

TPB Consultative forum and Financial adviser forum report – 20 November 2019

Thank you for joining Ian Klug (Chair), Michael O’Neill (CEO / Secretary), Julie Berry (Board member) and fellow Tax Practitioners Board (TPB) colleagues at the joint meeting of the TPB Consultative Forum and Financial Adviser Forum held on Wednesday 20 November 2019. We appreciate your valuable input and have produced a summary below to assist your association with communicating key messages to your members.

Items raised by Forum members

Safe harbour

- It was noted that the recent [discussion paper on the recent Review into the TPB and the TASA](#) (“the recent Review”) considered the operation of safe harbour.
- It was suggested that TPB and ATO website content be reviewed to facilitate greater awareness and to provide further clarity regarding process and outcomes.

Raising community awareness of the TPB and registered agents

- It was noted that the TPB is aware of the importance of continuing to raise visibility and is also hopeful of opportunities that may arise from the recent Review. It was also noted that website content had recently been updated (including new consumer-specific content such as a [new factsheet](#) for clients of registered tax practitioners), and that key messages were promoted to consumers throughout tax time.
- The Forum was also advised that the TPB recently engaged market research expertise to ascertain empirical data on current baseline awareness and to better inform the TPB’s communications for audiences. It was confirmed that survey results are currently being analysed and preliminary research data was shared with the Forum:
 - Many consumers are still unaware of the TPB;
 - The TPB is perceived to be effective at ensuring practitioners are registered but less effective at communicating importance of using registered practitioners;
 - Most consumers use a practitioner at least once a year and most businesses use a practitioner multiple times a year;
 - Most consumers have used their current practitioner for more than five years.
- The Forum suggested that the TPB continue to review its overall communications to ensure the TPB appropriately endorses the TASA regime and supports the clear majority of registered tax practitioners who comply with their obligations.

Unregistered agents

- It was noted that integrity of the system relies on a multiplicity of messages and that the TPB will continue to follow-up on unregistered agents and increase visibility of the TPB and its actions, as well as look into registered agents doing the wrong thing.

- It was confirmed that there are around 50 active cases currently being considered in relation to unregistered agents (representing about 1 in 6 of all complaints/referrals), and that each complaint is risk assessed to determine the most appropriate treatment.
- Key points were also noted from the [TPB's submission](#) on the recent Review, with the TPB hopeful of opportunities that may arise from its outcomes.

Transparency of sanction process

- A brief overview of the TPB compliance process was provided during the Forum and it was noted that a webinar was developed on the TPB investigation process, which is available to [view on Youtube](#).
- It was also noted that website content was recently updated (including [links to summaries of Board Conduct Committee decisions](#) on compliance matters) and that the TPB will continue to review and update material, having regard to feedback received.
- The Forum also suggested that the TPB provide further guidance (such as a brochure) on what a tax practitioner can expect when the TPB conducts an investigation.

ATO update

- The ATO's Forum representative Colin Walker (Assistant Commissioner, Tax Professional Digital Services) briefly outlined major changes that will have an impact on tax and BAS agents, including:
 - Two-month lodgement and payment deferral for taxpayers and agents in bushfire-affected areas;
 - Switching off access to tax and BAS agent portals on 29 November 2019, replaced by [OnlineServices](#);
 - The Activity statement financial processing project moving all activity statement and franking deficit tax financial information into the one ATO system, with the system change to occur in December 2019;
 - ongoing work concerning deceased estates; and
 - transitioning off AusKeys to myGovID.

TPB update

Operational update

Registration matters

- *Proof of identity (POI) checks:*
 - It was noted that the remaining practitioners yet to complete the POI process are expected to do so over the next 12 months, and that the TPB will continue to employ a pragmatic approach for the small number of practitioners who experience any difficulty passing POI checks and requiring an in-person check at Australia Post.
 - The TPB appreciates the continued support from recognised associations to remind their members of key messages – in particular:
 - The POI process is a one-off process

- Practitioners should complete the process as soon as practicable, rather than wait till when the annual declaration is due.
 - Practitioners should make sure they enter the information exactly as it appears on their legal document(s).
 - If documents cannot be verified in the Document Verification Service (DVS), or the practitioner does not consent to using the DVS, they must undertake an in-person POI check at Australia Post.
- It was also noted the TPB is in ongoing discussions to facilitate dovetailing of the POI process into the whole of government myGovID process.
- *Cessation of branch registrations:* It was reiterated that the Board no longer allocates branch registrations and is continuing to reduce the number of branches through an orderly process. It was confirmed that relevant entities have been contacted and that the TPB will continue to review the cessation of branch registrations on a case by case basis.
 - *Annual declaration lodgement:* It was noted that an increasing proportion of annual declarations are being lodged late (approximately 17% over the last quarter) and that the TPB is continuing to work on multiple solutions to encourage lodgement (including tailoring reminder messages and reviewing website content). The TPB appreciates the continuing support of recognised associations to remind their members of key messages, including completing and submitting annual declarations on time and keeping contact details up to date in MyProfile so that TPB requests can reach them.
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General compliance update

- It was noted that there are generally over 300 investigations at any one point in time, with the TPB collaborating closely with the ATO on complex matters including black economy taskforce work, and a joint compliance program on the 2,000 highest risk advisers and unregistered service providers.
- It was also noted that there has been a recent increase in activity by the Board Conduct Committee, including terminating over 70 practitioners already this financial year (as at 20 November 2019). This compares with 61 terminations in the 2019 financial year, and 24 terminations in the 2018 year.
- The Forum was also advised that there has been a corresponding increase in cases before the Administrative Appeals Tribunal (AAT). It was confirmed that as at end-October 2019, there were 38 cases before the Administrative Appeals Tribunal and 2 cases before the Federal Court.

CPE review update

- A status update was provided in relation to the TPB's CPE review activity - in particular:
 - Of the tax practitioners reviewed to date, most have been found compliant and have responded to requests for their CPE logs within the specified timeframe.
 - The TPB continues to provide education and guidance to practitioners to improve compliance. In particular, the TPB continues to remind practitioners of the importance of maintaining contemporaneous records, and that there is a 25% reading cap (not more than

25 per cent of CPE over a registered practitioner's CPE period should be completed through relevant technical or professional reading).

- It was noted that there were 545 practitioners randomly selected for a review for the period 1 July to 31 October 2019. Over 200 of these are still currently in progress, including 7 active CPE investigations. Of 327 reviews already completed, the following outcomes eventuated:
 - 287 practitioners were found to have met their CPE obligations;
 - 25 practitioners were found to have been marginally deficient in meeting their obligations and received education letters;
 - 5 practitioners were suspended (with orders);
 - 10 practitioners surrendered their registration.
- Learnings from CPE review activity are being considered in the TPB's review of CPE policies.

Regulator Performance Framework

- It was noted that the TPB continues to conduct an annual self-assessment of performance against the Regulator Performance Framework (RPF), providing an overall summary of performance against 6 key performance indicators on the administration of regulation. As part of this exercise, the TPB consults with TPB Consultative forum members to validate that its performance and conclusions are reasonable and objective.
- The Forum noted the draft 2018-19 RPF self-assessment report and metrics table, and that information and evidence to support the metrics is also contained in the TPB's 2018-19 Annual Report and associated Annual Performance Statement.
- It was confirmed that any feedback received will be considered prior to seeking relevant approvals, and that the TPB will also provide this feedback when submitting the report for approval. It was also noted that the final RPF report will be published on the TPB website.

Strengthening the TPB culture

- The Chair and Secretary noted that the TPB experienced significant change over the previous 12 months (including a review of leadership and strategy and the recent Review) and that organisational culture is an integral component in the reform and health of the TPB.
- Experienced organisational psychologist Robbie Macpherson (Adaptable Leadership) was introduced to the Forum, noting that he is working with the TPB to undertake a review of the current TPB culture and leadership, and to explore how to strengthen it to ensure the TPB is fit for purpose.
- It was noted that the culture review is interested in 2 key questions:
 - 1) What in the current TPB culture and leadership needs to be preserved or changed?
 - 2) What would an ideal culture look like, and how to realise this?
- It was confirmed that Forum members could feed into this process, with an opportunity to provide any direct feedback to Robbie about the TPB's culture by 30 November 2019.

Policy and legislative matters

Review of the TASA and TPB

- It was noted that the recent Review provided a fantastic opportunity to enhance the regulatory regime, and that discussion at the previous Forum provided a valuable opportunity to facilitate a shared understanding.
- It was confirmed that copies of the TPB and ATO submissions on the Discussion paper are published on the [Treasury website](#).
- It was also noted that a Final Report was delivered to Government on 31 October and that the timeframe for a response from Government is unknown.

CPE policy requirements

- The TPB considered Forum feedback on a discussion paper regarding a review of the TPB's Continuing professional education (CPE) policy requirements.
- The feedback received noted a range of views, including the following themes:
 - a suggestion that the TPB adopt/align the Financial Adviser Standards and Ethics Authority FASEA's Continuing profession development requirements as meeting the TPB's CPE requirements for tax (financial) advisers to reduce unnecessary regulatory burden;
 - varying views regarding what should be the minimum CPE hour requirement for tax and BAS agents;
 - no overwhelming support for the following:
 - mandating a minimum number of hours in particular CPE categories;
 - mandating attendance of a TPB webinar for new practitioners;
 - reducing requirements for practitioners working part-time.
 - broad support for maintaining the 25% reading cap allowance, and for increasing the record keeping requirement from 6 years to 7 years;
 - most supporting the TPB's current approach of not accrediting CPE activities or providers;
 - the TPB should continue to be pragmatic in its approach and not impose unnecessary regulatory burden regarding evidence of CPE completion; and
 - a suggestion that the TPB provide further detail in relation to its approach (principles applied) in considering extenuating circumstances.
- It was confirmed that further amendments would be made to the discussion paper for clarity, prior to seeking wider public comment on the TPB's preliminary views.
- The TPB welcomes any further submissions on the updated discussion paper, which will be considered in conjunction with all previous submissions, before the TPB determines its position.

Audit insurance

- The TPB considered Forum feedback received on a proposed update to the TPB information sheet on managing conflicts of interest for registered tax and BAS agents ([TPB\(I\) 19/2014](#)) in relation to audit insurance.
- The feedback received was generally supportive of the proposed update, with the following themes noted:

- further edits were suggested to provide additional clarity, including requirements as to appropriate disclosure;
- a suggestion to include further examples about audit insurance, and a wider review of the information sheet to further address concerns regarding management of conflicts of interest;
- A range of views on the extent of conflict of interest associated with dealing in audit insurance products.
- It was confirmed that further minor edits were made to provide clarity and consistency in messaging, including that the TPB strongly recommends a written statement for positive affirmation/consent, and that the updated information sheet will be published shortly.

BAS agents and Super Guarantee

- The TPB is in ongoing discussion with the ATO in relation to clarifying the scope of services when dealing with Superannuation Guarantee and Superannuation Guarantee Charge work. Subject to consideration of additional information being sought from the ATO, it is expected that out-of-session Forum feedback will be sought on a specific discussion paper.
- It was also noted that consultation processes would be required in relation to any amendment to the [current legislative instrument declaring certain services as 'BAS services'](#).

Other matters

Royal Commission into Misconduct in Banking and Financial Services

- It was noted that the implementation roadmap was released by Government on 19 August 2019 (providing a 2-year implementation outlook) and that the Government has accelerated establishment of a new disciplinary system and single disciplinary body.
- The TPB will continue to consider the broader environment and seek to be involved in relevant consultation to assist in reducing unnecessary regulatory burden.

Next meeting

- The Chair thanked forum members for the continuing and constructive feedback and noted that TPB Consultative Forum meetings for the 2020 calendar year are tentatively scheduled to be held on 24 March, 23 June and 17 November 2020. A 'save the date' notification will be forwarded to participants, pending final details.
- Other forums may be held on an exception basis as required and consistent with past practice, the TPB will seek forum feedback regarding future operation of the forum via a relevant survey to forum members.