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As passed by both Houses

Tax Agent Services Bill 2009

No. , 2009

A Bill for an Act to establish the Tax Practitioners Board and to provide for the registration of tax agents and BAS agents, and for related purposes

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1 **A Bill for an Act to establish the Tax Practitioners**
2 **Board and to provide for the registration of tax**
3 **agents and BAS agents, and for related purposes**

4 The Parliament of Australia enacts:

5 **Part 1—Introduction**

6 **Division 1—Preliminary**

7 **Table of sections**

8	1-1	Short title
9	1-5	Commencement

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Part 1 Introduction
Division 1 Preliminary

Section 1-1

- 1 1-10 Extension of Act to external Territories
2 1-15 General administration of Act

1-1 Short title

This Act may be cited as the *Tax Agent Services Act 2009*.

1-5 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Part 1 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Parts 2 to 5	A single day to be fixed by Proclamation. A Proclamation must not specify a day that occurs before the day on which the <i>Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009</i> receives the Royal Assent. However, if any of the provision(s) do not commence within the period of 9 months beginning on the day on which the <i>Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009</i> receives the Royal Assent, they commence on the first day after the end of that period. If the provision(s) commence in this way, the Minister must announce by notice in the <i>Gazette</i> the day on which the provision(s)	

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Part 1 Introduction

Division 2 Overview of this Act

Section 2-5

1

2 **Division 2—Overview of this Act**

3 **Table of Subdivisions**

4 2-A Objects

5 2-B Guide

6 **Subdivision 2-A—Objects**

7 **Table of sections**

8 2-5 Object

9 **2-5 Object**

10 The object of this Act is to ensure that *tax agent services are
11 provided to the public in accordance with appropriate standards of
12 professional and ethical conduct. This is to be achieved by (among
13 other things):

14 (a) establishing a national Board to register tax agents and BAS
15 agents; and

16 (b) introducing a *Code of Professional Conduct for *registered
17 tax agents and BAS agents; and

18 (c) providing for sanctions to discipline registered tax agents and
19 BAS agents.

20 **Subdivision 2-B—Guide**

21 **Table of sections**

22 2-10 General guide to each Part

23 **2-10 General guide to each Part**

24 (1) You need to be registered to provide *tax agent services for a fee or
25 to engage in other conduct connected with providing such services.
26 Part 2 sets out the requirements for registration.

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Section 2-10

- 1 (2) Once registered, you must comply with several requirements, in
2 particular, the *Code of Professional Conduct. The Code is set out
3 in Part 3.
- 4 (3) Part 4 sets out the circumstances in which your registration can be
5 terminated.
- 6 (4) Part 5 provides for civil penalties aimed at ensuring your
7 compliance with this Act.
- 8 (5) Part 6 establishes the Tax Practitioners Board and sets out the
9 Board's functions and powers. The Board may investigate breaches
10 of this Act and has certain reporting obligations.
- 11 (6) Part 7 contains miscellaneous provisions, mainly administrative
12 and machinery provisions relating to the operation of this Act.
- 13 (7) Part 8 contains the Dictionary, which sets out a list of most of the
14 terms that are defined in this Act. It also sets out the meanings of
15 some important concepts and rules on how to interpret this Act.
16

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

1

2 **Division 3—Explanation of the use of defined terms**

3 **Table of sections**

4	3-5	When defined terms are identified
5	3-10	When defined terms are <i>not</i> identified

6 **3-5 When defined terms are identified**

7 (1) Many of the terms used in this Act are defined in the Dictionary,
8 starting at section 995-1, to the *Income Tax Assessment Act 1997*.
9 However, some terms used in this Act are only defined in this Act.

10 Note: Expressions in the *Income Tax Assessment Act 1997* (other than the
11 expression “this Act”) have the same meaning in this Act as well, see
12 subsection 90-1(2).

13 (2) Most defined terms in this Act and the *Income Tax Assessment Act*
14 *1997* are identified by an asterisk at the start of the term: as in
15 “*BAS service”.

16 **3-10 When defined terms are *not* identified**

17 (1) Once a defined term has been identified by an asterisk, later
18 occurrences of the term in the same subsection are not usually
19 asterisked.

20 (2) Terms are not asterisked in the *Guides, headings or notes
21 contained in this Act.

22 (3) The term “Board” is not identified with an asterisk.

23 (4) If a term used in the *Income Tax Assessment Act 1997* is used in
24 this Act and the term is *not* identified with an asterisk in that Act,
25 the term is *not* identified with an asterisk in this Act.

26 Note: For expressions in the *Income Tax Assessment Act 1997* that are *not*
27 identified with an asterisk, see subsection 2-15(3) of that Act.
28

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

1

2 **Part 2—Registration**

3 **Division 20—Registration**

4 **Table of Subdivisions**

5	20-A	Eligibility for registration
6	20-B	Applying for registration
7	20-C	Renewing registration

8 **Guide to this Division**

9 **20-1 What this Division is about**

10

11

12

13

You must be registered to provide tax agent services for a fee or to engage in other conduct connected with providing such services. You will be eligible for registration if you are a fit and proper person and have appropriate qualifications and experience.

14

15

16

17

If you are eligible and apply to the Tax Practitioners Board for registration as a registered tax agent or BAS agent, you will be registered for a period of at least 3 years. Your registration may be subject to conditions. You may seek to vary these conditions.

18

19

Certain events, mainly relating to criminal convictions and bankruptcy, may affect your continued registration.

20

You may also apply to have your registration renewed.

21

Subdivision 20-A—Eligibility for registration

22

Table of sections

23

24

20-5	Eligibility for registration as registered tax agent or BAS agent
20-10	Regulations may prescribe system regarding professional associations

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Section 20-5

1 20-15 Criteria for determining whether an individual is a fit and proper person

2 **20-5 Eligibility for registration as registered tax agent or BAS agent**

3 *Individuals*

- 4 (1) An individual, aged 18 years or more, is eligible for registration as
5 a *registered tax agent or BAS agent if the Board is satisfied that:
6 (a) the individual is a fit and proper person; and
7 (b) the individual meets the requirements prescribed by the
8 regulations (including, but not limited to, requirements
9 relating to qualifications and experience) in respect of
10 registration as a registered tax agent or BAS agent.

11 Note 1: An individual in the capacity of trustee of a trust can be registered: see
12 section 70-15.

13 Note 2: Subsection (4) provides for an exception to paragraph (1)(b) for
14 pre-1988 tax agents and nominees.

15 *Partnerships*

- 16 (2) A partnership is eligible for registration as a *registered tax agent
17 or BAS agent if the Board is satisfied that:
18 (a) each partner who is an individual is:
19 (i) aged 18 years or more; and
20 (ii) a fit and proper person; and
21 (b) if a company is a partner:
22 (i) each director of the company is a fit and proper person;
23 and
24 (ii) the company is not under external administration; and
25 (iii) the company has not been convicted of a *serious
26 taxation offence or an offence involving fraud or
27 dishonesty during the previous 5 years; and
28 (c) the partnership has:
29 (i) in the case of registration as a *registered tax agent—a
30 sufficient number of individuals, being registered tax
31 agents, to provide *tax agent services to a competent
32 standard, and to carry out supervisory arrangements; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

- 1 (ii) in the case of registration as a *registered BAS agent—a
2 sufficient number of individuals, being registered tax
3 agents or BAS agents, to provide *BAS services to a
4 competent standard, and to carry out supervisory
5 arrangements.

6 *Companies*

- 7 (3) A company is eligible for registration as a *registered tax agent or
8 BAS agent if the Board is satisfied that:
9 (a) each director of the company is a fit and proper person; and
10 (b) the company is not under external administration; and
11 (c) the company has not been convicted of a *serious taxation
12 offence or an offence involving fraud or dishonesty during
13 the previous 5 years; and
14 (d) the company has:
15 (i) in the case of registration as a *registered tax agent—a
16 sufficient number of individuals, being registered tax
17 agents, to provide *tax agent services to a competent
18 standard and to carry out supervisory arrangements; or
19 (ii) in the case of registration as a *registered BAS agent—a
20 sufficient number of individuals, being registered tax
21 agents or BAS agents, to provide *BAS services to a
22 competent standard, and to carry out supervisory
23 arrangements.

24 Note: A company in the capacity of trustee of a trust can be registered: see
25 section 70-15.

26 *Special rule about pre-1988 tax agents*

- 27 (4) An individual is eligible for registration as a *registered tax agent
28 even if the Board is not satisfied that the individual satisfies the
29 requirements mentioned in paragraph (1)(b) if:
30 (a) the individual was registered as a tax agent or as a nominee
31 for the purposes of Part VIIA of the *Income Tax Assessment*
32 *Act 1936* (as in force immediately before the commencement
33 of item 12 of Schedule 1 to the *Tax Agent Services*

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Section 20-10

- 1 *(Transitional Provisions and Consequential Amendments)*
2 *Act 2009)* at both of the following times:
3 (i) immediately before the commencement of this Act;
4 (ii) immediately before the commencement of section 39 of
5 the *Taxation Laws Amendment Act (No. 2) 1988*; and
6 (b) the individual is otherwise eligible for registration as a
7 registered tax agent.

8 **20-10 Regulations may prescribe system regarding professional**
9 **associations**

10 The regulations may provide for a system to allow the Board to
11 accredit professional associations for the purposes of recognising
12 professional qualifications and experience that are relevant to the
13 registration of individuals as *registered tax agents and BAS
14 agents.

15 **20-15 Criteria for determining whether an individual is a fit and**
16 **proper person**

- 17 In deciding whether it is satisfied that an individual is a fit and
18 proper person, the Board must have regard to:
19 (a) whether the individual is of good fame, integrity and
20 character; and
21 (b) without limiting paragraph (a):
22 (i) whether an event described in section 20-45 has
23 occurred during the previous 5 years; and
24 (ii) whether the individual had the status of an undischarged
25 bankrupt at any time during the previous 5 years; and
26 (iii) whether the individual served a term of imprisonment,
27 in whole or in part, at any time during the previous 5
28 years.

29 **Subdivision 20-B—Applying for registration**

30 **Table of sections**

31 20-20 Application for registration

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

1	20-25	Registration
2	20-30	Board to notify you of grant of registration
3	20-35	Commencement and duration of registration
4	20-40	Variation of conditions of registration
5	20-45	Certain events may affect your continued registration

6 **20-20 Application for registration**

- 7 (1) You may apply to the Board for registration, including renewal of
8 registration, as a *registered tax agent or BAS agent.
- 9 (2) An application must be in a form approved by the Board and must
10 be accompanied by:
11 (a) any documents that are required by the Board; and
12 (b) the prescribed application fee.
- 13 (3) The Board must give the application fee to the Commissioner, who
14 receives the fee on behalf of the Commonwealth.
- 15 (4) If you withdraw your application:
16 (a) within 30 days after the day on which the application was
17 made; and
18 (b) before the application has been granted or refused;
19 the Commissioner must refund the application fee to you.

20 **20-25 Registration**

21 *Grant of application for registration*

- 22 (1) If you have applied to the Board for a type of registration, the
23 Board must grant your application if you are eligible for
24 registration of that type. Otherwise, the Board must reject your
25 application.
- 26 (2) The Board must decide your application within 6 months of
27 receiving it.
- 28 (3) If the Board does not decide your application within 6 months of
29 receiving it, the Board is taken to have rejected your application.

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Section 20-30

1 However, this does not apply if your application is for renewal of
2 your registration.

3 Note: For renewals of registration, see section 20-50.

4 *Period of registration*

5 (4) If the Board grants your application, the Board must also determine
6 the period for which you are registered. The period must be for at
7 least 3 years.

8 *Conditions of registration*

9 (5) If the Board considers it appropriate to do so, the Board may
10 impose one or more conditions to which your registration is
11 subject.

12 (6) If a condition is imposed, it must relate to the subject area in
13 respect of which you may provide *tax agent services.

14 (7) In deciding whether to impose a condition, the Board must have
15 regard to the requirements prescribed by regulations under
16 paragraph 20-5(1)(b) in relation to:

17 (a) if you are an individual—your registration as a *registered
18 tax agent or BAS agent; and

19 (b) if you are a partnership or company—the registration of
20 individuals who will provide *tax agent services for you.

21 **20-30 Board to notify you of grant of registration**

22 *Notification of decision*

23 (1) The Board must, within 30 days of its decision to grant or reject
24 your application for registration, notify you in writing of:

25 (a) the decision; and

26 (b) if the Board rejects your application—the reasons for the
27 decision; and

28 (c) if the Board grants your application—the following:

29 (i) the period of your registration;

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

1 (ii) any conditions to which your registration is subject.
2 However, failure to comply does not affect the validity of the
3 Board's decision.

4 (2) The Board must also notify the Commissioner of the Board's
5 decision.

6 *Professional indemnity insurance*

7 (3) If the Board grants your application, the Board may, by written
8 notice, require you to maintain professional indemnity insurance as
9 specified in the notice. The notice may be given to you at the same
10 time as the notice referred to in subsection (1), or subsequently.

11 **20-35 Commencement and duration of registration**

12 Your registration:

13 (a) commences:

14 (i) if it is a renewal of your registration—on the day after
15 the day on which your previous registration expired; or

16 (ii) in any other case—on the day specified in the notice
17 given under subsection 20-30(1); and

18 (b) expires at the end of the period determined by the Board,
19 unless it is terminated before that time.

20 Note: Registration may be terminated under Subdivision 30-B or 40-A.

21 **20-40 Variation of conditions of registration**

22 (1) The Board may vary a condition to which your registration as a
23 *registered tax agent or BAS agent is subject if:

24 (a) you make an application for variation of the condition; and

25 (b) the Board is satisfied that it is appropriate to vary the
26 condition.

27 (2) Your application must be:

28 (a) in a form approved by the Board; and

29 (b) accompanied by any information or documents that are
30 required by the Board.

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Section 20-45

1 **20-45 Certain events may affect your continued registration**

2 The following events may affect your continued registration as a
3 *registered tax agent or BAS agent:

- 4 (a) you are convicted of a *serious taxation offence;
5 (b) you are convicted of an offence involving fraud or
6 dishonesty;
7 (c) you are penalised for being a *promoter of a *tax exploitation
8 scheme;
9 (d) you are penalised for implementing a *scheme that has been
10 promoted on the basis of conformity with a *product ruling in
11 a way that is materially different from that described in the
12 product ruling;
13 (e) you become an undischarged bankrupt or go into external
14 administration;
15 (f) you are sentenced to a term of imprisonment.

16 **Subdivision 20-C—Renewing registration**

17 **Table of sections**

18 20-50 Renewal of registration

19 **20-50 Renewal of registration**

- 20 (1) The Board may renew your registration under section 20-25 if you
21 make an application for renewal:
22 (a) at least 30 days before the day on which your registration
23 expires; or
24 (b) within such shorter period as the Board allows.
- 25 (2) Your registration is taken to continue until your application has
26 been decided.
- 27 (3) You may apply for renewal of registration during a period when
28 your registration is suspended under section 30-25.
29

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

1

2 **Part 3—The Code of Professional Conduct**

3 **Division 30—The Code of Professional Conduct**

4 **Table of Subdivisions**

5	30-A	The Code of Professional Conduct
6	30-B	Your liability for administrative sanctions
7	30-C	Notifying a change of circumstances

8 **Guide to this Division**

9 **30-1 What this Division is about**

10
11

The Code of Professional Conduct regulates your personal and professional conduct as a registered tax agent or BAS agent.

12
13
14
15

If the Board investigates you and finds that you have failed to comply with the Code, the Board may give you a written caution, order you to take specified actions, or suspend or terminate your registration.

16
17

You must also notify the Board if certain circumstances change, including if you cease to meet the requirements for registration.

18 **Subdivision 30-A—The Code of Professional Conduct**

19 **Table of sections**

20	30-5	Application of the Code of Professional Conduct
21	30-10	The Code of Professional Conduct

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Section 30-5

1 **30-5 Application of the Code of Professional Conduct**

2 The *Code of Professional Conduct applies to you if you are a
3 *registered tax agent or BAS agent.

4 **30-10 The Code of Professional Conduct**

5 *Honesty and integrity*

- 6 (1) You must act honestly and with integrity.
- 7 (2) You must comply with the *taxation laws in the conduct of your
8 personal affairs.
- 9 (3) If:
- 10 (a) you receive money or other property from or on behalf of a
11 client; and
- 12 (b) you hold the money or other property on trust;
13 you must account to your client for the money or other property.

14 *Independence*

- 15 (4) You must act lawfully in the best interests of your client.
- 16 (5) You must have in place adequate arrangements for the
17 management of conflicts of interest that may arise in relation to the
18 activities that you undertake in the capacity of a *registered tax
19 agent or BAS agent.

20 *Confidentiality*

- 21 (6) Unless you have a legal duty to do so, you must not disclose any
22 information relating to a client's affairs to a third party without
23 your client's permission.

24 *Competence*

- 25 (7) You must ensure that a *tax agent service that you provide, or that
26 is provided on your behalf, is provided competently.

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Section 30-15

1 (8) You must maintain knowledge and skills relevant to the *tax agent
2 services that you provide.

3 (9) You must take reasonable care in ascertaining a client's state of
4 affairs, to the extent that ascertaining the state of those affairs is
5 relevant to a statement you are making or a thing you are doing on
6 behalf of the client.

7 (10) You must take reasonable care to ensure that *taxation laws are
8 applied correctly to the circumstances in relation to which you are
9 providing advice to a client.

10 *Other responsibilities*

11 (11) You must not knowingly obstruct the proper administration of the
12 *taxation laws.

13 (12) You must advise your client of the client's rights and obligations
14 under the *taxation laws that are materially related to the *tax agent
15 services you provide.

16 (13) You must maintain the professional indemnity insurance that the
17 Board requires you to maintain.

18 (14) You must respond to requests and directions from the Board in a
19 timely, responsible and reasonable manner.

20 **Subdivision 30-B—Your liability for administrative sanctions**

21 **Table of sections**

22	30-15	Sanctions for failure to comply with the Code of Professional Conduct
23	30-20	Orders
24	30-25	Suspension
25	30-30	Termination

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Section 30-15

1 **30-15 Sanctions for failure to comply with the Code of Professional**
2 **Conduct**

- 3 (1) This Subdivision applies if the Board is satisfied, after conducting
4 an investigation under Subdivision 60-E, that you have failed to
5 comply with the *Code of Professional Conduct.
- 6 (2) The Board may do one or more of the following:
7 (a) give you a written caution;
8 (b) give you an order under section 30-20;
9 (c) suspend your registration under section 30-25;
10 (d) terminate your registration under section 30-30.

11 **30-20 Orders**

- 12 (1) The Board may make an order that requires you take one or more
13 actions including, but not limited to, the following:
14 (a) completing a course of education or training specified in the
15 order;
16 (b) providing *tax agent services for which you are registered
17 only under the supervision of a *registered tax agent or BAS
18 agent specified in the order;
19 (c) providing only those tax agent services that are specified in
20 the order.
- 21 (2) The Board must notify you in writing of the order. The order may
22 specify the following, as appropriate:
23 (a) the period of time within which you must complete the
24 requirements specified in the order;
25 (b) the period of time during which the order applies.

26 **30-25 Suspension**

- 27 (1) The Board may, by notice in writing, suspend your registration for
28 a period determined by the Board.

29 Note: The Board must cause notice of its decision to be published in the
30 *Gazette*: see section 60-140.

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

1 (2) You must not provide *tax agent services during the period of
2 suspension.

3 Note: If you provide tax agent services while suspended, you may
4 contravene a civil penalty provision: see subsection (4) and
5 Subdivision 50-A.

6 (3) If, when the Board suspends your registration under subsection (1),
7 your registration is already suspended, suspension is for a further
8 period that the Board determines is appropriate. The further period
9 commences at the end of the period of suspension.

10 (4) While you are suspended, you are taken not to be a *registered tax
11 agent or BAS agent, except for the purposes of:

12 (a) Part 2 (Registration), Subdivision 30-C (Notifying a change
13 of circumstances) and Part 4 (Termination of registration);

14 and

15 (b) this Division.

16 **30-30 Termination**

17 The Board may terminate your registration.

18 Note: For notice and effect of termination, see Subdivision 40-B.

19 **Subdivision 30-C—Notifying a change of circumstances**

20 **Table of sections**

21 30-35 Obligation to notify a change of circumstances

22 **30-35 Obligation to notify a change of circumstances**

23 *Individuals*

24 (1) If you are a *registered tax agent or BAS agent and an individual,
25 you must notify the Board in writing whenever:

26 (a) you cease to meet one of the *tax practitioner registration
27 requirements; or

28 (b) an event affecting your continued registration, as described in
29 section 20-45, occurs.

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Section 30-35

1 *Partnerships*

- 2 (2) If you are a *registered tax agent or BAS agent and a partnership,
3 you must notify the Board in writing whenever:
- 4 (a) you cease to meet one of the *tax practitioner registration
5 requirements; or
 - 6 (b) an event affecting your continued registration, as described in
7 section 20-45, occurs in respect of:
 - 8 (i) a partner in the partnership; or
 - 9 (ii) a director of a company that is a partner in the
10 partnership; or
 - 11 (c) the composition of the partnership changes.

12 *Companies*

- 13 (3) If you are a *registered tax agent or BAS agent and a company, you
14 must notify the Board in writing whenever:
- 15 (a) you cease to meet one of the *tax practitioner registration
16 requirements; or
 - 17 (b) an event affecting your continued registration, as described in
18 section 20-45, occurs in respect of a director of the company;
19 or
 - 20 (c) an individual becomes, or ceases to be, a director of the
21 company.

22 *When notice must be given*

- 23 (4) You must give the notice within 30 days of the day on which you
24 become, or ought to have become, aware that the event occurred.

25 Note: A breach of this subsection is a breach of section 8C of the *Taxation*
26 *Administration Act 1953* and of subsection 30-10(2) of this Act.

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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2 **Part 4—Termination of registration**

3 **Division 40—Termination of registration**

4 **Table of Subdivisions**

5 40-A Grounds for terminating registration

6 40-B Notice and effect of termination

7 **Guide to this Division**

8 **40-1 What this Division is about**

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Your registration may be terminated if an event occurs that affects your continued registration (see section 20-45), you cease to meet the tax practitioner registration requirements or you breach a condition of your registration. If your registration is terminated, the Board may also determine a period during which you may not apply for registration.

15 **Subdivision 40-A—Grounds for terminating registration**

16 **Table of sections**

17 40-5 Termination of registration—individuals

18 40-10 Termination of registration—partnerships

19 40-15 Termination of registration—companies

20 **40-5 Termination of registration—individuals**

- 21 (1) If you are a *registered tax agent or BAS agent and an individual,
22 the Board may terminate your registration if:
23 (a) an event affecting your continued registration, as described in
24 section 20-45, occurs; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Part 4 Termination of registration
Division 40 Termination of registration

Section 40-10

- 1 (b) you cease to meet one of the *tax practitioner registration
2 requirements; or
3 (c) you breach a condition of your registration.

4 Note: The Board may also terminate your registration for breach of the Code
5 of Professional Conduct: see Subdivision 30-B.

- 6 (2) The Board must terminate your registration if:
7 (a) you surrender your registration by notice in writing to the
8 Board; or
9 (b) you die.

10 **40-10 Termination of registration—partnerships**

- 11 (1) If you are a *registered tax agent or BAS agent and a partnership,
12 the Board may terminate your registration if:
13 (a) you cease to meet one of the *tax practitioner registration
14 requirements; or
15 (b) you breach a condition of your registration.

16 Note: The Board may also terminate your registration for breach of the Code
17 of Professional Conduct: see Subdivision 30-B.

- 18 (2) The Board must terminate your registration if you surrender your
19 registration by notice in writing to the Board.

- 20 (3) If an event affecting your continued registration, as described in
21 section 20-45, occurs in respect of a partner in your partnership,
22 then the Board may, by notice in writing, require you to remove the
23 partner from your partnership within the period specified in the
24 notice.

25 Note: A failure to comply with a notice given under this subsection is a
26 breach of subsection 30-10(14).

- 27 (4) If an event affecting your continued registration, as described in
28 section 20-45, occurs in respect of a director of a company that is a
29 partner in your partnership, then the Board may, by notice in
30 writing, require:
31 (a) you to remove the partner from your partnership; or
32 (b) the company to remove the director;

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

1 within the period specified in the notice.

2 Note: A failure to comply with a notice given under this subsection is a
3 breach of subsection 30-10(14).

4 (5) In determining the period, the Board must have regard to:

5 (a) for the purpose of subsection (3) and paragraph (4)(a)—the
6 requirements of any *Australian law in relation to the
7 removal of partners from partnerships; and

8 (b) for the purpose of paragraph (4)(b)—any requirement of the
9 *Corporations Act 2001* in relation to the removal of directors.

10 **40-15 Termination of registration—companies**

11 (1) If you are a *registered tax agent or BAS agent and a company, the
12 Board may terminate your registration if:

13 (a) an event affecting your continued registration, as described in
14 section 20-45, occurs; or

15 (b) you cease to meet one of the *tax practitioner registration
16 requirements; or

17 (c) you breach a condition of your registration.

18 Note: The Board may also terminate your registration for breach of the Code
19 of Professional Conduct: see Subdivision 30-B.

20 (2) The Board must terminate your registration if:

21 (a) you surrender your registration by notice in writing to the
22 Board; or

23 (b) you cease to exist.

24 (3) If an event affecting your continued registration, as described in
25 section 20-45, occurs in respect of a director of your company,
26 then the Board may, by notice in writing, require you to remove the
27 director from the board of directors within the period specified in
28 the notice. In determining the period, the Board must have regard
29 to any requirement of the *Corporations Act 2001* in relation to the
30 removal of directors.

31 Note: A failure to comply with a notice given under this subsection is a
32 breach of subsection 30-10(14).

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Section 40-20

1 **Subdivision 40-B—Notice and effect of termination**

2 **Table of sections**

3	40-20	Notification of decision to terminate registration and when termination
4		takes effect
5	40-25	Period during which you may not apply for registration

6 **40-20 Notification of decision to terminate registration and when**
7 **termination takes effect**

8 (1) If the Board terminates your registration, the Board must, within 30
9 days of the decision to terminate your registration, notify you in
10 writing of:

- 11 (a) the decision and the reasons for the decision; and
- 12 (b) any determination under section 40-25 of a period during
13 which you are not eligible to apply for registration.

14 However, a failure to notify does not affect the validity of the
15 Board's decision.

16 Note 1: The Board may terminate your registration under Subdivision 30-B or
17 40-A.

18 Note 2: The Board must cause notice of its decision to be published in the
19 *Gazette*: see section 60-140.

20 (2) The termination takes effect on the day specified in the notice
21 given under subsection (1). The day specified in the notice must be
22 at least 28 days after the date of the notice.

23 (3) The Board must also notify the Commissioner of the Board's
24 decision and the reasons for the decision.

25 **40-25 Period during which you may not apply for registration**

26 (1) If the Board terminates your registration, the Board may also
27 determine a period, of not more than 5 years, during which you
28 may not apply for registration.

29 (2) Subsection (1) does not apply if your registration was terminated
30 because:

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

- 1 (a) you surrendered your registration; or
2 (b) you became an undischarged bankrupt; or
3 (c) you went into external administration.
4

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Section 50-1

1

2 **Part 5—Civil penalties**

3 **Division 50—Civil penalties**

4 **Table of Subdivisions**

5 50-A Conduct that is prohibited without registration

6 50-B Other civil penalties

7 50-C Obtaining an order for a civil penalty

8 **Guide to this Division**

9 **50-1 What this Division is about**

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This Division contains civil penalty provisions. If you contravene a civil penalty provision, the Board may apply to the Federal Court for an order that you pay a pecuniary penalty.

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You contravene a civil penalty provision if you are unregistered and provide tax agent services for a fee, advertise that you can provide tax agent services or represent yourself as registered.

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You also contravene a civil penalty provision if you are registered and you make a false or misleading statement, employ or use the services of an entity whose registration has been terminated, or sign a declaration or statement that was prepared by an unregistered entity who was not working under the supervision or control of a registered tax agent or BAS agent.

22

23

Subdivision 50-A—Conduct that is prohibited without registration

24

Table of sections

25

50-5 Providing tax agent services if unregistered

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Section 50-10

- 1 (i) you are prohibited, under a *State law or *Territory law
2 that regulates legal practice and the provision of legal
3 services, from providing that BAS service; or
4 (ii) subject to subsection (4), the service consists of
5 preparing, or lodging, a return or a statement in the
6 nature of a return; and
7 (e) if the BAS service relates to imports or exports to which an
8 *indirect tax law applies—you are not a customs broker
9 licensed under Part XI of the *Customs Act 1901*.

10 Civil penalty:

- 11 (a) for an individual—250 penalty units; and
12 (b) for a body corporate—1,250 penalty units.

13 Note: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to
14 the *Taxation Administration Act 1953* determine the procedure for
15 obtaining a civil penalty order against you.

- 16 (3) Subparagraph (1)(e)(ii) does not apply if you provide the *tax agent
17 service as a legal service in the course of acting for a trust or
18 deceased estate as trustee or *legal personal representative.
19 (4) Subparagraph (2)(d)(ii) does not apply if you provide the *BAS
20 service as a legal service in the course of acting for a trust or
21 deceased estate as trustee or *legal personal representative.
22 (5) If you wish to rely on subsection (3) or (4) in civil penalty
23 proceedings, you bear an evidential burden in relation to that
24 matter.

25 **50-10 Advertising tax agent services if unregistered**

- 26 (1) You contravene this subsection if:
27 (a) you advertise that you will provide a *tax agent service; and
28 (b) the tax agent service is not a *BAS service; and
29 (c) you are not a *registered tax agent; and
30 (d) if the tax agent service would be provided as a legal
31 service—either:

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Section 50-10

- 1 (i) you are prohibited, under a *State law or *Territory law
2 that regulates legal practice and the provision of legal
3 services, from providing that tax agent service; or
4 (ii) subject to subsection (3), the service would consist of
5 preparing, or lodging, a return or a statement in the
6 nature of a return; and
7 (e) if the tax agent service would be provided on a voluntary
8 basis—you would not provide the service under a scheme
9 approved by the Commissioner by notice published in the
10 *Gazette*.

11 Civil penalty:

- 12 (a) for an individual—50 penalty units; and
13 (b) for a body corporate—250 penalty units.

14 Note: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to
15 the *Taxation Administration Act 1953* determine the procedure for
16 obtaining a civil penalty order against you.

- 17 (2) You contravene this subsection if:
18 (a) you advertise that you will provide a *BAS service; and
19 (b) you are not a *registered tax agent or BAS agent; and
20 (c) if the BAS service would be provided as a legal service—
21 either:
22 (i) you are prohibited, under a *State law or *Territory law
23 that regulates legal practice and the provision of legal
24 services, from providing that BAS service; or
25 (ii) subject to subsection (4), the service would consist of
26 preparing, or lodging, a return or a statement in the
27 nature of a return; and
28 (d) if the BAS service relates to imports or exports to which an
29 *indirect tax law applies—you are not a customs broker
30 licensed under Part XI of the *Customs Act 1901*; and
31 (e) if the BAS service would be provided on a voluntary basis—
32 you would not provide the service under a scheme approved
33 by the Commissioner by notice published in the *Gazette*.

34 Civil penalty:

- 35 (a) for an individual—50 penalty units; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Part 5 Civil penalties
Division 50 Civil penalties

Section 50-15

- 1 (b) for a body corporate—250 penalty units.
- 2 Note: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to
3 the *Taxation Administration Act 1953* determine the procedure for
4 obtaining a civil penalty order against you.
- 5 (3) Subparagraph (1)(d)(ii) does not apply if you would provide the
6 *tax agent service as a legal service in the course of acting for a
7 trust or deceased estate as trustee or *legal personal representative.
- 8 (4) Subparagraph (2)(c)(ii) does not apply if you would provide the
9 *BAS service as a legal service in the course of acting for a trust or
10 deceased estate as trustee or *legal personal representative.
- 11 (5) A notice under paragraph (1)(e) or (2)(e) is not a legislative
12 instrument.

13 **50-15 Representing that you are a registered tax agent or BAS agent**
14 **if unregistered**

15 You contravene this section if:

- 16 (a) you represent that you are a *registered tax agent or BAS
17 agent; and
18 (b) that representation is untrue.

19 Civil penalty:

- 20 (a) for an individual—50 penalty units; and
21 (b) for a body corporate—250 penalty units.

22 Note: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to
23 the *Taxation Administration Act 1953* determine the procedure for
24 obtaining a civil penalty order against you.

25 **Subdivision 50-B—Other civil penalties**

26 **Table of sections**

27	50-20	Making false or misleading statements
28	50-25	Employing or using the services of deregistered entities
29	50-30	Signing of declarations etc.

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

1 **50-20 Making false or misleading statements**

2 You contravene this section if:

- 3 (a) you are a *registered tax agent or BAS agent; and
4 (b) you:
5 (i) make a statement to the Commissioner; or
6 (ii) prepare a statement that you know, or ought reasonably
7 to know, is likely to be made to the Commissioner by an
8 entity; or
9 (iii) permit or direct an entity to do a thing mentioned in
10 subparagraph (i) or (ii); and
11 (c) you know, or are reckless as to whether, the statement:
12 (i) is false, incorrect or misleading in a material particular;
13 or
14 (ii) omits any matter or thing without which the statement is
15 misleading in a material respect.

16 Civil penalty:

- 17 (a) for an individual—250 penalty units; and
18 (b) for a body corporate—1,250 penalty units.

19 Note 1: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to
20 the *Taxation Administration Act 1953* determine the procedure for
21 obtaining a civil penalty order against you.

22 Note 2: In some circumstances, it is an offence to recklessly make a false or
23 misleading statement under sections 8K and 8N of the *Taxation*
24 *Administration Act 1953*.

25 **50-25 Employing or using the services of deregistered entities**

26 (1) You contravene this subsection if:

- 27 (a) you are a *registered tax agent or BAS agent; and
28 (b) you employ or use the services of an entity to provide *tax
29 agent services on your behalf; and
30 (c) you know, or ought reasonably to know, that:
31 (i) the entity is not a registered tax agent or BAS agent but
32 was previously a registered tax agent or BAS agent; and

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Section 50-30

- 1 (ii) the entity's registration was terminated within the
2 period of 1 year before you first employed, or first used
3 the services of, the entity.

4 Civil penalty:

- 5 (a) for an individual—250 penalty units; and
6 (b) for a body corporate—1,250 penalty units.

7 Note: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to
8 the *Taxation Administration Act 1953* determine the procedure for
9 obtaining a civil penalty order against you.

- 10 (2) Subsection (1) does not apply if the entity's registration was
11 terminated:

- 12 (a) because:
13 (i) the entity surrendered their registration; or
14 (ii) the entity became an undischarged bankrupt or went
15 into external administration; or
16 (b) because of a reason prescribed by the regulations.

17 **50-30 Signing of declarations etc.**

18 *Individuals*

- 19 (1) You contravene this subsection if:
20 (a) you are a *registered tax agent and an individual; and
21 (b) you sign a declaration or other statement in relation to a
22 taxpayer that is required or permitted by a *taxation law
23 (other than a *BAS provision); and
24 (c) the document in relation to which the declaration or other
25 statement is being made was prepared by an entity other than:
26 (i) you; or
27 (ii) another registered tax agent who is an individual; or
28 (iii) another individual who is working under your
29 supervision and control or the supervision or control of
30 another registered tax agent who is an individual.

31 Civil penalty: 250 penalty units.

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Section 50-30

1 Note: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to
2 the *Taxation Administration Act 1953* determine the procedure for
3 obtaining a civil penalty order against you.

4 (2) You contravene this subsection if:

- 5 (a) you are a *registered tax agent or BAS agent who is an
6 individual; and
7 (b) you sign a declaration or other statement in relation to a
8 taxpayer that is required or permitted by a *BAS provision;
9 and
10 (c) the document in relation to which the declaration or other
11 statement is being made was prepared by an entity other than:
12 (i) you; or
13 (ii) a registered tax agent or BAS agent who is an
14 individual; or
15 (iii) an individual who is working under your supervision
16 and control or the supervision or control of another
17 registered tax agent or BAS agent who is an individual.

18 Civil penalty: 250 penalty units.

19 Note: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to
20 the *Taxation Administration Act 1953* determine the procedure for
21 obtaining a civil penalty order against you.

22 *Partnerships and companies*

23 (3) You contravene this subsection if:

- 24 (a) you are a partnership or company that is a *registered tax
25 agent; and
26 (b) you sign a declaration or other statement in relation to a
27 taxpayer that is required or permitted by a *taxation law
28 (other than a *BAS provision); and
29 (c) the document in relation to which the declaration or other
30 statement is being made was prepared by an entity other than:
31 (i) a registered tax agent who is an individual; or
32 (ii) an individual who is working under the supervision and
33 control of a registered tax agent who is an individual.

34 Civil penalty: 1,250 penalty units.

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Part 5 Civil penalties
Division 50 Civil penalties

Section 50-30

- 1 Note 1: If you are a partnership and contravene this subsection, see also
2 section 50-40.
- 3 Note 2: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to
4 the *Taxation Administration Act 1953* determine the procedure for
5 obtaining a civil penalty order against you.

- 6 (4) You contravene this subsection if:
- 7 (a) you are a partnership or company that is a *registered tax
8 agent or BAS agent; and
- 9 (b) you sign a declaration or other statement in relation to a
10 taxpayer that is required or permitted by a *BAS provision;
11 and
- 12 (c) the document in relation to which the declaration or other
13 statement is being made was prepared by an entity other than:
- 14 (i) a registered tax agent or BAS agent who is an
15 individual; or
- 16 (ii) an individual who is working under the supervision and
17 control of a registered tax agent or BAS agent who is an
18 individual.

19 Civil penalty: 1,250 penalty units.

- 20 Note 1: If you are a partnership and contravene this subsection, see also
21 section 50-40.
- 22 Note 2: Subdivision 50-C of this Act and Subdivision 298-B of Schedule 1 to
23 the *Taxation Administration Act 1953* determine the procedure for
24 obtaining a civil penalty order against you.

- 25 (5) Subsections (1) to (4) do not apply if you took reasonable steps to
26 ensure the accuracy of the document. In civil penalty proceedings,
27 you bear the evidential burden of proving that you took such
28 reasonable steps.

29 **Subdivision 50-C—Obtaining an order for a civil penalty**

30 **Table of sections**

31	50-35	Federal Court may order you to pay a pecuniary penalty for contravening a
32		civil penalty provision
33	50-40	Treatment of partnerships
34	50-45	Recovery of a pecuniary penalty

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

1 **50-35 Federal Court may order you to pay a pecuniary penalty for**
2 **contravening a civil penalty provision**

3 *Application for order*

- 4 (1) Within 4 years after you contravene a civil penalty provision, the
5 Board may apply on behalf of the Commonwealth to the *Federal
6 Court for an order that you pay the Commonwealth a pecuniary
7 penalty.

8 *Court may order you to pay pecuniary penalty*

- 9 (2) If the *Federal Court is satisfied that you have contravened a civil
10 penalty provision, the Federal Court may order you to pay to the
11 Commonwealth, for each contravention, the pecuniary penalty that
12 the Federal Court determines is appropriate (but not more than the
13 maximum amount specified for the provision).

14 *Conduct contravening more than one civil penalty provision*

- 15 (3) If conduct contravenes 2 or more civil penalty provisions of this
16 Act, proceedings may be instituted against you in relation to the
17 contravention of any one or more of those provisions. However,
18 you are not liable to more than one pecuniary penalty in respect of
19 the same conduct.

20 **50-40 Treatment of partnerships**

- 21 (1) If a partnership contravenes a civil penalty provision, each partner
22 in the partnership, at the time of the conduct constituting the
23 contravention, is taken to have contravened the civil penalty
24 provision unless the partner proves, on the balance of probabilities,
25 that the partner:
26 (a) did not engage in the conduct; and
27 (b) did not aid, abet, counsel or procure the conduct; and
28 (c) was not in any way knowingly concerned in, or party to, the
29 conduct (whether directly or indirectly or whether by any act
30 or omission of the partner).

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Part 5 Civil penalties

Division 50 Civil penalties

Section 50-45

- 1 (2) If a partnership contravenes a civil penalty provision, the civil
2 penalty that may be imposed on each partner in the partnership:
3 (a) if the partner is an individual—must not exceed an amount
4 equal to one-fifth of the maximum penalty that could be
5 imposed on a body corporate for the same contravention; and
6 (b) in any other case—must not exceed the maximum penalty
7 that could be imposed on a body corporate for the same
8 contravention.

9 **50-45 Recovery of a pecuniary penalty**

- 10 If the *Federal Court orders you to pay a pecuniary penalty:
11 (a) the penalty is payable to the Commissioner, who receives the
12 penalty on behalf of the Commonwealth; and
13 (b) the Commissioner may, on behalf of the Commonwealth,
14 enforce the order as if it were a judgment of the Federal
15 Court.
16

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

1

2 **Part 6—The Tax Practitioners Board**

3 **Division 60—The Tax Practitioners Board**

4 **Table of Subdivisions**

5	60-A	Establishment, functions and powers of the Board
6	60-B	Appointment etc. of members of the Board
7	60-C	Board procedures
8	60-D	Committees etc.
9	60-E	Investigations
10	60-F	Public reporting obligations of the Board

11 **Guide to this Division**

12 **60-1 What this Division is about**

13 This Division establishes the Tax Practitioners Board and contains
14 administrative provisions relating to Board appointments and
15 Board procedures.

16 Comprising at least 7 Board members, the Board has functions and
17 powers relating to the operation of this Act, including investigating
18 your application for registration and conduct that may breach this
19 Act. For the purposes of an investigation, the Board may oblige
20 you to give it information.

21 The Board must also report to the Minister on its operations each
22 year, maintain a register of registered tax agents and BAS agents,
23 and publish decisions to terminate or suspend the registration of a
24 registered tax agent or BAS agent.

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Section 60-5

1 **Subdivision 60-A—Establishment, functions and powers of the**
2 **Board**

3 **Table of sections**

4	60-5	Establishment
5	60-10	Membership
6	60-15	Functions
7	60-20	Powers

8 **60-5 Establishment**

9 The Tax Practitioners Board is established.

10 **60-10 Membership**

- 11 (1) The Board consists of:
- 12 (a) the *Chair; and
- 13 (b) 6 or more other *Board members.
- 14 (2) The performance of the functions, or the exercise of the powers, of
- 15 the Board is not affected only because of a vacancy or vacancies in
- 16 the membership of the Board.

17 **60-15 Functions**

- 18 The functions of the Board are:
- 19 (a) to administer the system for the registration of *registered tax
- 20 agents and BAS agents; and
- 21 (b) to investigate:
- 22 (i) applications for registration; and
- 23 (ii) conduct that may breach this Act; and
- 24 (c) to impose sanctions for non-compliance with the *Code of
- 25 Professional Conduct; and
- 26 (d) to issue, by legislative instrument, guidelines to assist in
- 27 achieving the functions mentioned in paragraphs (a), (b) and
- 28 (c); and

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

- 1 (e) such other functions as are conferred on the Board by this
2 Act, the regulations or any other law of the Commonwealth;
3 and
4 (f) to do anything incidental or conducive to the performance of
5 its functions.

6 **60-20 Powers**

7 The Board has power to do all things necessary or convenient to be
8 done for or in connection with the performance of its functions.

9 **Subdivision 60-B—Appointment etc. of members of the Board**

10 **Table of sections**

11	60-25	Appointment
12	60-30	Term of appointment
13	60-35	Remuneration and allowances
14	60-40	Leave of absence
15	60-45	Outside employment
16	60-50	Disclosure of interests
17	60-55	Resignation
18	60-60	Termination of appointment
19	60-65	Terms and conditions of appointment not provided for by Act

20 **60-25 Appointment**

- 21 (1) A Board member is to be appointed by the Minister by written
22 instrument, on a full-time basis or on a part-time basis.
- 23 (2) The Minister must appoint one of the *Board members to be the
24 *Chair. However, that member must not be:
- 25 (a) a person who holds any office or appointment (other than as a
26 Board member) under a law of the Commonwealth; or
27 (b) a person appointed or engaged under the *Public Service Act*
28 *1999*.

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Section 60-30

- 1 (3) A person's appointment as a *Board member is not invalid because
2 of a defect or irregularity in connection with the person's
3 appointment.

4 **60-30 Term of appointment**

5 A *Board member holds office for the period specified in the
6 instrument of appointment.

7 Note: A Board member is eligible for reappointment: see subsection 33(4A)
8 of the *Acts Interpretation Act 1901*.

9 **60-35 Remuneration and allowances**

10 (1) A *Board member is to be paid the remuneration that is determined
11 by the Remuneration Tribunal. If no determination of that
12 remuneration is in operation, a Board member is to be paid the
13 remuneration that is prescribed by the regulations.

14 (2) A *Board member is to be paid the allowances that are prescribed
15 by the regulations.

16 (3) This section has effect subject to the *Remuneration Tribunal Act*
17 1973.

18 **60-40 Leave of absence**

19 (1) A full-time *Board member has the recreation leave entitlements
20 that are determined by the Remuneration Tribunal.

21 (2) The Minister may grant a full-time *Board member leave of
22 absence, other than recreation leave, on the terms and conditions as
23 to remuneration or otherwise that the Minister determines.

24 (3) The Minister may grant leave of absence to a part-time *Board
25 member on the terms and conditions that the Minister determines.

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

1 **60-45 Outside employment**

- 2 (1) A full-time *Board member must not engage in paid employment
3 outside the duties of his or her office without the Minister's
4 approval.
- 5 (2) A part-time *Board member must not engage in paid employment
6 that conflicts or may conflict with the proper performance of his or
7 her duties.

8 **60-50 Disclosure of interests**

9 A *Board member must give written notice to the Minister of any
10 direct or indirect pecuniary interest that the Board member has or
11 acquires and that conflicts or could conflict with the proper
12 performance of the Board's functions.

13 **60-55 Resignation**

- 14 (1) A *Board member may resign his or her appointment by giving the
15 Minister a written resignation. The resignation must specify a day
16 from which the resignation will take effect.
- 17 (2) The *Chair may resign his or her appointment without resigning his
18 or her appointment as a *Board member.

19 **60-60 Termination of appointment**

20 *All Board members*

- 21 (1) The Minister may terminate the appointment of a *Board member:
22 (a) for misbehaviour or physical or mental incapacity; or
23 (b) if the Board member:
24 (i) becomes bankrupt; or
25 (ii) applies to take the benefit of any law for the relief of
26 bankrupt or insolvent debtors; or
27 (iii) compounds with his or her creditors; or
28 (iv) makes an assignment of his or her remuneration for the
29 benefit of his or her creditors; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Section 60-65

- 1 (c) if the Board member fails, without reasonable excuse, to
2 comply with section 60-50.

3 *Additional grounds: full-time Board members*

- 4 (2) The Minister may terminate the appointment of a full-time *Board
5 member if:
6 (a) the Board member is absent, except on leave of absence, for
7 14 consecutive days or for 28 days in any 12 months; or
8 (b) the Board member engages, except with the Minister's
9 approval, in paid employment outside the duties of his or her
10 office.

11 *Additional grounds: part-time Board members*

- 12 (3) The Minister may terminate the appointment of a part-time *Board
13 member if:
14 (a) the Board member is absent, except on leave of absence,
15 from 3 consecutive meetings of the Board; or
16 (b) the Board member engages in paid employment that conflicts
17 or may conflict with the proper performance of his or her
18 duties.

19 **60-65 Terms and conditions of appointment not provided for by Act**

20 A *Board member holds office on such terms and conditions (if
21 any) in relation to matters not provided for by this Act as are
22 determined, in writing, by the Minister.

23 **Subdivision 60-C—Board procedures**

24 **Table of sections**

25	60-70	Meetings
26	60-75	Decisions without meetings
27	60-80	Administrative support for the Board

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

1 **60-70 Meetings**

- 2 (1) At a meeting of the Board, a majority of *Board members
3 constitutes a quorum.
- 4 (2) A question arising at a meeting is decided by a majority of the
5 votes of the *Board members present and voting.
- 6 (3) The *Chair presides at all meetings at which he or she is present. If
7 the Chair is not present, the *Board members present must appoint
8 one of themselves to preside. However, the member appointed to
9 preside must not be:
- 10 (a) a person who holds any office or appointment (other than as a
11 Board member) under a law of the Commonwealth; or
- 12 (b) a person appointed or engaged under the *Public Service Act*
13 *1999*.
- 14 (4) The *Board member presiding at a meeting has a deliberative vote
15 and, if necessary, a casting vote.
- 16 (5) The Board may regulate proceedings at its meetings as it considers
17 appropriate.

18 Note: Section 33B of the *Acts Interpretation Act 1901* provides for
19 participation in meetings by telephone etc.

20 **60-75 Decisions without meetings**

- 21 (1) The Board may only make a decision without meeting if the Board
22 determines that the decision may be made in that way.
- 23 (2) If the Board determines that a decision may be made without
24 meeting, a decision is taken to have been made at a Board meeting
25 if:
- 26 (a) a majority of the Board indicate agreement with the proposed
27 decision in accordance with the method determined by the
28 Board under subsection (3); and
- 29 (b) all *Board members were informed of the proposed decision,
30 or reasonable efforts were made to inform all Board members
31 of the proposed decision.

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Section 60-80

1 (3) The Board may determine the method by which *Board members
2 are to indicate agreement with proposed decisions.

3 (4) The Board must keep a record of decisions made in accordance
4 with this section.

5 **60-80 Administrative support for the Board**

6 The Board is to be assisted by APS employees whose services are
7 made available to the Board by the Commissioner.

8 **Subdivision 60-D—Committees etc.**

9 **Table of sections**

10	60-85	Establishment of committees
11	60-90	Remuneration and allowances of committee members

12 **60-85 Establishment of committees**

13 (1) The Board may establish *committees to assist the Board in the
14 performance of its functions and the exercise of its powers.

15 (2) A *committee is to consist of such persons (whether *Board
16 members or not) as the Board determines.

17 **60-90 Remuneration and allowances of committee members**

18 (1) A member of a *committee (other than a *Board member) is to be
19 paid the remuneration that is determined by the Remuneration
20 Tribunal but, if no determination is in operation, the member is to
21 be paid the remuneration that is prescribed by the regulations.

22 (2) A member of a *committee (other than a *Board member) is to be
23 paid the allowances that are prescribed by the regulations.

24 (3) This section has effect subject to the *Remuneration Tribunal Act*
25 *1973*.

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

1 **Subdivision 60-E—Investigations**

2 **Table of sections**

3	60-95	Investigations
4	60-100	Power to request production of a document or thing
5	60-105	Power to require witnesses to appear before the Board
6	60-110	Power to take evidence on oath or affirmation
7	60-115	Self-incrimination
8	60-120	Board may retain documents and things
9	60-125	Outcomes of investigations

10 **60-95 Investigations**

- 11 (1) The Board may investigate:
- 12 (a) your application for registration; or
- 13 (b) any conduct that may breach this Act; or
- 14 (c) other matters prescribed by the regulations.
- 15 (2) The Board must notify you in writing if the Board decides to
- 16 investigate you. The notice must be given within 2 weeks after the
- 17 decision is made.
- 18 (3) An investigation is taken to commence on the date of the notice.
- 19 (4) The Board:
- 20 (a) has a discretion as to its procedure; and
- 21 (b) is not bound by the rules of evidence.

22 **60-100 Power to request production of a document or thing**

- 23 (1) For the purpose of an investigation, the Board may, by notice,
- 24 request a person:
- 25 (a) to give the Board the information referred to in the notice; or
- 26 (b) to produce to the Board the documents or things referred to in
- 27 the notice.

28 Note: Failure to give the information, or produce the documents or things, is

29 an offence: see sections 8C and 8D of the *Taxation Administration Act*

30 *1953*.

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Section 60-105

- 1 (2) The Board's request must:
2 (a) be in writing; and
3 (b) specify the period within which the person must comply with
4 the request.
5 The period specified under paragraph (b) must be at least 14 days
6 after the date of the request.

7 **60-105 Power to require witnesses to appear before the Board**

- 8 (1) For the purpose of an investigation, the Board may, by notice in
9 writing, require a person to appear before it:
10 (a) to give evidence; or
11 (b) to produce the documents or things referred to in the notice.
12 Note: Failure to attend, answer questions, or produce the documents or
13 things, is an offence: see sections 8C and 8D of the *Taxation*
14 *Administration Act 1953*.
15 (2) If a person is required to appear before the Board because the
16 person has been nominated by an entity that has applied for
17 registration, the person is entitled to be paid by the entity any
18 allowances and expenses that are prescribed by the regulations.
19 (3) In any other case, a person required to appear before the Board is
20 entitled to be paid by the Commonwealth any allowances and
21 expenses that are prescribed by the regulations.

22 **60-110 Power to take evidence on oath or affirmation**

- 23 (1) For the purpose of taking evidence, the *Chair, or an individual
24 acting on behalf of the Chair, may:
25 (a) require a person to either take an oath or make an
26 affirmation; and
27 (b) administer an oath or affirmation to the person.
28 Note: Failure to take an oath or make an affirmation is an offence: see
29 section 8D of the *Taxation Administration Act 1953*.
30 (2) The oath or affirmation is an oath or affirmation that the evidence
31 the person will give will be true.

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

- 1 (3) The Board may, if it thinks that it is appropriate, allow a person
2 who has been sworn, or who has made an affirmation, to give
3 evidence by tendering a written statement and verifying it by oath
4 or affirmation.

5 **60-115 Self-incrimination**

- 6 (1) A person is not excused from:
7 (a) giving information or evidence; or
8 (b) producing a document or thing;
9 under section 60-100 or 60-105 on the ground that doing so might
10 tend to incriminate the person or expose the person to a penalty.
- 11 (2) However, in the case of an individual:
12 (a) the information or evidence given or the document or thing
13 produced; and
14 (b) the giving of the information or evidence or the producing of
15 the document or thing; and
16 (c) any information, document or thing obtained as a direct or
17 indirect consequence of giving the information or evidence,
18 or producing the document or thing;
19 are not admissible in evidence against the individual in
20 proceedings, other than proceedings for an offence against:
21 (d) section 8C or 8D of the *Taxation Administration Act 1953* in
22 relation to the information or evidence given, or document or
23 thing produced, under this Act; or
24 (e) section 137.1 or 137.2 of the *Criminal Code* (which deals
25 with false or misleading information or documents) in
26 relation to the information or evidence given, or document
27 produced, under this Act; or
28 (f) section 149.1 of the *Criminal Code* (which deals with
29 obstruction of Commonwealth public officials) that relates to
30 this Act.

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Section 60-120

1 **60-120 Board may retain documents and things**

- 2 (1) If a document or thing is produced to the Board in accordance with
3 section 60-100 or 60-105, the Board:
- 4 (a) may take possession of, and make copies of, the document or
5 thing, or take extracts from the document; and
 - 6 (b) may retain possession of the document or thing for such
7 period as is necessary for the purposes of the investigation to
8 which the document or thing relates.
- 9 (2) While the Board retains the document or thing, the Board must
10 allow a person who would otherwise be entitled to possession of
11 the document or thing, or a person authorised by that person:
- 12 (a) reasonable access to the document for the purposes of
13 inspecting and making copies of, or taking extracts from, it;
14 and
 - 15 (b) reasonable access to the thing.

16 **60-125 Outcomes of investigations**

17 *Investigation relating to application for registration*

- 18 (1) After completing an investigation in relation to an application for
19 registration under section 20-20, the Board must make a decision
20 in accordance with section 20-25.

21 *Investigation relating to whether conduct breaches this Act*

- 22 (2) If the Board investigates conduct under section 60-95 and finds
23 that the conduct breaches this Act, the Board must either:
- 24 (a) make a decision that no further action will be taken; or
 - 25 (b) do one or more of the following:
 - 26 (i) impose one or more sanctions under Subdivision 30-B;
 - 27 (ii) terminate an entity's registration under
28 Subdivision 40-A;
 - 29 (iii) apply to the *Federal Court for an order for payment of
30 a pecuniary penalty under Subdivision 50-C;

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

1 (iv) apply to the Federal Court for an injunction under
2 section 70-5.

3 Note: The Board may terminate an entity's registration under
4 Subdivision 40-A without investigating conduct under section 60-95.

5 *Period within which a decision must be made*

6 (3) The Board must make a decision under subsection (2):

7 (a) within 6 months after the day on which the investigation is
8 taken to have commenced under subsection 60-95(3); or

9 (b) if a longer period is determined by the Board under
10 subsection (4)—within that period.

11 (4) If the Board is satisfied that, for reasons beyond the control of the
12 Board, a decision under subsection (2) cannot be made within the
13 period mentioned in paragraph (3)(a), the Board may determine a
14 longer period within which the Board must make a decision under
15 subsection (2).

16 (5) If the Board determines a longer period, the Board must do so not
17 later than 2 weeks before the expiry of the period mentioned in
18 paragraph (3)(a).

19 (6) The reasons mentioned in subsection (4) include, but are not
20 limited to, the following:

21 (a) undue delay that has been caused by an entity other than the
22 Board and that has affected the conduct of the investigation
23 to which the decision relates;

24 (b) the complexity of the investigation.

25 *Decision not made*

26 (7) If:

27 (a) a decision is not made within the period mentioned in
28 paragraph (3)(a) and the Board does not determine a longer
29 period; or

30 (b) the Board determines a longer period but does not make a
31 decision within that period;

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Section 60-125

1 the Board is taken to have decided to take no further action in
2 relation to the matter that was the subject of investigation.

3 *Notification of decisions*

- 4 (8) If:
- 5 (a) the Board makes a decision under subsection (2); or
 - 6 (b) the Board investigates conduct under section 60-95 and finds
7 that the conduct does not breach this Act;
- 8 the Board must, within 30 days of making the decision or finding:
- 9 (c) notify the following persons, in writing, of the decision or
10 finding:
 - 11 (i) the entity affected by the decision or finding;
 - 12 (ii) the complainant (if any);
 - 13 (iii) if the decision or finding is relevant to the
14 administration of the *taxation laws (other than this
15 Act)—the Commissioner; and
 - 16 (d) give, in writing, the reasons for the decision to:
 - 17 (i) the entity affected by the decision; and
 - 18 (ii) if subparagraph (c)(iii) applies—the Commissioner.
- 19 (9) If the Board determines a longer period under subsection (4), the
20 Board must, within 30 days of making the determination:
- 21 (a) notify the entity affected by the determination, in writing, of
22 the determination; and
 - 23 (b) give, in writing, the reasons for the determination.

24 **Subdivision 60-F—Public reporting obligations of the Board**

25 **Table of sections**

26	60-130	Annual report
27	60-135	Register
28	60-140	Publication of information

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

1 **60-130 Annual report**

- 2 (1) The *Chair must, as soon as practicable after the end of each
3 *financial year, prepare and give to the Minister, for presentation to
4 the Parliament, a report on its operations during that year.

5 Note: See also section 34C of the *Acts Interpretation Act 1901*, which
6 contains extra rules about annual reports.

- 7 (2) The *Chair must also set out in the report the things mentioned in
8 paragraphs 3B(1AA)(b) and (c) of the *Taxation Administration Act*
9 1953, to the extent that the Board discloses information under
10 section 3E of that Act during the year.

11 Note: Section 3E of the *Taxation Administration Act 1953* applies in relation
12 to the Board: see section 70-45.

13 **60-135 Register**

- 14 (1) The Board must establish and maintain a register of:
15 (a) *registered tax agents and BAS agents; and
16 (b) each entity who was a *registered tax agent or BAS agent and
17 whose registration has been terminated other than:
18 (i) because the entity surrendered their registration; or
19 (ii) because of a reason prescribed by the regulations.
- 20 (2) The regulations may prescribe the details that the Board must enter
21 on the register in respect of each entity who is entered on the
22 register.
- 23 (3) Details of an entity who was a *registered tax agent or BAS agent
24 must only be kept on the register for the 12 month period starting
25 on the day on which the entity's registration as a registered tax
26 agent or BAS agent was terminated.
- 27 (4) The register is to be made available for inspection on the internet.

28 **60-140 Publication of information**

29 The Board must cause a notice of the following decisions to be
30 published in the *Gazette*:

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Part 6 The Tax Practitioners Board

Division 60 The Tax Practitioners Board

Section 60-140

- 1 (a) a decision under Subdivision 30-B or 40-A to terminate the
2 registration of a *registered tax agent or BAS agent;
3 (b) a decision under section 30-25 to suspend the registration of
4 a registered tax agent or BAS agent.
5

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

1

2 **Part 7—Miscellaneous**

3 **Division 70—Miscellaneous**

4 **Table of Subdivisions**

5	70-A	Injunctions
6	70-B	Administrative review
7	70-C	Provisions affecting trustees and partnerships
8	70-D	Provisions relating to the Board
9	70-E	Miscellaneous

10 **Guide to this Division**

11 **70-1 What this Division is about**

12
13
14
15
16

This Division sets out some miscellaneous provisions, including a provision allowing the Board to apply to the Federal Court for an injunction, a provision allowing you to apply to the Administrative Appeals Tribunal for review of a Board's decision and a provision about the treatment of trustees.

17 **Subdivision 70-A—Injunctions**

18 **Table of sections**

19	70-5	Injunction to restrain or require certain conduct
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20 **70-5 Injunction to restrain or require certain conduct**

- 21 (1) If, on the application of the Board, the *Federal Court is satisfied
22 that you have engaged, or are proposing to engage, in conduct that
23 would constitute a contravention of a civil penalty provision, the
24 Federal Court may grant an injunction:
25 (a) restraining you from engaging in the conduct; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Part 7 Miscellaneous

Division 70 Miscellaneous

Section 70-10

1 (b) if in the Federal Court's opinion it is desirable to do so,
2 requiring you to do something.

3 (2) Before deciding the application, the *Federal Court may grant an
4 interim injunction:

5 (a) restraining you from engaging in conduct; or

6 (b) requiring you to do something.

7 **Subdivision 70-B—Administrative review**

8 **Table of sections**

9 70-10 Administrative review

10 **70-10 Administrative review**

11 An application may be made to the Administrative Appeals
12 Tribunal for review of any of the following decisions of the Board:

13 (a) a decision under section 20-25:

14 (i) to reject an application for registration (including
15 renewal of registration); or

16 (ii) to specify a condition to which registration is subject;

17 (b) a decision under subsection 20-30(3) to require professional
18 indemnity insurance;

19 (c) a decision under section 20-40 to refuse to vary a condition to
20 which registration is subject;

21 (d) a decision under subsection 20-50(1) not to determine a
22 shorter period for making a renewal application;

23 (e) a decision under Subdivision 30-B or 40-A to terminate
24 registration;

25 (f) a decision under section 30-20 to make an order or to specify
26 a time period in respect of an order;

27 (g) a decision under section 30-25 to suspend registration
28 (including a decision as to the length of the suspension);

29 (h) a decision under section 40-25 to determine a period during
30 which an application for registration may not be made;

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

- 1 (i) a decision under subsection 60-125(4) to extend the period of
2 time within which an investigation is to be completed.

3 **Subdivision 70-C—Provisions affecting trustees and**
4 **partnerships**

5 **Table of sections**

6	70-15	How this Act applies to an individual or company in the capacity of a
7		trustee
8	70-20	Continuity of partnerships

9 **70-15 How this Act applies to an individual or company in the**
10 **capacity of a trustee**

11 This Act applies to:

- 12 (a) a trustee who is an individual in the same way as it applies to
13 an individual; and
14 (b) a trustee that is a company in the same way as it applies to a
15 company.

16 **70-20 Continuity of partnerships**

17 For the purposes of this Act, a change in the composition of a
18 partnership does not affect the continuity of the partnership.

19 **Subdivision 70-D—Provisions relating to the Board**

20 **Table of sections**

21	70-25	Immunity from legal action
22	70-30	Delegation by Board

23 **70-25 Immunity from legal action**

24 No action, suit or proceeding may be brought against:

- 25 (a) a person who is, or has been, a *Board member; or
26 (b) a person who is, or has been, a member of a *committee;

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Section 70-30

- 1 in relation to anything done, or omitted to be done, in good faith by
2 the Board member or committee member:
3 (c) in the performance, or purported performance, of the Board's
4 functions; or
5 (d) in the exercise, or purported exercise, of the Board's powers.

6 **70-30 Delegation by Board**

- 7 (1) Subject to subsection (2), the Board may, by writing, delegate all
8 or any of its functions and powers to a *Board member or a
9 *committee, other than:
10 (a) its function of issuing guidelines; and
11 (b) its power to establish a committee under section 60-85.
- 12 (2) The Board may only delegate to a *committee a power to make a
13 decision in respect of which an application for review may be
14 made to the Administrative Appeals Tribunal under section 70-10
15 if:
16 (a) the committee has 3 members or more; and
17 (b) all members of the committee are *Board members.
- 18 (3) A delegate is, in the exercise of a delegated function or power,
19 subject to the directions of the Board.
- 20 (4) A delegation under this section:
21 (a) may be revoked by the Board (whether or not constituted by
22 the *Board members who constituted the Board when the
23 power was delegated); and
24 (b) continues in force even if the membership of the Board
25 changes.

26 **Subdivision 70-E—Miscellaneous**

27 **Table of sections**

28	70-35	Secrecy
29	70-40	Provision of information by Board to Commissioner
30	70-45	Application of certain secrecy provisions of the <i>Taxation Administration</i>
31		<i>Act 1953</i>

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

1	70-50	Legal professional privilege
2	70-55	Regulations

3 **70-35 Secrecy**

4 (1) A person commits an offence if:

5 (a) the person:

6 (i) is or has been a *Board member or a member of a
7 *committee; or

8 (ii) is or has been an APS employee whose services were
9 made available to the Board by the Commissioner; or

10 (iii) is or has been a person appointed or employed by, or a
11 provider of services for, the Commonwealth; and

12 (b) the person acquires or acquired information relating to a
13 person in the course of, or because of, his or her duties under
14 or in relation to this Act or the regulations; and

15 (c) the person:

16 (i) discloses the information to another person (including a
17 Minister); or

18 (ii) makes a record of the information.

19 Penalty: Imprisonment for 2 years.

20 (2) However, subsection (1) does not apply if the information is
21 disclosed or a record of the information is made:

22 (a) under or for the purposes of this Act or the regulations; or

23 (b) in the course of, or because of, the person's duties under or in
24 relation to this Act or the regulations.

25 Note: A defendant bears an evidential burden in relation to the matters in
26 subsection (2): see subsection 13.3(3) of the *Criminal Code*.

27 (3) A person mentioned in paragraph (1)(a) is not required to disclose
28 information of a kind mentioned in paragraph (1)(b) to a court or
29 tribunal except if it is necessary to do so for the purpose of
30 carrying into effect the provisions of this Act or the regulations.

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Section 70-40

1 **70-40 Provision of information by Board to Commissioner**

- 2 (1) Despite section 70-35, the Board may disclose information to the
3 Commissioner if the Board is satisfied that the information is
4 relevant to:
- 5 (a) establishing whether a *taxation offence has been, or is being,
6 committed; or
 - 7 (b) the making, or proposed or possible making, of a *proceeds
8 of crime order.
- 9 (2) A reference in this section to the possible making of a *proceeds of
10 crime order in respect of a person includes a reference to the
11 making of an order that is only a possibility at the time in question
12 because the person has not been convicted (within the meaning of
13 section 331 of the *Proceeds of Crime Act 2002*) of an offence to
14 which the order relates.

15 **70-45 Application of certain secrecy provisions of the *Taxation***
16 ***Administration Act 1953***

17 Sections 3D and 3E of the *Taxation Administration Act 1953* apply
18 as if the references in those sections to the Commissioner were
19 references to the Board.

20 **70-50 Legal professional privilege**

21 This Act does not affect the law relating to legal professional
22 privilege.

23 **70-55 Regulations**

- 24 (1) The Governor-General may make regulations prescribing matters:
25 (a) required or permitted by this Act to be prescribed; or
26 (b) necessary or convenient to be prescribed for carrying out or
27 giving effect to this Act.
- 28 (2) In particular, regulations may be made in relation to transitional
29 matters relating to the enactment of this Act and the repeal of
30 Part VIIA of the *Income Tax Assessment Act 1936*.
31

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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2 **Part 8—Interpretation**

3 **Division 80—Rules for interpreting this Act**

4 **Table of sections**

5	80-1	What forms part of this Act
6	80-5	The role of Guides in interpreting this Act

7 **80-1 What forms part of this Act**

- 8 (1) These all form part of this Act:
- 9 (a) the headings to the Parts, Divisions and Subdivisions of this
10 Act;
- 11 (b) *Guides;
- 12 (c) the headings to the sections and subsections of this Act;
- 13 (d) the notes and examples (however described) that follow
14 provisions of this Act.
- 15 (2) The asterisks used to identify defined terms form part of this Act.
16 However, if a term is not identified by an asterisk, disregard that
17 fact in deciding whether or not to apply to that term a definition or
18 other interpretation provision.

19 **80-5 The role of Guides in interpreting this Act**

- 20 (1) A **Guide** consists of sections under a heading indicating that what
21 follows is a Guide to a particular Subdivision, Division etc.
- 22 (2) A **Guide** forms part of this Act, but is kept separate from operative
23 provisions. In interpreting an operative provision, a Guide may
24 only be considered:
- 25 (a) in determining the purpose or object underlying the
26 provision; or
- 27 (b) to confirm that the provision's meaning is the ordinary
28 meaning conveyed by its text, taking into account its context

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Part 8 Interpretation

Division 80 Rules for interpreting this Act

Section 80-5

- 1 in the Act and the purpose or object underlying the provision;
2 or
3 (c) in determining the provision's meaning if the provision is
4 ambiguous or obscure; or
5 (d) in determining the provision's meaning if the ordinary
6 meaning conveyed by its text, taking into account its context
7 in the Act and the purpose or object underlying the provision,
8 leads to a result that is manifestly absurd or is unreasonable.
9

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

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2 **Division 90—Dictionary**

3 **Table of sections**

4	90-1	Dictionary
5	90-5	Meaning of <i>tax agent service</i>
6	90-10	Meaning of <i>BAS service</i>

7 **90-1 Dictionary**

8 (1) In this Act:

9 *BAS service* has the meaning given by section 90-10.

10 *Board* means the Tax Practitioners Board established by
11 section 60-5.

12 *Board member* means a member of the Board appointed in
13 accordance with section 60-25 (including the Chair).

14 *Chair* means the Chair of the Board.

15 *Code of Professional Conduct* means the Code of Professional
16 Conduct set out in section 30-10.

17 *committee* means a committee established under section 60-85.

18 *Federal Court* means the Federal Court of Australia.

19 *Guide* has the meaning given by section 80-5.

20 *penalty unit* has the meaning given by section 4AA of the *Crimes*
21 *Act 1914*.

22 *proceeds of crime order* means an order, relating to a person's
23 commission of a *taxation offence, under:

24 (a) Chapter 2 or Division 1 of Part 3-1 of the *Proceeds of Crime*
25 *Act 2002*; or

26 (b) Part II or III of the *Proceeds of Crime Act 1987*; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Section 90-1

- 1 (c) a law of a State or Territory corresponding to paragraph (a)
2 or (b); or
3 (d) Division 3 of Part XIII of the *Customs Act 1901*.

4 **registered BAS agent** means an entity that is registered under this
5 Act as a registered BAS agent.

6 Note: In most cases, an entity is taken not to be a registered BAS agent if the
7 entity is suspended from providing BAS services under section 30-25.

8 **registered tax agent** means an entity that is registered under this
9 Act as a registered tax agent.

10 Note: In most cases, an entity is taken not to be a registered tax agent if the
11 entity is suspended from providing tax agent services under
12 section 30-25.

13 **registered tax agent or BAS agent** means an entity that is
14 registered under this Act as a registered tax agent or a registered
15 BAS agent.

16 **registered tax agents and BAS agents** means entities that are
17 registered under this Act as registered tax agents and entities that
18 are registered under this Act as registered BAS agents.

19 **serious taxation offence** means:

- 20 (a) an offence against section 134.1, 134.2, 135.1, 135.2 or 135.4
21 of the *Criminal Code*, if the offence relates to a tax liability
22 (within the meaning of the *Taxation Administration Act*
23 *1953*); or
24 (b) a *taxation offence that is punishable on conviction by a fine
25 exceeding 40 penalty units, or imprisonment, or both.

26 **tax agent service** has the meaning given by section 90-5.

27 **taxation offence** has the meaning given by section 8A of the
28 *Taxation Administration Act 1953*.

29 **tax practitioner registration requirements** means the matters about
30 which the Board must, under Subdivision 20-A, be satisfied before
31 the Board is obliged to grant an application for registration under
32 this Act.

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

- 1 (2) An expression has the same meaning in this Act as in the *Income*
2 *Tax Assessment Act 1997* (other than the expression “this Act”).

3 **90-5 Meaning of *tax agent service***

- 4 (1) A ***tax agent service*** is any service:
5 (a) that relates to:
6 (i) ascertaining liabilities, obligations or entitlements of an
7 entity that arise, or could arise, under a *taxation law; or
8 (ii) advising an entity about liabilities, obligations or
9 entitlements of the entity or another entity that arise, or
10 could arise, under a taxation law; or
11 (iii) representing an entity in their dealings with the
12 Commissioner; and
13 (b) that is provided in circumstances where the entity can
14 reasonably be expected to rely on the service for either or
15 both of the following purposes:
16 (i) to satisfy liabilities or obligations that arise, or could
17 arise, under a taxation law;
18 (ii) to claim entitlements that arise, or could arise, under a
19 taxation law.
- 20 (2) A service specified in the regulations for the purposes of this
21 subsection is not a ***tax agent service***.

22 Note: For specification by class, see subsection 13(3) of the *Legislative*
23 *Instruments Act 2003*.

24 **90-10 Meaning of *BAS service***

- 25 (1) A ***BAS service*** is a *tax agent service:
26 (a) that relates to:
27 (i) ascertaining liabilities, obligations or entitlements of an
28 entity that arise, or could arise, under a *BAS provision;
29 or
30 (ii) advising an entity about liabilities, obligations or
31 entitlements of the entity or another entity that arise, or
32 could arise, under a BAS provision; or

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.

Section 90-10

- 1 (iii) representing an entity in their dealings with the
2 Commissioner in relation to a BAS provision; and
3 (b) that is provided in circumstances where the entity can
4 reasonably be expected to rely on the service for either or
5 both of the following purposes:
6 (i) to satisfy liabilities or obligations that arise, or could
7 arise, under a BAS provision;
8 (ii) to claim entitlements that arise, or could arise, under a
9 BAS provision.
- 10 (2) A service specified in the regulations for the purposes of this
11 subsection is not a **BAS service**.

12 Note: For specification by class, see subsection 13(3) of the *Legislative*
13 *Instruments Act 2003*.
14

(213/08)

*To find definitions of asterisked terms, see the Dictionary, starting at section 90-1.
