

# EXPOSURE DRAFT

EXPOSURE DRAFT (08/09/2023)

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Inserts for  
**Treasury Laws Amendment (Measures  
for consultation) Bill 2023: Tax  
Practitioners Board**

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>

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1. Schedule 1	The later of: (a) 1 July 2024; and (b) the first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	
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# EXPOSURE DRAFT

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## Schedule 1—Tax Practitioners Board

### Part 1—Information on the register

#### *Tax Agent Services Act 2009*

#### **1 Subsections 60-135(1) to (3)**

Repeal the subsections, substitute:

(1) The Board must establish, and maintain, a register of entities in accordance with this Act and the regulations made for the purposes of this subsection.

(2) Each entity that is a \*registered tax agent or BAS agent must be entered on the register for the period during which the entity is a registered tax agent or BAS agent.

Note: Another provision of this Act, or regulations made for the purposes of subsection (1), may require an entity that is not a registered tax agent or BAS agent to be entered on the register for a period.

(3) Without limiting the regulations that may be made for the purposes of subsection (1), those regulations may do the following:

(a) require an entity to be entered on the register for a specified period;

(b) if an entity is required (whether under this Act or the regulations) to be entered on the register for a period—require that specified details in respect of the entity be entered on the register for some or all of that period.

#### *Entities that are not registered tax agents or BAS agents*

(3A) An entity that is not a \*registered tax agent or BAS agent, and details in respect of such an entity:

(a) must not be entered on the register; and

(b) must not remain entered on the register;

except as required by this Act or by regulations made for the purposes of subsection (1).

# EXPOSURE DRAFT

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*Availability of register*

## **2 Application and transitional provisions**

*Transition of register*

- (1) The register that was established for the purposes of subsection 60-135(1) of the *Tax Agent Services Act 2009* before the commencement of this Part, and maintained for the purposes of that subsection immediately before that commencement, is taken, on and after that commencement, to have been established for the purposes of subsection 60-135(1) of that Act (as amended by this Part).

*Details prescribed by regulations*

- (2) Regulations made for the purposes 60-135(1) of the *Tax Agent Services Act 2009* (as amended by this Part) may require specified details in respect of an entity to be entered on the register whether the details relate to matters occurring before, on or after the commencement of this Part.

# EXPOSURE DRAFT

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## 1 Part 2—Investigations by the Board

### 2 Division 1—Period for making decisions

#### 3 *Tax Agent Services Act 2009*

#### 4 3 Paragraph 60-125(3)(a)

5 Omit “6 months”, substitute “24 months”.

#### 6 4 Application provisions

- 7 (1) The amendment made by this Division applies in relation to an  
8 investigation into conduct under section 60-95 of the *Tax Agent*  
9 *Services Act 2009* if the investigation commences on or after the  
10 commencement of this Division.
- 11 (2) The amendment also applies in relation to an investigation into conduct  
12 under section 60-95 of the *Tax Agent Services Act 2009* if:  
13 (a) the investigation commenced before the commencement of  
14 this Division; and  
15 (b) immediately before the commencement of this Division, the  
16 Board had not, in relation to the investigation:  
17 (i) made a decision under subsection 60-125(2) of the *Tax*  
18 *Agent Services Act 2009*; or  
19 (ii) been taken to have made such a decision; and  
20 (c) immediately before the commencement of this Division:  
21 (i) the Board had not, in relation to the investigation,  
22 determined a period under subsection 60-125(4) of the  
23 *Tax Agent Services Act 2009*; or  
24 (ii) the Board had, in relation to the investigation,  
25 determined a period of less than 24 months under  
26 subsection 60-125(4) of that Act.
- 27 (3) If the amendment applies in relation to an investigation because of  
28 subitem (2), and subparagraph (2)(c)(ii) of this item applies, then for the  
29 purposes of the *Tax Agent Services Act 2009* as it applies on and after  
30 the commencement of this Division:  
31 (a) the determination referred to in subparagraph (2)(c)(ii) of this  
32 item is to be disregarded; and

# EXPOSURE DRAFT

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1 (b) the Board must not, in relation to the investigation, make any  
2 further determination under subsection 60-125(4) of the *Tax*  
3 *Agent Services Act 2009*.

## 4 **Division 2—Publishing results of investigations**

### 5 *Tax Agent Services Act 2009*

#### 6 **5 At the end of paragraph 60-125(2)(b)**

7 Add:

8 ; (v) decide that the entity (the *contravening entity*) that  
9 engaged in the conduct, and the details in respect of the  
10 contravening entity prescribed by the regulations for the  
11 purposes of this subparagraph, be entered on the register  
12 for the period prescribed by the regulations for the  
13 purposes of this subparagraph.

#### 14 **6 Subsection 60-125(2) (note)**

15 Omit “Note”, substitute “Note 1”.

#### 16 **7 At the end of subsection 60-125(2)**

17 Add:

18 Note 2: In this section, *register* means the register kept under section 60-135  
19 (see subsection (10) of this section).

#### 20 **8 After subsection 60-125(2)**

21 Insert:

22 (2A) If the Board makes a decision in relation to the contravening entity  
23 under subparagraph (2)(b)(v), then the contravening entity, and the  
24 details in respect of the contravening entity mentioned in that  
25 subparagraph, must be entered on the register for the period  
26 mentioned in that paragraph.

#### 27 **9 At the end of section 60-125**

28 Add:

##### 29 *Definitions*

30 (10) In this section, *register* means the register kept under  
31 section 60-135.

# EXPOSURE DRAFT

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## 10 After paragraph 70-10(h)

Insert:

- (ha) a decision under subparagraph 60-125(2)(b)(v) that an entity, and certain details in respect of the entity, be entered on the register kept under section 60-135 for a period;

## 11 Application provisions

- (1) The amendments of section 60-125 of the *Tax Agent Services Act 2009* made by this Division apply in relation to an investigation into conduct under section 60-95 of that Act if the investigation commences on or after the commencement of this Division.
- (2) Those amendments also apply in relation to an investigation into conduct under section 60-95 of the *Tax Agent Services Act 2009* if:
  - (a) the investigation commenced on or after 1 July 2022 but before the commencement of this Division; and
  - (b) immediately before the commencement of this Division, the Board had not, in relation to the investigation:
    - (i) made a decision under subsection 60-125(2) of the *Tax Agent Services Act 2009*; or
    - (ii) been taken to have made such a decision.
- (3) Regulations made for the subparagraph 60-125(2)(b)(v) of the *Tax Agent Services Act 2009*:
  - (a) may prescribe details in respect of a contravening entity that relate to matters occurring before, on or after the commencement of this Division; and
  - (b) may prescribe a period that starts before, on or after the commencement of this Division.

## 12 Investigations that have concluded—Board may make new decision to publish findings

- (1) This item applies in relation to an investigation into conduct under section 60-95 of the *Tax Agent Services Act 2009* if:
  - (a) the investigation commenced before the commencement of this Division; and
  - (b) before the commencement of this Division, the Board had made a finding that the conduct breached that Act; and
  - (c) on or after 1 July 2022, but before the commencement of this Division, the Board had made a decision, within the period

# EXPOSURE DRAFT

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1 under subsection 60-125(3) of that Act, that no further action  
2 would be taken; and

3 (d) the Board made that decision because, at the time the  
4 decision was made, the entity (the **contravening entity**) who  
5 engaged in the conduct had ceased to be a registered tax  
6 agent or BAS agent.

7 (2) The Board may, within 6 months of the commencement of this  
8 Division, decide that:

9 (a) the contravening entity; and

10 (b) the details in respect of the contravening entity prescribed by  
11 the regulations for the purposes of subparagraph  
12 60-125(2)(b)(v) of *Tax Agent Services Act 2009*;

13 be entered on the register for the period prescribed by the regulations  
14 for the purposes of that subparagraph.

15 (3) If the Board makes a decision (a **publication decision**) under  
16 subitem (2) then, for the purposes of the *Tax Agent Services Act 2009* as  
17 it applies in relation to the investigation on and after the time when the  
18 publication decision is made:

19 (a) the publication decision is taken to have been validly made  
20 under subparagraph 60-125(2)(b)(v) of that Act,  
21 notwithstanding anything in subsection 60-125(3) of that Act  
22 (which imposes a time limit for making decisions); and

23 (b) the period prescribed by the regulations for the purposes of  
24 subparagraph 60-125(2)(b)(v) of that Act is taken to be a  
25 period of 5 years starting on the day when the Board made  
26 the decision that no further action would be taken (as  
27 mentioned in paragraph (1)(c) of this item); and

28 (c) except for the purposes of paragraph (b) of this subitem, the  
29 Board's decision that no further action would be taken is to  
30 be disregarded.

31 Note: The effects of subitem (3) include that the Board must give notice of, and reasons for,  
32 the publication decision under subsection 60-125(8) of the *Tax Agent Services Act 2009*,  
33 and that an application may be made to the Administrative Appeals Tribunal under  
34 section 70-10 of that Act for review of the publication decision.

# EXPOSURE DRAFT

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## 1 **Part 3—Delegations by the Board**

### 2 *Tax Agent Services Act 2009*

#### 3 **13 Before subsection 70-30(1A)**

4 Insert:

5 *Functions and powers that must not be delegated*

#### 6 **14 Subsection 70-30(2)**

7 Repeal the subsection, substitute:

8 *Powers to make reviewable decisions*

9 (2) A power to make a reviewable decision (other than a decision  
10 covered by subsection (2A)):

11 (a) must not be delegated under paragraph (1)(a), (c) or (d); and

12 (b) may be delegated to a \*committee under paragraph (1)(b)  
13 only if:

14 (i) the committee has 3 members or more; and

15 (ii) all members of the committee are \*Board members.

16 Note: For *reviewable decision*, see subsection (5).

17 (2A) This subsection covers the following reviewable decisions:

18 (a) a decision to terminate the registration of an individual under  
19 subsection 40-5(2);

20 (b) a decision to terminate the registration of a partnership under  
21 subsection 40-10(2);

22 (c) a decision to terminate the registration of a company under  
23 subsection 40-15(2).

24 *Other matters*

#### 25 **15 At the end of section 70-30**

26 Add:

27 *Definitions*

28 (5) In this section:

# EXPOSURE DRAFT

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*reviewable decision* means a decision in respect of which an application for review may be made to the Administrative Appeals Tribunal under section 70-10.