

10 March 2025

Director
Governance and Integrity Policy Unit
Law Division
The Treasury
Langton Crescent
Parkes ACT 2600

By email: taxsecrecyreview@treasury.gov.au

Dear Director,

Review of tax regulator secrecy exceptions

The Tax Institute welcomes the opportunity to make a submission to the Treasury in respect of its consultation regarding the Review of Tax Regulator Secrecy Exceptions – Consultation Paper December 2024 (**Consultation Paper**).

The Tax Institute supports the Government's initiative to expand the tax secrecy exceptions in circumstances where the public interest is at risk. However, we emphasise the need for careful consideration regarding the sharing of confidential tax information obtained by the Australian Taxation Office (**ATO**) and the Tax Practitioners Board (**TPB**) with designated bodies or agencies for non-tax purposes. The sharing of such sensitive information with designated bodies or agencies for purposes that are not directly related to tax administration raises significant concerns about privacy and confidentiality. We advocate for a balanced approach that prioritises protecting sensitive tax data while also meeting the legitimate needs of the public interest.

This means that any decision to share protected tax information should:

- be made with great caution;
- be permitted only by a legislative change through amendments to the *Taxation Administration Act 1953* (Cth) (**TAA**);
- ensure that only relevant and appropriate information is shared; and
- be accompanied by robust safeguards to prevent misuse or unauthorised access to this data.

Such caution is vital to uphold taxpayers' trust in the tax system and ensure that the integrity of the tax system is not compromised.

Further, particularly in light of recent major data breaches such as the Optus and Medibank incidents, and the implications that ensued for affected individuals and broader public confidence, data security is paramount, and any framework to share data should be designed with the strongest safeguards possible.

The proposal to expand the tax secrecy exceptions to enable relevant agencies to take appropriate action in relation to suspected serious misconduct formed part of the package of reforms announced on 6 August 2023. We generally support the proposals that would allow the limited disclosure of protected information to other agencies and certain ministers where required, and to the professional bodies in certain circumstances. However, we would like to understand how the further expansion of the exceptions to allow disclosure to third parties (i.e. non-government agencies) is warranted. There would seem to be an unacceptable risk without the highly robust safeguards and oversight that apply to government agencies, for example, sharing protected information under the fraud prevention program (**FPP**).

Further, we recommend introducing any new exceptions in gradual or incremental phases, with a thorough review conducted after each implementation to assess the effectiveness before proceeding to the subsequent phase of exceptions. This will avoid unnecessarily and prematurely expanding the range of organisations and bodies to which protected tax information may be made available.

We provide the following general feedback on the Consultation Paper:

- We note several highly complex and convoluted matters are listed as proposals in the Consultation Paper. The issues are framed merely as questions with limited context or rationale provided, and no data indicating why the current exception may be deficient so as to merit consideration of a new exception. The questions raised are very broad, making it challenging to provide a comprehensive response. The breadth of the questions requires careful consideration and analysis, which can be time-consuming and complex.

For example, one particularly challenging question is whether there should be any other limitations on what types of fraud prevention programs could be approved by the Minister. It is not clear to us whether any policy has been determined in respect of some of these matters. The nature of the information proposed to be shared through some new exceptions is not specified in the Consultation Paper. This has made it difficult to provide constructive feedback on such matters. Stakeholders are best placed to provide meaningful responses to assist the Treasury where they are provided with all the relevant information for consideration and adequate time to respond.

A more targeted approach to framing these questions would facilitate a more productive dialogue and yield insights that are both actionable and relevant to the government's ongoing efforts to undertake effective consultation. We would be pleased to work with the Treasury on these issues once further consideration has been given to them by the Treasury and there is a clear indication of what may be proposed and the basis for such proposals.

- The extensive consultation document, comprising 49 pages and covering various exceptions, could have been more effectively organised into three distinct consultations and streams:
 - proposed exceptions relating to the ATO;
 - proposed exceptions concerning the TPB; and

- further exceptions for future consideration.

We recommend that going forward, further consultation on these matters is undertaken separately under these headings. We would expect that such an approach would also help to mitigate any conflation of issues and proposals.

For the reasons stated above, our comments in this submission are limited to the broader proposals and do not attempt to address each question raised in the Consultation Paper.

Our detailed response and recommendations are contained in **Appendix A**.

Importantly, and particularly in light of our comments above, our submission is intended to be a starting point for further discussion and consultation. We consider it essential to ensure an ongoing dialogue between the ATO, the TPB, the Treasury, and the tax profession, on the matters considered in our submission and ways in which information sharing would help improve the integrity of the tax system. Such an open and collaborative process will help to build and maintain trust, and alleviate concerns of the community about the sharing of sensitive tax data.

The Tax Institute is the leading forum for the tax community in Australia. We are committed to shaping the future of the tax profession and the continuous improvement of the tax system for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all.

If you would like to discuss any of the above, please contact our Head of Tax & Legal, Julie Abdalla, at (02) 8223 0058.

Yours faithfully,

Scott Treatt

Chief Executive Officer

Tim Sandow

President

APPENDIX A

We have set out below our detailed comments and observations for your consideration.

Proposed further exceptions

Preliminary comments

We agree with the factors outlined in the Consultation Paper when evaluating the public benefit of the proposed exceptions against the impact on taxpayer privacy, and the factors ATO and the TPB should consider before releasing any information. It is essential that these factors are thoroughly assessed to ensure that the information provided is accurate, relevant and beneficial for all stakeholders involved. Also, considering the legal and ethical frameworks surrounding data sharing is crucial to ensuring compliance with existing privacy laws and regulations.

Recommendation 1

In this regard, The Tax Institute would like to highlight and recommends consideration be given to the [Data Sharing framework report](#) released by the Australian Computer Society¹ in September 2017. This report established a Data Taskforce to tackle the significant challenge of creating an ethical and privacy-respecting framework to govern automated data sharing for developing and implementing smart services. This framework aims to address technical, regulatory, and authorisation aspects, with the goal of identifying, adopting, adapting, or creating governance frameworks that prioritise privacy protection and facilitate effective data sharing across jurisdictions.

Further, it would be prudent to consider the following additional factors²:

- potential for unintended consequences of data disclosure and the measures that will be taken to remedy any breach;
- transparency in the decision-making process of the ATO and the TPB;
- clear guidelines for the use and retention of shared data; and
- the establishment of robust oversight mechanisms to monitor the use of disclosed data.

By considering these factors, the ATO and the TPB can enhance the effectiveness of their communication strategies, promote transparency, and foster trust within the tax community.

¹ Australian Computer Society is the leading professional association with members representing Australia's technology community across industry, government and education.

² Question 1 of the Consultation Paper. All references to questions in this submission are to questions in the Consultation Paper unless otherwise specified.

Prevention of fraud

We consider that the prevention of fraud generally justifies the disclosure of information that is directly relevant to such fraudulent activity.³ However, the Consultation Paper does not appear to contain a clear framework for the ATO and the TPB to identify possible or potentially fraudulent activities effectively. References to the oversight mechanism that is proposed to be employed within the ATO and the TPB to classify incidents as potentially fraudulent are ambiguous.

The Consultation Paper is also silent on the proposed framework for the Minister in approving FPPs. Given the involvement of non-government entities in FPPs, it is essential for stakeholders to understand how the Government will maintain oversight post-data sharing, and how such information will continue to be protected.⁴ The proposed information sharing includes sensitive personal data such as contact details (mobile, email addresses, street/postal address), member details (name, member identifiers), and financial institution or bank details (account details, and transaction details). Without proper safeguards, this raises concerns about possible breaches of protected information and the systems in place to manage such disclosures.

For example, recently, significant and deliberate illegal behaviour by thousands of entities resulted in fraudulent GST refunds being paid out by the ATO. This large-scale GST fraud led to the establishment of [Operation Protego](#) which has resulted in many prosecutions and referrals of the most serious offenders to the Serious Financial Crime Taskforce.

This raises crucial questions regarding the effectiveness and utilisation of the ATO's detection systems, and reporting and payment regimes by the ATO and other governmental bodies, indicating that there may be shortcomings in their implementation or execution that hinder their intended objectives.

Recommendation 2

We understand that the ideas and proposals in the Consultation Paper do not provide a complete plan for the proposed tax secrecy exceptions. However, to address the challenges identified above, we recommend the following:

- further stakeholder consultation is necessary to design a framework that will enable the:
 - ATO and TPB to better identify incidents of potential fraud that warrant the sharing of taxpayer information; and
 - Minister to approve FPPs;
- to ensure transparency, the criteria for FPP approval and detection of potential fraud should be clearly defined, along with the safeguards to be adopted and the oversight mechanisms, in the legislation through amendments to the TAA⁵;
- establishing a framework for ongoing monitoring and evaluation of approved FPPs — this is crucial to ensure their effectiveness and adaptability to new challenges in fraud prevention; and

³ Question 2.

⁴ Question 3

⁵ Question 5

- the ATO should review the effectiveness of changes in its approach to issuing refunds in light of Operation Protego, and undertake more thorough checks before issuing GST refunds to entities that are newly registered, or have recently made changes to their activity statements, banking details or registered agent. While these may be legitimate changes, they may in some cases indicate potentially fraudulent behaviour. Further consultation with stakeholders on current checks and other opportunities for improvement would be beneficial.

Other investigative agencies

AUSTRAC plays a vital role in Australia's financial landscape, functioning as both the regulator for anti-money laundering and counter-terrorism financing (**AML/CTF**) and as a financial intelligence unit. This dual function is significant because it allows AUSTRAC to enforce compliance with AML/CTF laws, and analyse financial data to identify and combat illicit activities. By serving in these two capacities, AUSTRAC is uniquely positioned to facilitate the flow of critical information between financial institutions and law enforcement agencies, thereby enhancing the overall effectiveness of Australia's efforts to combat financial crime.

We support the proposal to allow information sharing by the ATO and TPB with the Australian Transaction Reports and Analysis Centre (**AUSTRAC**), particularly because the Consultation Paper indicates that safeguards — similar to existing laws and guidelines designed to protect the information shared with law enforcement agencies — will remain in place.⁶ This assurance is crucial as it helps to mitigate privacy concerns and potential misuse of sensitive information.

However, we are concerned about the proposal to allow additional agencies to be prescribed by a disallowable ministerial instrument on a case-by-case basis, as it lacks the systematic structure essential for effective governance. A piecemeal or sporadic approach may lead to inconsistencies in how different agencies handle tax-related information, resulting in varying levels of compliance with tax secrecy principles. This could create confusion and uncertainty for the agencies involved, and taxpayers who expect their information to be safeguarded uniformly.

Recommendation 3

To address these concerns, it is recommended that the proposed investigative agencies be listed in subsection [355-70 \(4\)](#) of the TAA or, at a minimum, that the framework for evaluating agencies under the proposed exception be explicitly incorporated into legislation through an amendment to the TAA. This would ensure clarity and adherence to tax secrecy principles while facilitating necessary information sharing for law enforcement purposes.

We do not support the Minister being provided with a unilateral power to register a legislative instrument to specifically prescribe additional agencies.⁷ Nothing short of a legislative amendment to the TAA which is subject to full parliamentary oversight is appropriate for prescribing exceptions to the prohibition on sharing protected information.

⁶ Questions 8 and 9.

⁷ Notwithstanding the opportunity after a registered legislative instrument is tabled for either the House of Representatives or the Senate to disallow the instrument within the prescribed period.

Professional integrity

Disciplinary bodies

We support the proposed exception that allows professional associations and disciplinary bodies to address misconduct in certain professions, provided that the information to be shared has a relevant and clear connection with the tax and superannuation system. We also agree with the safeguards detailed on pages 22 and 23 of the Consultation Paper.⁸

Security clearance obligations

In principle, we endorse the proposal that the ATO be allowed to share protected information with the Australian Government Security Vetting Agency (**AGSVA**). However, the Consultation Paper is silent on the type and the extent of information that would be shared with the AGSVA and the relevance of this information to its activities. It would be beneficial to better understand what is envisaged as the policy design progresses. We would be pleased to provide further feedback once there is further clarity in this regard.

Recommendation 5

We recommend engaging in further consultations before proceeding with this proposed exception and implementing a structured review mechanism that evaluates the context of past incidents, ensuring that decisions regarding security clearance are informed and equitable.

Further government purposes exceptions⁹

Research and development tax incentive

We support this proposed exception. The Board of Taxation (**BoT**), in its [report](#) on the Review of R&D Tax incentive dual agency administration model, found that the tax secrecy provisions prevented the exchange of information between the Department of Industry, Science and Resources (**DISR**) and the ATO, leading to inefficiencies in the Research and development tax incentive (**R&DTI**) program that affected companies making claims.

The Tax Institute contributed to the BoT consultation and noted the following regarding information sharing:

⁸ Question 17.

⁹ Questions 21, 22 and 23.

We recommend that the government considers codifying an ability for the ATO and Industry Innovation and Science Australia (**IISA**) to share information and confer with each other in appropriate situations. Among other things, this would foreseeably contemplate situations where one agency has commenced proceedings or investigations in respect of a particular applicant. In such cases, consideration should be given to whether one administrator could be required to consider its position with respect to how the legislation it administers applies to a particular applicant at the same time as the other agency commences an investigation, audit, or other inquiry. This would mean that issues could be dealt with around the same time and ideally be resolved simultaneously. Overall, this would have the added benefit of providing transparency to taxpayers as to the information that is shared between the two agencies and minimising the duplication of work by both taxpayers and the administrators.

Recommendation 6

We consider that:

- the proposed exception should be legislated by way of an amendment to the TAA; and
- further targeted consultation is necessary between R&D practitioners, DISR and ATO to understand the nature of information required to improve R&DTI program. By engaging in these focused discussions, R&D professionals and relevant government bodies can work collaboratively to develop a comprehensive strategy that balances the need for information sharing with the principles of fairness, transparency, and accountability.

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

Subject to our comments below, we agree that the ATO should be permitted to disclose protected information with the Treasury secretary and the Australian Prudential Regulation Authority (**APRA**) for the purposes of administering the *Financial Sector (Shareholdings) Act 1998* (Cth) (**FSSA**) and the *Insurance Acquisitions and Takeovers Act 1991* (Cth) (**IATA**). The Consultation Paper indicates the ATO would share information relating to a history of non-compliance with the Treasury secretary and APRA for the purposes of decision-making.

A fundamental aspect revolves around understanding and defining the term 'history of non-compliance'. It requires a deeper assessment of what this term encompasses. It raises critical questions about the specific behaviours or actions that would qualify as non-compliance. For instance, does this history solely refer to instances of failing to submit required documentation or making timely tax payments? Or does it extend to other forms of non-compliance, such as engaging in fraudulent activities or violating regulatory requirements? Clarifying this definition is crucial, as it will directly impact how the ATO's disclosures are interpreted and utilised by the Treasury secretary and APRA.

While Australia aims to attract foreign investment, it needs to simultaneously address the risks associated with tax evasion and intentional non-compliance. Striking this balance is vital for several reasons. On the one hand, a welcoming investment climate is essential for economic growth and development, as it encourages capital inflow and fosters innovation. On the other hand, allowing unchecked non-compliance could undermine the financial system's integrity, leading to potential abuses that could harm the economy and public trust. Therefore, the challenge lies in ensuring that the proposed exception achieves its policy intent without creating an overly burdensome regulatory environment that deters legitimate investment.

Recommendation 7

The Tax Institute is of the view that:

- the Government should carefully consider how the ATO shares information while effectively promoting transparency and accountability. This is necessary to help maintain the integrity of the financial system, and ensure that it remains robust and resilient while creating a favourable environment for investors;
- further targeted consultation and collaboration among various stakeholders, including the ATO, Treasury, APRA, and the broader business community is necessary to ensure that the objectives of compliance and the attraction of foreign investment are balanced appropriately; and
- an oversight mechanism should be established to ensure that the information shared by the ATO is both appropriate and relevant. This mechanism would serve to verify that the data provided genuinely relates to a potential risk, and contributes effectively to the decision-making processes of the Treasury secretary and APRA.

Statement of Tax Record

The ATO should be permitted to verify the authenticity of a Statement of Tax Record (**STR**) when requested by a government department or agency, as outlined in the Consultation Paper. This verification process is designed to provide a binary response, confirming whether the STR is genuine and if it is the most recent version available. Importantly, this proposed exception would not allow the ATO to share specific details or particulars regarding the STR. If there are plans to broaden this proposed exception, engaging in additional consultations with stakeholders is necessary.

myGov

We agree in principle with the proposed exception that the ATO should be allowed to share protected information about changes to contact details on myGov with other government agencies. However, it is important to ensure that this does not disrupt individuals who prefer to use different contact details for valid reasons, such as a preference to use their personal contact details for one government agency and their business contact details for another, or their representative's details when engaging with a particular agency.

Recommendation 8

We consider that enhancing security measures for myGov is necessary to prevent potential compromises that could affect users' information across multiple agencies. An alternative solution could involve enabling myGov to compare data across linked services and notify users of any discrepancies. This would allow individuals to verify which information is correct and update the relevant agencies accordingly.

Fair Work regulatory functions

In principle, we support the proposed exception for the ATO to be permitted to disclose protected information to:

- the Department of Employment and Workplace Relations (**DEWR**) for the purposes of administering the Fair Entitlements Guarantee (**FEG**) Recovery Program; and

- the Fair Work Ombudsman (**FWO**) for the purposes of identifying and recovering unpaid superannuation and wages.

However, the Consultation Paper lacks details regarding the specific types of information that would be disclosed under this exception. We also have concerns about the potential implications for privacy and data security.

Recommendation 9

We are of the view that the nature of the information to be released to the DEWR and FWO should be codified by way of a legislative amendment to the TAA, and only limited disclosures relevant to recovering unpaid amounts should be allowed.

Additionally, safeguards should be established to maintain the integrity and confidentiality of the shared information. For example, safeguards may include stringent access controls to ensure that only authorised personnel can access the information, and regular audits to ensure compliance with disclosure protocols. Further, transparency measures should be implemented, enabling affected individuals to be informed about the disclosure of their information and its intended use.

Australian Business Register

We express concerns over the proposed exception to allow the ATO to disclose protected information for the purposes of showing whether a business is small, medium or large on the Australian Business Register. These concerns are primarily rooted in the complexity and variability of the thresholds that define a 'small business' across different regulatory frameworks.

Various thresholds exist for determining small business status (including for income tax and Goods and Services Tax (**GST**) purposes), including:

- the small business CGT concessions (less than \$2 million aggregated turnover);
- the small business income tax offset (less than \$5 million aggregated turnover);
- the R&DTI and GST reporting (both \$20 million, but calculated in different ways);
- a range of income tax concessions (such as the prepayment rules, the simplified depreciation and trading stock rules and the base rate entity rules) (less than \$50 million aggregated turnover);
- the thin capitalisation rules (\$2 million of debt deductions);
- the *Corporations Act 2001* (Cth) and reporting to the Australian Securities and Investments Commission (**ASIC**); and
- employment law.

Recommendation 10

Given these discrepancies, we recommend first establishing a standardised definition of 'small business' to ensure consistency across all regulatory frameworks before introducing this exception. This should be considered in consultation with stakeholders to reach an appropriate outcome and would facilitate a clearer understanding of the status of businesses.

National Disability Insurance Scheme Act 2013

We agree with the proposed exception to allow the ATO to disclose protected information to the National Disability Insurance Agency (**NDIA**) and NDIS Quality and Safeguards Commission (**NQSC**). However, the nature of the information that is proposed to be disclosed is not specified in the Consultation Paper.

Recommendation 11

We consider that only limited relevant information should be disclosed by the ATO. Further consultations should be conducted on the nature of the information the ATO should be permitted to share, and clear guidelines and safeguards should be developed before introducing this exception.

Indirect Tax Concession Scheme

We have significant concerns about the proposal in the Consultation Paper for the ATO to be able to share protected information with the Department of Foreign Affairs and Trade (**DFAT**) regarding the enforcement of indirect tax laws for the purpose of administering Indirect tax concession Schemes on foreign diplomatic entities and personnel.

While the intention behind this proposed information sharing may be to enhance compliance and ensure that foreign diplomats adhere to Australian tax laws, it also brings to light sensitive issues related to privacy, diplomatic immunity, and the potential for misuse of confidential data. The implications are far-reaching. It highlights the delicate balance that must be maintained between enforcing tax laws and respecting the rights and privileges of foreign diplomats. Sharing such sensitive information without adequate oversight could lead to diplomatic tensions and deter foreign entities from engaging with Australia.

Recommendation 12

Given these complexities, we are of the view that there is a pressing need for enhanced parliamentary oversight and further targeted consultation with stakeholders including legal experts regarding this permission proposed to be granted to the ATO.

TPB other government purposes exceptions¹⁰

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

We agree that the TPB should be permitted to disclose protected information about tax practitioners to the NDIA and NQSC, the IISA and DISR and the DEWR as proposed in the Consultation Paper.

The Consultation Paper indicates that a reasonable suspicion of assisting clients in misleading regulatory bodies serves as the basis for such disclosures; however, the definition of 'reasonable suspicion' is not clear. If the TPB receives evidence from the ATO or other practitioners, it should independently evaluate the practitioner's conduct before sharing any information.

¹⁰ Questions 23, 24 and 25.

We note that the disclosure threshold of having a ‘reasonable suspicion’ is a separate concept from the obligations under the new breach reporting rules and notifying false and misleading statement provisions that apply to registered tax practitioners. Having multiple but similar concepts in the law increases complexity and causes confusion among administrators and tax practitioners. This should be kept in mind when determining the appropriate threshold and concept in the current proposal.

Recommendation 13

We recommend that:

- further targeted consultation is necessary between practitioners, TPB, NDIA, NQSC, IISA, DISR and DEWR to formulate and clarify the meaning of ‘reasonable suspicion’ to facilitate proper administration;
- consideration be given to leveraging off existing concepts such as ‘reasonable grounds to believe’ in the breach reporting rules before introducing a new term;
- only limited disclosure relevant and appropriate to facilitate the effective administration of tax laws is permitted;
- the TPB thoroughly assess the conduct of the practitioner in question, particularly when relying on evidence from the ATO or other professionals, prior to disseminating any information. This approach would ensure a more precise and fair evaluation process.

Services Australia

We also agree that the TPB should be permitted to disclose 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.

Recommendation 14

Please see Recommendation 13, which equally applies to this proposed exception.

Office of the Migration Agents Registration Authority (OMARA)

We support the TPB being 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 the registration of migration agents.

Recommendation 15

Recommendation 13 above, should be taken into consideration for this proposed exception.

Internet service providers¹¹

In principle, we support the proposed exception that allows the ATO and the TPB to make limited disclosure of protected information to internet service providers (**ISPs**) to disrupt access to websites under the *Telecommunications Act 1997* (**Telecommunications Act**) when deemed reasonably necessary for protecting public revenue.

¹¹ Questions, 26, 27 and 28

However, the Consultation Paper does not elaborate on the nature of the limited disclosure.

Recommendation 16

We recommend the following:

- further targeted consultation is undertaken with the ISPs regarding the information required from the ATO and TPB to block website access;
- this proposed exception and the nature of the information that will be disclosed should be legislated by way of an amendment to the TAA;
- the Government should ensure that ISPs have adequate systems and protocols to ensure the strict confidentiality of protected information. It is necessary that these systems not only comply with existing privacy laws but also incorporate best practices in data protection to prevent unauthorised access or misuse of sensitive information; and
- any disclosure of protected information by the ATO and the TPB to ISPs should be strictly regulated. Such regulations should outline specific criteria for when and how information can be shared, ensuring that disclosures are made only in situations where they are absolutely necessary and justified. Additionally, there should be clear accountability measures in place to monitor compliance with these regulations, as well as mechanisms for addressing any breaches of confidentiality that may occur.

Further issues for future consideration

Exceptional and unforeseen circumstances¹²

The Tax Institute is of the view that it is essential and appropriate to accommodate flexible, exceptional, and unforeseen circumstances within the framework of tax administration. Such flexibility is crucial in ensuring that the tax system can respond effectively to unique situations that may arise, allowing for a more equitable and just application of tax laws. However, in this context, we express our concerns about the proposal that would delegate authority to the Governor-General. This delegation would significantly expand the role and powers of the Governor-General, which we consider inappropriate and problematic.

Recommendation 17

In order to effectively address situations that involve exceptional and unforeseen circumstances, we propose incorporating a specific provision into the TAA. This provision would empower the judiciary to approve such cases, ensuring that decisions are subject to judicial oversight and review. By involving the judiciary, we can ensure that the process remains transparent, accountable, and aligned with the rule of law and the separation of powers. This approach safeguards against the potential misuse of power and reinforces the principle of checks and balances within our government and legal system. The judiciary's involvement would introduce a crucial layer of scrutiny, facilitating a fair, independent evaluation of the circumstances and ensuring that any approvals are justified and reasonable, without causing delays in the process.

¹² Questions 29, 30, 31 and 32.

An alternative solution may be to amend the legislation to allow the Government to seek advice from the Attorney-General regarding specific circumstances. Following this, the ATO and the TPB could be granted permission to share protected information, when necessary, in accordance with the guidance from the Attorney-General's department.

Consumer consent

This proposed exception appears to be misaligned with the overarching public interest theme articulated in the Consultation Paper, and, in some circumstances, an individual's consent has the potential to undermine the purpose for which the tax secrecy provisions exist in the first place, i.e. to protect taxpayer information and maintain confidence in the system. While the Consultation Paper indicates that allowing digital sharing of ATO-held data, such as Business Activity Statements, could facilitate the loan application process for businesses, this benefit seems limited to a narrow segment of the population and does not appear directed to alleviate a public interest concern. Further, many taxpayers may not fully understand the ramifications of granting their consent, which could compromise the intended confidentiality of their information. Conversely, an excessive number of consents could complicate the process, as the requirement for consent may act as a barrier.

If the consent process becomes overly burdensome, it may hinder processes for many taxpayers, particularly those who may not have the resources or knowledge to navigate complex consent forms. This could inadvertently exclude certain groups from benefiting from the intended advantages of streamlined data sharing, thereby perpetuating inequities within the system.

Recommendation 18

We recommend understanding the public interest rationale and engaging in further consultations before proceeding with this proposed exception.

Addressing gender-based violence

We have reviewed a copy of the submission by the Inspector-General of Taxation and Taxation Ombudsman dated 24 February 2024 (IGTO's **Submission**). We agree with and endorse the IGTO's Submission.

Domestic violence is recognised as a national crisis, with a significant number of cases involving economic or financial abuse. Financial abuse occurs when a perpetrator uses money to control their partner, often continuing even after the victim-survivor leaves the relationship. This type of abuse is often accompanied by other forms of abuse, such as emotional or physical violence. [Australian Bureau of Statistics data released on 22 November 2023](#) indicates that approximately 16% of women and 8% of men have experienced financial abuse, affecting around 2.4 million people, though these figures are likely to be underestimated. Our understanding is that data compiled by the National Tax Clinic program indicates the prevalence is much higher, with about 80% of female clients reporting such abuse.

A particularly harmful tactic involves placing tax debts in the victim-survivor's name, often without their knowledge, and generally without their informed consent. This can lead to severe financial strain, unstable housing, and prolonged hardship. As the law stands, victim-survivors are legally required to repay these debts, and the ATO can pursue them through various means, including payment plans and bankruptcy proceedings, which can create and exacerbate financial challenges for the victim-survivor, in addition to emotional distress. Bankruptcy can have much broader dire consequences, such as negative impacts on mental health, limited access to housing and credit, and potential loss of child custody in the Family Court.

Many victims are unaware they are experiencing financial abuse, which complicates and hinders help-seeking behaviour. Even in cases where there is some level of awareness, financial instability can compel victim-survivors back into abusive relationships, as they may struggle to manage their finances alone. Tax Clinic clients often face high and unmanageable tax debts, averaging around \$90,000. The tax system can further harm victim-survivors, as they may be held responsible for debts they did not knowingly incur, particularly in cases where joint liability is involved.

The [Independent Rapid Review of Prevention Approaches to End Gender Based Violence Report \(Report\)](#) by the Government recognises the tax system as one of the significant systems that can contribute to this issue and makes recommendations across six key areas. The report recommended that Commonwealth and state and territory governments work together to strengthen multi-agency approaches and better manage risk, with a lens on harm and safety, for victim-survivors of domestic, family and sexual violence (**DFSV**), including the risk of homicide and suicide. This should include strengthening information sharing within and across jurisdictions — including through the National Criminal Intelligence System (**NCIS**).

The Parliamentary Joint Committee Hearing on Corporations and Financial Services Inquiry into the financial services regulatory framework in relation to financial abuse (**Financial Abuse Inquiry**), in its [Final Report](#), made 61 recommendations, of which 15 are relevant to tax law, administration and policy. In paragraph 5.127 of the report, the Joint Committee noted that an inter-departmental task force would enhance information-sharing pathways between government agencies and respond to emergent issues relating to financial abuse and the provisions of government services.

[Recommendation 15](#)

Accordingly, we are of the view that information sharing in this space is the need of the hour and sharing protected information across agencies like the Australian Securities and Investments Commission (**ASIC**), the NCIS, the ATO and Centrelink would help address the complexities of financial abuse, particularly in relation to child support and tax obligations. However, careful consideration should be given to the nature of the information proposed to be shared and safeguards around the further use of that information.