

EXPOSURE DRAFT

2008-2009

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT (12/02/2009)

If you have any comments on this exposure draft, they should be emailed to taxagentservices@treasury.gov.au or sent to:

The General Manager
Business Tax Division
The Treasury
Langton Crescent
Parkes, ACT 2600

by Thursday 26 March 2009.

Tax Agent Services (Transitional Provisions and Consequential Amendments) Bill 2009

No. , 2009

(Treasury)

EXPOSURE DRAFT

A Bill for an Act to deal with consequential and transitional matters arising from the enactment of the *Tax Agent Services Act 2009*, and for related purposes

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1

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedules 1 and 2	Immediately after the commencement of Part 2 of the <i>Tax Agent Services Act 2009</i> .	

2

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

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(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

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3 Schedule(s)

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Consequential amendments **Schedule 1**

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Schedule 1—Consequential amendments

A New Tax System (Goods and Services Tax) Act 1999

1 Section 195-1 (definition of *registered tax agent*)

Repeal the definition.

Corporations Act 2001

2 Paragraph 766B(5)(c)

Omit “tax agent registered under Part VIIA of the *Income Tax Assessment Act 1936*,” substitute “registered tax agent or BAS agent (within the meaning of the *Tax Agent Services Act 2009*),”.

Fringe Benefits Tax Assessment Act 1986

3 Part IX

Repeal the Part.

4 Subsection 136(1) (definition of *registered tax agent*)

Repeal the definition, substitute:

registered tax agent has the meaning given by subsection 90-1(1) of the *Tax Agent Services Act 2009*.

Income Tax Assessment Act 1936

5 Subsection 6(1) (definition of *registered tax agent*)

Repeal the definition.

6 Paragraph 16(4)(b)

Repeal the paragraph, substitute:

(b) any board, or member of a board, performing a function or exercising a power under a taxation law, for the purpose of performing that function or exercising that power;

7 Part VIIA

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Schedule 1 Consequential amendments

1 Repeal the Part.

2 *Income Tax Assessment Act 1997*

3 **8 Section 214-185**

4 Repeal the section.

5 **9 Subsection 995-1(1) (paragraph (a) of the definition of** 6 ***recognised tax adviser*)**

7 After “*registered tax agent”, insert “or BAS agent”.

8 **10 Subsection 995-1(1) (definition of *registered tax agent*)**

9 Repeal the definition, substitute:

10 *registered tax agent* has the meaning given by subsection 90-1(1)
11 of the *Tax Agent Services Act 2009*.

12 **11 Subsection 995-1(1)**

13 Insert:

14 *registered tax agent or BAS agent* has the same meaning as in the
15 *Tax Agent Services Act 2009*.

16 **12 Subsection 995-1(1) (at the end of the definition of** 17 ***taxation law*)**

18 Add:

19 ; or (c) the *Tax Agent Services Act 2009* or regulations made under
20 that Act.

21 *Income Tax (Transitional Provisions) Act 1997*

22 **13 Section 214-130**

23 Repeal the section.

24 *Taxation Administration Act 1953*

25 **14 Subsection 2(1)**

26 Insert:

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Schedule 1 Consequential amendments

1 **21 At the end of section 15A**

2 Add:

- 3 (12) This section applies in relation to the *Tax Agent Services Act 2009*
4 as if references in this section to the Commissioner were references
5 to the Chair of the Tax Practitioners Board (within the meaning of
6 that Act).

7 **22 After subsection 284-75(1) in Schedule 1**

8 Insert:

- 9 (1A) However, you are not liable to an administrative penalty under
10 subsection (1) if:
- 11 (a) you engage a registered tax agent or BAS agent; and
 - 12 (b) you give the registered tax agent or BAS agent all relevant
13 taxation information; and
 - 14 (c) the registered tax agent or BAS agent makes the statement;
15 and
 - 16 (d) the statement results in a *shortfall amount; and
 - 17 (e) the shortfall amount did not result from:
 - 18 (i) intentional disregard by you or the registered tax agent
19 or BAS agent of a *taxation law; or
 - 20 (ii) recklessness by you or the agent as to the operation of a
21 taxation law.

22 **23 After subsection 286-75(1) in Schedule 1**

23 Insert:

- 24 (1A) However, you are not liable to an administrative penalty under
25 subsection (1) if:
- 26 (a) you engage a registered tax agent or BAS agent; and
 - 27 (b) you give the registered tax agent or BAS agent all relevant
28 taxation information to enable the agent to give a return,
29 notice, statement or other document to the Commissioner in
30 the *approved form by a particular day; and
 - 31 (c) the registered tax agent or BAS agent does not give the
32 return, notice, statement or other document to the
33 Commissioner in the approved form by that day; and
 - 34 (d) the failure to give the return, notice, statement or other
35 document to the Commissioner did not result from:
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Schedule 2 Transitional provisions

Part 1 Preliminary

1

2

Schedule 2—Transitional provisions

3

Part 1—Preliminary

4

1 Definitions

5

(1) In this Schedule:

6

Board means the Tax Practitioners Board established under section 60-5 of the new law.

7

8

commencement means the commencement of Schedule 1 to this Act.

9

new law means the *Tax Agent Services Act 2009*.

10

old law means Part VIIA of the *Income Tax Assessment Act 1936* as in force immediately before commencement.

11

12

(2) An expression used in this Schedule that is also used in the new law has the same meaning in this Schedule as it has in the new law.

13

14

(3) Subject to subitem (2), an expression used in this Schedule that is also used in the *Income Tax Assessment Act 1997* has the same meaning in this Schedule as it has in that Act.

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Schedule 2 Transitional provisions

Part 2 Continuation of existing registrations

- 1 (ii) if item 17 of this Schedule applies and the Board
2 decides to cancel the entity's registration—the entity's
3 registration is cancelled under the old law despite its
4 repeal by Schedule 1 to this Act; or
5 (iii) the entity's registration is terminated under
6 Subdivision 30-B or 40-A of the new law;
7 whichever occurs first.

8 **3 Special rule relating to the registration of nominees of tax** 9 **agents**

10 If a person was, immediately before commencement, registered as a
11 nominee under the old law, the person is taken to be a registered tax
12 agent within the meaning of the new law for the period:

- 13 (a) beginning on the day on which this Schedule commences;
14 and
15 (b) ending on the day on which:
16 (i) the person's registration as a nominee would have
17 ceased under the old law but for its repeal by Schedule 1
18 to this Act; or
19 (ii) if item 17 of this Schedule applies and the Board
20 decides to cancel the person's registration—the person's
21 registration is cancelled under the old law despite its
22 repeal by Schedule 1 to this Act; or
23 (iii) the person's registration as a registered tax agent is
24 terminated under Subdivision 30-B or 40-A of the new
25 law;
26 whichever occurs first.

27 **4 Special rule relating to the provision of tax agent services** 28 **by certain persons**

- 29 (1) If:
30 (a) immediately before commencement, a person was providing
31 a service that is a tax agent service (other than a BAS service
32 within the meaning of the new law) but was not required to
33 be registered as a tax agent under the old law; and
34 (b) during the 6 month period beginning immediately after
35 commencement, the person notifies the Board, in writing,
36 that the person satisfies paragraph (a);

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Transitional provisions **Schedule 2**
Continuation of existing registrations **Part 2**

1 the person is taken to be a registered tax agent within the meaning of the
2 new law for the 2 year period beginning immediately after
3 commencement.

4 (2) If a person is taken to be a registered tax agent under subitem (1), the
5 Board may, in accordance with the new law, do either or both of the
6 following:

7 (a) impose conditions to which the person's registration is
8 subject;

9 (b) require the person to maintain professional indemnity
10 insurance;

11 as if the person had applied for registration and the Board had decided
12 to grant the application.

13 **5 Special rules relating to the provision of BAS services by** 14 **certain individuals**

15 (1) If:

16 (a) immediately before commencement, an individual:

17 (i) was a person referred to in subsection 251L(6) of the
18 old law; and

19 (ii) was providing a BAS service within the meaning of
20 subsection 251L(7) of the old law; and

21 (b) during the 6 month period beginning immediately after
22 commencement, the individual notifies the Board, in writing,
23 that he or she satisfies paragraph (a);

24 the individual is taken to be a registered BAS agent within the meaning
25 of the new law for the 2 year period beginning immediately after
26 commencement.

27 (2) If:

28 (a) an individual is not a person mentioned in subitem (1); and

29 (b) immediately before commencement, the individual was
30 providing a BAS service within the meaning of the new law
31 (other than a BAS service within the meaning of subsection
32 251L(7) of the old law); and

33 (c) during the 6 month period beginning immediately after
34 commencement, the individual notifies the Board, in writing,
35 that he or she satisfies paragraphs (a) and (b);

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Schedule 2 Transitional provisions

Part 2 Continuation of existing registrations

1 the individual is taken to be a registered BAS agent within the meaning
2 of the new law for the 2 year period beginning immediately after
3 commencement.

4 (3) If an individual is taken to be a registered BAS agent under subitem (1)
5 or (2), the Board may, in accordance with the new law, do either or both
6 of the following:

7 (a) impose conditions to which the individual's registration is
8 subject;

9 (b) require the individual to maintain professional indemnity
10 insurance;

11 as if the individual had applied for registration and the Board had
12 decided to grant the application.

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Transitional provisions **Schedule 2**
Applications for registration or re-registration **Part 3**

1

2 **Part 3—Applications for registration or**
3 **re-registration**

4 **Division 1—Pending applications**

5 **6 Pending applications for registration—tax agents**

6 (1) If:

- 7 (a) an entity has applied to a Tax Agents' Board for registration
8 under section 251J of the old law; and
9 (b) the Tax Agents' Board has not decided the application before
10 the commencement time;

11 then:

- 12 (c) the Board must decide the application in accordance with
13 section 251JA of the old law within 6 months after the
14 commencement time; and
15 (d) if the Board decides to grant the application—the Board
16 must:
17 (i) register the entity as a registered tax agent under
18 section 20-25 of the new law; and
19 (ii) notify the entity of its decision in accordance with
20 section 20-30 of the new law; and
21 (e) if the Board decides to reject the application—the Board
22 must notify the entity of its decision in accordance with
23 subsection 251JA(3) and section 251QB of the old law.

24 (2) The Board is taken to have rejected the application if it has not made its
25 decision within 6 months after the commencement time.

26 (3) To avoid doubt, if the Board decides to grant the application, the Board
27 may, in accordance with subsection 20-30(3) of the new law, require the
28 entity to maintain professional indemnity insurance.

29 **7 Pending applications for re-registration—tax agents**

30 (1) If:

- 31 (a) an entity has applied to a Tax Agents' Board for
32 re-registration under section 251JB of the old law; and

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Schedule 2 Transitional provisions

Part 3 Applications for registration or re-registration

- 1 (b) the Tax Agents' Board has not decided the application before
2 the commencement time;
- 3 then:
- 4 (c) the Board must decide the application in accordance with
5 section 251JC of the old law within 6 months after the
6 commencement time; and
- 7 (d) if the Board decides to grant the application—the Board
8 must:
- 9 (i) register the entity as a registered tax agent under
10 section 20-25 of the new law; and
- 11 (ii) notify the entity of its decision in accordance with
12 section 20-30 of the new law; and
- 13 (e) if the Board decides to reject the application—the Board
14 must notify the entity of its decision in accordance with
15 subsection 251JC(3) and section 251QB of the old law.
- 16 (2) The Board is taken to have rejected the application if it has not made its
17 decision within 6 months after the commencement time.
- 18 (3) To avoid doubt, if the Board decides to grant the application, the Board
19 may, in accordance with subsection 20-30(3) of the new law, require the
20 entity to maintain professional indemnity insurance.
- 21 (4) The entity is taken to be a registered tax agent for the period:
- 22 (a) beginning on the day on which this Schedule commences;
23 and
- 24 (b) ending:
- 25 (i) on the day on which the Board makes its decision; or
26 (ii) on the day that occurs 6 months after the
27 commencement time;
- 28 whichever occurs first.
- 29 (5) If:
- 30 (a) an entity has requested a Tax Agents' Board to allow, under
31 paragraph 251JB(4)(b) of the old law, an application for
32 re-registration to be made at a later time but before the day
33 on which the entity's registration would have ended under the
34 old law but for its repeal by Schedule 1 to this Act; and
- 35 (b) the Tax Agents' Board has not made a decision before the
36 commencement time;
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Schedule 2 Transitional provisions

Part 3 Applications for registration or re-registration

- 1 (3) To avoid doubt, if the Board decides to grant the application, the Board
2 may, in accordance with subsection 20-30(3) of the new law, require the
3 nominee to maintain professional indemnity insurance.

4 **9 Pending applications for re-registration—nominees**

- 5 (1) If:
6 (a) an entity has applied to a Tax Agents' Board for
7 re-registration of a nominee under section 251KB of the old
8 law; and
9 (b) the Tax Agents' Board has not decided the application before
10 the commencement time;

11 then:

- 12 (c) the Board must decide the application in accordance with
13 section 251KC of the old law within 6 months after the
14 commencement time; and
15 (d) if the Board decides to grant the application—the Board
16 must:
17 (i) register the nominee as a registered tax agent under
18 section 20-25 of the new law; and
19 (ii) notify the entity and the nominee of its decision in
20 accordance with section 20-30 of the new law; and
21 (e) if the Board decides to reject the application—the Board
22 must notify the entity and the nominee of its decision in
23 accordance with subsection 251KC(3) and section 251QB of
24 the old law.

- 25 (2) The Board is taken to have rejected the application if it has not made its
26 decision within 6 months after the commencement time.

- 27 (3) To avoid doubt, if the Board decides to grant the application, the Board
28 may, in accordance with subsection 20-30(3) of the new law, require the
29 nominee to maintain professional indemnity insurance.

- 30 (4) The nominee is taken to be a registered tax agent for the period:
31 (a) beginning on the day on which this Schedule commences;
32 and
33 (b) ending:
34 (i) on the day on which the Board makes its decision; or
35 (ii) on the day that occurs 6 months after the
36 commencement time;
-

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Schedule 2 Transitional provisions

Part 3 Applications for registration or re-registration

- 1 (a) the registration of a partnership (the *original partnership*)
2 has been terminated because of section 251JD of the old law;
3 and
4 (b) a new partnership has applied to a Tax Agents' Board in
5 accordance with subsection 251JE(2) of the old law; and
6 (c) the Tax Agents' Board has not registered the new partnership
7 under section 251JF of the old law before the commencement
8 time;

9 then, despite section 251JD of the old law, the original partnership's
10 registration is taken not to have been terminated at the time of the
11 change in the constitution of the partnership.

12 (3) If:

- 13 (a) a Tax Agents' Board received a document from an entity
14 purporting to be an application made in accordance with
15 section 251JE of the old law; and
16 (b) the Tax Agents' Board notified the entity in accordance with
17 subsection 251JE(8) of the old law that the Tax Agents'
18 Board was of the opinion that the document was not an
19 application made in accordance with section 251JE of the old
20 law; and
21 (c) at the commencement time, the 7 day period mentioned in
22 subsection 251JE(9) of the old law has not expired; and
23 (d) the entity has not made an application under section 251JE of
24 the old law, as allowed by subsection 251JE(9) of the old
25 law;

26 then:

- 27 (e) the entity may, under subsection 251JE(9) of the old law,
28 apply in accordance with section 251JE of the old law within
29 7 days after the commencement time; and
30 (f) if the Board is of the opinion that the entity has applied in
31 accordance with section 251JE of the old law—the Board
32 must:
33 (i) register the entity as a registered tax agent under
34 section 20-25 of the new law; and
35 (ii) notify the entity of its decision in accordance with
36 section 20-30 of the new law.

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Schedule 2 Transitional provisions

Part 3 Applications for registration or re-registration

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2

Division 2—Applications not made, but time period for making applications not expired

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4

12 Applications for registration not made—successor tax agents

5

6

(1) If:

7

(a) the registration of a partnership has been terminated because of section 251JD of the old law; and

8

9

(b) at the commencement time:

10

(i) a person had not applied to a Tax Agents' Board in accordance with subsection 251JE(1) of the old law; but

11

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(ii) the 30 day period within which an application had to be made (as mentioned in subsection 251JE(4) of the old law) had not expired;

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then, the person may apply to the Board in accordance with subsection 251JE(1) of the old law, despite its repeal by Schedule 1 of this Act, within the 30 day period.

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(2) If the person makes an application mentioned in subitem (1), then despite section 251JD of the old law, the partnership's registration is taken not to have been terminated at the time of the change in the constitution of the partnership.

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22

(3) If:

23

(a) the registration of a partnership (the *original partnership*) has been terminated because of section 251JD of the old law; and

24

25

26

(b) at the commencement time:

27

(i) a new partnership had not applied to a Tax Agents' Board in accordance with subsection 251JE(2) of the old law; but

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(ii) the 30 day period within which an application had to be made (as mentioned in subsection 251JE(4) of the old law) had not expired;

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then, the new partnership may apply to the Board in accordance with subsection 251JE(2) of the old law, despite its repeal by Schedule 1 of this Act, within the 30 day period.

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EXPOSURE DRAFT

Schedule 2 Transitional provisions

Part 3 Applications for registration or re-registration

1

2 **Division 3—New applications**

3 **13 Special rule for applications for registration as a** 4 **registered tax agent**

5 (1) If:

- 6 (a) an entity applies for registration as a registered tax agent
7 under section 20-20 of the new law before the end of the 6
8 month period beginning immediately after commencement;
9 and
10 (b) the entity would be eligible for registration but for the
11 operation of:
12 (i) paragraph 20-5(1)(b) of the new law (which requires the
13 Board to be satisfied of requirements prescribed by
14 regulations, including requirements in relation to
15 qualifications and experience in respect of registration
16 as a registered tax agent); or
17 (ii) paragraph 20-5(2)(c) or (3)(d); and
18 (c) immediately before commencement, the entity was providing
19 a tax agent service within a particular area of the taxation
20 laws; and
21 (d) the Board is satisfied that the entity had been providing that
22 tax agent service to a competent standard for a reasonable
23 period before making the application;

24 then, despite paragraph 20-5(1)(b), (2)(c) or (3)(d) of the new law, the
25 entity is eligible for registration.

26 (2) The entity is taken to be a registered tax agent within the meaning of the
27 new law for the period:

- 28 (a) beginning on the day on which this Schedule commences;
29 and
30 (b) ending immediately before the day on which the Board
31 makes a decision under section 20-25 of the new law.

32 **14 Special rule for applications for registration as a** 33 **registered BAS agent**

34 If:

- 35 (a) an individual applies for registration as a registered BAS
36 agent under section 20-20 of the new law before the end of
-

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Schedule 2 Transitional provisions

Part 4 References to, and things done by, or in relation to, a Tax Agents' Board

1

2

Part 4—References to, and things done by, or in relation to, a Tax Agents' Board

3

4

15 Things done by, or in relation to, a Tax Agents' Board

5

(1) If a thing was done by, or in relation to, a Tax Agents' Board under the old law, then the thing is taken, for the purposes of the operation of any law after the commencement time, to have been done by, or in relation to, the Board.

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(2) The Minister may, by writing, determine that subitem (1) does not apply in relation to a specified thing done by, or in relation to, a Tax Agents' Board.

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(3) To avoid doubt, doing a thing includes making an instrument.

13

(4) A determination under subitem (2) is not a legislative instrument.

14

16 References in instruments

15

(1) If:

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(a) an instrument is in force immediately before the commencement time; and

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(b) the instrument contains a reference to a Tax Agents' Board;

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then, the instrument has effect after the commencement time as if the reference to the Tax Agents' Board were a reference to the Board.

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21

(2) The Minister may, by writing, determine that subitem (1) does not apply in relation to a specified reference.

22

23

(3) A determination made under subitem (2) is not a legislative instrument.

24

17 Continuation of inquiries by a Tax Agents' Board

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(1) If, before the commencement time, a Tax Agents' Board had given an entity a show cause notice, then:

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(a) within 60 days after the commencement time, the Board must decide whether to investigate the entity; and

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29

(b) if the Board decides to investigate the entity—the Board must:

30

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Transitional provisions **Schedule 2**

References to, and things done by, or in relation to, a Tax Agents' Board **Part 4**

- 1 (i) notify the entity in accordance with section 60-95 of the
2 new law; and
- 3 (ii) carry out its investigation in accordance with the
4 process required or allowed by Subdivision 60-E of the
5 new law as if the Board were investigating conduct that
6 may breach the *Tax Agent Services Act 2009*; and
- 7 (iii) take whatever action in relation to the entity allowed by
8 the old law, despite its repeal by Schedule 1 to this Act,
9 that the Board considers appropriate; and
- 10 (c) if the Board decides not to investigate the entity—the Board
11 must, within 30 days of its decision, notify the entity, in
12 writing, that no further action will be taken in relation to the
13 show cause notice.
- 14 (2) If a decision is not made within 60 days after the commencement time,
15 the Board is taken to have decided not to investigate the entity.
- 16 (3) If, as allowed by subparagraph (1)(b)(iii), the Board suspends an entity,
17 the entity is taken not to be a registered tax agent within the meaning of
18 the new law while the entity is suspended, except for the purposes of the
19 following Parts of the new law:
- 20 (a) Part 2 (Registration);
21 (b) Part 3 (The Code of Professional Conduct);
22 (c) Part 4 (Termination of registration).
- 23 (4) If:
- 24 (a) a Tax Agents' Board required a person to provide evidence,
25 information or any document; and
26 (b) the evidence, information or document was not provided to
27 the Tax Agents' Board before the commencement time;
- 28 then, the evidence, information or document must be provided to the
29 Board.
- 30 (5) In this item:
- 31 ***show cause notice*** means a written notice to an entity that:
- 32 (a) sets out the grounds on which a Tax Agents' Board is giving
33 the notice; and
34 (b) invites the entity to respond to the Tax Agents' Board, in
35 writing, addressing the grounds on which the Tax Agents'
36 Board has given the notice; and
-

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Schedule 2 Transitional provisions

Part 4 References to, and things done by, or in relation to, a Tax Agents' Board

- 1 (c) states the period within which the entity must give the written
2 response to the Tax Agents' Board.

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Transitional provisions **Schedule 2**
Review of decisions **Part 5**

1

2 **Part 5—Review of decisions**

3 **18 Rights of review of certain decisions**

4 (1) Despite the repeal of section 251QA of the old law by Schedule 1 to this
5 Act, an application may be made to the Administrative Appeals
6 Tribunal under that section for review of any of the following decisions:

- 7 (a) a decision by a Tax Agents' Board made before the
8 commencement time under a provision of the old law if, at
9 the commencement time, the period for making an
10 application for review has not ended;
- 11 (b) a decision by the Board to reject an application for
12 registration decided in accordance with section 251JA of the
13 old law under paragraph 6(1)(c) of this Schedule;
- 14 (c) a decision by the Board to reject an application for
15 re-registration decided in accordance with section 251JC of
16 the old law under paragraph 7(1)(c) of this Schedule;
- 17 (d) a decision by the Board to refuse a request to allow an
18 application for re-registration to be made at a later time in
19 accordance with section 251JB of the old law under
20 paragraph 7(5)(c) of this Schedule;
- 21 (e) a decision by the Board to reject an application for
22 registration decided in accordance with section 251KC of the
23 old law under paragraph 8(1)(c) of this Schedule;
- 24 (f) a decision by the Board to reject an application for
25 re-registration decided in accordance with section 251KC of
26 the old law under paragraph 9(1)(c) of this Schedule;
- 27 (g) a decision by the Board to refuse a request to allow an
28 application for re-registration to be made at a later time in
29 accordance with section 251KB of the old law under
30 paragraph 9(5)(c) of this Schedule;
- 31 (h) a decision by the Board to suspend or cancel the registration
32 of an entity after investigating the entity in accordance with
33 the new law as referred to in item 17 of this Schedule.

34 (2) To avoid doubt, an application may be made to the Administrative
35 Appeals Tribunal under section 70-10 of the new law for review of any
36 of the following decisions of the Board:

EXPOSURE DRAFT

Schedule 2 Transitional provisions

Part 5 Review of decisions

- 1 (a) a decision under section 20-25 of the new law, as applied by
2 one of the following provisions of this Schedule, to specify a
3 condition to which registration is subject:
4 (i) paragraph 4(2)(a);
5 (ii) paragraph 5(3)(a);
6 (iii) subparagraph 6(1)(d)(i);
7 (iv) subparagraph 7(1)(d)(i);
8 (v) subparagraph 8(1)(d)(i);
9 (vi) subparagraph 9(1)(d)(i);
10 (vii) subparagraph 10(3)(f)(i);
11 (b) a decision under section 20-30 of the new law, as applied by
12 one of the following provisions of this Schedule, to require
13 professional indemnity insurance to be maintained:
14 (i) paragraph 4(2)(b);
15 (ii) paragraph 5(3)(b);
16 (iii) subparagraph 6(1)(d)(ii);
17 (iv) subparagraph 7(1)(d)(ii);
18 (v) subparagraph 8(1)(d)(ii);
19 (vi) subparagraph 9(1)(d)(ii);
20 (vii) subparagraph 10(3)(f)(ii);
21 (c) a decision under subsection 60-125(4) of the new law, as
22 applied by subparagraph 17(1)(b)(ii) of this Schedule, to
23 extend the period of time within which an investigation is to
24 be completed.

EXPOSURE DRAFT

Transitional provisions **Schedule 2**
Legal proceedings **Part 6**

1

2 **Part 6—Legal proceedings**

3 **19 Substitution of Board as a party to pending proceedings**

4 If any proceedings to which a Tax Agents' Board was a party were
5 pending in any court or tribunal immediately before the commencement
6 time, the Board is substituted for the Tax Agents' Board, after the
7 commencement time, as a party to the proceedings.

8 **20 Legal proceedings by taxpayers to recover fines etc.**

9 If:

- 10 (a) a taxpayer is or becomes liable to pay a fine or other penalty,
11 the general interest charge under a provision of the *Income*
12 *Tax Assessment Act 1936*, or to pay shortfall interest charge;
13 and
14 (b) a registered tax agent (within the meaning of the old law) or a
15 person exempted under section 251L of the old law would
16 have been liable to pay to the taxpayer the amount of that
17 fine or other penalty, additional tax, general interest charge or
18 shortfall interest charge under section 251M of the old law,
19 but for its repeal by Schedule 1 to this Act;

20 then, the taxpayer may, in accordance with section 251M of the old law,
21 sue for and recover that amount as if that section had not been repealed
22 by Schedule 1 to this Act.

23 **21 Special rule relating to the cancellation of registration**

24 (1) If an entity was a registered tax agent or a registered nominee within the
25 meaning of the old law, then, the entity is taken to have been previously
26 a registered tax agent or BAS agent for the purposes of subparagraph
27 50-25(1)(c)(i) of the new law.

28 (2) If:

- 29 (a) an entity was a registered tax agent or a registered nominee
30 within the meaning of the old law; and
31 (b) the registration of the entity was cancelled under
32 section 251K or 251KE of the old law (other than because the
33 entity permanently ceased to carry on business as a registered
34 tax agent);

EXPOSURE DRAFT

Schedule 2 Transitional provisions

Part 6 Legal proceedings

1 then, the cancellation of the entity's registration under section 251K or
2 251KE of the old law is taken to have been a termination of registration
3 under Part 4 of the new law for the purposes of subparagraph
4 50-25(1)(c)(ii) of the new law.

EXPOSURE DRAFT

Transitional provisions **Schedule 2**
Reporting and disclosure obligations **Part 7**

1

2 **Part 7—Reporting and disclosure obligations**

3 **22 Modified reporting requirements for first year**

4 If commencement occurs during the last 3 months of a financial year,
5 then, despite subsection 60-130(1) of the new law:

- 6 (a) the Chair is not required to prepare a report for that financial
7 year; and
8 (b) the period from commencement to the end of the financial
9 year must be dealt with in the next annual report.

10 **23 Obligation to keep register**

11 The requirements of section 60-135 of the new law apply in relation to
12 an entity if:

- 13 (a) the entity was a registered tax agent or a registered nominee
14 within the meaning of the old law; and
15 (b) in the period of 12 months before the commencement time,
16 the registration of the entity was cancelled under
17 section 251K or 251KE of the old law other than because the
18 entity permanently ceased to carry on business as a registered
19 tax agent.

20 **24 Transfer of custody of records of Tax Agents' Board**

- 21 (1) This item applies to any records or documents that:
22 (a) are in the custody of a Tax Agents' Board immediately
23 before the commencement time; or
24 (b) relate to the activities of a Tax Agents' Board but are in the
25 custody of the Commissioner of Taxation before the
26 commencement time; or
27 (c) relate to the enforcement of the old law and are in the
28 custody of the Commissioner of Taxation before the
29 commencement time.
- 30 (2) The records and documents must be transferred into the custody of the
31 Board as soon as practicable after the commencement time.

EXPOSURE DRAFT

Schedule 2 Transitional provisions

Part 8 Miscellaneous

1

2 **Part 8—Miscellaneous**

3 **25 Transitional regulations**

- 4 (1) The Governor-General may make regulations prescribing matters:
5 (a) required or permitted by this Schedule to be prescribed; or
6 (b) necessary or convenient to be prescribed for carrying out or
7 giving effect to this Schedule.
- 8 (2) In particular, regulations may be made prescribing matters of a
9 transitional nature (including any saving or application provisions)
10 relating to the amendments or repeals made by Schedule 1 to this Act.
- 11 (3) Subitem (2) does not limit subitem (1).