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# **Chapter 5**

## ***The Tax Practitioners Board***

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### **Outline of chapter**

5.1 Division 608 of Item 18 of this Bill amends Schedule 1 of the *Taxation Administration Act 1953* (TAA 1953) to establish a national Tax Practitioners Board (the Board). The Board is responsible for:

- registration of tax agents, BAS service providers and nominees (collectively termed ‘tax practitioners’);
- conducting investigations and imposing sanctions for breaches of the Code of Professional Conduct (the Code) where necessary; and
- other functions that are incidental to the above responsibilities or are prescribed in the regulations.

### **Context of amendments**

#### **Operation of current provisions**

5.2 Currently, the six state Tax Agents’ Boards operate somewhat independently of one another. Each administers registration processes, disciplinary processes, investigations and evidence gathering activities in accordance with the same law, but with separate administrative processes.

5.3 Under the current arrangements, each state Board is allocated a similar level of resources to perform its functions, despite significant differences in the number of tax agents that each jurisdiction regulates. The current arrangements have therefore led to some Boards being overworked, while others are comparatively under utilised.

5.4 The separation of the state Boards in turn has increased the risk of inconsistencies in the regulation and standards of tax agents, particularly in the administration of tax agent registrations and the handling of complaints and disciplinary matters.

5.5 Furthermore, while the current law provides for the Minister to appoint members to each state Board, it does not:

- stipulate duration of appointments;
- provide for a person once appointed to resign; or
- provide for the removal of Board members for cause.

5.6 Other deficiencies in the current system include:

- The state Boards are not required to report on their activities to the Minister or to the Parliament.
- The state Boards' powers are narrowly defined without sufficient flexibility to accommodate various circumstances.
- Differences between the Boards, both in approach and in interpretation, have created anomalies nationally.
- The current administrative arrangements between the state Boards and the Australian Taxation Office (Tax Office) blur the responsibilities of the Boards and the Tax Office. Both tax agents and taxpayers often regard the state Boards as merely an arm of the Tax Office.

### **Rationale for major changes**

5.7 Division 608 defines the role, functions and powers of the Board. The primary purpose of Division 608 is to establish a single national Tax Practitioners Board to register and regulate tax practitioners with the powers to perform its job effectively and the flexibility to allocate resources appropriately.

5.8 The Board will be composed of a sufficient number of members to allow it to undertake similar functions to the existing state Boards, but will provide for national co-ordination and consistency. All stakeholders within the system will benefit from the Board providing an efficient and effective national system of regulation and administration, and the flexibility to have a regional presence. This will deal with duplication of services and activities and inconsistencies in the interpretation of terms, rules and procedures.

5.9 The Board is a statutory body that falls within the Treasury portfolio. The statutory functions and powers are vested in the Board

independently of the Tax Office and the Tax Office cannot interfere with the Board's performance of those functions and powers.

## **Summary of new law**

5.10 This Bill abolishes the six state Tax Agents' Boards and creates a national Tax Practitioners Board.

5.11 The Board is invested with a number of functions and powers.

- The functions include administration of tax practitioner registration, investigation and the imposition of sanctions where necessary, and the performance of any other functions prescribed or required by the Bill and anything else incidental to the performance of the functions.
- The Board may do all things necessary for the performance of its functions. This includes the power to establish committees to assist it and to determine its own procedures.

5.12 The Board consists of a Chair and at least six other members, appointed by the Minister, holding office on a part-time basis.

5.13 A member may resign by notice provided to the Minister. The Minister may also terminate the appointment of a member of the Board in certain circumstances.

5.14 A quorum is constituted by a majority of the members of the Board. At meetings, questions are decided by a majority of the votes of the Board members present, with the Chair having a casting vote.

## **Comparison of key features of new law and current law**

<i>New law</i>	<i>Current law</i>
A national Tax Practitioners Board is established to administer the regulation of tax agent services in all states and territories, to achieve national consistency and flexible resource allocation.	The current law provides for six state Tax Agents' Boards.

<i>New law</i>	<i>Current law</i>
The Bill provides for the functions and powers of the Board, the decisions that the Board may make following an investigation, the ability to establish committees, and the reporting obligations.	No equivalent.

## **Detailed explanation of new law**

### **Functions and powers of the Tax Practitioners Board**

#### *Establishment*

5.15 The Tax Practitioners Board is established on commencement of the Bill, that is, on a date to be set by proclamation, within nine months of Royal Assent. [*Schedule 1, Item 18, Division 608, section 608-5 of Schedule 1 to the TAA 1953*]

5.16 The Board is a statutory body that falls within the portfolio responsibilities of the Treasurer. It is funded through the annual appropriation to the Australian Taxation Office (the Tax Office), but is not prescribed by the *Financial Management and Accountability Act 1997* as an FMA Act Agency and is not a body regulated by the *Commonwealth Authorities and Companies Act 1997* (that is, the Board is neither an FMA Act Agency nor a CAC body).

5.17 The Board has responsibility for regulating the provision of tax agent services in all Australian states and territories by reference to a legislated Code and a legislated system for the registration of tax practitioners and conduct of investigations.

5.18 The relationship between the Board and the Tax Office will have some similarity to the current arrangements between the state-based Boards and the Tax Office. The Board will operate with decision-making independence from the Tax Office, but will rely on the Tax Office for administrative support. The increased funding committed by the Government for the administration of the new system will allow the Board to have the resources necessary to perform its functions. The exact nature of the service relationship and arrangements between the Board and the Tax Office will be determined through agreements between the two parties. Such agreements are likely to cover a number of issues including resourcing, technical support and legal support.

### **Functions**

5.19 The functions of the Board are:

- to administer the system for the registration of tax practitioners — this is discussed in Chapter 2 of this explanatory memorandum; and
- to investigate matters relating to registration and non-compliance with the Code — these aspects are discussed in Chapters 2, 3 and 4 of this explanatory memorandum; and
- to issue guidelines by legislative instrument; and
- other functions conferred on the Board by the Bill, the regulations, or any other law of the Commonwealth; and
- to do anything else related to the performance of its functions.

*[Schedule 1, Item 18, Division 608, section 608-10 of Schedule 1 to the TAA 1953]*

### **Powers**

5.20 The Board has the power to do all things necessary or convenient to be done to enable it to perform its functions. This gives the Board great flexibility in the administration of the new system. The Board's powers therefore include, but are not limited to, such things as issuing practice statements and guidelines to determine the scope of the principles of the Code. *[Schedule 1, Item 18, Division 608, subsection 608-15(1) of Schedule 1 to the TAA 1953]*

5.21 The Board may establish committees, consisting of such persons as the Board thinks fit, to assist the Board in the performance of its functions. This is discussed in greater detail in Chapter 4 of this explanatory memorandum in the context of investigating committees. Committees may be formed for other purposes, for example, to prepare draft guidelines, review training standards or evaluate tender responses. *[Schedule 1, Item 18, Division 608, subsection 608-15(2) of Schedule 1 to the TAA 1953]*

### **Immunity from legal action**

5.22 Members or past members of the Board and members or past members of committees established by the Board are immune from legal action in connection with their activities on behalf of the Board. No action or suit may be brought against such members in relation to the

exercise of their functions, or the performance of their duties as members of the Board or a Committee appointed by the Board. *[Schedule 1, Item 18, Division 608, section 608-30 of Schedule 1 to the TAA 1953]*

## **Structure of the Tax Practitioners Board**

### *Composition of the Board*

5.23 The Board consists of:

- a Chair; and
- at least six other members.

*[Schedule 1, Item 18, Division 608, subsection 608-20(1) of Schedule 1 to the TAA 1953]*

5.24 The Chair cannot be a member of the Board engaged under the *Public Service Act 1999* and performing duties in the Tax Office. This ensures operational independence of the Board from the Tax Office.

5.25 The Bill provides for a minimum of seven Board members. This is an appropriate minimum size, given the scope of the Board's functions, the complexity and risk of its activities and the needs of the Board members. There is no maximum number of Board members.

5.26 The Minister is responsible for appointing members of the Board. (Minister refers to a Minister from the Treasury portfolio — that is, the Treasurer or the Minister for Revenue and Assistant Treasurer.)  
*[Schedule 1, Item 18, Division 608, subsection 608-20(2) of Schedule 1 to the TAA 1953]*

### *Process for appointment*

5.27 Generally a vacancy will be advertised. Candidates for appointment to the Board may be nominated by an RPA, the Commissioner of Taxation (the Commissioner) or a legal professional association, or may respond of their own accord to an advertised vacancy.

5.28 While it is likely that the Minister will appoint members with an appropriate level of qualification and experience, relevant to the tax profession, the Minister may appoint a community representative, or a person with special qualifications or experience.

5.29 Although Tax Office employees may hold Board membership (other than the Chair — refer to paragraph 5.24 above), it would be

unusual for more than two Tax Office employees to be appointed to the Board at any one time.

*Term of office*

5.30 Members of the Board hold office for a period determined by the Minister and are eligible for reappointment on expiry of the term of appointment. The terms of members of the inaugural Board may be staggered to facilitate a smooth integration of future members and maintain corporate knowledge. [*Schedule 1, Item 18, Division 608, subsection 608-20(3) of Schedule 1 to the TAA 1953*]

5.31 Office — including that of the Chair — is held on a part-time basis in recognition that most Board members will hold full-time employment elsewhere, so that a part-time appointment to the Board will not require members to forego their usual employment. However, the formal part-time appointment does not prevent Board members from working full time hours when necessary and convenient. Part-time office provides flexibility around the management of the Board’s workload — the workload is expected to be greater during and immediately following the establishment of the Board, but is likely to stabilise over time. [*Schedule 1, Item 18, Division 608, subsection 608-20(3) of Schedule 1 to the TAA 1953*]

*Vacancies*

5.32 The performance of the functions or the exercise of the powers of the Board is not affected by a vacancy or vacancies in the membership of the Board. [*Schedule 1, Item 18, Division 608, subsection 608-20(4) of Schedule 1 to the TAA 1953*]

***Remuneration***

5.33 The members of the Board, and members of a committee established by the Board, are to be paid:

- such remuneration as is determined by the Remuneration Tribunal; and
- such allowances as are prescribed in regulations.

5.34 The remuneration of the Board and its committees is subject to the *Remuneration Tribunal Act 1973*. The Remuneration Tribunal, an independent statutory body, is responsible for determining remuneration and related matters for a range of senior offices in Commonwealth bodies, including the Board and its committees. The *Remuneration Tribunal Act 1973* outlines the functions and powers of the Remuneration Tribunal.

*[Schedule 1, Item 18, Division 608, section 608-25 of Schedule 1 to the TAA 1953]*

### ***Termination of appointment***

#### *Resignation by member*

5.35 Ordinarily, a member who wishes to resign from membership of the Board will give the Minister written notice of resignation. The notice must specify a date from which the member proposes that the resignation will take effect. *[Schedule 1, Item 18, Division 608, subsection 608-35(1) of Schedule 1 to the TAA 1953]*

#### *Termination by Minister*

5.36 The Minister may terminate the appointment of a member prior to the expiry of the member's term on one or more of the following grounds:

- misbehaviour *[Schedule 1, Item 18, Division 608, subsection 608-35(2) of Schedule 1 to the TAA 1953]*;
- mental incapacity to perform duties or exercise functions *[Schedule 1, Item 18, Division 608, subsection 608-35(2) of Schedule 1 to the TAA 1953]*;
- the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors, or makes an assignment of his or her remuneration for the benefit of his or her creditors *[Schedule 1, Item 18, Division 608, paragraph 608-35(3)(a) of Schedule 1 to the TAA 1953]*;
- absence from three consecutive meetings of the Board without leave *[Schedule 1, Item 18, Division 608, paragraph 608-35(3)(b) of Schedule 1 to the TAA 1953]*;
- engagement in paid employment outside the duties of the member's office without the Minister's approval *[Schedule 1, Item 18, Division 608, paragraph 608-35(3)(c) of Schedule 1 to the TAA 1953]*.

### ***Meetings***

5.37 The Board may regulate proceedings at its meetings in any way that it considers appropriate. For example, this may include such things as determining the priority and nature of agenda items, circulating an agenda in advance of each meeting, and circulating the meeting minutes

following a meeting. The Board may also determine its approach to managing conflicts of interest of Board members. *[Schedule 1, Item 18, Division 608, subsection 608-40(5) of Schedule 1 to the TAA 1953]*

5.38 At a meeting of the Board a quorum is constituted by a majority of Board members appointed. Subsection 33B(3) of the *Acts Interpretation Act 1901* provides explicitly that a member who participates in a meeting via telephone or other means of communication, such as a video-link, is taken to be present at the meeting. *[Schedule 1, Item 18, Division 608, subsection 608-40(1) of Schedule 1 to the TAA 1953]*

### **Example 5.1**

The Tax Practitioners Board has eight members. At the time of one of the Board's meetings, two members are absent overseas, one member is absent due to illness, and one further member, Maria, is unable to attend in person due to other commitments. Maria participates in the discussion and decisions made during the meeting via video-link.

There are therefore four members present at the meeting and one participating by video-link. In this case, the quorum requirement of five members is met.

5.39 A question arising at a meeting is decided by a simple majority of the votes of the members of the Board present and voting. *[Schedule 1, Item 18, Division 608, subsection 608-40(2) of Schedule 1 to the TAA 1953]*

5.40 The Chair presides at all meetings at which he or she is present. If the Chair is unable to attend a meeting, the members present must appoint one of themselves to preside. As the Chair cannot be an officer of the Tax Office, the person appointed to preside over a meeting of the Board in the Chair's absence also cannot be an officer of the Tax Office. *[Schedule 1, Item 18, Division 608, subsection 608-40(3) of Schedule 1 to the TAA 1953]*

5.41 The person presiding at a meeting has a deliberative vote and, if necessary, a casting vote. (A deliberative vote is a vote that expresses an individual's opinion on a matter being deliberated. A casting vote, or deciding vote, is a vote given to the presiding officer in order to resolve a deadlock.) *[Schedule 1, Item 18, Division 608, subsection 608-40(4) of Schedule 1 to the TAA 1953]*

### ***Decisions without meetings***

5.42 Decisions can be made in the absence of a meeting if the Board has determined another method by which its members are to indicate agreement (or otherwise) with proposed decisions. *[Schedule 1, Item 18, Division 608, subsection 608-45(2) of Schedule 1 to the TAA 1953]*

5.43 Once this has been determined, a decision is taken to have been made at a meeting of the Board if:

- without meeting, a majority of the Board indicates agreement with the proposed decision in accordance with the method determined by the Board for indicating such agreement; and
- all of the members of the Board were informed of the proposed decision, or reasonable efforts were made to inform all the members of the proposed decision.

*[Schedule 1, Item 18, Division 608, subsection 608-45(1) of Schedule 1 to the TAA 1953]*

5.44 The purpose of this subsection is to ensure that part-time membership does not inhibit the functioning of the Board, while providing assurance that all of the Board members have the opportunity to consider and express their opinions on a matter before it is decided.

5.45 The Board must keep a record of all decisions made without meetings. Note that records of other decisions are kept in accordance with the regulations. *[Schedule 1, Item 18, Division 608, subsection 608-45(3) of Schedule 1 to the TAA 1953]*

## **Reporting and disclosure obligations of the Tax Practitioners Board**

### ***Report to Parliament***

5.46 The Chair of the Board is responsible for ensuring that an annual report on the operation of the Board is prepared and given to the Minister for presentation to the Parliament. The report must be prepared and provided to the Minister as soon as practicable after 30 June each year. Note that the Board's periodic reporting requirements to Parliament are governed by section 34C of the *Acts Interpretation Act 1901*. *[Schedule 1, Item 18, Division 608, subsections 608-50(1) and (2) of Schedule 1 to the TAA 1953]*

5.47 The Minister must table a copy of the report provided by the Chair of the Board before each House of the Parliament within 15 sitting days of that House following receipt of the report. *[Schedule 1, Item 18, Division 608, subsection 608-50(3) of Schedule 1 to the TAA 1953]*

### ***Publication of information***

5.48 The Board has responsibility for ensuring that a register of every entity that is registered under Part 5-90 of this Bill be maintained on the Board's website. A register of tax practitioners is a valuable resource for taxpayers who wish to locate and engage registered practitioners to

provide tax agent services. *[Schedule 1, Item 18, Division 608, section 608-55 of Schedule 1 to the TAA 1953]*

5.49 The register must include:

- the name of the entity; and
- the contact details of the business of the entity (the intention is for the Australian Business Number to be used as a point of reference for this purpose); and
- any relevant professional affiliation of the entity; and
- any sanction (other than a caution) that has been imposed by the Board on the entity.

*[Schedule 1, Item 18, Division 608, paragraph 608-55(a) of Schedule 1 to the TAA 1953]*

5.50 Entries on the register for entities that are deregistered must be removed from the website. The Board may also publish a notice on its website if it makes a decision under Subdivision 602-C or Subdivision 604-B to suspend or to terminate the registration of an entity. In this case the Board should take into account the appeal rights of the tax practitioner. *[Schedule 1, Item 18, Division 608, paragraph 608-55(b) of Schedule 1 to the TAA 1953]*

5.51 The Board is expected to publish the details of sanctions imposed where registration is suspended or terminated for wrongdoing, that is, where there is an evident consumer protection imperative. Note that where the Board has terminated the registration of a tax practitioner under Subdivision 602-C for a reason related to their fitness to provide tax agent services, the deregistered tax practitioner cannot apply for registration for a period of at least five years, as determined by the Board.

### **Example 5.2**

Olga is a nominee of Best Taxation & Accounting Services, a registered tax agent. Following preliminary inquiries, the Board decides to appoint a committee to investigate its concerns about various aspects of Olga's conduct over the past few months. The Board investigation results in Olga's registration being suspended for six months.

Details of Olga's suspension are listed on the Board's website. Olga is an associate member of an RPA. The Board considers it appropriate to advise Olga's RPA of the suspension, enabling the RPA to take appropriate disciplinary action if it chooses to do so.

***Disclosure to law enforcement agencies or the Commissioner***

5.52 Under the secrecy provisions in the taxation law, taxpayer information is tightly protected unless there is a legislative exception allowing disclosure. Section 608-60 of the Bill provides for the following exceptions for the disclosure of information acquired by the Board under the Bill to:

- law enforcement agencies, if the Board is satisfied that the information is relevant to the enforcement of the criminal law ('law enforcement agencies' refers to the Australian Federal Police, the police force or police service of a State or Territory, the Australian Crime Commission, the Australian Securities and Investments Commission, and the Commonwealth Director of Public Prosecutions);
- the Commissioner, if the Board is satisfied that the information is relevant to establishing whether a person is in breach of a provision of the taxation law (other than a provision under this Part).

*[Schedule 1, Item 18, Division 608, section 608-60 of Schedule 1 to the TAA 1953]*

**Discipline**

5.53 The Board's powers in relation to investigations and the imposition of disciplinary sanctions are described and explained in Chapter 4 of this explanatory memorandum.