

Tax Practitioners Board Regulator Performance Framework Self-assessment 2020-21

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1. Introduction

This is the Tax Practitioners Board's (TPB) sixth and final self-assessment report under the 2014 Regulatory Performance Framework (RPF).

From 1 July 2021, regulator performance reporting under the RPF was replaced with a new principles-based Regulator Performance Guide (RPG).

The six outcome-based Key Performance Indicators (KPIs) seek to facilitate performance assessment by; ensuring accountability, being transparent, flexible and cost-effective; and complement, rather than duplicate, other processes.

The TPB has received approval to have the TPB Consultative Forum externally validate its metrics to measure and assess performance against the six KPIs. The TPB, in consultation with the Forum, has developed a range of metrics against each of the KPIs before publishing them on the TPB website.

2. Self-assessment

This report sets out the TPB's 2020-21 self-assessment against the RPF. To support the TPB's annual self-assessment, we have consulted with the TPB Consultative Forum members to validate performance as well as the reported conclusions being reasonable and objective.

This self-assessment report provides an overall summary and conclusion on the TPB's performance against the RPF and the six KPIs. This report provides an overall summary on areas where the TPB is performing well and areas of risk to the TPB.

This is then followed by a separate summary and conclusion for each of the six KPIs in providing an objective assessment of how the TPB has performed against each of the KPIs. Information and evidence to support our metrics is contained in our Corporate Plan 2020-21, Annual Report 2020-21 and the associated Annual Performance Statement.

2.1. Self-assessment method

The TPB uses a three-point rating scale to self-assess our performance against for each of the six KPIs. Information supporting each KPI was analysed and allocated an appropriate rating to indicate the level of performance achieved.

Rating	Performance definition
Met	Strong performance against all measures under the KPI
Substantially Met	Strong performance against most measures under the KPI
Not Met	Unsatisfactory performance against most measures under the KPI

3. Summary of self-assessment

This assessment is based on the outcomes of our metrics and the improvements made for each of the six KPIs. We have assessed our performance to be 'met' for five of the six KPIs and 'substantially met' for the other. Details of our assessment are outlined in the individual KPI summaries.

Summary of self-assessment results		Ratings for 2020-21
KPI 1	Regulators do not unnecessarily impede the efficient operation of regulated entities.	Met
KPI 2	Communication with regulated entities is clear, targeted and effective.	Met
KPI 3	Actions undertaken by regulators are proportionate to the risk being managed.	Met
KPI 4	Compliance and monitoring approaches are streamlined and coordinated.	Substantially Met
KPI 5	Regulators are open and transparent in their dealings with regulated entities.	Met
KPI 6	Regulators actively contribute to the continuous improvement of regulatory frameworks.	Met

Throughout 2020-21, we continued to build on a range of new strategies and developments in the TPB, as well as external reviews which have impacted our business and priorities. The emergence of COVID-19 in early 2020 challenged regulators to examine the impact they were having on strained businesses. While registration of tax practitioners will always be a central function of the TPB, our focus has shifted more into the regulatory space with attention on appropriately managing risks and targeting those practitioners who pose the greatest threat to the system.

Our enabling legislation, the *Tax Agent Services Act 2009* (TASA), the TPB and the accompanying legislative framework became the focus of an independent effectiveness review, led by Keith James, and completed in October 2019. In November 2020, the final report of the James Review was released, along with the Australian Government's response to the review. The TPB worked effectively with Treasury, other government agencies and the professional associations to progress the implementation of the review recommendations accepted by Government.

The engagement with our stakeholders continued to build through our effective communications strategies which, once again, produced great results. We continued to engage a range of communication tactics and channels to provide clear, targeted and effective messaging to our audiences. We also established the Tax Practitioner Governance and Standards Forum, as recommended by the James Review, to ensure appropriate consultation and collaboration on any significant proposals.

We focused on relationship building with industry stakeholders and related agencies, in particular the Australian Taxation Office (ATO) and Australian Securities and Investments Commission (ASIC). For example, through collaboration with the ATO, the TPB had access to intelligence of tax practitioners who were inappropriately making claims for themselves or on behalf of their clients. Our use of data analytics together with increased intelligence from our partner agencies further improved our compliance results. Recommendations from the James Review will continue to

improve our information-sharing with appropriate government and industry bodies to improve our outcomes as a regulator.

During 2020-21 we focused our efforts on streamlining the tax practitioner registration system and supporting practitioners in response to COVID-19. In particular, we focused on balancing the reduction of red tape with protecting consumers of tax agent services (including BAS and tax (financial) advice services).

Overall, the TPB maintained its focus on continually serving our community – both registered tax practitioners, professional bodies and consumers of taxation services. The James Review has been a pivotal exercise in shaping and future proofing the organisation during this period and will continue to have implications into future periods. Our renewed focus as a regulatory body does not involve compromise to our business as a registration body – we have continued to demonstrate commitment to improving our processes and streamlining procedures both for tax advisers and internally. We will continue to focus our efforts on practitioners and unregistered preparers who pose the greatest risk to the integrity of the tax profession and system and manage our resources effectively.

Rating for the summary of assessment	Met
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4. Summary against the six KPIs

4.1 - KPI 1

Regulators do not unnecessarily impede the efficient operation of regulated entities

We have continued our program to improve the efficient operation of regulated entities, as outlined below.

COVID-19 Challenges

We continued to support tax professionals to implement the Australian Government's COVID-19 stimulus measures which began in 2019-20 – cash flow boosts, the JobKeeper Payment and the early release of superannuation program.

We also helped to ensure the integrity of the stimulus packages was upheld, by investigating allegations of tax practitioners taking unlawful advantage of the measures for themselves and/or for their clients. We continued to modify regulatory requirements to help practitioners manage their own and their client affairs. We also staffed a central inbox that monitored complaints and referrals from the public and tax practitioners, and maintained a COVID-19 tip-off queue on our telephone enquiry line to receive any enquiries regarding potentially fraudulent activities relating to the stimulus measures.

For example, extending response deadlines for tax practitioners to respond to the TPB. We also introduced targeted compliance procedures to deal with improper activity and claims around the multiple stimulus measures. To support our recognised professional associations, we made concessions in relation to their requirement to submit annual declarations to the TPB to maintain ongoing recognition under the Tax Agent Services Regulations 2009.

In addition, we continued several concessions to assist tax practitioners meeting their renewal and ongoing registration requirements, including:

- alternative methods to complete Board approved course assessments
- temporarily relaxing the reading cap required for continuing professional education requirements
- automatic exemption to lodge annual declarations
- enabling BAS agents, through legislative instruments, to legally support their business clients with matters relating to the stimulus measures.

Stakeholder engagement

We are committed to consulting and working with key stakeholders and registered tax practitioners, ensuring their experiences and industry knowledge help inform the TPB in its decision making and operations.

In addition to continuing to facilitate our TPB Consultative Forum, we developed the structure for the Tax Practitioner Governance and Standards Forum, as recommended by the James Review. This will ensure that any significant proposals affecting tax practitioners: such as changes to relevant legislation and regulations, including the Code of Professional Conduct (Code) in the TASA, and the creation and application of a charter of tax practitioner governance – are made with appropriate consultation.

During 2020-21, the TPB drafted, consulted upon and published a number of information products to assist tax practitioners to understand their professional responsibilities, and to support the majority of tax practitioners, who do the right thing. They included new information products in relation to

requirements for recognition as a professional association, the use and disclosure of a client's tax file number information, proof of identity requirements for client verification, and supervisory arrangements and continuing professional education policy requirements for registered tax practitioners.

We consider the use of the Consultative Forums to be a key reference point for gathering feedback from the profession on our draft policy guidance material as a highly effective process in helping form our policy positions. During 2020-21 we conducted four consultative forums and discussed a range of issues relevant to the profession. We have received favourable feedback from forum members on their inclusion in our feedback processes.

Registrations processes

We have a range of service standards for the processing of new and renewal applications for registrations we report on. During 2020-21 the TPB processed 92% of all new and renewal applications within 30 days, well above our service standard of 80%.

In 2020–21, we continued our drive to consult and interact with the wide range of stakeholders involved in our industry, including registered practitioners, recognised professional associations, government, the public, partnership agencies and others. This included providing practical guidance through webinars and discussion papers, and sharing key messages online and via media channels.

We have assessed ourselves to have performed well for this KPI, given our dedicated approach to engagement with all key stakeholders, including the establishment of processes to receive feedback from them. It is important to our operations that those practitioners who are doing the right thing are supported and engaged. We worked with the ATO and other government partners on new initiatives and strategies to enhance the regulatory environment for registered tax practitioners across Australia. Ensuring a whole-of-government approach is taken, and improve the integrity of the tax system.

For example, when developing the TPB's proposed proof-of-identity requirements for tax practitioners, we worked closely with the ATO to ensure that any requirements that it imposes are consistent with the requirements that the ATO intends to impose on tax practitioners.

Rating for KPI 1	Met
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4.2 - KPI 2

Communication with regulated entities is clear, targeted and effective

Our communications strategy aims to educate the community on the importance of using a registered practitioner, educate practitioners themselves on their obligations and responsibilities, and increase awareness of the TPB and the legislation underpinning our regulation. Through our communications, we share the story of how we manage practitioner compliance to better protect consumers and the majority of honest and ethical practitioners.

We employ an extensive range of communications channels and products to provide clear, targeted and effective messaging to our audiences and key stakeholders. This includes a mix of digital communication and face-to-face channels such as professional forums, conferences and ATO open forums. Our website, the main channel for communicating with practitioners and consumers, includes policy guidance (explanatory papers, guidelines and information sheets) to help tax practitioners understand and comply with their obligations. Draft policy material is made available for feedback from professional associations, tax practitioners and consumers, before finished material is made available on the website.

Our 2020-21 Annual report highlights some of our major successes in communications for the period, including:

- The TPB eNews online newsletter distributed monthly to around 61,000 tax practitioners with “open” rates which are 35% above industry averages and reader feedback suggesting a highly engaged reader base.
- 23 editions of TPB eNews – including two special editions, covering tax time for tax and business activity statement (BAS) agents (in July 2020) and the government’s announcement of reforms to the TASA (in December 2020) – distributed to an average of 59,800 subscribers each month (up from 59,000 in 2019–20)
- The TPB website attracted 1,027,693 unique visits and over 2 million searches were conducted on the public register, highlighting the usability of the website to the public to ensure they are engaging appropriate advisers.
- Daily social media messaging delivered via LinkedIn, Facebook and Twitter, and boosting of selected posts to promote wider coverage of our messages
- 23 free webinars conducted to support and educate tax practitioners on their obligations and provide opportunities for continuing professional education, and recordings of the webinars made available online through the TPB’s YouTube channel
- 33 news articles published on our website to provide the latest news and updates, along with supporting materials of interest to tax practitioners
- three instructional videos produced to assist tax practitioners meet their obligations.
- implementation of an improved distribution system for media releases and media communication, utilising a commercial subscription service that includes a database which is updated daily and includes over 59,000 media contacts and outlets around Australia.

We directly engage with professional practitioner associations and conduct regular consultative forums with tax and BAS practitioners and tax (financial) advisers. This engagement facilitates efficient communications with registered tax practitioners, allowing us to inform stakeholders of our services and provides them with opportunities to have input into the TPB’s service delivery and operations.

Rating for KPI 2	Met
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4.3 - KPI 3

Actions undertaken by regulators are proportionate to the risk being managed

Our compliance strategy is risk-based, with our compliance work and resources focused on issues where there is the greatest risk of harm to the integrity of the profession, specific taxpayers, the community, and the tax system more broadly.

This risk-based approach is the best use of our resources and avoids unnecessarily impacting the vast majority of responsible tax practitioners who seek to comply with the Code of Professional Conduct and other obligations.

We currently implement a tiered risk assessment process involving an initial assessment of the risk and issues, a secondary preliminary analysis, and a formal investigation process for relevant matters. We gather and analyse intelligence from information sourced from complaints lodged with the TPB, referrals from the ATO and data analytics of high-risk areas.

We received 2,014 complaints and referrals regarding potential breaches of the TASA by tax practitioners and unregistered entities. 587 matters were sent to the TPB from the ATO in 2020-21, an increase of 140% from 2019-20. The increase in ATO referrals was largely driven by matters related to the COVID-19 stimulus measures. This trend of increased ATO referral activity is expected to continue as we focus on our relationship and capabilities in data and intelligence sharing, including a Coordinated Compliance Strategy.

Our complaints resolution framework requires us to assess complaints received from a range of sources, in a timely manner. Complaints are received, then reviewed and assessed in accordance with our risk framework. Throughout 2020–21, our continued and improving use of data analytics enabled us to target the complaints which represented the highest risks to our tax system and focus our resources appropriately.

We have improved our use of profiling as part of treatment plans to review referrals and complaints to identify and address high-risk behaviour. To address the most egregious behaviour by unregistered preparers, we have also prioritised an unregistered preparers strategy with a dedicated team created to identify and address unregistered preparer behaviour.

Overall, we resolved 1,925 cases from complaints, referrals and intelligence by targeting higher risk practitioners. As our data and intelligence capability has continued to develop and mature, it supported us to detect the highest risk practitioners and present 170 cases from across our compliance programs to the Board Conduct Committee. We were able to deliver quality outcomes and manage risk appropriately with only a minor impact on case outcomes.

We will continue to focus on those practitioners posing the highest risk to the integrity of the tax profession, consumers and the tax system more broadly. In doing so, we will refine our risk modelling, invest in data analytics, increase collaboration and engagement with other regulators, including the ATO and develop new compliance and registration initiatives to detect poor behaviour.

Rating for KPI 3	Met
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4.4 - KPI 4

Compliance and monitoring approaches are streamlined and coordinated

We have assessed this performance measure as 'substantially met', due to:

- a shift in priorities to support the government's COVID-19 stimulus measures
- insufficient resourcing to fully utilise data analytics to prioritise complaints and identify patterns and trends in intelligence.

Nonetheless, we continue to review and improve our compliance and monitoring processes, whilst ensuring affected practitioners are afforded procedural fairness. We continue to engage early with practitioners to resolve matters as early as possible, and with minimal disruption to the practitioner's business.

We have actively sought to strengthen our relationships with other Commonwealth regulators, particularly the ATO and ASIC, to ensure effective and coordinated approaches to address shared compliance risks.

The Coordinated Compliance Strategy between the ATO and the TPB, previously called the Joint Compliance Program, continued to mature. Throughout 2020–21, our improving use of data analytics enabled us to target the complaints and conduct which represented the highest risks to our tax system and consumers and focus our resources appropriately.

We have aligned the TPB complaints resolution framework with the ATO risk model to ensure that tax practitioners who are classified as a higher risk by the ATO are prioritised for appropriate compliance activity.

By using evidence and data extracted and verified from third party sources, we have also successfully run streamlined compliance projects that minimized unnecessary interaction with the affected tax practitioners. These projects targeted specific compliance risks and issues, such as failure to maintain professional indemnity insurance, misuse of self-managed superannuation fund auditor numbers and unsubstantiated R&D claims.

Our annual declaration (AD) program encourages ongoing compliance through a streamlined approach which requires tax practitioners to demonstrate to the TPB on an annual basis that they meet their ongoing registration requirements. Due to the impacts of COVID-19, we suspended the requirement to lodge ADs from July 2020 to December 2021, and have instead been collecting this information from practitioners as they complete their registration renewal applications.

Through the use of data analytics and coordinated compliance approaches, the TPB is increasingly identifying high risk practitioners such as unregistered preparers, those involved in tax crime, promoters of tax avoidance schemes and those who facilitate the black economy. By focusing its investigations and sanctions on these high-risk practitioners, the TPB is leveling the playing field for the vast majority of responsible and complying registered tax practitioners.

Rating for KPI 4	Substantially Met
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4.5 - KPI 5

Regulators are open and transparent in their dealings with regulated entities

Tax practitioners play an important role in helping individuals and businesses meet their taxation obligations. We are committed to consulting and working with key stakeholders, particularly tax practitioners, to ensure their experiences inform and influence the TPB's decision-making and operations.

We communicate with the tax profession through all relevant professional associations, and directly with practitioners through our website, emails, speaking events, conferences, webinars, meetings and consultative forums. We have drafted, consulted and published a number of information products to assist tax practitioners to understand their professional responsibilities, and to support the majority of tax practitioners, who do the right thing.

These include: new information products in relation to requirements for recognition as a professional association, the use and disclosure of a client's tax file number (TFN) information, proof-of-identity requirements for client verification, supervisory arrangements and continuing professional education policy requirements for registered tax practitioners.

Publication of the TPB Annual Report for 2020-21 is a key document in providing transparency to the Government, tax practitioners, the public and community stakeholders. It was released in October 2021 and details our key successes and challenges for the period, including our support for practitioners in dealing with the COVID-19 pandemic:

- Results of our compliance initiatives such as the self-managed superannuation funds audit issues project and the professional indemnity insurance project.
- Strong results demonstrated through a range of targeted communications activities.
- Improvements in our digital services both internally and externally, such as improved data sharing and analytics, and improved intelligence with the ATO.

We also work with approved course providers to ensure that courses offered meet the TPB's education requirements regarding courses in Australian taxation law, commercial law, basic accountancy principles, and basic GST/BAS taxation principles.

We are open and transparent about our goals, priorities, strategies and risks, as demonstrated by our attendance at business and industry conferences, speaking at forums and seminars. To this end we regularly engage with practitioners and their professional associations to address complaints, seek input about policy and provide feedback about our performance. For example, our consultative forums provide our Recognised Professional Associations with an update from the Chair and are given the opportunity to raise any issues for discussion and feedback.

We engage with practitioners and the public via a range of communication channels, including eNews for advisers, our Register to help the public make an informed tax practitioner choice, and via our website. This includes free webinars conducted to support and educate tax practitioners on their obligations and provide opportunities for continuing professional education, and recordings of the webinars made available online through the TPB's YouTube channel.

Importantly, this year we have updated our Register with further information to enhance transparency around Board sanctions. This supports public awareness and encourages voluntary compliance by all practitioners.

We also publish certain compliance cases, which serves as an effective mechanism to clarify what is appropriate practitioner behaviour; a total of 13 final decisions were published by the

AAT in relation to 18 matters (five decisions involved an individual and a related company registration).

The AAT affirmed the TPB Board's substantive decision in all matters, varying the non-application period in four matters and removing it entirely in three matters. The non-application period was increased in one matter.

In addition, we are also committed to regularly publishing case studies on our website which summarises outcomes from the Board Conduct Committee, as well as issuing media releases that highlight Federal Court and Administrative Appeals Tribunal decisions involving the Board. We consider our performance against the KPI to be strong due to the engagement processes with all key stakeholders and the extensive communication channels to inform the tax practitioner community.

Rating for KPI 5	Met
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4.6 - KPI 6

Regulators actively contribute to the continuous improvement of regulatory frameworks

We continue to focus our efforts on streamlining our systems and processes to effectively administer the TASA and uphold the tax profession's integrity. In everything we do, we aim to simplify processes for registered tax practitioners and those looking to register, and to protect the interests of the consumers who engage the services of tax practitioners.

For example, we have made significant progress towards the Workbench system, which is a new customer relationship management tool to replace our ageing systems. Workbench is built upon commercial software products that will improve our ability to automate, process applications in a timely manner, and track and analyse client interactions.

Good business management is the first way we enhance the regulatory framework. This includes assessing our goals and priorities, responding to the changing environment, reviewing our strategies and processes, measuring performance against ambitious targets, building capability, culture and continuous systems innovation.

Our governance processes, especially oversight by our independent Board, ensures that our performance is checked, contested and challenged to improve.

The TPB is strongly committed to support law reform. In particular, we are committed to supporting the Australian Government's response to the James Review. This includes working with Treasury to implement law changes, consulting further on a number of the review's recommendations, and implementing the government's response administratively. We also continued to work with Treasury to streamline the regulation of financial advisers, as recommended by the Hayne Banking Royal Commission and the James Review.

This independent review into the effectiveness of the TPB and the TASA was to ensure that tax agent services are provided to the public in accordance with appropriate professional and ethical standards. This review was a positive step forward for the future, and change was timely following 10 years of operation under the TASA.

The Government accepted the majority of the recommendations which brings key changes to enhance our effectiveness, including:

- increasing our independence, so that we have clear accountability and responsibility to the public and the government – this will provide confidence that our disciplinary actions are imposed by an independent regulator
- reducing red tape, including by streamlining the regulation of tax (financial) advisers and allowing us to accept different types of experience as being relevant to a practitioner's registration
- ensuring that education and experience requirements are set at the right level for tax practitioners to ensure community confidence in the tax profession
- bolstering eligibility requirements to ensure that only those individuals and entities that meet high standards of ethical and professional behaviour can obtain tax practitioner registration
- expanding the information that appears on our online public register so that consumers of tax services can be even more informed.

The TPB continues to work closely with Treasury and the tax practitioner profession to progress the Government's response to the review.

Rating for KPI 6	Met
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