



Exposure Draft

Fit and proper person

Tax Practitioners Board Exposure Draft

The Board has released this draft information sheet as an exposure draft and invites comments and submissions in relation to the information contained in it within 60 days. The closing date for submissions is 6 June 2010 after which time the Board will consider any submissions made before seeking to finalise this information sheet.

Any written submissions in relation to this exposure draft should be made by the closing date to the Secretary of the Board via email at tpbwebsite@ato.gov.au or by mail to:

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DISCLAIMER

Please note that this document is in draft form, and when finalised, will be intended as information only. While it seeks to provide practical assistance and explanation, it does not exhaust, prescribe or limit the scope of the Board's powers provided in the *Tax Agent Services Act 2009*.

Additionally, the principles, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. The Board's conclusions and views may change as a result of the comments the Board receives or as other circumstances change.

Document History

This draft information sheet issued on 7 April 2010 and is based on the *Tax Agent Services Act 2009*, the *Tax Agent Services Regulations 2009* and the *Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009* as at 1 March 2010.



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Misconduct of tax agents and BAS agents

1. The Board has a range of options available to it under the *Tax Agent Services Act 2009* (TASA) to manage misconduct by a tax agent or BAS agent. The options open to the Board include:
 - imposing sanctions for breach of the Code of Professional Conduct (Code);
 - applying for a civil penalty for breach of the civil penalty provisions;
 - terminating an agent's registration on the basis that the agent is no longer a fit and proper person to be a tax agent or BAS agent.

Code of Professional Conduct

2. The Code establishes a set of ethical and professional standards to be observed by tax agents and BAS agents. These provisions are prospective and apply only to conduct which occurs after commencement of the TASA on 1 March 2010.
3. The Board may commence investigations to determine whether there has, in fact, been a breach of the Code.¹ If the Board is satisfied, following an investigation, that there has been a breach of the Code, it may impose one or more of the following administrative sanctions:²
 - a written caution;
 - an order requiring the tax agent or BAS agent to take one or more actions including, but not limited to, the following:³
 - completing a course of education or training specified in the order by the Board;
 - providing services (for which the tax agent or BAS agent is registered) only under the supervision of another tax agent or BAS agent that has been specified in the order; and/or
 - providing only those services specified in the order;
 - suspension of registration; and/or
 - termination of registration.

¹ Section 60-95 of the TASA.

² Section 30-15 of the TASA

³ Section 30-20 of the TASA.



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Civil Penalty Provisions

4. Whereas the Code applies only to registered agents, the civil penalty provisions apply variously to unregistered persons or entities.⁴
5. These provisions are prospective in effect and will be able to be applied only in relation to behaviour which occurs after commencement of the TASA on 1 March 2010.
6. If there is a breach of any of these civil penalty provisions then the Board has the option of applying to the Federal Court of Australia (Federal Court) for a civil penalty order to be granted against the tax agent or BAS agent.⁵
7. The Board also has the option of applying to the Federal Court for an injunction to either restrain behaviour that would breach a civil penalty provision or enforce other behaviour.⁶ The Board may apply for an injunction as an alternative to seeking a civil penalty in relation to that breach (in the case of a permanent injunction) or in combination with such a civil penalty application in order to maintain the status quo until the Federal Court can make its final determination (in the case of an interim injunction).

Termination of registration

8. The Board may terminate the registration of a tax agent or BAS agent if the conduct of a tax agent or BAS agent is such that the Board is satisfied that the agent is not a fit and proper person.
9. In determining whether a tax or BAS agent is a fit and proper person, the Board can examine an agent's previous conduct including actions or omissions that occurred prior to 1 March 2010 to the extent that the behaviour is relevant to the agent's present fitness and propriety.
10. The relevant considerations in determining whether an individual is a fit and proper person to be a tax agent or BAS agent is the subject of this guide.

Fit and Proper – Overview

11. Section 20-15 of the TASA establishes the criteria the Board must consider in determining whether it is satisfied that an individual is a fit and proper person for the purposes of registration as a tax agent or BAS agent.
12. Section 20-15 of the TASA provides:

'In deciding whether it is satisfied that an individual is a fit and proper person, the Board must have regard to:

⁴ Division 50 of the TASA.

⁵ Subdivision 50-C of the TASA.

⁶ Section 70-5 of the TASA.



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- (a) *whether the individual is of good fame, integrity and character; and*
- (b) *without limiting paragraph (a):*
 - (i) *whether an event described in section 20-45 has occurred during the previous 5 years; and*
 - (ii) *whether the individual had the status of an undischarged bankrupt at any time during the previous 5 years; and*
 - (iii) *whether the individual served a term of imprisonment, in whole or in part, at any time during the previous 5 years'*

13. Section 20-45 of the TASA provides:

The following events may affect your continued registration as a registered tax agent or BAS agent:

- (a) *you are convicted of a serious taxation offence;*
- (b) *you are convicted of an offence involving fraud or dishonesty*
- (c) *you are penalised for being a promoter of a tax exploitation scheme;*
- (d) *you are penalised for implementing a scheme that has been promoted on the basis of conformity with a product ruling in a way that is materially different from that described in the product ruling;*
- (e) *you become an undischarged bankrupt or go into external administration;*
- (f) *you are sentenced to a term of imprisonment.*

14. Tribunal cases decided under Part VIIA of the *Income Tax Assessment Act 1936* (ITAA 1936) establish a number of principles concerning how a determination of fitness and propriety should be reached and what considerations and conduct were relevant to such a determination.

15. Generally, the considerations and conduct relevant to determining fitness and propriety were equally applicable to determining whether an individual was of good fame, integrity and character.

16. As the Board must have regard to whether an individual is of good fame, integrity and character for the purpose of determining the individual's fitness and propriety for registration under section 20-5 of the TASA, it is considered that these principles will be equally instructive to the Board's determination on that requirement pursuant to the TASA.

17. These principles will also be relevant in determining whether a tax agent or BAS agent fails to meet the 'fit and proper' registration requirement, thereby warranting termination of their registration under Division 40 of the TASA.⁷

⁷ Any reference in this draft information sheet to an agent may also be taken, where applicable, as a reference to an applicant for registration as an agent.



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18. The further matters the Board must consider under paragraph 20-15 (b) of the TASA are questions of fact. If one of these defined events occurs in relation to an individual, the Board must consider this in determining whether that individual is a fit and proper person. The meanings of these events are relatively non-contentious. Whether one of these events has in fact occurred will be a question of fact to be determined by the Board on the basis of the evidence available to it.
19. While there is no single consideration that will be determinative of the fitness and propriety of a tax agent or a BAS agent, the cases arising from the previous State Tax Agents' Board's decisions have highlighted some fundamental concepts and some specific conduct that have informed the approach of the board's and the courts in determining fitness and propriety.
20. This draft information sheet will consider these principles arising from the cases under the following headings:
 - a) Fundamental concepts in assessing fitness and propriety
 - b) Standards and functions of the profession
 - c) Management of personal income tax obligations
 - d) Relationship with the Board, Commissioner and clients
 - e) Conduct of the applicant/agent in circumstances of wrongdoing
 - f) Previous misconduct
 - g) Further considerations
21. While the cases referred to only considered fitness and propriety in relation to tax agents, the principles concerning the standards of professional and ethical conduct discussed in this draft information sheet are equally relevant to determining the fitness and propriety of BAS agents as required under the new legislative regime.
22. **Appendix 1** to this document contains a list of key cases supporting these principles and providing a brief summary of the facts and illustrating the application of these principles.
23. Conduct giving rise to considerations of fitness and propriety may also be relevant in determining whether a registered tax agent or BAS agent has complied with the Code of Professional Conduct contained in section 30-10 of the TASA. A full discussion of the application of the Code principles is contained in the separate information sheet '*Section 30-10 of the Tax Agent Services Act 2009: Code of Professional Conduct*'. This conduct may also be relevant in determining whether any of the civil penalty provisions apply. For further information, refer to the section of this paper titled '*Misconduct of tax agents and BAS agents*'.

Fundamental concepts in assessing fitness and propriety

A balancing exercise

24. There is no general formula for determining whether a person is a fit and proper person for the purpose of registration as a tax agent or BAS agent.



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25. A determination on whether a person is a fit and proper person requires the Board to make a value judgment in the context of a particular activity to be licensed considering all the circumstances of a given case.⁸
26. The principles contained in this draft information sheet are an indication of how various considerations and specific conduct have been considered by the State Tax Agents' Boards and tribunals in reaching this determination.

Primacy of the public interest

27. Maintaining the public interest and trust is integral to the functioning of the tax agent and BAS agent professions.⁹
28. The principal purpose underlying the provisions applying to tax agent and BAS agent registration is to protect the public and maintain public confidence in the profession as opposed to the imposition of penalties or punishment to regulate misconduct.¹⁰
29. This ultimate objective is achieved through ensuring only those individuals that possess the requisite honesty, knowledge, ability and integrity are registered as tax agents or BAS agents.¹¹
30. Consequently, individuals presenting an unacceptable risk to the public in the role of a tax or BAS agent should not be registered and, if previously registered, should be removed from the register.¹²

Special circumstances

31. Previously, under Part VIIA of the ITAA 1936, the State Tax Agents' Boards were required, in certain situations, to take into account any special circumstances in relation to an agent for the purpose of disregarding particular conduct when determining whether an individual was a fit and proper person.¹³
32. While there is no longer a specific requirement that the special circumstances of an individual be taken into account, the Board may continue to treat the particular circumstances of the individual as a relevant consideration in determining fitness and propriety.

⁸ *Re Comino and Tax Agents Board of New South Wales* [2009] AATA 766.

⁹ *Re Sargent and Tax Agents' Board of Victoria* [2009] AATA 219.

¹⁰ *Re Carbery and Associates Pty Ltd and Tax Agents Board of Queensland* [2001] AATA 107 *Re Jones and Tax Agents' Board of New South Wales* [2002] AATA 1246; *Re Budai and Tax Agents' Board of New South Wales* [2002] AATA 1154; *Re Sargent and Tax Agents Board of Victoria* [2009] AATA 219.

¹¹ *Re Su and Tax Agents' Board of South Australia* [1982] AATA 127; *Re Carbery and Associates Pty Ltd and Tax Agents' Board of Queensland* [2001] AATA 107; *Re McKay and Tax Agents' Board of Tasmania* [1994] AATA 113.

¹² *Re Scott and Tax Agents' Board of Queensland* [2001] AATA 435.

¹³ Subsection 251BC(3) of the ITAA 1936.



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33. While the particular circumstances of an agent may be relevant to a determination of whether an individual is a fit and proper person, the Board must weigh the public interest in the tax agent or BAS agent continuing in practice against the public interest in protecting clients from a recurrence of the relevant conduct.¹⁴
34. Considerations of personal circumstances cannot override this primary consideration and must not be considered in isolation from the public interest in ensuring proper and competent provision of tax agent services.¹⁵

Scope of what may be considered

35. Beyond the words of section 20-15 of the TASA, there is no statutory definition of the expression 'fit and proper'.
36. While the Board **must** consider the matters contained in section 20-15 of the TASA in determining whether it is satisfied that an individual is a fit and proper person, these criteria do not limit the generality of the expression or circumscribe the matters the Board **may** consider in determining fitness and propriety.¹⁶

Standards and functions of the profession

Functions of the profession

37. The function of a tax agent or BAS agent is to provide tax agent services.¹⁷
38. The role of a tax agent or BAS agent in providing these services across a wide range of business, professions, occupations and clients is not to be taken lightly. It is a task that requires diligence, up-to-date knowledge, competence and honesty in dealing with the Commissioner, the Board and clients.¹⁸

¹⁴ *Re Sargent and Tax Agents' Board of Victoria* [2009] AATA 219.

¹⁵ *Re Toohey and Tax Agents' Board of Victoria* [2009] AATA 142.

¹⁶ *Re Carbery and Tax Agents' Board of Queensland* [2001] AATA 107; *Re Kerin and Tax Agents' Board of South Australia* [2009] AATA 974.

¹⁷ 'Tax agent service' is defined under section 90-5 of the TASA and includes a 'BAS service'.

¹⁸ *Re Su and Tax Agents' Board of South Australia* [1982] AATA 127; *Re Carbery and Associates Pty Ltd and Tax Agents' Board of Queensland* [2001] AATA 107; *Re McKay and Tax Agents' Board of Tasmania* [1994] AATA 113. The relevance of assessing competence, skill, ability, honesty and integrity as it relates to fitness and propriety in the role of tax agent or BAS agent also accords with the view taken by Australian Prudential Regulation Authority (APRA) on the requirement for the responsible persons in regulated institutions to be fit and proper for that role and how to assess this fitness and propriety. See *Prudential Standard APS 520 Fit and Proper* July 2008 at [18].



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39. The conduct of a tax agent or BAS agent should be such that the Board, the Commissioner, clients and the public may have confidence that a tax agent or BAS agent will perform their function competently and with integrity.¹⁹

Conduct indicative of a lack of fitness and propriety

40. Conduct falling short of this standard may indicate that an individual is not a fit and proper person.²⁰ The significance attributed to the conduct will vary depending on, among other things, the type of conduct, whether it is part of a pattern of behaviour and when the conduct occurred.
41. Certain offences are so inconsistent with performing the role of a tax agent or BAS agent that conviction for these offences will render a person not fit and proper to be registered.²¹ Tax evasion is considered to be an offence of this nature as a conviction for tax evasion is wholly inconsistent with the role of providing tax agent services competently and with integrity.²²
42. In general, conduct (including convictions) involving fraud and/or dishonesty of a tax agent or BAS agent business may bear greater weight in the determination of fitness and propriety for tax agent or BAS agent registration than other considerations. Such conduct is particularly relevant to 'good fame, integrity and character' in a profession that invariably requires the maintenance of client trust and confidence and involves the handling of client moneys.²³
43. Conversely, while particular acts or omissions may not be enough, viewed separately, to warrant removal from the register, it is possible for multiple less serious matters, if sufficient in number, to provide a basis for the Board to determine that an agent does not meet the fit and proper requirement.²⁴

Persistent misconduct

44. It will be more difficult for an applicant or agent to satisfy the requirements underlying fitness and propriety where they have committed misconduct extending over several years.²⁵

¹⁹ *Re Su and Tax Agents' Board of South Australia* [1982] AATA 127; *Re Terrence Richard Denton and Tax Agents' Board, South Australia* [1983] AATA 21.

²⁰ *Re Fitzgibbon and Tax Agents' Board of Queensland* [1993] AATA 474.

²¹ As above; *Frost Taxation Pty Ltd and Tax Agents' Board of South Australia* [2005] AATA 393.

²² As above.

²³ *Re Jones and Tax Agents' Board of New South Wales* [2002] AATA 1246; *Frost Taxation Pty Ltd and Tax Agents' Board of South Australia* [2005] AATA 393.

²⁴ *Su v Tax Agents' Board of South Australia* [1982] AATA 127.

²⁵ *Re Jones and Tax Agents' Board of New South Wales* [2002] AATA 1246.



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Management of personal income tax obligations

45. As a tax agent or BAS agent is responsible for providing tax agent services on behalf of other entities, non-compliance by an agent with respect to the agent's personal taxation obligations may be considered relevant in determining whether a tax agent is a fit and proper person.²⁶
46. In considering an agent's management of his or her personal income tax obligations, individual circumstances may need to be considered. A pattern of behaviour or conduct in this regard may also be relevant.
47. A failure to accurately complete returns and notices and to comply with other requirements of the Commissioner or the Board may be indicative of a lack of competence and integrity such that the individual concerned cannot be relied upon to adequately provide tax agent services.²⁷
48. A tax agent's or BAS agent's inability to comply with the agent's own taxation affairs will subsequently cast doubt over the competence with which the agent has prepared the returns of the agent's clients. This may result in adverse treatment of the clients' returns on the basis that there is no assurance that the return was completed competently.²⁸
49. On the basis of the above, a tax agent or BAS agent who fails to comply with the agent's own taxation obligations will not be considered a person of sufficient good fame, integrity and character or sufficiently fit and proper to be registered as a tax agent or BAS agent.²⁹

Relationship with the Board, the Commissioner and clients

50. Broadly, the cases highlight that an agent must properly maintain their relationships with the Board and the Commissioner such that these agencies can rely on the ability of the agent to undertake the role of a tax agent or BAS agent honestly, competently and with integrity, and therefore with the level of fitness and propriety required to hold registration.³⁰

Relationship with the Board

51. In general, a lack of cooperation with the Board and failure to deal with the Board appropriately will reflect adversely on an agent's fitness and propriety for registration as they demonstrate a lack of appreciation of the significance of completely and promptly responding to requests from regulatory authorities.³¹

²⁶ *Re Carbery and Associates Pty Ltd and Tax Agents' Board of Queensland* [2001] AATA 107.

²⁷ *Su v Tax Agents' Board of South Australia* [1982] AATA 127; *Pappalardo v Tax Agents' Board of Victoria* [2003] AATA 990.

²⁸ As above; *Stasos v Tax Agents Board of New South Wales* [1990] AATA 346.

²⁹ As above; *Re Comino and Tax Agents' Board of New South Wales* [2009] AATA 766.

³⁰ *Stasos v Tax Agents' Board of New South Wales* [1990] AATA 346.

³¹ *Pappalardo v Tax Agents' Board of Victoria* [2003] AATA 990; 2003 ATC 2207; *Re Ray and Tax Agents' Board of Queensland* [2005] AATA 657.



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52. An agent may be found not fit and proper in circumstances where, for example, the agent repeatedly neglects or delays in responding to telephone calls, correspondence and directions to provide assistance or substantiation in relation to queries and fails to attend interviews when required.³² A failure to advise the Board of any change to contact details is a factor that may further indicate a lack of competence, and therefore fitness, to perform the functions of a registered agent.³³
53. Furthermore, the making of false or misleading statements by an agent to the Board (whether on an application form or otherwise in the course of providing information) will likely be sufficient for a finding that the agent does not possess the competence and integrity, and therefore the fitness and propriety, for registration.³⁴

Relationship with Commissioner

54. Failure to deal with the Commissioner appropriately will reflect adversely on an agent's fitness and propriety as a registered tax agent or BAS agent as the agent is required to be of such competence and integrity that others may entrust their taxation affairs to that persons care.³⁵
55. Failing to comply with the taxation laws, including failing to respond to formal notices and directions from the Commissioner, may reduce the confidence the Board may have in the tax agent or BAS agent to provide tax agent services in an honest, competent and accurate manner.³⁶

Relationship with clients

56. Misconduct by an agent in failing to discharge the agent's responsibilities on behalf of clients will generally be viewed more seriously than a failure to discharge the agent's own tax responsibilities where it involves exploitation of the clients' dependence and trust. The severity of such misconduct will be greater where the clients involved are in a position of particular vulnerability.³⁷

³² *Re Cowlshaw and Ors and Tax Agents' Board of Queensland* [1999] AATA 412; *Re Carbery and Associates Pty Ltd and Tax Agents' Board of Queensland* [2001] AATA 107; *Jones and Tax Agents' Board of New South Wales* [2002] AATA 1246; *Pappalardo v Tax Agents' Board of Victoria* [2003] AATA 990; 2003 ATC 2207; *Frost Taxation Pty Ltd and Tax Agents' Board of South Australia* [2005] AATA 393.

³³ *Re Carbery and Associates Pty Ltd and Tax Agents' Board of Queensland* [2001] AATA 107.

³⁴ *Su and Tax Agents' Board of South Australia* [1982] AATA 127; *Re Fitzgibbon and Tax Agents' Board of Queensland* [1993] AATA 474; *Re Carbery and Associates Pty Ltd and Tax Agents' Board of Queensland* [2001] AATA 107; *Re Bouffiere and Tax Agents Board of New South Wales* [2007] AATA 1978.

³⁵ *Su and Tax Agents' Board of South Australia* [1982] AATA 127.

³⁶ *Stasos v Tax Agents' Board of New South Wales* [1990] AATA 346.

³⁷ As above



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57. Specific examples of failure to properly maintain client relationships that reflect adversely on fitness and propriety for registration include, but are not limited to:

- failure to prepare or lodge client returns in a timely fashion;
- failure to respond to client telephone calls and correspondence;
- failure to otherwise make oneself available to attend to client matters or to notify clients of any change to contact details;
- failure to pass on correspondence from the Commissioner to clients;
- provision of misleading information to clients in relation to the filing of returns with the Commissioner;
- imposition of blame on clients for delays in filing returns; and
- provision of money to clients to influence them against complaining to any official body.³⁸

58. Importantly however, while the Board may take into account complaints against an agent or individual in determining fitness and propriety for registration under the TASA,³⁹ the absence of any complaints may not bear much relevance when considered in conjunction with other relevant facts and circumstances.⁴⁰

Conduct of the applicant or agent in circumstances of wrongdoing

59. Applying the principles in the cases to the TASA, a tax agent or BAS agent who commits wrongdoing may still be considered fit and proper where the agent displays remorse, contrition and an awareness of the significance and consequences of the wrongdoing such that the Board and the Commissioner can have confidence in the agent's continued ability to honestly and competently discharge the functions of the profession.⁴¹

60. Following from this, a tax agent's or BAS agent's level of frankness and cooperation with regulators and judicial decision makers when confronted with the agent's misconduct (such as in tendering admissions to allegations raised) will be relevant to the agent's fitness and propriety for registration under the TASA.⁴² On that basis, an agent's refusal to accept responsibility for previous misconduct will bear on the issue of whether the agent is a fit and proper person to be registered.⁴³

³⁸ *Re an Applicant and Secretary, Tax Agents' Board of Victoria* [1987] AATA 117; *Re Cowlshaw and Ors and Tax Agents' Board of Queensland* [1999] AATA 412; *Pappalardo v Tax Agents' Board of Victoria* [2003] AATA 990; 2003 ATC 2207 and *Re Carbery and Associates Pty Ltd and Tax Agents' Board of Queensland* [2001] AATA 107.

³⁹ For example, see *Jones and Tax Agents' Board of New South Wales* [2002] AATA 1246.

⁴⁰ *Kerin and Tax Agents' Board of South Australia* [2009] AATA 974.

⁴¹ *Stasos v Tax Agents' Board of New South Wales* [1990] AATA 346; *Frost Taxation Pty Ltd and Tax Agents' Board of South Australia* [2005] AATA 393.

⁴² *Budai and Tax Agents Board of New South Wales* [2002] AATA 1154.

⁴³ *Re Cowlshaw and Ors and Tax Agents' Board of Queensland* [1999] AATA 412.



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61. For example, the provision of false or misleading evidence before bodies such as the Board in the course of an investigation into a tax agent's or BAS agent's conduct of tax agent services is a matter that reflects adversely on the agent's fitness and propriety as it raises doubts about the agent's honesty and competence and weighs against the agent's ability to act in accordance with the agent's professional obligations in the future.⁴⁴
62. By the same rationale, any delay or failure by a tax agent or BAS agent to comply with the taxation laws during the period of a stay granted by the Administrative Appeals Tribunal (AAT) or while the agent's case is being considered by the AAT or Federal Court may be indicative of a lack of appreciation of the significance of any misconduct and therefore calls into question the agent's fitness and propriety for registration.⁴⁵
63. Furthermore, in the context of a fraudulent misappropriation of client money, whether or not an agent has repaid the misappropriated amount may be relevant to the issue of the likelihood of the misconduct recurring, and hence the fitness and propriety of the agent generally.⁴⁶

Previous misconduct

64. In determining whether an applicant or agent charged with previous misconduct that impacts adversely on their fitness and propriety should be registered under the TASA, the Board will have regard to a range of issues such as public confidence and protection issues.⁴⁷

Further considerations

Onus of proof

65. The onus of proof in establishing fitness and propriety rests with the agent. It is up to the agent to satisfy the Board, as the case may be, that on the balance of probabilities and having regard to the seriousness of the matters raised that the agent or relevant individual is a fit and proper person.⁴⁸

⁴⁴ *Re Carbery and Associates Pty Ltd and Tax Agents' Board of Queensland* [2001] AATA 107; *Pappalardo v Tax Agents' Board of Victoria* [2003] AATA 990; 2003 ATC 2207.

⁴⁵ *Toohy and Tax Agents' Board* [2009] AATA 142.

⁴⁶ *Jones and Tax Agents' Board of New South Wales* [2002] AATA 1246.

⁴⁷ *Budai and Tax Agents Board of New South Wales* [2002] AATA 1154; *Jones and Tax Agents' Board of New South Wales* [2002] AATA 1246; *Sargent and Tax Agents' Board of Victoria* [2009] AATA 219.

⁴⁸ *Jack v Tax Agents' Board of New South Wales* [1997] AATA 678.



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Liability of directors, partners and directors of company partners

66. If it is determined that a director in a company tax agent or BAS agent is not a fit and proper person, the company will no longer, while the director remains in that position, satisfy the registration criteria as all individual directors in a company tax agent or BAS agent tax agent must be a fit and proper person.⁴⁹
67. If it is determined that an individual partner or a director of a company partner in a partnership tax agent or BAS agent is not a fit and proper person, the partnership, while the partner or director remains in place, will no longer satisfy the registration criteria as all individual partners or directors of company partners in a partnership tax agent must be a fit and proper person.⁵⁰
68. While an individual director or partner is not liable for the specific conduct of an offending director or partner, if that person knows of the misconduct of the director or partner and fails to take any steps to mitigate the issues caused by the other director or partner, then the Board will consider that this failure to mitigate the harm caused will reflect adversely on the fitness and propriety of the other directors or partners.⁵¹

Mitigating Conduct

69. Generally, to the extent that sustained failure and delay in providing tax agent services would reflect on fitness and propriety, the agent may still be considered a fit and proper person where steps are undertaken to address the difficulties such as communication with the Commissioner pertaining to the difficulties being experienced.⁵²

Conduct not connected to registration as a tax agent or BAS agent

70. Observations made about a tax agent's or BAS agent's conduct in the practice of another profession are relevant to whether the agent is fit and proper to obtain or maintain registration under the TASA.⁵³
71. An agent may fail to satisfy the fit and proper requirement on the basis of behaviour (for example, inappropriate behaviour towards current or former clients or staff) that constitute breaches of conventions such that it would be detrimental to any professional body to accommodate the agent as a member. This is so even if the agent's professional integrity cannot otherwise be impugned.⁵⁴

⁴⁹ Subsection 20-5(3) of the TASA.

⁵⁰ Subsection 20-5(2) of the TASA.

⁵¹ *Re Cowlshaw and Ors and Tax Agents Board of Queensland* [1999] AATA 412.

⁵² *Toohy and Tax Agents' Board* [2009] AATA 142.

⁵³ *Kerin and Tax Agents' Board of South Australia* [2009] AATA 974; Also see *Frost Taxation Pty Ltd and Tax Agents' Board of South Australia* [2005] AATA 393.

⁵⁴ *Jack v Tax Agents' Board of New South Wales* [1997] AATA 678.



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72. Consistent with the above, conduct need not occur directly in the course of professional practice to constitute misconduct for the purposes of assessing fitness and propriety. Such conduct will amount to misconduct where it is “sufficiently closely connected with such practice,” undermines the reputation or standards of the profession or demonstrates the presence of qualities (such as dishonesty or deception) that are inconsistent with the standards and expectations to practise as a registered agent.⁵⁵

Need more information?

Further information can be found on the Board’s website at www.tpb.gov.au.

⁵⁵ *Kerin and Tax Agents’ Board of South Australia* [2009] AATA 974; Also see *Sargent and Tax Agents’ Board of Victoria* [2009] AATA 219.



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Appendix 1 – Case examples

Su and Tax Agents' Board of South Australia [1982] AATA 127

Outline of relevant facts

This case concerned a decision by a state board to cancel the agent's registration on the basis that the agent was not a fit and proper person. The agent conducted a large practice that, due to difficulties encountered, had to be scaled back. The applicant was convicted on two separate occasions of failing to lodge personal income tax returns and failing to remit withholding tax deductions collected from employees.

In addition to his convictions for failing to remit withholding tax, the agent was also late in remitting withholding tax on several occasions. In the annual returns lodged with the board, the agent failed to disclose the previous convictions. The agent was struck off the register of liquidators and fined in relation to his role in liquidating a private company. The board determined to cancel the agent's registration on the basis of this conduct.

The tribunal set aside the board's decision to cancel and substituted its own decision that the agent's registration be cancelled.

Relevant principle/s established or confirmed by the case

- While particular acts or omissions by a tax agent may not be enough, viewed separately, to warrant removal from the register, it is possible for multiple less serious matters, if sufficient in number, to provide a basis for a board to determine that a tax agent was not fit and proper.
- In addition, the failure of a tax agent to comply with their own taxation obligations is relevant to fitness and propriety as it may result in adverse treatment of the clients of that agent and the Commissioner will have reduced confidence in the competence with which those returns were prepared.
- Certain offences are so inconsistent with performing the role of a tax agent that conviction for these offences will render a person not fit and proper to be a registered tax agent. The Tribunal highlighted offences involving tax evasion to be an example of such an offence.
- In relation to the failure to accurately complete the annual returns to the Board, someone incapable of accurately completing a simple yet important notice "*is not a person of sufficient competence and integrity to hold the privilege of acting for clients in the preparation and lodgement of their income tax returns.*"



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Stasos v Tax Agents' Board of New South Wales [1990] AATA 346

Outline of relevant facts

This case concerned a decision by a state board to cancel the agent's registration on the basis that the agent was not a fit and proper person. The agent ran a tax agent practice, the clientele of which was largely migrant clients that mostly paid his professional fees in cash. The agent engaged in tax evasion through failing to disclose the income earned from his tax agent business to the Commissioner. This was partly achieved through failing to claim a deduction on behalf of his clients for professional fees paid to him for preparing their income tax returns. The agent originally denied the allegations to this effect put to him by taxation officers only to later confirm what they had told him was, in fact, true.

The Tribunal affirmed the board's decision that the agent was not a fit and proper person on the basis that he had breached his responsibilities as a tax agent by failing to declare income and, more importantly, by failing to claim a deduction on behalf of clients to secure an advantage for himself. The Tribunal also determined that insufficient time had elapsed to determine whether the agent had truly corrected his behaviour. The agent appealed to the Federal Court.

The Federal Court found no error of law in the decision of the Tribunal and made further comment on this matter.

Relevant principle/s established or confirmed by the case

- Failure to claim *deductions* on behalf of clients was a more serious breach of a tax agent's responsibilities than failure to declare a tax agent's own income.
- The severity of this misconduct is greater where the clients involved are in a position of particular *vulnerability*. In this particular case, the affected clients were largely migrant clients from different ethnic backgrounds that had placed trust in the tax agent to assist them in complying with their income tax obligations.
- This type of misconduct is sufficient to support a finding that, at the time of the wrongdoing, the person was not a fit and proper person to be a tax agent.
- A person is not fit and proper, even if a period of time has elapsed between the conduct *complained* of and the hearing of a matter, if they fail to demonstrate contrition and an understanding of wrongdoing.
- An *agent* must maintain relationships with the Board and the Commissioner such that these departments may have confidence in their ability to undertake their role truthfully, accurately and competently.



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Jack v Tax Agents' Board of New South Wales [1997] AATA 678

Outline of relevant facts

This case concerned a decision of a state board to refuse the applicant's application for registration as a tax agent on the basis that the applicant was not a fit and proper person. The applicant ran a tax agent practice that was being investigated by the Commissioner. The Commissioner had also starting investigating several of the applicant's clients. The applicant had engaged a Mr Ross to act as a consultant during this period to assist with handling these matters. Mr Ross subsequently established his own practice and transferred several of the applicant's clients to that practice.

The applicant initiated proceedings against Mr Ross for the loss of the clients. During this litigation, the applicant threatened Mr Ross about money he 'owed' the applicant for the loss of clients. Following this interaction, the applicant visited a former client seeking payment of an account for work performed. Mr Ross had also issued an account for payment to this client that was paid. The applicant and his associates proceeded to threaten the client in relation to the money 'owed' to the applicant.

The Tribunal affirmed the board's decision to refuse the application for registration as a tax agent.

Relevant principle/s established or confirmed by the case

- The onus of proof in establishing that the applicant is a fit and proper person rests with the applicant. It is up to the applicant to satisfy the Tribunal, on the balance of *probabilities* and having regard to the seriousness of the matter raised, that the applicant is a fit and proper person.
- It is *possible* for a person to render themselves not fit and proper on the basis of certain behaviour that that is so in breach of conventions on particular occasions that it would be detrimental for any professional body to have that person as a member. This is so even if their professional integrity cannot be impugned.
- In this matter, the Tribunal considered the conduct described above was such that the *applicant* could not be considered a fit and proper person to be registered as a tax agent.
- The inability of an agent to competently represent clients in dealings with the Commissioner and in any objections proceedings is sufficient to render a person not fit and *proper* to be registered as a tax agent.



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Re Cowlshaw and Ors and Tax Agents' Board of Queensland [1999] AATA 412

Outline of relevant facts

This case concerned a decision of a state board to suspend the registration of the tax agents on the basis that they were not fit and proper persons to be registered. The Commissioner had commenced investigating the returns lodged by the tax agents on the basis that deduction claims made in these returns were higher than would otherwise have been expected for that type of return. The Commissioner placed the tax agents on a tax agents' program and required them to provide substantiation of a specific number of claims for deductions. The tax agents failed to cooperate with the Commissioner through repeatedly failing to respond to telephone calls, correspondence and directions to provide substantiation of claims for deductions in client returns.

In addition, the tax agents had failed to file client returns, failed to respond to client correspondence, had lied to clients about the status of their returns, failed to pass on correspondence from the Commissioner to their clients and failed to respond to correspondence from the board. One of the tax agents had given money to his clients to "keep his clients quiet, to stop them from complaining to any official body." The tax agents also attempted to blame clients and staff for the delay in filing their returns and responding to Commissioner requests for information.

The Tribunal varied the board's decision to extend the suspension periods applied to the tax agents.

Relevant principle/s established or confirmed by the case

- In relation to the cooperation with the Commissioner a state board, a lack of cooperation with the Commissioner officers and failure to treat the board with proper respect is a serious breach of the proper conduct of a tax agents' business.
- The following matters may be considered to be misconduct as a tax agent such that an agent *engaged* in this conduct will not be a fit and proper person to prepare income tax returns or transact business on behalf of taxpayers in income tax matters;
 - failing to file tax returns within a reasonable time or in some cases at all;
 - failing to respond to telephone calls and correspondence;
 - failing to pass on correspondence from the Commissioner to clients;
 - misleading clients by informing them that returns had been filed with the Commissioner when they had not;
 - blaming clients for delays;
 - blaming staff for delays; and



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- providing money to clients to keep them quiet and to stop them from complaining to any official body.
- While an individual director or partner is not liable for the specific conduct of an *offending* director or partner, if that person knows of the misconduct of the director or partner and fails to take any steps to mitigate the issues caused by the other director or partner, then the Board will consider that this failure to mitigate the harm caused will reflect adversely on the fitness and propriety of the other directors or partners

Re Carbery and Associates Pty Ltd and Tax Agents Board of Queensland [2001] AATA 107

Outline of relevant facts

The case concerned a decision of a state board to refuse an application for re-registration on the basis that the nominee of the applicant was not a fit and proper person and that the executive officer was not of good fame, integrity and character. The board's decision was based on convictions for failing to lodge income tax returns, false statements made to the board, failure to respond to board correspondence, failure to file client returns and the number of client complaints concerning the applicant.

Medical evidence indicated that the failure to respond and other relevant conduct could be partly explained by medical conditions of the applicant, particularly depression.

At the hearing, the applicant produced certain evidence purporting to show that returns had been lodged with the Commissioner. The veracity of this evidence was highly suspect and was inconsistent with previous statements made by the applicant.

The Tribunal affirmed the board's decision to refuse the application for re-registration.

Relevant principle/s established or confirmed by the case

- The matters that may be considered in determining fitness and propriety include those matters set out in section 251BC. However, this section does not limit the range of other *factors* that may be considered by a decision-maker in determining whether an agent or other individual is a fit and proper person.
- The failure to comply with the basic requirements of the Commissioner in the conduct of an agent's personal taxation affairs is a "gross dereliction of a fundamental duty" made *more* serious by the fact that the agent is themselves responsible for the management of their client's compliance with these requirements.
- Making *false* or misleading statements to the board, failing to provide written explanations on request from the board and tendering false evidence before the Tribunal are matters that raise serious doubts about the honesty of an agent.



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- The role of a tax agent in preparing income tax returns across a wide range of *business*, professions, occupations and income sources is not to be taken lightly. It is a task that requires diligence, up-to-date knowledge, competence and honesty in dealing with the Commissioner, the relevant board and clients.
- Unless a person can be considered competent in all these attributes, then the person will not be considered a fit and proper person to prepare income tax returns and to transact business on behalf of taxpayers in income tax matters.
- While special circumstances are relevant in determining an application for *re-registration*, the key principle behind imposing a sanction is the protection of the public rather than the punishment of the practitioner. Considerations of personal circumstances cannot override this primary consideration.

Jones and Tax Agents' Board of New South Wales [2002] AATA 1246

Outline of relevant facts

In *Jones*, the Tribunal considered the content of the fit and proper registration requirement in the context of a review of a decision by a state board to refuse an application for registration following an earlier cancellation of the registration.

The board had refused the application on the basis of a number of matters relating to the applicant's fitness and propriety for registration. These included complaints from clients and the Commissioner regarding delays in payment of refunds, the unauthorised negotiation of refund cheques, difficulties experienced in contacting the applicant during business hours, the depositing of cheques payable to the Commissioner into his trust account, delays in lodgement of returns, failure to attend Commissioner interviews when required and the misappropriation of approximately \$100,000 of client moneys.

The Tribunal affirmed the board's decision to refuse registration.

Relevant principle/s established or confirmed by the case

- It will be more difficult for an applicant to satisfy the requirements underlying fitness and *propriety* where they have committed misconduct extending over several years.
- *Factors* considered relevant to the required standard of fitness, propriety and character differ depending on the nature of the relevant vocation.
- Consistent with the above, convictions and conduct involving fraud and dishonesty reflect particularly adversely on the good fame, integrity and character of an applicant for registration in a profession that invariably involves the handling of client moneys.
- In general, convictions involving dishonesty in the conduct of a tax agent business may bear greater weight in the determination of fitness and propriety for tax agent registration than other convictions.



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- The *principal* purpose underlying the provisions applying to tax agent registration is to protect the public and maintain public confidence in the profession, as opposed to the imposition of penalties or punishment to regulate misconduct.
- A board's consideration is not limited to the circumstances outlined in the legislation that expressly bar a finding of fitness and propriety (such as a conviction of a serious *taxation* offence during the previous 5 years), however such circumstances may provide guidance on the types of factors relevant to be considered. Consequently, a conviction that occurred more than 5 years prior to the application will be considered relevant if the nature of the conviction impacts on the applicant's good fame, integrity and character or general fitness and propriety.
- *Whether* or not an applicant has repaid a misappropriated amount may be relevant to the assessment of their fitness and propriety.
- The *greater* the level of seriousness of a dereliction of duty by an applicant or agent, the lengthier the period of time that will be required to establish rehabilitation and an unlikelihood of recurrence of the conduct.

Budai and Tax Agents Board of New South Wales [2002] AATA 1154

Outline of relevant facts

This case involved an application to the Tribunal for review of a decision by a state board to cancel a tax agent's registration on the basis that he was not a fit and proper person to be registered under Part VIIA of the ITAA 1936.

The board based its finding on admissions made by the tax agent regarding the development of a fraudulent tax evasion scheme in relation to a group of investors/developers some 13 to 14 years prior to its decision and his response to a show cause letter issued by the board. The Tribunal set aside the cancellation and substituted a decision to suspend the registration of the tax agent.

Relevant principle/s established or confirmed by the case

- A *decision* on whether a tax agent is fit and proper to maintain their registration is informed by a public protection rationale, rather than a purpose of exacting punishment for past wrongdoing.
- Depending on the facts and circumstances of the case, an agent charged with prior conduct that impacts adversely on their integrity may still satisfy a board that they are fit and proper to remain registered. This may follow where, for example, the tax agent displays remorse, is frank and cooperative with regulators and judicial decision makers when confronted with the misconduct and their misdeed/s were isolated and unlikely to recur in future.
- Generally, the greater the period of time that has elapsed since the misconduct, the lesser the likelihood of recurrence.



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Pappalardo v Tax Agents' Board of Victoria [2003] AATA 990

Outline of relevant facts

This case involved an application to the Tribunal for review of a decision by a state board to cancel the tax agent's registration on the basis that he was not a fit and proper person to remain registered under Part VIIA of the ITAA 1936.

The board's finding on fitness and propriety was based on a number of matters, including his conviction of serious taxation offences for failing to lodge personal income tax returns for five consecutive years, his failure to respond (or adequately respond) to correspondences from the board and clients, his giving of confused and misleading evidence in relation to his non-lodgement of returns and his lack of contrition.

These matters were considered by the Tribunal to demonstrate a lack of competence and a failure to appreciate the obligations required to be adhered to maintain registration as a tax agent.

The Tribunal affirmed the decision of the board to cancel the applicant's registration.

Relevant principle/s established or confirmed by the case

- The *inability* of a tax agent to manage their own tax affairs (such as timely and accurate lodgement of tax returns) indicates a lack of competence and/or disregard for the law and hence reflects adversely on their fitness and propriety to perform the functions of a tax agent.
- A failure to comply with a timeframe specified in a final notice provides a strong *indication* that the tax agent is not a fit and proper person to be registered.
- Inaccurate or misleading statements/submissions to a board or the Tribunal can in circumstances reflect an inability to clearly think about the relevant issues and consequently may be relevant to evaluating competence and fitness and propriety in general.
- Failure to return board and client correspondences reflects adversely on fitness and *propriety* to be registered as it demonstrates a serious neglect of the business of a tax agent and a lack of appreciation of the significance of completely and promptly responding to requests from a regulatory authority.
- The display of contrition or insight by a person into the implications of their wrongdoing such that it can be established that there will be no recurrence of the conduct in future is *relevant* in determining whether they are fit and proper to exercise the functions of a tax agent.



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Frost Taxation Pty Ltd and Tax Agents' Board of South Australia [2005] AATA 393

Outline of relevant facts

This case regarded a review of a decision of a state board to refuse the company applicant's registration on the basis that its original nominee was not a fit and proper person, in particular, that he was not of good fame, integrity and character as required under the ITAA 1936.

The board's finding in respect of the nominee related to a number of factual matters. These included evidence and findings made in Supreme Court proceedings regarding the nominee's conduct in the manipulation of accounts and giving of financial advice in the course of his practice as an accountant, his consequential bankruptcy, the failure to keep proper records and making of false declarations in respect of his maintenance of a trust account and disciplinary proceedings before the Society of Certified Practising Accountants.

In relation to his bankruptcy, the board further considered the nominee's delay in notifying the board of his status, his failure to notify the Trustee in bankruptcy of his ownership of a property, his personal use of rent moneys derived from the property and his application for and use of a credit card.

The Tribunal affirmed the board's decision to refuse the application for registration on the basis of the conduct of the nominee.

Relevant principle/s established or confirmed by the case

- It is *not* sufficient, when determining fitness and propriety with regard to past wrongdoing, that the applicant merely express remorse and contrition. The applicant must establish that they appreciate the significance of the wrongdoing and have rehabilitated themselves such that they will not repeat it or further depart from the standards required of them in the future.
- Misconduct involving intent and dishonesty provides strong grounds for a finding that the *applicant* is not of good fame, integrity and character for the purposes of tax agent registration.



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Toohy and Tax Agents' Board [2009] AATA 142

Outline of relevant facts

Toohy involved an application to review a decision by a state board to refuse the applicant's re-registration on the basis that he was not a fit and proper person to be registered as a tax agent. The finding on fitness and propriety was generally based on his failure to lodge personal tax returns and returns for three family entities for which he was responsible within the required timeframe for a period of years spanning 1992 to 2006. The lapses in lodgements generally ranged from three weeks to approximately 11 years.

The board considered the circumstances submitted by the applicant (which included severe depression and stress, financial problems and marriage difficulties) and found that these did not amount to special circumstances such that would require them to disregard the applicant's non-lodgement of returns in assessing fitness and propriety.

The Tribunal affirmed the board's decision to refuse re-registration.

Relevant principle/s established or confirmed by the case

- A failure to lodge income tax returns on time constitutes a significant factor when *evaluating* an applicant's fitness and propriety to be registered in view of a clear public interest in tax agents upholding the standards applicable to the preparation and lodgement of returns.
- Communications between the applicant and the Commissioner may afford a relevant *consideration* in determining whether the applicant is fit and proper for registration.
- An *applicant* who experiences difficulties in complying with timeframes for preparation and lodgement of returns may still be considered fit and proper where they undertake steps to address the difficulties, such as by engaging another tax agent for assistance.
- Delay or failure to lodge tax returns during the period of a stay granted by the Tribunal or *whilst* the applicant's case is being considered by the Tribunal or Federal Court is indicative of a lack of appreciation by the applicant of the significance of their omissions and therefore calls into question their fitness and propriety for registration.
- The giving of priority to clients' income tax matters does not to any degree absolve a tax agent from their obligations in respect of their personal tax affairs. Conversely, such a *justification* manifests personal disorganisation and/or a disregard for the regulatory and legal framework within which tax agents operate.
- In determining an applicant's fitness and propriety for registration, adverse personal *circumstances* must not be considered in isolation from the public interest in ensuring proper and competent provision of taxation services.



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- The conduct of an applicant in preparing their case before the Tribunal may be relevant to the *issue* of fitness and propriety.

Sargent and Tax Agents' Board of Victoria [2009] AATA 219

Outline of relevant facts

Sargent involved an application for review of a decision of a state board to cancel a tax agent's registration. In reaching its decision, the board considered the issues of fitness and propriety (with regard to the applicant's good fame, integrity and character) and misconduct as grounds for cancellation under Part VIIA of the ITAA 1936.

The cancellation decision was based on the conviction of the tax agent on a number of criminal charges involving stalking and child pornography, for which the applicant was sentenced to a term of imprisonment and ordered to pay a fine, in addition to complying with further orders. At the date of the Tribunal hearing, the tax agent had paid the fine and completed the term, along with a majority of the orders.

The Tribunal affirmed the board's decision to cancel the tax agent's registration.

Relevant principle/s established or confirmed by the case

- When assessing fitness and propriety in the context of a decision to suspend or cancel a tax agent's registration, the primary purpose is to protect the public from future misconduct, rather than to punish or exact retribution from the tax agent.
- In considering whether a person is fit and proper, a board may have regard to conduct not *directly* connected with their practice as a tax agent.
- Akin to the legal profession, public interest and trust are integral to the functioning of the tax agent profession.
- Where fitness and propriety or misconduct is in issue, the board must weigh the public *interest* in the tax agent continuing in practice against the public interest in protecting clients from repetition of the relevant conduct.
- A *consideration* relevant to the balancing exercise is whether the tax agent displays insight and remorse into the significance of their conduct.
- However, a tax agent who displays insight and remorse and is deemed unlikely by the board to repeat their prior behaviour may still fail to satisfy the 'fit and proper' *requirement* for registration. Such a result may follow where, for example, an offence committed is particularly serious, the behaviour has brought the tax agent profession into disrepute and the tax agent has only begun to address their obligations in respect of maintaining the reputation and standards of the profession.



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Kerin and Tax Agents' Board of South Australia [2009] AATA 974

Outline of relevant facts

This case involved an application to the Tribunal for review of a decision by a state board to refuse the applicant's re-registration on the basis that he was not a fit and proper person to remain registered, in particular, that he was not of good fame, integrity and character under Part VIIA of the ITAA 1936.

The board's finding related to complaints and proceedings instituted against or involving the applicant during the period of his tax agent registration. These matters included convictions for knowingly making a false statement to a Customs officer, importing prohibited firearm parts and for importing Tier 2 goods without approval. The matters further included:

- a complaint laid against the applicant by the Legal Practitioners Complaints Committee *involving* findings of unprofessional conduct in relation to the convictions;
- appeals by the Legal Practitioners Conduct Board and the applicant regarding a fine *imposed* for unprofessional conduct in connection with the conduct of a mortgage practice; and
- *applications* by the Law Society of South Australia and the Legal Practitioners Conduct Board to have the applicant removed from the roll of legal practitioners.

The Tribunal affirmed the board's decision to refuse re-registration.

Relevant principle/s established or confirmed by the case

- *Whilst* a lack of good fame, integrity and character disqualifies an applicant from satisfying the fit and proper requirement, the range of circumstances by which a Board can determine fitness and propriety in a given case is not limited to considerations of that nature.
- The content of the fit and proper requirement may vary slightly with regard to the vocation of the person. However, the factors relevant to fitness and propriety are not *restricted* to the provisions of the relevant Act and encompass all considerations that properly relate to the requirements of the vocation.
- Conduct need not occur directly in the course of professional practice to constitute *professional* misconduct. Such conduct will amount to professional misconduct where it is "so connected to such practice" or demonstrates the presence of qualities (such as dishonesty or deception) that are inconsistent with fitness and propriety to practise as a registered tax agent.
- To be *considered* fit and proper for tax agent registration, the applicant must establish that past adverse conduct was merely temporary or isolated and unlikely to recur in the future.



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TAX PRACTITIONERS BOARD

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- The absence of any complaints from the Commissioner may not bear much relevance to the determination of fitness and propriety when considered in conjunction with other relevant facts and circumstances.
- Whilst there may be slight variances in the fitness and propriety requirements as between various professions, the standards applicable are largely uniform across all professions. Accordingly, observations made about the applicant's conduct in the practice of another profession are equally relevant to whether they are fit and proper to obtain/maintain tax agent registration.