

## **IPA NEWS**

### **Seeking member views – Review of AI and the Australian Consumer Law**

The Treasury is 'seeking your views on whether the Australian Consumer Law (ACL) remains suitable to: protect consumers who use Artificial Intelligence (AI); and support the safe and responsible use of AI by businesses'. Submissions are due to The Treasury by **12 November 2024**.

## **TAXATION**

### **Tax whistleblower laws extended to other tax regulators**

The Government has registered regulations extending the disclosures within the existing tax whistleblower framework to the TPB, the ACNC, and the IGT.

### **90% of tip offs deemed "suitable" for further investigation: ATO warns**

The ATO has issued a media release stating more than 47,000 tip-offs were reported in 2023-24 with 90% of tip-offs analysed deemed suitable for further investigation.

### **Government payments to service providers: ATO data-matching program**

The ATO has issued a notice that it will acquire government payments data from government entities administering government programs for 2023-24 to 2025-26.

### **Treasury annual report 2023-24 released**

Treasury has released its 2023-24 annual report outlining performance against outcomes, program and performance information.

### **GST: food of a kind marketed as a prepared meal – GSTD 2024/D3**

GSTD 2024/D3 (replacing GSTD 2024/D1) sets out the ATO's revised preliminary views on when a product is food of a kind marketed as a prepared meal.

### **ATO-led Operation Protego sees woman sentenced for GST fraud**

The ATO has highlighted another prosecution as a result of Operation Protego, the ATO-led investigation into GST fraud, and provided an update on the operation.

## **Australian Small Business and Family Enterprise Ombudsman (ASBFEO) – Tax Concierge Service**

‘The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) provides a Tax Concierge Service to help small business operators (or those who deal with their tax) navigate the Administrative Review Tribunal (ART) process’.

### **Taxation submissions**

The IPA has made four recent submissions including two joint submissions. The submissions were: ‘Senate Economics References Committee inquiry into Australia’s taxation system’; ‘PCG 2024/D2 Personal Services Businesses & Part IVA of Income Tax Assessment Act 1936 (Joint submission with CA ANZ)’; ‘Exposure Draft: Treasury Laws Amendment Bill 2024: Denying Deductions for Interest Charges’; and IGTO systemic reviews: draft work plan.

## **SUPERANNUATION**

### **Super released on compassionate grounds: ATO data released**

The ATO has released data on applications received and approved for the release of superannuation on compassionate grounds for the past 6 financial years.

### **APRA's 2023-24 annual report - super activities**

APRA has released its 2023-24 report, including highlights of key superannuation initiatives.

## **FINANCIAL SERVICES**

### **APRA registers new operational risk standards (SPS 114)**

APRA has registered a new version of SPS 114 commencing 1 July 2025 which replaces the 2012 version.

### **APRA releases material service provider register template**

The use of the template is APRA’s preferred method for regulated entities to submit their registers to APRA for meeting the requirement of paragraph 51 of CPS 230.

### **ASIC executive appointments**

ASIC has announced significant appointments to its senior executive leadership team as part of its ongoing transformation program.

## **REGULATOR NEWS**

### **ASIC News**

Updates from ASIC in the past week including media releases, news, articles and speeches.

### **APRA news**

Updates from APRA in the past week including media releases, news, articles and speeches.

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## **IPA NEWS**

### **Seeking member views – Review of AI and the Australian Consumer Law**

The Treasury have advised that ‘AI is a fast-evolving class of technologies. AI may impact a range of economic activities and boost productivity growth.

We are seeking views on how the ACL applies to AI-enabled goods and services, including:

- how the existing principles apply
- the remedies available to consumers where things go wrong
- the mechanisms for allocating liability among manufacturers and suppliers.

Your views will inform other ongoing work:

- on Australia's consumer protection framework
- to clarify and strengthen existing laws to address AI-related risks and harms.’

You can access the [discussion paper here](#)

The IPA will be making a submission and should you wish for your comments to be included in our submissions, please send any comments to [ipaadvocacy@publicaccountants.org.au](mailto:ipaadvocacy@publicaccountants.org.au)

By **Wednesday 6 November 2024**.

## **TAXATION**

### **Tax whistleblower laws extended to other tax regulators**

The Government has registered the [Taxation Administration Amendment \(Extending Tax Whistleblower Protections\) Regulations 2024](#) ("Regulations"). The Regulations amend the Taxation Administration Regulations 2017 to extend the disclosures within the existing tax whistleblower framework to the Tax Practitioners Board ("TPB") about the affairs of entities providing tax agent services, to the Commissioner of the Australian Charities and Not-for-

profits Commission ("ACNC") about the tax-related affairs of charities, and to the Inspector-General of Taxation ("IGT") for the purposes of administering their roles and functions. With the changes, the limited disclosures to the TPB, ACNC and IGT will ensure that the regulators of the tax system can comprehensively protect the integrity of the taxation system and act on the disclosure made by the whistleblower.

The Regulations do not modify the nature or scope of the protections contained in the Taxation Administration Act 1953, including the nature of the information that may be disclosed.

DATE OF EFFECT: 12 October 2024.

## **90% of tip offs deemed "suitable" for further investigation: ATO warns**

The ATO has issued a [media release](#) stating that more than 47,000 community tip-offs were reported in the 2023-24 financial year alone, about tax avoidance and other dishonest behaviours. With more than 250,000 tip-offs received since July 2019, the ATO is getting information about taxpayers not declaring income, demanding cash from customers, paying workers in cash to avoid paying tax and super, not reporting sales, and where someone's lifestyle doesn't appear to match their income.

Building and construction, cafes and restaurants and hairdressing and beauty services topped the list of industries the ATO was tipped off about in 2023-24. The ATO said that approximately 90% of tip-offs analysed by the ATO in 2023-24 were deemed as being "suitable" for further investigation. The investigation is then carried out by specialised teams and taskforces within the ATO, including the cross-agency Shadow Economy Taskforce.

As part of the media release, the ATO is also encouraging businesses who have been operating in the shadow economy to speak to their registered tax professional or the ATO to work on getting it right.

## **Government payments to service providers: ATO data-matching program**

The ATO has issued a [notice](#) that it will acquire government payments data from government entities who administer government programs for 2023-24 to 2025-26 financial years. Primarily for tax compliance activities, the program will match data on government payments made to service providers against ATO records.

The data items include:

- service provider identification details (names, addresses, phone numbers, email, dates of birth, service type, ABN, ACN);
- payment transaction details (service provider ID, name of service, type of service linked to program, value of payments received for the financial year, count and type of claim, withholding and re-credit amount).

The ATO estimate that records relating to approximately 60,000 service providers will be obtained each financial year.

## Treasury annual report 2023-24 released

Treasury has released its [2023-24 annual report](#) which outlines performance against outcomes, program and performance information contained in the Portfolio Budget Statements 2023-24, Portfolio Additional Estimates Statements 2023-24, Portfolio Supplementary Additional Estimates Statements 2023-24, and the Treasury Corporate Plan 2023-24.

Notable activities highlighted through the financial year include:

- Responsible for 24 Bills containing 55 measures including the Treasury Laws Amendment (Making Multinationals Pay Their Fair Share - Integrity and Transparency) Act 2024 which was an election commitment;
- Uplifting the integrity of the tax system by increasing regulator powers and regulatory arrangements; and
- Increasing frequency of payment for employees' superannuation guarantee entitlements and to reduce tax concessions on superannuation balances exceeding \$3 million.

## GST: food of a kind marketed as a prepared meal – GSTD 2024/D3

[Draft GST Determination GSTD 2024/D3](#) sets out the ATO's revised preliminary views on when a product is food of a kind "marketed as a prepared meal". GSTD 2024/D3 replaces [GSTD 2024/D1](#), which has now been withdrawn. In response to feedback, the ATO decided to release a new draft, which includes a method statement and a proposed compliance approach for determining whether certain salad products are marketed as prepared meals.

In *Simplot Australia Pty Ltd v FCT* [2023] FCA 1115, the Federal Court held that various frozen products were food of a kind marketed as prepared meals. In accordance with this decision, the ATO says that the statutory question is not whether the product itself is marketed as a prepared meal but whether it is a member of a class or genus of foods that are marketed as prepared meals. Adopting the words of Hespe J in *Simplot*, GSTD 2024/D3 states that a product will be food of a kind marketed as a prepared meal if it is the kind of food that, as a matter of common sense and common experience, is marketed as a prepared meal. This is determined objectively by considering the attributes of the food, including quantity, composition and presentation.

The ATO says that in determining whether a product is of a relevant kind, it does not matter whether it may also be of some other kind. In *Simplot*, the fact that the products could be described as food marketed as a meal component or side dish did not mean they could not also be food of a kind that is marketed as a prepared meal. Nevertheless, the ATO notes that in practice, many meal components will not possess the necessary attributes that would make them food of a kind marketed as a prepared meal.

**PROPOSED DATE OF EFFECT:** retrospective. However, the ATO will continue to act in accordance with PS LA 2011/27 (Determining whether the ATO's views of the law should be applied prospectively only) and PS LA 2012/2 (GA) (GST classification of food and beverage items).

The ATO plans to amend its Detailed Food List and withdraw GST Industry Issue Food

Industry Partnership Prepared food (Issue 5 Prepared Food).

COMMENTS on Draft GSTD 2024/D3 are due by 15 November 2024.

## **ATO-led Operation Protego sees woman sentenced for GST fraud**

An ATO [media release](#) highlighted another successful prosecution as a result of the ATO-led investigation into GST fraud, Operation Protego, where a woman has been sentenced to 4 years imprisonment. With a non-parole period of 2 years and 4 months, the woman was alleged to have claimed nearly \$600,000 in GST refunds from 27 fraudulent business activity statements lodged. A reparation order to the value of the amount obtained was granted.

As part of Operation Protego, the ATO has taken action against more than 57,000 alleged offenders, and those involved in this fraud have already been handed in the order of \$300 million in penalties and interest.

As of 30 September 2024:

- 104 people have been arrested.
- 59 people have been convicted with a range of sentencing outcomes, including jail terms of up to 7 years and 6 months and with orders made to restrain real property.
- The ATO has finalised 60 investigations and referred 51 briefs of evidence to Commonwealth Director of Public Prosecutions.

## **Australian Small Business and Family Enterprise Ombudsman (ASBFEO) – Tax Concierge Service**

The ASBFEO website says that:

‘We can provide small business operators with:

- information about the ART’s procedures for reviewing a decision
- access to subsidised legal advice to help decide if lodging an Application for Review with the ART is worthwhile
- ongoing support and assistance until a decision is reached (for example, help with applications and compiling relevant documents).

If you are a small business operator and think you have suffered financial loss due to the action of the ATO, the Tax Concierge Service can also help you to navigate the Compensation for Detriment caused by Defective Administration (CDDA) scheme.’

You can read more [here](#)

## **Taxation submissions**

You can access the four submissions by clicking on the below links



- [Senate Economics References Committee inquiry into Australia's taxation system](#)
- [PCG 2024/D2 Personal Services Businesses & Part IVA of \*Income Tax Assessment Act 1936\*](#)
- [Exposure Draft: \*Treasury Laws Amendment Bill 2024: Denying Deductions for Interest Charges\*](#)
- [IGTO systemic reviews: draft work plan](#)

We welcome member views on public consultations and these can be sent to [ipaadvocacy@publicaccountants.org.au](mailto:ipaadvocacy@publicaccountants.org.au) with the name of the submission in the title of the email please.

## **SUPERANNUATION**

### **Super released on compassionate grounds: ATO data released**

The ATO has [released](#) data on applications received and approved for the release of superannuation on compassionate grounds for the past 6 financial years. This data does not reflect the amounts actually released by super funds.

The total amount approved for release in 2023-24 was \$1.040 billion.

### **APRA's 2023-24 annual report - super activities**

APRA has released its [2023-24 Annual Report](#), including highlights of key superannuation initiatives.

- APRA focused on improving member outcomes, leading to lower fees and the exit of poor-performing funds. The regulator strengthened supervision and prudential standards to address sub-standard practices.
- Unlisted asset valuations remained a priority, with APRA surveying trustees and reviewing their practices.
- The *Your Future, Your Super* reforms continued, including the annual performance test. MySuper product failures decreased, with only 1 in 2023. The test now includes trustee-directed products, revealing underperformance in platform offerings.
- APRA enhanced superannuation transparency through improved fund performance reporting. A Comprehensive Product Performance Package is planned for September 2024.

## **FINANCIAL SERVICES**

### **APRA registers new operational risk standards (SPS 114)**

APRA has registered [Superannuation \(prudential standard\) determination No. 6 of 2024 Prudential Standard SPS 114 Operational Risk Financial Requirement](#) (the instrument) to replace the [2012 version](#).

SPS 114 sets out requirements for an RSE licensee to maintain and manage financial resources to protect beneficiaries and to address incurred or potential losses arising from

operational risks that may affect RSEs within its business operations. SPS 114 outlines the key requirements for RSE licensees to have ready access to financial resources to respond to, and rectify, the impacts of operational risks.

The instrument commences on 1 July 2025.

## APRA releases material service provider register template

APRA has released a [material service provider register template](#) to assist entities in demonstrating the linkages between their critical operations and the material service providers they rely upon. The use of the template is APRA's preferred method for regulated entities to submit their registers to APRA for meeting the requirement of paragraph 51 of [Prudential Standard CPS 230 Operational Risk Management \(CPS 230\)](#).

A completed material service provider register is to be submitted back to APRA by authorised deposit-taking institutions (ADIs), superannuation trustees, and insurers by 1 October 2025.

## ASIC executive appointments

ASIC has unveiled significant [appointments](#) to its senior executive leadership team as part of its ongoing transformation program. ASIC Chair Joe Longo announced Peter Soros as the new Executive Director Regulation and Supervision, set to commence in November. Soros, currently Deputy CEO Regulation at AUSTRAC, brings extensive experience in financial intelligence and regulation.

Additionally, Chris Savundra has been appointed Executive Director Enforcement and Compliance, effective October 2024. Savundra brings significant litigation expertise, particularly in complex ASIC matters.

These appointments follow recent organisational changes, including the addition of three new Commissioners and executives in key areas such as Registry and Intelligence, Data and Technology, and People and Culture.

## REGULATOR NEWS

### ASIC News

ASIC has released the following updates in its Newsroom section:

- [18 October 2024 – MEDIA RELEASES – Court rules Harvey Norman and Latitude advertising misled consumers](#) – In the Federal Court, Yates J has found that advertisements in 2020 and 2021 by Latitude Financial Australia and Harvey Norman Holdings Ltd were misleading and deceptive. The court found that the statement of the payment method in the advertisements was incomplete in that the arrangements also required consumers to take out a credit card. The [judgment](#) is available.
- [17 October 2024 - MEDIA RELEASES – ASIC action results in penalty and disqualification against former Noumi CFO and Company Secretary](#) – In the Federal Court of Australia, Jackman J has ordered the former Company Secretary and CFO of Noumi Ltd to pay a \$100,000 penalty and banned him from managing corporations for



four years. The [judgment](#) is available. This follows the earlier judgment which found that Noumi had contravened its continuous disclosure obligations under Chapter 6CA of the *Corporations Act 2001* (Cth). Up to 2021, Noumi had traded as Freedom Foods.

- [17 October 2024 – MEDIA RELEASE – Appointments to the ASIC Executive Leadership team](#) – ASIC has announced the appointment of Mr Peter Soros as Executive Director, Regulation and Supervision, and Mr Chris Savundra as Executive Director, Enforcement and Compliance. The appointments are part of ASIC's organisational redesign.
- [16 October 2024 – SPEECH – The expectation gap: Remarks to the Insurance Council of Australia 2024 Annual Conference](#) – Alan Kirkland, ASIC Commissioner, presented to the annual conference of the Insurance Council of Australia in Brisbane. He emphasised the importance of responding to customer expectations, noting with concern that many claims from 2022 floods remain unresolved. The responses of insurers to the vulnerability of policy holders will continue to be an area of interest for ASIC.
- [15 October 2024 – NEWS ITEM – Investor alert: Reports of stolen shares due to identity theft on the rise](#) – ASIC has issued a warning to investors about the increasing incidence of identity theft leading to stolen shares. Many victims only become aware that their shares have been transferred until receiving a letter of confirmation. ASIC provided suggestions about precautions that investors can take, including reviewing share portfolios regularly.

## APRA news

APRA has released the following updates in its News and publications section:

- [17 October 2024 – MEDIA RELEASES – APRA releases material service provider register template](#) – After industry feedback, APRA has formulated a template to assist regulated entities better understand the risk management frameworks related to their critical operations. The template is intended for use in order to comply with Prudential Standard CPS 230 Operational Risk Management.
- [16 October 2024 – SPEECHES – APRA Executive Board Member Suzanne Smith – Speech to the ICA conference 2024](#) – Suzanne Smith presented to the annual conference of the Insurance Council of Australia in Brisbane. She referred to consumers continuing to face challenges regarding affordability and access to insurance. New standards applying in 2025 will impose requirements for industry participants: the Financial Accountability Regime, from 15 March 2025; and the implementation of Prudential Standard CPS 230 – Operational Risk.
- [16 October 2024 – MEDIA RELEASES – APRA releases latest Points of Presence Statistics for authorised deposit-taking institutions](#) – The latest Points of Presence statistics demonstrate a decline in physical points of presence over the last year. These statistics are a detailed listing of the physical banking service channels provided to Australians, including branches, ATMs and EFTPOS facilities.
- [14 October 2024 – MEDIA RELEASES – APRA releases quarterly insurance statistics for June 2024](#) – APRA has issued data on superannuation products for the quarter ending June 2024. This set includes the quarterly performance statistics for general, life and private health insurance.