# EXPLANATORY STATEMENT

## Issued by authority of the Treasurer

*Tax Agent Services Act 2009*

*Tax Agent Services Amendment (Register Information) Regulations 2024*

Section 70-55 of the *Tax Agent Services Act 2009* (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.

Section 60-135 of the Act provides that regulations may prescribe the details that the Tax Practitioners Board (TPB) must enter in respect of each entity who is entered on the Register maintained by the TPB (the Register). These details are set out in section 25 of the *Tax Agent Services Regulations 2022* (the Regulations).

The *Tax Agent Services Amendment (Register Information) Regulations 2024* (the Instrument) complements Schedule 3 to the *Treasury Laws Amendment (Tax Accountability and Fairness) Act 2024* (the Amendment Act). The purpose of the Instrument is to further implement the Government’s Response to the Independent Review of the Tax Practitioners Board (the TPB Review) and it forms one of a range of measures to give effect to the Government’s commitment to restore public trust and confidence in the regulation of the tax profession.

The Instrument gives effect to three recommendations in the final report of the TPB Review:

* enabling the TPB to publish more detailed reasons for tax practitioner sanctions, including terminations, on the Register (recommendation 6.3);
* publishing a wider range of information, decisions and outcomes on the Register (recommendation 8.1(a)); and
* removing time limits on how long certain information appears on the Register (recommendation 8.1(c)).

Registered tax agents and BAS agents (collectively referred to as ‘tax practitioners’) are governed by the TPB, which decides whether to register an entity as a tax practitioner and investigates conduct that may have breached the Act. A breach of the Act includes a breach of an instrument under the Act and of the Code of Professional Conduct (the Code) contained within the Act and any relevant determination by the Minister. The Act and Regulations form the legislative framework within which the TPB operates.

Section 60-135 of the Act requires the TPB to establish and maintain a register of entities including current tax practitioners. Section 25 of the Regulations sets out further detail on information to be included on the Register.

The amendments contained in this Instrument, along with those in the Act, were developed within the context of recent parliamentary and public scrutiny of disreputable tax practitioner conduct in Australia. They form part of a range of measures to promote the professional and ethical standards of tax practitioners.

An exposure draft of the Instrument was released for consultation from 20 September until 4 October 2023, together with an exposure draft of the Amendment Act. Treasury received several submissions from professional associations and large global accounting firms (representing tax practitioners about which information would go on the Register under the Instrument) as well as public interest bodies and the TPB.

The submissions were generally supportive of the requirements for additional detail and information to be published on the Register. Some stakeholders highlighted the need for suitable safeguards, and suggested that the Register should be updated to reflect when sanctions have lapsed or orders have been complied with. In response to feedback, additional safeguards have been introduced, including requiring Register information to be updated to ensure that it meets requirements of the Act and Regulations and is not false or misleading following appeals. Lapsed sanctions will be apparent on the Register (which will state the period for which sanctions apply, if any).

The Instrument updates the Regulations in four main ways:

* Requiring additional information to be published on the Register. This makes information about the conduct of registered and formerly registered tax professionals, or unregistered entities who have advertised or provided tax agent services, transparent to the public.
* Requiring Register information to be updated to ensure that it is not false or misleading following a review of a TPB decision by the AAT or a court.
* Extending the length of time that certain information must be kept on the Register, securing the availability of that information to the public.
* Providing greater transparency of accountable individuals who form the sufficient number of tax practitioners within a registered company or partnership.

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

The Instrument is a disallowable instrument that is subject to sunsetting.

The Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Instrument commences the day after registration.

Details of the Instrument are set out in Attachment A.

**ATTACHMENT A**

**Details of the *Tax Agent Services Amendment (Register Information) Regulations 2024***

This attachment sets out further details of the *Tax Agent Services Amendment (Register Information) Regulations 2024,* which updated the *Tax Agent Services Regulations 2022* (the Regulations).

Section 1 – Name

This section provides that the name of the instrument is the *Tax Agent Services Amendment (Register Information) Regulations 2024* (the Instrument).

Section 2 – Commencement

Schedule 1 to the Instrument commenced the day after registration.

Section 3 – Authority

The Instrument is made under the *Tax Agent Services Act 2009* (the Act).

Section 4 – Schedule

This section provides that each instrument that is specified in Schedule 1 to this Instrument is amended or repealed as set out in the applicable items in Schedule 1, and any other item in the Schedule to this Instrument has effect according to its terms.

Schedule 1 – Amendments

**Current law**

The Tax Practitioners Board (the TPB) maintains a register (the Register) which is a publicly available database that includes the details of all currently registered, and in some cases formerly registered, tax agents and Business Activity Statement agents (collectively known as ‘tax practitioners’). The Register assists employers of tax practitioners and members of the public who may require tax agent services by allowing them to search tax practitioners based on their expertise or location. The Register also provides visibility of any conditions or sanctions imposed on the entity. For completeness, ‘entity’ is defined at subsection 960‑100(1) in the *Income Tax Assessment Act 1997* to include, amongst other entities, individuals, body corporates and partnerships.

Before Schedule 3 to the *Treasury Laws Amendment (Tax Accountability and Fairness) Act 2024* (the Amendment Act) commenced, the Act (under section 60-135) and the Regulations (under section 25) required the Register to include:

* Registered tax agents and BAS agents, and their names, contact details, relevant professional affiliations, duration of registration, any conditions of registration;
* For registered tax and BAS agents, any sanction (other than a caution or termination) imposed by the Board on the entity, for the longer of 12 months or the period during which the sanction has effect (for example, for a 3 year period if an entity had their registration suspended for 3 years); and
* Formerly registered tax agent or BAS agents whose registration was terminated within the past 12 months, including their name, contact details, the date of effect of the termination of the entity’s registration and the reason for the termination of the entity’s registration.

The Regulations also enabled the Register to include:

* Other information that is relevant to the operation of the arrangements for the registration of tax practitioners.

Issues arising from those provisions included:

* If an entity breached the Act and had their registration suspended, the suspension could remain on the Register for a longer period than if they had had their registration terminated for misconduct, despite a suspension being a lesser sanction than a termination decision.
* If an entity’s registration lapsed during an investigation, even if the TPB found a breach of the Act they would not be able to impose an order or sanction, or suspend or terminate the entity’s registration, so the Register did not include any information about the breach.
* A lack of clarity about information that should be included on the Register under the discretion to include other relevant information on the Register.

**New law**

The Instrument removes the general discretion to include other relevant information on the Register. Instead, the amendments set out explicitly what information is required to go on the Register in a detailed range of circumstances.

Under the Amendment Act and this Instrument, the Register is required to include:

* Past names and registration numbers during the previous 5 years for certain entities on the Register for misconduct;
* The names and registration numbers of any registered individuals provided to the TPB as part of an entity’s registration application to demonstrate that it has a sufficient number of individual tax practitioners to provide tax agent services to a competent standard and carry out supervisory arrangements;
* An application to the TPB for renewal of registration;
* Details of registration applications rejected on integrity grounds, including for certain entities that have previously been registered or are already on the Register in relation to a Federal Court application or decision;
* Details of TPB orders, suspension and termination decisions for misconduct;
* Details of a TPB investigation finding that an entity breached the Act, if the TPB decides to publish those findings on the Register, and noting if registration lapsed during the investigation;
* Details or updates to Register information for any appeals by an entity against a reviewable decision of the TPB to the AAT or a court, including the fact that an application was made and updates for the outcomes, which could include removing an unregistered entity’s record if they were exonerated by the appeal decision;
* Information linking breaches by companies or partnerships and breaches by the individuals representing them, in defined circumstances where the breaches relate to the same conduct or matter;
* Details of applications by the TPB to the Federal Court for a civil penalty or injunction under the Act;
* Details of decisions if the Federal Court finds a breach of the Act, orders a penalty, grants a non-interim injunction or makes a finding of contempt of court, and details of any appeals of those decisions; and
* While the widely drafted, but functionally limited discretion for the TPB to include other relevant information has been removed, the Register will still include appropriate general information that is not about a specific entity, such as sub‑headings and explanations of terms used.

More detail on each of these changes is provided below. All section references refer to the Instrument unless otherwise specified.

**Detailed explanation of new provisions**

*Introductory provisions*

Item 1 of the Instrument inserts definitions for the Administrative Appeals Tribunal (AAT), the *Administrative Appeals Tribunal Act 1975* (AAT Act) and the Register to enable abbreviations to be used. These definitions describe how the AAT, AAT Act and Register will be referenced throughout the Instrument.

Item 2 of Schedule 1 makes a minor editorial amendment by creating a new Division under Part 5 of the Regulations entitled ‘Administrative assistance,’ which applies to section 24 which is otherwise not changed by the Instrument.

Item 3 of Schedule 1 creates a second Division under Part 5 of the Regulations entitled ‘Register of entities.’ It replaces the old section 25.

Section 25 clarifies that the new Division 2 (with the exception of section 25F) is made for the purposes of subsection 60-135(1) of the Act, which requires the TPB to maintain a register in accordance with the Act and Regulations.

Section 25F of the Instrument is made for the purposes of subparagraph 60‑125(2)(b)(v) of the Act. That section of the Act provides that, if the TPB investigates conduct under section 60‑95 of the Act and finds that the conduct breaches the Act, the TPB can decide to include the entity that engaged in the conduct, and information about the entity as prescribed by the regulations, on the Register.

**Information on the Register**

*Basic information - current*

For an entity required under another provision to be entered on the Register, section 25A prescribes the basic information about the entity that the Register must include. Under paragraphs 25A(4)(a) and (b), for both registered and unregistered entities, the Register must include the name and contact details of the entity.

Under subsection 25A(2), for a registered entity, the name and contact details on the Register must be kept up‑to‑date for the duration that the entity is on the Register. Under subsection 25A(3), for an unregistered entity, the most up-to-date name and contact details that the TPB has access to must be entered.

In addition to names and contact details, paragraph 25A(4)(c) prescribes that the following basic information must also be published and kept up-to-date for all registered tax practitioners:

* registration number;
* any relevant professional affiliation;
* duration of registration; and
* any conditions affecting the entity’s registration.

If an entity is required to be on the Register for a certain period (the ***entry period*** under subsection 25A(1)), they may be registered for part of that period and unregistered for part of that period. In this case, their details will need to be kept up-to-date while they are registered and the most up-to-date details available to the TPB included while they are unregistered.

*Basic information – historical*

If an entity has changed their name or had a different registration number, under paragraphs 25B(4)(a) and (b) their past names and registration numbers from the past five years must be included on the Register in certain circumstances. If an entity does not currently have a registration number but has had one or more registration numbers before, paragraph 25B(4)(c) requires that all of their registration numbers within the past five years must be entered on the Register in certain circumstances. This enables a client or other Register user to identify all information on the Register about a certain individual, company or partnership, even if the entity has had a different name or registration number in the past.

Under subsection 25B(1), past names or registration numbers only need to be entered on the Register if the entity has any of the following on the Register:

* an order;
* suspension of their registration;
* termination of their registration;
* a TPB application to the Federal Court for a penalty or injunction;
* a Federal Court order for a penalty or injunction;
* a Federal Court finding that the entity breached the Act;
* their application for registration or renewal was rejected on integrity grounds;
* a TPB decision to include findings of investigations on the Register.

Under the application provision in item 4, section 28, historical details only need to go on the Register if an entity has applied for registration or renewal on or after commencement of the provision. The reason that past names or registration numbers only need to be entered on the Register if the entity applies for registration or renewal of registration on or after commencement is that the TPB may not necessarily have historical information about unregistered entities unless or until the entity applies for registration.

Subsection 25B(4) includes a requirement to keep historical names and registration numbers up-to-date for registered entities, and to include the most up-to-date information in the TPB’s possession for unregistered entities. The application provision at item 4, subsection 28(2) clarifies that a period of five years referred to in subsection 25B(4) can be a period that started before, on or after commencement of the Instrument. This ensures that historic details in the five years before commencement can be covered by the provision.

In addition to basic information about an entity, information about changes in name or registration number are important to allow tracing of an entity’s past and maintain transparency on the Register. This information ensures that decisions or actions taken by the TPB or the Federal Court in relation to misconduct under former names or registration numbers of entities will be traceable from the entity’s current record on the Register.

*Personal safety exception to publishing historic details*

Subsections 25B(5) to (7) provide an exception to the requirement to include an entity’s past name or registration number on the Register. The exception is based on physical or personal safety grounds and so only applies to entities that are individuals, not entities that are companies or partnerships.

Under subsection 25B(6), if the TPB is satisfied that entering a past name or registration number on the Register would pose a safety risk to the individual or a member of their family, and having regard to their safety, it would not be appropriate to enter that information on the Register for a certain period (the ***non-disclosure period***), that information is not to be entered on the Register.

The intent of the exception is to ensure that, if an individual or their family member has experienced a personal safety risk such as family violence or stalking, and the individual has changed their name or registration number to reduce or avoid that safety risk, and including their past name or registration number on the Register would enable the person who is a threat to the individual’s personal safety or their family member’s personal safety to more easily identify or locate the individual or their family member, there is an avenue for that past name or registration number not to be published on the Register.

Under subsection 25B(5), the exception requires that an individual makes a request in writing to the TPB for a past name or a previous registration number not to be published on the Register on the basis that it would risk their safety or the safety of their family member. There is no specific requirement for the individual to provide particular details about, or evidence of, the safety risk. However, the TPB would need sufficient details and evidence to be satisfied of the safety risk and that it is appropriate in all the circumstances not to publish the historic details. This provides flexibility in the information that can be provided to satisfy the TPB that it is appropriate not to publish the historic details.

Information that an individual could provide to the TPB about a safety risk will depend on all the circumstances and could include, but is not limited to, one or more of the below:

* a copy of a family violence order to protect the individual, or a member of the individual’s household or family such as their de-facto partner or child;
* a copy of an apprehended violence order to protect the individual or their family member, or equivalent order in any state or territory;
* a copy of allegations of family violence tendered as evidence in parenting proceedings or child protection proceedings;
* details of receiving compensation for physical injuries under a victims of crime compensation scheme; or
* copies of relevant police reports and medical reports, if these establish a personal safety risk.

Subsection 25B(7) clarifies that entering information on the Register would pose a safety risk to an individual if it would create, increase or maintain, or otherwise contribute to, such a risk. If the person who threatens the individual is already aware of the individual’s previous and new name or registration number, then publishing that information on the Register would be unlikely to be contributing to a safety risk.

If an individual proposes to change their name to reduce the risk to their personal safety, and publishing their historic details on the Register would maintain their safety risk at the same level as before the name change, that would be an example of publication contributing to an individual’s safety risk by maintaining that safety risk, in circumstances where the risk to their safety would have decreased if historic details weren’t published on the Register.

The intent of the exception is to protect the rights and interests of individuals who have experienced family violence or similar personal safety risks. The Act provides a list of the TPB decisions that are subject to merits review by the AAT, and this exception cannot be added to that list through amendments to the Regulations alone. Although merits review is not available for this exception, the rights and interests of individuals are better served by including the exception than by removing it on the grounds that there is no merits review available. Without the exception, past names and registration numbers would need to be published even in cases where this posed a threat to the personal safety of the individual. Moreover, if merits review was made available, that would not necessarily provide an effective outcome for an individual if information that risked their personal safety was published on the Register and then later removed following a review, as the information will have already been made publicly available.

*Application for renewal of registration*

Section 25C requires that the Register to note when an entity has applied for renewal of registration. Under subsection 25C(1), that information is to remain on the Register until either the application is withdrawn or discontinued, or the TPB makes a decision on the application, whichever occurs first.

Under the application provision in item 4, section 29, this applies to any application for renewal in the 5 years before commencement of the Instrument, and on and from commencement of the Instrument.

*Registration applications rejected on integrity grounds*

An application for registration as a tax practitioner includes an application for renewal of registration under subsection 20-20(1) of the Act, and both are referred to as a ***registration application*** in the Instrument.

Section 20-5 of the Act sets out eligibility criteria for registration which include the following integrity requirements:

* For individuals, an individual must be a fit and proper person (paragraph 20‑5(1)(a)).
* For partnerships:
	+ each partner who is an individual must be a fit and proper person (subparagraph 20-5(2)(a)(ii)); and
	+ for each partner who is a company:
		- all company directors must be fit and proper people (subparagraph 20-5(2)(b)(i)); and
		- the company must not have been convicted of a serious taxation offence or an offence involving fraud or dishonesty during the previous 5 years (subparagraph (2)(b)(iii)).
* For companies:
	+ all company directors must be fit and proper people (subparagraph 20‑5(3)(a)); and
	+ the company must not have been convicted of a serious taxation offence or an offence involving fraud or dishonesty during the previous 5 years (subparagraph 20‑5(3)(c)).

If the TPB rejects an entity’s registration application because, or partly because, the entity is not eligible for registration because it does not meet any of those integrity requirements, this explanatory statement will refer to the application as having been rejected on integrity grounds.

Subsection 25D(1) requires information about a registration application rejected on integrity grounds to be entered on the Register in certain circumstances. Those circumstances are set out in subsection 25D(2) of the Instrument. They include where, at the time that the TPB rejects the registration application:

* the entity is not registered, but was registered at some point within the past five years;
* the entity is not registered, but is required to be on the Register because the Federal Court found that it had breached the Act or ordered a civil penalty or injunction;
* the entity is not registered, but the TPB has applied to the Federal Court for a civil penalty or injunction against the entity and the case has not been decided yet; or
* the entity is not registered, but was registered at some point (which can be more than five years ago), and it is appropriate in all the circumstances for the application rejected on integrity grounds to go on the Register.

If an entity’s registration application is rejected in one of the above circumstances, then that entity is required to have a record on the Register and under subsection 25D(2) the information about the rejected registration application must remain published for five years starting from the date the Board rejected the application. Section 25D(3) sets out this specified information including:

* a statement that the TPB has decided to reject the registration application;
* the date the TPB decided to reject the registration application; and
* the reason that the TPB rejected the application, including which provision(s) relating to integrity mentioned in paragraph 25D(c) the TPB was not satisfied was met.

Under the application provision in item 4, section 30, section 25D of the Instrument applies to the TPB’s decision to reject a registration application if the decision was made on or after 1 July 2022. Under the application provision in item 4, section 38, if the TPB rejected an application on integrity grounds on 1 July 2022, and the rejection is required to go on the Register from commencement, it would not be on the Register for the full five years but would be on the Register from commencement until the end of 30 June 2027, which would be the end of the period of five years from the rejection decision.

*Orders, suspensions and terminations*

Under section 25E, certain information about current or former tax practitioners is required to be entered on the Register where the TPB orders an entity to take specified actions, or the TPB suspends or terminates an entity’s registration. Under the Act, the TPB is able to make orders or suspend or terminate an entity’s registration if it conducts an investigation into the entity’s conduct and finds that the entity did not comply with the Act. The TPB is also able to terminate an entity’s registration without an investigation under Subdivision 40-A of the Act, for example, if the entity no longer meets a registration requirement. Publication of this information enables members of the public to make better, more informed decisions about an entity’s suitability to provide tax agent services.

Subsection 25E(1) prescribes certain information about current and former tax practitioners must be entered on the Register for five years where the TPB has performed any of the following actions that take effect on or after 1 July 2022:

* imposed orders under section 30-20 of the Act;
* suspended registration under section 30-25 of the Act; or
* terminated registration under section 30-30 or Subdivision 40-A of the Act.

Where the TPB finds that an entity did not comply with the Act and gives an entity a written caution, there is no requirement for details relating to the caution to be entered on the Register. Such cautions provide an opportunity for an entity to rehabilitate their conduct. However, if the TPB gives a written caution, the TPB can decide to enter the findings of their investigation that found a breach of the Act on the Register under subparagraph 60‑125(2)(b)(v) of the Act inserted by the Amendment Act.

However, subsection 25E(2) provides that the termination of an individual’s registration does not need to be published on the Register if the Registration is terminated because the individual died.

Subsection 25E(3) specifies the details the TPB must publish on the Register where it orders an entity to take specified actions, or suspends or terminates the registration of that entity. These details include:

* a statement that an order to take a specified action, suspension or termination has been imposed on the entity;
* the reasons given by the TPB for the order, suspension or termination, including details of the entity’s conduct if their conduct was the reason for the order, suspension or termination;
* a summary of any order’s content;
* if the TPB ordered a period during which the entity must not apply for registration following a termination decision, a statement to that effect;
* the period for which the order or suspension is in force; and
* the date the order, suspension, or termination takes effect.

The reasons for the order, suspension or termination would include details of:

* what actions the entity took that breached the Act;
* what obligations under the Act were breached.

To provide an example, if an entity breached its obligation to ensure that a tax agent service it provided, or that was provided on its behalf, was provided competently, the reasons on the Register could include:

* what services weren’t provided competently (for example, the preparation of income tax returns); and
* in what way those services weren’t competent (for example, that deductions were overclaimed or incorrect because they couldn’t be substantiated or didn’t have sufficient nexus to assessable income).

The reasons for an order, suspension or termination of registration of an entity, or description of conduct, should not include the name or registration number of any other entity unless the requirements under section 25K are met.

In relation to specifying which obligations of the Act were breached, if a Code obligation determined by the Minister was breached, the reasons should specify which obligation determined by the Minister was breached, and not just state that subsection 30-10(17) of the Act was breached.

Subsection 25E(4) clarifies how long particular types of information should stay on the Register. It prescribes the longer of:

* five years starting on the day the order, suspension or termination of registration takes effect; and
* the period for which the order or suspension is in force.

Where an order to take one or more actions is given to an entity, subsection 25E(5) provides that the date that it takes effect is either the start of the time period specified in the order for the required action to be completed, or if no time period is specified in the order, it is the day after the order is given to the entity. Under subsection 25E(6), an order is in force for a period if the order specifies a period of time within which the action must be completed or the period of time during which the order applies.

Where an entity’s registration is suspended, subsection 25E(7) provides that suspension takes effect at the start of the suspension period, and is in force for the entirety of the suspension.

Under the application provisions at item 4, sections 31 and 38, for orders, suspensions and terminations of registration that take effect on or after 1 July 2022 but before commencement of the Instrument, assuming that the order or suspension is in force for five years or less, information will be required to go on the Register from commencement until 5 years from the day that the order, suspension or termination of registration took effect. For example, if a termination decision took effect on 1 July 2022, it would not be on the Register for the full five year period. It would have been on the Register for one year before commencement of this Instrument. From commencement of this Instrument it would go back on the Register until five years from the day that the termination took effect.

*Investigations by the TPB – decision to publish finding of breach*

The Amendment Act created a new outcome for investigations when the TPB finds there has been a breach of the Act. In addition to existing options (orders, suspensions and terminations) or civil penalties, the TPB can opt to publish the investigation findings on the Register (subparagraph 60-125(2)(b)(v) of the Act). These amendments allow the TPB to publish the findings of the investigation on the Register where they find a breach is sufficiently serious, but an order, suspension or termination is not appropriate or not possible, for example if the entity is no longer registered at the time of the decision. This provides the TPB a different avenue for making clear to the public that an entity was found to have breached the Act.

Subparagraph 60-125(2)(b)(v) of the Act enables regulations made for the purposes of that subparagraph to prescribe the information to go on the Register and the entry period. If the TPB decides to publish findings of the investigation on the Register, subsection 60‑125(2A) of the Act requires the entity and information about the entity to be published on the Register as set out in subparagraph 60‑125(2)(b)(v).

Paragraph 25F(2)(a) of the Instrument provides that where the Board has conducted an investigation under section 60-95 of the Act and found that conduct has breached the Act, and they have made a decision to publish the findings (***publication decision***) under subparagraph 60-125(b)(v) of the Act in relation to the entity that breached the Act (***contravening entity***), the TPB must publish:

* details of their finding that conduct of the contravening entity breached the Act; and
* the reasons for that finding.

The details of the TPB’s finding of breach and the reasons for the finding of breach will encompass details of the conduct that breached the Act, which could include a reference to another entity’s breach if the requirements of section 25K are met. It will also include specifying which obligations in the Act were breached, including if any particular Code obligations determined by the Minister have been breached.

The TPB is also required to specify if an entity allowed its registration to lapse before the TPB made its decision. If an entity becomes unregistered during an investigation, this would prevent the TPB from making an order, suspension or termination. Including the fact that the entity’s registration lapsed during the investigation on the Register can help to explain to someone using the Register why an order, suspension or termination did not apply.

Information about the TPB’s investigation findings under paragraph 25F(2)(b) must remain on the Register for five years from the date of making the decision to publish.

Publication decisions became available from 1 July 2024 under the Amendment Act, in relation to investigations that began on or after 1 July 2024, and investigations that began on or after 1 July 2022 but which were still open at commencement of the Amendment Act (investigations for which the TPB had not made and was not taken to have made a decision by 1 July 2024). Publication decisions also became available for investigations for which the TPB had made a decision on or after 1 July 2022 to take no further action, if the TPB made that decision because the entity was no longer registered (item 12 of the Amendment Act).

Information about investigation findings can also go on the Register under other provisions of this Instrument, such as in providing reasons for the TPB’s order, suspension or termination decision under section 25B, which applies to those decisions made on or after 1 July 2022.

Increased information on the public Register will assist members of the public who are seeking tax agent services. It provides greater visibility over past professional misconduct and ensures members of the public are able to make better-informed decisions about engaging an entity for tax agent services. Publishing findings of investigations, where there was misconduct that breached the Act, also allows employers to make more informed decisions about current or potential employees.

*Applications by the TPB to the Federal Court*

Subsection 25G(1) requires an entity, whether registered or unregistered, to be entered on the Register if the TPB applies to the Federal Court for an order for a civil penalty because of a contravention of the Act, or for an injunction restraining the entity from engaging in conduct or requiring an entity to do something because the entity has engaged in, or is proposing to engage in, conduct that does or would breach the Act. The information subsection 25G(2) requires to be published on the Register in these circumstances is:

* a Statement that the Board has applied to the Federal Court for the penalty or injunction;
* details of each civil penalty provision that the TPB considers has been contravened;
* details of the entity’s conduct or proposed conduct that allegedly has contravened or would contravene the civil penalty provision; and
* details of the order or injunction the TPB has applied for.

Details of the entity’s conduct can include a reference to another entity whose breach is a reason for the entity’s breach if the requirements of section 25K are met. Details of the order or injunction that the TPB has applied for would include:

* the amount that the TPB has sought for a civil penalty (e.g. the dollar amount or the number of penalty units sought), if applicable;
* what conduct the entity has engaged in, or proposes to engage in, that the TPB alleges did or would breach the Act, as applicable; and
* what actions the TPB seeks the injunction to require the entity to do or not do and for what period.

Subsection 25G(3) states the prescribed period for publishing the information on the Register starts from the day that the TPB makes the application, and states the information is to be removed from the Register when the application to the Federal Court is withdrawal or discontinued, or when the Federal Court makes its final decision in relation to the case. When the Federal Court makes its final decision, if they find a breach or order a penalty or final injunction, details of the Federal Court’s findings and orders will go on the Register under section 25H or 25J of the Instrument, with the result that information about the TPB’s application is no longer needed on the Register.

If the Federal Court finds that there has been no breach of the Act and has not ordered a penalty or granted a non-interim injunction and there is no other basis for information about the Federal Court decision to go on the Register, information about the TPB’s application to the Federal Court will come off the Register and no information about the Federal Court decision will need to be added to the Register. If an unregistered entity was only on the Register because of an application to the Federal Court, and the Federal Court decision does not need to be entered on the Register, and nobody has applied to appeal the Federal Court decision, and there is no other basis under the Act or Instrument for the entity to be on the Register, the entity’s entire entry on the Register would be removed.

Under the application provision in item 4, section 32, section 25G applies to applications made to the Federal Court within the five years before commencement of the Instrument, and on and after the commencement of the Instrument.

*Federal Court Orders and Injunctions*

Under subsection 25H(1), an entity must be entered on the Register for a prescribed period if the Federal Court, in response to an application by the TPB for a civil penalty or injunction:

* makes an order that an entity pay a pecuniary penalty after being satisfied the entity has contravened a civil penalty provision of the Act; or
* grants a non-interim injunction restraining an entity from doing something because it is satisfied the entity has engaged, or is proposing to engage in, conduct constituting or conduct that would constitute a contravention of a civil penalty provision of the Act.

If the Federal Court makes an interim injunction to require the entity to take a certain action, or to restrain an entity from taking a certain action, while the case is being heard but does not grant the injunction sought by the TPB as a final outcome of the case based on a finding of breach, that interim injunction alone does not require a Federal Court decision to go on the Register.

Under paragraphs 25H(2)(a) to (f) of the Instrument, the following information must go on the Register if the Federal Court ordered a civil penalty:

* a statement to the effect that the Federal Court made an order to pay a pecuniary penalty after being satisfied that the entity contravened a civil penalty provision of the Act;
* which civil penalty provisions were found to have been breached;
* details of the conduct that contravened the civil penalty provision;
* the amount of the penalty;
* the date of the order; and
* how a member of the public can get access to a copy of the order or injunction.

Under paragraphs 25H(3)(a) to (f), the following information must go on the Register if the Federal Court ordered a non-interim injunction:

* a statement to the effect that the Federal Court granted an injunction after being satisfied that the entity had engaged in, or proposed to engage in (as applicable), conduct that did or would contravene a civil penalty provision of the Act;
* which civil penalty provisions had been breached by the conduct, or would be breached by the proposed conduct (as applicable);
* details of the conduct that contravened, or would contravene, the civil penalty provision;
* details of the injunction, including what the entity is required to do or not do (as applicable) under the injunction and for what time period;
* the date on which the injunction was granted; and
* how a member of the public can get access to a copy of the Federal Court’s injunction decision.

The Federal Court may order a civil penalty and grant an injunction, in which case the information relating to both types of decisions will need to be entered on the Register. Similarly, the Federal Court may grant an injunction in relation to some conduct that the entity engaged in that has breached the Act, as well as some conduct that the entity proposed to engage in that would breach the Act, in which case the Register should include details in relation to what actual conduct breached which civil penalty provisions, and what proposed conduct would breach which civil penalty provisions. Similarly, if the injunction requires the entity to take some actions and requires the entity not to take other actions, details of both need to be included on the Register.

If the TPB considers it appropriate to include additional information about the order or injunction, other decisions or findings the Federal Court makes in the same proceedings, and other decisions or findings made by the Federal Court or another court in related proceedings, then that additional information is required to be entered on the Register. It would generally be appropriate to include any pending appeal of the Federal Court decision to a higher court.

In some circumstances it may also be appropriate to include details of:

* any breaches alleged by the TPB which the Federal Court found not to be substantiated, noting that no information about the Federal Court decision is required to go on the Register if there is no finding of a breach by the Federal Court and no penalty ordered or injunction granted; and
* any decisions of the Federal Court that are still pending at a particular point in time (for example, a civil penalty might be ordered and go on the Register before a decision about an injunction is made).

The prescribed period for which information under section 25H must be entered and remain on the Register starts as soon as practicable after the day the Federal Court makes an order or grants a non-interim injunction. In the event the TPB publishes additional information, it begins on the day the TPB decides additional information is required to be published on the Register. It finishes at the end of five years starting on the day when the Federal Court makes the order or grants the injunction.

Under the application provision in item 4, section 33, section 25H applies to Federal Court decisions made within the previous five years before commencement of the Instrument and decisions made on or after commencement of the Instrument.

*Other court findings and decisions*

Under section 25J, if the TPB applies to the Federal Court for a civil penalty or injunction in relation to a breach of the Act, and the Federal Court does not order a civil penalty or grant an injunction, information would still need to be included on the Register if the Federal Court, or another court on appeal:

* finds a breach of a civil penalty provision of the Act; or
* finds the entity in contempt of court (for example, it finds that an entity advertised tax agent services while unregistered in contravention of an interim injunction imposed by the court which specifies that the entity must not advertise tax agent services while unregistered).

Information to go on the Register about the breach is specified in paragraphs 25J(2)(c) to (f). The Register must include a statement that the court found a breach but decided not to impose a penalty or grant an injunction, identification of the civil penalty provision breached, details of the conduct of the entity that breached the provision, and a link to the court’s decision or instructions on how a member of the public can gain access to the court’s finding.

Information to go on the Register about the contempt of court finding is specified in paragraphs 25J(3)(c) to (f). If the Federal Court or another court finds the entity in contempt of court, the Register must include a statement about the court found the entity in contempt of court, details of the finding that the entity was in contempt of court including details of the entity’s conduct that the finding was based on, details of any punishment imposed by the court for contempt of court, and a link to the court’s decision or instructions on how a member of the public can gain access to the court’s finding.

Under subsection 25J(5), information about the breach of a civil penalty provision or the contempt of court finding would need to be entered on the Register for the length of time that the TPB considers appropriate, but no longer than five years.

Under the application provision in item 4, section 34, section 25J applies in relation to findings or decisions made by the Federal Court or another court within the previous five years before commencement of the Instrument, or made on or after the commencement of the Instrument.

*Information about the related conduct of another entity*

Subsection 25K enables a company or partnership, and an individual who is an employee or partner or otherwise engaged by the company or partnership, to be linked on the Register where they both have breaches on the Register in relation to the same conduct or matter. The individual and company or partnership can be linked by including the name and registration number and conduct of the individual on the company’s or partnership’s entry on the Register and vice versa.

The reason for the provision is that, in some cases, the conduct of an individual employed or engaged by a company or partnership will result in both the individual being in breach of the Act, and the company or partnership being in breach of the Act, and vice versa. This could occur, for example, in relation to the requirement in subsection 30-10(7) that a tax practitioner entity must ensure that a tax agent service they provide, or that is provided on their behalf, is provided competently.

If a partner that is an individual provides tax agent services on behalf of their partnership that are not competent to the standard required by subsection 30-10(7) of the Act, the partnership that they are a partner of will not have ensured that tax agent services provided on their behalf were provided competently, and so both the individual partner, and the partnership, will be in breach of subsection 30‑10(7) of the Act. Enabling these breaches to be linked on the Register provides greater transparency.

It is only if an entity already has information about their own breach on the Register that subsection 25K could require a breach by another entity to be included on their Register entry. Under paragraph 25K(1)(a), a breach could be on the Register in relation to an order, suspension, termination, a Federal Court civil penalty or injunction, Federal Court or other court finding of a breach, or a finding of breach by the TPB. Under subsection 25K(2), if the Federal Court orders an injunction only in relation to proposed conduct by an entity, rather than conduct that the entity has already engaged in, that is not information about a breach by the entity so is not sufficient on its own to enable breaches by entities to be linked.

Subsection 25K(3) also ensures that the breach by another entity is not listed on an entity’s Register page beyond the period that their own breach is on the Register. It ensures that, once information on an entity’s breach is removed from the Register, information on the breach by the other entity is also removed.

Furthermore, the linking can only occur if the TPB is satisfied that the link would be appropriate, having regard to the relation between the conduct by both entities. The TPB can have regard to any matter it considers relevant. Without limiting the provision, this could include having regard to factors such as:

* the degree to which the breach by one entity is the reason for the breach by the other entity;
* whether one entity would not have been found to have breached the Act if the other entity had not been found to have breached the Act;
* the degree to which the breaches are in relation to the same conduct or matter (for example, both breaches may be in relation to sharing confidential information but the breaches may be unrelated if they involve sharing different information from different clients with different third parties);
* whether the individual’s conduct was consistent or inconsistent with any practices, policies or directions of the company or partnership; and
* the extent to which the company or partnership had control or influence over the actions of the individual that breached the Act, and vice versa.

Although there is no specific application provision for this section, it only applies during the period of time that both entities are required to be on the Register in relation to a breach.

*Review by the Administrative Appeals Tribunal*

Section 25L of the Instrument prescribes that certain applications for review of a TPB decision by the AAT must be published on the Register, along with necessary and appropriate updates to the Register once the AAT makes a decision. Under paragraph 25L(1)(a), only AAT reviews of certain TPB decisions that are subject to administrative review under the Act can result in information about the AAT review going on the Register. Those TPB decisions are:

* a decision to reject a registration application on integrity grounds;
* a decision under section 30-20 to make an order in relation to the entity;
* a decision under section 30-25 of the Act to suspend the entity’s registration;
* a decision under section 30-30 or Subdivision 40-A of the Act to terminate the entity’s registration;
* a decision under subparagraph 60-125(2)(b)(v) of the Act that the entity be entered on the register for a period, along with certain information about the entity.

This ensures that information about an application to the AAT for review, or information about the AAT’s decision, is not required to go on the Register in circumstances where the TPB’s original decision is not on the Register. For example, if the TPB rejects an application on a basis unrelated to integrity, that rejection would not be required to be entered on the Register, so a review by the AAT of that rejection is also not required to go on the Register.

Paragraph 25L(1)(b) further ensures that information is not required to be entered on the Register in relation to an application for AAT review, or AAT decision, unless the decision of the TPB that is being reviewed or has been reviewed is also required to be entered on the Register. Paragraph 25L(1)(c) further limits the scope of section 25L by limiting it to cases where the application to the AAT is made before the end of the entry period for information about the reviewable decision to be on the Register. This ensures that information about an AAT review is not added to the Register if the application for review is made after information about the reviewable decision has been removed from the Register.

If someone has applied for a review of the AAT decision, subsection 25L(2) requires the TPB must enter a statement on the Register stating a review application has been made, along with appropriate details. This information must remain on the Register until:

* the review application is withdrawn or discontinued;
* the AAT makes a decision on review in relation to the reviewable decision; or
* at the end of the entry period required by the Act or Instrument.

The provision is not limited to where the entity subject to the TPB’s reviewable decision applies for review. This ensures that information about AAT reviews can go on the Register regardless of whether it is the entity that the TPB made a reviewable decision about that applies for AAT review, or another entity. This could cover reviews where, for example, an individual tax practitioner’s employer applies for review, rather than the individual themselves.

Paragraph 25L(3)(a) requires the TPB to update the Register as required to ensure compliance with the Act and this Instrument if the AAT makes a decision on review in relation to the decision. For example, if the TPB ordered termination of an entity’s registration due to a breach of the Act, and the AAT found that the entity had not breached the Act and their registration was not validly terminated and set aside the TPB’s decision so that it is as if the TPB had never made that decision, then the entity would no longer have had their registration terminated and there would be no basis under the Act or Instrument to include details of a TPB termination decision on the Register. The Act and Instrument would require that details of the termination decision be removed.

In addition, paragraph 25L(3)(b) states that the TPB must enter information it considers appropriate to enter on the Register in respect of any particular information relating to the reviewable decision or relating to the AAT’s review. If the TPB does enter related information it considers appropriate on the Register, subsection 25L(4) states that this information must not stay on the Register for any longer than a period of 5 years starting on the day that the information is first entered on the Register.

Furthermore, subsection 25L(5) requires the TPB to ensure that on and after the time when the decision on review is made, any information relating to the reviewable decision entered on the register is not misleading in a material respect.

Subsections 25L(3) and (5) are intended to accommodate any decision that the AAT makes and enable appropriate removal of information or updates to be made. For example, the AAT might affirm a TPB decision to terminate an entity’s registration but vary, or set aside, or set aside and remit to the TPB, the TPB’s decision to impose a period during which the entity must not apply for registration. In that example, some information about the termination would stay on the Register but information about the period during which the entity must not apply for registration might need to be removed, or changed to a different period, or an update might be needed to explain the AAT’s decision and any subsequent decision by the TPB if the decision is remitted (sent back to) the TPB to make a new decision, depending on the AAT’s decision.

Subsection 25L(6) prohibits information from being entered on the Register under section 25L if the AAT makes an order under subsection 35(3) or (4) of the AAT Act prohibiting or restricting the publication or other disclosure of particular information.

Under the application provisions in item 4, section 35, section 25L applies to a review application made before, on, or after the Instrument commences. However, its application is also limited by the timing of the entry period for the reviewable decision under subsections 25L(1) and (2). In addition, under item 4, section 35, information about AAT reviews that is on the Register at commencement, if the TPB considers that information to be appropriate to be on the Register, can remain on the Register on and from commencement, for a period of no longer than five years from when it was first entered on the Register.

### *Information about appeals*

Section 25M requires information about additional types of appeals to go on the Register.

Paragraphs 25M(1)(a) and (c) and 25M(3)(a) and (c) require the Register to include information about appeals to a court if the decision being appealed is required to be entered on the Register under the Act or this Instrument, and the application to appeal is made while information on the decision being appealed is required to be on the Register.

Under paragraphs 25M(1)(b) and 25M(3)(b), information about appeals to a court are only required to be entered on the Register if the appeal is of one of the following types of decisions:

* a TPB decision for which information about an AAT appeal may be required to go on the Register (decisions listed under subsection 25L(1)(a) of this Instrument);
* a Federal Court order to pay a pecuniary penalty under Subdivision 50-C of the Act or grant an injunction under Subdivision 70-A of the Act (other than an interim injunction); or
* an AAT, Federal Court, or other court decision that relates to one of the above types of decisions.

While subsection 25L relates to AAT appeals of TPB decisions, subsection 25M can cover:

* an appeal of certain TPB decisions to the Federal Court for judicial review (rather than an appeal to the AAT for merits review);
* appeals of AAT decisions to the Federal Court; and
* appeals of certain Federal Court decisions to the Federal Court of Appeal; and
* appeals of any of the above decisions to a higher court.

Subsection 25M(4) of the Instrument provides the TPB must publish information that an appeal has been made and information indicating how the appeal relates to the covered decision on the Register until the earliest of any of the following:

* the appeal is withdrawn or discontinued;
* the appeal court decides the appeal; or
* the end of the entry period.

If the appeal court decides the appeal, subsection 25M(5) of the Instrument requires the TPB to make updates to the Register that are needed to ensure compliance with the Act and Instrument, and enter any information it considers appropriate on the Register. Subsection 25M(6) requires that any additional information added under paragraph 25M(5)(b) does not stay on the Register for more than 5 years.

Subsection 25M(7) further requires that information relating to the original decision or appeal that is entered on the Register is not false or misleading. As with section 25L, section 25M is designed to provide flexibility to ensure that all potential forms of relevant decisions made on appeal can be accommodated, whether those decisions are to affirm, vary, set aside, set aside and remit a decision or any other forms of decision open to any courts covered by the section.

Under the application provision at item 4, section 36, section 25M applies to an appeal that is made before, on or after commencement. However, the application of section 25M is further limited by the entry period for the reviewable decision that is being appealed, as outlined in subsections 25M(1) to (4).

### *Sufficient numbers of individual tax practitioners*

To be eligible to be registered, a company or partnership must demonstrate to the TPB that it has a sufficient number of registered individuals to provide tax agent services to a competent standard, and to carry out supervisory arrangements. The number or ratio of registered individuals required, their level of expertise and the relationship between the company or partnership and the individual tax practitioner(s) comprising the sufficient number are not prescribed. In practice, the company or partnership seeking registration chooses how many registered individuals to name on their registration application form and the TPB assesses whether that number is sufficient for the company or partnership to be eligible to be registered.

Subsection 25N(1) requires that for each company or partnership that successfully applies for registration or renewal of registration, details of the ***sufficient number individuals*** who are tax practitioners and form the sufficient number for the registered company or partnership must be published on the Register.

Paragraph 25N(2)(a) requires that the name and registration number of the sufficient number individuals is published on the company or partnership record. Similarly, paragraph 25N(2)(b) requires the name and registration number of the company or partnership be published on the record of the sufficient number individual the entity has nominated. For example, where company B is granted registration, if person A forms part of the sufficient number for company B, then company B’s record on the Register should give details about person A, and person A’s record on the Register should also give details about company B.

Paragraphs 25N(2)(c) and (d) prescribe the information required under section 25G is to remain published from the beginning of the registration period until the earlier of:

* the end of the registration period of the company or partnership;
* the end of the day that the individual, company or partnership ceases to be a registered tax practitioner; or
* when notice is given to the TPB that the individual is no longer considered part of a company or partnership’s sufficient number of individual tax practitioners from a specified day, the start of that day.

Under the application provision at item 4, section 37, section 25N applies to applications for registration or renewal of registration made by a company or partnership on or after commencement of the Instrument.

This amendment is not expected to increase the administrative burden for companies and partnerships as updates to the Register will typically occur alongside the registration or renewal process, or when an entity notifies the TPB that their sufficient number has changed, or when registration ends.

Publication of the required sufficient number of individuals details provides greater clarity as to which tax practitioners are ultimately accountable for the tax agent services provided. By making this information available, it improves the transparency of registered company and partnership operations and increases the quality of information held about those entities. It also more closely aligns the Register with other public registers maintained by ASIC for financial advisers and auditors.

#### *Where an individual dies*

Section 25P prescribes that, if the Act or Instrument would otherwise require an individual to be entered on the Register for an entry period, if the individual dies before or during that entry period, there is no longer any requirement for the entity, or information relating to them, to be entered on the Register.

An exception is provided in subsection 25P(3) if the Act requires information about an individual to be entered on the Register or remain entered on the Register for a period after the individual has died. This may arise because the Act requires the Register to include all registered entities, and there may be a window of time between when a registered individual dies and when the TPB is notified of their death and terminates their registration. If information about an individual that has died is required to remain on the Register under that subsection, and the TPB becomes aware the individual has died, a statement to the effect that the individual has died must be entered on the Register in respect of the entity for the remainder of the entry period.

*Where a company or partnership ceases to exist*

Section 25Q provides that publication requirements under the Act and Instrument continue to apply in relation to a company or partnership that has ceased to exist. This means that the entity will still be required to be entered on the Register, or required to remain on the Register, for the remainder of the entry period. If the TPB becomes aware that the entity has ceased to exist, they must include a statement to that effect on the Register for the remainder of the entry period.

### *Other general information*

Both the current Regulations and the Instrument do not specify the format in which information is required to be displayed on the Register, and subsection 25R(2) provides the TPB with a general discretion over how information required to be displayed on the Register is arranged and ordered, and the terminology used. Subsection 25R(1) of the Instrument enables the TPB to include general guidance that is not information specific to a certain entity. Without limiting the interpretation of the provision, the type of general guidance or formatting options the TPB could use include:

* informative sub-headings;
* displaying key information prominently in shorthand and the full details required to go on the Register lower down on the entity’s Register page. For example, for an entity that has appealed a TPB suspension to the AAT, using words such as “suspended-under review” prominently at the top of an entity’s page and the required details of the AAT application further down the page;
* hyperlinks to other parts of the TPB website, and other relevant websites such as the AAT website and Federal Court website;
* including hyperlinks to different information required to be entered on the Register for the same entity, for example, a hyperlink to an entity’s previous page on the Register under their previous registration number if historic details are included, hyperlinks between companies and partnerships and the registration pages of their sufficient number individuals, hyperlinks to the other entity where the TPB has linked two breaches of the Act under section 25K, and hyperlinks to the Australian Business Register if the entity has an ABN;
* including information about separate Federal Court decisions in the same case in one summary;
* general explanatory information or summary information that is not specific to the entity, such as explaining what sufficient number details mean and how often they are updated, or explaining that an order, sanction or termination decision is not available if an entity’s registration lapses during an investigation; and
* any other general information required to give context to information appearing on the Register.

#### *Application of amendments*

Item 4 section 27 defines this Instrument as the ***amending regulations*** for the purposes of the application provisions. It defines the time that this Instrument commences as the ***commencement time*** for the purposes of the application provisions.

Sections 28 to 38 set out application provisions whose implications have been described above.

**Statement of Compatibility with Human Rights**

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

*Tax Agent Services Amendment (Register Information) Regulations 2024*

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**

This Instrument amends the *Tax Agent Services Regulations 2009* (the TASR) to complement the Treasury Laws Amendment (Tax Accountability and Fairness) Act 2024 (the Amendment Act) which amended the *Tax Agent Services Act 2009* (the Act).

The Instrument and Amendment Act were developed within the context of recent parliamentary and public scrutiny of disreputable tax practitioner conduct in Australia. They form part of a range of measures to promote the professional and ethical standards of tax practitioners.

Section 60-135(1) of the Act requires the Tax Practitioner’s Board (TPB) to establish and maintain a register (the Register) of entities including currently registered tax agents and business activity statement agents (referred to collectively as ‘tax practitioners’). It enables the Regulations to prescribe the circumstances in which entities are required to be entered on the Register, the information that is required to be entered in relation to them, and the duration for which information is required to remain on the Register. The Register is publicly available.

Under the current TASR and the Act before it was amended by the Amendment Act, the Register was required to include a current tax practitioner’s:

* name;
* contact details;
* relevant professional affiliations;
* the duration of registration;
* conditions attached to registration; and
* any sanctions the TPB imposed.

The Register was also required to include details of any TPB decision to terminate an entity’s registration, which included unregistered entities on the Register. The TASR also provided a discretion for the TPB to include other relevant information on the Register.

This Instrument enables more information to be published about currently or previously registered tax practitioners, or certain entities that have provided or advertised tax agent services without registration, on the publicly accessible Register and enables this information to stay on the Register for up to 5 years in most cases.

Under the Amendment Act and this Instrument, the Register is required to include:

* Past names and registration numbers during the previous 5 years for certain entities on the Register for misconduct;
* The names and registration numbers of any registered individuals provided to the TPB as part of an entity’s registration application to demonstrate that it has a sufficient number of individual tax practitioners to provide tax agent services to a competent standard and carry out supervisory arrangements;
* An application to the TPB for renewal of registration;
* Details of registration applications rejected on integrity grounds, for certain entities that have previously been registered or are already on the Register in relation to a Federal Court application or decision;
* Details of TPB orders, suspension and termination decisions for misconduct;
* Details of a TPB investigation finding that an entity breached the Act, if the TPB decides to publish those findings on the Register, and noting if registration lapsed during the investigation;
* Details or updates to Register information for any appeals by an entity against a reviewable decision of the TPB to the AAT or a court, including the fact that an application was made and updates for the outcomes, which could include removing an unregistered entity’s record if they were exonerated by the appeal decision;
* Information linking breaches by companies or partnerships and breaches by the individuals representing them, in defined circumstances where the breaches relate to the same conduct or matter;
* Details of applications by the TPB to the Federal Court for a civil penalty or injunction under the Act;
* Details of decisions if the Federal Court finds a breach of the Act, orders a penalty, grants a non-interim injunction or makes a finding of contempt of court, and details of any appeals of those decisions; and
* While the general discretion for the TPB to include other relevant information has been removed, the Register will still include appropriate general information that is not about a specific entity, such as sub-headings and explanations of terms used.

Individuals who are entered on the Register will include currently registered individuals, and unregistered individuals who have been found by the TPB or a court to have breached the Act or that the TPB has applied to the Federal Court for a civil penalty or injunction against. Under the Act, the TPB can apply to the Federal Court for a civil penalty or injunction if an individual has:

* provided tax agent services, advertised tax agent services, or represented that they are a registered tax practitioner, while unregistered (including while registration is suspended) (sections 50-5, 50-10, 50-15 and 70-5 of the Act); or
* failed to notify a registered entity that they are a disqualified entity, if employed by the entity or seeking employment or another arrangement in connection with providing tax agent services with the entity (sections 45-10, 45-15, 45-20 of the Act).

On that basis, the Register will only include information about individuals who have worked in a regulated profession, or who have dishonestly advertised or held themselves out to be a member of that regulated profession or have provided tax agent services in breach of the Act. It does not apply to members of the public more generally.

Information is generally required to stay on the Register for up to five years, with some exceptions such as where the length of a registered entity’s order or suspension is longer than five years.

**Human rights implications**

This Instrument engages the following rights:

* the right to work under Article 6(1) of the International Covenant of Economic Social and Cultural Rights (ICESR); and
* the right to privacy and reputation under Article 17 of the ICCPR.

**Right to work**

Article 6(1) of the ICESCR includes the right to work, and the right of everyone to the opportunity to gain their living by work they freely choose or accept. Any limitation on the right to work must be directed towards a legitimate objective, be rationally connected to that objective, and be proportionate. Article 7(c) of the ICESCR recognises the right for equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence.

The right to work may be engaged because of the requirement to enter details about an individual on the Register in certain circumstances, in particular the following details:

* a finding by the TPB that an individual has breached the Act;
* orders, or suspensions or terminations of an entity’s registration in response to a TPB’s finding that the entity breached the Act;
* applications for registration rejected on integrity grounds; and
* AAT and court applications and decisions.

Including information of this kind on the Register does not of itself restrict an individual from working or being promoted as a tax practitioner, or working or being promoted in any other line of work. If an entity is not registered they are not permitted to provide tax agent services, regardless of whether information about a suspension, termination or rejected application for registration is on the Register.

Information about an individual on the Register may influence a client or potential client’s choice of tax practitioner. To the extent that this limits the right to work or right to a promotion, it is for the legitimate objective of enabling clients and potential clients to make informed choices and to promote the integrity of the tax profession and tax system. Further, compliance with the Act is a foundation of competence in this field. Details about these decisions reflects the competence of the person or entity subject to these decisions. This means these would be relevant factors to consider for a promotion.

Any potential limitations on the right to work or the right to be promoted in a field of employment are reasonable and proportionate. Publishing information about these entities is necessary to maintain appropriate oversight of the tax industry, to protect the public from potential dishonesty, misconduct or fraud and maintain high standards of the profession.

**Privacy and reputation**

The Instrument engages the right to protection from unlawful or arbitrary interference with privacy and the right not to be subjected to unlawful attacks on honour and reputation under Article 17 of the ICCPR.

The Instrument will impact on the right to privacy of tax practitioners and others through the publication of information on the Register. As outlined above, the publication of information on the Register will only apply to individuals who have worked in the regulated profession, have advertised or held themselves out as working in the profession, or have provided services while unregistered in breach of the Act. Any impact on privacy is limited to individuals whose actions reflect on the integrity of the tax profession and the tax system.

Information with an impact on privacy and reputation will include:

* information that the TPB has made an investigation finding that an individual has breached the Act, including any order, suspension or termination decisions;
* information that the TPB has applied to the Federal Court for a civil penalty or injunction for an alleged breach of a civil penalty provision under the Act;
* information about Federal Court findings of breaches and decisions in response to applications for civil penalties and injunctions; and
* information about appeals of TPB decisions to the AAT or a court, and information about appeals of Federal Court decisions to another court.

The intent of publishing information on the Register is to support the integrity of the tax profession and tax system. Misconduct by tax professionals can harm their clients. The Instrument improves the transparency of information available to current and potential clients, supporting improved consumer protection. Misconduct by tax professionals can reduce compliance with the tax system and reduce taxation revenue available for public purposes. The Instrument discourages misconduct and helps to raise standards in the profession.

Existing legislation already requires details of all currently registered tax practitioners to be included on the Register. Entities that had their registration terminated other than for a reason prescribed by the TASR were also included on the Register. A key purpose of this Instrument is to close a previously existing loophole in which an individual could let their registration lapse to avoid having their registration terminated and avoid being listed on the Register. The Register will now include details of TPB investigations where the TPB found a breach of the Act, and where the TPB made a decision to publish that finding on the Register. Closing this loophole ensures the public is protected and upholds the integrity of the profession.

The scope of publishing this information is limited to current or former members of a regulated profession or individuals who provide tax agent services, and of that cohort, only the subset of those who have breached the TAS Act as determined by the TPB, and of those, only those that the TPB decides it is appropriate to include on the Register. In making this decision, the TPB is guided by the object of the TAS Act to ensure tax agent services are provided to the public in accordance with appropriate standards of ethical and professional conduct. This means the TPB can only make a decision to publish information for the purpose of achieving that outcome and protecting the public, not for any other purpose. Procedural fairness is provided to a tax practitioner who objects to a decision to publish information about the TPB’s finding of misconduct, through the right to appeal to the AAT.

Information on orders, suspensions and terminations imposed by the TPB following an investigation and a finding that an entity has breached the Act will continue to be entered on the Register under the Instrument.

The requirements in the Instrument to update the Register for any AAT or court appeals ensures that Register information remains up-to-date and accurate. If a finding of a breach by the TPB is on the Register, then any decision of the AAT or a court that affirms that finding of breach will also go on the Register. Any finding by the AAT or a court that sets aside or varies the finding of a breach will require updates to the Register to reflect that, which can include removing references to the TPB’s finding or an entity’s entire Register entry, as appropriate in the circumstances. In practice, the Register already notes where an appeal is pending and Register information is updated following reviews, but the Instrument makes these requirements explicit.

The Instrument provides that the Register is not to include any information about an AAT appeal that the AAT has made a non‑disclosure decision in relation to (subsection 25L(6)). This ensures that if the AAT makes a decision that certain information is not to be disclosed, that flows though to not disclosing that information on the Register.

The Instrument requires the Register to include information that the TPB has applied to the Federal Court for a civil penalty or injunction for an alleged breach of a civil penalty provision under the Act. The information on the Register will include information about what is being sought in the application. The TPB, in deciding whether to commence proceedings, would need to exercise its functions and powers for the purposes of the Act and ensure the efficient use of resources.

It is possible that Register users will draw inferences from the fact that an application has been made, even though the Federal Court has not yet made any finding or decision. This is also the case for information on the Register about pending AAT appeals. This impact has to be weighed against the rights of consumers. If an individual is providing or advertising tax agents services without registration, including information about the TPB’s application on the Register helps to protect their clients. If only Federal Court decisions were included on the Register, despite the TPB having sufficient evidence of a breach of the Act to apply for a civil penalty or injunction, clients’ interests could be at risk for months or longer before the Federal Court decision is made and published. In these circumstances, the privacy impact on the individual is outweighed by the public interest in transparency of information on the Register.

The right in Article 17 may be subject to permissible limitations, where these limitations are authorised by law and are not arbitrary. In order for an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the particular circumstances. The UN Human Rights Committee has interpreted the requirement of ‘reasonableness’ to imply that any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case. In this case, the limits on the right to privacy for individuals subject to a TPB application to the Federal Court for a penalty or injunction are proportional and necessary in the interests of consumer protection and integrity of the tax profession and tax system.

In relation to the prohibition on unlawful attacks on reputation, information that is required to go on the Register under this Instrument is factual information about the individual, including about findings by the TPB or courts. The Instrument reduces the discretion for the TPB to include other information about individuals on the Register.

The TPB is required to exercise its powers and functions consistent with the objects of the Act. Information required to go on the Register may include findings that reflect on a person’s honour or reputation but those findings will be the result of an investigation by the TPB or a court, which need to follow due process and afford procedural fairness. The Instrument does not allow personal attacks to go on the Register. Further, information that is required to go on the Register is specified in the Instrument, therefore any impact on an individual’s honour or reputation in accordance with the Instrument will not be unlawful or arbitrary.

The amendments are reasonable, necessary, and proportionate to achieving a legitimate aim, paying due regard to the nature of the information disclosed and the public policy objective.

**Conclusion**

This 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 as, to the extent that it may limit human rights, the limitations are appropriate, proportionate and achieve a legitimate objective.