

EXPLANATORY STATEMENT

Issued by authority of select a Minister

Taxation Administration Act 1953

Treasury Laws Amendment (Measures for Consultation) Regulations 2023: extending tax whistleblower protections

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.

Section 14ZZW(2)(d) of the Act provides that the *Taxation Administration Regulations 2017* (the primary regulations) may prescribe a person or body to whom the operation of 14ZZW(1) does not apply.

The purpose of the *Treasury Laws Amendment (Measures for Consultation) Regulations 2023: extending tax whistleblower protections* (the Instrument) is to allow the regulators of the tax system, including the Commissioner of Taxation, Tax Practitioners Board (TPB) and Commissioner of the Australian Charities and Not-for-profits Commission (ACNC), to share necessary whistleblower information more effectively.

The tax whistleblower laws came into effect in 2019. They gave eligible whistleblowers appropriate protection if they made an eligible disclosure to the ATO or another eligible recipient about the tax affairs of a possible non-compliant taxpayer. However, the existing whistleblower framework does not extend to disclosures to the TPB about the affairs of entities providing tax agent services or to the ACNC about the tax-related affairs of charities. This meant that the TPB and ACNC 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 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 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 *Taxation Administration Regulations 2017* (principal regulations) by prescribing the TPB and ACNC under paragraph 14ZZW(2)(d) of the Act.

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 and ACNC to ensure that the regulators of the tax system can comprehensively address the integrity of the taxation system.

These regulations support changes being made by the Treasury Laws Amendment (Measures for Consultation Bill) 2023 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.

The Regulations sunset on ###, and as they contain transitional provisions, they are not 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 later of the day the amendments in Treasury Laws Amendment (Measures for Consultation Bill) 2023 commence, and the day after the regulations is registered.

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

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

Details of the *Treasury Laws Amendment (Measures for Consultation) Regulations 2023*

Section 1 – Name

This section provides that the name of the regulations is the *Treasury Laws Amendment (Measures for Consultation) Regulations 2023* (the Regulations).

Section 2 – Commencement

Schedule 1 to the Regulations commenced on the later of the day the amendments in the Treasury Laws Amendment (Measures for Consultation Bill) 2023 commence, and the day after the instrument is 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.

Item 1 of the Regulations created Regulation 13A, which prescribed the Tax Practitioners Board and the Commissioner of the Australian Charities and Not for profits Commission for the purposes of paragraph 14ZZW(2)(d) of the Act. Consequently, a person may disclose confidential information to the 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 by the ATO, but also extends to eligible recipients under section 14ZZV of the Act.

Item 2 of the Regulations created Regulation 77, which acts as a transitional provision to protect the operation of 14ZZW of the Act prior to the commencement of these regulations.