



Australian Government



TAX  
PRACTITIONERS  
BOARD

# **Tax Practitioners Board Regulator Performance Framework Self-assessment 2018-19**

UNCLASSIFIED

# Contents

- 1. Introduction.....3
- 2. Self-assessment .....3
  - 2.1 Self-assessment method .....4
- 3. Summary of assessment.....5
- 4. Summary against the KPI's.....7
  - 4.1 - KPI 1 Regulators do not unnecessarily impede the efficient operation of regulated entities.....7
  - 4.2 - KPI 2 Communication with regulated entities is clear, targeted and effective .....9
  - 4.3 - KPI 3 Actions undertaken by regulators are proportionate to the risk being managed .....10
  - 4.4 - KPI 4 Compliance and monitoring approaches are streamlined and coordinated .....11
  - 4.5 - KPI 5 Regulators are open and transparent in their dealings with regulated entities .....12
  - 4.6 - KPI 6 Regulators actively contribute to the continuous improvement of regulatory frameworks ..14

# 1. Introduction

The Government's regulation reform agenda introduced a Regulator Performance Framework (Framework) to help measure the performance of regulators and to reduce the burden of regulation on the community.

The Government has developed the Framework to measure and test the performance of regulators with six outcome-based Key Performance Indicators (KPIs) of best practice, performance and administration. Such measures, along with public reporting are intended to give business, stakeholders, the community and individuals confidence that regulators effectively and flexibly manage risk in the work they perform.

The Framework seeks to facilitate performance assessment by; ensuring accountability, being transparent, flexible and cost-effective; and complement, rather than duplicate, other processes. Regulators are required to work in consultation with their agreed stakeholders and report annually on their performance against the six KPI's.

The Tax Practitioners Board (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 consultative forum, has developed a range of metrics against each of the KPIs before publishing them on the TPB website.

<b>Six Key Performance Indicators</b>	
<b>KPI 1</b>	Regulators do not unnecessarily impede the efficient operation of regulated entities.
<b>KPI 2</b>	Communication with regulated entities is clear, targeted and effective.
<b>KPI 3</b>	Actions undertaken by regulators are proportionate to the risk being managed.
<b>KPI 4</b>	Compliance and monitoring approaches are streamlined and coordinated.
<b>KPI 5</b>	Regulators are open and transparent in their dealings with regulated entities.
<b>KPI 6</b>	Regulators actively contribute to the continuous improvement of regulatory frameworks.

## 2. Self-assessment

This report sets out TPB's 2018-19 self-assessment against the Framework. To support the TPB's annual self-assessment, the TPB has consulted with its consultative forum members to validate its performance and its conclusions are reasonable and objective.

This self-assessment report provides an overall summary and conclusion on the TPB's performance against the Framework and the six KPIs outlined in the Framework. This report provides an overall summary on areas the TPB is working well on 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 2018-19, Annual Report 2018-19 and the associated Annual Performance Statement.

## 2.1 Self-assessment method

The TPB uses a four-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.

<b>Rating</b>	<b>Performance definition</b>
<b>Excellent</b>	Meets all expectations of performance
<b>Very good</b>	Meets most expectations with minor room for improvement
<b>Satisfactory</b>	Average performance with room for improvement
<b>Improvement required</b>	Performance is partially met with considerable room for improvement

### 3. Summary of assessment

In the overall assessment against the KPIs, the TPB continues its commitment to enhancing the regulatory environment for registered tax practitioners across Australia. The TPB has demonstrated continuing drive to be consultative and interactive with key stakeholders and registered practitioners and has made it a priority to better communicate and help practitioners comply with their obligations.

2018-19 saw a range of new strategies and developments in the TPB, as well as external reviews which have impacted our business and priorities. The Hayne review into Misconduct in the Banking, Superannuation and Financial Services Industry was one factor influencing the Board in approving and introducing five new strategies to support our role and function as a regulatory body and protector of the tax system in Australia. 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. Together with improved governance and new strategies around our culture and our people, we are working to evolve the organisation in line with the recommendations of the report.

Our enabling legislation, the *Tax Agent Services Act 2009* (TASA), had not been reviewed since its inception in 2009. And since March 2019, almost ten years after the TPB commenced operations, the TPB and the accompanying legislative framework has been the focus of an independent effectiveness review, led by Keith James.

In our submissions to the review, we have focussed on making it easier for practitioners to comply and are seeking greater powers for the TPB to manage misconduct, ultimately ensuring a level playing field for all practitioners. This has been a journey for the Board, our people and broader stakeholders, including practitioners and other government agencies, to facilitate the TPB being able to do a better job as a regulator.

Of important note is the fact that over 60 written submissions from practitioners, other associations and various stakeholders were received as part of the consultation process of the review, all of which will work to build stronger recommendations and outcomes, and a stronger TPB. Our stakeholders are engaged and just as committed to upholding the integrity of the tax profession and the tax system.

The engagement with our stakeholders continued to build through our effective communications strategy, 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. Our strategies focussed on supporting the regulated professionals with registration, renewal and education of obligations, increasing visibility of TPB outcomes, and raising awareness with the community of the importance of using registered tax practitioners.

We continued to communicate and engage with our key industry stakeholders and regulated entities. We conducted webinars, presented at various public forums and meetings and conducted consultative forums with our members. We take our relationship with our stakeholders and community seriously, and have demonstrated that we not only inform, but we actively listen, and change based on feedback received.

We focus on relationship building with industry stakeholders and related agencies, in particular the ATO and ASIC. Referrals from the ATO continued to increase and build our compliance initiatives during the period. Our use of data analytics together with increased intelligence from our related agencies further improved our compliance results. It is hoped that recommendations from the TASA/TPB review continue to improve our information-sharing with appropriate government and industry bodies to improve our outcomes as a regulator.

During 2018-19 the TPB focussed its efforts on streamlining the tax practitioner registration system, effectively administering the TASA and upholding the tax profession's integrity. The TPB aims to simplify processes for registered tax practitioners and those looking to register, and to protect the interests of the consumers who use the services of tax practitioners.

Our risk-based approach to compliance ensures we are focussed on those parties who pose the greatest risk to the integrity of the tax system and upholds the values of those parties who continue to do the right thing under the TASA and our Code of Professional Conduct. We implemented new compliance programs in 2018-19 including the debt and lodgement program to ensure tax practitioners were up to date with their ATO lodgements and outstanding debt. Our Continuing Professional Education (CPE) audits received positive results and identified few practitioners that were not up to date with their requirements, but also showed how committed practitioners are to their professional development and their clients.

Our efforts to streamline our registrations process and introduce new security features was well received by our stakeholders and the introduction of a dedicated telephony team ensured we were well placed to quickly respond to inquiries so our members could get on with business.

Overall, the TPB is focussed on continually serving our community – both registered members, professional bodies and users of taxation products and advice. The review of the TASA has been a pivotal exercise in shaping our self-assessment of the organisation during this period and will continue to have implications into future periods. Our new 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 compliance procedures both for members and internally. We will continue to focus our efforts on those practitioners who pose the greatest risk to the integrity of the system and manage our resources effectively.

<b>Rating for the summary of assessment</b>	Very good
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## 4. Summary against the KPI's

### 4.1 - KPI 1 Regulators do not unnecessarily impede the efficient operation of regulated entities

As stated in our submissions to the TASA review discussion paper, 'the TPB supports any steps taken to reduce the regulatory burden on tax practitioners'<sup>1</sup>. The TPB's final submission to the independent review recognised the increased costs and complexity of multiple professional services regulatory regimes operating in Australia. We see merit in systemic review of these overlapping regimes by a body such as the Productivity Commission. This would have particular impact on TFAs who are subject to ongoing reforms recommended by the Hayne Royal Commission. We also support improvements to regulating unregistered tax practitioners through law reform and increased funding to ensure a level-playing field across the industry.

Beyond our involvement in the TASA review and the potential for reform, the TPB has continued its program to improve the efficient operation of regulated entities, as outlined below.

#### ***Stakeholder engagement***

The TPB is 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. A key example of this was the roundtable discussion at our 3 July 2019 consultative forum, where forum representatives spoke about their submissions on the terms of reference for the independent review of the effectiveness of the TPB and the TASA, with discussion providing an opportunity to facilitate a better understanding of stakeholder views and create a shared understanding. This demonstrates our commitment to strong communication and action with our stakeholders.

To assist our practitioner base to comply and reduce costs of such compliance, the TPB publishes policy guidance material in the form of explanatory papers, guidelines and information sheets. All proposed policy material is issued as public exposure drafts as a means of seeking industry and public feedback. These public exposure drafts are first issued to the consultative forum members for their feedback, before seeking public feedback. Guidance material is regularly reviewed and updated to ensure information disseminated to stakeholders is relevant and accessible, and during 2018-19 three information products were updated and a new guidance product issued to support practitioners.

The TPB considers the use of the consultative forums as a key reference point for gathering industry feedback on our draft policy guidance material as a highly effective process in helping form our policy positions. During 2018-19 we conducted three 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***

The TPB has a range of service standards for the processing of new and renewal applications for registrations it reports on. During 2018-19 the TPB processed 88% of all new and renewal applications within 30 days, exceeding our performance standards. New processes were implemented to speed and ease the application process for practitioners, including the online modules, and a dedicated telephony team to assist with inquiries.

#### ***Engagement with the ATO to streamline processes***

The TPB continued to build its relationship with the ATO and other regulators during 2018-19. We continued to improve our referrals program to target the highest risk practitioners, support the detection of unregistered agents, and uphold the integrity of the profession. Our use of data

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<sup>1</sup> *Review of the Tax Practitioners Board*, Discussion Paper, July 2019, p67

analytics and improved intelligence sharing with the ATO enabled us to action a greater number of referrals and cases, increasing the number of terminated registrations by up to 200%.

The TPB considers it has performed well for this KPI with a dedicated approach to engagement with all key stakeholders and establishing processes to receive feedback from them. It is important to the TPB that those agents that are doing the right thing are supported and engaged. In 2018-19 the introduction of new strategies and compliance programs strengthened our resolve to support registered agents and seek out those tarnishing the profession. We made strong progress in these areas and our engagement strategies and registrations processes have continued to enable the TPB to positively interact with stakeholders and respond to their requirements in providing professional tax practitioners services for all consumers.

<b>Rating for KPI 1</b>	Very good
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## 4.2 - KPI 2 Communication with regulated entities is clear, targeted and effective

The TPB 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 other 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 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 finalised material is made available on the website. The TPB website is the main channel for communicating with practitioners and consumers and all other modes of communication lead to the website for further information.

Our 2018-19 Annual report highlights some of our major successes in communications for the period, including:

- The TPB eNews online newsletter distributed monthly to around 60,000 tax practitioners with feedback suggesting a highly engaged reader base.
- A successful media engagement strategy which resulted in a potential audience reach from TPB media releases totalling more than seven million readers and general coverage resulting from both TPB media liaison and unsolicited coverage with a reach of over 21 million readers.
- The TPB website attracted 670,897 unique visits and over 1.7 million searches were conducted on the public register, highlighting the usability of the website to the public to ensure they are engaging appropriate advisers.
- The TPB improved its engagement on social media channels, with our Twitter followers increasing 10%, our LinkedIn followers increasing 226% and our YouTube channel received over 23,000 individual views. In June 2019, we started a Facebook page which is an important communications base for BAS agents and small business owners.
- The TPB conducted 22 webinars and increased the number of registrations by 54%. These webinars count towards required CPE hours for practitioners and form an important part of our education and communication channels.

The TPB directly engages with professional practitioner associations and conducts regular consultative forums with tax and BAS practitioners and tax (financial) advisers. This engagement facilitates efficient communications with registered tax practitioners and allows the TPB to inform them of our processes and provides them with opportunities to have input into the TPB's service delivery and operations.

The TPB conducted and appeared at 55 outreach events in the last financial year across Australia, including 17 industry and professional association events and also presented at 38 ATO Open Forum events. These are an important way for the TPB to communicate with a range of stakeholders including new and existing members, and members of the public.

Overall, the TPB has had great success with our communications strategy during 2018-19. We look forward to building our presence on social media platforms and continuing to engage the public and members to build awareness of the TPB.

<b>Rating for KPI 2</b>	Very good
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## 4.3 - KPI 3 Actions undertaken by regulators are proportionate to the risk being managed

The TPB's compliance strategy is risk-based; compliance work and resources are focused on issues where there is the greatest risk of harm to specific taxpayers and to the community. This risk-based approach is the best use of the TPB's resources and avoids unnecessary impacts on the majority of responsible tax practitioners who seek to comply with the Code of Professional Conduct and other obligations.

The TPB currently implements 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.

In 2018-19, tax and BAS agents demonstrated a high level of compliance with the annual declaration process. The annual declaration provides valuable intelligence to the TPB so that we can address high-risk behaviours that would otherwise undermine public confidence in the tax profession. Failure to submit a registration renewal or annual declaration by the due date may result in a sanction, including suspension or termination of registration. In 2018-19, the TPB received 49,707 annual declarations and investigated 516 practitioners, with 594 sanctions applied including 24 terminations.

The TPB also addressed 1,974 complaints and referrals regarding potential breaches of the TASA by tax practitioners and unregistered entities. 196 matters were sent to the TPB from the ATO in 2018-19, an increase of 63% from 2017-18, The increase in ATO referrals was a result of a focus on data and intelligence sharing and aligned investigation strategies. This trend of increased referral activity is expected to continue as we focus on our relationship and capabilities in this area.

In 2018-19 we introduced new compliance programs focussed on tax practitioners outstanding debt and lodgements and their continuing professional education requirements. Both programs had outstanding results including the collection by the ATO of over \$37million in outstanding practitioner debt and 8,000 lodgements. 530 CPE audits were conducted confirming the vast majority of practitioners take seriously their ongoing educational obligations. However, 83 practitioners were cautioned, and eight formal investigations led to formal sanctions, including suspensions, for CPE breaches.

All of these activities and programs show the TPB's focus on the integrity of the profession and the importance of reducing the risk to consumers when using the services of a registered tax practitioner. We ensure those who are registered are up to date with their declarations and CPE requirements. We also ensure that the risk of engaging an unregistered agent is managed with our risk-based approach and data referrals and intelligence from the ATO and complaints.

Overall, the TPB did not meet published service standards of 80% of registered entities complaints cases finalised within set timeframes in 2018-19 - with 71% of cases completed within 150 days and 72% of cases completed within 210 days. However, in the broader context of an increase in compliance cases of 83% on 2017-18, we were able to deliver quality outcomes and manage risk appropriately with only a minor impact on case outcomes.

Going forward, the TPB will continue to focus on those parties posing the highest risk to the integrity of the tax profession and the tax system more broadly. We will continue to invest in data analytics, increased collaboration and engagement with the ATO and other agencies and new compliance and registration initiatives to detect poor behaviour.

Rating for KPI 3	Very good
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## 4.4 - KPI 4 Compliance and monitoring approaches are streamlined and coordinated

The TPB promotes and facilitates relationships with other Commonwealth regulators, particularly the ATO and the Australian Securities and Investments Commission (ASIC), to ensure a more streamlined and coordinated approach to issues of mutual interest. This extends to timely exchanges of information (where permitted) for matters of co-regulation, areas of shared risks and compliance referrals. The TPB coordinates this by regular liaison meetings with these regulators and particularly works closely with the ATO on compliance matters they have referred to us.

The Board's members participate in our conduct committees to ensure a nationally consistent approach is taken to all registration and compliance outcomes. This nationally coordinated approach also allows for the most efficient processes to be deployed and allows for additional streamlining of compliance work, as committee members have an end to end view of the TPB's compliance work. All sanctions and terminations are reviewed, assessed against our risk matrix and legislation and decided by an independent committee of Board members. Confirmation that the Board exercises its independent role appropriately is seen in decisions from courts, the Administrative Appeals Tribunal and other external agencies, such as the Inspector General of Taxation and Taxation Ombudsman (IGTO).

Our corporate plan details the strategic objectives the TPB will target in order to fulfil our purpose. Prior to its release the TPB discussed the planned objectives of the organisation with our stakeholders, including attendees at our regular consultative forums and took on feedback prior to its publication. This is just one example of how the TPB seeks and adopts feedback from our stakeholders.

Our corporate plan also details our compliance focus and initiatives for 2019-20, a key project being our commitment to improving our outcomes in the unregistered tax practitioner space. The TPB acknowledges it needs to do more to work in profiling and understanding the unregistered practitioner audience to align with our tiered risk assessment system. This will continue to ensure a level-playing field for our registered agents and improve outcomes for the broader community to protect them against poor advice and ensure the integrity of the tax system.

The TPB's annual declaration program ensures an annual interaction with registered tax practitioners with a streamlined approach for tax practitioners to meet their ongoing registration requirements. In 2018-19, registered tax agents, BAS agents and tax (financial) advisers lodged annual declarations. The clear majority of tax practitioners who were required to lodge an annual declaration did so by the due date.

We continue to review and improve our compliance processes, with new targets and commitments as stated in our corporate plan which support our initiatives in this area. We continue to streamline and improve outcomes in the compliance space, for both regulated entities and the community.

<b>Rating for KPI 4</b>	Satisfactory
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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. The TPB is 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.

The TPB communicates with the tax profession through all relevant professional associations, and directly with practitioners through its website, email, events, conferences, webinars and meetings and consultative forums.

Publication of the TPB annual report is a key document in providing transparency to our Government, practitioner and community stakeholders. The 2018-19 annual report was released in October 2019 and details our key successes and challenges for the period, including:

- New Board Chair and a new Board Secretary and CEO
- Our new strategic focus for 2018-19 including the endorsement of five new strategies by the Board
- Results of our new compliance initiatives such as the Debt and Lodgment program and the CPE audit of registered practitioners.
- Strong results demonstrated through a range of targeted communications activities, including webinars, media and social media engagements which have improved tax practitioner engagement and awareness of the requirements of registration and compliance.
- Improvements in our digital services both internally and externally, such as improved data sharing and analytics and improved intelligence with the ATO.

In December 2018, the TPB released a new guidance product to assist all registered tax practitioners understand their obligations under the Code of professional Conduct (complying with taxation laws in the conduct of personal affairs). The TPB also updated three existing guidance products during the year. The TPB has also commenced a review of all guidance products. Feedback about the TPB's suite of information products has been sought from tax practitioners, TPB staff, the consultative forum and the financial adviser forum, and the review will progress in 2019-20.

The TPB engages frequently with the professional associations, including those that are accredited by the TPB as a recognised tax agent, BAS agent or tax (financial) adviser association, that support the tax practitioner profession. This approach and related feedback, ensures the expectations of tax practitioners as represented by their professional bodies, aligns with the role of the TPB as the regulator of the tax profession in Australia.

The TPB also engages frequently with approved course providers and other key stakeholders on the education requirements for registration as a tax agent, BAS agent or tax (financial) adviser. In particular, the TPB works with approved course providers to ensure that courses offered meet the TPB's education requirements regarding courses in Australian taxation law and Commercial law.

Consumer protection is an overriding goal of the TPB, and it facilitates a framework which helps support this goal. The TPB engages with the broader community to ensure matters of tax practitioner conduct are appropriately managed. In addition to our regular communications program of digital and face-to-face engagement, the TPB regularly publishes case studies on the website which summarises outcomes from the Federal Court, Administrative Appeals Tribunal and the Board Conduct Committee and provides further information to ensure public confidence in our decision making.

Additionally, the TPB maintains a public register which provides information about registered and deregistered tax agents, BAS agents and tax (financial) advisers.

The TPB considers its 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 and community.

<b>Rating for KPI 5</b>	Very good
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## 4.6 - KPI 6 Regulators actively contribute to the continuous improvement of regulatory frameworks

The TPB continues to focus its efforts on streamlining the tax practitioner registration system, effectively administering the TASA and upholding 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.

Our work incorporating tax (financial) advisers into our registrations and renewals work has now largely been completed. Efforts to streamline registration processes has enabled all practitioners to continue on their business as per usual with minimal additional compliance and interaction with the TPB required.

Our dedicated telephony team has freed up our registration resources to focus on application and annual declaration processing.

The Hayne Royal Commission report recommended regulators engage with the Government's new Modernising Business Registers program of work as an avenue to cut red tape, the review also recommended the TPB Register should be expanded to better inform consumers. These are all recommendations we support and will investigate, together with the recommendations of the TASA/TPB review.

The Keith James review of the TASA/TPB provided a valuable opportunity to evaluate the TPB and the TASA, with the final report provided to the Assistant Treasurer on 31 October 2019. We have worked closely with Mr James, the ATO and Treasury throughout the review to ensure our views and positions are conveyed. It is our hope that the recommendations of the report and Government decisions support the ongoing improvement of the TPB.

Additional powers of review and sanction would provide the TPB with a greater authority over the practitioners who are not doing the right thing to uphold the integrity of the system. A review of the structure of our organisation and our independence could provide streamlined outcomes and improve our ability to regulate the industry.

Also, recommendations could shape our relationships with other regulators, including the ATO and ASIC to better exchange intelligence and findings under streamlined information sharing protocols.

The TPB welcomes the findings and recommendations of the review and will continue to work with appropriate stakeholders to implement the recommendations of government.

Much of this work on implementation from the TASA/TPB review will occur in 2019-20 and as such, there is more work to be done in regard to meeting this KPI.

<b>Rating for KPI 6</b>	Satisfactory
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