

# TPB Information Sheet

## TPB(I) 33/2018

### Recognised professional associations – Corporate governance related requirements for recognition under the Tax Agent Services Regulations 2022

#### **DISCLAIMER**

This is a Tax Practitioners Board (TPB) information sheet (TPB(I)). It is intended to be for information only. While it seeks to provide practical assistance and explanation, it does not exhaust, prescribe or limit the scope of the TPB's powers in the *Tax Agent Services Act 2009* (TASA).

In addition, please note that the principles and examples in this TPB(I) do not constitute legal advice and do not create additional rights or legal obligations beyond those that are contained in the TASA or which may exist at law.

#### **Document history**

This information sheet was originally issued as an Exposure Draft on 3 October 2017. The TPB invited comments and submissions in relation to the information contained in it by 17 November 2017.

The TPB considered all the comments and submissions received and published the TPB(I) on 27 February 2018.

On 5 August 2021, the TPB updated this TPB(I) to:

- replace the term 'professional association' with 'organisation' throughout this TPB(I) to align with the term used in Schedule 1 to the Tax Agent Services Regulations 2009
- include an additional question for organisations to consider their corporate governance structure when determining whether they meet the requirements in the TASR relating to corporate governance, operational procedures and accountability.

On 1 April 2022, the TPB updated this TPB(I) to:

- replace references from the repealed Tax Agent Services Regulations 2009 to Tax Agent Services Regulations 2022 (TASR)
- replace the term 'organisation' with 'association' (where relevant) throughout this TPB(I) as used in the TASR
- remove references to tax (financial) adviser associations.

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# Recognised professional associations – Corporate governance related requirements for recognition under the Tax Agent Services Regulations 2022

## Introduction

1. This Information Sheet (TPB(I)) has been prepared by the Tax Practitioners Board (TPB) to provide guidance to professional associations in relation to the TPB's interpretation and application of the requirements for recognition of professional associations under the Tax Agent Services Regulations 2022 (TASR). In particular, the TPB(I) considers requirements that relate to corporate governance, operational procedures and accountability.<sup>1</sup>
2. In particular, this TPB(I) provides guidance on the above recognition requirements as they apply to:
  - associations that are seeking recognition as a recognised tax agent association (RTAA) or recognised BAS agent association (RBAA)<sup>2</sup> with the TPB; and
  - those already recognised professional associations, for the purpose of maintaining their recognition under the TASR.
3. Importantly, the guidance provided in this TPB(I) has purposely been presented at a high level and adopts a principles based pragmatic approach rather than being too prescriptive.<sup>3</sup> The reason for this approach is because concepts of good corporate governance are contemporary in nature and will necessarily evolve over time as an organisation's legislative environment<sup>4</sup> and community expectations develop. Further, there is no one set formula to determine whether an association meets the eligibility requirements for recognition as the governing framework of associations will differ depending on the nature, size, structure and maturity of its operations. It is further noted that a board of an association may also consider that some principles are not applicable to their particular circumstances. However, if such a decision is made, the association must be able to explain why the principles have not been applied.

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<sup>1</sup> See Items 102 and 107 in Schedule 1, Part 1 of the TASR, Items 202 and 207 in Schedule 1, Part 2 of the TASR.

<sup>2</sup> For the purpose of this Information Sheet, RTAAs and RBAAAs are collectively referred to as recognised professional associations.

<sup>3</sup> See also paragraphs 46 to 48 of this information sheet.

<sup>4</sup> It is observed that foreign incorporated or registered professional bodies (that are recognised or may qualify for recognition with the TPB) may be subject to other legislative requirements and governance codes (in relation to their foreign status); however, these bodies will still be subject to the principles as outlined in this document in relation to recognition status with the TPB.

4. While the focus of this TPB(I) is on the requirements for recognition under the TASR that relate to corporate governance, operational procedures and accountability, it is important to note that there are other requirements for recognition that an association must meet to be eligible for recognition as a recognised professional association by the TPB.<sup>5</sup>

## Background

5. The role of the TPB is to ensure that every entity that should be registered is registered, and to ensure the services provided by registered tax practitioners to the public are provided in accordance with appropriate standards of professional and ethical conduct.
6. The TPB is not a regulator of professional associations,<sup>6</sup> but instead recognises professional associations so that those individual entities who are voting members of a TPB recognised professional association have an additional pathway to seek registration with the TPB.<sup>7</sup> The requirements for this individual registration pathway are distinct to other registration pathway requirements (see Appendix 4 to this document). Further, it is noted that recognition with the TPB does not give a professional association a legal ability to provide tax agent services, BAS services or tax (financial) advice services for a fee or reward.
7. The TASR does not require the TPB to conduct full governance audits on professional associations; however, the TPB must be satisfied that the eligibility requirements outlined in the TASR are satisfied before recognising a professional association. This ensures that only those professional associations that enforce high educational, ethical and professional requirements (relevant to taxation) on their members can be recognised by the TPB as recognised professional associations. Further, the requirements are designed to ensure that only truly professional and well-run associations are capable of recognition.<sup>8</sup>
8. In addition to the above considerations, the TPB's process of recognising professional associations assists in ensuring that only appropriately suitable and qualified individuals can seek registration with the TPB through their membership with a recognised professional association which contributes to the maintenance of public confidence in the registered tax practitioner profession.

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<sup>5</sup> See Schedule 1, Parts 1 and 2 of the TASR for more information about the other requirements for recognition of RTAAs and RBAAs.

<sup>6</sup> It is noted that the TPB has general administration of the TASA and TASR. The TPB does not administer the *Corporations Act 2001* and Association Incorporation Acts legislation (see footnote 17 for specific references); however, key principles have been extracted for reference purposes.

<sup>7</sup> See Schedule 2, Part 1, Item 102 of the TASR for BAS agents, see Schedule 2, Part 2, Items 206 and 210 of the TASR for tax agents. See **Appendix 4** for a summary of qualifications and experience requirements in relation to the various pathways to registration as a tax agent or BAS agent.

<sup>8</sup> See the Explanatory Statement to the TASR.

## Eligibility to become a recognised professional association

9. The TASR contains, among other things, a number of requirements for recognition that an association must meet before it can be recognised as a RTAA or RBAA by the TPB.
10. Under the TASR, an association seeking recognition as a recognised professional association must apply to the TPB for recognition using a form approved by the TPB.<sup>9</sup>
11. The TASR provides that the TPB must recognise an organisation as a recognised professional association if the organisation meets the requirements for recognition set out in the TASR.<sup>10</sup>
12. The focus of this TPB(I) is on the corporate governance related eligibility items. These items are specified as follows:

### Recognised BAS agent associations (Schedule 1, Part 1 of the TASR)

#### Item 102

The association has adequate corporate governance and operational procedures to ensure that:

- a. it is properly managed; and
- b. its internal rules are enforced.

#### Item 107

The management of the association:

- a. is required to be accountable to its members; and
- b. is required to abide by the corporate governance and operational procedures of the association.

### Recognised tax agent associations (Schedule 1, Part 2 of the TASR)

#### Item 202

The association has adequate corporate governance and operational procedures to ensure that:

- a. it is properly managed; and
- b. its internal rules are enforced.

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<sup>9</sup> Refer to Section 7 (application for recognition as a RBAA) and Section 12 (application for recognition as a RTAA) of the TASR.

<sup>10</sup> Under the TASR, the TPB must recognise an association as a recognised professional association, having regard to certain prescribed matters, if the association meets the requirements for recognition other than specific requirements relating to the minimum number of voting members and minimum requirements that voting members must comply with. See Section 8 (RBAs) and Section 13 (RTAs) of the TASR.

## Item 207

The management of the association:

- a. is required to be accountable to its members; and
- b. is required to abide by the corporate governance and operational procedures of the association.

## Continued recognition as a recognised professional association

13. In addition to the above items being requirements that an association must meet in order to be eligible for recognition as a recognised professional association by the TPB, a recognised professional association must also ensure that it continues to meet these requirements to maintain its recognition with the TPB.
14. Section 11 of the TASR provides that the TPB may terminate the recognition of a RBAA in certain circumstances. These include if the TPB:
  - has reasonable grounds for believing the association has ceased to meet the requirements for recognition for the association; and
  - is not satisfied that it is appropriate for the association to be recognised, having regard to the purposes of the *Tax Agent Services Act 2009* (TASA) and the role of RBAs under the TASR.
15. Section 16 of the TASR provides that the TPB may terminate the recognition of a RTAA in certain circumstances. These include if the TPB:
  - has reasonable grounds for believing the association has ceased to meet the requirements for recognition for the association; and
  - is not satisfied that it is appropriate for the association to be recognised, having regard to the purposes of the TASA and the role of RTAs under the TASR.

## Corporate governance and operational procedures

16. Items 102, 202, 107 and 207 of Schedule 1 of the TASR set out the requirements for recognition in relation to corporate governance, operational procedures and accountability that an organisation must meet, in addition to other recognition requirements, to be eligible for recognition and to maintain its continued recognition as a recognised professional association.
17. There are many definitions of what 'corporate governance' means. Generally, corporate governance can be defined as the rules, relationships, policies, systems and processes whereby authority within an organisation is exercised, managed and held to account.

18. The key elements of items 102 and 202 are as follows:

- adequate
- corporate governance
- operational
- procedure
- properly
- manage
- ensure
- enforce.

19. The above elements are not defined in the TASA or TASR and therefore take on their ordinary meaning. The Macquarie Dictionary<sup>11</sup> defines the above words and phrases as follows:

a. 'adequate'

- equal to the requirement or occasion; fully sufficient, suitable, or fit
- (law) reasonably sufficient for starting legal action; adequate grounds

b. 'corporate governance'

- the system by which a business institution is controlled and directed, especially with regard to regulation of decision-making procedures

c. 'operational'

- of or relating to an operation or operations

d. 'procedure'

- the act or manner of proceeding in any action or process; conduct
- a particular course or mode of action

e. 'properly'

- in a proper manner
- correctly
- appropriately
- decorously
- accurately
- justifiably

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<sup>11</sup> *The Macquarie Dictionary*, [Multimedia], version 6.0.0.



f. 'manage'

- to take charge or care of
- to handle, direct, govern or control in action or use
- to succeed in accomplishing a task, purpose, etc.
- to conduct affairs

g. 'ensure'

- to secure, or bring surely, as to a person
- to make sure or certain to come, occur, etc.

h. 'enforce'

- to put or keep in force; compel obedience to
- to impose (a course of action) upon a person
- to support (a demand, etc.) by force.

## What is 'corporate governance'?

20. 'Corporate governance' (and related concepts and requirements, such as 'accountability') and what constitutes an adequate or appropriate 'corporate governance' framework are not intended to be prescriptive, but rather flexible and variable. It depends on such considerations as the applicable legislative and regulatory regimes, the specific industry and the nature, size, structure and maturity of the association or organisation in question. For something to be adequate, it must be sufficient or suitable for the relevant purpose (such as the rules, policies and relationships) to ensure that authority within the organisation is appropriately exercised, managed and held to account.

21. Definitions of corporate governance include:

- a. The mechanisms by which corporations are directed and controlled and the mechanisms by which those who direct and control the corporation are monitored and supervised. That is, it is about mechanisms that ensure those who are in control are accountable.<sup>12</sup>
- b. The process by which organisations are directed, controlled and held to account. It encompasses authority, accountability, stewardship, leadership, direction and control exercised in the organisation.<sup>13</sup>

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<sup>12</sup> See Berna Collier, Commissioner, 'The role of ASIC in corporate governance' (Speech delivered at the Corporate Governance Summit 2002, 27 November 2002).

<sup>13</sup> Joint Committee of Public Accounts and Audit, Report 372, *Corporate Governance and Accountability Arrangements for Commonwealth Government Business Enterprises*, Canberra, Canprint, 1999.

- c. The framework of rules, relationships, systems and processes within and by which authority is exercised and controlled within corporations. It encompasses the mechanisms by which companies, and those in control, are held to account.<sup>14</sup>
  - d. The system or framework of rules by which companies are managed, controlled, and made accountable. Corporate governance describes the manner in which transparency, integrity, and accountability is achieved by management in a company in general and, in particular, by its board of directors. It is a wide concept and also includes the study of how risks are monitored and assessed and how corporate performance is optimised to deliver value to stakeholders and to shareholders in particular.<sup>15</sup>
22. There is also additional public guidance available on what corporate governance means from a number of key organisations. These definitions are not dissimilar to those outlined in paragraphs 20 and 21 above. See also further definitions contained in **Appendix 1** to this document.
23. The corporate governance framework in Australia has evolved over time and generally comprises a combination of:
- a. legislation and other legally enforceable rules (e.g. the *Corporations Act 2001*<sup>16</sup> and related legislation, the State and Territory legislation that governs the incorporation of an association<sup>17</sup> the ASX Listing Rules and the Australian Accounting Standards Board (AASB) Australian Accounting Standards) where applicable
  - b. judicial principles highlighted in cases relating to similar requirements in other legislative contexts
  - c. principles and recommendations that have some regulatory force (e.g. the ASX Corporate Governance Council corporate governance principles and recommendations)<sup>18</sup>

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<sup>14</sup> Justice Owen in the HIH Royal Commission, *The Failure of HIH Insurance Volume 1: A Corporate Collapse and Its Lessons*, Commonwealth of Australia, April 2003 at page xxxiv.

<sup>15</sup> LexisNexis, *Encyclopaedic Australian Legal Dictionary* (at January 2011).

<sup>16</sup> The *Corporations Act 2001* regulates a number of different types of entities, including companies that are registered under that Act. Companies that can be registered under the *Corporations Act 2001* include (amongst other things) public companies limited by guarantee.

<sup>17</sup> *Associations Incorporations Act 2012* (Qld), *Associations Incorporation Regulation 1999* (Qld), *Associations Incorporation Reform Act 2012* (Vic), *Associations Incorporation Reform Regulations 2012* (Vic), *Associations Incorporation Act 1995* (SA), *Associations Incorporation Regulations 2008* (SA), *Associations Incorporation Act 2009* (NSW), *Associations Incorporation Act 1964* (Tas), *Associations Incorporation Direction 1999* (Tas), *Associations Incorporation Regulations 2007* (Tas), *Associations Incorporation (Model Rules) Regulations 2007* (Tas), *Associations Incorporation Act 2015* (WA), *Associations Incorporation Regulation 2015* (WA), *Associations Act* (NT), *Associations (Model Constitution) Regulations* (NT), *Associations Regulations* (NT), *Associations Incorporation Act 1991* (ACT) and *Associations Incorporation Regulation 1991* (ACT)

<sup>18</sup> Although the ASX Corporate Governance Council corporate governance principles and recommendations are only intended to apply to ASX listed entities (which do not include any of the TPB recognised professional associations currently recognised by the Board), they are considered to represent a contemporary model of appropriate corporate governance and may provide guidance to other bodies when determining their own corporate governance requirements: see ASX Corporate Governance Council, 'Corporate Governance Principles and Recommendations' (2014) 3, 4.

- d. other non-regulatory advisory guidelines including those issued by such organisations as the Australian Shareholders' Association and the Australian Institute of Company Directors
- e. voluntary codes of practice
- f. other principles adopted by governments in developing regulatory corporate governance frameworks (e.g. the OECD Principles of Corporate Governance).

24. In particular, it is noted that the *Corporations Act 2001* contains various provisions and requirements governing matters that are generally relevant to the corporate governance of companies registered under that Act. These include, amongst other things, provisions and requirements governing:

- a. the conduct of directors and other officers of a company in the exercise of their powers and discharge of duties<sup>19</sup>
- b. the appointment, remuneration and cessation of appointment of directors of companies<sup>20</sup>
- c. the conduct of company meetings and access by members to minutes of meetings<sup>21</sup>
- d. the selection and appointment of auditors of companies and related matters<sup>22</sup>
- e. regulate the conduct of audits on the financial reports of a company and reporting by the auditor to members,<sup>23</sup> and
- f. the keeping of financial records, the preparation of financial reports and directors' reports, annual financial reporting to members, and the lodgement of annual reports (and half-year reports as required) with the Australian Securities and Investments Commission (ASIC).<sup>24</sup>

25. Further, it is also noted that the various Acts and regulations that govern the incorporation of an association in the different States and Territories contain various provisions and requirements governing matters that are generally relevant to the corporate governance of associations that are incorporated under the relevant legislation.

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<sup>19</sup> For example, see sections 180 to 191 of the *Corporations Act 2001*.

<sup>20</sup> For example, see sections 201A to 203E of the *Corporations Act 2001*.

<sup>21</sup> For example, see sections 249C to 251B of the *Corporations Act 2001*.

<sup>22</sup> For example, see sections 327 to 336 of the *Corporations Act 2001*.

<sup>23</sup> For example, see sections 307 to 313 and Divisions 3, 4 and 5 of Part 2M.4 of the *Corporations Act 2001*.

<sup>24</sup> Generally, see Chapter 2M (in particular, Parts 2M.1 to 2M.3) of the *Corporations Act 2001*.

26. Generally, the various State and Territory statutory regimes which govern the incorporation of associations across Australia appear to codify the corporate governance and operational procedures required of an incorporated association to ensure that it is adequately managed and its internal rules are enforced. There are set financial management requirements in each jurisdiction which include the maintenance and retention of certain financial documentation and particular auditing requirements. Each jurisdiction also sets out general operational requirements that include those relating to the conduct and frequency of general meetings and relevant decision-making processes.
27. These requirements include, amongst other things, provisions and requirements governing:
- objects/purpose
  - membership details (fees, membership rejection/termination processes, classes of membership, condition/s for membership, voting rights, disciplinary procedure and grievance procedures)
  - meeting minute recording and verification
  - rule amendment processes
  - the way association income and property may be used
  - custody of documents
  - financial year end date for association
  - winding up and dissolution processes
  - management committee (position designation, election processes, terms of office, resignation process, meeting frequency, procedures and functions and powers)
  - general meeting procedures
  - income and property management
  - funding arrangements
  - financial reporting requirements – preparation and auditing of financial statements; and preparation of financial accounts, presentation of audited statements at general meetings and lodgement of statements.

## Key principles of corporate governance

28. The Australian Institute of Company Directors (AICD) Good Governance Principles and Guidance for Not-for-Profit Organisations details ten principles on what constitutes good governance in a not-for-profit organisation.<sup>25</sup> These principles are contained in **Appendix 2** to this document.

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<sup>25</sup> AICD good governance principles (and ASX Corporate Governance Council principles) are considered to represent a contemporary model of appropriate corporate governance and may provide guidance to other bodies when determining their own corporate governance requirements.

29. In addition, the Australian Securities Exchange (ASX) Governance Council has released the Corporate Governance Principles and Recommendations Guide (Guide) to assist all ASX listed companies. In particular, the Principles and Recommendations in the Guide are structured around, and seek to promote, eight central principles. While the principles apply only to ASX listed companies, the TPB may consider these principles when assessing whether an association meets the requirement to have adequate corporate governance and operational procedures when seeking recognition, or to maintain its continued recognition as a recognised professional association, as appropriate to the particular circumstances of that association. These eight principles are contained in **Appendix 3** to this document.
30. When the TPB is considering an application for recognition as a recognised professional association or an annual declaration<sup>26</sup> by a recognised professional association, the TPB will take into account the principles outlined in the AICD's Good Governance Principles and Guidance for Not-for Profit Organisations in the first instance. The TPB will also consider ASX Corporate Governance Principles and Recommendations Guide.
31. Generally Items 107 and 207 may be summarised to require that the person/s responsible for managing a recognised professional association (e.g. its board of directors):
- is/are liable to be called to account, or responsible, to the members of a recognised professional association; and
  - is/are required to observe the recognised professional association's systems for controlling and directing at the management level for the purpose of achieving transparency, integrity and accountability, as well as the recognised professional association's procedures relating to its operations.
32. The key elements of Items 107 and 207 are as follows:
- management
  - accountable
  - abide by
  - corporate governance
  - operational
  - procedure.

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<sup>26</sup> See **Appendix 5** for a blank copy of the annual declaration form for Recognised tax agent associations. It is noted that the substance of the content in this form is the same for Recognised BAS agent associations.

33. In addition to the terms contained in Items 102 and 202 (as outlined in paragraph 18 above), the Macquarie Dictionary<sup>27</sup> defines each of the relevant terms contained in Items 107 and 207 as follows:
- a. 'Management'
    - the act or manner of managing; handling, direction, or control
    - the person or persons managing an institution, business, etc
    - executives collectively
  - b. 'Accountable'
    - liable to be called to account; responsible (to a person, for an act etc)
    - that can be explained
  - c. 'Abide by'
    - to accept and to continue to observe (an undertaking, promise, agreement, rule, law, etc).

## What does it mean to be 'accountable'?

34. Critical to any association's operations is its ability to deliver benefits to its members and to promote the profession in which their members operate. By being accountable to its members, an association should be best placed to deliver those benefits.
35. In addition to its ordinary meaning, being accountable to members generally requires that an association communicates and consults with its members on a regular and timely basis. It also generally requires that an association:
- is being held to account through agreed processes
  - consult with members about any significant and material changes to the association's services and policies
  - has a culture of openness, particularly in relation to complaint processes and handling.
36. Further guidance on what being accountable to members means can be taken from the Australian Charities and Not-for-Profit Commission's (ACNC) *Governance Standard 2: Accountability to members*.<sup>28</sup>
37. While Governance Standard 2 only applies to charities with members, the key principles equally apply to professional associations that are, or are seeking to be, recognised by the TPB.

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<sup>27</sup> *The Macquarie Dictionary*, [Multimedia], version 6.0.0.

<sup>28</sup> See the *Australian Charities and Not-for-profit Commission's Regulation 2013* (ACNC Regulations).

38. In particular, Governance Standard 2 requires charities to:

- take reasonable steps to be accountable to their members; and
- allow their members adequate opportunities to raise concerns about how the charity is run.

39. Guidance by the ACNC<sup>29</sup> on Governance Standard 2 explains that being accountable includes letting members know about the charity's activities and what the results of those activities are. It is also about allowing members to raise concerns and ask questions about how the charity is run.

40. As referred to in paragraphs 23 to 27 above, the various Acts and regulations that govern the incorporation of associations in the different States and Territories across Australia also have a number of mechanisms which endeavour to ensure the accountability of an incorporated association, its management committee and office holders. These mechanisms include:

- the management committee must ensure that the association complies with its rules for meetings
- the management committee members must take all reasonable steps to ensure the association complies with the relevant legislation
- the association is bound by rules of natural justice in adjudicating upon the rights of its members conferred by its rules
- the office holder must exercise his or her powers and discharge his or her duties with the degree of care and diligence that a reasonable person would, if that person were an office holder of the association, in the same circumstances
- the office holder must exercise his or her powers and discharge his or her duties in good faith in the best interests of the association and for a proper purpose
- the office holder/former office holder must not make improper use of information to gain an advantage for themselves or another person or to cause detriment to the association
- rules must set out how member may initiate grievance procedures against the association
- the office holder must disclose material personal interests and certain procedures are to apply (i.e. cannot vote or be present at a meeting/s considering matters).

41. For the purposes of determining what it means to be accountable to members, when the TPB is considering an application for recognition as a recognised professional association or an annual declaration by a recognised professional association, the TPB will take into account the principles outlined by the ACNC and in this information sheet (see paragraphs 34 to 41).

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<sup>29</sup> See [ACNCs website](#) for more information.

## What an association should demonstrate to the TPB?

42. In determining whether an association meets the requirements to become recognised as a recognised professional association, the TPB will have consideration to both form and substance. For example, in relation to the requirements relating to corporate governance, operational procedures and accountability, the TPB will consider:

- what the association's corporate and procedural documents state and require
- how the principles stated in the association's corporate and procedural documents are actually applied in practice and to decision making.

43. Without placing any limitations on the legislative requirements and noting that the TPB does not seek to prescribe the corporate governance practices that an association must adopt, the TPB considers that associations should consider the following questions in relation to the practices and procedures that they have in place to satisfy the requirements under items 102 / 202 and 107 / 207:

- What is the corporate governance structure of the association (including the extent to which an associated or parent entity can influence the association's proper governance, management and enforcement of the internal rules of the association)?
- Does the association hold annual general meetings (AGMs) and other general meetings as appropriate, and comply with relevant requirements for provision of notices of meetings to members of the association?<sup>30</sup>
- What general procedures exist to govern the holding of AGMs and other meetings (general / special / extraordinary meetings)? Such procedures include those relating to venues, quorums, the chairing of meetings, ability for members to propose resolutions and voting entitlements, and allowing reasonable accessibility to the AGM for all members.
- Are there procedural processes in place to ensure that critical matters for the association are brought to the board for consideration and/or approval? Such matters would include consideration of the annual declaration to the TPB.
- How are the proceedings of boards of directors and directors' meetings regulated? Does the board meeting allow time in the agenda for in-camera discussions between directors?
- Are minutes of general / special / extraordinary meetings provided to members in a reasonable and timely manner?
- What is the composition of boards of directors?

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<sup>30</sup> ACNC's Governance Standard 2



- What procedures and rules are in place in relation to the directors? Such procedures include the election, appointment and disqualification of directors; duties and powers of directors, including provisions relating to disclosure and management of conflicts of interest; requirements to comply with the association's constitution, by-laws and other corporate requirements; and the payment of remuneration and benefits to directors.
- Does the association have a risk management framework in place and is this framework being applied as required, recognising that the framework will reflect the nature, size, structure and maturity of an association?<sup>31</sup>
- How is the receipt and application of the income and property of the association governed and regulated by the association?
- Are auditors appointed and are their details and functions clearly defined and understood?
- What procedures are in place in relation to the establishment and powers of committees?
- What complaint handling processes are in place for handling complaints from members, other external stakeholders and internal staff and management about the association's corporate governance, operational procedures and/or accountability? Do these processes facilitate independence when complaints are considered?
- How are financial records kept?
- What procedures are in place for financial reporting to members?
- Does the association meet its requirements to prepare and lodge financial reports with ASIC?
- Is the association meeting its obligations to comply with its constitution and relevant provisions of the *Corporations Act 2001* (Cth) and/or other relevant legislation?
- Are there provisions in place indicating that the duties of directors and auditors are to be governed in accordance with relevant provisions of the *Corporations Act 2001*, other legislative requirements and the organisation's constitution?

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<sup>31</sup> It is recognised that the nature of the framework and type of procedures used in a large association are likely to be noticeably more detailed than would be required for a smaller association.

44. Therefore, the non-exhaustive examples of evidence that demonstrate compliance with the above items are as follows:

- appropriate notice of an AGM
- minutes of AGMs
- details of any changes in board of director or committee composition
- financial reports lodged with ASIC
- audited financial statements
- any relevant amendments to corporate governance documents, such as constitution, bylaws, rules, charters or codes
- annual report (if applicable)
- any documents outlining relevant details, including in regard to:
  - board and management functions
  - board and committee composition
  - qualities and competencies for directors and members
  - appointment and removal of the board of directors
  - board elections
  - processes and procedures for the conduct of board and committee meetings etc.
  - details of any changes in board of director or committee composition
  - complaint handling processes and procedures.

## Implementation

45. The TPB appreciates that any relevant changes made for the purpose of complying with the above requirements could take some period of time to implement (for example, where modification is required to an association's constitution and an AGM is required to be held) and that the governance framework is unlikely to change on an annual basis.

46. The TPB observes that each association is different, particularly in regard to the nature, size, structure and maturity of the association, and that a board of an association may also consider that some principles are not applicable to their particular circumstances. However, if such a decision is made, the association must be able to explain why the principles have not been applied.

47. Where modification is required, the TPB will take a pragmatic approach in assessing an association's ongoing compliance with requirements in the TASR. However, the TPB expects that an association would provide an undertaking to the TPB that a relevant process would be in place for the purpose of effecting any relevant changes where required, with the TPB kept informed in relation to status. Further, it is noted that where a decision is made that a relevant principle is not adopted, the association must be able to explain why it has not been adopted.

## Further information

48. For further information relating to corporate governance, please refer to the following:

- [ASX](#) (including the [ASX Corporate Governance Council](#))
- [Australian Institute of Company Directors](#)
- [Governance Institute of Australia](#)
- [Australian Securities and Investments Commission](#)
- [Financial Services Council](#)
- [Australian Council of Superannuation Investors](#)
- [Australian Charities and Not-for-profits Commission](#).

## Appendix 1

<p><b>Australian Institute of Company Directors</b></p>	<p>The governance attributes of an organisation are shaped by a variety of factors, both ‘internal’ (for example, constitution, organisational policies) and ‘external’ (e.g. laws, regulations, community expectations). A board of directors plays a pivotal role in influencing an organisation's governance environment.</p> <p>A common goal for many organisations is to have the most effective governance framework in place that best meets their individual circumstances and needs – helping to drive enhanced organisational performance while at the same time aiding conformance with various requirements (e.g. the company's constitution, policies, controls and procedures as well as with applicable external regulations and laws).</p> <p>An effective governance framework would have appropriate regard to the:</p> <ul style="list-style-type: none"> <li>• contribution of individual directors</li> <li>• effectiveness of the board and board performance</li> <li>• way in which governance is applied throughout the organisation</li> <li>• strength of the relationships the organisation fosters with its stakeholders.</li> </ul> <p>Similarly, an effective board evaluation or board review would typically seek to incorporate reflection on an organisation's governance from each of these different perspectives.</p>
<p><b>Australian Securities Exchange (ASX) Governance Council</b></p>	<p>The phrase ‘corporate governance’ describes ‘the framework of rules, relationships, systems and processes within and by which authority is exercised and controlled within corporations. It encompasses the mechanisms by which companies, and those in control, are held to account.’</p>
<p><b>Australian Securities and Investments Commission</b></p>	<p>Corporate governance is a driver of the performance of a company. The term ‘corporate governance’ is broad and has many components.</p>
<p><b>Organisation for Economic Co-operation and Development (OECD)</b></p>	<p>Corporate governance involves a set of relationships between a company's management, its board, its shareholders and other stakeholders.</p> <p>Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.</p>
<p><b>The Governance Institute</b></p>	<p>Governance encompasses the system by which an organisation is controlled and operates, and the mechanisms by which it, and its people, are held to account. Ethics, risk management, compliance and administration are all elements of governance.</p>

## Appendix 2

### Principles of 'good governance' from the Australian Institute of Company Directors (AICD) Good Governance Principles and Guidance for Not-for Profit Organisations guide

#### 1) *Roles and responsibilities*

There should be clarity regarding individual director responsibilities, organizational expectations of directors and the role of the board.

#### 2) *Board composition*

A board needs to have the right group of people, having particular regard to each individual's background, skills and experience, and how the addition of an individual builds the collective capability and effective functioning of the board.

#### 3) *Purpose and strategy*

The board plays an important role in setting the vision, purpose and strategies of the organisation, helping the organisation understand these and adapting the direction or plans as appropriate.

#### 4) *Risk – recognition and management*

By putting in place an appropriate system of risk oversight and internal controls, boards can help increase the likelihood that their organisation will deliver on its purpose.

#### 5) *Organisational performance*

The degree to which an organisation is delivering on its purpose can be difficult to assess, but this can be aided by the board determining and assessing appropriate performance categories and indicators for the organisation.

#### 6) *Board effectiveness*

A board's effectiveness may be greatly enhanced through: careful forward planning of board-related activities; board meetings being run in an efficient manner; regular assessments of board performance; having a board succession plan; and the effective use of sub-committees, where appropriate.

#### 7) *Integrity and accountability*

It is important that the board have in place a system whereby: there is a flow of information to the board that aids decision-making; there is transparency and accountability to external stakeholders; and the integrity of financial statements and other key information is safeguarded.

#### 8) *Organisation building*

The board has a role to play in enhancing the capacity and capabilities of the organisation they serve.

#### 9) *Culture and ethics*

The board sets the tone for ethical and responsible decision-making throughout the organisation.

#### 10) *Engagement*

The board helps an organisation to engage effectively with stakeholders.

## Appendix 3

### **Central principles from the the Australian Securities Exchange (ASX) Governance Council's Governance Principles and Recommendations Guide**

#### **1) Lay solid foundations for management and oversight**

A listed entity should establish and disclose the respective roles and responsibilities of its board and management and how their performance is monitored and evaluated.

#### **2) Structure the board to add value**

A listed entity should have a board of an appropriate size, composition, skills and commitment to enable it to discharge its duties effectively.

#### **3) Act ethically and responsibly**

A listed entity should act ethically and responsibly.

#### **4) Safeguard integrity in corporate reporting**

A listed entity should have formal and rigorous processes that independently verify and safeguard the integrity of its corporate planning.

#### **5) Make timely and balanced disclosure**

A listed entity should make timely and balanced disclosure of all matters concerning it that a reasonable person would expect to have a material effect on the price or value of its securities.

#### **6) Respect the rights of security holders**

A listed entity should respect the rights of its security holders by providing them with appropriate information and facilities to allow them to exercise those rights effectively.

#### **7) Recognise and manage risk**

A listed entity should establish a sound risk management framework and periodically review the effectiveness of that framework.

#### **8) Remunerate fairly and responsibly**

A listed entity should pay director remuneration sufficient to attract and retain high quality directors and design its executive remuneration to attract, retain and motivate high quality senior executives and to align their interests with the creation of value for security holders.

## Appendix 4

An individual may apply to register or renew their registration through various options set out in Schedule 2 of the Tax Agent Services Regulations 2022 depending on qualifications and experience. A summary of the eligibility requirements under the relevant Items (Items 101 or 102 for a BAS agent; Items 201 to 206 for a tax agent; Items 207 to 211 for financial services licensees and their representatives to register as a tax agent) is provided in the images below.

### Summary of qualifications and experience requirements for tax agents

	Primary qualification	Board approved courses			Relevant experience
		Australian taxation law	Commercial law	Basic accountancy principles	
<b>201</b> Tertiary qualifications in accounting	Degree or post-graduate award	✓	✓	✗	1 year in past 5 years
<b>202</b> Tertiary qualifications - specialists	Degree or post-graduate award	May be required	May be required	May be required	1 year in past 5 years
<b>203</b> Diploma or higher award in accounting	Diploma or higher award	✓	✓	✗	2 years in past 5 years
<b>204</b> Tertiary qualifications in law	Academic qualifications to be an Australian legal practitioner	✓	✗	✓	12 months in past 5 years
<b>205</b> Work experience	✗	✓	✓	✓	8 years in past 10 years
<b>206</b> Membership of a professional association	Voting member of a recognised tax agent association	✗	✗	✗	8 years in past 10 years

### Summary of qualifications and experience requirements for BAS agents

	Primary qualification	Board approved course in GST/BAS taxation principles	Voting member of a recognised BAS or tax agent association	Relevant experience
<b>101</b> Accounting qualifications	At least Certificate IV Financial Services in bookkeeping or accounting	✓	✗	1,400 hours in past 4 years
<b>102</b> Professional Association membership	At least Certificate IV Financial Services in bookkeeping or accounting	✓	✓	1,000 hours in past 4 years

## Summary of qualifications and experience requirements for financial services licensees and their representatives to register as tax agents to provide tax (financial) advice services

	Primary qualification	Board approved courses		Relevant tax (financial) advice experience
		Australian taxation law <sup>1</sup>	Commercial law	
207 Tertiary qualifications	Degree or post-graduate award in a relevant discipline <sup>2</sup>	✓	✓	1 year in past 5 years
208 Diploma or higher award	Diploma or higher award in a relevant discipline <sup>2</sup>	✓	✓	18 months in past 5 years
209 Work experience	✗	✓	✓	3 years in past 5 years
210 Membership of professional associations	Voting member of a recognised tax agent association	✗	✗	6 years in past 8 years
211 Registered tax (financial) advisers	Registered as a tax (financial) adviser immediately before 1 January 2022 and applies to register as a tax agent before 1 January 2023	✗	✗	✗

<sup>1</sup> Must include a component in the Tax Agent Services Act 2009, including the Code of Professional Conduct.

<sup>2</sup> A relevant discipline includes: finance, financial planning, commerce, economics, business, tax, accountancy or law.

## Appendix 5

[Annual declaration form for recognised tax agent associations](#)