

Tax Practitioners Board Regulator Performance Framework Self-assessment 2019-20

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1. Introduction

The Government's regulation reform agenda introduced a Regulator Performance Framework (the 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 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 TPB's 2019-20 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 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 2019-20, Annual Report 2019-20 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.

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

Summary of self-assessment results		Ratings for 2019-20
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

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 a 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.

In 2019-20, 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 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 supporting the public, practitioners acting professionally and enhancing the integrity 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), the TPB and the accompanying legislative framework became the focus of an independent effectiveness review, led by Keith James, and completed in October 2019. Subject to Government's consideration of Mr James' final report, we look forward to implementing reforms to enhance the system.

In our submissions to the review, we have focused on making it easier for practitioners to comply and are seeking reforms 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 highly 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 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 and occasionally, such as during the bushfires and COVID pandemic, individual tax practitioners. Our strategies focused 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 engaged with our key industry stakeholders and regulated entities. We conducted webinars, presented at various public forums and meetings and conducted consultative forums with practitioners and their professional representatives. 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 focused 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 partner agencies further improved our compliance results. It is hoped that recommendations from the TASA/TPB review will continue to improve our information-sharing with appropriate government and industry bodies to improve our outcomes as a regulator.

During 2019-20 the TPB focused its efforts on streamlining the tax practitioner registration system and supporting practitioners in response to Covid 19 conditions. In particular, we focused on **adjusting** regulatory requirements, so practitioners were better able to support their clients. Many practitioners worked tirelessly to assist clients, especially in accessing Government stimulus measures. 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 focused 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 strengthened our compliance programs in 2019-20 including the debt and lodgment program to ensure tax practitioners were up to date with their ATO lodgments and outstanding debt. Our Continuing Professional Education (CPE) audits not only identified those practitioners that were not up to date with their requirements, but also showed how committed practitioners are to their professional development.

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 practitioners could get on with business.

Overall, the TPB is focused 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 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 compliance procedures both for tax advisers and internally. We will continue to focus our efforts on those practitioners and unregistered advisers who pose the greatest risk to the integrity of the system and manage our resources effectively.

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

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

As stated in the TPB's public submissions to the TASA review discussion paper, "the TPB supports any steps taken to reduce the regulatory burden on tax practitioners". The TPB's final submission to the independent review recognised the increased costs and complexity of multiple professional services regulatory regimes operating in Australia. The TPB also supports improvements to regulating registered and unregistered tax practitioners through law reform and appropriate funding to ensure a level-playing field across the profession.

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.

Covid 19 Challenges

In this year of unprecedented challenges, tax practitioners have provided invaluable service to support their clients, especially in accessing JobKeeper and other Government stimulus measures. The TPB has modified its regulatory requirements to help practitioners manage their own and their clients affairs. This included providing concessions for CPE (private reading time), reducing reporting (suspending annual declarations), and flexible extensions of time. In addition, we have adjusted our compliance program to reduce the impact on tax advisers whilst still targeting higher risk cases.

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. In addition to tax practitioners, the TPB managed and supported relationships with recognised professional associations and the TPB's Combined Consultative and Financial Adviser Forum members. In addition, the TPB signed its first memorandum of understanding with a recognised professional association, setting out a clear and practical framework for engagement, cooperation and proactive information sharing.

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.

During 2019-20, this included a new practice note providing practical guidance about the benefits of using letters of engagement and matters that tax practitioners should consider including in letters of engagement, with a focus on ensuring compliance with the Code and the TASA. Other guidance materials updated on the TPB website were in relation to Single Touch Payroll, newly enacted whistleblower legislation, the Notifiable Data Breaches scheme, and the requirements of the TPB and the Financial Adviser Standards and Ethics Authority (FASEA).

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 2019-20 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 2019-20 the TPB processed 77% of all new and renewal applications within 30 days, just below our performance standard of 80% mainly due to COVID

staffing impacts. New processes were implemented to speed and ease the application process for practitioners, including automation 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 2019-20. 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. The use and integration of data analytics capability within the TPB’s investigations stream assisted decision-making, case selection and the ability to assess the compliance of tax practitioners quickly, improving compliance activities considerably. The use of data also enabled the automation of personal tax obligation checks for registration renewals, improving the accuracy of the checks and improving registration service levels.

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 who are doing the right thing are supported and engaged. In 2019-20 the continued refinement 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.

Rating for KPI 1	Met
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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 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 2019-20 Annual report highlights some of our major successes in communications for the period, including:

- The TPB eNews online newsletter distributed monthly to around 59,000 tax practitioners with “open” rates and reader feedback suggesting a highly engaged reader base.
- A successful media engagement strategy which resulted in a potential audience reach from TPB activity totaling more than ten million (10,235,600) readers.
- The TPB website attracted 1,007,585 unique visits and over 1.9 million searches were conducted on the public register, highlighting the usability of the website to the public to ensure they are engaging appropriate advisers.
- Social media engagement with tax practitioners increased significantly across all platforms reflecting the TPB’s proactive approach to posting social media messaging tailored to relevant audiences. A highlight is the TPB Facebook page, launched in July 2019, has grown to attract over 3,000 followers (500% increase). The success of the LinkedIn platform continues, with followers growing to over 26,000 (98% increase). Twitter followers increased by 10% to over 1,660. YouTube subscribers increased by 66% to over 1,000.
- The TPB conducted 19 webinars and increased the number of registrations by 45%. Webinars were delivered on a range of topics, including TPB investigations processes, our 2020 vision and client obligations. 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, allows the TPB to inform stakeholders of our services and provides them with opportunities to have input into the TPB’s service delivery and operations.

The TPB conducted and appeared at 32 outreach events in the last financial year across Australia, including 15 industry and professional association events and also presented at 17 ATO Open Forum events. These are an important way for the TPB to listen to and communicate with a range of stakeholders including new and existing practitioners, and members of the public.

Overall, the TPB has had great success with our communications strategy during 2019-20. We look forward to continuing to build our presence on social media platforms and further engaging the public to build awareness of the TPB and tax practitioner regulation.

Rating for KPI 2	Met
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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, to the community and to tax system integrity. 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 2019-20, 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 2019-20, the TPB received 37,275 annual declarations and investigated over 1,800 practitioners, with 589 sanctions applied including 1 termination. Due to natural disasters and Covid-19, we temporarily waived the requirement for all tax practitioners to lodge an annual declaration on or before 30 December 2020, followed by a further lodgment extension until 30 June 2021.

The TPB also addressed 1,937 complaints and referrals regarding potential breaches of the TASA by tax practitioners and unregistered entities. 245 matters were sent to the TPB from the ATO in 2019-20, an increase of 25% from 2018-19. 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, including a Joint Compliance Strategy.

The TPB continued its compliance programs that focused on tax practitioners outstanding debt and lodgments and their continuing professional education requirements. The strategy has been broadly effective in influencing practitioner compliance, resulting in 94% of the outstanding lodgments being lodged and outstanding debt reduced by 34%, from \$114.8 million to \$76.3 million. Further, 600 CPE audits were conducted confirming the vast majority of practitioners take their ongoing educational obligations seriously. However, twelve formal investigations led to formal sanctions, including suspensions, for the most serious 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 legal 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 resolved over 2,400 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 over 300 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.

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	Met
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4.4 - KPI 4 Compliance and monitoring approaches are streamlined and coordinated

The TPB continues to develop its relationships with other Commonwealth regulators, particularly the ATO and the Australian Securities and Investments Commission (ASIC), to ensure an effective and coordinated approach to address shared compliance risks. The ATO-TPB Joint Compliance Program was created to promote collaboration to achieve a whole of government approach to address the highest risk practitioners. MOUs with co-regulators and relevant stakeholders are currently under review and/or being developed with a view to ensuring streamlined and timely approaches to lawful exchanges of information.

We continue to review and improve our compliance and litigation processes, whilst ensuring affected practitioners are provided with procedural fairness. We engage early with practitioners to resolve matters as early as possible, and with minimal disruption to the practitioner's business. The TPB is focused on early complaint resolution, bringing practitioners and clients together, to address low risk disputes. The TPB has a range of administrative sanctions available to it to address practitioner misconduct. The most serious cases must be referred to the Board Conduct Committee (BCC) for determination.

In 2019-20, the TPB ran a number of pro-active compliance projects, including those that focused on debt and lodgment, and CPE. These projects were streamlined, using evidence and data that was extracted and verified from third party sources, minimizing unnecessary interaction with affected tax practitioners.

The TPB's annual declaration program ensures an annual interaction with registered tax practitioners with a streamlined approach for tax practitioners to demonstrate how they meet their ongoing registration requirements. In 2019-20, 37,275 of tax practitioners lodged annual declarations. Due to natural disasters and Covid-19, we temporarily waived the requirement for all tax practitioners to lodge an annual declaration on or before 30 December 2020, followed by a further lodgment extension until 30 June 2021.

Increasingly, higher risk practitioners who are the subject of TPB investigations will include unregistered advisers, those involved in tax crime, promoters of tax avoidance schemes and those who facilitate the black economy. This work is enabled by effective data analytics, intelligence sharing across co-regulators, and joint compliance approaches. TPB analysis confirms that successful investigations of high-risk practitioners, with appropriate sanctions, level the playing field for honest tax advisers. Indeed, our focus on egregious practitioners often deals with tax avoidance or evasion at the source, thereby supporting thousands of their clients who may have been caught up in these schemes.

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. 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 2019-20 annual report was released in October 2020 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 Debt and Lodgment program and the CPE audit of registered practitioners.
- 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.

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.

On a daily basis, the TPB engages with practitioners and their professional associations, addressing complaints, in consultation about policy and in providing feedback about our performance. For example, TPB Board members remain actively engaged in their professional lives, engaging with the community, businesses and fellow practitioners. Attendance at business and industry conferences, speaking at forums and seminars, the TPB is open and transparent about its goals, priorities, strategies and risks. In particular, at our consultative forums, practitioners and their representatives are provided with an update from the Chair and are given the floor to include 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. Importantly, this year we have updated our Register with further information to enhance transparency around Board sanctions. This supports the public awareness and encourages voluntary compliance by all practitioners.

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.

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.

Rating for KPI 5	Met
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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.

Good business management is the first way we enhance the regulatory framework. This includes assessing our goals and priorities, sensing 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 an independent Board, ensures that our performance is checked, contested and challenged to improve.

We engage with practitioners and associations on a daily basis, and key trends or patterns allow us to reflect and respond. For example, we are implementing IT systems renewal within the TPB to enhance the practitioner experience and to better link and integrate all parts of our business.

The TPB policy and litigation teams work closely to monitor the practical application of the law, to provide useful guidance to practitioners, and to support law reform as required. For example, we welcomed the Keith James review of the TASA/TPB which provided a valuable opportunity to evaluate the TPB and the TASA. The TPB is currently awaiting an announcement by Government as to its response to the Review.

Subject to agreement by Government, the Review may result in:

- a review of the TPB's governance arrangements, including enhancing the TPB's independence
- a decision about the regulation of tax (financial) advisers;
- enhancements to the registration criteria and compliance framework that applies to tax practitioners; and
- other matters to improve the effectiveness of the TPB and its legislative framework.

Once announced the TPB will be focused on working with Treasury to implement any required law changes, and then the provision of policy guidance on the operation of the new law for stakeholders, including tax practitioners. There will also need to be a significance operational focus to implement the relevant law changes.

Rating for KPI 6	Met
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