

## **EXPLANATORY STATEMENT**

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

#### *Taxation Administration Act 1953*

#### *Taxation Administration Amendment (Extending Tax Whistleblower Protections) Regulations 2024*

Section 18 of the *Taxation Administration Act 1953* (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 14ZZV(1)(d) of the Act provides that the *Taxation Administration Regulations 2017* (the principal regulations) may prescribe an entity as an eligible recipient of information in relation to an entity that is eligible for protection under taxation whistleblower laws.

Paragraph 14ZZW(2)(d) of the Act provides that the principal regulations may prescribe a person or body to whom the operation of 14ZZW(1) does not apply about confidentiality of a whistleblower's identity.

The purpose of the *Taxation Administration Amendment (Extending Tax Whistleblower Protections) Regulations 2024* (the Regulations) is to allow the regulators of the tax system, including the Commissioner of Taxation, Tax Practitioners Board (TPB), the Commissioner of the Australian Charities and Not-for-profits Commission (ACNC) and Inspector-General of Taxation (IGT) to share whistleblower information for more effective regulatory responses to suspected breaches of the law.

The tax whistleblower laws came into effect in 2019. They gave eligible whistleblowers appropriate protection if they made an eligible disclosure to the Australian Taxation Office (ATO) or another eligible recipient (as defined in section 14ZZV of the Act) about the tax affairs of a possible non-compliant taxpayer. However, the existing tax whistleblower framework did not extend to disclosures to the TPB about the affairs of entities providing tax agent services, to the ACNC about the tax-related affairs of charities, or to the IGT for the purposes of administering their roles and functions. This meant that these three entities were unable to receive information from an eligible whistleblower or an eligible recipient (such as the ATO) unless consent was provided by the whistleblower.

It is an offence under section 14ZZW of the Act for a person to disclose the identity of a discloser or information that is likely to lead to the identification of a discloser under Part IVD of the Act. However, a disclosure of a protected discloser's identity is authorised in several circumstances, including where the disclosure is made to a person or body prescribed by the regulations for the purposes of paragraph 14ZZW(2)(d).

To ensure effective collaboration between regulators, the Regulations amended the principal Regulations by prescribing the IGT, TPB and ACNC under paragraph 14ZZW(2)(d) of the Act.

Additionally, the Regulations amended the principal Regulations by prescribing the IGT under paragraph 14ZZV(1)(d) of the Act as an eligible recipient. This permits whistleblowers to be protected where they make disclosures to the IGT under section 14ZZT(2) where the discloser considers that the information may assist the IGT to perform their functions and duties in relation to the tax affairs of the entity (such as investigating an action affecting the entity taken by a tax official that is the subject of a complaint by that entity).

The Regulations provide for the use or disclosure of confidential personal information and therefore engages with rights to privacy. However, the Regulations do not modify the nature or scope of the protections contained in the Act, including the nature of the information that may be disclosed. It is necessary and appropriate to allow these limited disclosures to the TPB, ACNC and IGT to ensure that the regulators of the tax system can comprehensively protect the integrity of the taxation system and act on the disclosure made by the whistleblower.

The Regulations support changes made by the *Treasury Laws Amendment (Tax Accountability and Fairness) Act 2024* to improve the manners in which the TPB can receive disclosures under the Act.

The Act does not specify any conditions that need to be satisfied before the power to make the Regulations may be exercised.

Public consultation was undertaken from 20 September 2023 to 4 October 2023. The majority of responses supported improving the tax whistleblower regime. Subsequent to consultation, the Regulations were amended to also cover disclosures made to the IGT.

The Regulations are subject to the automatic repeal process under section 48A of the *Legislation Act 2003*. The principal regulations sunset on 1 October 2027. The Regulations are subject to disallowance.

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

The Regulations commenced on the day after the instrument was 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](#).

**Details of the *Taxation Administration Amendment (Extending Tax Whistleblower Protections) Regulations 2024***

**Section 1 – Name**

This section provides that the name of the regulations is the *Taxation Administration Amendment (Extending Tax Whistleblower Protections) Regulations 2024* (the Regulations).

**Section 2 – Commencement**

Schedule 1 to the Regulations commenced on the day after they are registered on the Federal Register of Legislation.

**Section 3 – Authority**

The Regulations are made under the *Taxation Administration Act 1953* (the Act).

**Section 4 – Schedule**

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

**Schedule 1 - Amendments**

***Taxation Administration Regulations 2017***

Item 1 of the Regulations created section 13A, which prescribed the Inspector-General of Taxation (IGT) for the purposes of paragraph 14ZZV(1)(d) of the Act in relation to all entities. Consequently, an individual who discloses information to the IGT in accordance with the requirements of subparagraph 14ZZT(2) of the Act qualifies for whistleblower protections.

Item 1 of the Regulations also created section 13B, which prescribed the IGT, Tax Practitioners Board (TPB) and the Commissioner of the Australian Charities and Not-for-profits Commission (ACNC) for the purposes of paragraph 14ZZW(2)(d) of the Act. Consequently, a person may disclose confidential information to the IGT, TPB or the ACNC about a discloser who has made a qualifying disclosure, without committing an offence under section 14ZZW of the Act. This protection includes disclosures of confidential information made to and from the ATO, but also extends to other eligible recipients under section 14ZZV of the Act.

Item 2 of the Regulations created section 78, which acts as a transitional provision to ensure that disclosures already made under the Act may be disclosed to the ACNC, TPB and IGT after 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 (Extending Tax Whistleblower Protections) 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 *Taxation Administration Amendment (Extending Tax Whistleblower Protections) Regulations 2024* (the Regulations) permit the regulators of the tax system, including the Commissioner of Taxation, Tax Practitioners Board (TPB), the Commissioner of the Australian Charities and Not-for-profits Commission (ACNC) and Inspector-General of Taxation (IGT) to share necessary tax whistleblower information. This is achieved by prescribing the IGT, TPB and ACNC for the purpose of paragraph 14ZZW(2)(d) of the *Taxation Administration Act 1953* (the Act).

Additionally, the regulations permit whistleblowers to be protected where they make disclosures to the IGT under section 14ZZT(2) of the Act, by prescribing the IGT under paragraph 14ZZV(1)(d) as an eligible recipient to tax whistleblower disclosures.

**Human rights implications**

Schedule 1 to 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 permits sharing of confidential whistleblower information with the IGT, ACNC and TPB.

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 amendments permit the Australian Taxation Office (ATO) – as well as eligible recipients under section 14ZZT of the Act – to disclose confidential information to the IGT, TPB and ACNC. It will improve the ability of the tax regulators to more effectively collaborate, to conduct timely compliance activity and better protect the integrity of Australia’s tax system.

Any information that is shared between the tax regulators will remain subject to strict confidentiality protections under the Act, as well as continuing to afford protection to the tax whistleblowers. The ATO will remain subject to the requirement to take all reasonable measures to protect confidential information from any unauthorised disclosure.

## **Conclusion**

The Legislative Instrument is compatible with human rights because to the extent that it may limit the privacy rights of individuals, those limitations are reasonable, necessary and proportionate to ensure the protection of whistleblowers and the tax system.