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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

EXPOSURE DRAFT EXPLANATORY MATERIALS

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TREASURY LAWS AMENDMENT (MEASURES FOR CONSULTATION) BILL  
2023: EXTENDING TAX WHISTLEBLOWER PROTECTIONS

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EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer, the Hon Jim Chalmers MP)



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## **Glossary**

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This Explanatory Memorandum uses the following abbreviations and acronyms.

<b>Abbreviation</b>	<b>Definition</b>
ATO	Australian Taxation Office
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
TAA 1953	<i>Taxation Administration Act 1953</i>
TASA 2009	<i>Tax Agent Services Act 2009</i>
TPB	Tax Practitioners Board
PID Act	<i>Public Interest Disclosure Act 2013</i>



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# **Chapter 1: Extending tax whistleblower protections**

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## Outline of chapter

- 1.1 The Treasury Laws Amendment (Measures for Consultation) Bill 2023 (Bill) amends Part IVD of the TAA 1953 to extend whistleblower protections to eligible whistleblowers who make disclosures to the TPB where they believe the information may assist the TPB to perform its functions or duties under the TASA 2009.
- 1.2 All legislative references in this Chapter are to the Bill unless otherwise stated.

## Context of amendments

- 1.3 The PwC scandal exposed severe shortcomings in Australia’s regulatory frameworks, including limitations in the abilities of Australia’s regulators to receive and share information from whistleblowers. These limitations arbitrarily and negatively constrain the integrity of the taxation system.
- 1.4 Whilst individuals are currently protected when they make disclosure of information to the Commissioner of Taxation (Commissioner) for the purposes of taxation law, there is no similar protections for disclosures made to the TPB. The 2019 James’ Review of the Tax Practitioners Board concluded the inability of the TPB to receive information from an eligible whistleblower as an anomalous outcome. As such, the Commissioner is equipped to address tax misconduct that falls within the Commissioner’s purview, but the TPB is not

equally able to address malicious practices by tax practitioners or scheme promoters.

- 1.5 The policy objectives are to protect a new range of disclosures, relating to potential misconduct by tax practitioners.
- 1.6 This measure is one of several responses to the breach of confidence and unethical use of confidential information by PwC and seeks to restore public trust in the public sector and strengthen integrity within the regulatory frameworks and systems related to tax intermediaries.

## Comparison of key features of new law and current law

**Table 1.1 Comparison of new law and current law**

<b>New law</b>	<b>Current law</b>
A disclosure of information qualifies for protection if made to the Commissioner or to the TPB to assist the TPB to perform its functions or duties under the TASA 2009.	A disclosure of information qualifies for whistleblower protection if made to the Commissioner to assist the Commissioner with his or her functions or duties under the taxation law.
A discloser is further protected if they make disclosures to several entities for the purposes of obtaining assistance in relation to a disclosure, or to a medical practitioner or psychologist.	A discloser qualifies for protection if the disclosure of information is made to a legal practitioner for the purposes of obtaining legal advice or representation about disclosures made to the commissioner or an eligible recipient.
The burden of proof is reversed for claims for protection from liabilities by a discloser, applying in a similar manner to parts of the PID Act.	A discloser that qualifies for protection is not subject to several liabilities in relation to the disclosure.

## Detailed explanation of new law

### New protected disclosures

#### **TPB**

- 1.7 A discloser is protected under Part IVD if they make disclosures to the TPB or the Commissioner where they consider the information may assist the TPB to



perform its functions and duties under the TASA 2009.

**[Schedule #, item 3, subsection 14ZZT(1A) of the TAA 1953]**

- 1.8 Although such disclosures are intended to assist the TPB in addressing tax practitioners misbehaviour, a discloser is also protected if they provide such information via the Commissioner.  
**[Schedule #, item 3, subparagraph 14ZZT(1A)(b)(ii) of the TAA 1953]**
- 1.9 Once information is disclosed to the TPB, the Board has the power to use this information as necessary or convenient for performing its functions under section 60-15 of the TASA 2009.

### Other disclosures

- 1.10 The Bill expands the types of disclosures that can be made to entities other than the Commissioner or the TPB to support eligible disclosers in obtaining assistance in the process of whistleblowing. In addition to disclosures made to legal practitioners under the existing subsection 14ZZT(3), disclosures of information are also protected when made to a number of entities who assist disclosers in their professional capacity. This includes relevant professional associations, bodies that represent the professional interests of disclosers and registered organisations under the *Fair Work (Registered Organisations) Act 2009* (such as trade or industry unions). These amendments are intended to broaden the scope of persons to which a discloser may rely on for professional assistance in blowing the whistle on potential misconduct.  
**[Schedule #, item 4, subparagraph 14ZZT(3A) of the TAA 1953]**
- 1.11 Disclosures of information made to medical practitioner or psychologists also qualify for protection under Part IVD. This protection aligns the whistleblower regime with exemptions found in the *National Anti-Corruption Commission Act 2022*, to support the health and wellbeing of whistleblowers.  
**[Schedule #, item 4, subparagraph 14ZZT(3B) of the TAA 1953]**

### Treatment of disclosed information

- 1.12 As information received under new subsection 14ZZT(1A) may be made to either the TPB or the Commissioner of Taxation, both the respective secrecy and confidentiality provisions within Division 355 of the TAA 1953 or Subdivision 70-E of the TASA 2009 may apply. For the avoidance of doubt and to ensure that such disclosed information is appropriately protected, only one Act applies to a disclosure at a time.
- 1.13 If a disclosure is made to the Commissioner, then the disclosed information is protected information under paragraph 355-30(1)(a) of the TAA 1953. As such, recording or disclosing information received under 14ZZT(1A) to another entity is an offence under section 355-25.  
**[Schedule #, item 6, subsection 14ZZTA(1) of the TAA 1953]**

- 1.14 Conversely, if the disclosure is made to the TPB, then the information is treated as official information as defined in section 90-1(1) of the TASA 2009. As such, recording or disclosing information received under 14ZZT(1A) to another entity is an offence under section 75-35 of the TASA 2009.  
*[Schedule #, item 6, subsection 14ZZTA(2) of the TAA 1953]*

## Claims for protection

- 1.15 Section 14ZZXA establishes evidentiary burdens and procedures regarding claims for protection made under section 14ZZX. These are made to align with section 10 and section 23 of the PID Act 2013.
- 1.16 Where an individual makes a claim under section 14ZZX, the evidential burden of proof is reversed such that the individual bears the onus of substantiating their claim for protection.  
*[Schedule #, item 8, subsection 14ZZXA of the TAA 1953]*
- 1.17 The [Guide to Framing Commonwealth Offences](#) states that it may be appropriate for the evidentiary burden of proof to be placed on a defendant where the facts in relation to the defence are peculiarly within the knowledge of the defendant. Where a whistleblower is making a claim that they have made a disclosure that qualifies for protection under Part IVD of the Act, it will be uniquely within their knowledge as to the circumstances of the information they disclosed and the motivations for doing so.

## Commencement, application, and transitional provisions

- 1.18 Schedule [#] to the Bill commences on later of the first 1 January, 1 April, 1 July or 1 April to occur after the day the Bill receives Royal Assent; and 1 July 2024.
- 1.19 The amendments apply on commencement.