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Submission from the Tax Justice Network Australia to the *Review of Tax Regulator Secrecy Exceptions* Consultation Paper
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The Tax Justice Network Australia (TJN-Aus) welcomes the opportunity to make a submission to the *Review of Tax Regulator Secrecy Exceptions* Consultation Paper.

1. Are the above factors appropriate considerations when considering new exceptions to the TAA 1953 or TASA? What other factors (if any) should be considered?

The TJN-Aus supports most of the factors proposed. We do not see the relevance of the factor “whether the new disclosure would represent a significant departure from existing disclosure provisions” is relevant. If a disclosure would assist in addressing serious criminal activity, whether the disclosure is a significant departure from existing disclosure provisions should not be a factor.

Regarding the factor “whether the information can be obtained from other sources”, should consider the difficulty of the other agency being able to access the information from the other source. If obtaining information from the other source would be difficult, then the disclosure should be justified.

An additional factor should be if the serious criminal activity detected by the ATO or TPB is likely to be detected by the other agency without the disclosure being made to them.

An alternative approach to the one in the consultation paper would be to allow the ATO and TPB to have a high-level broad public interest test that applies to the disclosure of protected information that they can apply flexibly, rather than many specific exemptions. The challenge would be to develop the test to be robust enough to avoid accusations that protected information was being disclosed for matters that were not sufficiently serious, but flexible enough to allow for disclosure in all circumstances where such disclosure would be warranted.

2. Does the broad public interest in the proposal sufficiently justify this possible new exception?

The public interest in preventing fraud justifies the new exception.

3. Are the proposed safeguards appropriate? Are additional safeguards required?

The proposed safeguards are appropriate to balance the need to address fraud while making sure the disclosed information is used as intended and that the information is appropriately protected.

7. Would fraud prevention programs in the following sectors be considered to be in the broad public interest?

- the superannuation system; and,
- the financial systems sector, including the banking, payments and insurance systems.

We agree that preventing fraud in superannuation, banking, payments, and insurance systems is in the public interest, so they should be included in the new exception.

8. Does the broad public interest in the proposal sufficiently justify this possible new exception?

The TJN-Aus agrees that the proposed new exception serves the public interest as the Office of the Director of Military Prosecutions, Australian Sanctions Office and AUSTRAC regularly deal with cases of severe criminal activity. People on Australia's sanction list have usually been involved in serious human rights abuses, such as senior military personnel from Myanmar who were involved in the Rohingya mass murder. Sanctions against such people must be enforced.

AUSTRAC deals with money laundering and the financing of terrorism. The predicate offences for money laundering often involve inflicting serious harm on members of the community, such as human trafficking and commercial online child sexual abuse.

9. Are the proposed safeguards appropriate? Are additional safeguards required?

The proposed safeguards are appropriate and we do not see the need for additional safeguards. The provision of safeguards needs to be weighed against making sure the process for disclosure does not become so burdensome that it becomes unworkable or so lengthy that by the time the information is provided it is no longer helpful.

10. Does the proposed exception sufficiently help to address the issue identified? Are further changes/ exceptions necessary?

The proposed exception will assist in addressing the issue identified. After implementation, there should be a review to assess if further changes and exceptions are necessary.

20. Does the broad public interest in the proposal sufficiently justify this possible new exception?

The TJN-Aus believes there is a broad public interest that justifies the proposed new exceptions as they would apply to:

- the Research and Development Tax Incentive, as fraudulent behaviour of claiming research and development under the Incentive results in a loss of government revenue and diverts funds away from genuine research and development activities;
- disclosing protected information to the Treasury Secretary and APRA for the purposes of administering the *Financial Sector (Shareholdings) Act 1998* and the *Insurance Acquisitions and Takeovers Act 1991*;
- the ATO confirming the genuineness of a Statement of Tax Record at the request of a government department or agency and that it is the most recent STR. Such a measure further upholds the integrity of the measure that requires businesses tendering for Commonwealth procurements of over \$4 million to have to provide a valid STR;
- the ATO being permitted to disclose protected information about changes to contact details on myGov with other government agencies linked to that user's myGov account. However, in this case we believe that the disclosure should only occur with

the user's consent, as the benefit is to the user not having to change their details multiple times;

- the ATO being able to disclose protected information to DEWR for the purposes of administering the FEG Recovery Program and the FWO for the purposes of identifying and recovering unpaid superannuation and wages;
- the ATO be permitted to disclose protected information for the purposes of showing whether a business is small, medium or large on the Australian Business Register;
- the ATO being able to disclose protected information to the NDIA and the NDIS Quality and Safeguards Commission for the purposes of administering the *National Disability and Insurance Scheme Act 2013*; and,
- the ATO being permitted to disclose protected information to DFAT regarding the application of the indirect tax laws to foreign consulates, embassies, high commissions and foreign diplomatic staff, for the purposes of administering the *Indirect Tax Concession Scheme*.

21. Are the proposed safeguards appropriate? Are additional safeguards required?

In the cases outlined in the answer to question 20, we believe the safeguards are appropriate.

23. Does the broad public interest in the proposal sufficiently justify this possible new exception?

The TJN-Aus believes there is a broad public interest that justifies the proposed new exceptions as they would apply to the TPB being permitted to disclose protected information:

- about tax practitioners with the NDIA and the NDIS Quality and Safeguards Commission, where it has a reasonable suspicion that a tax practitioner is assisting their clients to mislead the NDIA or NDIS Quality and Safeguards Commission;
- about R&D advisers with the IISA and DISR for the purposes of administering the R&D Tax Incentive;
- to the DEWR for the purposes of administering the Recovery Program; and,
- 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 registration of migration agents.

24. Are the proposed safeguards appropriate? Are additional safeguards required?

In the cases outlined in the answer to question 23, we believe the safeguards are appropriate.

26. Does the broad public interest in the proposal sufficiently justify this possible new exception?

The broad public interest of protecting public revenue justifies the ATO and TPB being permitted to disclose to ISPs protected information necessary for the ISP to execute access disruption to websites under subsection 313(3) of the *Telecommunications Act 1997*.

27. Are the proposed safeguards appropriate? Are additional safeguards required?

We believe the safeguards are appropriate.

29. Should the Governor-General be provided with a power to enable the ATO and TPB to share protected information in exceptional and unforeseen circumstances?

The TJN-Aus supports the Governor-General having the power to enable the ATO and TPB being able to share protected information in exceptional and unforeseen circumstances.

30. Would the benefits outweigh the risks and costs associated with introducing an exceptional and unforeseen circumstances exception?

Provided the exception for exceptional and unforeseen circumstances has adequate safeguards against misuse and to ensure disclosed information is appropriately managed and safeguarded, then the benefits of the exception outweigh the risks. We do not conceive of how such an exception imposes costs.

31. Are the identified safeguards appropriate? Are additional safeguards required?

The TJN-Aus believe the proposed safeguards are too restrictive. The Parliament putting in place a permanent exception after consultation can be a lengthy process. To avoid the Governor-General having to make repeated extensions on the use of the exception, the Governor-General should be able to make a declaration that remains in force for up to 12 months.

32. Are there alternative mechanisms to provide the flexibility to address exceptional and unforeseen circumstances that should be considered?

As noted in our response to question 1, an alternative approach would be to allow the ATO and TPB to have a high level broad public interest test that applies to the disclosure of protected information that they can apply flexibly. The challenge would be to develop the test to be robust enough to avoid accusations that protected information was being disclosed for matters that were not sufficiently serious, but flexible enough to allow for disclosure in all circumstances where such disclosure would be warranted.

38. Are any further changes necessary to the tax secrecy regime to ensure it operates in a complimentary manner with the DAT Act?

We believe that the *Data Availability and Transparency Act 2022* should be amended to remove the restriction on disclosure for enforcement-related purposes and to detect, investigate, or address acts or practices detrimental to public revenue.

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Background on the Tax Justice Network and Tax Justice Network Australia

The Tax Justice Network (TJN) is an independent organisation launched in the British Houses of Parliament in March 2003. It is dedicated to high-level research, analysis and advocacy in the field of tax and regulation. TJN works to map, analyse and explain the role of taxation and the harmful impacts of tax evasion, tax avoidance, tax competition and tax havens. TJN's objective is to encourage reform at the global and national levels.

The Tax Justice Network believes our tax and financial systems are our most powerful tools for creating a just society that gives equal weight to the needs of everyone. But under pressure from corporate giants and the super-rich, our governments have programmed these systems to prioritise the wealthiest over everybody else, wiring financial secrecy and tax havens into the core of our global economy. This fuels inequality, fosters corruption and undermines democracy. We work to repair these injustices by inspiring and equipping people and governments to reprogram their tax and financial systems.

The Tax Justice Network Australia (TJN-Aus) is the Australian arm of TJN.

In Australia, the current members of TJN-Aus are:

- ActionAid Australia
- Aid/Watch
- Anglican Overseas Aid
- Australian Council for International Development (ACFID)
- Australian Council of Social Service (ACOSS)
- Australian Council of Trade Unions (ACTU)
- Australian Education Union (AEU)
- Australian Manufacturing Workers Union (AMWU)
- Australian Nursing & Midwifery Federation (ANMF)
- Australian Services Union (ASU)
- Australian Workers Union, Victorian Branch (AWU)
- Baptist World Aid
- Caritas Australia
- Centre for International Corporate Tax Accountability & Research (CICTAR)
- Community and Public Service Union (CPSU)
- Electrical Trades Union, Victorian Branch (ETU)
- Evatt Foundation
- Friends of the Earth (FoE)
- GetUp!
- Greenpeace Australia Pacific
- International Transport Workers Federation (ITF)
- Jubilee Australia
- Maritime Union of Australia (MUA)
- National Tertiary Education Union (NTEU)
- New South Wales Nurses and Midwives' Association (NSWMWA)
- Oaktree Foundation
- Oxfam Australia
- Publish What You Pay Australia
- Save Our Schools
- SEARCH Foundation
- SJ around the Bay
- TEAR Australia
- The Australia Institute
- Union Aid Abroad – APHEDA
- United Workers' Union (UWU)
- Uniting Church in Australia, Synod of Victoria and Tasmania
- UnitingWorld
- Victorian Trades Hall Council
- World Vision Australia