

EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No. 130

Issued by authority of the Assistant Treasurer

Corporations (Fees) Act 2001
Tax Agent Services Act 2009
Taxation Administration Act 1953

Tax Administration and Tax Agent Services Legislation Amendment Regulation 2013

Schedule 1, item 1 of the Regulation

Section 5 of the *Corporations (Fees) Act 2001* provides that the Governor-General may make regulations prescribing fees for chargeable matters as defined in this Act. The *Corporations (Fees) Regulations 2001* prescribe the amount of such fees.

The purpose of Schedule 1, item 3 of the Regulation is to allow the Tax Practitioners Board (TPB) and the Australian Securities and Investments Commission (ASIC) to more easily share information. This, in part, enables the TPB and ASIC to prepare for the proposed regulatory regime for financial advisers that provide tax advice.

Specifically, Schedule 1, item 1 of the Regulation amends item 31A of Schedule 1 to the *Corporations (Fees) Regulations 2001* so as to exempt the TPB from having to pay a fee to ASIC for seeking to inspect (or making an enquiry involving an inspection of) any of these ASIC registers relating to financial services licensees and authorised representatives of financial services licensees.

Schedule 1, item 1 of the Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

Schedule 1, items 2 and 3 of the Regulation

Section 70-55 of the *Tax Agent Services Act 2009* provides that the Governor-General may make regulations prescribing matters that are required or permitted by this Act to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Part 2, Schedule 2 to the *Tax Agent Services Regulations 2009* currently prescribes a series of alternative eligibility avenues, one of which individuals must satisfy to be considered eligible for registration by the TPB.

Two of the alternative eligibility avenues (namely, those known as ‘diploma or higher award’ and ‘work experience’) currently require an individual who applies for registration, including renewal, from 1 March 2013 to have successfully completed a course in commercial law that has been endorsed by the TPB.

Schedule 1, items 2 and 3 of the Regulation amends these eligibility requirements to ensure that those individuals who apply for registration, including renewal, from 1 March 2013, and who had been previously registered under the former tax agent services regime, do not have to complete such a course in commercial law.

This amendment recognises that certain tax agents who were registered under the former tax agent services regime had not previously been required to complete an

endorsed commercial law course. This amendment does not affect individuals who never registered under the former tax agent services regime.

Schedule 1, items 2 and 3 of the Regulation commence on 1 March 2013. Although this amendment will commence retrospectively, it does not disadvantage any individuals as it reduces the number of eligibility requirements that need to be satisfied by particular individuals.

Schedule 1, item 4 of the Regulation

Section 18 of the *Taxation Administration Act 1953* (TAA 1953) provides that the Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted to be prescribed by this Act, or that are necessary or convenient to be prescribed for giving effect to this Act.

Subsection 355-70(12) of Schedule 1 to the TAA 1953 provides that the regulations may prescribe a taskforce to receive protected information, and that a major purpose of any such taskforce must be the protection of Australia's public finances.

Schedule 1, item 4 of the Regulation amends the *Taxation Administration Regulations 1976* to prescribe the National Anti-Gang Taskforce (NAGT) as a taskforce that can receive, or have disclosed to it, protected information that is for, or in connection with, a purpose of the NAGT. Protected information is generally tax-related information that could reasonably be used to identify a taxpayer.

On 3 March 2013, the Government announced that the NAGT would be established on 1 July 2013 to combat gang related crime and protect the public finances of Australia from gang-related abuses of the tax system. The NAGT will be comprised of members from Federal and State Police forces as well as officers from multiple Commonwealth agencies, including the Australian Taxation Office.

Schedule 1, item 4 of the Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

None of the aforementioned Acts specify any conditions that need to be satisfied before the power to make the Regulation may be exercised.

No consultation was conducted in relation to the amendments because the amendments are minor or machinery in nature.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The details of the Regulation are listed below:

Section 1 – Name of Regulation

This section specifies the name of the Regulation as the *Tax Administration and Tax Agent Services Legislation Amendment Regulation 2013*

Section 2 – Commencement

This section provides for the Regulation to commence the day after registration.

Section 3 – Authority

This section states that the Regulation is made under the *Corporations (Fees) Act 2001*, the *Tax Agent Services Act 2009* and the *Taxation Administration Act 1953*.

Schedule 1 – The Amendments

Schedule 1, item 1 amends the *Corporations (Fees) Regulations 2001* to exempt the Tax Practitioners Board from paying fees to the Australian Securities and Investments Commission when accessing information relating to financial services licensees and authorised representatives.

Schedule 1, items 2 and 3 amend the *Tax Agent Services Regulations 2009* to ensure that certain individuals are eligible to renew their registration as a tax agent without having to complete an endorsed course in commercial law.

Schedule 1, item 4 amends the *Taxation Administration Regulations 1976*, prescribing the National Anti-Gang Taskforce as a taskforce that taxation officers may disclose protected information to, if the information is for, or in connection with, a purpose of the Taskforce.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The legislative instrument:

- exempts the Tax Practitioners Board from certain fees imposed by the Australian Securities and Investments Commission;
- exempts certain individuals from completing a course in commercial law as a requirement for renewing their registration as a tax agent; and
- will allow taxation officers to disclose protected information to the National Anti-Gang Taskforce.

Human rights implications

That disclosures may be made by taxation officers to the National Anti-Gang Taskforce engages the prohibition on interference with privacy under article 17 of the *International Covenant on Civil and Political Rights*. Information disclosed under this amendment may only be used for the purposes of the Taskforce, namely to detect, disrupt and deter gang related crime in Australia, and to protect the public finances of Australia from gang-related abuse of the tax system.

Accordingly, any interference with a person's right not to be subject to arbitrary or unlawful interference with their private life is reasonable, necessary and proportionate when considered against these very important national interest objectives.

The legislative instrument does not otherwise engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument engages the prohibition on interference with privacy, but does so in a reasonable, necessary and proportionate way. As such, this Schedule is compatible with human rights.