

The laws give effect to this primary objective by placing a general prohibition on the disclosure of taxpayer information. ATO officers are prohibited from disclosing 'protected information'.² Protected information is information obtained by the ATO for the purposes of the taxation law which identifies, or is reasonably capable of being used to identify, an entity. Similarly, TPB officers are prohibited from disclosing official information and on-disclosure of official information.³ 'Official information' is information which the TPB obtains for the purposes of the TASA and which identifies, or is reasonably capable of being used to identify, an entity. This paper uses the term 'protected information' in reference to both 'protected information' and 'official information' as defined in the TAA 1953 and TASA respectively.

Protected information may be contained in written documents, conversations, electronic recordings, or any other form in which it can be recorded. It includes information obtained directly from a taxpayer, a third party, or information generated by the relevant agency.

In recognition of the importance that taxpayer information can play in facilitating efficient and effective government administration and law enforcement, disclosures of protected information have generally been permitted under the TAA 1953 and TASA in defined circumstances where the impact on taxpayer privacy is outweighed by the public benefit resulting from the disclosure.

2.2 Exceptions to the general prohibition on sharing information

Both the TAA 1953 and TASA provide exceptions to the prohibition on the disclosure of protected information. The circumstances where disclosures are permitted can be broadly categorised into the performance of duties by an officer, law enforcement and related purposes, government purposes, disclosures to ministers, and disclosures for other purposes. The ATO and TPB can make proactive disclosures under these exceptions (i.e. they do not need to wait for a request before making a disclosure). Further, the ATO and TPB are not obliged to disclose protected information and may not do so in certain cases, even if doing so would be permitted under an exception.

² Section 355-25 of Schedule 1 to the TAA 1953.

³ Section 70-35 of the TASA provides that a Board member or employee commits an offence if they make a record of, or disclose, official information that they acquired in the course of, or because of their duties under the TASA, or TASA, to another person.

For example, this may occur where the ATO has determined that a potential recipient’s information management protocols and IT security is not sufficient to adequately manage and secure the information sought. Similarly, information held by the Commissioner is generally collected to satisfy tax law, and as such, that same information may not be appropriate to share for other government purposes (such as situations where information has been collected using the ATO’s compulsive information gathering powers).

The table below summarises the categories of exceptions:

Exception	ATO	TPB
Disclosures in performing duties as a taxation officer	Disclosures are permitted in the course of a taxation officer’s duties. Generally, such disclosures facilitate the officer carrying out their responsibilities in the administration of a taxation law. The TAA 1953 provides a non-exhaustive list of disclosures that fall within the scope of such a disclosure.	Disclosures are permitted where the disclosure is made in the course of the officer’s duties.
Government purposes	Disclosures for particular government purposes, reflecting situations where Parliament considers the impact on taxpayer privacy is outweighed by the public benefit resulting from the disclosure.	No Government purposes exception. However, disclosures are permitted with the following organisations for specified purposes: ATO, Australian Securities and Investments Commission (ASIC), Financial Services and Credit Panels, the Inspector-General of Taxation (Inspector-General).
Law enforcement and related purposes	Disclosures are permitted to be made to law enforcement agencies, prescribed multi-agency taskforces whose functions include protecting public finances of the Commonwealth, to the Australian Security Intelligence Organisation (ASIO) and Commonwealth Royal Commissions and similar State inquiries	Disclosures are permitted to law enforcement agencies (linked to the definition of authorised law enforcement officer in the TAA 1953).
Minister	Disclosures to ministers are permitted only in limited circumstances.	N/A
Other	Disclosures permitted in other narrow circumstances. For example, disclosures to support major disaster support programs, which are time limited.	N/A

Performance of duties

ATO

A taxation officer may disclose protected information in the course of performing their duties as a taxation officer.⁴ Some examples of permitted disclosures under this exception include:

- Disclosures to other taxation officers within the ATO, to enable tax compliance or tax assessment activities to occur in relation to a taxpayer.
- Disclosures to any entity, court or tribunal for the purpose of criminal, civil or administrative proceedings (including merits review or judicial review) that are related to a taxation law. This ensures taxpayers and the ATO can appropriately participate in court or tribunal proceedings involving the review of ATO decisions.

TPB

Similarly, the TPB or an employee may disclose official information for the purposes of administering the TASA in the course of performing their duties.⁵

Disclosures for other government purposes

ATO

While tax information is critical to the proper administration of the taxation and superannuation laws, such information may also be useful and in the broad public interest for disclosures to be made to other government agencies in administering their laws or conducting compliance and enforcement activities. Taxpayer information can play an integral role in facilitating efficient and effective government administration.

The vast majority of exceptions within the TAA 1953 fall under this broad umbrella and are contained in a series of seven tables.⁶ Each table covers a shared public interest, namely:

- social welfare, health or safety (15 exceptions);
- superannuation or finance (17 exceptions);
- corporate regulation, business, research or policy (7 exceptions);
- other taxation matters (5 exceptions);
- rehabilitation or compensation (3 exceptions);
- the environment (1 exception); and
- miscellaneous matters (19 exceptions).

⁴ Section 355-50 of Schedule 1 to the TAA 1953.

⁵ Section 70-40 of the TASA 2009.

⁶ Section 355-65 of Schedule 1 to the TAA 1953.

These disclosures are usually limited to a particular purpose and reflect situations where Parliament has decided that the impact on taxpayer privacy is outweighed by the public benefit resulting from the disclosure. The large volume of exceptions is necessary because each of the exceptions narrowly define the recipient of information and the purpose for which it is being disclosed. There are some cases where the same recipient may be eligible to receive information under multiple exceptions, if the information is being disclosed for different purposes. For example, items 5 and 6 of Table 2 both permit disclosures to APRA. Table item 5 permits disclosures of information relating to lost superannuation to APRA, for the purpose of APRA performing its general functions and powers. Table item 6 permits disclosures to APRA for the purpose of it administering reporting standards under the *Major Bank Levy Act 2017*.

TPB

The TASA permits the TPB to disclose official information to other agencies in the following circumstances:

- to the Commissioner [of Taxation] for the purpose of administering a taxation law;⁷
- to ASIC for the purpose of ASIC performing any of its functions or exercising any of its powers;
- to a Financial Services and Credit Panel for the purpose of the panel performing any of its functions or exercising any of its powers; and
- to the Inspector-General for the purpose of investigating or reporting under, or otherwise administering either the *Inspector-General of Taxation Act 2003* (IGT Act 2003) or provisions of the *Ombudsman Act 1976*, to the extent that they are applied by the IGT Act 2003.

Disclosures for law enforcement and related purposes

ATO

The framework in the TAA 1953 creates a distinction between permitting disclosures for various government purposes as noted above, and permitting disclosures made for law enforcement and related purposes. For example, the ATO can disclose protected information to:

- an authorised law enforcement agency officer, or a court or tribunal for the purpose of investigating a serious offence⁸ (including for the purpose of establishing whether a serious offence has been or is being committed), or enforcing a law which would be a serious offence if contravened;
- a taskforce officer of a prescribed taskforce, or a court or tribunal, for or in connection with a purpose of the prescribed taskforce (the purpose of the taskforce must include the protection of public finances (such as preventing tax evasion));

⁷ Subsection 70-40(3) of the TASA.

⁸ A **serious offence** is a defined term in section 355-70 of Schedule 1 to the TAA 1953. It is defined in subsection 355-70(10) to mean an offence that is punishable by more than twelve months' imprisonment (consistent with the Commonwealth definition of an indictable offence).

- an authorised ASIO officer, for the purposes of performing the ASIO’s functions⁹; and
- Commonwealth Royal Commissions and similar State inquiries.

The ATO has been able to rely on this exception to proactively disclose information about the suspected misconduct with the AFP for the purposes of establishing whether a serious offence had been committed.¹⁰

Given that the consequences of disclosures under this exception could potentially be quite significant for individuals, these disclosures are subject to additional safeguards. The Commissioner must identify in his annual report the number of times that he was requested by these agencies/bodies to provide information and the number of times information was actually provided. Further, these disclosures can only be made by:

- the Commissioner, a Second Commissioner or an SES employee or acting SES employee of the ATO; or
- a taxation officer who has been authorised to make the disclosure by an SES or above employee who is not a direct supervisor of the taxation officer.

Also, there is generally a requirement that the disclosure must be made to an ‘authorised officer’. This is usually either the head of an agency or an officer who is authorised in writing by the head of the agency.

TPB

The TPB can also disclose information that is relevant for law enforcement purposes. Specifically, the TPB is able to disclose information to an authorised law enforcement agency officer, for the purpose of investigating a serious offence¹¹, or enforcing a law, the contravention of which is a serious offence or for the making or possible making of a proceeds of crime order.¹² This includes proactively disclosing information about potential misconduct with law enforcement agencies for the purpose of establishing whether a serious offence has been committed.

Disclosures to ministers

The tax secrecy framework provides a number of circumstances where the ATO may make disclosures to ministers.¹³ These exceptions ensure that ministers can appropriately discharge the functions of their role (such as enabling the Minister to respond directly to an entity in relation to a representation made by the entity to the Minister or another member of a House of the Parliament).

⁹ Subsection 17(1) of the *Australian Security Intelligence Organisation Act 1979*.

¹⁰ There is no requirement under Division 355 for the ATO to wait for a request prior to disclosing information that falls within an exception.

¹¹ The term as defined in the TASA is tied to the definition found in the TAA 1953 (see footnote 8).

¹² Subsection 70-40(4) of the TASA.

¹³ Section 355-55 of Schedule 1 to the TAA 1953.

However, additional limits apply to disclosures to ministers.¹⁴ Other than where protected information is publicly available, only section 355-55 can be relied on to disclose protected information to a minister. Further, the protections in the *Parliamentary Privileges Act 1987* do not extend to disclosures of protected information by a taxation officer to a minister. This recognises the importance of ensuring the separation of the independent and impartial administration of the taxation laws from the general policy and political role of executive government. These restrictions protect the integrity of tax information and public trust in the administration of the tax system.

Disclosures for defined other purposes

In addition to the broad categories identified above, there are a number of other narrow exceptions that permit the ATO to disclose protected information that do not fit into these categories. These include disclosures to support major disaster support programs, to registrars and to credit reporting bureaus. While this category of purposes has not been engaged with in this paper, they do provide some previous examples of exceptional circumstances where the broad public interest necessitated legislative change outside of the primary categories.

2.3 On-disclosures

Once information is disclosed by the ATO or TPB under their respective secrecy provisions, the recipients of that data also become subject to the operation of those secrecy provisions.

Subsection 355-155 in Schedule 1 to the TAA 1953 and subsection 70-45 of the TASA create broad prohibitions against the disclosure of information that an entity has received under one of the various exceptions that apply to tax regulators, in each case having a penalty of 2 years imprisonment. In both cases, there is a consequent exception to the on-disclosure prohibition that permits further disclosure of the information if it is done for the same purpose under which it was originally disclosed, or in connection with that original purpose.

¹⁴ Section 355-60, 355-180, 355-181 and 355-210 of Schedule 1 to the TAA 1953.

Part 3: Proposed further exceptions

This Part outlines options for new exceptions to tax secrecy laws, which would enable the ATO and TPB to disclose protected tax information in specified circumstances.

Any proposed disclosures need to be assessed within the tax policy framework – where the information in question has largely been collected for the purpose of supporting tax law administration. While, considered in a vacuum, tax data might be of value in developing or supporting other policy frameworks, any disclosures by the ATO or TPB remain disclosures of *tax* data that require strict handling and protection.

In assessing options for additional exceptions, Treasury has considered whether the impact on taxpayer privacy is outweighed by the public benefit resulting from the disclosure. As outlined in Part 2 of this paper, taxpayer confidence in the privacy of their information is critical to protecting their right to privacy¹⁵ and maintaining a high level of voluntary engagement with the tax and superannuation systems.

A strong justification, supported by evidence, is therefore needed before exceptions are introduced that authorise disclosures of protected information. Treasury has considered the following factors¹⁶ when assessing the public benefit of proposed exceptions in this paper against the impact on taxpayer privacy:

- the purpose for which the information is to be used;
- the potential impact on the individual or entity from the disclosure and subsequent use of the information;
- the nature and amount of information likely to be provided under any new provision;
- whether the information can be obtained from other sources;
- whether the new disclosure would represent a significant departure from existing disclosure provisions; and
- whether not providing the information would significantly undermine the ability of government to effectively deliver services or enforce laws.

Treasury has also considered, where a disclosure of protected tax information is justifiable in the public interest, it must be protected by adequate and proper safeguards. Australians expect government agencies to act transparently, lawfully, ethically and with integrity, when handling their information, particularly where an agency has collected information on a compulsory basis. Consistent with the findings of the Robodebt Royal Commission, disclosure of protected tax information should only occur where the ATO or TPB has first confirmed:

- proper governance and controls are in place by the recipient of the data;

¹⁵ Under the *International Covenant on Civil and Political Rights* and other international treaties.

¹⁶ Paragraph 1.17 of the [Explanatory Memorandum](#) to the Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2010.

- the use of the data will be only for a proper and lawful purpose (consistent with Parliament’s intent);
- the proposed use of the data will not undermine the proper functioning of the tax system; and
- the proposed use of data will not undermine public trust and confidence in the tax system or government agencies.

Question

Q1: Are the above factors appropriate considerations when considering new exceptions to the TAA 1953 or TASA? What other factors (if any) should be considered?

In addition, Treasury has been mindful of the principle that where the purpose for the disclosure is remote or disconnected from the reason the taxpayer initially provided the information (for example, for use in locating people who are unlawfully in Australia), then the disclosure provision should generally be very precisely targeted, allowing for the disclosure of taxpayer information only for a strictly defined purpose. On the other hand, where a disclosure is closely aligned with or connected to the purpose for which the Commissioner obtained the information in the first place (for example, for use in administering a taxation law), then the disclosure provision can be framed more broadly.

For each of the proposals in Part 3 of the consultation paper, Treasury is seeking information on the questions contained in the box below each subsection.

3.1 Prevention of fraud

Proposal

1. Permit the ATO and TPB to disclose protected information to the operators of approved fraud prevention programs.

The ATO holds information that can sometimes identify or indicate possible fraudulent behaviour within or adjacent to the broader taxation and superannuation system. The current secrecy framework provides some avenues for the ATO to disclose information if doing so falls within the administration of the taxation law. However, where the suspected fraudulent behaviour may be outside of the ATO’s administrative remit, the ATO may be unable to disclose information necessary to prevent further potential harm from occurring to Australians. For example, there is scope for information held by the ATO to be of assistance in preventing or remediating fraud, beyond tax fraud against the Commonwealth, in the, superannuation and banking systems.

Similarly, the TPB can hold information that indicates that a tax practitioner is engaging in fraudulent behaviour. Currently, the TPB can only disclose information about fraudulent conduct if it is in the performance of a TPB officer's duties or for a permitted law enforcement purpose.

Superannuation fund trustees

Australians currently hold approximately \$3.9 trillion in retirement assets within the superannuation system.¹⁷ This makes the superannuation system an attractive fraud target for actors with access to compromised personal information.

The ATO has visibility of superannuation holdings and regularly obtains information from various sources that can indicate fraudulent behaviours against the superannuation system. Identity theft is a common form of fraudulent behaviour used against the superannuation system, which can take the form of identity takeover or account takeover:

- In identity takeovers, fraudsters use the personal information to assume the identity of their victim. The fraudster can then, for example, open new superannuation accounts in the victim's name without their knowledge and attempt to rollover their existing balances into this new account.
- In account takeover, fraudsters take control of legitimate accounts using member information they have stolen to gain access and direct the movements of the account funds, or attempt to claim the member's funds directly.

Current exceptions to tax secrecy framework do not expressly permit the ATO to disclose information concerning potential fraud directly to a superannuation fund trustee. If superannuation fund trustees were made aware of potential fraud from ATO disclosures, they could take steps to ensure superannuation accounts and transactions are legitimate such as undertaking enhanced monitoring or client identification checks which would have a minimal impact on those using the superannuation fund.

There are some actions the ATO may currently undertake if it detects potential fraud. However, these mechanisms do not inform the superannuation fund trustees of the reason for these actions so they cannot refine or adjust their own fraud prevention controls.

Australian Financial Crime Exchange

The ATO is often the target of fraud directly. Generally, where money is incorrectly disbursed by the ATO, one mechanism that the ATO uses to recover those funds is by raising a debt against the perpetrator of the fraud. This system relies heavily on information provided by banks to identify the recipient of the overpayment of funds. However, it is increasingly challenging to establish the identity of the recipient of third-party funds due to data breach events which allow fraudsters to create accounts under another entity's name.

To counteract this, the ATO is presently undertaking a trial of membership in the Australian Financial Crime Exchange (AFCX). The AFCX is a body that was initially formed by the Big 4 banks to combat

¹⁷ APRA quarterly superannuation statistics, March 2024

financial related crimes. The AFCX has the support of the Attorney-General's Department and is a key limb in the Australian Government's National Organised Crime Response Plan.

It is funded by its members but operates independently of government, law enforcement and its members. AFCX currently has over 35 members including financial institutions, MUFG Pension and Market Services (who administer a number of large APRA-regulated superannuation funds), telecommunications companies, and digital currency exchanges. Under the Scam Safe Accord¹⁸ all banks were required to join AFCX by mid-2024.

The AFCX facilitates a process that allows member banks to disclose relevant fraudulent signals, such as known fraudulent accounts, mule accounts, IP and device addresses into a central repository for real time consumption by other member banks in their fraud prevention models. However, due to the tax secrecy regime, the ATO's current participation in the AFCX does not extend to disclosing any information of fraudulent accounts identified by the ATO.

The AFCX also operate a platform called the Fraudulent Reporting Exchange (FRX) which allows member banks to return on an indemnified basis, fraudulent money held in one institution that has been stolen from another, in close to real time. Under current arrangements, if a bank suspects that an ATO payment made to one of their customer accounts is fraudulent, they report it to the ATO via the Reserve Bank of Australia (RBA) (in addition to lodging a suspicious matter report to AUSTRAC). The ATO then reviews the payment and if appropriate, a garnishee order is issued for the money to be returned. This process is administratively burdensome on the banks and the ATO. Funds may take a significant length of time to return due to the inability of banks and the ATO to engage in disclosing suspected fraud due to secrecy laws.

Proposal

Treasury proposes that a new exception be added that would permit the Minister to approve a government or private sector backed program as a 'fraud prevention program' to which the ATO and/or TPB could provide protected information about suspected fraudulent behaviour with operators or participants of that fraud prevention program. This power would be subject to safeguards to ensure the public benefit of preventing fraud is balanced with sensitivities around disclosing taxpayer information to potential non-government entities.

Firstly, Treasury proposes that the power would be limited to established fraud prevention programs with appropriate governance arrangements in place that ensure the correct usage, storage, and security of information, as opposed to ad-hoc disclosures where the ATO or TPB suspects fraud is occurring. This ensures that non-tax regulator entities participating in the fraud prevention program are adequately engaged with the obligations under the tax secrecy framework, and understand the purpose for which any sensitive information is being disclosed.

Treasury further proposes that:

- approved fraud prevention programs would be required to have a predominant purpose of preventing or remediating fraud, and the minister be satisfied the program's purpose will 'have a meaningful impact on reducing fraud in the tax and superannuation system'. Similar to the

¹⁸ <https://www.ausbanking.org.au/new-scam-safe-accord/>.

requirements on prescribing a taskforce, this focus on fraud prevention must be substantial and its impact on the tax and superannuation systems must not be merely an immaterial, ancillary or tangential outcome of the fraud prevention program's objectives;

- approved fraud prevention programs would be required to demonstrate a strong public benefit objective with any private benefit being incidental to the public benefit objective;
- approved fraud prevention programs would be required to satisfy the minister that they have well established and monitored information security and privacy safeguards in place;
- information that could be disclosed in the fraud prevention program may be limited to contact details (mobile, email addresses, street/postal address), member details (name, member identifiers), and financial institution or bank details (account details, and transaction details);
- pending the outcomes of the AFCX/ATO trial, both the AFCX and a dedicated superannuation fraud prevention program could be suitable candidates for approval.

Additional Questions

Q2: Does the broad public interest in the proposal sufficiently justify this possible new exception?

Q3: Are the proposed safeguards appropriate? Are additional safeguards required?

Q4: Does the proposed exception sufficiently help to address the issue identified? Are further changes/exceptions necessary?

Q5: Should there be any other limitations on what types of fraud prevention programs could be approved by the Minister?

Q6: Are there any other considerations the Minister should take into account before approving a fraud prevention program?

Q7: Would fraud prevention programs in the following sectors be considered to be in the broad public interest?

- the superannuation system; and
- the financial systems sector, including the banking, payments and insurance systems.

3.2 Other investigative agencies

Proposal

2. Permit the ATO and TPB to disclose protected information with non-law enforcement agencies for the purposes of assisting that agency to investigate a serious offence.

The ATO and TPB can hold information which may assist in the investigation and enforcement of suspected serious offences that are not strictly related to the taxation or superannuation systems. As outlined in Part 2 of this paper, both agencies are permitted to disclose protected information with an authorised law enforcement agency officer to assist them with investigating or enforcing a serious offence¹⁹ or to make or enforce a proceeds of crime order. **Law Enforcement Agency** is a defined term²⁰ and is currently limited to 13 organisations that broadly have law enforcement as one of their primary functions (such as the AFP).

There are other government agencies that undertake investigative or enforcement actions in relation to serious offences that are not captured under this Law Enforcement Agency definition. In these instances, the ATO may be able to use a different exception such as a specific 'other government purposes' exception to disclose protected information. If no specific exceptions exist, the ATO is unable to provide protected information to support government agencies in their investigative functions.

Examples of agencies that do not currently fall under either the law enforcement exception or a specific other exception include:

- The Office of the Director of Military Prosecutions of the Australian Defence Force may charge members with Commonwealth offences under the Criminal Code for obtaining a financial advantage (for example, abuse of military allowance) which fits under the definition of a 'serious offence'. However, the ATO is unable to provide any assistance (such as relevant tax return information) to the Office of the Director of Military Prosecutions as it is not a prescribed law enforcement agency.
- The Australian Sanctions Office (ASO) sits within the Department of Foreign Affairs and Trade (DFAT) and is responsible for monitoring Australia's compliance with international financial sanctions. The ATO is unable to disclose protected information to the ASO, if for example, it identifies information about a foreign entity who may be avoiding international sanctions by laundering money in Australia.
- The Australian Transaction Reports and Analysis Centre (AUSTRAC) regulates obligations in the remittance sector (such as verifying customers and submitting transaction reports to AUSTRAC), which poses a high money laundering and terrorism finance risk. Failure to comply with these obligations can facilitate large sums of money being sent overseas undetected. At present, the ATO can only disclose to AUSTRAC when they are part of a prescribed taskforce.

Proposal

The current law enforcement exception recognises that law enforcement officers belong to a specific class of personnel that possess the relevant security clearances and training, as well as being a fit and proper person. As such, information disclosed to law enforcement agencies for the purpose of investigating serious offences is handled sensitively according to existing law and guidelines. Its use is strictly limited to the investigative or enforcement purpose for which it was disclosed. As the law

¹⁹ includes assisting to establish whether a serious offence has been or is being committed.

²⁰ Section 355-70(3) of Schedule 1 of the TAA 1953.

enforcement exceptions are (comparatively) broader than any other government purpose exception, the current narrow definition of law enforcement agency acts as an additional safeguard of taxpayer information (in addition to the other safeguards mentioned in Part 2 of this paper). However, it may be appropriate and in the public interest to permit the ATO and TPB to disclose protected information with a broader range of agencies that are responsible for investigating and enforcing serious offences. Treasury seeks views on the below proposal:

- in parallel to the current law enforcement exception and aligned with the law enforcement disclosure purpose, the ATO and TPB be permitted to disclose information with a broader range of agencies for law enforcement purposes;
- those additional agencies be specifically prescribed by disallowable ministerial instrument on a case-by-case basis where the minister is satisfied that it is appropriate to prescribe the agency having regard to the tax secrecy principles;
- disclosures require similar SES approval to those required for law enforcement agencies;
- the ATO and TPB be required to report on the number of serious offence disclosures it makes under the provision, and the agencies that information was disclosed to in its annual report.

Initially, the ATO's ability to disclose protected information for law enforcement purposes is proposed to only be extended to:

- The Office of the Director of Military Prosecutions;
- Australian Sanctions Office; and
- AUSTRAC.

Initially, the TPB's ability to disclose protected information for law enforcement purposes is proposed to only be extended to AUSTRAC.

Questions

Q8: Does the broad public interest in the proposal sufficiently justify this possible new exception?

Q9: Are the proposed safeguards appropriate? Are additional safeguards required?

Q10: Does the proposed exception sufficiently help to address the issue identified? Are further changes/exceptions necessary?

3.3 Professional integrity

Proposal

3A. Permit the ATO to disclose protected information about a Commonwealth employee (including a member of a disciplinary force), who is suspected of misconduct which would constitute a serious breach of the Australian Public Service Code of Conduct (or similar), to the head of a relevant Commonwealth agency (and the Australian Public Service Commissioner) for the purpose of enforcing the relevant code of conduct.

3B. Permit the ATO to disclose protected information about a current or prospective Commonwealth employee (including a member of a disciplinary force), who is suspected of committing a serious offence relating to fraud or dishonesty, to the head of a relevant Commonwealth agency (and the Australian Public Service Commissioner) for the purpose of safeguarding the operations of the agency and enforcing a relevant code of conduct.

3C. Permit the ATO and TPB to disclose protected information about a trusted professional (subject to a binding code of professional conduct)²¹, and who is suspected of committing a serious offence relating to fraud or dishonesty, to the relevant disciplinary body responsible for enforcing a code.

3D. Permit the ATO and TPB to disclose protected information to the Australia Government Security Vetting Agency (AGSVA) for the purpose of AGSVA performing security assessments and maintaining security clearances.

Enforcing Commonwealth Codes of Conduct

Operation Protego is an ATO-led investigation into large-scale Goods and Services Tax (GST) fraud that was promoted particularly on social media. Operation Protego has identified facilitators and promoters suspected of defrauding the Commonwealth by inventing fake businesses to claim false GST refunds. In 2023, Operation Protego uncovered the potential involvement of current government employees in GST-related fraud.

The involvement of trusted operators within the tax and superannuation system (whether tax professionals or government employees) in schemes that take undue advantage of their position present a risk to both the public finances of Australia, as well as public confidence in the tax and superannuation systems. Amendments introduced by the TAF Act permit the ATO and TPB to disclose information about ethical misconduct by advisers to prescribed professional disciplinary bodies for disciplinary action.²² This enables those disciplinary bodies to protect against further harm by taking action – including revoking registration – against professionals who are in breach of their ethical and professional standards. However, this is initially focussed on certain professionals and does not extend to Commonwealth public servants (such as those uncovered in Operation Protego).

²¹ TAF Act amendments have recently introduced new laws to allow disclosure of information relating to misconduct by legal, tax or accounting professionals to disciplinary bodies.

²² Paragraph 4.3 of the [Explanatory Memorandum](#) to the Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023.

The tax secrecy framework currently permits the ATO to disclose protected information with affected agencies by way of prescribing taskforces set up for particular purposes.²³ Disclosing protected information to a taskforce enables affected agencies to commence investigations with the benefit of protected tax data, and manage risks of employees potentially committing further fraud against the Commonwealth in the course of their employment.

However, standing up a taskforce may not always be an effective approach to an ongoing and generalised matter requiring flexibility, as taskforces need to be focussed on specific and set deliverables, with agreed and set approaches to issues, and often requiring considerable governance and reporting overheads. Treasury is therefore seeking views on whether it is appropriate for the ATO to be able to disclose information directly to relevant Commonwealth agencies in the future, without the need to establish a bespoke integrity taskforces for each larger fraud related investigation.

Proposal

Treasury seeks views on whether the ATO should be permitted to disclose protected information which raises a reasonable suspicion that a Commonwealth employee is in serious breach of their relevant Code of Professional Conduct. This disclosure would be made to a Commonwealth employee's agency head for the purpose of enabling them to enforce the relevant Code of Conduct.

This proposal may also extend to allowing disclosed protected information to be used by another Commonwealth employer who is considering an application for employment so that the relevant decision maker is, where appropriate, able to be made aware of an investigation (ongoing or concluded) into a potential breach of a code of conduct. This ensures that employees suspected of serious breaches of public trust are not able to avoid accountability by moving to another agency. Disclosing information about prospective employees would need to be coupled with proper safeguards to protect the rights of employees and potentially broader reforms to the public service to enable proper information sharing between agencies for recruitment and code enforcement related purposes.

Additionally, Treasury seeks views as to whether the ATO be permitted to disclose protected information that reasonably indicates a Commonwealth employee has committed a serious crime relating to fraud or dishonesty, which may include actions of a Commonwealth employee beyond their Commonwealth employment. This extension is being considered on the basis that an employee who commits serious crimes relating to dishonesty or fraud poses a more substantial risk of undertaking behaviour in breach of their Code of Conduct. As agencies have limited resources to enforce the Code of Conduct, these disclosures by the ATO may assist in better managing internal fraud risks and targeting investigations to where there is a higher likelihood of misconduct being identified. Mirroring the proposed exception for code of conduct breaches, Treasury seeks views as to if or how this proposal could extend to prospective Commonwealth employees.

²³ For example, the Operation Protego Integrity Taskforce (the Taskforce) was prescribed by the *Taxation Administration Amendment (Disclosure of Information to Operation Protego Integrity Taskforce) Regulations 2024* allow the ATO to share information with the Taskforce to take investigative or disciplinary action against Commonwealth employees suspected of engaging in misconduct in respect of GST fraud being investigated by the ATO as part of Operation Protego. The sharing of this information seeks to ensure the protection of public finances through better detection, management and prevention of fraud against the Commonwealth.

The proposed exception would be subject to safeguards to ensure that any new disclosures strike an appropriate balance between the need to protect the confidentiality of Commonwealth employees as taxpayers, and the need for the Commonwealth to effectively uphold the principles of good public administration, embodied in the various Commonwealth Codes of Conduct. Consideration would also be given to safeguards ensuring the use of disclosure does not interfere with natural justice for prospective employees, noting that these safeguards would necessarily be contingent on broader APS employment reform.

Treasury proposes that safeguards would include, but not limited to:

- the disclosure would be limited to where the ATO has a reasonable suspicion of a serious breach of a Commonwealth Code of Conduct or that a serious offence relating to fraud or dishonesty having been committed; and
- the decision to make the disclosure would require SES approval by the ATO.

Disciplinary bodies

As noted above, amendments introduced by the TAF Act permit the ATO and TPB to disclose protected information about ethical misconduct to prescribed professional disciplinary bodies for disciplinary action. The new exception can be used to prescribe professional disciplinary bodies to enable them to take disciplinary action against misconduct within certain professions. Given the important role certain trusted professionals play in the tax and superannuation system, Treasury intend for the new exception to initially be used for tax, accounting and legal disciplinary bodies and professionals²⁴.

However, there are a number of other disciplinary bodies that have codes of conduct that may have a relevant connection to the tax and superannuation system and may also be suitable for prescription. For example, in certain circumstances of fraudulent early release of superannuation, the Australian Health Practitioner Regulation Agency would be the relevant body for dealing with medical practitioners who wrongfully certify that medical treatment meets the necessary grounds for early release of superannuation.

²⁴ Treasury is yet to seek applications from professional associations / disciplinary bodies who wish to be prescribed.

Example use case: Australian Health Practitioner Regulation Agency (AHPRA)

AHPRA works with 15 National Boards (such as the Medical Board of Australia and Dental Board of Australia)²⁵ to regulate registered health practitioners in Australia.²⁶ The core functions include advising National Boards about registration standards, codes and guidelines; managing registration and renewal processes; managing complaints, ensuring compliance with Board requirements and ensuring graduating students are suitably qualified.²⁷

Medical practitioners play a key role in certifying early release of superannuation on compassionate grounds for the purposes of medical treatment. For superannuation to be released on these grounds, two medical practitioners must certify that the funds are being used to for the treatment of a life-threatening illness or injury, alleviating acute or chronic pain or to alleviate acute or chronic mental illnesses.

The ATO is not well-placed to comment on a person's diagnoses or treatment strategy and relies on the assessment of the medical practitioners to determine if superannuation should be released on compassionate grounds. However, the ATO may identify that certain practitioners are exhibiting a suspicious or unusual pattern of certifying that medical treatments meets the necessary grounds. Prescribing the AHPRA and/or National Boards as a disciplinary body for the purposes of this proposal would allow the ATO to inform the AHPRA of what appears to be suspicious or unusual behaviour. AHPRA can then take further action in conjunction with National Boards as it sees as appropriate or necessary.

Proposal

Treasury seeks views as to whether the Government should allow further trusted professional associations or disciplinary bodies (with professional codes of conduct) beyond those that relate to the legal profession, or tax/accounting profession, to apply for prescription.

Prior to prescribing any bodies, consideration would be given to whether the body has appropriate processes and safeguards in place for appropriately managing the protected information.²⁸ Additional safeguards to those discussed above may be necessary to ensure that these associations or bodies have appropriate information management protocols and protections in place. Such safeguards for these disclosures could include:

- disclosures may only be made for conduct that has direct implications for the tax or superannuation system; and

²⁵ <https://www.ahpra.gov.au/National-Boards.aspx>.

²⁶ NSW and Queensland have separate state-based complaints and investigative bodies, AHPRA will only manage complaints in those jurisdiction if complaints are made directly to them. These state-based bodies may also be similarly prescribed.

²⁷ For further information about AHPRA see <https://www.ahpra.gov.au/About-Ahpra/What-We-Do.aspx>.

²⁸ Paragraph 4.29 of the [Explanatory Memorandum](#) to the Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023.

- suspected misconduct must have occurred on multiple occasions and in the course of the individual's professional capacity. Conduct that relates to the individual's personal affairs would be excluded.

Security clearance obligations

The Australian Government Security Vetting Agency (AGSVA) conducts security clearance assessments for federal, state and territory agencies. Security clearance assessments ensure personnel are eligible and suitable to access classified government resources. There are various responsibilities and reporting requirements that are required when holding a security clearance, including:

- maintain personal behaviour the public would reasonably expect of someone who holds a position of public trust;
- maintain a standard of behaviour that meets the requirements of holding a security clearance;
- act with honesty and integrity; and
- *not* take advantage of a position or authority to seek or obtain a benefit or to avoid a liability or penalty.

Proposal

Treasury seeks views as to whether the ATO should be permitted to disclose protected information to AGSVA which indicates that an applicant for a security clearance or a clearance holder should not hold a security clearance.

Additional Questions

Q11: Does the broad public interest in the proposal sufficiently justify this possible new exception?

Q12: Are the proposed safeguards appropriate? Are additional safeguards required?

Q13: Does the proposed exception sufficiently help to address the issue identified? Are further changes/exceptions necessary?

Q14: Should these proposals extend to prospective employees and contractors, and if so, what further matters should be considered?²⁹

Q15: Is the proposed threshold of 'reasonable suspicion of breach of a serious crime (relating to fraud or dishonesty)' or 'a serious breach of a Commonwealth Code of Conduct has been committed' appropriate?

²⁹ Noting that the [Commonwealth Supplier Code of Conduct](#) came into effect on 1 July 2024, which would apply as the relevant code of conduct for Commonwealth suppliers including contractors.

Q16: Should the disclosure be allowed in relation to any other serious crimes?

Q17: Is the proposed threshold of 'suspected misconduct having occurred on multiple occasions' appropriate for disclosures about a person who is not a legal, tax or accounting trusted professional?

Q18: Are there other trusted professionals, covered by a Code of Conduct, that should be considered by the new power to prescribe professional associations or disciplinary bodies?

Q19: Are there other trusted professionals, covered by a code of professional conduct, that should be covered by a new disclosure to employers as the employers enforce the code?

3.4 Further government purposes exceptions

Proposal

4. Permit the ATO to use or disclose protected information with:

- Industry Innovation and Science Australia (IISA), and the Department of Industry, Science and Resources (DISR), for the purposes of administering the Research and Development (R&D) Tax Incentive;
- the Treasury Secretary and with APRA for the purposes of administering the *Financial Sector (Shareholdings) Act 1998* and the *Insurance Acquisitions and Takeovers Act 1991*;
- an Australian government agency to confirm that a Statement of Tax Record (STR) provided by an entity to the agency is genuine and the most recent version issued;
- (limited to user contact details) other government agencies linked to a user's myGov account;
- the Department of Employment and Workplace Relations (DEWR) for the purposes of administering the Fair Entitlement Guarantee Recovery Program;
- the Fair Work Ombudsman (FWO) for the purposes of identifying and recovering unpaid superannuation and wages;
- the Australian Business Register (ABR) for the purposes of showing whether a business is small, medium or large on the ABR;
- National Disability Insurance Agency and NDIS Quality and Safeguards Commission for the purposes of administering the *National Disability and Insurance Scheme Act 2013*; and
- the Department of Foreign Affairs and Trade, regarding the application of the indirect tax laws to foreign consulates, embassies, high commissions and foreign diplomatic staff, for the purposes of administering the Indirect Tax Concession Scheme.

Research and Development (R&D) Tax Incentive

The R&D Tax Incentive is the government's key mechanism to stimulate industry investment in R&D in Australia. The R&D Tax Incentive offsets some of the costs incurred by Australian industry to encourage entities to undertake additional R&D investment activities. IISA and the ATO jointly administer the R&D Tax Incentive. DISR assists IISA to register R&D activities, while the ATO manages the rules of eligible entities and expenditure.

A 2021 Board of Taxation review of the R&D Tax Incentive Dual Agency Administration Model found that broader information sharing between DISR and the ATO was necessary to improve the experience for companies participating in the program and to create a more efficient process.³⁰ As companies are subject to review by both DISR and the ATO, this may lead to duplicative work and companies needing to allocate additional resources to respond to multiple reviews.

Proposal

Treasury seeks views as to whether the ATO should be permitted to disclose protected information with IISA/DISR for the purposes of administering the R&D Tax Incentive under the tax law and Part III of the *Industry Research and Development Act 1986*. This treatment would have regard to a similar exception in the TAA 1953 which currently enables the ATO to disclose information relating to corporate regulation, business, research or policy to IISA for the purpose of administering any Commonwealth law relating to venture capital.³¹

Financial Sector (Shareholdings) Act 1998 and the Insurance Acquisitions and Takeovers Act 1991

The *Financial Sector (Shareholdings) Act 1998* (FSSA) and *Insurance Acquisitions and Takeovers Act 1991* (IATA) enable the Treasurer to grant or refuse certain acquisition applications based on whether the acquisition would be in the 'national interest'.³² Where the Treasurer grants an application, one or more conditions may be specified to ensure that the acquisition is in the 'national interest'.³³

³⁰ Page 35 of the [Review of R&D Tax Incentive Dual Agency Administration Model](#).

³¹ Subsection 355-65(4), Table 3, item 6 of Schedule 1 to the TAA 1953.

³² Note that under the IATA, the Treasurer is to apply a public interest test when deciding on an application.

However, under paragraph 5(1)(d), an application is contrary to the public interest if it is contrary to the 'national interest'.

³³ Section 16 of the FSSA; Section 41 of the IATA.

The Treasurer has delegated this authority to the Australian Prudential Regulation Authority (APRA) where the value of total assets of the entity being acquired, or from which business is being acquired, does not exceed \$5 billion.³⁴ Under the current tax secrecy framework where the value of total assets exceeds \$5 billion, Treasury briefs the Treasurer on the details, including risks, of the application. However, the ATO is currently unable to disclose relevant protected information about the applicant for the Treasurer's consideration of whether the proposal raises tax compliance risks. Where the value does not exceed \$5 billion, APRA processes the application internally as delegate of the Treasurer. This means that the decision-maker does not have access to potentially relevant information, such as non-compliance with Australian tax laws, when considering these applications.

Proposal

Treasury seeks views as to whether the ATO should be permitted to disclose protected information with the Treasury Secretary and APRA for the purposes of administering the FSSA and IATA. This would allow the Treasurer and APRA to consider a history of non-compliance with Australian tax laws to more clearly identify potential risks associated with applications under the FSSA or the IATA.

Statement of Tax Record

A Statement of Tax Record (STR) is a statement issued by the ATO to a business showing that the business has satisfactory engagement with the tax system. A satisfactory STR requires that certain registration, lodgement and debt obligations are met.

A satisfactory STR is currently a requirement for businesses that are tendering for Commonwealth procurements that are estimated to have a value over \$4 million. If a Commonwealth agency suspects that an STR is fraudulent, the ATO is currently unable to provide information to that agency verifying the genuineness of an STR as it contains protected information.

Proposal

Treasury seeks views as to whether the ATO should be permitted to confirm the genuineness of an STR at the request of a government department or agency, where the STR has been lodged with that agency by the business. This would be restricted to the ATO verifying on a 'yes' or 'no' basis whether an STR is genuine and whether it is the most recently issued STR. This exception would not extend to the ATO providing details or particulars about the STR.

myGov

myGov allows users to access linked government services through a single platform. A number of government services can be linked to a myGov account including Medicare, the ATO and Centrelink services. If contact information on one government service is updated, these changes should be automatically made to linked participating government agencies. For example, if a person updates their address on their Centrelink account, these changes should be automatically reflected in the user's ATO account. However, addresses, phone numbers, names and other contact information is considered protected information under the tax secrecy framework. The ATO can only disclose protected information if there is an applicable exception, and it can be unclear whether there is a

³⁴ Sections 7 and 10 of the *Ministerial Powers (APRA) Instrument 2020*.

relevant exception that enables the ATO to disclose changes to contact details with other government agencies. As such, if a user's details are updated via the ATO account, that information may not flow out to other agencies nor automatically update databases of linked participating government agencies.

Proposal

Treasury seeks views as to whether the ATO should be permitted to disclose protected information about changes to contact details on myGov with other government agencies linked to that user's myGov account. This would enable automatic synchronisation of contact details for services linked to an individual's myGov account. This exception would be restricted to protected information in the form of contact details and would not extend to other forms of protected information.

Fair Work regulatory functions

There is potentially a public interest in permitting the ATO to disclose protected information in the following circumstances:

- Under the Fair Entitlements Guarantee Recovery Program (Recovery Program), the Department of Employment and Workplace Relations (DEWR) can pursue recovery of amounts advanced under the Fair Entitlements Guarantee (FEG) owed by employers who have entered liquidation or bankruptcy. The Government recently agreed to a change in the Recovery Program settings to enable it to actively pursue outstanding amounts of Superannuation Guarantee Charge (SGC) owed to the ATO by employers who have entered liquidation or bankruptcy. Permitting the ATO to disclose information for the purpose of the administration of the Recovery Program could reduce duplication and support more joined-up recovery activities, streamlining the Recovery Program's functions of recovering amounts advanced under the FEG and outstanding SGC.
- An employer must make contributions to a superannuation fund for the benefit of an employee to avoid liability to pay SGC.³⁵ While the ATO is the regulator responsible for collection of SGC, there is also potential for employees, unions and the Fair Work Ombudsman (FWO) to take action for unpaid superannuation against an employer under the *Fair Work Act 2009*. The ability for the ATO and FWO to disclose information relevant to each other in these matters could assist both agencies discharge their functions and avoid unnecessary duplication. The ATO and FWO have an existing MOU dealing with information sharing and handling matters where there is overlapping responsibility. However, the ATO is limited in its ability to disclose information to the FWO where it identifies evidence of unpaid superannuation or wages that is not related to specific taskforces or tax evasion.

Proposal

Treasury seeks views as to whether the ATO should be permitted to disclose protected information to:

³⁵ Recent reforms to the *Fair Work Act 2009* added superannuation contributions to the National Employment Standards to require that 'An employer must make contributions to a superannuation fund for the benefit of an employee so as to avoid liability to pay superannuation guarantee charge under the Superannuation Guarantee Charge Act 1992 in relation to the employee' (section 116B *Fair Work Act 2009*)

- DEWR for the purposes of administering the FEG Recovery Program; and
- the FWO for the purposes of identifying and recovering unpaid superannuation and wages.

Australian Business Register

The Australian Business Register (ABR) contains details about businesses and organisations, including their Australian Business Number (ABN). Information on the ABR can be public information that is available to anyone via ABN Lookup³⁶, or non-public information that is only available to the ABN holder, their contacts and certain government agencies.

Certain government programs impose obligations which depend upon whether a business is small, medium or large, and whether a business which that business is engaging with is small, medium or large. The size of a business is generally determined using aggregated annual turnover for tax purposes. There is no central government source that can show the size of a business so entities must instead rely on a range of proxy tools to determine the size of a business. The ATO holds data about the aggregated annual turnover of a business that it cannot currently disclose to the ABR for publication, and this can make it more difficult for businesses to comply with their obligations and for certain government programs to be properly targeted.

For example, under the Payment Times Reporting Scheme³⁷, certain large businesses and some government enterprises must report on their payment times to small businesses. The Small Business Identification Tool (SBI Tool) is available and can be accessed by registered reporting entities for the purpose of fulfilling their obligations under the Scheme. However, there is currently no comprehensive register of whether a business is small, medium or large. The ABR could be amended to include details about whether a business is small, medium or large based on protected information that the ATO holds as part of the information on ABN look up. This would assist in ensuring that businesses are appropriately captured within the Payment Times Reporting Scheme or support the development and improvement of the SBI Tool.

Placing business size on the ABR seeks to reduce compliance costs for all businesses by allowing the widely accessible ABR to be used to confirm business size (either through the ABN look-up website or through business software that utilises information on the ABR database). Adding a new 'small, medium or large' data field to the ABR will ensure that businesses can comply with their legal obligations, at lower compliance cost, whilst also ensuring that small businesses are able to access benefits legally made available to them.

Proposal

Treasury seeks views as to whether the ATO should be permitted to disclose protected information for the purposes of showing whether a business is small, medium or large on the ABR. Only the size of the business would be disclosed - details or particulars about the aggregated annual turnover of the business will not be disclosed.

³⁶ Available at <https://abr.business.gov.au/>.

³⁷ <https://paymenttimes.gov.au/about/about-payment-times-reporting-scheme>.

National Disability Insurance Scheme Act 2013

The National Disability Insurance Scheme (NDIS) – administered jointly by the National Disability Insurance Agency (NDIA) and NDIS Quality and Safeguards Commission (NQSC) – is a national scheme which provides funding for support and services to Australians who have permanent and significant disabilities.

NDIS non-compliance takes money intended to be spent on supports that increase independence, social and economic participation of Australians living with disability, and diverts that money to purposes outside of the scheme. It is also a significant driver in the increasing costs of maintaining the scheme. During 2022-23, the NDIA undertook over 71,000 compliance activities and pre and post payment reviews (compared to 6,700 compliance activities in 2021-22) to treat non-compliance identified primarily through tip-offs and detected risk profiles. This involved the review of over \$200 million in payments.³⁸

NDIS non-compliance may arise from 6 different types of conduct:³⁹

- Error or mistake – a genuine mistake where there is no intention to gain something;
- Misuse – using funds in ways that are not consistent with a participant’s plan;
- Conflict of interest – when someone has competing interests because of their duties to more than one person or organisation. A conflict of interest is only non-compliant when it is not declared or managed properly;
- Dishonest or barely honest behaviour (‘sharp practice’) – practices that are not illegal but are unethical, unscrupulous or not in the interests of participants;
- Fraud – intentionally trying to gain a benefit through deception or other means; and
- Corruption – a range of criminal offences including breach of public trust, bribery or biased exercise of official functions.

Currently, the ATO may only disclose protected information to the NDIA and the NQSC for the purposes of the Fraud Fusion Taskforce (Taskforce)⁴⁰ which was established to improve how government agencies work together to quickly detect, resolve and prevent fraud and serious organised crime in the NDIS. This means that the agencies are limited in their ability to respond to the diverse forms of non-compliance other than fraud in the NDIS ecosystem. There are therefore some use cases where the public interest in the ATO disclosing protected information could outweigh privacy concerns. For example, protected information about providers (including Single Touch Payroll (STP)) could be used to validate the provider’s claimed labour costs, and identify undesirable conflicts of interest.

³⁸ Page 111 of the [NDIA 2022-23 Annual Report](#).

³⁹ For more information on non-compliance see: <https://www.ndis.gov.au/participants/working-providers/what-non-compliance>.

⁴⁰ Subsection 355-70(1) of Schedule 1 to the TAA 1953.

Proposal

Treasury seeks views as to whether the ATO should be permitted to disclose protected information with the NDIA and the NQSC for the purposes of administering the *National Disability and Insurance Scheme Act 2013*.

Indirect Tax Concession Scheme

The Indirect Tax Concession Scheme (ITCS) – administered by both the Department of Foreign Affairs and Trade (DFAT) and the ATO – allows for the refund of certain amounts paid as indirect tax (being GST, luxury car tax and wine equalisation tax) by Australian-based diplomatic and consular officials of foreign states. This has been enacted via various Acts including the *Consular Privileges and Immunities Act 1972* (CPI Act).

Each of the relevant indirect taxation laws specified in the CPI Act to which the ITCS applies (for example, *A New Tax System (Goods and Services Tax) Act 1999*) are taxation laws. Therefore, as a general rule, disclosures of protected information considered necessary for the administration of these relevant indirect taxation laws for the purposes of ITCS are permitted.

However, information disclosures under the general disclosure provision involve an individual determination of the ability to disclose on a case-by-case basis, which can result in delays in the processing of claims and also result in inconsistent information disclosures. Additionally, the ATO cannot disclose information to DFAT where there is suspected, or actual non-compliance in the claims being made.

The Acts that establish these rights (such as the CPI Act itself) are not legally defined as taxation laws. Taxation officers are, therefore, not necessarily permitted to disclose protected information in connection with the ITCS generally as there is no taxation decision that needs to be made. There are therefore circumstances where the ATO is unable to disclose beneficial information to DFAT in their role as the policy holder of the ITCS and for their relationship management with foreign embassies. These include:

- the ATO warning DFAT of a decision to deny a claim or to recover an overpayment so that DFAT may manage any consequences this decision may have on Australia's diplomatic relations (including mediating any dispute between the ATO and the relevant diplomatic or consular mission);
- DFAT contacting the ATO to request clarification as to what an embassy is claiming in Australia, in order to negotiate what Australian diplomatic staff may claim in the associated country; or
- the ATO advising DFAT of any prohibited acquisitions the ATO may be aware of in order to assist DFAT with managing diplomatic relations.

Proposal

Treasury seeks views as to whether the ATO should be permitted to disclose protected information more broadly to DFAT regarding the application of the indirect tax laws to foreign consulates, embassies, high commissions and foreign diplomatic staff, for the purposes of administering the ITCS.

Questions

For each of the proposals in this section, Treasury seeks views on the following questions:

Q20: Does the broad public interest in the proposal sufficiently justify this possible new exception?

Q21: Are the proposed safeguards appropriate? Are additional safeguards required?

Q22: Does the proposed exception sufficiently help to address the issue identified? Are further changes/exceptions necessary?

3.5 TPB other government purposes exception

Proposal

5. Establish an 'other government purposes' exception for the TPB.

Permit the TPB to disclose protected information to:

- the NDIA and NQSC for the purposes of administering the *National Disability and Insurance Scheme Act 2013*;
- IISA and DISR, for the purposes of administering the Research and Development (R&D) Tax Incentive;
- DEWR for the purposes of administering the Recovery Program;
- Services Australia for the purposes of administering the *Social Security (Administration) Act 1999*; and
- the Office of the Migration Agents Registration Authority for the purpose of regulating migration agents under the *Migration Act 1958*.

As outlined in Part 2, the TASA has exceptions to the tax secrecy framework that permits disclosures for:

- the performance of its duties;
- performance of duties of the ATO, ASIC, Inspector General of Taxation and Taxation Ombudsman; and
- serious offences and proceeds of crime orders.

There are some further circumstances below where the TPB is prevented from disclosing information for government purposes that is not currently covered in the TASA exceptions. This is a discrepancy from the TAA 1953 where specific disclosure of information with government entities can be permitted where in the broad public interest.

Treasury is seeking stakeholder views on whether there should be a government purposes exception that would permit the TPB to disclose protected information to specified agencies for specific purposes. This will establish and convey a clear policy intent that the TASA contemplates disclosures for government purposes where appropriate and would enable further circumstances to be added in the future, as appropriate. Initial exceptions that could be included under a government purposes exception are set out below.

National Disability Insurance Scheme Act 2013, R&D Tax Incentive, and Fair Entitlement Guarantee Recovery Scheme

Similar to the use cases for ATO held information discussed in Part 3.4, there are some circumstances where the public interest in the TPB disclosing protected information could outweigh privacy concerns. For example:

- many taxpayers rely upon registered tax practitioners as trusted advisers to engage on their behalf with government payment systems, and some payments are contingent upon the provision of tax information held by registered tax practitioners. As such, while undertaking investigations into tax practitioners, the TPB may identify tax practitioners facilitating fraud against the NDIS.
- in addition to regulating tax agents, the TPB directly regulates R&D advisers. As such, the TPB may identify information that is of material assistance to IISA and DISR in regulating the R&D Tax Incentive.
- the TPB often sees issues arising in relation to tax practitioners and their clients that would be materially benefit DEWR in the recovery of SGC, which the TPB may not currently disclose.

Proposal

Treasury seeks views as to whether the TPB should be permitted to disclose protected information:

- about tax practitioners with the NDIA and NQSC where it has a reasonable suspicion that a tax practitioner is assisting their clients mislead the NDIA or NQSC;
- about R&D advisers with the IISA and DISR for the purposes of administering the R&D Tax Incentive; and
- to the DEWR for the purposes of administering the Recovery Program.

Services Australia

A number of social security, Medicare and other payments, such as child support, are calculated with estimates of income and assets as some of the determining factors. This means that the tax and social security systems can be closely linked. Tax practitioners, in addition to performing services related to tax liabilities, may also assist with preparing social security and other government applications for clients.

While undertaking investigations into tax practitioners, the TPB may identify tax practitioners that are aiding or facilitating, or wilfully turning a blind eye to, fraud against the social security system.

Currently, the TPB may only disclose information with Services Australia if it falls within the performance of duties under TASA. This also means that the TPB is limited in its ability to assist with a fraud investigation that Services Australia is undertaking.

The secrecy exceptions do not permit the TPB to disclose information in response to notices issued under Services Australia's coercive information gathering powers or in response to subpoenas issued under the *Social Security (Administration) Act 1999*. For completeness, in instances where fraud amounts to a serious offence, the TPB may disclose this information to law enforcement.

Social security and child support related fraud undermines trust and confidence in the government and social security systems, and impacts the ongoing cost of these programs. In the case of child support fraud, it can also have adverse consequences for a child's best interests.

Proposal

Treasury seeks views as to whether the TPB should be able to share protected information about tax practitioners with Services Australia where it has a reasonable suspicion that a tax practitioner is aiding or facilitating, or wilfully turning a blind eye to, fraud by their clients in relation to the client's social security payments and services.

Office of the Migration Agents Registration Authority (OMARA)

It is common for tax practitioners to also be registered as migration agents under the *Migration Act 1958*. Tax and migration agents may also work closely together within the same or linked businesses. These arrangements allow businesses to provide a number of services on behalf of clients. For newer migrants this removes the need for them to navigate an unfamiliar environment and multiple providers.

Like the social security system, the migration system can be linked with income. Migration agents and tax agents may facilitate under-declaration of income by student visa holders or over-declare income to meet thresholds for sponsored-visa holders. This fraudulent behaviour undermines trust in the system and gives an unfair advantage in a competitive sector.

Currently, the TPB cannot advise OMARA, the regulatory body for migration agents, about fraudulent behaviour or conduct that is not fit and proper, which is a requirement for registration as a tax practitioner or migration agent. In situations, where a tax practitioner is also registered as a migration agent, the inability for the TPB to inform OMARA that an investigation is underway means that the individual can continue to engage in inappropriate conduct as a migration agent until deregistration as a tax practitioner can be publicised. This can create situations where practitioners may not be fit and proper under the TPB regime but still be fit and proper under the OMARA regime.

Proposal

Treasury seeks views as to whether the TPB should be permitted to disclose protected information to OMARA about investigations that the TPB is undertaking into relevant tax practitioners not being a fit and proper person for the purposes of administering registration of migration agents. Disclosure of protected information could be limited to:

- if the individual is both a tax practitioner and migration agent, where an investigation related to the conduct of the tax practitioner is underway; or

- if the individual is a migration agent only, if the TPB holds a reasonable suspicion that the individual does not meet the fit and proper person test.

Questions

For each of the proposals in this section, please answer the following questions:

Q23: Does the broad public interest in the proposal sufficiently justify this possible new exception?

Q24: Are the proposed safeguards appropriate? Are additional safeguards required?

Q25: Does the proposed exception sufficiently help to address the issue identified? Are further changes/exceptions necessary?

3.6 Internet Service Providers

Proposal

6. Permit the ATO and TPB to make limited disclosure of protected information to ISPs to disrupt access to websites under the *Telecommunications Act 1997* (Telecommunications Act) when deemed reasonably necessary for protecting the public revenue.

Paragraph 313(3)(d) of the Telecommunications Act allows government agencies to make a request for help from internet service providers (ISPs) to disrupt access to websites ('website blocking') when deemed reasonably necessary for protecting public revenue. However, the ATO and TPB are not able to reasonably utilise this mechanism as designed by the Parliament, due to the limitations on disclosing taxpayer information under the tax secrecy regime.

The process of requesting and putting in place a website block inherently includes disclosing protected information about the operator of the website, as even where a disclosure only contains a URL/website name, this may still indicate non-compliance with Australian tax law (which is considered protected information under the TAA).

Proposal

Treasury seeks views as to whether the ATO and TPB should be permitted to disclose to ISPs only as much protected information as is necessary for the ISP to execute a website block under the Telecommunications Act.

As the power in subsection 313(3) of the Telecommunications Act is ordinarily reserved for the most serious offences, Treasury considers that this exception should be subject to appropriate safeguards

to ensure disruptions are limited to serious criminal or civil offences, or threats to national security.⁴¹ As such, Treasury proposes that this exception be limited to only be used to prevent fraud or evasion against the tax and super system, or fraud that targets Australian taxpayers.

Questions

Q26: Does the broad public interest in the proposal sufficiently justify this possible new exception?

Q27: Are the proposed safeguards appropriate? Are additional safeguards required?

Q28: Does the proposed exception sufficiently help to address the issue identified? Are further changes/exceptions necessary?

⁴¹ See ['Guidelines for the use of subsection 313\(3\) of the Telecommunications Act 1997 by government agencies for the lawful disruption of access to online services'](#).

Part 4: Further issues for future consideration

4.1 Exceptional and unforeseen circumstances

The PwC tax scandal demonstrated the difficulties of anticipating exceptional circumstances in which it may be necessary, appropriate and in the public interest to disclose taxpayer information in a time critical manner. There, the ATO became aware that PwC had breached an obligation of confidence to the Commonwealth and used that information to develop schemes to avoid the application of the proposed law but was not able to disclose the relevant information to Treasury. The *Treasury Laws Amendment (Tax Accountability and Fairness) Act 2024*, which commenced in full on 1 July 2024, enables the ATO to disclose information to Treasury if similar circumstances were to arise again. However, it is possible that in the future there will be other unforeseen and exceptional circumstances where the public interest in the ATO quickly disclosing protected information would outweigh taxpayer confidentiality that necessitate sharing beyond Treasury.

Australia's tax secrecy framework protects the confidentiality of taxpayer information while recognising that in specified circumstances taxpayer information can play an important role in facilitating efficient and effective government administration and law enforcement. Given this tension, the most appropriate mechanism for dealing with any identified gaps in the tax secrecy framework is for Parliament to consider and legislate amendments to the framework as and when needed. However, it is not possible to legislate for all future circumstances where the disclosure of taxpayer information is in the public benefit and outweighs taxpayer confidentiality, without creating overly broad circumstances for disclosure, which would be unnecessarily detrimental to taxpayer confidentiality.

The PwC matter has highlighted that there are genuine circumstances where taxpayer information may need to be shared immediately to protect the tax and superannuation system or the public more broadly. In these limited and unforeseen circumstances, there may be merit to providing the ATO and TPB with a mechanism, limited by appropriate safeguards, that enables it to disclose protected information where it is in the public interest ahead of Parliament considering whether a more permanent exception be incorporated into the TAA 1953 as necessary.

Treasury is seeking views about whether a flexible exceptional and unforeseen circumstances exception is necessary and appropriate. An example of such a mechanism could be delegating a power to the Governor-General:

Declaring an exceptional and unforeseen circumstance

The Governor-General could be provided a power to temporarily declare an urgent circumstance in which the ATO and TPB may disclose protected information in the public interest. This would enable information to be disclosed appropriately in limited unforeseen and exceptional circumstances that are not contemplated by the existing tax secrecy framework.

This power should be subject to safeguards to ensure that any new disclosure provision strikes an appropriate balance between the need to protect the confidentiality of taxpayer information, and the need for the Commonwealth to be able to respond appropriately – including by responding to a disaster or dealing with serious breaches of the law – in unforeseen and exceptional circumstances. For example:

- disclosures under a Governor-General declaration could be time limited to 90 days – that is the protected information could only be disclosed by the ATO or TPB for a specified entity of up to 90 days from the date on which the legislative instrument containing the relevant circumstance and specified entities and purposes is registered on the Federal Register of Legislation;
- the disclosure could only be made to specified entities where the Commissioner is satisfied that entity has a legitimate use for the information having regard to the stated purpose of the prescription;
- the entity that receives the information could be required to delete the information when it is no longer required for the purposes for which it was disclosed; and
- the Minister is of the view that the relevant circumstances are exceptional, urgent and/or novel, that necessitate immediate action.

Questions

Q29: Should the Governor-General be provided with a power to enable the ATO and TPB to share protected information in exceptional and unforeseen circumstances?

Q30: Would the benefits outweigh the risks and costs associated with introducing an exceptional and unforeseen circumstances exception?

Q31: Are the identified safeguards appropriate? Are additional safeguards required?

Q32: Are there alternative mechanisms to provide the flexibility to address exceptional and unforeseen circumstances that should be considered?

4.2 Financial advisers

Treasury seeks feedback on whether the ATO should be permitted to disclose certain ATO-held information with registered financial advisers where they are providing financial (tax) advice to their clients.

Currently, only registered tax agents and BAS agents can access ATO-held information (such as taxable income, super balance, contributions, and other tax components) on behalf of a client. Financial advisers do not have access to the ATO's Online Services for Agents (also known as the ATO Online Portal). Financial advisers rely on clients providing this information to them through less secure channels (for example, a client may access information in their myGov account, download it and email it to their adviser).

Financial advisers are responsible for the accuracy of information provided by their clients. Streamlining financial advisers' access to ATO-held client information provides the opportunity to utilise more complete, accurate and timely data which may reduce the cost of advice by lessening the administrative burden.

Historically, financial advisers have had a longstanding interest in having their own access to ATO systems, as early as 2017 when financial (tax) advisers were still managed and overseen by the TPB. Access to superannuation information is important since the introduction of the total superannuation balance and transfer balance cap because it affects what contribution and pension rules apply for an individual.

Financial advisers need to have accurate information so that they can ensure clients comply with these legislative requirements.

However, the proposal comes with risks around cyber security, implementation costs, unintended or pressured access, and does *not* assure timeliness of data, as discussed further below. The size and sophistication of financial advice businesses – and their ability to manage cyber security risks and large amounts of sensitive information - varies widely. While there are some large firms, many financial advice businesses are small businesses who may lack the expertise and resourcing to provide a high level of data protection.

Giving financial advisers access to client information increases financial crime risks, which not only affects the retirement savings of members, but can disrupt business operations for an extended period. To reduce the risk of financial crime, financial advisers should be able to meet baseline security standards suitable to handle sensitive information. This is necessary to avoid leaving clients and financial advisers vulnerable to cyber-based attacks and data breaches, but is likely to require businesses to invest material amounts. While financial advisers already handle sensitive client information, providing a channel for advisers to access ATO-held data (including in a digital form) without any security uplift increases cyber security risks.

A new platform would need to be developed and built to enable the ATO to provide limited client specific superannuation information once a client has authorised access for their financial adviser. This would be a significant cost to taxpayers for granting access to a relatively small cohort of financial advisers.

While progress has been made with real-time reporting, there is still some time lag in reportable superannuation details held by the ATO due to tax reporting timeframes. This means clients may still need to provide advisers with up-to-date information from their superannuation fund. This therefore would reduce the benefits for financial advisers accessing ATO-held information.

Consideration would also need to be given to ensuring that access is granted in an informed and consensual way to a financial adviser in a way that can be easily turned off at the discretion of the taxpayer without financial or economic detriment to the taxpayer. Without such protections, taxpayers may be pressured to provide this system access to gain access to finance, which may then reduce incentives for voluntary compliance with the tax laws because of potential external implications of tax data being available to other parties.

Questions

Q33: Should the ATO be permitted to disclose ATO-held information (such as taxable income, super balance, contributions, and tax components) to financial advisers (that are qualified tax relevant providers)?

Q34: Would the benefits outweigh the risks and costs associated with disclosing client superannuation information to financial advisers?

4.3 Consumer consent

Treasury also seeks views as to whether the TAA 1953 should be amended to allow taxpayers to consent to the ATO disclosing their data directly with third parties where this may provide benefits to the taxpayer.

There are circumstances where taxpayers may benefit from consenting to the ATO sharing their data directly with third parties. For example, enabling digital sharing of ATO-held data (such as Business Activity Statements) could streamline the completion of loan application processes for business loans and other complex lending products. Compared to current manual processes such as emailing or printing statements, digital sharing could save businesses time and increase lender certainty that information provided by applicants is consistent with that provided to the ATO.

When the tax secrecy regime was reformed in 2010, the regime specifically highlighted that consent was not an exception from the broad prohibition to disclosure. This approach intended to ensure issues of whether the consent is informed and voluntary (as opposed to, for instance, being a precondition for a particular good or service) were avoided. It also recognises that where any entity requires a taxpayer's information, the taxpayer is able to obtain that information directly from the ATO and then pass it on, as there are no limits on what a taxpayer may do with their own information. This approach was intended to ensure that the taxpayer knows precisely what information is being provided. This feature of the tax secrecy regime ensures that the ATO is not treated generally as a central repository of financial information to be accessed for purposes unrelated to the tax system or to government administration, nor are ATO systems designed for such uses. In today's digitalised

environment, consumers expect seamless digital interactions with Government and it is worth considering whether the current tax secrecy framework achieves this purpose.

If legislative changes were made to allow taxpayers to consent to the ATO disclosing their data to a third party, there would need to be substantial work to design and implement a pathway to implement efficient and secure data sharing with informed consumer consent. One possible pathway is leveraging the Consumer Data Right (CDR), a data sharing scheme in which data holders – currently banks and energy providers – are in most circumstances required to share data with a third party when a consumer requests it.⁴² Consumer protections, including informed and explicit consent, are a fundamental part of the CDR. As the CDR already operates in banking, allowing ATO-held data to be used alongside banking data in the future could provide ways for consumers to benefit from the value of their data when obtaining various financial products and services.

The 2022 Statutory Review of the CDR recommended that ‘facilitating government participation in the CDR should be a priority to ensure consumers benefit from more seamless government interactions and an ability to share their data across a greater range of services.’⁴³ The 2023 Government response to the Statutory Review noted that the Government is prioritising work to support the CDR to mature in its existing sectors, but expansion of the CDR to include government-held data would be considered in the future.⁴⁴

Consideration will also need to be given to ensuring that access is granted in an informed and consensual way to a third party that can be easily turned off at the discretion of the taxpayer without financial or economic detriment to the taxpayer. Without such protections, taxpayers may be pressured to provide such data to gain access to finance or other benefits. Additionally, whilst identify theft is an extant risk that the ATO must address to protect taxpayer data, greater consumer-driven access to data may provide additional identity theft risks that would need to be managed when designing any consent-based data sharing process.

Questions

Q35: Should consideration be given to changing the TAA 1953’s limitation on consent as a means for disclosure of protected information?

Q36: Would the benefits outweigh the risks and costs associated introducing consent as an authorisation for ATO disclosure?

Q37: As highlighted in Part 4.1, what safeguards would be necessary to prevent coercive sharing and ensure that taxpayer consent is only granted in an informed and consensual way?

⁴² See [Consumer Data Right Rules 2010](#) for the requirements imposed on data holders.

⁴³ Recommendation 3.2 of the [Statutory Review of the Consumer Data Right](#).

⁴⁴ [Government statement](#) in response to the Statutory Review of the Consumer Data Right.

4.4 Interoperability with other data sharing regimes

The *Data Availability and Transparency Act 2022* (DAT Act) established a new, best practice scheme for sharing Australian Government data. The DAT Act focuses on increasing the availability and use of Australian Government data to deliver government services that are simple, effective and respectful, inform better government policies and programs, and support world-leading research and development.

The DAT Act overrides the current tax secrecy framework; however, disclosure for enforcement related purposes and detecting, investigating or addressing acts or practices detrimental to public revenue are specifically precluded from the DAT Act Scheme. Sharing under the DAT Act is also subject to the ATO's data disclosure governance processes. Some examples of data that the ATO will not share under a DAT sharing arrangement include:

- where the ATO has applied the Privacy Commissioner's Guidelines on Data Matching in Australian Government Administration;
- data obtained under international exchange obligations;
- taxpayer-specific compliance or investigation data; and
- data the ATO has obtained from other agencies or departments for which the ATO is not the primary data custodian.

Whilst the DAT Act Scheme is still in its infancy, it presents a distinct avenue for categories of data sharing that the TAA 1953 does not currently prioritise/endorse (such as policy development or research purposes). For example, whilst existing exceptions in the TAA 1953 permit the use of ATO data for the development of economic modelling that relates directly to taxation and revenue, other types of economic modelling undertaken by the Department of the Treasury (such as intergenerational comparisons) are not able to utilise the same ATO data sets.

The benefits of sharing data that cannot otherwise be shared under the TAA 1953 were demonstrated during the COVID-19 pandemic through a number of short-term exceptions introduced into section 365-65 in Schedule 1 to the TAA 1953 (not via the DAT Scheme). Whilst it is appropriate that those temporary measures were time limited, the benefits of ATO data sharing under those measures suggest it may be appropriate to facilitate longer-term sharing of ATO data with Treasury (and other government policy areas) through the DAT Scheme going forward.

Question

Q38: Are any further changes necessary to the tax secrecy regime to ensure it operates in a complimentary manner with the DAT Act?

4.5 Addressing gender-based violence

Perpetrators of gender-based violence may seek to control a victim-survivor before, during or after separation, including through manipulation of Commonwealth systems and services and the making of false allegations or complaints. The Government has identified that perpetrators can exploit systems for the purpose of abusing a partner or ex-partner, including the tax and superannuation system. For example:

- perpetrators may not lodge tax returns on time, or may withhold or minimise information about finances, causing a debt to victim-survivors; and
- perpetrators can make victim-survivors liable for unjust debts that are incurred without consent (including fraudulent making a victim-survivor a corporate director of companies or business).

Whilst a taxpayer is able to access their own ATO-held data, there may be circumstances where a victim-survivor requires additional support or information about their partner' or ex-partner's conduct to protect both their safety and their individual rights. Whilst broader "safety by design" of tax administration are outside the scope of this paper, Treasury seeks comments as to whether there are any further changes needed to the tax secrecy regime to address gender-based violence.

Question

Q39: Are any further changes necessary to the tax secrecy regime to address gender-based violence and support victim-survivors?

Part 5: Annexures

Annexure A – Relevant legislation and reviews

The *Privacy Act 1988*

While the tax secrecy framework provides overarching protection of taxpayer information, that information is also protected in other ways. For instance, the *Privacy Act 1988* (Privacy Act) imposes requirements on regulated entities to protect personal information. The Privacy Act protects personal information about individuals while the tax secrecy framework recognises the need to protect information provided by any taxpayer, including information such as an individual's annual income, a company's wage bill or a superannuation fund's rate of return.

Under the Australian Privacy Principles (APP), an APP entity (these include Commonwealth agencies, businesses with over \$3 million in turnover, and prescribed state and territory authorities) may use and disclose personal information in accordance with the APPs. Where the tax secrecy framework authorises the disclosure of information, such a disclosure will also be consistent with obligations under the Privacy Act.

Review of Secrecy Provisions

Following a number of inquiries and recommendations dating back to 2010, the Attorney-General's Department conducted a review of Commonwealth secrecy provisions, with the terms of reference including a review of the suitability and appropriate framing of the general and specific secrecy offences in Commonwealth legislation.

The 2023 Final Report on the Review of Secrecy Provisions found that there were 11 general secrecy offences contained within the *Criminal Code Act 1995* (Criminal Code), 295 non-disclosure duties and 569 secrecy offences.⁴⁵

In response to the Final Report, the government agreed to 11 principles to guide future work to reduce the number of secrecy offences and support a consistent approach to the framing of secrecy offences. While these principles are primarily focused on the framing of new secrecy provisions, Treasury will consider them where relevant to this review.

⁴⁵ Page 5 of the [Final Report on the Review of Secrecy Provisions](#).

Annexure B – List of proposals

3.1. Prevention of fraud
1. Permit the ATO and TPB to disclose protected information to the operators of approved fraud prevention programs.
3.2. Other investigative agencies
2. Permit the ATO and TPB to disclose protected information with non-law enforcement agencies for the purposes of assisting that agency to investigate a serious offence.
3.3. Professional integrity
3A. Permit the ATO to disclose protected information about a Commonwealth employee (including a member of a disciplinary force), who is suspected of misconduct which would constitute a serious breach of the Australian Public Service Code of Conduct (or similar), to the head of a relevant Commonwealth agency (and the Australian Public Service Commissioner) for the purpose of enforcing the relevant code of conduct.
3B. Permit the ATO to disclose protected information about a Commonwealth employee (including a member of a disciplinary force), who is reasonably suspected of committing a serious offence relating to fraud or dishonesty, to the head of a relevant Commonwealth agency (and the Australian Public Service Commissioner) for the purpose of safeguarding the operations of the agency and enforcing a relevant code of conduct.
3C. Permit the ATO and TPB to disclose protected information about a trusted professional (subject to a binding code of professional conduct), and who is suspected of committing a serious offence relating to fraud or dishonesty, to the relevant disciplinary body responsible for enforcing a code.
3D. Permit the ATO and TPB to disclose protected information to the Australia Government Security Vetting Agency (AGSVA) for the purpose of AGSVA performing security assessments and maintaining security clearances.
3.4. Further government purposes exceptions
4. Permit the ATO to use or disclose protected information with: <ul style="list-style-type: none"> • Industry Innovation and Science Australia (IISA), and the Department of Industry, Science and Resources (DISR), for the purposes of administering the Research and Development (R&D) Tax Incentive; • the Treasury Secretary and with APRA for the purposes of administering the <i>Financial Sector (Shareholdings) Act 1998</i> and the <i>Insurance Acquisitions and Takeovers Act 1991</i>; • an Australian government agency to confirm that a Statement of Tax Record provided by an entity to the agency is genuine and the most recent version issued; • (limited to user contact details) other government agencies linked to a user's myGov account; • the Department of Employment and Workplace Relations (DEWR) for the purposes of administering the Fair Entitlement Guarantee Recovery Program; • the Fair Work Ombudsman for the purposes of identifying and recovering unpaid superannuation and wages;

- the Australian Business Register for the purposes of showing whether a business is small, medium or large on the ABR;
- to the National Disability Insurance Agency and NDIS Quality and Safeguards Commission for the purposes of administering the *National Disability and Insurance Scheme Act 2013*; and
- to the Department of Foreign Affairs and Trade, regarding the application of the indirect tax laws to foreign consulates, embassies, high commissions and foreign diplomatic staff, for the purposes of administering the Indirect Tax Concession Scheme.

3.5. TPB other government purposes exception

5. Establish an 'other government purposes' exception for the TPB.

Permit the TPB to disclose protected information to:

- the NDIA and NQSC for the purposes of administering the *National Disability and Insurance Scheme Act 2013*;
- IISA and DISR, for the purposes of administering the R&D Tax Incentive;
- DEWR for the purposes of administering the Recovery Program;
- Services Australia for the purposes of administering the *Social Security (Administration) Act 1999*; and
- the Office of the Migration Agents Registration Authority for the purpose of regulating migration agents under the *Migration Act 1958*.

3.6. Internet Service Providers

6. Permit the ATO and TPB to make limited disclosure of protected information to ISPs to disrupt access to websites under the *Telecommunications Act 1997* when deemed reasonably necessary for protecting the public revenue.

Annexure C – List of questions

Part 3 - Proposed further exceptions
<p>Q1: Are the above factors (on page 14) appropriate considerations when considering new exceptions to the TAA 1953 or TASA? What other factors (if any) should be considered?</p>
<p>3.1. Prevention of fraud</p>
<p>Q2: Does the broad public interest in the proposal sufficiently justify this possible new exception?</p> <p>Q3: Are the proposed safeguards appropriate? Are additional safeguards required?</p> <p>Q4: Does the proposed exception sufficiently help to address the issue identified? Are further changes/exceptions necessary?</p> <p>Q5: Should there be any other limitations on what types of fraud prevention programs could be approved by the Minister?</p> <p>Q6: Are there any other considerations the Minister should take into account before approving a fraud prevention program?</p> <p>Q7: Would fraud prevention programs in the following sectors be considered to be in the broad public interest?</p> <ul style="list-style-type: none"> – the superannuation system; and – the financial systems sector, including the banking, payments and insurance systems.
<p>3.2. Other investigative agencies</p>
<p>Q8: Does the broad public interest in the proposal sufficiently justify this possible new exception?</p> <p>Q9: Are the proposed safeguards appropriate? Are additional safeguards required?</p> <p>Q10: Does the proposed exception sufficiently help to address the issue identified? Are further changes/exceptions necessary?</p>
<p>3.3. Professional integrity</p>
<p>Q11: Does the broad public interest in the proposal sufficiently justify this possible new exception?</p> <p>Q12: Are the proposed safeguards appropriate? Are additional safeguards required?</p> <p>Q13: Does the proposed exception sufficiently help to address the issue identified? Are further changes/exceptions necessary?</p> <p>Q14: Should these proposals extend to prospective employees and contractors, and if so, what further matters should be considered?</p> <p>Q15: Is the proposed threshold of ‘reasonable suspicion of breach of a serious crime (relating to fraud or dishonesty)’ or ‘a serious breach of a Commonwealth Code of Conduct has been committed’ appropriate?</p> <p>Q16: Should the disclosure be allowed in relation to any other serious crimes?</p> <p>Q17: Is the proposed threshold of ‘suspected misconduct having occurred on multiple occasions’ appropriate for disclosures about a person who is not a legal, tax or accounting trusted professional?</p> <p>Q18: Are there other trusted professionals, covered by a Code of Conduct, that should be considered by the new power to prescribe professional associations or disciplinary bodies?</p>

<p>Q19: Are there other trusted professionals, covered by a code of professional conduct, that should be covered by a new disclosure to employers as the employers enforce the code?</p>
<p>3.4. Further government purposes exceptions (for each proposal in the section)</p>
<p>Q20: Does the broad public interest in the proposal sufficiently justify this possible new exception?</p> <p>Q21: Are the proposed safeguards appropriate? Are additional safeguards required?</p> <p>Q22: Does the proposed exception sufficiently help to address the issue identified? Are further changes/exceptions necessary?</p>
<p>3.5. TPB other government purposes exception (for each proposal in the section)</p>
<p>Q23: Does the broad public interest in the proposal sufficiently justify this possible new exception?</p> <p>Q24: Are the proposed safeguards appropriate? Are additional safeguards required?</p> <p>Q25: Does the proposed exception sufficiently help to address the issue identified? Are further changes/exceptions necessary?</p>
<p>3.6. Internet Service Providers</p>
<p>Q26: Does the broad public interest in the proposal sufficiently justify this possible new exception?</p> <p>Q27: Are the proposed safeguards appropriate? Are additional safeguards required?</p> <p>Q28: Does the proposed exception sufficiently help to address the issue identified? Are further changes/exceptions necessary?</p>
<p>Part 4 – Further issues for consideration</p>
<p>4.1. Exceptional and unforeseen circumstances</p>
<p>Q29: Should the Governor-General be provided with a power to enable the ATO and TPB to share protected information in exceptional and unforeseen circumstances?</p> <p>Q30: Would the benefits outweigh the risks and costs associated with introducing an exceptional and unforeseen circumstances exception?</p> <p>Q31: Are the identified safeguards appropriate? Are additional safeguards required?</p> <p>Q32: Are there alternative mechanisms to provide the flexibility to address exceptional and unforeseen circumstances that should be considered?</p>
<p>4.2. Financial advisers</p>
<p>Q33: Should the ATO be permitted to disclose ATO-held information (such as taxable income, super balance, contributions, and tax components) with financial advisers (that are qualified tax relevant providers)?</p> <p>Q34: Would the benefits outweigh the risks and costs associated with disclosing client superannuation information to financial advisers?</p>
<p>4.3. Consumer consent</p>
<p>Q35: Should consideration be given to changing the TAA 1953's limitation on consent as a means for disclosure of protected information?</p>

Q36: Would the benefits outweigh the risks and costs associated introducing consent as an authorisation for ATO disclosure?

Q37: As highlighted in Part 4.1, what safeguards would be necessary to prevent coercive sharing and ensure that taxpayer consent is only granted in an informed and consensual way?

4.4. Interoperability with other sharing regimes

Q38: Are any further changes necessary to the tax secrecy regime to ensure it operates in a complimentary manner with the DAT Act?

4.5. Addressing gender-based violence

Q39: Are any further changes necessary to the tax secrecy regime to address gender-based violence and support victim-survivors?