

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Assistant Treasurer and Minister for Financial Services**

#### *Taxation Administration Act 1953*

#### *Taxation Administration Amendment (Disclosure of Information to National Taskforce Morpheus) Regulations 2024*

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 which are necessary or convenient to be prescribed for giving effect to the Act.

Subsection 355-70(12) in Schedule 1 to the Act provides that the regulations may prescribe a taskforce for the purposes of item 4 of the table in subsection 355-70(1). A major purpose of a prescribed taskforce must be protecting the public finances of Australia.

The purpose of *Taxation Administration Amendment (Disclosure of Information to National Taskforce Morpheus) Regulations 2024* (the Regulations) is to amend the *Taxation Administration Regulations* (principal Regulations) to permit disclosures of protected information by the Australian Taxation Office (ATO) to National Taskforce Morpheus (the Taskforce).

The Act sets out the administrative framework for taxation law in Australia. This includes rules relating to the protection of taxpayer information. Under section 355-25 in Schedule 1 to the Act, it is an offence for a taxation officer to record or disclose (hereafter referred to as ‘disclose’) protected information that the taxation officer acquired in their role as a taxation officer.

There are various exceptions to this offence, including disclosure for law enforcement and related purposes. Section 355-70 permits taxation officers to disclose protected information to a prescribed taskforce officer if the disclosure is for or in connection with a purpose of a prescribed taskforce. The principal regulations prescribe taskforces for the purposes of this exception.

National Taskforce Morpheus is a joint law enforcement initiative targeting the highest Outlaw Motorcycle Gangs risks to Australia to detect and disrupt their criminal activity. The Taskforce has taken over the functions of the National Anti-Gang Taskforce (NAGT) which ceased operations on 30 June 2023. The NAGT is a prescribed taskforce for the purposes of section 355-70.

Schedule 1 to the Regulations amends the principal Regulations to add ‘National Taskforce Morpheus’ to the list of prescribed taskforces. This allows taxation officers to disclose relevant information to taskforce officers in the Taskforce, thereby enabling the ongoing disclosure of information between taskforce agencies under the new arrangement. For example, the ATO could provide protected information that identifies illicit profits, attempts by Outlaw Motorcycle Gangs to infiltrate legitimate business or professional facilitators assisting Outlaw Motorcycle Gangs to carry out illegal activities.

Consistent with subsection 355-70(12) of the Act, a major purpose of the Taskforce is to protect the public finances of Australia by addressing the risks Outlaw Motorcycle Gangs pose to the collection of public revenue and government expenditure programs.

Further details of these amendments are set out in [Attachment A](#).

Consultation on Schedule 1 to the Regulations was undertaken with the ATO and the Australian Federal Police. No public consultation took place on the amendments made by Schedule 1 as they are minor and machinery in nature, relating to the internal processes of Government.

The Act specifies no conditions that need to be satisfied before the power to make the proposed Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commenced on the day after it was registered on the Federal Register of Legislation. The amendments made by Schedule 1 to the Regulations apply to disclosures made on or after 1 January 2025, regardless of the time that the relevant taxpayer information was obtained.

The Regulations are subject to the automatic repeal process under section 48A of the *Legislation Act 2003*. This section provides that where a legislative instrument only repeals or amends another instrument, without making any application, saving or transitional provisions relating to the amendment or repeal, that instrument is automatically repealed. By virtue of paragraph 48A(2)(aa) of that Act, the Instrument automatically repeals on the end of the last day on which the Instrument or a provision of the Instrument may be disallowed in a House of Parliament. Once repealed, the sunseting regime set out in Part 4 of Chapter 3 of the *Legislation Act 2003* is no longer relevant to the Instrument. The principal regulations sunset on 1 October 2027.

The Regulations are subject to disallowance.

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

A Statement of Compatibility with Human Rights is in [Attachment B](#).

**Details of the *Taxation Administration Amendment (Disclosure of Information to National Taskforce Morpheus) Regulations 2024***

**Section 1 – Name**

This section provides that the name of the instrument is the *Taxation Administration Amendment (Disclosure of Information to National Taskforce Morpheus) Regulations 2024* (the Regulations).

**Section 2 – Commencement**

This Schedule provides that the Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

**Section 3 – Authority**

This section provides that the Regulations is made under the *Taxation Administration Act 1953* (the Act).

**Section 4 – Schedule**

This section provides that each instrument that is specified in a Schedule to the instrument are amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

**Schedule 1 – Amendments**

**Item 1 – Addition of National Taskforce Morpheus to the table of prescribed taskforces**

Item 1 in Schedule 1 to the Regulations amends the *Taxation Administration Regulations 2017* (the principal regulations) to allow taxation officers to disclose protected information to National Taskforce Morpheus officers.

Section 355-25 in Schedule 1 to the Act provides that it is an offence for a taxation officer (defined at subsection 355-30(2) in Schedule 1 to the Act) to record or disclose protected information (that is, information obtained under a taxation law that relates to an entity and could be used to identify that entity) that the taxation officer acquired in their role as a taxation officer.

Section 355-70 in Schedule 1 to the Act provides exceptions to this offence for records or disclosures made for law enforcement and related purposes. This includes records made or disclosures to a prescribed taskforce officer that is for or in connection with a purpose of the prescribed taskforce (see item 4 of the table in subsection 355-70(1) in Schedule 1 to the Act).

Subsection 355-70(12) in Schedule 1 to the Act provides that the regulations may prescribe a taskforce for the purposes of item 4 of the table in subsection 355-70(1) in Schedule 1 to the Act. Subsection 355-70(12) requires that a major purpose of a prescribed taskforce must be protecting the public finances of Australia. Consistent with the requirements of the

Act, a major purpose of National Taskforce Morpheus is protecting the public finances of Australia by addressing the risks from Outlaw Motorcycle Gangs (OMCGs) to the taxation laws and government expenditure programs.

Section 67 of the principal regulations contains a list of prescribed taskforces for the purposes of subsection 355-70(12) in Schedule 1 to the Act.

Schedule 1 to the Regulations amends the principal regulations to include National Taskforce Morpheus in this list. This allows taxation officers to disclose protected information to National Taskforce Morpheus officers where the record or disclosure is for or in connection with a purpose of the Taskforce.

Section 355-175 of the Act permits on disclosure of protected information if it made for the original purposes of the disclosure or in connection with the original purpose. This includes where the original purposes is for one purposes of a prescribed taskforce and then on disclosed for another purpose of that taskforce. This permits National Taskforce Morpheus officers to further disclose amongst each other any information validly disclosed by taxation officers.

National Taskforce Morpheus is a joint law enforcement initiative between all Australian state and territory police, the Australian Federal Police, other Australian Government partners and New Zealand Police. The taskforce proactively and collaboratively target the highest OMCG risks to Australia, and detect their criminal activity. As such, purposes for which information may be disclosed to, or on disclosed within, the taskforce could include:

- improving understanding of the nature of OMCG serious and organised crime activity;
- developing and implementing crime prevention and disruption strategies;
- identifying underlying factors that allow OMCGs to be resilient to law enforcement;
- restricting and preventing opportunities for OMCGs to infiltrate legitimate business;
- confiscating illicit profits;
- targeting professional facilitators who assist OMCGs to carry out their illegal activities.

## **Item 2 – Transitional Provisions**

This item provides transitional provisions to allow for the sharing of information obtained before, on or after the commencement of the Regulations.

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

**Taxation Administration Amendment (Disclosure of Information to National Taskforce Morpheus) Regulations 2024**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

The Regulations amend the *Taxation Administration Regulations 2017* to include National Taskforce Morpheus as a prescribed taskforce to enable the disclosure of protected information and other forms of confidential information.

**Human rights implications**

Schedule 1 to the Regulations engages the right to protection from unlawful or arbitrary interference with privacy under Article 17 of the International Covenant on Civil and Political Rights (ICCPR) because it allows for the sharing of protected, private tax and financial information more broadly than is currently permitted by law.

The right in Article 17 may be subject to permissible limitations, where these limitations are authorised by law and are not arbitrary. In order for an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the particular circumstances. The UN Human Rights Committee has interpreted the requirement of ‘reasonableness’ to imply that any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case.

The Regulations amend the *Taxation Administration Regulations 2017* to enable the tax officers to disclose protected information to taskforce officers of National Taskforce Morpheus where the record or disclosure is for or in connection with a purpose of the taskforce. The amendment will further permit members of the taskforce to on disclose protected information to other members of the taskforce where that disclosure is in connection with a purpose of the taskforce.

This amendment enables effective and timely collaboration during investigations into the activity of Outlaw Motorcycle Gangs (OMCGs). The amendment is a reasonable change as it will allow agencies in the Taskforce to work together more effectively to respond to, manage and mitigate the risks from OMCGs to the taxation laws and government expenditure programs. Importantly, this limited information sharing will substantially improve Morpheus’ ability to detect the activity of OMCGs.

The sharing of certain protected information necessary for National Taskforce Morpheus to perform its regulatory function will only be to taskforce officers in National Taskforce Morpheus, ensuring the protected information is not disseminated more broadly than necessary, and is only shared proportionately to respond to, better manage and mitigate risks from OMCGs to the taxation laws and government expenditure programs.

Taskforce officers are required to adhere to the on-disclosure rules in section 355-175 in Schedule 1 to the *Taxation Administration Act 1953*, ensuring ongoing protection of privacy once it is disclosed to National Taskforce Morpheus officers.

The Regulations are intended to be a proportionate response to the criminal activity of OMCGs. The limited potential infringements on the right to privacy caused by the sharing of protected information and other forms of confidential information are substantially outweighed by the tangible benefits to the integrity of Australia's taxation laws and government expenditure programs.

### **Conclusion**

To the extent that this legislative instrument engages with human rights, it is proportionate and necessary.