

EXPLANATORY STATEMENT

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

Taxation Administration Act 1953

Taxation Administration Amendment (Disclosure of Information to Operation Protego Integrity Taskforce) Regulations 2024

The *Taxation Administration Act 1953* (the Act) 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. Personal and corporate information held by the Australian Taxation Office (ATO), that is not publicly available, is subject to secrecy provisions and can only be disclosed to other Government agencies if authorised by law. 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 without being authorised by law.

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

Paragraph 355-70(1)(b) in Schedule 1 to the Act further provides that a taxation officer may disclose protected information to an officer of a taskforce prescribed by regulations.

The Regulations allow the ATO to share information with the Operation Protego Integrity Taskforce (the Taskforce) to take investigative or disciplinary action against Commonwealth employees suspected of engaging in misconduct in respect of goods and services tax (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. A major purpose of the Taskforce is protecting the public finances of Australia, by better managing and mitigating risks of fraud and dishonesty within Commonwealth agencies, consistent with subsection 355-70(12) of Schedule 1 to the Act.

The Government is assessing the impacts of the potential involvement of Commonwealth employees in GST fraud being investigated by the ATO as part of Operation Protego. The Government is concerned that allegations of Commonwealth employees involved in GST fraud are very serious, given the misappropriation of public funds. The sharing of information to the Taskforce seeks to mitigate the risk of other Commonwealth funds being misused and protects the reputation of Commonwealth agencies and the public's faith in their integrity.

The Regulations allow protected information to be shared by prescribing the Taskforce as a body or entity that can lawfully receive protected information. The use of this protected information is intended to facilitate civil or administrative investigations of the potential involvement of Commonwealth employees in serious crimes (involving fraud or dishonesty) against the Commonwealth relating to Operation Protego and to assist related investigations into suspected code of conduct breaches by Commonwealth employees. Facilitating such investigations is a reasonable, necessary and proportionate approach to

better manage and mitigate risks of fraud and dishonesty within Commonwealth agencies to ensure the ongoing protection of the public finances of the Commonwealth. In addition to protecting Commonwealth finances, the Taskforce better equips Commonwealth agencies to assist with investigations into serious crimes involving fraud and dishonesty relating to Operation Protego and ensures the protection and safeguard of Commonwealth employee rights.

Officers of Government agencies, including the ATO, Australian Public Service Commission, Treasury, Australian Government Security Vetting Agency, the Australian Federal Police and other employer agencies, which together constitute the Taskforce, remain subject to the on-disclosure rules in section 355-155 in Schedule 1 to the Act, ensuring ongoing protection of this protected information.

This measure relates to administrative arrangements within Commonwealth Government agencies and, as such, no public consultation was undertaken. However, the ATO and the Australian Public Service Commission, along with other relevant government agencies were consulted in the development of the Regulations.

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

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

The Regulations are subject to disallowance under section 42 of the *Legislation Act 2003*.

The Regulations are subject to sunseting under section 50 of the *Legislation Act 2003*.

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

Regulation Impact Statement

The Office of Impact Analysis (OIA) has been consulted (OIA ref: OIA24-06567) and agreed that an Impact Analysis is not required. The measure has no impact on compliance costs.

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

Details of the Taxation Administration Amendment (Disclosure of Information to Operation Protego Integrity Taskforce) Regulations 2024

Section 1 – Name of Regulations

This section provides that the title of the regulations is the *Taxation Administration Amendment (Disclosure of Information to Operation Protego Integrity Taskforce) Regulations 2024* (the Regulations).

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 instrument is made under the *Taxation Administration Act 1953* (the 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, and any other item in the Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Taxation Administration Regulations 2017

Item [1] – Addition of the Operation Protego Integrity Taskforce to the table of prescribed taskforces

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

The list of prescribed taskforces relates to Item 4 of the table in subsection 355-70(1) in Schedule 1 to the Act, 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 Act).

Item [2] – 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

Taxation Administration Amendment (Disclosure of Information to Operation Protego Integrity Taskforce) Regulations 2024

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* to include the Operation Protego Integrity Taskforce (the Taskforce) as a prescribed taskforce to enable the disclosure of protected information by taxation officers to Taskforce officers.

The Regulations engage the following rights.

Human rights implications

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 taxation officers to disclose protected information to taskforce officers of the Taskforce where the record or disclosure is for, or in connection with, a purpose of the Taskforce. It will improve the ability of Government agency Taskforce members to conduct timely investigations and to take early disciplinary action to better protect the integrity of Australia’s social security system. This amendment will enable effective and timely collaboration during investigations into fraud against the Commonwealth. The amendment is a reasonable change as it will allow the ATO and the Taskforce members to more effectively work together to ensure compliance with Australia’s tax laws. Importantly, this limited information sharing will substantially uphold the integrity of Australia’s taxation system.

The sharing of certain protected information necessary for the purposes of the Taskforce will be limited, as protected information will only be shared with the relevant Taskforce officers, such as officers of the Government agency that is the employer of the Commonwealth employee who is suspected of having engaged in the GST fraud against the Commonwealth. This ensures the protected information is not disseminated more

broadly than necessary, safeguarding the rights of the individual. The information will only be shared proportionately to achieve improvements to Australia's taxation system.

Taskforce officers are required to adhere to the on-disclosure rules in section 355-155 of Schedule 1 to the *Taxation Administration Act 1953*, ensuring ongoing protection of taxation information once it is disclosed to Taskforce officers.

The Regulations are essential for the Taskforce to effectively achieve its objectives and identify, address and prevent fraud for the protection of public finances. The Regulations enable the sharing of protected 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 Commonwealth. 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 the public finances of Australia and the Australia Public Service.

Conclusion

This Legislative Instrument is compatible with human rights as it reasonably, necessarily and proportionately affects the right to privacy.