



15 September 2023

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600

Sent by email to: corporations.joint@aph.gov.au

Dear Committee Secretary

Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry

1. The Tax Practitioners Board (TPB) welcomes the opportunity to make a submission to the Parliamentary Joint Committee on Corporations and Financial Services (Committee) in relation to the inquiry into recent allegations of and responses to misconduct in the Australian operations of the major accounting, audit, and consultancy firms (Inquiry). The Inquiry seeks to investigate and analyse the regulatory, technical and legal settings and broader cultural factors.
2. The submission covers the following key points:
 - a. The TPB's legal framework, including the regulatory framework to address professional services misconduct.
 - b. Our interactions with co-regulators and other key stakeholders.
 - c. A summary of previously identified areas for regulatory improvements.
3. Questions of law and policy are matters for Government. However, if there was to be a law change, the TPB will continue our usual practice of issuing guidance to assist tax practitioners understand the TPB's requirements, which would only be finalised after consultation with key stakeholders, including government agencies, tax practitioners and professionals. Our experience is that this approach has worked well and gives appropriate flexibility to address emerging issues in a timely manner.

Background information

The TPB's role

4. The TPB is an independent statutory body that administers the *Tax Agent Services Act 2009* (TASA) and *Tax Agent Services Regulations 2022* (TASR). The TPB is responsible for registering and regulating entities providing tax agent services and business activity statement (BAS) services in Australia. A number of entities that are registered with the TPB as tax practitioners also provides auditing, assurance and consulting services.

5. The object of the TASA is to ensure that the services provided by registered tax practitioners (i.e. registered tax agents, and BAS agents) are provided to the public in accordance with appropriate standards of professional and ethical conduct.

Tax practitioner demographics

6. As at 16 August 2023, there were 62,555 registered tax practitioners. This total number is comprised of 44,532 individual registrations, 17,901 company registrations and 932 partnership registrations.
7. Of those entities operating through a partnership structure, 792 have 5 or less partners and 129 have between 6 and 20 partners and 11 have more than 20 partners.
8. In addition to the population of nearly 63,000 registered tax practitioners, the TPB understands that there are approximately 300,000 tax intermediaries that undertake various roles in the taxation and superannuation systems. These intermediaries include digital service providers, legal practitioners, registered insolvency practitioners, financial advisers and self-managed superannuation fund auditors.

The TPB's key activities

9. The TPB recently released our 2024-25 Corporate Plan which articulates our key activities and the performance measures we will apply as we continue to deliver on our purpose, supporting public trust and confidence in the integrity of the tax profession and the tax system. Our key activities are as follows:



10. Those key activities are supported by the TPB's current areas of strategic focus, which are:
- Using data, as one assessment tool only, to assess the health of the system, key risks and opportunities, and to identify higher risk cases.
 - Support voluntary compliance with law and policy reforms and practical guidance
 - Engage and collaborate effectively with our key stakeholders
 - Register and support those with relevant education, experience and ethical capabilities.
 - Resolve complaints to support clients, the public and tax practitioners.
 - Investigate higher risk cases and undertake projects to address systemic issues.
 - Impose sanctions to address specific misconduct and improve professional standards.
 - Litigate and review to support fair and legal decision making and law clarification.
 - Enhance our services, capability and effectiveness through technology.
 - Develop our governance strategy to support our people, finance and communications.

The TPB's regulatory framework

11. Under the TASA, the TPB's regulatory remit is to register and regulate any entity being individuals, companies or partnerships, that provide a tax agent service for a fee or reward. While there are some differences in the registration eligibility requirements, there is no distinction in how these entities are regulated as they are all subject to the same legislated Code of Professional Conduct and civil penalty provisions and are required to meet the ongoing registration requirements.
12. The registration and regulatory framework is summarised in Table 1 below, with more detailed information on key matters in the paragraph that follows:

Table 1: Summary of TPB's registration and regulatory framework

		Individuals	Partnerships	Companies
Registration requirements	Fit and proper requirements	●	● (all individual partners and all directors of company partners)	● (all directors)
	Qualifications (education and experience)	●		
	Not under external administration		● (company partners)	●
	Not convicted of a serious taxation offence		● (company partners)	●

		Individuals	Partnerships	Companies
	Not convicted of an offence involving fraud or dishonest		• (company partners)	•
	Sufficient number of registered tax practitioners to supervise and ensure competent services		•	•
Regulatory requirements	Obligation to notify of a change in circumstances	•	•	•
	Meet the ongoing eligibility requirements (including being fit and proper)	•	•	•
	Comply with the Code of Professional Conduct	•	•	•
	Civil penalty provisions (limited)	•	•	•
	Criminal offences (limited)	•	•	•

Fit and proper requirements

13. To become registered and remain registered as a tax practitioner, individuals and companies must meet the fit and proper person requirements (Division 20 of the TASA) as follows:
 - For the individuals, the individual themselves
 - For partnerships, every individual partner and director of a company partner
 - For companies, every director of the company.
14. In deciding whether an individual is a fit and proper person, the TASA (sections 20-15 and 20-45) requires that the Board must consider:
 - whether the individual is of good fame, integrity and character
 - whether any of the following events have occurred during the previous 5 years:
 - the individual has been convicted of a serious taxation offence
 - the individual has been convicted of an offence involving fraud or dishonesty
 - the individual has been penalised for being a promoter of a tax exploitation scheme
 - the individual has been 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
 - the individual has had the status of an undischarged bankrupt
 - the individual has been sentenced to a term of imprisonment, or served a term of imprisonment in whole or in part.
15. If a registered tax agent or BAS agent does not meet or ceases to meet the fit and proper person requirement, the Board cannot register or renew their registration or can terminate their registration.

Sufficient number requirement

16. Sections 20-5(2) and (3) of the TASA requires that a partnership and company seeking registration as a tax or BAS agent will need to meet the 'sufficient number' requirement, which requires that they have a sufficient number of registered individual tax practitioners to provide tax agent services to a competent standard, and to carry out supervisory arrangements.
17. There is no set formula that can be applied for determining the sufficient number of registered individuals that a partnership or company is required to have in order to satisfy this requirement. However, factors that will need to be considered are:
 - the size of the business
 - the services being offered
 - the supervisory arrangements in place
 - the conditions that may be imposed on the partnership or company registration based on the qualifications and experience of its personnel.
18. If a registered tax agent or BAS agent does not meet or ceases to meet the sufficient number requirement, the Board cannot register or renew their registration or can terminate their registration.

Notification obligations

19. Once registered, a registered tax practitioner is required to notify the Board of a change in their circumstances. This obligation relies on a self-assessment by the tax practitioner who must notify the TPB if they cease to meet specified requirements. Further, notification must occur within 30 days of the day on which they tax practitioner becomes, or ought to have become, aware that one of the relevant events occurred.
20. This required written notification to the TPB that there has been a change in circumstances include:
 - the tax practitioner ceasing to meet the ongoing registration requirements
 - the tax practitioner has an event that affects their registration in relation to a partner in a partnership or director of a company that is a partner of a partnership or director of a company.
 - The composition of the partnership changes
 - An individual becomes, or ceases to be, a director of the company
21. If a registered tax agent or BAS agent does not notify the Board of any of the above changes the Board can terminate their registration or impose another administrative sanction.

Code of Professional Conduct

22. Section 30-10 of the TASA establishes the legislated Code for registered tax practitioners. The Code sets out the professional and ethical standards required of registered tax practitioners. This section also outlines the duties that registered tax practitioners owe their clients, the TPB and other registered tax practitioners.
23. The Code consists of a list of core principles which are grouped into five categories:
 - Honesty and integrity
 - Independence
 - Confidentiality
 - Competence
 - Other responsibilities.

24. Within those five categories there are the following 14 principles:

Code item	
1	You must act honestly and with integrity.
2	You must comply with the taxation laws in the conduct of your personal affairs.
3	If you receive money or other property from or on behalf of a client, and you hold the money or other property on trust; you must account to your client for the money or other property.
4	You must act lawfully in the best interests of your client.
5	You must have in place adequate arrangements for the management of conflicts of interest that may arise in relation to the activities that you undertake in the capacity of a registered tax agent or BAS agent.
6	Unless you have a legal duty to do so, you must not disclose any information relating to a client's affairs to a third party without your client's permission.
7	You must ensure that a tax agent service that you provide, or that is provided on your behalf, is provided competently.
8	You must maintain knowledge and skills relevant to the tax agent services that you provide.
9	You must take reasonable care in ascertaining a client's state of affairs, to the extent that ascertaining the state of those affairs is relevant to a statement you are making or a thing you are doing on behalf of a client.
10	You must take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which you are providing advice to a client.
11	You must not knowingly obstruct the proper administration of the taxation laws.
12	You must advise your client of the client's rights and obligations under the taxation laws that are materially related to the tax agent services you provide.
13	You must maintain professional indemnity insurance that meets the Board's requirements.
14	You must respond to requests and directions from the Board in a timely, responsible and reasonable manner.

25. If the TPB is satisfied, following an investigation, that there has been a breach of the Code, it may apply one or more of the sanctions, including termination and suspension, set out in section 30-15 of the TASA.

Civil penalty provisions

26. There are limited civil penalty provisions in the TASA for tax and BAS agents. In particular:
- a. Making false or misleading statements
 - A tax practitioner will breach a civil penalty provision if they knowingly or recklessly (by inclusion or omission):
 - make a false or misleading statement to the Commissioner of Taxation
 - prepare a false or misleading statement which they know, or should reasonably know is likely to be made to the Commissioner
 - permit or direct an entity to make or prepare a false or misleading statement to the Commissioner.
 - b. Employing or using the services of deregistered entities
 - A tax practitioner will breach a civil penalty provision if they employ or use the services of a deregistered entity to provide tax practitioner services, when they know or should reasonably know:
 - that the entity is not currently registered but was previously registered, and
 - the tax practitioner first employed, or first used the services of, the entity within one year of its deregistration.
 - However, the tax practitioner will not breach a civil penalty provision if the entity's registration was terminated because it surrendered its registration, became an undischarged bankrupt or went into external administration.
 - c. Signing of declarations
 - A tax practitioner will also breach a civil penalty provision if they sign a declaration or statement in relation to a taxpayer that is required or permitted under a taxation law, which was prepared by someone else who is not:
 - a registered tax or BAS agent
 - working under the supervision and control of a registered individual tax or BAS agent
27. If a tax practitioner breaches a civil penalty provision under the TASA, we may, within 4 years, apply to the Federal Court of Australia for a pecuniary penalty order. If the Federal Court is satisfied that a civil penalty provision has been breached, it determines an appropriate penalty. The currently penalty amounts for individuals is up to \$68,750 (250 penalty units) and for non-individuals, up to \$343,750 (1,250 penalty units) for each breach.

Relationship with other Government agencies and professional associations

Other agencies

28. While the TPB is an independent statutory body that is responsible for registering and regulating tax practitioners, we seek to have close working relationships with a number of other agencies, in particular, the Australian Taxation Office. Both organisations have an interest in the behaviour and actions of tax practitioners, though for different reasons and in different capacities. Tax practitioners are key players in the tax eco-system that influence and shape the views of their clients. The TPB and the ATO have three key areas of shared strategic goals:
- Educate and support those tax practitioners who seek to comply, with a focus on reducing red tape for the tax profession.
 - Understand and treat tax practitioner risk and compliance behaviour, while maintaining our respective independence.
 - Strengthen the regulation of tax practitioners to increase confidence in the integrity of the tax profession and tax system.

29. In addition to the ATO, the TPB works closely with a number of other agencies including the Treasury and the Australian Securities and Investments Commission.

Professional associations

30. Tax practitioners and their associations are key stakeholders for the TPB. The TPB and professional associations have a shared focus and role in ensuring that tax agent services are provided to the public to an appropriate standard. We work together, through ongoing consultation, including dedicated forums – the Tax Practitioner Governance and Standards Forum and Consultative Forum. These forums provide advice, feedback and input in relation on relevant matters, however final operational and strategic decisions are matters for the TPB Board. Further details about the TPGSF and CF are articulated in the respective published Charters, available at www.tpb.gov.au
31. The TPB also has a legislative role in ‘recognising’ professional associations. Some associations hold recognition as a tax agent association, BAS agent association or both. A full list of recognised associations can be found at www.tpb.gov.au, and include CPA Australia, Chartered Accountants Australia and New Zealand, Institute of Public Accountants, The Tax Institute, Financial Advice Association Australia and Institute of Certified Bookkeepers.
32. Recognition with the TPB provides the voting members of recognised associations with an additional avenue to become registered as tax practitioners. Of the nearly 43,000 individual registered tax practitioners, just over half, or 22,000 have indicated that they are members of a TPB recognised professional association.

Observations about the regulatory model

33. Observations have been made about the TPB’s regulatory framework which was implemented in 2010. These observations have arisen through a 2019 Government initiated review of the TPB and, more recently, issues related to the TPB’s 2022 compliance decision in relation to PricewaterhouseCoopers (PwC) and Mr Peter-John Collins.
34. In 2019, the Government announced an independent review, led by Mr Keith James to assess the effectiveness of the TPB and TASA in regulating tax practitioners. The Review considered whether the legislative framework for the TPB delivers on its policy objectives to ensure that tax agent services are provided to the public in accordance with appropriate standards of professional and ethical conduct. Further, the Review considered whether the legislative framework impaired the operation of the TPB to deliver against their objectives, being:
- to maintain, protect and enhance the integrity of the registered tax practitioner profession;
 - to promote the TPB as an independent, efficient and effective regulator; and
 - to protect all consumers of tax practitioner services.
35. In particular, the Review
- Examined if the legislative framework is operating as intended and continues to be fit for purpose and meet the objectives of the TAS Act.
 - Examined if the governance framework is operating as intended and continues to be fit for purpose.
 - Considered the appropriateness of the TPB’s governance arrangements.
 - Considered whether the tax agent services legislation supports the TPB in responding to known and emerging issues.
 - Examined whether the powers and the functions of the TPB are sufficient to enable the objects of the legislative framework to be met.

- Considered any other matters that may enhance the regulatory environment that tax practitioners operate under, including the interaction with the regulation of relevant related professional activities.
36. In late 2019 a report was delivered to Government and in November 2020 the Government announced its response to the report. Of the 28 recommendations in the James Review, the Government supported in full or in-part with 10 recommendations and supported in principle another 10 recommendations. The then Government's response forms part of the Government's wider commitment to improve the effectiveness of the TPB, who are responsible for the regulation of tax practitioners. The implementation of these recommendations will uphold confidence and support high standards in the tax profession. Some of these reforms have had administrative implementation. Others are currently before the parliament.
37. On 6 August 2023, the Government announced that it will oversee the biggest crackdown on tax adviser misconduct in Australian history. This was a result of the PwC scandal that exposed shortcomings in the regulatory frameworks. Legislation to strengthen the integrity of our tax system and increase the powers of regulators will be introduced this year, with consultation on the reforms beginning shortly. The package of reforms announced covered the following three priority areas:
- Strengthening the integrity of the tax system
 - Increasing the powers of our regulators
 - Strengthening regulatory arrangements to ensure they are fit for purpose.
38. The ongoing inquiries are currently being undertaken by the Parliamentary Joint Committee on Corporations and Financial Services and the Senate Finance and Public Administration References Committee into issues related to the PwC matter are also assisting to identify areas for improvement.
39. The TPB welcomes all of the above opportunities which will result in reforms that improve public protections and professional integrity.
40. The TPB makes the following observations about the current regulatory framework.

Governance arrangements for partnerships and companies

41. As outlined in the table in paragraph 12, companies and partnerships need to meet certain requirements before they can register, or renewal their registration, as a tax practitioner. As part of the James Review, the suitability of these requirements were specifically reviewed. The James Review raised a question about the appropriate levels of governance, transparency and reporting for tax practitioner entities, including large companies and partnerships.
42. Following feedback from key stakeholders, including the TPB and the ATO, the Review found that the existing requirements for companies and partnerships were generally appropriate, subject to improvements required in the governance of these entities. In particular, Recommendation 4.4 from the James Review provided that:

'... the eligibility requirements for company and partnership tax practitioners in the *Tax Agent Services Act 2009* be amended to include a requirement that the entity has appropriate governance arrangements in place that demonstrate who is accountable for the delivery of tax agent services. Whether arrangements are appropriate will be a matter for the TPB to determine, noting that the TPB will need to provide guidance on what appropriate arrangements are, in consultation with key stakeholders, including the professional associations.'

43. In arriving at this recommendation, Mr James saw the benefit of only registering those companies and partnerships that had actual governance and control structures in place, which would ensure that there is clear line of sight for the TPB, ATO and the public as to who is accountable for the delivery of tax agent services — all of which support the objects of the TASA.
44. In its response to this recommendation, the then Government supported the recommendation in principle, noting that greater individual accountability for the delivery of tax agent services within a company or partnership is a sound public policy outcome.

Sanctions regime

45. The 2019 James Review considered the appropriateness of the TPB and TASA's sanction regime. One key theme that emerged from the consultation was that the TPB's current powers to impose sanctions should be retained but there needed to be strong consideration given to whether they should be strengthened, having regard to the powers and sanctions available to other regulators such as ASIC. In particular, there needed to be further consideration as to whether the current sanctions available under the TASA are flexible enough to apply in the modern-day work environment. The Review also highlighted a gap, where the TPB has been left little choice between applying low-level sanctions (such as written cautions and further education), and high-level sanctions including the suspension or termination of registration and civil penalties.
46. As a result of this key theme and finding, Recommendation 6.1 of the Review noted that:
- ‘...the Board’s sanctions powers need to be increased, including introducing the following sanctions into the *Tax Agent Services Act 2009*, which could be applied to registered and unregistered practitioners:
- infringement notices
 - enforceable undertakings
 - quality assurance audits
 - interim suspensions
 - permanent disbarment
 - external intervention.’
47. In response to this recommendation, the then Government noted the recommendation and recognised that while there are a number of sanctions already available to the TPB, the review identified a gap between existing low-level sanctions and higher-level sanctions. The Government stated that Treasury will consult with stakeholders on the appropriateness of providing new sanction powers to the TPB.
48. The TPB supports the Government's announcement of 6 August 2023 that there will be consultation to ensure options are targeted and effective. This includes implementing remaining recommendations from the independent review of the TPB, including strengthening the range of sanctions available to the TPB. Feedback suggests that the sanction powers available to the TPB need to reflect a more contemporary and agile sanctions regime. Any new sanctions regime needs to be graduated to deal with the particular mischief, whether the particular mischief is indicative of a broader risk or a more general deterrence to restore community confidence.

Information sharing between Government agencies

49. TPB supports the announcements by Government on 6 August 2023 to review the secrecy provisions that apply to the ATO and TPB and to consider whether there are further circumstances in which it is in the broad public interest for information obtained by these regulators to be shared with other regulatory agencies.
50. The issue of sharing information between agencies and regulators was also a key area of focus of the James Review. Mr James recommended (Recommendation 3.4) that the law be amended to oblige the TPB, ATO and ASIC to:
- cooperate with each other
 - share information to the maximum extent practicable, and
 - notify the other whenever it forms the belief that a breach in respect of which the other has enforcement responsibility may have occurred.

Relationship with the professional associations

51. As part of the James Review, it was recommended that the TPB should no longer accredit professional associations as a 'recognised professional association' (Recommendation 4.2). Mr James' recommendation was based on the fact that the TPB has limited capacity/capability to test and assess whether a professional association complies, both initially and in an ongoing sense, with the requirements to become recognised. Further, where the association is subject to limited TPB oversight, the TPB could incorrectly be seen as a regulator and thereby carry substantial reputational risk.
52. In response, the then Government noted the recommendation and confirmed that there should be community confidence that tax practitioners have the appropriate professional qualifications and that there will be further consultation on potential changes to registration entry pathways.
53. The TPB supported this recommendation and is of the view that ending the practice of 'recognising' professional associations also addresses one aspect of independence – the perception or risk of perceived and actual conflicts of interest.
54. Improvements to the co-regulatory framework will be supported by proposals announced on 6 August 2023. These include extending protections for whistleblower disclosures to the TPB and enabling the TPB to make disclosures about professional conduct issues to the relevant professional association.

Further information

55. Please contact me at _____ or on _____ or _____ Assistant Secretary
at _____ or on _____ you would like to discuss further.

Yours sincerely

Michael O'Neill
Secretary/CEO
Tax Practitioners Board