

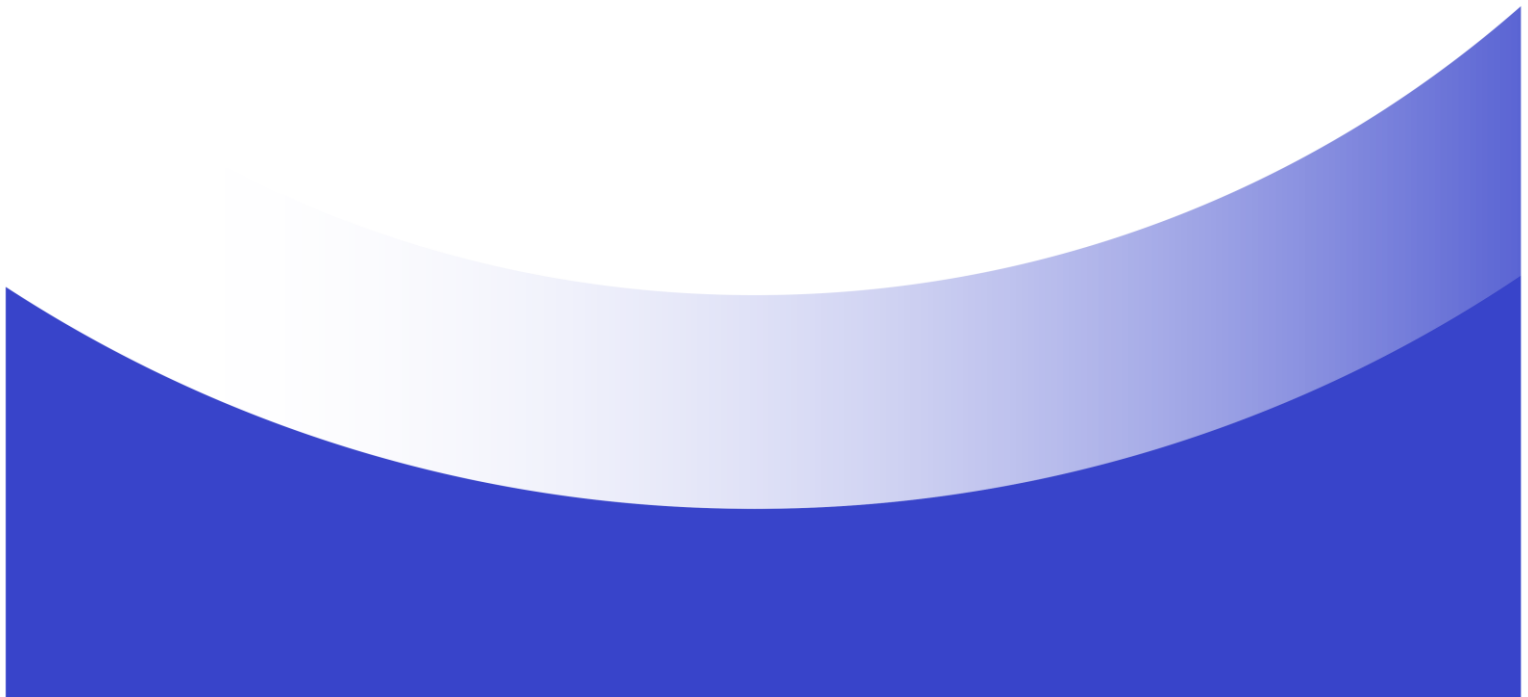


Australian Government
Australian Taxation Office

ATO Submission

Inquiry into Public Governance, Performance and Accountability Amendment (Ban Unethical Contractors) Bill 2025

19 December 2025



Introduction

1. The Australian Taxation Office (ATO) welcomes the opportunity to make a submission to the Finance and Public Administration Legislation Committee's inquiry into the *Public Governance, Performance and Accountability Amendment (Ban Unethical Contractors) Bill 2025* (**"the Bill"**).
2. This submission explains the ATO's role in administering the Statement of Tax Record which helps to ensure government contractors are generally compliant with their tax obligations. This submission also notes some potential administrative issues with the Bill identified by the ATO for consideration by the Committee.

The ATO's role in administering the Statement of Tax Record

3. The ATO administers the Statement of Tax Record (STR) regime, which requires tenderers to verify that they are generally compliant with their tax obligations.
4. In 2023, the ATO provided a detailed submission (**"the 2023 Submission"**) to the Senate Finance and Public Administration References Committee's Inquiry into the management and assurance of integrity by consulting services. That submission is at **Attachment A**.
5. The 2023 Submission contained relevant background information in relation to the STR regime. Given the relevance of the STR regime to some of the issues being considered by the Committee, we summarise below how the STR regime operates.

Existing tax attestation requirements in Government procurement decisions

6. Since 1 July 2019, businesses seeking to tender for Australian Government procurement contracts are required to provide a statement from the ATO indicating that they are generally compliant with their tax obligations. Specifically, businesses tendering for Commonwealth Government procurements that are undertaken through open tenders, are subject to the Commonwealth Procurement Rules (CPRs), and have an estimated total value of over \$4 million, must obtain a satisfactory STR showing satisfactory engagement with the tax system.
7. The criteria for a satisfactory STR are objective and are that the taxpayer:
 - is up to date with registration requirements
 - has lodged at least 90% of lodgment obligations (for each lodgment type)
 - has paid or has a payment plan for any undisputed debts \$10,000 or greater.
8. When applying for the STR, a new business or a business with less than four years of Australian tax history is required to attest to the following:
 - they will comply with and pay all Australian tax obligations
 - they have no tax related convictions in the last four years
 - they are complying with, or do not have, tax obligations outside of Australia
 - they are an Australian resident or non-resident for tax purposes.
9. STRs provide objective tax information about a business. While an STR does not provide absolute assurance of tax compliance (i.e. it does not reflect any ATO action underway) it does indicate whether a business is generally compliant with their tax obligations, which is an important

consideration for agencies as part of their assessment of that business' eligibility to participate in procurement activities.

10. Where that business is also a provider of tax services, an STR does not provide information on the governance arrangements of their tax advisory work.
11. It should be noted that the ATO issues STRs to businesses in our capacity as tax administrator, from within our Client Engagement Group. There is no specific exception in the taxpayer confidentiality provisions which expressly permits disclosure of protected taxpayer information for the purpose of making procurement decisions.
12. ATO contracts with suppliers, including consultants, require the supplier to comply with all their tax obligations over the life of the contract.
13. Additionally, in answer to a Question on Notice from the 2023 consulting services inquiry, the ATO provided further information about the STR, see **Attachment B**. The ATO answer to the Question on Notice noted the potential for additional criteria to be added to the STR, including for suppliers who are also tax advisory firms.

Potential administrative issues with the Bill

Establishing whether a potential supplier or tenderer (and their related entities, directors, senior officers or employees) has a "proven record of tax avoidance"

14. The Bill requires that government procurement contracts cannot be entered into with potential suppliers or tenderers (and their related entities or directors, senior officers or employees) who have engaged in "unethical conduct". It defines "unethical conduct" in section 105BC to include "a proven record of tax avoidance". Given the relevance of tax avoidance to the remit of the ATO, we consider it important to bring some potential administrative issues to the Committee's attention.
15. The first issue identified by the ATO is that "tax avoidance" is not defined. There is a broad range of behaviour that may breach Australian tax laws, civil or criminal, however depending upon its definition, such breach may or may not constitute "tax avoidance".
16. Secondly, given the length of time that can be taken to resolve tax disputes, there may also be some uncertainty for a prolonged period as to whether a potential supplier or tenderer (and their related entities or directors, senior officers or employees) has a proven record of tax avoidance. For example, a circumstance where the Commissioner has applied the anti-avoidance provisions or the anti-transfer mispricing provisions and issued an amended assessment to the taxpayer, however that assessment has been appealed to the courts. As a matter of natural justice and procedural fairness, it would be problematic for a potential supplier to be disqualified from procurement when their position may well be vindicated in the Courts.
17. The third issue identified by the ATO is how government agencies undertaking procurement processes would be able to determine whether a potential supplier or tenderer (or their related entities, directors, senior officers or employees) have engaged in tax avoidance, and that matter has not been publicly ventilated (eg through the Courts or through corporate disclosures). The taxpayer confidentiality provisions, found in Division 355 of the *Taxation Administration Act 1953*, prohibit the disclosure of such taxpayer information (protected information) unless a specific exception applies. As noted in Treasury's December 2024 consultation paper 'Review of Tax

Regulator Secrecy Exceptions¹ (at 1.1):

Australia's tax secrecy framework imposes strict obligations on the sharing of tax information. This maintains the privacy, integrity and confidence of entities interacting with the tax system and to support high levels of voluntary compliance with the tax system. It prohibits the disclosure of tax information, except in certain specified circumstances and only where Parliament has determined that the public benefit derived from the disclosure outweighs the impact on the entity's privacy and the potential impact on voluntary tax law compliance

18. The Bill does not seek to amend the taxpayer confidentiality provisions to expressly permit the Commissioner to disclose protected information to assist procuring agencies to establish whether a potential supplier or tenderer (and their related entities, directors, senior officers or employees) has a proven record of tax avoidance. In the absence of an express exception, there may be ambiguity as to whether the ATO could comply with a request by a procuring agency, in relation to whether an entity has a proven record of tax avoidance.
19. A fourth issue identified by the ATO is the scope of the provision in its application to the potential supplier or tenderer as well as their related entities, directors, senior officers or employees. In respect of large entities (for example multinational entities) this could potentially cover an extremely large number of entities and people, including many located overseas, and there could be significant challenges in retrieving and analysing such information to determine what could be relevant and whether it is capable of disclosure under the law.

Disclosing whether a potential supplier or tenderer has engaged in other conduct that has, or is likely to have, an adverse impact on the integrity of, or public confidence in, the Commonwealth

20. The Bill also includes in its definition of "unethical conduct" within section 105BC, circumstances where an entity has "engaged in other conduct that has, or is likely to have, an adverse impact on the integrity of, or public confidence in, the Commonwealth."
21. The ATO notes that as per the explanation above in relation to the taxpayer confidentiality provisions, the Commissioner may be prevented from disclosing protected information that may fall within this definition unless a specific exception to the confidentiality provisions applies.
22. One example of an exception that may apply is that from 1 June 2024, following the enactment of the *Treasury Laws Amendment (Tax Accountability and Fairness) Act 2024*, the Commissioner has been enabled to share protected information with Treasury concerning suspected breaches of obligations of confidence by entities against the Commonwealth (see subsection 355-65(8) in Schedule 1, table 7, item 14 to the *Taxation Administration Act 1953*). Such behaviour would likely fall within this definition of "unethical conduct".
23. However, if the ATO were to uncover information of suspected misconduct by potential suppliers or tenderers, that did not fall within this confidentiality provision exception, the Commissioner may be prevented from informing either Treasury and/or the relevant procuring agency about such alleged misconduct, unless another, existing specific confidentiality provision exception were to apply. That may need to be determined on a case by case basis.

¹ <https://treasury.gov.au/consultation/c2024-579753>

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Conclusion

24. The ATO is available to respond to any questions the Committee may have and will attend a hearing as required.
25. The ATO looks forward to the outcomes of this inquiry.

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Attachments

Attachment A:

ATO submission to the Senate Finance and Public Administration References Committee's Inquiry into the management and assurance of integrity by consulting services

Attachment B:

ATO answer to a Question on Notice from the Senate Finance and Public Administration References Committee's Inquiry into the management and assurance of integrity by consulting services