



Australian Government

GOVERNMENT RESPONSE TO THE REVIEW OF THE TAX PRACTITIONERS BOARD 2019

November 2020

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Foreword

I am pleased to release the Australian Government's response to the Tax Practitioners Board (TPB) Review 2019

Our response forms part of the Government's wider commitment to improve the effectiveness of the TPB, who is responsible for the regulation of tax practitioners.

Tax practitioners play a vital role in the tax system. Around 17 million taxpayers use a tax agent to prepare their returns.

The panel received more than 90 submissions and met with multiple stakeholders to gauge the effectiveness of the TPB and Tax Agent Services Act 2009 (TASA). Overall, of the 28 recommendations in the Review, the Government supports in full or in-part with 10 recommendations and supports in principle with another 10 recommendations.

I believe our response to the recommendations will result in a more effective and independent TPB and a reduction in red tape for tax practitioners.

Implementation of these recommendations will enhance community confidence, and support high standards in the tax profession.

I note that some of the recommendations require consultation to further develop options for implementation. I look forward to engaging with you over coming months on these issues.

I would like to acknowledge the head of the Review, Mr Keith James (Chair), who was assisted by Mr Neil Earle. I would like to thank them for their outstanding work and thank all parties that made submissions. The

Government is well positioned to take clear and decisive action due to their thorough review and comprehensive report.

As evident in this response, the Government will continue to strongly support effective regulation of tax practitioners via an effective Tax Practitioners Board.

The Hon Michael Sukkar MP
Minister for Housing and Assistant Treasurer

Overview

The Government response

The Australian Government is committed to ensuring high standards of ethics and competency in the tax profession while minimising the regulatory burden on tax practitioners via a strong, independent and effective Tax Practitioners Board (TPB).

Supporting an independent regulator

It is important that the tax profession and wider community have confidence in the regulation of tax practitioners. Greater TPB independence from the ATO will ensure clear accountability and responsibility to the public and Government, and will provide the tax profession with confidence that TPB disciplinary actions are imposed by an independent regulator.

Ensuring high standards in the tax profession

Approximately 74 per cent of individual tax returns and 54 per cent of BASs are prepared by tax agents and BAS agents.

Community confidence in the tax profession is essential to the integrity of the tax system.

The Government will ensure tax practitioners hold appropriate professional qualifications by ensuring that education and experience requirements are set at the right level.

Reducing red tape

The Government will advance opportunities to reduce red tape without compromising regulatory standards, for example by streamlining the regulation of tax (financial) advisers and allowing the TPB to accept different types of experience as being relevant to a practitioner's registration.

The Government will also remove the requirement for tax practitioners to submit an annual declaration (replacing it with a streamlined annual registration process).



Government response

Government response to the recommendations in the Review of the Tax Practitioners Board 2019

Recommendation	Government response
<p>1.1 The Review recommends the Government retain the TPB as the statutory authority responsible for regulating tax practitioners, noting that the disciplinary model for tax (financial) advisers may be reviewed, with effect from 2021, as part of the process of establishing a new central disciplinary body further to Recommendation 2.10 of the Final Report of the Financial Services Royal Commission (FSRC) (see also Recommendation 7.1 in Chapter 7).</p>	<p>The Government supports the recommendation.</p> <p>The TPB remains the most appropriate statutory body to regulate tax practitioners (noting that tax (financial) advisers will be subject to a revised statutory regime – see recommendation 7.1).</p>
<p>2.1 The Review recommends the object clause of the TASA (section 2 5) should be updated to:</p> <ul style="list-style-type: none">a) Include wording to the effect that there should be community confidence in the integrity of the tax system.b) Remove reference to tax (financial) advisers, subject to the adoption of Rec 7.1 in Chapter 7.c) Include reference to unregistered agents. <p>Rephrase the wording to reflect that the TPB is a more mature organisation that is no longer in a start up phase.</p>	<p>The Government supports the recommendation.</p> <p>These changes will make the Tax Agent Services Act 2009 (TASA) more contemporary, and align more closely with the TPB’s role and responsibilities.</p>

Recommendation	Government response
<p>3.1 The Review recommends the TPB should become a separate agency and receive its own specific appropriation from the Government rather than as an allocated proportion of a broader ATO budget (which will require accompanying law changes). This will represent a TPB that is independent from the ATO.</p>	<p>The Government supports the recommendation in principle.</p> <p>The Government agrees that the TPB's independence should be enhanced. After the TPB Charging Arrangements Review has concluded, the Government will take steps to increase the TPB's financial independence from the ATO.</p>
<p>3.2 The Review recommends, in addition to Recommendation 3.1, the following changes should be made to improve the level of independence the TPB has from the ATO:</p> <ul style="list-style-type: none"> a) The position of the CEO of the TPB should be accountable to the Board and become a statutory appointment rather than, as at present, an ATO employee on secondment to the TPB. b) If the TPB second staff from the ATO, there should be formal secondment arrangements put in place for those ATO staff on secondment to the TPB. 	<p>The Government supports the recommendation in part.</p> <ul style="list-style-type: none"> a) The position of CEO will be made accountable to the Board, administratively. The Government does not support the CEO becoming a statutory appointment. b) A formal MOU will clarify the role, responsibilities and accountability of ATO secondees that have been allocated to the TPB.

Recommendation

Government response

3.3 The Review recommends:

- a) The TPB and ATO should maintain and publish a plan that sets out how they will work together, encouraging early engagement, strengthening information sharing, providing clear responsibilities and accountabilities and setting agreed strategic goals.
- b) The creation of a Tax Practitioner Governance and Standards Forum and corresponding Charter of Tax Practitioner Governance.

The Government supports the recommendation.

The Government agrees that a published plan outlining working arrangements between the ATO and the TPB would provide transparency to the community. The Government notes that the ATO and the TPB are already in the process of preparing this plan.

In addition to the proposed members of the Tax Practitioner Governance and Standards Forum, the Government considers that a BAS agent association member should also be a member.

Recommendation

Government response

3.4 The Review recommends:

1. The law should be amended to oblige each of the TPB and ATO to:

- a) co operate with the other;
- b) share information to the maximum extent practicable; and
- c) notify the other whenever it forms the belief that a breach in respect of which the other has enforcement responsibility may have occurred.

2. The law should be amended to oblige each of the TPB and ASIC to:

- a) co operate with the other;
- b) share information to the maximum extent practicable; and
- c) notify the other whenever it forms the belief that a breach in respect of which the other has enforcement responsibility may have occurred.

The Government supports the recommendation in principle.

The Government agrees that the TPB should work in co-operation with both the ATO and ASIC, sharing information and notifying each other where there are breaches where the other has enforcement responsibility.

Recommendation

Government response

3.5 The Review recommends that the whistleblower laws be amended such that the TPB is legislatively defined as an 'eligible recipient'. This would ensure that the TPB is able to:

- a) receive information from an eligible whistleblower and eligible recipient;
- b) and disclose information received to other eligible recipients.

The Government notes the recommendation.

The Government will consult with key stakeholders on the scope of possible disclosures to the TPB that would benefit from whistleblower protections.

3.6 The Review recommends:

- a) The Tax Agent Services Act 2009 is amended to mandate that at least one member of the Board is a community member. Consideration will need to be given as to how this term is defined but it should be expected they would provide community focused input and have a high level of experience in regulating professional activities outside of the tax profession.
- b) Subsection 70 30(2) of the Tax Agent Services Act 2009 is amended so that only two members of a committee, that is making appealable decisions, have to be Board members and the third member can be a person chosen at the Board's discretion so long as that person has the appropriate skills and knowledge.

The Government supports recommendation part (a) in principle.

(a) The Government agrees in principle that Board members should be selected to provide a range of skills and expertise including an understanding of community matters. Under current law, the Government has the capacity to appoint members so as to ensure an appropriate mix of skills and expertise is included on the Board.

(b) The Government does not support amending Subsection 70 30(2) of the Tax Agent Services Act 2009 so that only two members of a committee that is making appealable decisions have to be Board members. Appealable decisions can have significant impacts and therefore should be made by members with the relevant accountability standards.

Recommendation

Government response

4.1 The Review recommends in relation to the primary qualifications (education and experience requirements), that:

- a) The TPB, in collaboration and consultation with other regulators, professional associations, education providers, the tax profession and other key stakeholders, undertake a review to determine if the primary qualification level itself has been set at the right level and what grandfathering arrangements would be appropriate (if required).
- b) The Treasury and the TPB, with input from key stakeholders, determine whether an amendment to the Tax Agent Services Regulations 2009 is appropriate to give the TPB greater flexibility to accept other qualifications that may not fall within the traditional tax practitioner course of study.

The Government notes the recommendation.

The Government will request that the TPB undertake further consultation on contemporary education requirements for tax practitioners. Following this consultation process, the Government will consider if changes to the legislation are required, as well as the need for any transitional arrangements.

Recommendation

Government response

4.2 The Review recommends that the TPB should no longer accredit professional associations as a 'recognised professional association'. The consequence of this is that the registration entry pathway based on being a voting member of a TPB recognised professional association (items 102, 206 and 304 of Schedule 2 to the Tax Agent Services Regulations 2009), will no longer be required. However, it is recommended that these items are removed prospectively with appropriate permanent grandfathering arrangements in place.

The Government notes the recommendation.

The Government believes that there should be community confidence that tax practitioners have the appropriate professional qualifications and will consult further on potential changes to registration entry pathways.

4.3 The Review recommends:

- a) The Tax Agent Services Regulations 2009 being amended to give the TPB greater flexibility to accept different types and periods of experience as being relevant. This would allow the TPB to take into account individual circumstances such as maternity leave or other absences from the profession.
- b) As part of (a), The Treasury and the TPB, with input from key stakeholders, determine whether an amendment to the TASR is appropriate to amend the amount of relevant experience (and nature of experience) required to be registered as a BAS agent.

The Government supports the recommendation.

The Government agrees that it is appropriate that people are not penalised by taking time off for maternity leave or other absences from work and will consider whether changes to legislation are required to effect this outcome.

Treasury will consult with stakeholders to determine whether the amount of relevant experience required to be a BAS agent is appropriate.

Recommendation

4.4 The Review recommends 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.

Government response

The Government supports the recommendation in principle.

The Government agrees that greater individual accountability for the delivery of tax agent services within a company or partnership is a sound public policy outcome.

Treasury will consult with key stakeholders to develop a proposal that would improve firm/partnership accountability and governance.

Recommendation

Government response

4.5 The Review recommends that:

- a) The Treasury, with input from key stakeholders (in particular the TPB) amend the fit and proper person test in the Tax Agent Services Act 2009 to ensure greater consistency with the requirements of other Government regulators, such as ASIC and APRA.
- b) The current 5 year period in the Tax Agent Services Act 2009 in which the TPB must consider certain conduct that may contravene the fit and proper person test should be increased or removed entirely, with guidance from other regulators.
- c) Those applying for registration with the TPB, including renewal, must disclose any spent convictions.

The Government supports the recommendation in principle.

The Government agrees in principle that these recommendations could reduce compliance risks and red tape.

The potential red tape reduction benefits of any changes to align the TASA fit and proper person test with other similar tests should be considered against the transitional and implementation costs of amending the existing test.

Treasury will conduct additional consultation with key stakeholders to consider whether this recommendation is consistent with broader Government policy on the treatment of past convictions or conduct.

Recommendation	Government response
<p>4.6 The Review recommends that the Tax Agent Services Act 2009 be amended to include as part of a tax practitioner’s eligibility for registration a requirement to declare:</p> <p>i)</p> <ul style="list-style-type: none"> a) any close associates relevant in the provision of tax agent services; and/or b) employees involved in the provision of tax agent services; <p>who are affected by any of the fit and proper events in the Tax Agent Services Act 2009; and</p> <p>ii) if they have engaged anyone listed in the proposed unregistered practitioners register.</p>	<p>The Government supports the recommendation in principle.</p> <p>The Government agrees that it is important that any employees and associates used by a tax practitioner meet expected standards.</p> <p>The Government will request this recommendation be implemented administratively via a requirement to disclose this information as part of the registration process via an approved form.</p>
<p>4.7 The Review recommends that:</p> <ul style="list-style-type: none"> a) The registration period be converted to an annual period, subject to the TPB being able to make the necessary system and IT enhancements to reduce the regulatory burden on tax practitioners that are renewing their registration. b) The annual registration fee should be pro rated, in comparison to the current fee payable for a three year registration period. 	<p>The Government supports the recommendation in part.</p> <p>The Government agrees to move to an annual registration cycle.</p> <p>Registration fees will be determined as part of the TPB Charging Arrangements Review (see response to Recommendation 3.1).</p>

Recommendation	Government response
<p>4.8 The Review recommends that following completion of the trial of tax clinics and decisions of Government to either cease or extend the program, the issue of tax clinics and the TPB be reviewed to determine if any longer term amendments may be required.</p>	<p>The Government notes this recommendation.</p> <p>Since this recommendation was made the Government has now agreed to continue the program.</p> <p>Having just completed a one year trial it is considered too early in the process to conduct a further review at this stage.</p>
<p>4.9 The Review recommends that:</p> <ul style="list-style-type: none"> a) Only those tax intermediaries that are not regulated by any other Government body should require registration with the TPB, despite otherwise being required to be registered with the TPB. b) The TPB should have the power, through the legislative instrument process, to exclude certain other services from having to register with the TPB. 	<p>The Government supports the recommendation.</p> <p>Adopting this recommendation will reduce the compliance burden on many small businesses while still ensuring an appropriate level of regulation.</p> <p>Using the legislative instrument process will ensure that appropriate consultation occurs to confirm that any tax services will still be appropriately regulated.</p>
<p>5.1 The Review recommends that the relevant Minister be given a legislative instrument power to be able to supplement the Code of Professional Conduct to address emerging or existing behaviours and practices. The legislative instrument process would also ensure appropriate consultation with key stakeholders and parliamentary oversight.</p>	<p>The Government supports the recommendation.</p> <p>There are clear benefits in having processes in place to ensure the Code of Professional Conduct remains contemporary.</p> <p>Any proposed changes to the Code will be considered first by the Tax Practitioner Governance and Standards Forum proposed as part of Recommendation 3.3.</p>

Recommendation	Government response
<p>5.2 The Review recommends that a provision concerning legal professional privilege (LPP) such as that in section 70 of the Australian Securities and Investments Commission Act 2001 be enacted in the Taxation Administration Act 1953 (TAA).</p> <p>Further, a similar protocol to that being developed between the Law Council of Australia and the ATO in relation to LPP claims should be developed for tax practitioners generally. This item should be something for the proposed forum (at Recommendation 3.3) to consider.</p>	<p>The Government supports the recommendation in part.</p> <p>Development of the protocol between the Law Council and the ATO should be progressed and finalised and a similar protocol developed for tax practitioners.</p> <p>Once both protocols have had sufficient time to be considered in operation, the Government will revisit the need for legislative intervention.</p>
<p>6.1 The Review recommends 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:</p> <ul style="list-style-type: none"> a) infringement notices b) enforceable undertakings c) quality assurance audits d) interim suspensions e) permanent disbarment f) external intervention. 	<p>The Government notes the recommendation.</p> <p>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.</p> <p>Treasury will consult with stakeholders on the appropriateness of providing new sanction powers to the TPB.</p>

Recommendation	Government response
<p>6.2 The Review recommends that:</p> <ul style="list-style-type: none"> a) Investigations are able to commence and/or continue once a registered tax practitioner either has their registration terminated, chooses not to re-register, or is seeking to surrender their registration. b) The limitation on the TPB formally gathering information prior to commencing and notifying a tax practitioner of an investigation be removed. c) The six month timeframe to conduct an investigation be removed. 	<p>The Government supports the recommendation in part.</p> <p>The Government agrees with (a) and will amend the law to enact this change.</p> <p>The Government will consult further on (b) and (c) to investigate the systemic implications of changing the current limitation on TPB formal information gathering and investigation time limits.</p>
<p>6.3 The Review recommends that the Tax Agent Services Regulations 2009 be amended to enable the TPB to publish more detailed reasons for tax practitioner sanctions, including terminations, on the TPB Register (which is publicly available). See also Recommendation 8.1.</p>	<p>The Government notes the recommendation.</p> <p>The Government notes that there should be transparency for the community to make informed decisions regarding their use of tax services and will consult on the scope of information to be included on the TPB register and how long the information should remain on the TPB register.</p>
<p>6.4 The Review recommends that an administrative penalty regime, administered by the ATO, be introduced to impose penalties on tax practitioners who demonstrate an intentional disregard of the taxation laws in making, or being involved in making, a statement to the Commissioner of Taxation.</p>	<p>The Government notes the recommendation.</p> <p>Any additional powers provided to the TPB (as per Recommendation 6.1) should be given time to be considered in operation before considering the need to introduce ATO administered administrative penalties for tax practitioners.</p>

Recommendation

6.5 The Review recommends the safe harbour protection as it applies both to false or misleading statement penalties and failure to lodge penalties, be extended to cover instances where the tax agent or BAS agent has demonstrated recklessness or intentional disregard with respect to a taxation law.

Government response

The Government notes the recommendation.

In the absence of a new administrative penalty regime administered by the ATO (recommendation 6.4), a response to this recommendation is not required.

Recommendation	Government response
<p>7.1 The Review recommends, in alignment with implementing Recommendation 2.10 of the Final Report of the Financial Services Royal Commission, a new model be developed for regulating tax (financial) advisers in consultation with ASIC, FASEA, the TPB and Treasury. This new model should incorporate the following features:</p> <ul style="list-style-type: none"> a) single point of registration for individuals; b) requirement to abide by only the one code of conduct; and c) any disciplinary action involving the provision of tax advice is decided by experts from the tax profession. <p>Until the new model is developed the status quo should be retained.</p>	<p>The Government supports the recommendation in principle.</p> <p>The Government agrees that the regulatory overlap should be reduced. The Government is setting up a new disciplinary system for financial advisers in response to recommendation 2.10 of the Financial Services Royal Commission.</p> <p>This new system will cover all financial advisers, including individual tax (financial) advisers.</p> <p>Tax (financial) advisers will only be subject to a single disciplinary regime.</p>
<p>7.2 Having recommended the regulatory burden on tax (financial) advisers is to be reduced, the Review believes it is reasonable that a similar level playing field should be considered for accountants. The Review therefore recommends the Government initiate a specific review of what advice accountants can and cannot give in respect of superannuation and which accountants that might apply to. Such a review could perhaps be undertaken by the Productivity Commission.</p>	<p>The Government supports the recommendation in principle.</p> <p>The Government will review this issue as part of Recommendation 2.3 of the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.</p>

Recommendation

Government response

8.1 The Review recommends that:

- a) Details of tax practitioners that are currently included on the TPB Register should be expanded. This could include publishing a wider range of information, decisions and outcomes on the TPB Register.
- b) A register of unregistered tax practitioners be made available. This register would include those entities that receive a notice by the TPB to 'cease and desist' providing tax agent services for a fee and publication of details relating to renewal application rejections (in certain circumstances, such as not being fit and proper).
- c) The time limits on how long certain information appears on the Register be removed.

The Government supports the recommendation in part.

Paragraph (a) support in principle. Paragraphs (b) and (c) not supported.

Ensuring a wider range of information is available to the public may help safeguard consumers of tax agent services.

Option (b) is impracticable, and it is not clear what benefit would be provided to consumers by the creation of a separate register for unregistered tax practitioners. The current TPB register provides a comprehensive record of all registered tax practitioners.

(c) Maintaining time limits retains the right for a sanction to be spent after a reasonable time.

8.2 The Review recommends that details of tax practitioners that are included on the TPB Register should ultimately be included on the Modernising Business Register.

The Government supports the recommendation in principle.

The Government has provided funding in the 2019-20 Mid-Year Economic and Fiscal Outlook to begin modernising the business registers at the Australian Securities and Investments Commission (ASIC) and the Australian Taxation Office (ATO). While this program initially includes only the business registers at ASIC and the ATO, the intention is for this platform to be a whole-of-government service and is being built to be able to incorporate other registry data, when appropriate.