

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer and Minister for Financial Services

Taxation Administration Act 1953

Australian Securities and Investments Commission Act 2001

Treasury Laws Amendment (Disclosure of Information to Fraud Fusion Taskforce) Regulations 2023

The *Taxation Administration Act 1953* (the TAA 1953) provides the administrative framework for the tax law. This includes the collection and recovery of income tax and other liabilities, objections, reviews and appeals processes, charges and penalties, rulings and other tax administration matters.

The *Australian Securities and Investments Commission Act 2001* (the ASIC Act) provides for the Australian Securities and Investments Commission (ASIC) and its functions, powers and business as Australia's integrated corporate, markets, financial services and consumer credit regulator.

Section 18 of the TAA 1953 provides that the Governor-General may make regulations prescribing matters required or permitted by the TAA 1953 to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the TAA 1953. Paragraph 355-70(1)(b) in Schedule 1 to the TAA 1953 further provides that a taxation officer may disclose protected information to a taskforce officer of a taskforce prescribed by regulations.

Section 251 of the ASIC Act provides that the Governor-General may make regulations prescribing matters required or permitted by the ASIC Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the ASIC Act. Subsection 127(5A) of the ASIC Act further provides that regulations may specify uses of information and disclosures of information that are authorised uses and authorised disclosures.

The Treasury Laws Amendment (Disclosure of Information to Fraud Fusion Taskforce) Regulations 2023 (the Regulations) would allow the Australian Taxation Office (ATO) and ASIC to share information with the Fraud Fusion Taskforce to better detect, address and prevent fraud against government programs, particularly the National Disability Insurance Scheme (NDIS). A major purpose of the Fraud Fusion Taskforce is protecting the public finances of Australia, consistent with subsection 355-70(12) in Schedule 1 to the TAA 1953. The Government announced the establishment of the Taskforce to strengthen the Australian Government's fraud detection and response capability in the October 2022-23 Budget. Personal and corporate information held by the ATO and ASIC, that is not publicly available, is subject to secrecy provisions and can only be disclosed to other Government agencies if authorised by law.

The Government made an election commitment to stop waste in the NDIS including by reducing fraud. The Government announced the establishment of the Taskforce as

a first important contribution to address fraud against government programs including the NDIS in the October 2022 Budget.

It is a strict liability offence (punishable by two years' imprisonment) for a taxation officer (an ATO employee, Commissioner or Second Commissioner) to record or disclose protected information. The ASIC Act requires ASIC to take all reasonable measures to protect from unauthorised use or disclosure of this protected information.

The Regulations allow for that protected information to be shared by prescribing the Fraud Fusion Taskforce as a body or entity that can lawfully receive protected information. The use of this protected information is intended to assist in identifying patterns of fraudulent actions against government programs. The initial focus is on fraud against the NDIS, with scope to expand to other programs as the work of the Taskforce progresses.

Officers of Government agencies, which together constitute the Fraud Fusion Taskforce, remain subject to the on-disclosure rules in section 355-155 in Schedule 1 to the TAA 1953, and to conditions imposed by ASIC on the disclosure of certain information, ensuring ongoing protection of this protected information.

The TAA 1953 and ASIC Act specify no conditions that need to be satisfied before the power to make the proposed Regulations may be exercised.

This measure relates to administrative arrangements within government agencies and as such no public consultation was undertaken. However, the ASIC, ATO and National Disability Insurance Agency were consulted in the development of the Regulations.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence the day after they are registered on the Federal Register of Legislation.

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

A statement of Compatibility with Human Rights is at [Attachment B](#).

The Office of Impact Analysis (OIA) has assessed that an Impact Analysis is not required as the Regulations are machinery in nature (OIA ref: 22-03762). The Regulations have no regulatory impact.

Details of the *Treasury Laws Amendment (Disclosure of Information to Fraud Fusion Taskforce) Regulations 2023*

Section 1 - Name of Regulations

This section provides that the title of the Regulations is the *Treasury Laws Amendment (Disclosure of Information to Fraud Fusion Taskforce) Regulations 2023*.

Section 2 - Commencement

This section provides that the Regulations commence on the day after registration on the Federal Register of Legislation.

Section 3 - Authority

This section provides that the *Treasury Laws Amendment (Disclosure of Information to Fraud Fusion Taskforce) Regulations 2023* is made under the *Taxation Administration Act 1953* (the TAA 1953) and the *Australian Securities and Investments Commission Act 2001* (the ASIC Act).

Section 4 - Schedule

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

Schedule 1 – Amendments

Australian Securities and Investments Commission Regulations 2001

Item [1] – Regulation 8A

This item renumbers Regulation 8A of the ASIC Act as Regulation 8AB to avoid impractical numbering of the Regulations.

Item [2] – 8AC Commission may disclose confidential information to specified bodies or entities

This item provides that ASIC may share confidential information with entities holding an office in, employed in, or performing services for, agencies or bodies in the Fraud Fusion Taskforce, who are performing duties related to a purpose of the Fraud Fusion Taskforce. The confidential information may only be shared for a purpose of the Fraud Fusion Taskforce.

This regulation is made pursuant to subsection 127(5A) of the ASIC Act, which provides that Regulations may specify uses of information and disclosures of information that are authorised uses and disclosures within the scope of ASIC's obligation to take all reasonable measures to protect from unauthorised use or disclosure information. ASIC may impose conditions on the use of disclosed information to ensure the information is not used in an unauthorised way.

Item [3] – Transitional Provisions

This item provides transitional arrangements to allow for the sharing of information obtained before, on or after the commencement of the Regulations.

Item [4] – Regulation 8AB

This item amends the text underneath the schedule heading to account for the renumbering of the Regulation in Item 1.

Taxation Administration Regulations 2017

Item [5] – Addition of the Fraud Fusion Taskforce to the table of prescribed taskforces

This item amends Regulation 67 of the *Taxation Administration Regulations 2017* to add the Fraud Fusion Taskforce to the list of prescribed taskforces. This allows taxation officers to share protected information with officers of Government agencies, which together constitute the Fraud Fusion Taskforce, where the record or disclosure is for or in connection with a purpose of the taskforce.

The list of prescribed taskforces relates back to Item 4 of the table in subsection 355-70(1) in Schedule 1 to the TAA 1953, which protects from liability for disclosure of records made or disclosed to a taskforce officer of a prescribed taskforce that is for or in connection with a purpose of the prescribed taskforce. A taskforce officer is an entity who holds an office in, is employed in, or is performing services for, an agency in the prescribed taskforce (subsection 355-70(11) in Schedule 1 to the TAA 1953).

Item [6] – Transitional Provisions

This item provides transitional provisions to allow for the sharing of information obtained before, on or after the commencement of the Regulations.

Statement of Compatibility with Human Rights

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

Treasury Laws Amendment (Disclosure of Information to Fraud Fusion Taskforce) Regulations 2023

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

Overview of the Legislative Instrument

The Regulations amend the *Taxation Administration Regulations 2017* and the *Australian Securities and Investments Commission Regulations 2001* to include the Fraud Fusion Taskforce (the Taskforce) as a prescribed taskforce to enable the disclosure of protected information and other forms of confidential information.

Human rights implications

Right to Social Security

These Regulations engage the right to social security under Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The right to social security requires Australia to, within its maximum available resources, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

These Regulations support the right to social security in Australia. Detecting, addressing and preventing fraud against Australia's social security scheme ensures the sustainability and integrity of Australia's social security system.

The Regulations are relevant to the NDIS. The Regulations provide that the ATO and ASIC may share protected information and other forms of confidential information with the Fraud Fusion Taskforce, which has the purpose of detecting, addressing and preventing fraud against the NDIS.

The objective of the Regulations is to allow the new Fraud Fusion Taskforce to detect, address and prevent fraud against the NDIS using ATO and ASIC data. Fraud against the NDIS takes money intended to be spent on Australians living with disability, and diverts that money contrary to the intended eligibility criteria of the scheme. The Bill enhances the right to social security to the extent that it ensures the NDIS' sustainability and integrity, so that Australians living with disability can receive the essential level of benefits that enable them to acquire essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.

Right to Privacy

Schedules 1 and 2 of the Regulations engage the right to protection from unlawful or arbitrary interference with privacy under Article 17 of the International Covenant on Civil and Political Rights (ICCPR) because it allows for the sharing of protected, private tax and financial information more broadly than is currently permitted by law.

The right in Article 17 may be subject to permissible limitations, where these limitations are authorised by law and are not arbitrary. In order for an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the particular circumstances. The UN Human Rights Committee has interpreted the requirement of ‘reasonableness’ to imply that any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case.

The amendment enables the ATO to, and confirms ASIC’s ability to, disclose protected information and other forms of protected information to taskforce officers of the Fraud Fusion Taskforce where the record or disclosure is for or in connection with a purpose of the taskforce. It will improve the Fraud Fusion Taskforce’s ability to conduct timely compliance activity and better protect the integrity of Australia’s social security system. This amendment will enable effective and timely collaboration during investigations into fraud against the NDIS. The amendment is a reasonable change as it will allow the ATO, ASIC and the Fraud Fusion Taskforce to more effectively work together to ensure compliance with the NDIS framework. Importantly, this limited information sharing will substantially uphold the integrity of the social security system.

The sharing of certain protected information necessary for the Fraud Fusion Taskforce to perform its regulatory function will only be to taskforce officers in the Fraud Fusion Taskforce, ensuring the protected information is not disseminated more broadly than necessary, and is only shared proportionately to achieve improvements to Australia’s social security system.

Taskforce officers are required to adhere to the on-disclosure rules in section 355-175 of Schedule 1 to the *Taxation Administration Act 1953*, ensuring ongoing protection of taxation information once it is disclosed to Fraud Fusion Taskforce officers.

The Regulations are essential for the Fraud Fusion Taskforce to effectively achieve its objectives and identify, address and prevent fraud. The Regulations enable the sharing of protected information and other forms of confidential information in circumstances where the information would otherwise not be allowed to be shared.

Finally, the Regulations are intended to be a proportionate response to fraud against the NDIS. The limited potential infringements on the right to privacy caused by the sharing of protected information and other forms of confidential information are substantially outweighed by the tangible benefits to the integrity and sustainability of Australia’s social security system, and Australians’ right to a social security system.

Conclusion

This Legislative Instrument is compatible with human rights as it upholds the right to social security while minimally and proportionately affecting the right to privacy.