

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is made on
the 1st day of July 2021

BETWEEN

THE PROFESSIONAL STANDARDS COUNCILS of
Level 2, 111 Elizabeth St, Sydney NSW ("**Councils**")

AND

THE TAX PRACTITIONERS BOARD ("Co-Regulator")

(collectively, "**the Parties**" or "**the agencies**")

BACKGROUND

1. The Professional Standards Councils ("the Councils") are statutory bodies established in each state and territory which collectively administer the professional standards legislation ("the PSL") in all states and territories.
2. The Co-Regulator has complementary regulatory responsibilities with those of the Councils. In particular, the Tax Practitioners Board (TPB) is a national government body responsible for the registration and regulation of tax agents, BAS agents and tax (financial) advisers (collectively referred to as registered tax practitioners). Its primary objective is to ensure that tax agent services are provided to the public in accordance with appropriate standards of professional and ethical conduct. The TPB has the power to impose administrative sanctions on registered tax practitioners who it has found to have breached the Code of Professional Conduct in the *Tax Agent Services Act 2009*.
3. The Parties seek to enhance the effective performance of their respective functions through collaboration, cooperation, mutual assistance and information-sharing, to the extent legally permitted.

PURPOSE

4. Each Party acknowledges that carrying out its respective roles will require effective consultation and cooperation with the other Party, and each Party is committed to ensuring such consultation and cooperation occurs.
5. The purpose of this MoU is to:
 - i. guide and facilitate the Parties' collaboration, cooperation and mutual assistance in the performance of their respective statutory functions.
 - ii. provide transparency about the Parties' efforts to coordinate activities and minimise duplication within the limitations placed on each by law.
 - iii. allow for the exchange of relevant information and documents to the extent permitted by relevant legislation.
6. This MoU sets out the principles that underpin the relationship between the Parties and is to be applied with that purpose in mind and the ability of both Parties to effectively discharge their respective statutory functions and objectives.

AGREED PRINCIPLES

7. The Parties will work together to pursue common interests and demonstrate their commitment to a co-operative regulatory approach to protecting and promoting confidence in the integrity of the legislative schemes administered by the Parties.
8. The MoU is not intended to be exhaustive in the subject matters within its scope. The Parties may enter into any other arrangements for cooperation and collaboration to the full extent permitted by the law.

Term

9. This MoU commences on the date that the last Party signs this MOU and expires five (5) years from the date, unless the MoU is further extended in writing under clause 31 of this MOU, or is earlier terminated pursuant to clause 30 of this MoU.

Responsibilities of parties

10. The Co-Regulator will, to the extent legally permitted, liaise and share information with the Councils where reasonably necessary to assist in the exercise of either of the respective Parties' functions.
11. The Councils will, to the extent legally permitted (including pursuant to s. 50A of the PS Act as extended in its application to all Councils by this MoU), liaise and share information with the Co-Regulator where reasonably necessary to assist in the exercise of either of the respective Parties' functions.

Liaison

12. The Parties agree that there will be regular liaison meetings between the agencies. To facilitate and enhance the full and timely sharing of information, the Parties may meet for discussions in relation to specific areas of common interest.
13. Each Party will appoint contact officers for the purpose of liaison, communication and exchange of information between the Parties under this MoU. Each Party may change its contact officers as necessary and will advise the other Party of its initial contact officers and of any changes to the contact officer.
14. The Parties will be responsible for the day to day operation of this MoU. The Parties will liaise, as required, to discuss the progress of matters of common interest, to improve the sharing of information, to identify opportunities for joint supervision, to resolve problems that may arise in compliance or enforcement activities and other activities, where appropriate.
15. The Parties agree that, where appropriate, they will consult with each other in relation to stakeholder groups to provide consistent guidance, create joint publications or resources and engage in joint contact. The Parties may issue joint media releases or publications, at an agreed date of release, in relation to any common supervision or other activities. The Parties will collaborate in drafting these proposed joint media releases or other joint publications. The Parties will agree appropriate arrangements for ownership and licensing/cross licensing of intellectual property in any jointly or collectively created material.

Information sharing

16. Each Party is subject to statutory and equitable obligations of secrecy or confidentiality which govern the disclosure and use of confidential or protected information.
17. Section 50A of the *Professional Standards Act 1994* (NSW) (**PS Act**) specifies the circumstances under which information must not be disclosed by the NSW Council. The PS Act does not have corresponding provisions regarding information disclosure in the statutes of the other states and territories that together form the PSL but the Councils collectively are guided by the standards set by s 50A, which, for the purposes of this MoU, will regulate each Council's commitments to the Co-Regulator as if it applied under the professional standards legislation of the state or territory in which that Council is constituted.
18. Section 50A of the PS Act states:

50A Disclosure of information
A person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:

 - (a) with the consent of the person from whom the information was obtained, or*
 - (b) in connection with the administration or execution of this Act, or*
 - (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or*
 - (d) in accordance with a requirement imposed under the Ombudsman Act 1974, or*
 - (e) with other lawful excuse.*
19. The Parties agree to exchange confidential and protected information if permitted by the relevant statutory provisions. Information may be provided by one Party in compliance with a written request from the other Party. A Party may also provide information to the other Party, even if it has not been first requested, if the information would be likely to assist that other Party in administering or enforcing the laws for which that Party is responsible.
20. The Parties may keep each other advised, in a timely manner, of matters relevant to their jurisdiction. Subject to legislative restrictions on disclosure, the Parties may:
 - (i) advise each other where either Party becomes aware, during the normal course of their duties, that there is or may be a matter of relevance to the other Party, such as referrals or complaints. The Parties may provide such information considered to be relevant to that matter to the other Party.
 - (ii) request from the other Party information about a specific entity.
 - (iii) share information about risks and/or risk management strategies that have been identified with specific entities.
 - (iv) share intelligence identifying emerging risks, themes and opportunities where appropriate.
21. If information provided pursuant to the MoU becomes the subject of a subpoena, freedom of information request, or other legal demand for access, the recipient Party must immediately notify the owner Party, in writing. The

owner Party may then advise of any intended action relating to the release, disclosure, publication or production of such information, and advise of its views concerning the access of the relevant information.

Confidentiality

22. The Parties must keep confidential all information obtained under or in relation to this MoU except as may be required for release by one Party to a third party for a law enforcement purpose or otherwise as may be required or authorised by law.
23. Information obtained under or in relation to this MoU must not be used for any purpose outside the terms of this MoU without permission from the other Party.
24. The obligations under this clause continue after the expiry or earlier termination of this MoU.

Mutual assistance

25. The Parties may provide assistance through any appropriate arrangements, including:
 - (i) if legally permitted, referral of a matter by a Party where both Parties agree the matter more appropriately falls within the jurisdiction of the other Party;
 - (ii) temporary secondments and/or exchange of staff to facilitate a transfer of expertise and skills; and/or
 - (iii) provision of joint training, or an invitation to participate in training conducted or facilitated by a Party that may be relevant to the other Party.

Cost of provisions information

26. In general, both Parties agree that the disclosing Party will bear the cost incurred by it in relation to providing the information to the receiving Party.
27. If it appears that the disclosing Party will incur substantial costs in relation to information to be provided to the receiving Party, the Parties may negotiate a cost-sharing arrangement, in writing, in relation to the provision of that information.

Notices

28. Any notice in writing pursuant to this MoU should be addressed to the recipient Party at the address nominated for service of notices in Schedule 1.

Dispute resolution

29. If a dispute arises out of, or in relation to this MoU, the Parties will endeavour, in good faith, to settle all matters notified in writing as being in dispute.

Termination process

30. Either Party may terminate this MoU by providing written notice to the other Party that includes a date on which or a time by which the termination will take effect.

Extension

31. The Parties may, before or on the expiration date of this MoU, agree in writing to extend this MoU for a specified period.

Review and Amendment

32. The Parties will review this MoU every 12 months or at such other intervals as the parties agree in writing.
33. No amendment to this MoU is effective unless it is in writing and signed by the Parties.

Supersession of previous arrangements and understandings

34. The Parties agree that arrangements in this MoU and any Schedule to this MoU supersede all previous arrangements between the Parties in relation to the same or similar subject matter whether or not such previous arrangements were recorded or reduced to writing and signed by the Parties.

No binding relationship created by this document

35. This MoU is not intended to nor does it in any way create a binding legal relationship between the Parties.

The parties record the following understandings:

1. INTERPRETATION

Unless a contrary intention appears or the context indicates otherwise, in this Memorandum of Understanding ("**MoU**"):

"Professional Standards Councils" means:

- (i) The Professional Standards Council of the Australian Capital Territory a body corporate established under sch 4 pt 4.6 div 4.6.1 s 4.36 of the *Civil Law (Wrongs) Act 2002* (ACT);
- (ii) The Professional Standards Council of New South Wales a body corporate established under s 39 of the *Professional Standards Act 2004* (NSW);
- (iii) The Professional Standards Council of the Northern Territory a body corporate established under s 41 of the *Professional Standards Act 2005* (NT);
- (iv) The Professional Standards Council of Queensland a body corporate established under s 42 of the *Professional Standards Act 2004* (Qld);
- (v) The Professional Standards Council of South Australia a body corporate established under section 42 of the *Professional Standards Act 2004* (SA);
- (vi) The Professional Standards Council of Tasmania a body corporate established under s 43 of the *Professional Standards Act 2005* (Tas);
- (vii) The Professional Standards Council of Victoria a body corporate established under section 42 of the *Professional Standards Act 2003* (Vic);
- (viii) The Professional Standards Council of Western Australia a body corporate established under section 8 of the *Professional Standards Act 1997* (WA);

as replaced or added to from time to time.

"Tax Practitioners Board" means:

- (i) the Tax Practitioners Boards as established under section 60-5 of the *Tax Agent Services Act 2009*.

2. REPRESENTATIVES

- (a) The person named or occupying the position in item 1 of Schedule 1, or such other person nominated by the Councils in writing, will act as the Councils' representative in connection with this MoU.
- (b) The person named or occupying the position in item 2 of Schedule 1, or such other person nominated by the Co-Regulator in writing, will act as the representative of the Co-Regulator in connection with this MoU.

SCHEDULE 1

REPRESENTATIVES

1. Representative for the Professional Standards Councils

Name:

Position: CEO of the Professional Standards Councils

Address: GPO Box 4021, Sydney NSW 2001

Telephone: (02) 8315 0800

Email: pscinfo@psc.gov.au

2. Representative for the Co-Regulator

Name: Michael O'Neill

Position: Secretary/Chief Executive Officer

Address: GPO Box 1620, SYDNEY NSW 2001

Telephone: 1300 362 829

Email: Michael.O'Neill@tpb.gov.au

ADDRESS FOR SERVICE OF NOTICES

(i) Professional Standards Councils

C/- CEO

Professional Standards Councils

GPO Box 4021

SYDNEY NSW 2001

(ii) Co-Regulator

C/- Secretary/Chief Executive Officer

Tax Practitioners Board

GPO Box 1620

SYDNEY NSW 2001

**SIGNED by Roxane Marcelle-Shaw,
FOR THE COUNCILS,, but not so as to
incur any personal liability, in the presence**

of:

19 August 2021

Name of Witness
Alice Kang

Signature of Witness

19 August 2021

SIGNED by Michael O'Neill
OF THE CO-REGULATOR, but not so as to
incur any personal liability, in the presence
of:

29 July 2021

Maria Barlas

Name of Witness

Signature of Witness

29 July 2021