

EXPOSURE DRAFT

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Inserts for
**Treasury Laws Amendment (Measures
for Consultation) Bill 2023: Extending
tax whistleblower protections**

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details

1. Schedule #	The later of: (a) the first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent; and (b) 1 July 2024.	
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Schedule #—Amendments

Taxation Administration Act 1953

1 Subsection 2(1)

Insert:

Tax Practitioners Board means the Tax Practitioners Board established by section 60-5 of the *Tax Agent Services Act 2009*.

2 Section 8AC

Omit “established by the *Tax Agent Services Act 2009*”.

3 After subsection 14ZZT(1)

Insert:

- (1A) A disclosure of information by an individual (the *discloser*) qualifies for protection under this Part if:
- (a) the discloser is an eligible whistleblower in relation to an entity (within the meaning of the *Income Tax Assessment Act 1997*); and
 - (b) the disclosure is made to:
 - (i) the Tax Practitioners Board; or
 - (ii) the Commissioner; and
 - (c) the discloser considers that the information may assist the Tax Practitioners Board to perform its functions or duties under the *Tax Agent Services Act 2009*, or an instrument made under that Act, in relation to the entity or an associate (within the meaning of section 318 of the *Income Tax Assessment Act 1936*) of the entity.

4 After subsection 14ZZT(3)

Insert:

- (3A) A disclosure of information by an individual (the *discloser*) qualifies for protection under this Part if the disclosure is made:
- (a) to any of the following of which the discloser is a member:
 - (i) a professional association that has regulatory functions or provides professional career support or development to its members;

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- 1 (ii) a body that represents the professional interests of the
2 discloser;
- 3 (iii) an organisation registered under the *Fair Work*
4 *(Registered Organisations) Act 2009*; and
- 5 (b) for the purpose of obtaining assistance in relation to the
6 operation of this Part.

7 (3B) A disclosure of information by an individual (the *discloser*)
8 qualifies for protection under this Part if the disclosure is made to a
9 medical practitioner or psychologist for the purpose of obtaining
10 medical or psychiatric care, treatment or counselling (including
11 psychological counselling).

12 5 Subsection 14ZZT(4)

13 Insert:

14 *medical practitioner* means a person registered or licensed as a
15 medical practitioner under a law of a State or Territory that
16 provides for the registration or licensing of medical practitioners.

17 *psychologist* means a person registered or licensed as a
18 psychologist under a law of a State or Territory that provides for
19 the registration or licensing of psychologists.

20 6 After section 14ZZT

21 Insert:

22 14ZZTA Information disclosed for the purpose of assisting the Tax 23 Practitioners Board

- 24 (1) If information is disclosed to the Commissioner in accordance with
25 subsection 14ZZT(1A) then, for the purposes of the following
26 provisions:
- 27 (a) paragraph 355-30(1)(a) in Schedule 1;
- 28 (b) paragraph (a) of the definition of *official information* in
29 subsection 90-1(1) of the *Tax Agent Services Act 2009*;
- 30 the information is taken to have been disclosed or obtained under
31 or for the purposes of this Act, and not the *Tax Agent Services Act*
32 *2009*.
- 33 (2) If information is disclosed to the Tax Practitioners Board in
34 accordance with subsection 14ZZT(1A) then, for the purposes of
35 the following provisions:

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- 1 (a) paragraph 355-30(1)(a) in Schedule 1;
2 (b) paragraph (a) of the definition of *official information* in
3 subsection 90-1(1) of the *Tax Agent Services Act 2009*;
4 the information is taken to have been disclosed or obtained under
5 or for the purposes of the *Tax Agent Services Act 2009*, and not this
6 Act.

7 Paragraph 14ZZX(1)(c)

8 After “to the Commissioner”, insert “or the Tax Practitioners Board”.

9 8 After section 14ZZX

10 Insert:

11 14ZZXA Claims for protection

- 12 (1) If, in civil or criminal proceedings (the *primary proceedings*)
13 instituted against an individual in a court, the individual makes a
14 claim (relevant to the proceedings) that, because of section 14ZZX,
15 the individual is not subject to any civil, criminal or administrative
16 liability for making a particular disclosure:
- 17 (a) the individual bears the onus of adducing or pointing to
18 evidence that suggests a reasonable possibility that the claim
19 is made out; and
 - 20 (b) if the individual discharges that onus—the party instituting
21 the primary proceedings against the individual bears the onus
22 of proving that the claim is not made out; and
 - 23 (c) the court must deal with the claim in separate proceedings;
24 and
 - 25 (d) the court must adjourn the primary proceedings until the
26 claim has been dealt with; and
 - 27 (e) none of the following:
 - 28 (i) any admission made by the individual in the separate
29 proceedings;
 - 30 (ii) any information given by the individual in the separate
31 proceedings;
 - 32 (iii) any other evidence adduced by the individual in the
33 separate proceedings;
- 34 is admissible in evidence against the individual except in
35 proceedings in respect of the falsity of the admission,
36 information or evidence; and

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1 (f) if the individual or another person gives evidence in the
2 separate proceedings in support of the claim—giving that
3 evidence does not amount to a waiver of privilege for the
4 purposes of the primary proceedings or any other
5 proceedings.

6 (2) To avoid doubt, a right under section 126K of the *Evidence Act*
7 *1995* not to be compelled to give evidence is a privilege for the
8 purposes of paragraph (1)(f) of this section.

9 **9 Paragraph 15(3)(a)**

10 Omit “(within the meaning of that Act)”.

11 **10 Subsection 15A(12)**

12 Omit “(within the meaning of that Act)”.