

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing

Tax Agent Services Act 2009

Tax Agent Services Regulations 2022

The *Tax Agent Services Act 2009* (the Act) establishes the Tax Practitioners Board (the Board) and provides for a system to accredit professional associations relevant to the registration of tax agents and BAS agents. Section 70-55 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Tax Agent Services Regulations 2022* (the Regulations) is to remake and improve the operation of the *Tax Agent Services Regulations 2009* (the 2009 Regulations) prior to 'sunsetting'. The purpose of the Regulations is to provide details to accompany the Act that prescribe definitions and requirements for registrations, fees for registration applications and administration details of the Board.

The Legislation Act 2003 provides that all legislative instruments, other than exempt instruments, progressively sunset according to the timetable in section 50 of that Act. The 2009 Regulations will be automatically repealed on 1 April 2022. Legislative instruments generally cease to have effect after a specific date unless further action is taken to extend their operation, such as remaking the instrument.

The Regulations remake and improve the 2009 Regulations by repealing redundant provisions, simplifying language, and restructuring and renumbering provisions for ease of navigation. These changes do not affect the substantive meaning or operation of the provisions except in limited cases that are specifically identified in Attachment A to this Explanatory Statement. The Schedules to the Regulations broadly follow the structure and numbering of the Schedules to the 2009 Regulations.

The Act does not specify any conditions that need to be met before the power to make the Regulations may be exercised.

An Exposure Draft of the Regulations and accompanying Explanatory Materials were released for public consultation from 10 January 2022 to 24 January 2022. Five submissions were received all of which supported remaking the 2009 Regulations. Submissions were received from the Australian Institute of Quantity Surveyors (AIQS), Certified Practising Accountant (CPA), Chartered Accountants Australia and New Zealand (CAANZ) with the Institute of Public Accountants (IPA), KPMG and a confidential submission. Although AIQS, CPA, CAANZ and IPA supported the remake, they also recommended policy modifications. Policy changes are not included as part of this remake as, these recommendations will be considered at a later date.

Details of the Regulations are set out in Attachment A.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on 1 April 2022.

Prior to the making of the Regulations and in accordance with the Office of Best Practice Regulation's Guidance Note on sunseting instruments, the Department of the Treasury self-assessed that the 2009 Regulations were operating effectively and efficiently, and therefore a Regulation Impact Statement was not required. This assessment was informed by the public consultation on the exposure draft Regulations.

A Statement of Compatibility with Human Rights is at [Attachment C](#). The Legislative Instrument is compatible with human rights. To the extent that it engages and limits the right to work, those limitations are reasonable, necessary and proportionate to the outcome.

Details of the *Tax Agent Services Regulations 2022*

This attachment sets out further details of the *Tax Agent Services Regulations 2022* (the Regulations). All references are to the Regulations unless otherwise stated.

Changes of a minor or machinery nature, such as the increased use of headings and also references to 'section' rather than 'regulation' in accordance with modern drafting practice, are generally not specifically identified in this Attachment. Where changes are made that are intended to apply in a different way or require further explanation, these are identified and explained in this Attachment.

The Regulations improve the *Tax Agent Services Regulations 2009* (2009 Regulations) by repealing redundant provisions, simplifying language, restructuring and renumbering provisions for ease of navigation. The Regulations have changed the order of the provisions from the order found in the 2009 Regulations for ease of reader comprehension. The Schedules to the Regulations broadly follow the structure and numbering of the Schedules to the 2009 Regulations.

The finding table in Attachment B represents the previous numbering of the 2009 Regulations and the updated numbering in the Regulations. Consequently, references to a 'corresponding provision' are to the corresponding provision in the 2009 Regulations as identified by the finding table in Attachment B.

The *Financial Sector Reform Amendment (Hayne Royal Commission Response—Better Advice) Regulations 2021* (Better Advice Regulations) that repealed a number of redundant provisions in the 2009 Regulations have been incorporated into these Regulations.

Part 1 – Preliminary

Section 1 – Name

This section provides that the name of the Regulations is the *Tax Agent Services Regulations 2022* (the Regulations).

Section 2 – Commencement

The Regulations commence on 1 April 2022.

Section 3 – Authority

The Regulations are made under the *Tax Agent Services Act 2009* (the Act).

Section 4 – Schedule

This section provides that each instrument that is specified in Schedule 3 to this instrument will be amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

Schedule 5 – Definitions

Section 5 contains defined terms used throughout the Regulations. A number of definitions have either been updated or listed to indicate the terms that have been defined in the Act. This amendment improves the overall clarity and comprehensibility of the Regulations.

Part 2 – Recognition of professional associations

Division 1 – Purpose of Part

Section 6 – Purpose

The purpose of the Regulations remains consistent with the 2009 Regulations to provide for a system for the Board to recognise associations and has been updated with minor editorial updates.

Division 2 and 3 – Recognised BAS agent and tax agent associations

Sections 7 and 12 – Application for recognition

Sections 7 and 12 detail how a not-for-profit association may apply to the Board for recognition as a BAS agent association or a tax agent association. These sections specify how an application may be made and in what form. The application for recognition has been updated in accordance with current drafting conventions.

Section 8 and 13 – Recognition of association

Sections 8 and 13 provide the Tax Practitioners Board’s (the Board) process for recognising associations relating to BAS agent and tax agent associations, respectively.

In determining whether to recognise an organisation as a BAS agent association, section 8 states that the Board must have regard to a set of objective requirements outlined in Part 1 of Schedule 1 to the Regulations. Section 13 similarly states that the Board must have regard to the objective requirements listed in Part 2 of Schedule 1 to the Regulations in determining whether or not to recognise an organisation as a recognised tax agent association.

If the Board either recognises or refuses to recognise the association, then the Board must provide written notification specifying the reasons for the decision. The requirement for the Board to maintain a list of recognised associations on their website has been relocated to a new provision in section 19.

These provisions have been consolidated to improve reader comprehension in circumstances where the changes have not altered the scope or any other feature of the substantive operation of these sections.

Section 9 and 14 – Notice to Board if association ceases to meet requirements

Sections 9 and 14 specify that where an association no longer meets the requirements outlined in the Schedules, an association is required to notify the Board of any change of circumstances that impacts on their ongoing recognition by the Board.

The purpose of the amendments is to simplify and update the sections by removing redundant legislative obligations.

Section 10 and 15 – Notice if Board Requests

Sections 10 and 15 provide that the Board may request further information to assist in determining whether an association should or should not be terminated. In circumstances of requests from the Board, the association must provide a statement of reasons to the Board detailing why their recognition should not be terminated within 30 days from the day the Board gave notice. Minor editorial updates have been made to the provisions in accordance with current drafting conventions.

Section 11 and 16 – Termination of recognition

Sections 11 and 16 provide that the Board must terminate recognition of a recognised BAS agent association or a recognised tax agent association in two instances. Firstly, if the association has not provided notice after the Board has requested notice. Secondly, the Board is satisfied that the association no longer meets one or more of the prescribed requirements in Part 1 of Schedule 1 and the Board no longer considers it appropriate for the association to continue to be recognised.

The Board must notify the recognised association of their intention to terminate recognition where there is reasonable belief that an association no longer meets the prescribed requirements. The notice must include reasons for terminating and invite the association to make a written submission within a reasonable time.

These sections include the option for recognised professional associations to surrender their recognition with the Board.

The purpose of the amendments is to clarify and consolidate these sections in accordance with current drafting conventions. The amendments have not altered the scope or substantive operation of the Regulations.

Section 17 – Notice of recognition

Section 17 details that the TPB must publish a notice on its website, which states that on 1 January 2022 an association that was a recognised tax (financial) adviser association immediately before 1 January 2022, was deemed to be a recognised tax agent association. The amendments ensure visibility of deemed recognised tax agent associations and is consistent with the requirement in section 19 for the TPB to publish decisions to recognise associations.

Division 4 – Miscellaneous

Section 18 – Review of decisions

Section 18 provides that the Board's decision to refuse recognition or terminate an association is a reviewable decision. Section 18 is updated with minor editorial updates consistent with current drafting conventions.

Section 19 – List of recognised associations

Section 19 requires the Board to maintain a list of recognised associations on their website. The purpose of this new section is for the Board to provide and maintain a list of associations recognised by the Board so that BAS agents and tax agents have

access to current information that enable agents to be aware of associations that are recognised by the Board.

Part 3 – Registration of BAS agents and tax agents

Divisions 1 and 2 – Registered BAS agents and tax agents

Sections 20 and 21 – Eligibility for registration for registered BAS and tax agents

Sections 20 and 21 detail the requirements in Parts 1 and 2 of Schedule 2 that individuals must fulfill to be registered as either a BAS agent or a tax agent. and The amendment makes minor editorial updates consistent with current drafting conventions.

Division 3 – Application fees for registration

Section 22 – Fees for registration

Section 22 provides that an application for registration under section 20-20 of the Act must be accompanied by an application processing fee. Section 22 has updated the fees to reflect indexation that applies from 1 July 2022. These changes have not altered the scope or substantive operation of the section.

Part 4 – Investigations

Section 23 – Power to require witnesses to attend—allowances and expenses

Section 23 sets out the prescribed allowances and expenses payable to a witness who is required to attend an investigation to give evidence. The amendment has been updated in accordance with current drafting conventions and is consistent with the corresponding provision in the 2009 Regulations. These changes have not altered the scope or substantive operation of this section.

Part 5 – The Tax Practitioners Board

Section 24 – Administrative assistance

Section 24 provides that the Commissioner of Taxation must provide a person performing duties in the Australian Taxation Office (ATO) to be the Secretary of the Board as well as ATO personnel to provide administrative assistance to the Board. This section replicates the corresponding provision in the 2009 Regulations but has been simplified by removing redundant legislative obligations.

Section 24 relies on the necessary and convenient power in paragraph 70-55(1)(b) of the Act.

Section 25 – Register of registered and deregistered tax agents and BAS agents

Section 25 prescribes information that must be included on the register for the registration and deregistration of agents. This section has minor editorial updates but is consistent with the corresponding provision in the 2009 Regulations.

Part 6 – Services that are not tax agent services

Section 26 – Services that are not tax agent services

A tax agent service is defined in section 90-5 of the Act. Subsection 90-5(2) allows services to be excluded from this definition through regulations.

Section 26 of the Regulations specifies the list of services that are not intended to be captured by the tax agent services definition, such as services provided to a related entity. The amendments to section 26 are minor editorial edits and some clarifications to how it is expressed but is consistent with the corresponding provision in the 2009 Regulations.

The amendments from the Better Advice Regulations have been incorporated in Section 26, which provide that non-financial advisers (individuals, partnerships and companies) who were registered as tax (financial) advisers immediately before 1 January 2022 can continue to provide tax (financial) advice services between 1 January 2022 and 31 December 2022 without being registered as a tax agent.

Schedule 1 – Requirements for recognition of professional associations

Schedule 1 sets out the objective requirements for associations to become registered as a BAS agent association or a tax agent association.

The structure and format of Schedule 1 is consistent with the 2009 Regulations. Schedule 1 incorporates amendments from the Better Advice Regulations that inserts definitions and has been updated with minor edits consistent with current drafting conventions.

Schedule 2 – Requirements for registration as a BAS agent or tax agent

The prescribed requirements for BAS and tax agents to become registered is detailed in Schedule 2.

As a result of updates to the qualifications administered by the Department of Education, Skills and Employment, there have been consequential amendments to the Certificate IV qualifications in items 101 and 102.

The former Certificate IV in Bookkeeping and the Certificate IV in Accounting have been superseded by the current reference to Certificate IV in Accounting and Bookkeeping. These updates do not inhibit individuals from holding a previously recognised qualification that has been superseded, as this continues to be recognised. Similarly, in the future where individuals obtain a qualification that supersedes the current Certificate IV will continue to meet the requirements.

The structure and format of Schedule 2 is retained and is consistent with the 2009 Regulations. Schedule 2 incorporates amendments from the Better Advice Regulations that inserts definitions and minor and editorial updates that have not altered the scope or any other feature of its substantive operation.

Schedule 3—Repeals

This section repeals the whole of the *Tax Agent Services Regulations 2009*.

ATTACHMENT B

FINDING TABLES – *Tax Agent Services Regulations 2009*

As a result of some of the changes outlined in Attachment A, it was necessary to renumber the provisions in the Regulations. This explanatory statement includes finding tables to assist in identifying which provision in the Regulations corresponds to a provision in the old law that has been rewritten or consolidated.

In the finding table, in the Old Law column, 'no equivalent' means that this is a new provision that has no equivalent in the old law.

Finding table – Old to New Law

<i>Old Law</i>	<i>New Law</i>
<i>Tax Agent Services Regulations 2009</i>	<i>Tax Agent Services Regulations 2022</i>
1	1
No equivalent	2 - 4
3	5
4	6
4A	7
4B	8
4D	8
4E	9
4F	10
4G	11
5	12
5A	13
5B	13
5C	14
5D	15
5E	16
5F - 5L	Repealed by the Better Advice Regulations

<i>Old Law</i>	<i>New Law</i>
<i>Tax Agent Services Regulations 2009</i>	<i>Tax Agent Services Regulations 2022</i>
6	8/11/13 and 17 – inserted by the Better Advice Regulations
6A	18
6B	11
7	19
8	20
8A	Repealed by the Better Advice Regulations
9	22
10	23
11	24
12	25 References to tax (financial) advisers removed by Better Advice Regulations
13	26

Finding table – New to Old Law

<i>New Law</i>	<i>Old Law</i>
<i>Tax Agent Services Regulations 2022</i>	<i>Tax Agent Services Regulations 2009</i>
1	1
2	No equivalent
3	No equivalent
4	No equivalent
5	3
6	4
7	4A
8	4B/4D/6
9	4E
10	4F
11	4G/6/6B
12	5
13	5A/5B/6
14	5C
15	5D
16	5E
17	No equivalent
18	6A
19	No equivalent
20	7
21	8
22	9
23	10

<i>New Law</i>	<i>Old Law</i>
<i>Tax Agent Services Regulations 2022</i>	<i>Tax Agent Services Regulations 2009</i>
24	11
25	12
26	13

Statement of Compatibility with Human Rights

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

Tax Agent Services Regulations 2022

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 *Tax Agent Services Act 2009* (the Act) establishes the Tax Practitioners Board (the Board) and provides for a system to accredit professional associations relevant to the registration of tax agents and BAS agents. Section 70-55 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Tax Agent Services Regulations 2022* (the Regulations) remake and improve the operation of the *Tax Agent Services Regulations 2009* (2009 Regulations) by repealing redundant provisions, simplifying language and restructuring provisions for ease of navigation. The Regulations also make some minor clarifications to several provisions in the repealed 2009 Regulations to ensure that they operate as intended.

The objective of the Regulations is to provide details to accompany the Act that prescribe definitions and requirements for registrations, fees for registration applications and administration details of the Board.

These changes are not intended to affect the substantive meaning or operation of the provisions.

Human rights implications

This Legislative Instrument engages the following human rights or freedoms.

The right to work

This measure engages the right to work in Article 6 of the *International Covenant on Economic, Social and Cultural Rights*.

Article 6(1) recognises the right to work and obliges States Parties to take appropriate steps to safeguard this right.

The opportunity to work may be limited by the required qualifications for individuals to complete prior to becoming formally recognised. These qualifications have a monetary cost associated, which limits certain individuals from becoming registered.

In addition, the requirement for individuals to pay for registration as a professional agent may limit the right of individuals to free choice of work opportunities.

These Regulations impose obligations to hold certain tertiary qualifications as well as paying associated registration fees. However, these statutory qualifications and fees are necessary to ensure a high standard of tax and BAS agent services are provided to society at large. These limitations provide benefits and assure the general public that only accredited professionals are eligible to handle complex tax affairs. Any potential limitations on the right to work are reasonable and proportionate to provide quality service and assistance to the general public. The knowledge and experience gained to become a tax professional who can assist the general public with meeting their compulsory tax obligations is justified because it provides a net social benefit to society.

Conclusion

This Legislative Instrument is compatible with human rights. To the extent that it engages and limits the right to work, those limitations are reasonable, necessary and proportionate to the outcome.