6 September 2019

Mr Nick Westerink
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Treasury
Langton Cres
Parkes ACT 2600

Submission via tpbreview@treasury.gov.au

Dear Mr Westerink

Review of the Tax Practitioners Board – Discussion Paper

As the representatives of over 200,000 current and future professional accountants in Australia, the two major Australian accounting bodies Chartered Accountants Australia and New Zealand (Chartered Accountants ANZ) and CPA Australia (together 'the Major Accounting Bodies'), we make this joint submission on Treasury's *Review of the Tax Practitioners Board – Discussion Paper* (Discussion Paper).

The Major Accounting Bodies recognise the important and valuable role of the Tax Practitioners Board (TPB) in regulating and supporting the tax profession. This Discussion Paper and the final report of this Review is an important step forward in the evolution of the TPB and raises a range of important issues that directly affect the community, our profession and our members. The final report should not however be the end of the consultation process. We ask to be involved in further consultations before the Government announces its response to the final report.

We submit that the Review should ensure that principles of agency independence, privacy, market neutrality, competition and freedom of association guide the discussion on potential changes.

We also consider that the TPB must be the body responsible for regulating tax practitioners and should be enabled to effectively do so. It is inappropriate for this to be undertaken by other government bodies, or for work-around solutions that undermine the role and authority of the TPB.

The importance of the Board and its ability to fulfil the objects of the *Tax Agent Services Act 2009* (*TASA*) should be reflected in the Review's recommendations. Caution must be taken to ensure that its role and functions are not inappropriately outsourced or over-lapped with other government agencies or, indeed, professional associations.

It is also important that the Review's final report to Government recommends opportunities for the TPB to

better support tax practitioners, as well as appropriate expansion of its regulatory powers, where justified. Such a balance reduces the risk of some interpreting the Review as an unnecessary attack on the broader profession.

While we acknowledge the limited scope of the review, we note the lack of detail in the Discussion Paper in relation to the performance and effectiveness of the TPB itself. Specifically, there is limited or no discussion about the strategies, capability, processes, resourcing, decision making, communications or operating environment of the TPB.

In this submission, we have identified opportunities to enhance the effectiveness of the TPB both with and without changing legislation. This includes collaboration with professional associations, improved administrative processes, enhanced government funding and increased external communication. We also agree with the suggestion of a Capability Review of the TPB at paragraph 1.39.

We have observed that as tax expands into occupations that previously did not interact with the tax system, broader questions of the scope of the regime arise. While peripheral intermediaries will need to exercise judgment on staying within their field of expertise, in the future we expect that rapid economic and technological changes, and tax collection and integrity processes may mean the government and its regulations will increasingly bring tax into a wider range of occupations and therefore consumers will need to be protected.

In terms of the possible options canvassed for regulation of tax (financial advisers), our preference is for Option 4 (ASIC and TPB as co-regulators with TPB registration automatically attaching to all financial advisers unless they opt-out). Looking forward however, our submission calls for a wholesale review of the current financial advice framework to address regulatory complexity.

However, we would need to understand ASICs potential funding requirements, if any, to support this model and be responsible for the imposition and enforcement of any sanctions. If ASIC requires further funding, this would add further cost burden to this sector under the ASIC Funding Model, which is already having a significant negative impact on smaller and independent practices. Finally, this Review is one of many being managed under the Treasury portfolio, including the APRA Capability Review, retirement savings review and the implementation of the recommendations of the Financial Services Royal Commission. The Financial Adviser Standards and Ethics Authority (FASEA) is still in its early stages of its work.

As professional associations and on behalf of our members, there is a lack of clarity about the relative priorities and interactions between these various bodies of work, all of which may impact tax practitioners. There is therefore a significant risk of siloed or contradictory approaches being taken that has impacts across the sector. Professionals, including those with tax practitioner registration, may end up with conflicting, confusing and/or burdensome regulation. We seek consistency and fairness across the relevant laws and regulations with similar levels of obligations and requirements and similar penalties for commensurate unacceptable behaviours.

Our general position is that:

- The Discussion Paper proposes several potential changes with limited details on how the change would be designed, funded and administered
- We do not agree that the TPB is responsible for the 'integrity of the tax system', rather it is the regulator of the tax profession and thereby provides consumer protection

- We do not support the imposition of the full cost recovery model on the TPB and any increased costs arising from this Review should be funded by government
- The proposed improvements to information sharing require greater detail in terms of scope, administration and safeguards
- The tone and direction of any recommendations should be carefully articulated so as not to be seen as an attack on the profession.

Specific comments in response to each chapter of the Discussion Paper are included in Appendix A to this submission. Commentary on the case studies is included in Appendix C. More information about the Major Accounting Bodies is included in Appendix D.

Please contact either Michael Croker (Chartered Accountants ANZ) at michael.croker@charteredaccountantsanz.com or Gavan Ord (CPA Australia) at gavan.ord@cpaaustralia.com.au should you wish to discuss the matters detailed in this submission.

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Appendix A

Chapter 2 Whole of government interactions

The increased ability for information to be shared between partner agencies and professional associations, where appropriate, will assist in regulating the profession in a timely, proportionate and effective manner.

Many of the proposals require further details including an analysis of the current legislative framework, exposure draft provisions and safeguards for tax agents. We anticipate that there will be differentiated treatment depending on its location on the information spectrum, and that intelligence on tax practitioners will be risk-rated and appropriately triaged prior to dissemination.

As professional associations, we are open to co-designing potential models and protocols. We are however mindful of our distinct and separate function as membership organisations who do not have legislative authority, but which operate alongside regulators in a shared regulatory environment.

Para	Discussion Paper view	Position of the Major Accounting Bodies	Comments
2.7	If the TPB conducts a formal investiga ion, against a member of a recognised professional association, and makes a decision hat there has or has not been a breach, the TPB must no ify he relevant recognised professional association of the TPB's decision or finding, including reasons, within 30 days of making the decision or funding.	**Agree**	We suggest that the TPB inform the relevant professional association at the commencement of a formal investigation in addition to notification of the decision. While members have a positive duty to disclose, a notification from the TPB ensures that professional associations receive information at the appropriate time. The TPB has access to more information which may assist professional associations in maintaining professional standards. Professional associations will consider reciprocity and creating a reverse obligation to disclose. We recognise the benefits of the two-way flow of information however currently face privacy, procedural and natural justice issues. We recommend further discussions to be held between the TPB and the professional conduct areas of our organisations.
2.8	The TPB is of the view that the flow of informa ion between he TPB and other key stakeholders, including the ATO, ASIC and the professional associations, should be strengthened to ensure the appropriate and imely flow of information.	**Agree in principle**	We require further time to fully explore all the ramifications of this collaborative model but recognise there are opportunities for greater information sharing including disclosure of reasons for decisions. We need to work with our members before settling on an information sharing model and would seek a whole-of-profession approach, noting that not all recognised professional associations operate with a professional conduct model like ours. In furthering the common goal of protecting the public interest, consumers and members, we would also seek to receive information at the 'lighter' end of TPB's disciplinary spectrum. This includes intervention opportunities such as education and support where professional associations can undertake to work with their members.

Para	Discussion Paper view	Position of the Major Accounting Bodies	Comments
2.12	TPB view: Under the new laws, as contained in the Treasury Laws Amendment (Enhancing Whistleblower Protec ions) Act 2019 the TPB is not considered an 'eligible recipient' and therefore is unable to receive informa ion from an eligible whistleblower and an eligible recipient (such as he ATO) if consent is not provided by the whistleblower. Given the role of the TPB in regula ing the tax profession and protecting consumers of tax services, this outcome is anomalous and requires a legislative amendment to allow he TPB to be in receipt of such information is critical.	**Agree in principle**	Further detail is required. We agree that the TPB should be designated an 'eligible recipient' of information and subject to the requirements to protect whistleblowers. Consideration needs to be given to how information would be managed or actioned. The ATO and TPB should be aligned on processes for tax whistleblowers. Greater clarity is required to understand how the TPB can or intends to utilise the whistleblower information, given the protections relate to 'the tax affairs of the entity or associate' rather than the behavior of advisors. It is unclear whether the proposal intends to expand the current scope of the legislation or whether the view is that the legislation enables the TPB to take action based on whistleblower disclosures.
2.15	To minimise regulatory overlap, it has also been suggested the work be done to develop a uniform code of conduct that would apply across all professions. Alternatively, steps could be taken to align aspects of he *TASA*'s Code of Professional Conduct with the code developed by FASEA. During consultation stakeholders emphasised the importance of a code being developed in close consulta ion with the relevant profession.		The Major Accounting Bodies supports the objective of a single statutory Code of Ethics to foster an ethical culture and increase professionalism. A statutory principles-based code with cascading standards or guidance would be the most effective and efficient model to implement a single Code of Ethics for tax and financial planning advisers. There are many benefits to this approach. It: • clearly sets out a consistent and uniform framework of expected behaviour that will act as an umbrella to the existing legislative obligations • avoids the Code being implemented as another 'tick the box' compliance obligation • draws upon the work the TPB has done to explain the obligations under their Code and court precedents • ensures advice and services provided to clients will be in accordance with appropriate standards of professional and ethical conduct, regardless of their scope, and • it will help to effectively foster the development of an ethical culture, increase professionalism aligning all advisers, including taxation, accounting and financial planning. However, under such a model we do not see the need for the TPB to have power through instruments/determinations to change/issue Codes. Further, a principles-based Code eliminates the need for specific amendments and changes, as the broader principles would influence the conduct and behavior of the individual.
2.18	Table 2.1 highlights the bread h of he regulatory regime and he duplica ion in the system, in particular for TFAs. This places		It is important for the Review to acknowledge that tax agents who are accountants are also under regulatory oversight by numerous specialist and general regulators depending on the services they provide. Further, many registered tax agents are also authorised to provide financial planning advice either as an authorised

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	both a regulatory and compliance burden on tax prac itioners, and creates multiple entry points for consumers of tax services.		representative or under their own Australian Financial Services licence, adding further regulatory oversight obligations. We suggest that this list be expanded to get a more complete picture of the regulatory pressure the profession is under. This list should include other federal and state regulatory bodies that regulate some of the services provided by accountants including, but not limited to: • ASIC • ATO • Office of the Australian Information Commissioner • AUSTRAC • Australian Financial Security Authority for insolvency practitioners • Professional Standards Council • Queensland Building and Construction Commission • Australian Charities and Not-for Profit Commission • Fair Trading NSW • Registered Organisations Commission, and • National Disability Insurance Australia ***See Appendix B***.
2.19	Consistent wi h the Government's Regulator Performance Framework, it is imperative that regulators do not unnecessarily impede the efficient operation of regulated enti ies. Further, communication with regulated entities needs to be clear and effective, and compliance and monitoring approaches should be streamlined and coordinated.	**Agree**	The TPB should leverage the existing systems in place in the tax system, such as those of professional associations that have accredited systems in place under authority of law, e.g. the Major Accounting Bodies regarding the accreditation of educational qualifications for providing tax services to the public or quality review functions, to achieve efficiencies and remove duplications through a co-regulatory approach. Also, see our cautions further below about the cumulative impact of making all of the proposed changes to the TASA, which if all made together would likely impede the efficient operation of regulated entities, e.g. registration period (three years to annual), minimum academic qualification (diploma to degree level), removing the professional membership pathway, other changes to eligibility criteria such as fit and proper person, and a new sanctions and penalties regime. Staggering of proposed changes, as well as grandfathering and long transitional rules will be required.
2.20	Effective informa ion sharing between government organisations is needed to reduce the number of government interactions for prac itioners and consumers, and to focus compliance and monitoring activity.	**Agree in principle**	We recognise that information sharing enables effective regulation. Where regulators hold and seek the same information, information sharing across government can lessen the regulatory burden. However, any dilution of privacy principles needs to be carefully considered. If progressed, the case for greater information sharing should be contextualised and supported by examples. Care should be taken to avoid unintended consequences and a transparent triage model should be developed. We would

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			seek the introduction of thresholds of severity and triggers similar to 'reasonable cause' so as to maintain balance in the extent of incursion of the government in the lives of individuals, through its myriad of agencies. Information sharing models must be efficient, and not excessive. They should also consider the Inspector General of Taxation and the Office of the Australian Information Commissioner. Government agencies must also be transparent about how and when they share information including their protocols. Legislation, instruments and inter-agency agreements or MOUs should be made publicly available with annual reporting on the number and type of disclosures made.
2.21	Once the Government's Modernising Business Registers (MBR) program has been implemented, the possibility of incorporating he registra ion of tax prac itioners on he new system could be explored	**Agree in principle**	Further detail is required and our associations have yet to be fully engaged in a consultation process for the MBR.. We recommend that all relevant government numbers are consolidated on the register. This includes tax agent number, ABN, financial advisor number and ACN. This enables a one-stop check for consumers and rationalises registers including the TPB, ASIC and the financial advisor registers.
2.23	Strengthening the information sharing arrangements, perhaps by force of legislation, should strengthen he rela ionship between he agencies. In our view he model suggested by Commissioner Hayne of mandatory, rather than discretionary sharing of informa ion is worth considering.	**Agree in principle**	Further details and clear safeguards are required, as discussed above. We support the ability of the TPB to disseminate and receive information about tax agents who are committing or enabling criminal activity. We support disclosures where serious criminal offences are involved and the involvement of the TPB in inter-agency taskforces. We question why the ATO does not invoke criminal sanctions more often (such as the *Crimes (Taxation Offences) Act 1980*. However, we do not support the disclosure of minor violations of the Code such as capability issues occurring on a small number of occasions. Greater detail is required to understand what types of information would be disseminated and to whom. Given the spectrum of intelligence available to government agencies, the TPB should retain the discretionary power to determine what types of information are appropriate for disclosure. Where mandatory reporting is considered, clear objective standards, reporting thresholds and safeguards will need to be developed.

Chapter 3 TPB governance

It is paramount that the TPB be established and operated independently of the ATO and other bodies. The TPB's governance arrangements must achieve both structural independence (free from external influence) and impartiality (free from internal bias, and in accordance with procedural fairness) so the Board is not open to challenges of its decision-making process through the Courts and by the community. This will be increasingly important should decision-making powers be delegated to TPB staff. This will require making statutory appointments, accountable authority arrangements and employment structures that ensure or strengthen the TPB's independence. This is critically important as the Review recommendations will likely determine the TPB's structure for the next generation of tax professionals, and ultimately consumers of tax services.

Further, we caution against the conflation of the roles of the Tax Practitioners Board and the Commissioner of Taxation. While the TPB acknowledges its role in supporting the integrity of the tax and superannuation systems, its mandate is regulating and supporting providers of tax agent services. We agree with this distinction and are concerned with efforts to legislate amorphous concepts into the *TASA* Objects.

We are strongly opposed to the application of the 'Australian Government Cost Recovery Guidelines' on the TPB – that is, the full cost recovery model. The main function of the TPB is to regulate tax practitioners to protect consumers – it is therefore consumers who primarily benefit from the work of the TPB. It is our view that funding should therefore primarily continue to come from consolidated revenue, not a user pays system. We are supportive of efforts to achieve cost efficiencies and agree with the use of shared services agreements, subject to ongoing vigilance over ensuring the appropriate level of independence for the TPB.

The ongoing use of ATO secondees and appointments from the ATO does increase the potential risk of regulatory capture and limited diversity in capability and culture. We support, as a general principle, increased numbers of TPB staff, especially where proposals to delegate decisions are progressed. The induction process for staff seconded from the ATO should include clear boundary-setting and foster a mindset of independence from the ATO.

Noting that the position of Chief Executive Officer has (to date) always been filled by an ATO officer, we think this review should address head-on whether the position of TPB CEO and Secretary reflects the hallmarks of independence, particularly the arrangements relating to the:

- appointment, re-appointment and remuneration of the office holder, and
- freedom from ATO interference or influence in decision making

Para	Discussion Paper view	Position of the Major Accounting Bodies	Comments
3.15.2	The ATO considers hat the Board could be provided with the flexibility to delegate certain reviewable decisions to TPB staff.	**Undecided**	Further detail is required. We support the 'peers judging peers' model of the TPB given the complexities and potential impacts of particular decisions. Decisions involving the most severe sanctions (terminations or suspensions) and assessment of 'fit and proper person' should remain the responsibility of the Board. It may be appropriate that a single member of

Para	Discussion Paper view	Position of the Major Accounting Bodies	Comments
			the Board make a decision (rather than the current three) in certain circumstances. There could however be lower grade decisions that are delegated based on clearly prescribed legislative criteria (not discretions) such as approving straight forward renewals, or making an order under the Code to undertake training or issuing a caution that could be delegated to the CEO and other senior TPB staff. Any delegations should be through a legislative instrument and subject to consultation and ongoing review. The Board must set the parameters for delegated authorities and be accountable for the outcomes. They should receive reporting metrics and undertake regular evaluations to ensure that decision making remains objective, transparent and fair. We recommend that a review of the determinations made by the Board is undertaken to identify: • Decisions and sanctions that can be standardised and consistently administered based on published guidelines • Complex, severe and/or sensitive decisions that should remain the province of the Board • Well defined and published criteria for infractions, decisions and sanctions • Processes to address special circumstances and the scope for internal, low cost and speedy appeals • Required delegations to satisfactorily administer the *TASA*. We hold strong concerns about the potential for real or perceived bias in decisions made by TPB staff invariably seconded from the ATO.
3.22.3	Establish the Chair of the TPB as the relevant *accountable authority* responsible for its own budget and reporting. However he majority of he staff would be ATO secondees and the ATO and the TPB would operate under a "shared services arrangement". This model would also satisfy the requirements set out by The Ethics Centre and is our preferred option and is discussed fur her below.	**Agree in principle**	Our agreement is contingent only on the Government funding of this proposed governance model. We do not support any change whereby the additional costs are passed on to tax practitioners. Sufficient funding is what is appropriate and necessary for this agency to become structurally independent. We also recommend that delegated decisions are made by senior TPB staff and that a Capability Review is undertaken to determine the most appropriate capabilities and skillsets required for the TPB. This Review may recommend a reduction in the number of ATO secondees and thereby affect this proposal. Finally, we express disappointment that the Review sheds little light on the efficiency or otherwise of the Board's day to day operations.
3.24	To address the perception issues that have been identified by many stakeholders, and assuming	**Agree**	As above, our agreement is contingent on the Government funding of this proposed governance model. We do not support any change whereby the additional costs are passed on to tax practitioners.

Para	Discussion Paper view	Position of the Major Accounting Bodies	Comments
	any enabling legisla ion can be developed within the current public sector framework, one solution might be to make the position of the CEO a statutory appointment that is made ei her by he Board or by the relevant Minister.		
3.25	Similarly it might be appropriate that those staff of the TPB who report directly to the CEO and are responsible for decisions regarding sanctions and litigation are also employees of the TPB ra her than ATO secondees working for the TPB. This would ensure that all decisions that may be made by the TPB and that are appellable to either the AAT or a Court are made by employees of the TPB who are clearly independent of he ATO.	**Agree in principle**	See comments 3.15.2 and 3.22.3.
3.26	Making the Chair of the Board of the TPB an *accountable authority* under he *PGPA Act* would enable his to occur but would come with other responsibilities for the TPB including additional commitments regarding he administration and compliance with the *PGPA Act*.	**Agree in principle**	Our agreement is contingent on the Government funding of this proposed governance model. We do not support any change whereby the additional costs are passed on to tax practitioners.
3.27	One of he biggest advantages of having the staff of the TPB located in ATO offices is the significant savings that are made in infrastructure costs. If he TPB were to become an *accountable authority* it does not necessarily follow that these should increase. An	**Agree in principle**	We accept that cost efficiencies are achieved through co-location. However, the Review should consider the adequacy of existing "ethical walls" within the ATO-TPB locations. We are unclear as to how the physical and digital separation of staff, files and systems is managed. We suggest that TPB governance processes require demonstrated independence from the ATO. Our agreement is contingent on the Government funding of this proposed governance model. We do not support any change whereby the additional costs are passed on to tax practitioners.

Para	Discussion Paper view	Position of the Major Accounting Bodies	Comments
	option might be to have an arrangement that would allow the TPB to con inue to use ATO facilities and equipment through the Government's Shared Services Program.		
3.28	May well be appropriate for the TPB to con inue to be staffed by ATO secondees in order to assist with obtaining staff who have the necessary skills	**Recommend Capability Review**	There is no information on the diversity of current staff within the TPB or an assessment of their capability. We recommend a Capability Review is undertaken to determine the appropriate staff profiles required for the TPB and an evaluation of current staffing against those requirements. While ATO staff may have certain skillsets, we believe that the TPB would benefit from those with a broader range of skills including private sector recruits. In particular, staff with a background in public practice or public practitioner quality reviews would benefit the TPB. Depending on the outcome of the Review on educational pathways, staff with skills in post-graduate workplace skills development would also be beneficial to the TPB. It is unclear from the Discussion Paper whether the TPB selects, counsels or has a role in dismissing TPB employees, including ATO secondees.
3.31	Currently there are 8 part- ime members, one of whom is the Chair.	**Recommend this be reviewed once the Government releases its response to the final report**	The Board should be comprised of high-calibre and skilled members from diverse backgrounds. We note there are no Board members with an information technology or consumer advocacy background which may assist the TPB in both strategic and operational decision making. We suggest that the composition and employment status (i.e. part-time or full-time) of the Board members is assessed once any changes arising from this Review are actioned. The role and responsibilities of the Board will then determine the most appropriate governance structure. We would anticipate that delegating decision-making authority may substantially change its form and function. Whether a full-time Chair is required would likely depend upon whether it is decided that a statutory appointment of CEO is appropriate. A Deputy Chair role could also be considered for the Board. We recommend that the Board's composition be aligned with the best practice composition of the AICD guidelines. We strongly recommend that the Board also appoint a member who is specifically in the role of Governance officer who is accountable for the risk, legal and other governance duties of the Board.
3.39	One means of addressing this is to have a member of the Board with relevant information technology expertise and perhaps some experience with introducing	**Agree**	We would suggest that this member also have a good understanding of the application of technology in the tax, business and compliance environment.

Para	Discussion Paper view	Position of the Major Accounting Bodies	Comments
	innovation and change to work prac ices.		
3.41	Having a Board member as a community member also has a lot of merit. Other Boards such as the Dental Board of Australia and the Victorian Board of he Medical Board of Australia have adopted such a model and have members who are community members outside the profession. A fur her example is the Queensland Legal Practice Committee who have what they term as two "lay people" who have a high level of experience and knowledge of consumer protection, business, public administration or another relevant area.	**Agree in principle**	The Government could consider having community members. Community associations should also have an adequate opportunity to contribute to TPB consultations.
3.43	If the TPB were to become an *accountable authority* under the *PGPA Act* would having an ATO officer as a member of the Board help to facilitate the close working relationship between he two Government bodies?	**Do not agree**	Such a placement brings the independence of the TPB from the ATO into question. We consider it is inappropriate for the ATO to be represented on the Board. We also question whether an ATO officer should be appointed CEO/Secretary. If ex-officio positions are to be considered, then ASIC and FASEA representatives should also be included given the breadth of the TPB's role. The best way to facilitate a close working relationship between the TPB and the ATO is in an independent way. There are many means of liaison and co-operation such as information exchange programs, formal referral procedures, and taskforce collaborations.
3.47	In particular, the objects of the *TASA* would benefit from being updated to cover the following three inter-related areas. These areas are to support and protect: • the public, including consumers of tax services; • tax advisers acting lawfully and ethically;	**Do not agree**	Our view is that the TPB's role, and therefore the Objects, should focus on community confidence in the tax profession. We do not support the inclusion of language related to the 'integrity of the tax system' as this is a very broad concept that is not the sole responsibility on one agency. We agree with the articulation in the TPB Annual Report 2017-18 which states "*the objective of the TPB is to ensure that the services provided by tax practitioners are provided to the public in accordance with appropriate standards of professional and ethical conduct.[by]:* • *ensuring that tax practitioners maintain appropriate knowledge and skills to provide competent services* • *ensuring that tax practitioners are aware of and understand their obligations, by communicating with*

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	• community confidence in the integrity of the tax **system**.		*them, issuing clear guidance and employing transparent processes in administering the TASA, and* • *responding promptly and effectively to complaints about tax practitioners."* We recommend that the *TASA* Objects are redrafted to reflect the above.
3.50	The manner in which section 2-5 of he *TASA* has been phrased wi h terminology that calls for: • *"establishing a national Board …"* • *"introducing a Code of Professional Conduct …"* makes it clear that this provision was intended as a transi ional element. Now that both the Board and he Code have been established and opera ing for over 9 years it is worth reviewing whether the object of he *TASA* needs upda ing.	**Agree**	We support a shift in the Objects towards regulating the profession per our comments at 3.47.
3.52	If one were to join the dots between he standards required in the Code of Professional Conduct and comments made in the EM, it is our view that he integrity of the tax system as an objective of the *TASA* is evident. None heless it may be beneficial if it was made expressly clear hat the integrity of the tax system is also an important purpose of the *TASA*. Such an approach is consistent with the views set out by The Ethics Centre.	**Do not agree**	We agree with the TPB's description in its Annual Report 2017-18 as '*strengthening the integrity of the tax practitioner profession*', while acknowledging the profession's role in ensuring the integrity of the tax and superannuation systems. We hold concerns that 'integrity' is an imprecise term for inclusion in the Objects.

Chapter 4 Community awareness

We believe that increasing awareness of the role of the TPB and the expectations it places, as a regulator, on tax practitioners is beneficial to consumers of tax services. To date, there has been limited information about the TPB's engagement and external communication strategies, or the efforts made to date to enhance community awareness. In our view this is not due to restrictions in the legislative framework but rather a lack of priority or resourcing, or combination thereof.

Certain proposals in this chapter appear to run counter to certain aspects of privacy, freedom of association and natural justice. We do not support the proposals related to governance documents or information on associates, and we hold reservations about the unrestricted publication of registration histories. A collaborative approach between the ATO and TPB enabled by improved information sharing protocols may be of greater benefit in monitoring risk and analysing intelligence. The ATO has a tax agent assurance strategy, and there should be increased clarity on how the TPB utilises this ATO data in managing risk in the profession.

We observe that neither the TPB nor the ATO have yet developed an engagement approach that recognises the assurance provided by trusted tax practitioners. The mutual benefit provided by these practitioners to consumers, the ATO and the TPB should be acknowledged and valued more explicitly. An ongoing discussion should be held in relation to those at the bottom of the ATO's tax agent assurance 'teardrop' model. The TPB should set benchmarks in collaboration with professional associations, like the ATO's practical compliance guidelines, of a well-run tax practice.

We also note there may be less future reliance on tax practitioners for the preparation and lodgment of individual tax returns with the increased uptake of online/digital services such as myTax and myGov. This is likely to challenge the viability of some tax practices and may encourage more of them to expand their services into other areas of work, especially non-tax advisory services. This means that the TPB will be just one of several regulators which tax practitioners will encounter. Therefore, its strategies, legislative framework and governance should be aligned with other regulators to achieve consistency and minimise regulatory burden. It is also important that the Review is balanced in its recommendations as they form part of the broader conversation about the future of the tax profession.

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4.1	The community heavily relies on he services of tax professionals, with approximately 73% of individual taxpayers choosing to use a tax professional to lodge their tax return each year and over 95% of all businesses using tax professionals to perform	**Agree in principle**	We note that the high percentage of taxpayers who use tax practitioners reflects the complexity of the tax and transfer system and the frequency of changes to tax laws. The issue of consumer awareness of their rights and obligations raises an issue which the TPB has previously considered – whether an engagement letter should be mandatory. The Major Accounting Bodies support the use of engagement letters and suggest the TPB revisit current guidance on this.

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	some or all their tax functions. This reflects a high degree of trust within the community of the tax profession. However, while reliant and trusting of the tax profession, consumers of tax services are largely unaware of their rights when using a registered tax professional or the risks associated with using an unregistered tax professional.		
4.4	The ATO has suggested hat the TASA could mandate he display of the registration number on all public facing material, including correspondence and digital platforms. In addition to enabling consumers of tax agent services to verify the practi ioner's registra ion, this may also assist in enhancing the TPB's visibility.	**Partly agree**	The TPB symbol is not a qualification. It is a registration provided to ensure that practitioners are not in breach of the civil penalty code. It does not provide qualifications, nor signify membership of a particular entity. It is a not a 'brand' of the practitioner, and it is not a mark of quality or standard of qualifications or skills being possessed. The TPB does not have a Quality Review and Assurance program for its registrants. The symbol might mislead consumers by portraying a status for registered tax agents, beyond merely being a registration number. It also competes against the insignia of the professional associations and other associations who do provide many of the features mentioned above. The sole intention is to show that a practitioner is a registered tax practitioner, which gives the client the consumer protection oversight. If displaying registration details is to be mandated, we believe that the registered practitioners' registration number is adequate. This is how it is done by the NSW Office of Fair Trading for builders' licences. Given the large variety of TPB registrations, some general and some highly specialised, we recommend that the TPB review and reconsider how a consistent approach can be applied all registered practitioners. Our concern is that currently, consumers may be being misled into thinking there is a common standard of tax skills and knowledge.

Para	Discussion Paper view	Position of the Major Accounting Bodies	Comments
4.8	Having the TPB more visible serves to assist tax practi ioners in understanding their obligations under the TASA regime and signals to consumers of tax agent services that there is recourse when hese services are not provided in accordance with the Code of Professional Conduct. Increasing visibility of the TPB will also assist with the problems surrounding unregistered practitioners (see discussion at Chapter 8).	**Agree**	This issue is more likely to be addressed through an effective external communications strategy, rather than legislative reform. We are supportive of the increased media presence and visibility of the TPB and are open to working with the TPB to enhance its visibility.
4.9	The TPB could engage in a targeted educa ion programme, directed at both consumers of tax agent services and tax practi ioners. It may be efficient for the TPB to leverage heir relationship wi h professional associations in understanding key points of uncertainty and the most appropriate forums to engage he profession.	**Agree in principle**	We need to first consider the ramifications of a collaborative model, including its structure, governance and implementation. We note and support the TPB's enhanced media strategy and the publication of the wide-ranging impact of sanctions and penalties. Further research is required to identify the best avenues to inform consumers of their rights. For example, research could be undertaken on standardised or suggested clauses to be included in engagement letters or encouraging client conversations about mutual rights and obligations.
4.10	It may also assist consumers of tax agent services if he TPB focus on clarifying its interaction with federal and state consumer bodies, and complaints bodies such as the IGTO.	**Agree**	It may also assist consumers if the TPB clarified its interaction with state-based statutory bodies handling complaints against legal practitioners.
4.13	TPB register includes registered and unregistered practi ioners. This could include publishing a wider range of decisions and outcomes on the TPB Register, including more details of reasons for sanctions and termination,	**Undecided**	We are supportive of the reasons for giving the TPB power to publish more information about terminations and suspensions, as this provides greater context and detail to explain whether any culpability is associated with those more serious outcomes. However, beyond this we would seek and recommend undertaking a comparison against the process for other professionals such as lawyers and doctors, as well as the general administrative approach to spent criminal convictions by other agencies. Consideration needs to be given to 'natural justice' and the process needs to be

Para	Discussion Paper view	Position of the Major Accounting Bodies	Comments
	and publication of details relating to rejec ions of renewal applications. Addi ionally, he TPB suggest removing the time limits on how long certain information appears on the Register. [currently 12 months]		fully considered. A nuanced conversation needs to be held on time limits to determine how long a sanction or other information should be in the public domain and for what reasons. See 4.20 below for further discussion on the suggestion for removing time limits.
4.14	The TASA could also be amended to require company and partnerships to provide details on heir firm governance structures. This informa ion could be made available via he TPB Register.	**Do not agree**	The concept of firm governance is an amorphous concept and the proposal does not recognise that smaller firms may not have a formal governance structure or process in place. We see limited value in this and the information can be obtained by the TPB through other means such as information gathering during a risk-assessed investigation. Any proposal related to governance requires far greater detail to be provided as well as an in-depth consultation process. This recommendation appears to be informed by the ATO's current work on firm governance structures and the associated incomplete consultation process. We are highly concerned about the proposal to make such information publicly available on the Register. Not only can it be misinterpreted or possibly commercially sensitive, it is not clear that it enables the consumer to make a more informed decision with respect to their engagement of the tax practitioner.
4.16	The ATO has advised that the TPB Register does not currently provide full transparency on disbarment and sanctions. The TASA does not allow the publication of reasons for termina ion or professional affiliations, nor does it provide a mechanism to make clients aware that their tax agent has been terminated. The ATO supports changes to he TASA to allow for publication of this information on the TPB Register.	**Agree in principle**	Requires further details and safeguards. Given the significant ramifications of these severe sanctions, we recognise the importance of disclosing the reasons for the decisions. However, the proposal needs further thought. For example, safeguards should be included to ensure details at the 'lighter end' are not published, and the TPB should have the ability not to publish where there are valid reasons or exceptional circumstances. Standardised wording will also need to be developed.
4.17	The ATO supports the requirement for firms to provide details on their firm governance structures. The ATO considers that informa ion of actual governance and control structures ought to be provided by firms irrespective of their legal structure. This	**Do not agree**	See comments at 4.14. Further explanation from the ATO is required on how this information would be collected and how it would be disclosed. The proposal may impose an unnecessary burden on small firm practitioners and may slow down registration. Such questions may not be relevant for many practitioners. We see this proposal as attempting to prevent those who have been struck off from re-entering the profession,

Para	Discussion Paper view	Position of the Major Accounting Bodies	Comments
	would assist the TPB to look through firm structures when undertaking compliance ac ivity, enabling it to appropriately target the controlling minds of these firms.		however, we believe other proposals in this Discussion Paper are better and more targeted at attacking this mischief, such as the proposed banning orders, providing additional information on the TPB register concerning sanctions and using the model proposed for director identification numbers.
4.20	Subject to working through any privacy issues, there is a lot of merit in providing additional information on the TPB register concerning any sanctions imposed on practi ioners.	**Agree in principle**	Requires further details and safeguards. See comments at 4.16. While poor behaviour should not be tolerated within the profession, there remains a right for a sanction to be spent after a reasonable time. Further details are required as to which sanctions would be published, what level of detail would be provided and the length of time it would remain available. Safeguards should be included that are linked to the severity of the offending and the reasons for the sanction.

Chapter 5 Registration, education and qualifications

Registration requirements including education and experience requirements are fundamental to a high-quality tax profession and therefore consumer protection. The current education requirements in the *TASA* need a deeper review to determine if they remain fit for purpose and are future-proof. This should include ensuring the current education and experience requirements for registration are suitably flexible and adaptable not only for new and emerging classes of tax intermediaries but also for traditional accounting intermediaries. As a first step, the Review could recommend changes to Regulations to give the TPB the ability to introduce reforms coming out of such a review.

In undertaking its review, it is important for the TPB to recognise that the tax modules in the CA and CPA Programs already offer what we believe are sound educational entry pathways to the tax profession. There is also the CPA and CA training in related disciplines relevant to the accounting profession, practice management and ethical obligations. Our view is that those offering tax agent services that lack these educational foundations should be challenged to lift the bar and invest in improved outcomes.

It is important that any changes to educational and experience requirements have long transition periods for those currently undertaking impacted courses and grandfathering to avoid the need for current tax practitioners having to undertake further study to meet a new education standard.

We do not agree with moving to an annual registration process. This may unnecessarily increase the compliance burden on registered agents with no or little identifiable benefit.

We disagree with a “de minimis” exclusion for registration. This may make it easier for the TPB, but it may leave consumers with a lower level of protection from some service providers. Further, the penalties that such providers may be subject to may not be consistent with those impose by the TPB. We therefore recommend that, at the very least, the TPB should have jurisdiction over advisers offering such “peripheral” tax advice and liaise with the relevant industry or professional bodies to ensure that their members receive tax-related training and obtain tax-related professional indemnity cover.

We are not comfortable with the management of digital service providers through the ATO’s DSP framework alone. We feel that the TPB has an important continuing role here, particularly once services evolve into artificial intelligence or assisted tech areas. Confidentiality and ownership of taxpayer data stored on DSP systems must be regulated. In short, technology-assisted advice should be regulated under the *TASA*.

Further, the Discussion Paper ducks whether the exemption for legal practitioners should continue. The differences in the regulatory environment for lawyers providing tax-related advice is not lost on our members.

We do not agree with proposals to expand the fit and proper person test to include conflicts of interest, governance arrangements, treating close associates of an egregious practitioner as the practitioner, nor the introduction of a ‘may register’ regime.

Para	Discussion Paper view	Position of the Major Accounting Bodies	Comments
5.5.1	Better alignment with exis ing government approaches to lift standards and ensuring consistency across different professions. For example, new education standards apply to new and exis ing financial advisers to have an approved bachelor degree qualification – the question that should be considered is whe her there should be a similar lifting of educational requirements for tax and BAS agents.		The tax modules in the CPA and CA Programs (and pre-requisites for entry into these programs) already offer what we believe are sound educational entry pathways to the tax profession. There is also the CPA and CA training in related disciplines relevant to the accounting profession and ethical obligations. Our view is that those professional associations which lack these educational foundations should be challenged to lift the bar and invest in improved outcomes. There must be a suitable transition period and grandfathering for any changes to education and experience requirements. There is also value in considering whether the TPB should have a special admission pathway for exceptional circumstances.
5.5.2	Sufficient flexibility for the qualification requirements to reasonably respond to new tax intermediaries hat may form part of the regulated population, for example, payroll service providers who may have educational qualifications that do not necessarily fit within the structure as contained in he *TASA*.	**Agree in principle**	We observe an increasing dichotomy in the treatment of 'traditional' tax agents and the providers of "peripheral" tax advice such as payroll or similar services. Indeed, the Discussion Paper appears to focus more on the former than the latter. The use of limited licenses or conditional registration is a practical option for new types of tax intermediaries as opposed to excluding them from the regime by legislative instrument. Excluding new tax intermediaries from the TASA may not be in the interest of consumers and does not achieve competitive neutrality. Another option to conditional registration would be to create a series of specialisation registrations for unique areas of tax and BAS agent services. If this proposal is progressed, then clear educational pathways are required to decide what, for example a 'payroll' person must have studied. The TPB needs to do educational mapping for accreditation and we recommend a dedicated Board sub-committee to oversee the educational standards if one does not already exist. The TPB will also need to be consistent with FASEA's approaches to mapping and accreditation. Professional association members do significant amounts of professional development. We would seek to ensure that our members educational and ongoing learnings, as well as other professional obligations are appropriately recognised. We note that existing accreditation schemes, adaptability and flexibility should also be built into the Regulations regarding the traditional accounting intermediaries, not just flexibility for the new tax intermediaries. If the accounting applicant is a professional accountant who is certified to be able to provide professional accounting services, including tax, to the public, then they should have a different pathway to register, via a pathway for professional accountants. The proposed professional accountants pathway for tax agents and BAS agents is discussed in more detail below at 5.14

5.5.3	Greater flexibility to allow the TPB to determine what is, and how much, relevant experience is required. This allows the TPB to take into account special circumstances, such as a career breaks or maternity leave, non-traditional tax intermediaries (such as payroll providers) and partial retirees.	**Agree**	We support the proposal to give the TPB greater flexibility to determine whether an applicant has sufficient "relevant experience", based on scenarios which (for example) involve overseas tax-related work experience, career breaks, parental leave, non-traditional tax intermediaries and semi-retired persons. TPB registration processes should also cater for practitioners who are traditional tax intermediaries but highly specialist subject matter experts. There should be built in flexibility for the Board to exercise its discretion to treat not only 'new tax intermediaries' as having sufficient experience, but rather existing specialists (e.g. transfer pricing, US tax law). If a practitioner's field of technical specialisation is narrower, then logically, the relevant experience required to be able to develop a competent knowledge in that area may be narrower than for traditional tax intermediaries who advise across the full breadth of tax services. Regulations for this purpose should be developed through consultation, and should be sufficiently flexible to take account of the 21st century landscape of the tax profession. The lack of flexibility in 'relevant experience' has had a disproportionately discriminatory impact on women who are the main group of agents who take leave (often 6 – 12 months per child) to raise their families. A period of 8 out of 10 years is a very high threshold to meet for those practitioners who can only register via the item 206 'Professional membership' pathway. This is currently a double whammy, for female professional accountants in particular, because they are forced into the 'Professional membership' pathway because of the TPB's views on "a course in commercial law", and "a course in basic GST/BAS taxation principles" respectively, which prevents them from qualifying to apply under items 201-205, or items 101-102. If the practitioner qualified to apply under those other pathways, then the "relevant experience" requirement would have only been one year in the past five years (for tax agents), which would have been far easier to satisfy despite the parental leave taken. We recommend amending the definition of 'relevant experience' in Part 2 - Tax agents, so that it states, for example, that one period of parental leave of up to 12 months duration will be disregarded in determining whether the 'relevant experience' requirement has been satisfied for items 201-205, and up to two periods of parental leave of up to 24 months duration will be disregarded in determining whether the 'relevant experience' requirement has been satisfied for item 206. Alternatively, the total number of years in which to gain the relevant experience could simply be increased to 6 years, and 12 years, respectively. A similar approach to the above could be adopted for Part 3 - Tax (financial) advisers (relative to the reduced periods involved). FASEA has already proposed to take account of parental leave in a similar manner to the first option outlined above.
5.6	In addition to the registration requirements, a review of the current period of registration would be appropriate. Under he *TASA*, an entity is registered for a period of at	**Do not agree**	The policy rationale for this change has not been fully explained, other than that it is expected that it would align and streamline registration and declaration processes. We have concerns that it may increase the compliance burden on those that are registered for minimal gain. It may also be seen as a 'fee grab', even though the overall fee may not rise.

	least 3 years. There is no discernible policy basis for this 3-year period and the TPB suggests that in the interests of the tax practitioners, he TPB and Government, it would be beneficial if he registra ion period was converted to an annual basis. This approach would align with most other requirements affec ing tax practitioners, including professional indemnity insurance and association membership. This annual registration would replace the current TPB administrative 'Annual Declaration' process.		We understand that it is proposed to replace the Annual Declaration (AD) process. However, the registration renewal process is more onerous than the AD process. We also note the potential cumulative effect of all of the proposed changes to the registration/renewal process in this Review. The need to meet all of the new requirements would arise annually, and it would be a difficult process to complete because of all of the 'moving parts' that are proposed, if they were all introduced together. The proposed changes to the registration eligibility requirements would potentially create a barrier and significant complexity for the initial years as applicants seek to renew and have to provide a large volume of new information and documentation annually. An annual registration process would be particularly burdensome for large firms on an ongoing basis, as they often have hundreds of tax agent registrations. Apart from the compliance burden issue, it comes down to cost. Is the renewal fee effectively going to go up when it moves from a 3-year period to a 1-year period? Other considerations for the Review include: • design of the Annual Declaration • making it mandatory to declare professional association membership, including membership of multiple associations • cross-checking CPD data held by professional associations
5.11	There is a need for the relevant experience requirements to reflect the modern landscape. There is a growing number of specialist practitioners and a move away from traditional 'tax return work' towards tax advice work. This transition is also occurring in a highly digitised environment.	**Agree in principle**	See comments at 5.5.1-5.5.3
5.13	In light of the lifting of standards in he financial adviser profession, which now mandates hat all individual financial advisers have a baseline educational qualification, the appropriateness of individuals becoming	**Do not agree**	It does not necessarily follow that if financial advisers have to do a degree minimum to register with the regulator, then all tax practitioners should have to do a degree minimum to register with the TPB, and that no exceptions or flexibility should apply, such as the existing 'professional membership' pathway. While our members would be able to satisfy this requirement, we are conscious that many other existing registered practitioners may not be able to. Again, we consider that some flexibility is important. Any change would have to apply fairly and equitably to all tax practitioners.

	registered through their voting membership with a TPB recognised professional associa ion needs to be considered.		There would also need to be a long period of transitional arrangements and grandfathering for any proposed move from a diploma level baseline qualification, to a degree level baseline qualification. Once it is decided what the appropriate education qualification is for registered tax agents, then the appropriateness of individuals being able to registered through their professional association membership can be considered.
5.14	We also share the IGTO's view, as expressed in Recommendation 6.2 of *The Future of the Tax Profession Report* that there should be periodic review of the educational requirements by the TPB in consulta ion with practitioners, professional associations, ter iary institutions and the ATO.	**Agree**	The IGT's Recommendation 6.2(a) was that the TPB: *periodically review the suitability of the educational requirements of the Tax Agent Services Regulations 2009 and its own related guidance with input from practitioners, professional associations, tertiary institutions and the ATO and act upon any findings including requesting the Government to consider legislative change where necessary.* We support the recommendation for a review of the educational requirements. It is long overdue. A separate review of educational requirements should be undertaken by both Treasury and the TPB as legislative/regulatory amendments are required. To overcome a lack of alignment with the TPB's educational requirements for the standard 'accounting' pathways, we seek a new ***dedicated pathway*** for ***professional accountants*** who have the academic qualifications required by CA ANZ and CPA Australia to obtain a Certificate of Public Practice (CPP)/Public Practice Certificate to provide taxation services to the public. We would be pleased to consult further with Treasury on the precise drafting of the clause in due course. We note that the Major Accounting Bodies, are both: • specifically authorised by the Corporations Act to perform this role of educating the accounting profession to provide professional accounting services, which includes taxation services, to the public; and also • providers of post-graduate/professional accreditation courses. The Major Accounting Bodies have assessed the key 'learning outcomes' for commercial law (specified by the International Federation of Accounting education standards) as being met in the undergraduate law subjects that are currently contained in all of the "Accredited Tertiary Courses" for entry into the CA and CPA program. It is both logical and efficient for the TPB to place reliance on existing legally authorised, formal accreditation schemes between the profession and the Higher Education Providers (HEPs), such as the Accreditation partnership between CA ANZ and CPA Australia, and the HEPs. We believe that this was the intention behind section 20-10, not that it only be used for item 206. We recommend that this Review reconsider the legislative intention behind section 20-10. Was it intended to confer a power on the Board to accredit professional bodies to recognise qualifications and experience for pathways other than item 206? The notes in the Regulations (Schedule 2) also state that the Board may approve a course by an accreditation scheme.

			A related issue to this one is the meaning of "professional associations". Arguably, an association should not be regarded as a "professional association" if there is an absence of a professional conduct function in the association to regulate their members as "professionals". We note that CA ANZ and CPA Australia invest heavily in their respective professional conduct functions. We are not certain whether this is the case for all other recognized associations. In addition, for BAS agent registration, the Major Accounting Bodies seek a new ***dedicated pathway*** for ***professional accountants***, who have the academic qualifications required by the Major Accounting Bodies to obtain a CPP to provide taxation services, including BAS services, to the public. Again, we are happy to consult with Treasury further on the precise drafting of the clause. In terms of amendments required to accommodate international talent, item 206 should be retained, and should provide the Board with a clear discretion to approve an applicant who holds an international professional membership, where they are also an 'affiliate' or 'associate' member of an RTAA in Australia, and where they meet the relevant experience requirements through their tax work both in Australia and internationally (in aggregate), with more than 50 per cent of it completed in Australia.
5.19	The TPB is of he view hat generally registration under the *TASA* should be: 5.19.1 mandated for traditional tax advisers, such as tax agents and BAS agents, that provide advice for a fee or reward; 5.19.2 required by advisers who **substantially deal in tax advice** (tax advice concerns any matter arising from tax laws administered by the ATO), that provide advice for a fee or reward; and 5.19.3 **excluded on a 'de minimis'** basis for hose professions that have marginal and simple tax advice interac ions.	**Agree in part**	We agree with 5.19.1. We seek clarification of 5.19.2. Issues here include: • Registration by those who "substantially deal in tax advice" should be "mandated" in our view • What does "substantially deal in tax advice" mean? Examples are required to contextualise what is meant here • The meaning of "fee or reward" needs to be fleshed out. In particular, the concept of "reward" needs to be interpreted broadly by the TPB to capture those who benefit from access to data without actually imposing a monetary fee (e.g. the Plutus Payroll scenario). This would also, in our view, rightly bring within the TPB's purview that who develop tax-related software and APIs. We disagree with a "de minimis" exclusion. We see this as motivated by what makes life easier for the TPB rather than a consumer-focused recommendation. Our understanding is that this recommendation would leave unprotected (in terms of recourse to the TPB) the consumer who relies on: • Advice of tax residency proffered by a real estate agent or conveyancer (tax residency being relevant to the operation of CGT exposure) • Advice on building-related expenditure proffered by a quantity surveyor (relevant to capital works deductions) • Valuations (relevant for a range of tax purposes, including deductible gifts, trading stock and CGT cost base). Without TPB coverage, aggrieved consumers would be left to report the adviser to the Office of Fair Trading in the relevant jurisdiction or fund an action in negligence. The adviser would not be sanctioned by a tax regulator and may or may not be sanctioned by the professional association (if any) to which they belong. It should also be noted that the penalties that such providers may be subject to may not be consistent with the TPB.

			We recommend that, at the very least, the TPB should have jurisdiction over advisers offering such advice and liaise with the relevant industry or professional bodies to ensure that their members received tax-related training and obtain tax-related professional indemnity cover. Alternatively, those professional associations should develop guidelines which ensure that consumers are explicitly warned in writing that the conveyancer, quantity surveyor etc is not providing tax advice.
5.20	Consideration as to whe her an en ity is subject to other regulation for their tax advice is also appropriate.	**Undecided**	We seek further clarity. There is no context provided for this TPB view.
5.21	The ATO considers hat TPB's view is sensible and notes that the approach to tax intermediary registration should be future proofed (see discussion at Chapter 12). However, TPB regulation should not extend to those intermediaries where the services hey provide is to act solely as a conduit between the ATO and the entity or individual providing he tax agent service. That is, some digital service providers should be excluded from regulation under the TPB.	**Undecided**	We seek examples of the type and form of services that are described to gain a clearer understanding. It may create: • definitional problems that could be exploited • an unfair competitive advantage for those who are unregulated • a lack of consumer protection We are not comfortable with the management of digital service providers through the ATO's DSP framework alone. We feel that the TPB has an important continuing role here, particularly once services evolve into artificial intelligence or assisted tech areas (i.e. decision-making technology). Technology-assisted advice and the confidentiality and ownership of data should be regulated under the *TASA*.
5.24	On he other hand quan ity surveyors, novated lease providers and salary sacrifice advisers would seem to actively market or adver ise hemselves as providing tax services without being regulated by any other Government agency and as such should con inue to be regulated by the TPB.	**Disagree**	This view appears to contradict para 5.19.3. There should not be a 'de minimis' rule for some professions and not others. Any proposal should be industry/profession neutral in respect of de minimis. We also note that the TPB's role is to protect all consumers and regulate all providers of tax agent services – not to protect some consumers and regulate some tax advisors. While we acknowledge the Discussion Paper's attempt to try to find a pragmatic line, its consumer protection objective cannot and should not be compromised.
5.25	Tax lawyers, insofar as they are not preparing or lodging a return or a statement in the nature of a return, have a specific exemption from needing to be a registered tax practi ioner.	**Insufficient consideration in Discussion Paper**	The Discussion Paper ducks whether this exemption (carve out) should continue. The differences in the regulatory environment for lawyers providing tax-related advice is not lost on our members., There are concerns about the lack of a level playing field. An assessment of the regulation of the legal protection and the protections afforded to consumers who receive bad or incorrect legal advice (as it relates to tax) should be undertaken. The regulatory regime should ensure that there

			is consistent oversight of all participants in the tax profession. We are not aware of a tax issue that has gone to the legal profession boards in their respective States or Territories, and we are not aware of instances where the ATO has shared information with legal profession boards. Members have put to us that lawyers may be just as, if not more, l kely to be giving complex or possibly aggressive tax advice. While the policy presumption is that lawyers are already regulated and shouldn't be over-regulated, we question how effective this is in practice. We also hold concerns that if an agent and a lawyer work on the same matter which may give rise to a contravention of the *TASA*, there may be asymmetry between the respective penalties imposed on the lawyer and the agent.
5.26	However, consultation has to date suggested that there are relatively few other tax intermediaries that curren ly fall into his category. Considering this, it may be appropriate for he TPB to publish a determination that excludes certain tax intermediaries from registration.	**Undecided**	We require further details of the proposal. If progressed, we would suggest that a Legislative Instrument or Regulation, rather than a determination, be used to exclude certain classes of intermediaries from registration. Such an instrument or regulation must be subject to public consultation before it is tabled in Parliament. It should also be recognised that certain tax intermediaries may want to be included and should be able to voluntarily register. The law should therefore not preclude registration.
5.34.1	Incorporating the matter of conflicts of interest as part of its consideration as to whether an individual is a fit and proper person including a specific reference to ensuring all personal tax obliga ions are up to date.	**Do not agree**	Further detail on the matter of conflicts is required including clarity on whether the registration requirements are intended to mirror subsection 30-10(5) of the Code of Conduct. The TPB's interpretation of 'fit and proper person' as set out in TPB (EP) 02/2010 can be updated to include management of personal income tax obligations without modifying or prescribing the existing common law definition. It should be noted section 220 of APES 110 Code of Ethics for Professional Accountants goes into detail on conflicts of interest. APES 110 requires our members to take reasonable care to identify circumstances that could pose a conflict of interest and the member must evaluate the significance of any threat and apply safeguards where necessary to eliminate or reduce the threat to an acceptable level. In other words, it is not a requirement on members to eliminate all conflicts of interest - this depends on the extent of the threat and if thought significant how the threat can be reduced.
5.34.2	Bolstering the management of personal income tax obliga ions consideration to include a consideration of the management of the income tax obligations of an individual and the individual's associated entities	**Do not agree**	The definition of associated entities is broad and can include entities over which the registrant has no effective control. For example, the spouse of a registrant or a partner in the same accounting practice has outstanding returns. Not only may the registrant be unaware of the outstanding obligations due to privacy, they may have no authority or influence to direct their associate to lodge. Their outstanding obligations do not necessarily impact the agent's ability to provide professional tax practitioner services and should not prevent registration.

5.34.3	Whe her a company or partnership has appropriate governance arrangements in place	**Do not agree**	See comments at 4.14 and 4.16. It is unclear how governance arrangements relate to the requirements for 'fit and proper person'. The mischief the TPB may be seeking to target with this proposal may be better achieved through other less intrusive proposals in this Discussion Paper.
5.34.4	Removing the five-year period referred to in sec ion 20-15 of the TASA and either increase, or remove entirely, the timeframe within which matters can be taken into consideration	**Undecided**	Greater detail and context is required as to what is proposed. We support efforts to ensure bad actors are kept out of the profession, however we are concerned that this proposal does not allow for changed behaviours, the impact of education etc.
5.34.5	Any other relevant matters that the Board considers appropriate.	**Undecided**	Greater detail and context are required as to what is proposed. We hold concerns that the Board may make decisions based on allegations or intelligence against a tax practitioner that are not proven in court or where the practitioner has not had an opportunity to refute the allegations. There must be objective tests, safeguards and avenues for appeal included in the design.
5.36.1	The ATO has identified a number of potential reforms to the fit and proper person test: 5 36.1 The *TASA* does not have a mechanism to treat close associates of egregious tax practitioners as he tax practitioner. This is to be contrasted wi h the tax and corporations legisla ion, which provide for the actions of close associates. The ATO has suggested that fit and proper person test could be amended to include considera ion of the actions undertaken by close associates of the registered tax practi ioner in certain circumstances, akin to the related party provisions in the *Corporations Act 2001*.	**Do not agree**	This reform proposes treating the close associates of egregious practitioners as the practitioner. This could result in a firm of 200 partners with one egregious tax practitioner impacting the firm's fit and proper person test for all the other partners and partnership. This would be inappropriate. Freedom of association is a right that should be not contravened and there is a lack of definition as to how an 'associate' may be defined for the fit and proper test. TPB decisions shouldn't be affected by independent entities/associates and the potential impingement on other regulatory and legislative frameworks should also be assessed. The proposal appears very broad and undefined and builds a regime around the most egregious cases that attract guilt by association. It appears to attempt to address the issue of sanctioned tax practitioners operating within the profession by modifying the *TASA* rather than going through the proper process of investigating and litigating. It may affect registrants who have an association but were not involved in any wrongdoing (e.g. a back-office accountant in an accounting firm with a partner convicted as a promoter but they were not involved in the scheme). We note that the fit and proper person test applies to directors for company registrants. The *Corporations Act 2001* definition of directors encompasses shadow directors. As such, it is arguable that the Board can already deregister (or choose to not register) a company if information is provided that demonstrates a person defined as a director of the company for the purpose of the *Corporations Act* (including shadow directors) is not a fit and proper person.
5.36.2	The *TASA* allows serious previous criminal convic ions and imprisonment to be withheld in an application for	**Undecided**	Requires further details and safeguards. The comments made at 4.16 in relation to disclosures on the register, similarly apply to this proposal. We hold concerns about the term 'relevant information' – this needs to be more specifically defined.

	registration as a tax practitioner. The *TASA* could mandate the disclosure of spent convic ions and relevant information to be considered for the fit and proper person test.		We suggest that perhaps a better approach would be that the TPB informs the applicant that a police check will be undertaken and that this will assist in informing whether the individual is of good fame, integrity and character.
5.36.3	The *TASA* applies a 'shall register' regime, so that if a behaviour is not listed in the *TASA*, the TPB has limited discre ion to reject an application for registration. Moving to a 'may register' approach may provide the TPB wi h great flexibility and discre ion in registering practitioners in instances involving complex behaviours that are difficult to define, such as illegal phoenixing.	**Do not agree**	Limiting registration for reasons that are broad, esoteric and indirectly-related, especially where they are beyond the control of the registrant, is unfair. Tax professionals should have the right to participate in their chosen profession. The fit and proper person test is sufficient to address registrants who have previously been involved in phoenixing, etc. Caution should be exercised before providing regulators with a broad discretion to deny registration where there are only allegations or intelligence reports of a particular behaviour. The Board and its delegates must not be given too much discretion on the fundamental principles.
5.36.4	Las ly, moving from a three year to a one-year registration cycle would provide a more timely review of a prac itioner's fit and proper conduct.	**Undecided**	See comments at 5.6. The reporting burden may become significantly more onerous and/or costly for limited regulatory or consumer benefit.
5.39	Guidance could be taken from the fit and proper person requirements for o her government agencies. The fit and proper person requirement under he *TASA* could be expanded to require consideration of conflicts of interest, disqualifica ion from managing corporations, or whether the individual was involved in the business of a terminated or suspected tax practitioner.	**Do not agree**	We do not support expanding the fit and proper person test as proposed. It is a very critical concept and can prevent an applicant from registering. It is important that it not be unduly complicated, otherwise it may improperly restrain tax practitioners from being able to register and conduct their tax practices. Fit and proper person has a common law meaning and the TPB's own guidance material refers to several AAT cases. The proposed changes are prescriptive and narrow and may, in fact, restrict rather than expand the application of the fit and proper person test. A broad approach to the test is helpful as becoming too prescriptive can instead limit discretion. Any legislation or adoption of other agencies' definitions of fit and proper person would need to be minimal, serious and critical to the integrity of the tax practitioner profession. Further, the term 'involvement' would need to be carefully defined to ensure that it does not affect innocent individuals or entities, nor offend principles of association. We are also concerned about the conflict of interest proposal as subsection 30-10(5) of the Code of Conduct legislates for adequate management of conflicts. This is reinforced by section 220 pf APES 110 Code of Ethics for Professional Accountants mentioned in 5.34.1.

5.40	There may also be scope to adjust the five-year time period built into the fit and proper person requirement under he *TASA*.	**Undecided**	Requires further detail and context. The five-year period may be appropriate in some cases, but not in others. Our comments in relation to disclosures on the register, similarly apply to this proposal. Caution should be taken to avoid imposing a permanent professional life sentence with no second chances. A comparison against regimes in other jurisdictions or under other legislation should be undertaken. Our preference is to have permanent banning orders available to the TPB rather than placing barriers to entry at the registration process. While there may be scope to increase the time period there should not be an unlimited timeframe. The legislation should not be determinate as people should be able to show they can change their ways. Further consideration should be given to the proposal and its implications, especially for bankruptcy or insolvency.
5.41	As is noted in Chapter 3, it might also be appropriate for the criteria to be expanded to include upholding the integrity of the tax system. While this is already inferred in paragraph 20-15(a) of the *TASA* there may be value in making this more explicit.	**Do not agree**	Reference to the integrity of the tax system is inappropriate for the fit and proper person test. The concept is too amorphous and generic, with limited applicable evidence and too much discretion. The proposal introduces new, untested concepts where there is no evidence of anything being wrong with the current test. TPB should risk rate, monitor and gather information on registrants which can then be used to inform education and compliance strategies. We also re-iterate earlier comments about the lack of a regulatory-playing field, vis-a-vis lawyers practicing in tax.
5.42	Picking up on the discussion Chapter 7 (and the case examples in Appendix C) on supervisory agents, there may be scope for the TPB to consider the associates of a tax practitioner in determining whether they are a fit and proper person. In particular, the fit and proper person test could consider whe her the tax prac i ioner operates a practice with, or under the direction of, a deregistered or terminated tax practitioner.	**Undecided**	Further detail and context required. We prefer banning orders, including permanent orders, to ensure deregistered or terminated tax practitioners no longer operate within the profession. As mentioned in 5.36.1, we note that the fit and proper person test applies to directors for company registrants. The *Corporations Act 2001* definition of directors encompasses shadow directors. As such, it is arguable that the Board can already deregister (or choose to not register) a company if information is provided that demonstrates a person defined as a director of the company for the purpose of the *Corporations Act* (including shadow directors) is not a fit and proper person.

5.52	Consultation reveals that access to he tax agent portal is the driving reason behind suggestions to include tax clinics in the tax practitioner regime. However, access to the portal is a matter to be determined by he ATO. It would appear burdensome and unnecessarily bureaucra ic to require a volunteer-run tax clinic to register as a tax prac itioner and meet the relevant entry requirements to access an ATO system. Tax clinics should continue to work with the ATO so that the portal issue can be considered as part of the pilot evaluation.	**Disagree**	We are yet to be convinced that all risks are mitigated. Access to the Portal or Online services for agents can expose the Tax Clinic, the ATO and taxpayers to significant risks. Tax Clinics or the registered agent must ensure client data and ATO systems are not inappropriately accessed. We would be interested in the ATO's view as to how they protect their systems from misuse. We recommend that Tax Clinic staff, and students, be trained in the responsibilities of the profession vis-à-vis the tax system. They should operate under the supervision of a registered agent at all times. We are aware that similar initiatives are undertaken in the legal profession, however there are limited risks in that students do not have access to online personal tax information and ATO systems. We also note that some Tax Clinic students are getting a 'reward' in that the experience forms part of subject credits toward a university degree. Finally, we see Tax Clinics as a valuable learning environment for students who may become tax professionals. This learning environment should reflect as closely as possible the realities of being a tax agent, including the regulatory environment in which they operate.

Chapter 6 Code of Professional Conduct

We are strongly of the view that the Code of Professional Conduct should remain in the Act. While we understand the argument for the Code of Professional Conduct to have a degree of adaptability, as a principle, regulators should not have the power to set requirements on those they regulate. The Parliament should not and does not need to abrogate legislative powers to the TPB. Given that significant penalties can apply to a breach of the Code, additions to the Code should remain the prerogative of the Parliament, through legislation or regulations.

We have not seen any evidence of deficiencies in the Code. Given that the Code is principle-based, we believe it is dynamic enough to capture most if not all existing or possible behaviours of concern including in the digital space. The TPB may either wish to test this and/or provide more guidance on how it will apply the Code. The TPB also needs to act with greater speed to finalise its guidance and be given the power to issue its own rulings that it is bound by.

Para	Discussion Paper view	Position of the Major Accounting Bodies	Comments
6.5	The TPB is of the view that the Code should become more dynamic in nature by providing the Board with the power to amend and update the Code. This would allow the TPB to deal with any emerging and/or best practice behaviours, such as those in relation to operating in a digital environment or the use of engagement letters.	**Do not agree**	While we understand the need for the Code to have a degree of adaptability, as a principle, regulators should not have the power to set or amend requirements they enforce. Given that significant penalties can apply to a breach, such a prerogative should remain with Parliament, through legislation or regulations (as a minimum). The Code is well-designed in that it is legislated and principle-based. While the Code should remain legislated, additions to the Code should be subject to parliamentary oversight and therefore could be made by regulation (rather than something lesser). We observe that as a principle-based code, it is arguable that the existing Code can encompass and absorb issues around the digital environment or the use of engagement letters. Alternatively, the TPB could develop a Tax Agents' Charter which sets out rights, obligations and expectations between the TPB and tax practitioners. In this way, the TPB would outline its culture and provide its undertakings to tax practitioners as to how it agrees to conduct itself and interact with tax practitioners in the performance of its statutory duties.
6.6	The ATO considers he Code of Professional Conduct should be linked to a professional association's code, such that a breach by a tax practitioner of its professional association's code could result in a breach of he *TASA* Code of Professional Conduct. Linking the codes would provide he TPB with a more complete picture of a tax practitioner's conduct during the registration or	**Undecided**	Requires further detail and context. It should be noted that the APES 110 Code of Ethics for Professional Accountants and professional standards issued by the APESB has a much wider application than just tax practitioners, therefore it may not be appropriate to link in all circumstances. As noted earlier, not all recognised associations operate to the same model in terms of ethical and professional standards, professional conduct hearings etc. It is difficult to see how this ATO view would be implemented in practice.

Para	Discussion Paper view	Position of the Major Accounting Bodies	Comments
	renewal process. Fur her information on the relationship between the TPB and he professional associations is at Chapter 11.		
6.10	We agree wi h that statement and believe it is best captured, at least in part, by making the Code a more dynamic instrument that can adjust to changes in a more contemporary manner than is permitted when it is enshrined in the Act. Curren ly any changes to he Code require legislative change. This can be time consuming and is not conducive to creating a proactive regime where changes to the environment can be promp ly adapted to by the regulator.	**Do not agree**	See above response to 6.5
6.11	To ensure appropriate controls are in place (including Parliamentary oversight), such changes could be made by giving the TPB a legislative instrument power. This process would necessarily incorporate a consultation process occurring with the profession.	**Do not agree**	We seek further clarity on what is proposed and meant by 'legislative instrument power' and the need for this, as distinct from adding to the Code through regulations. See above response to 6.5.
6.12	This legislative instrument making power could be utilised by the Board to address emerging or existing behaviours and practices that may not have been contemplated when the Code was developed in 2009. For example, his could include: 6.12.1 matters relating	**Do not agree**	We consider the examples in this paragraph can be dealt with under the existing Code. For example: • Cybersecurity requirements are a client confidentiality issue which is already covered in the Code. Confidentiality is not a static interpretation and in the digital age, non-disclosure to third parties means having appropriate cybersecurity. In the ATO space, portal access is managed by defined contractual standards which can be set between the ATO and the agent. • The TPB has a guidance note on letters of engagement with the explicit purpose of meeting the

Para	Discussion Paper view	Position of the Major Accounting Bodies	Comments
	to hose digital service providers who lodge tax returns online and have received a code from he ATO allowing them access to he ATO portal; 6.12.2 providing legal services, such as he draf ing of legal documents or matters rela ing to the maintenance of legal professional privilege; 6.12.3 the appropriateness of using a contingency fee or guaranteed refund arrangements; 6.12.4 ensuring that companies and partnerships have appropriate corporate governance arrangements on place; 6.12.5 maintenance of a trust accounts for client monies; 6.12.6 cybersecurity requirements; and 6.12.7 mandating letters of engagement.		Code of Conduct requirements. Letters are a tool or product, rather than a principle. We support moves by the TPB to mandate letters of engagement to improve outcomes for both the consumer and agents We also consider the examples go beyond ethical requirements and are therefore professional standards. As such they will be prescriptive by nature and hence not 'dynamic'. We would also expect that such prescriptive requirements may not be future-proofed. We have observed that TPB Practice Notes and other guidance remain unlegislated. Instead of modifying the *TASA* and Code of Conduct, we suggest that the Practice Note process be streamlined to give it legal authority. With an efficient collaborative and consultative process, the TPB could work with agencies and associations to develop standards. The TPB should have access to resources similar to the ATO's Tax Counsel Network who can finalise and support the passage of proposed Guidelines (legislative instruments). We seek further clarity on the link between contingency fees and the black economy in the paper. We do not support there being a direct linkage where contingency fee models are in place with the right governance procedures and controls.
6.21	One issue could be whether maintaining a claim for privilege is within the professional expertise of a par icular practitioner. For example, where a tax practitioner reasonably makes an LPP claim on behalf of a client at an access visit without notice, and the tax practitioner lacks the professional expertise to maintain that claim, it would be	**Do not agree**	This proposal is outside the scope of Review. While we concur that a tax practitioner should seek legal advice on a client's claim for legal professional privilege (LPP), we are not certain of the benefits of making it an explicit requirement in the Code. The LPP claim is made, and the legal advice obtained, by the client, not by the practitioner. We note that the onus is on the tax agent (acting in the client's best interests) to at least bring to the client's attention the possibility of a claim for LPP. Once LPP is waived, it cannot be retrieved, as illustrated by the recent High Court decision in the *Glencore* case. The Code legislates the obligation on the tax agent to act in client's best interests, so this proposal may conflict with an existing provision. The proposal attempts to regulate the practitioner in relation to the activities or rights of the client. Further, there are well established principles to deal with LPP claims so it is inappropriate to include

Para	Discussion Paper view	Position of the Major Accounting Bodies	Comments
	appropriate for the tax practitioner to obtain advice from a qualified Australian legal practitioner on the maintenance of that claim. Amendments could be made to the TPB Code of Conduct to require such tax practitioners who make a claim for LPP on behalf of their client to obtain advice from a qualified Australian legal practitioner on the maintenance of that claim.		prescriptive processes in the Code. The Law Council of Australia is currently working with the ATO on public guidance which will assist practitioners in managing LPP claims.

Chapter 7 Sanctions

We support the TPB having an increasing range of sanctions they can impose for breaches of the Code of Professional Conduct. The increased range of penalties should allow the TPB to better regulate tax practitioners. We note that if the TPB is given such powers, then additional resources are likely to be required to administer and apply those powers.

We acknowledge that there may be deficiencies in the current investigative processes of the TPB that may be impacting the timeliness of such work. We therefore recommend that such operational processes be subject to a review to identify efficiencies that should result in greater effectiveness. Such a review may also identify capability gaps within the TPB.

Publishing a process map of the ATO-TPB investigations process would also allow the professional community to better understand the background and evidence-gathering that has led to the imposition of sanctions.

Para	Discussion paper view	Position of the Major Accounting Bodies	Comment
7.18	The TPB has suggested that he available suite of sanctions is insufficient in targeting and changing particular tax agent behaviours and that the sanction powers available to the TPB need to reflect a more contemporary and agile sanctions regime. Any new sanctions regime needs to be graduated to deal wi h the particular mischief, whether the particular mischief is indicative of a broader risk or a more general deterrence to restore community confidence. Additional new sanction powers could include infringement no ices, enforceable undertakings, interim and immediate suspensions, lifetime bans, practice reviews and external intervention orders. Reference to the *Regulatory Powers (Standard Provisions) Act 2014* would be instructive if additional new sanctions such as infringement no ices and enforceable undertakings were being contemplated.	**Agree in principle**	Further detail and context required. There is a need to develop a framework around the imposition of low to mid-range administrative penalties and pecuniary penalties. A possible model for consideration is the pecuniary penalty regime of the Office of Fair Trading NSW (OFT) under the *Home Building Act 1989*, where many offences that are subject to civil penalties are also prescribed as "penalty notice offences" that are liable to a lower order fine set out in a Schedule to the Regulations. The OFT can impose those fines without the need to go to the tribunal, up to a total maximum amount. We also note that if the TPB is given a wider range of sanctions and powers, then additional resources are likely to be required to administer and apply those powers. We also note that fault-based penalties do not necessarily change behaviour in the absence of follow-up investigation to see if the behaviour has been rectified.

Para	Discussion paper view	Position of the Major Accounting Bodies	Comment
7.19.	In addition to sanction types, he TPB is of the view hat he current inves igation powers in he *TASA* could be improved. In particular, he 6-month timeframe to conduct a formal investigation can create difficulties. The TPB is of the view that the 6-mon h timeframe should be extended and/or amended to allow the TPB to extend an inves igation, even if he reasons for extension are within the TPB's control, for example, due to the complexity of matters raised in the inves igation. This decision to extend would also be a reviewable decision. Currently, the *TASA* only allows a one-off extension due to matters that are outside of he TPB's control. As an alternative, the formal information gathering powers under the *TASA* could be amended such that they are not triggered by the commencement of a formal inves igation.	**Agree in principle**	Further detail and context required. For small practices and sole practitioners especially, drawn out TPB investigations are highly detrimental to the viability of their business. We would like to see the TPB commit to a published service standard on how it goes about its investigations. Extensions of time to conduct a formal investigation should be by exception, with suitable checks and balances in place such as approval of the TPB. Reasons for the delay should be shared. The TPB should publicly-report the number of investigations where an extension was required and the reasons for the extension. This would assist identify in more detail why investigations may be taking more than six months.
7.24	The TPB and the ATO have each highlighted an integrity concern in the inves igation process that they see as a significant problem. Higher risk tax practitioners are able to circumvent the investigation process and avoid disciplinary action through voluntarily deregistering before a formal investigation commences. A case example of Agent C is provided at he end of this Discussion Paper.	**Agree in principle**	Further detail and context required on how the Review believes this mischief should be addressed. CPA Australia and CA ANZ do not allow members to resign where they are subject to disciplinary processes.
7.29.1	QA audits – Internal control weaknesses: Many referrals to the TPB result from internal control weaknesses in a tax practice. It may be beneficial if the TPB were able to order hat a tax practice undertake a QA Audit where such control weaknesses appeared to exist. Such an audit may be issued as part of another order, or as an interim sanction.	**Agree**	We are open to considering whether the practitioner's professional association could do such a review. Note however that not all recognised associations conduct such reviews.

Para	Discussion paper view	Position of the Major Accounting Bodies	Comment
7.29.2	**Enforceable undertakings:** It may be desirable for the TPB to have an effective alternative to civil penalties or administrative sanctions, which could be used to head-off more serious behaviours. A system of enforceable undertakings would allow undertakings to be given to, and accepted by, the TPB and be enforceable in a court. ASIC have had this sanction available to hem and it has been used in around 9% of heir finalised actions.	**Agree**	We note that enforceable undertakings should be disclosed to the tax practitioner's professional association/s. Such undertakings are generally expressed as 'confidential' however, and they are not always visible. In a practical sense, they fall into the 'first strike/first warnings' category.
7.29.3	**Interim suspensions:** Where there is a risk of immediate harm to the public and/or tax system it might be useful if he TPB had the power to issue an interim suspension as a prelude to a full inves igation process. This proposal bears similarities to the Legal Profession Uniform Law (NSW) which allows the NSW Bar Association, prior to making a decision, to suspend a legal practitioner's practising certificate where it is considered the immediate suspension of the certificate is warranted in the public interest on the basis of the seriousness of he alleged conduct.	**Agree in principle**	Further detail and context required. We would be concerned if "tax system integrity" entered into the TPB's thinking here. The ATO has a range of options to target tax professionals perceived to be at risk (including 'switching off' access to online services). The TPB should not, in our view, be seen to be part of the ATO's arsenal in circumstances where the agent has been given no opportunity to present their case to the TPB.
7.29.4	**External intervention:** Often practices run into difficulties due to a significant event (for example, illness of he prac i ioner). When an agent is de-registered or terminated there is no formal legislated process about protecting clients. Unlike he legal profession, the *TASA* does not provide for the TPB to take action and intervene in such cases to protect consumers. Intervention would involve he TPB stepping (through he use of an appointed panel member) into he relevant practice and managing it. This would be to assist it to recover, or to take steps to wind it up. Such intervention	**Agree in principle**	Further information about the legal profession process and its potential application to the tax practitioner profession is required. Safeguards for tax practitioners and client privacy protections need to be included. We are interested in working with the TPB to develop a model involving collaboration with the TPB and professional associations. This could enable: • the identification of panels of professionals who are able to step in • the development of a communications strategy for affected clients • the design of referral processes to identify local practitioners willing to take on additional client loads, and • creating panels of firms to assist and standardise the transfer process.

Para	Discussion paper view	Position of the Major Accounting Bodies	Comment
	would primarily protect consumers but may also assist a practi ioner in regulatory difficulties, by allowing some value to be recovered for the practice in an orderly run off of clients through a managed winding up. Taxpayers would have the op ion of moving to another tax agent of their choice.		
7.29.6	**Deregistered agents:** A broadened suite of sanctions should, where appropriate, be made available to the TPB to address the behaviour of deregistered agents (that is, hose agents who do not renew heir registration or do not meet the renewal requirements). This would address he concerns raised above where tax prac i ioners are voluntarily de-registering or not renewing their registration to avoid TPB compliance action, then subsequently entering the profession as an employee. Similarly, to the observa ion above, the ability to be able to publish he names of de-registered agents might be a fur her appropriate safeguard.	**Agree.**	See response to para 7.24
7.29.7	**Administrative sanctions and Infringement notices:** The TPB's deterrent effect is limited by he fact that it cannot rapidly impose administra ive sanc ions, unlike ASIC which has had such powers since 2004. The review has iden ified two instances that may warrant administrative sanctions: 1. There has been an alleged lower level breach of he Code of Professional Conduct by the tax practitioner. 2. The tax practitioner has been either reckless or shown intentional disregard in applying he tax law, in preparing a return for a taxpayer (which has resulted in a tax	**Agree in principle (with reservations about the scope)**	We support the TPB having the ability to impose administrative sanctions. The design of penalties should be carefully considered including the number of penalty units. They should be independent of any associated tax liabilities or tax penalties and be mindful of interactions with any safe harbour given to taxpayers. Given the availability of civil penalties for recklessly or intentionally making false and misleading statements, we seek further clarification on: • what type of penalties are most likely to be sought for false and misleading statements, and • whether lower-level administrative penalties will replace the civil penalties, or • new administrative penalties are being sought for being reckless in applying or intentionally disregarding the tax law, in preparing a return for a taxpayer. We see "reasonable care" penalties as more problematic in that our members would rightly expect

Para	Discussion paper view	Position of the Major Accounting Bodies	Comment
	shortfall). With respect to the first instance, it may be beneficial if the TPB was able to take quick action by issuing infringement no ices for certain breaches of he Code of Professional Conduct. Infringement no ices could also be issued against unregistered agents. Where the behaviour con inues the TPB may then pursue more serious sanctions. It would be envisaged, given the lower level of any breach of the Code that he tax practitioner, on payment of he infringement notice would not then have their name publicised by the TPB for this lower level of sanction. Administrative/constitutional law principles require that an op ion be provided to challenge he infringement no ice. That would be decided by a court and a loss in court would result in a conviction.		any penalty to be determined with input from those members of the TPB who have actually worked as agents and have a feel for the agent's work environment.
7.29.8	**Permanent disbarment from the tax profession:** The TPB cannot ban even the most egregious tax practitioners from working in the tax profession in another capacity, that is, other han as a registered tax practitioner. On de-registering an agent he TPB may only prohibit them from re-applying to become registered for up to five years, per section 40-25 of the *TASA*. Fur her, a tax practitioner's termina ion appears on the public TPB Register for a maximum of 12 months only. After 12 months, a potential employer may not be able to discover hat the particular individual had their registra ion terminated. Permanent disbarment from the profession would prevent certain terminated or de-registered practitioners from being employed in the profession, paid or otherwise,	**Agree**	Examples of egregious behaviours required. Obvious questions also arise as to why the ATO does not pursue criminal sanctions against the most "egregious tax practitioners" rather than go down the TPB disciplinary route. Permanent banning orders should also cover contracting arrangements, not just employment arrangements. The ASIC approach could potentially be used as a basis for the design of the orders and will also ensure that the orders are appealable to the AAT.

Para	Discussion paper view	Position of the Major Accounting Bodies	Comment
	and prohibit registered practitioners from engaging them.		
7.30	Analysis of ATO data shows that it takes the TPB on average **41 weeks** to action an ATO referral and come to a decision. While this could be seen as a significant period of time for a practitioner to be subject to review and investigation, the legislative process underlying the inves igation and he gathering of information does not facilitate a quick resolution.	**Do not agree**	We are surprised the Discussion Paper does not question or seek to better understand the reasons for the long investigation timeframes. We do not believe that it is the legislative process, or the information gathering provisions that are the cause of these extended time periods. The *TASA* provides for the TPB to request documents in 14 days and legislation requires that investigations are completed within six months. These timeframes therefore go to questions about the effectiveness of the TPB's referral triage processes, resourcing and information exchange between the agencies. There may be capability constraints as well. We suggest that the final report include a roadmap of the TPB investigation process and a diagram of the ATO-TPB interactions, including the decision-making process. We suggest the TPB commission a review of these operational processes to identify efficiencies that should result in greater effectiveness.
7.31	In order for the TPB to be able to able to u ilise an agile sanctions regime, it needs to be adequately resourced.	**Agree, subject to evidence that the TPB is using existing resources effectively**	We reiterate our position that increased resources should not be funded by an increase in costs to tax practitioners.
7.32	The formality involved in the TPB conduc ing an inves igation appears inefficient and improvements could be made to the investigatory process.	**Agree in principle**	Require further details and context. It is unclear what is being proposed, and what formalities are problematic. The legislated investigation process at section 60-95 of the *TASA* is broad and non-prescriptive. Where the Board is enabled to delegate certain decisions to TPB staff, this may make the investigation decision making process more efficient. The TPB needs to have the appropriate capability and talent pool supported by efficient processes to undertake timely, effective investigations. A review of the TPB's current investigation processes and a capability assessment may assist in identifying opportunities to improve the TPB's effectiveness. Where the practitioner is engaging in the process and responding in a timely manner, then we would expect compliance with a service standard and timely resolution. A Tax Agents' Charter or similar product would be useful in setting out mutual obligations and expectations, and what to expect during a TPB investigation. As stated in 7.30, we recommend that the final report suggest that the TPB commission a review of these operational processes to identify efficiencies that should result in greater effectiveness.

Chapter 8 Unregistered agents

Para	Discussion paper view	Position of the Major Accounting Bodies	Comments
8.5	Whilst here are current civil penalties for unregistered tax prac itioners, and a number (12) have been prosecuted there is s ill the requirement to identify that the individual has been operating as an unregistered practitioner. As the industry evolves and with digital services improvements, the ability to be able to adequately identify unregistered tax practitioners will also need to be reviewed.	**Agree in principle**	The statement *"the ability to identify unregistered tax practitioners will also need to be reviewed"* should be clarified. We lack an understanding about how the ATO and/or the TPB currently go about identifying unregistered agents (apart from dob-ins). Further evidence of the problem to demonstrate its size and impact is required, as well as an explanation of the TPB's concerns regarding its ability to identify unregistered agents. It is less likely that this is a legislative framework issue than one of intelligence gathering and information sharing. We support efforts to build the TPB's digital analysis capability and providing it with the tools necessary to operate in a digital environment.
8.14	It may assist identifying he controlling mind of a tax firm if the *TASA* was amended to require tax firms, irrespective of their legal structure, to provide details to the TPB of its actual governance and control structures. This informa ion could be made available via the TPB Register (see discussion in Chapter 4).	**Do not agree.**	See comments at 4.14.
8.15	To complement this and the discussion on permanent disbarment in Chapter 7, the Code of Professional Conduct could be strengthened to prohibit tax practitioners from employing, paid or otherwise, individuals who have been either suspended or permanen ly disbarred from the tax profession. This prohibition should be able to be determined by the Board and the Board should be able to specify the terms based on the factual circumstances of each case.	**Agree in principle**	We acknowledge that this requirement would require the earlier proposals on permanent banning orders and permanent display on the register to be progressed. For suspended tax practitioners, the prohibition should only apply during the period of suspension or deregistration. This places a positive obligation on employers to check the register and it is unclear whether there will be consequences if the employer employs one of these individuals. An administrative penalty may be appropriate for these situations where the employing agent has shown intentional disregard or recklessness in employing/engaging such a person. The TPB should therefore publish guidance for agents on best practice in onboarding new employees/contractors and provide prompt responses to enquiries relating to a person's background

Chapter 9 Safe Harbour

Our position is that penalties on tax practitioners should be solely administered by the TPB in its role as the regulator of the profession and therefore we do not agree with the proposal to provide the ATO with the power to penalise tax practitioners. The ATO should not regulate tax practitioners beyond the already available powers in promoter penalty, *Taxation Administration Act 1953* and *Criminal Code Act 1995* laws.

The question of extending the safe harbour for recklessness and intentional disregard of the law in order to enhance consumer protections should be kept separate from the sanctions and penalties regime for tax practitioners. While we recognise the need for such behaviours to be penalised, it does not necessarily follow that the current penalty regime should be altered.

As the penalties regimes of taxpayers should be administered by the ATO and tax practitioners should be administered by the TPB, there should be no apportioning of penalties or working out of joint culpability between the taxpayer and their tax practitioner. If the enablers of such reckless behavior or intentional disregard of the law are not tax practitioners, then it is arguable that the ATO should have residual power to penalise such enablers, and this would entail consideration of existing tools such as the promoter penalty regime.

If there are concerns regarding the capability of the TPB to regulate egregious behaviours of tax practitioners, this should be addressed through a capability and effectiveness review of the TPB rather than giving the ATO residual powers to impose penalties on tax practitioners. In stating this, we recognise that the ATO has a responsibility for the integrity of the tax system, however it would be confusing (to say the least) if both the ATO and the TPB had overlapping responsibilities for imposing penalties on tax practitioners.

Such a penalty regime would be detrimental to agent-client relations (for example, in terms of blame apportionment)

Our members would also rightly be wary of the possibility that an agent might be pressured by the ATO (overtly or subtly) to “back down” on a client matter to avoid penalties which might be imposed on the agent.

At a macro level, we also question the ATOs policy thinking. A fault-based penalty imposed by the ATO on the agent is not transparent to the client (consumer) and does little in a practical sense to force behavioural change on the agent unless the penalty is so large that it impacts the viability of the practice. Our members will be fearful that such a measure is an ill-disguised attempt to force agents perceived to be “bad” to exit the industry without the ATO troubling the TPB.

Para	Discussion paper view	Position of the Major Accounting Bodies	Comments
9.15	The ATO has proposed hat he administrative penalties framework (or some hing similar) could be used to apply administrative penalties on tax practitioners, where the taxpayer has a tax shortfall owing to the tax practitioner's fault. This is proposed to apply in instances where the tax practitioner's conduct is more culpable than a failure to take reasonable care.	**Do not agree**	Refer to the introductory comments immediately above. This proposal goes against the independence issue that is at the heart of this review – the legislative framework needs to ensure the appropriate regulator is administering the appropriate laws. The analysis needs to start by defining what role each agency performs. We are of the opinion that the regulation, including punishment of tax agents, is the TPB's domain while the ATO's role is the administration of shortfall penalties on the taxpayer. We are expecting the TPB's ability to impose fines and penalties will expand because of this Review which will ensure that tax agents are appropriately regulated by the TPB. There should be no duplication of powers, nor the allocation of new powers to the ATO for tax practitioners. We note that under the TASA there is a civil penalty provision (s50-20) and that the ATO already has access to the promoter penalty and other laws which can encompass the behaviour of tax agents. We do not support the ATO's attempt to seek to impose administrative penalties on tax practitioner behaviours, given that this is the clear regulatory purview of the TPB. We note that the "*low risk, easily identifiable examples of improper agent behaviours*" expressed at paragraph 9.19 are unlikely to satisfy recklessness or intentional disregard. The Canadian system includes civil penalties for culpable conduct which is tantamount to intentional conduct or shows a wilful, reckless or wanton disregard of the law. It is viewed as the lesser penalty to criminal tax evasion. The ATO proposal to apply this to low risk agent behaviours runs counter to the intent of the Canadian law which is intended to apply to more serious acts (that is, one-step below tax evasion). Generally speaking, the Australian equivalent of the Canadian regime are the promoter penalty laws which are administered by the ATO. We also note that there is not an equivalent of the TPB in Canada and therefore this is not a l ke for like comparison. ,
9.25	An obvious method to further enhance consumer protection would be to remove the restriction of the safe harbour not applying in instances of recklessness or inten ional disregard by he relevant agent. This is based on the premise that penalties ought to follow the penalised conduct. However, this approach would	**Agree**	Refer to introductory comments above. We agree that consumers should not be liable for the tax practitioner actions of which they have, or could not have had, knowledge. Our expectation is that the ATO would use the Commissioner's penalty remission powers in such cases to achieve this outcome. That said, we do agree that any safe harbour should ensure taxpayers do not escape all forms of culpability just because they use a tax agent. The sufficiency of the current burden of proof on the taxpayer for the reasonable care safe harbuor should be tested against situations of recklessness or intentional disregard. The penalty for recklessness or intentional disregard by an agent must sit somewhere. The ATO has access to the promoter penalty provisions and other laws and we support the TPB having the power to impose administrative or civil penalties on agents for such behaviours. The question of extending the safe harbour for recklessness and intentional disregard of the law in order to enhance consumer protections should be kept separate from the sanctions and penalties regime for tax practitioners.

Para	Discussion paper view	Position of the Major Accounting Bodies	Comments
	need to ensure that taxpayers cannot abrogate individual responsibility by simply engaging an agent.		
9.27	The review sees some merit in he ATO's proposal to impose an administrative penalty upon egregious tax practitioners. This seems a much more direct way of addressing the issue han the current avenue which requires a taxpayer to sue their agent under the common law action of negligence. The review considers that, as part of this proposal, a tax practitioner's registration could be terminated for penalties of a certain quantum.	**Do not agree**	We agree with the principle of egregious agents being subject to administrative penalties, however we do not support the ATO applying these penalties as the TPB is respons ble for the regulation of the profession. Paragraph 9.18 suggests that the ATO would compute a base penalty amount *"with reference to…any shortfall amount…to be treated as if it was incurred by the agent"*. This is inappropriate as this is not the intent of the administrative penalty regime which is also limited to taxation laws[1]. The proposal's difficulties are further compounded by the complex challenge of determining the level of culpability between the agent and taxpayer to apportion blame and set penalties. Taxpayers should also retain the right to sue tax agents under common law and those rights should not be undermined or circumvented by administrative penalties. Double jeopardy penalties by the ATO and client instigated legal action becomes an issue. The cost of professional indemnity cover for tax agents would likely increase if this proposal were implemented. We believe that better enabling the regulator (i.e. the TPB) to do their role is the most effective way to regulate the profession and address behaviours.

[1] Explanatory Memorandum, House of Representatives, A New Tax System (Tax Administration) Bill (No. 2) 2000

Chapter 10 Tax (financial) advisers

It is positive that the Discussion Paper raises several high-level suggestions to improve the current regulatory framework. Instead of developing these options further, we strongly recommend the final report recommends to government a wholesale review of the current regulatory framework.

Further, we recommend that the objective of such a review should be to identify policy changes needed to ensure that consumers can access quality affordable advice from their choice of trusted adviser.

Such reforms are needed to ensure that the regulatory framework encourages the provision of affordable, independent quality advice by professionals and importantly seeks to engage, inform and protect the client in the process.

The complexity of the current regulatory framework has been caused by years of layered regulatory reforms, without appropriate consideration as to whether such changes would give consumers access to quality affordable advice from their choice of trusted adviser.

Para	Discussion paper view	Position of the Major Accounting Bodies	Comments
10.15.1	Option 1 The status quo remains. This means that ASIC is responsible for the regulation of financial advice and any financial advisers that provide tax advice as part of their financial services for a fee or reward must be registered with the TPB as a TFA and therefore are subject to the TPB regulatory regime. (page 68) 10.15.1 Option 1 reflects the current position and fails to achieve a more streamlined, less complex model and a reduction in regulatory burden. In our view, this is not a viable option.	**Disagree**	Further to our comments in 2.18, we do not support this option. The current regulatory environment is a product of years of consistent change and layered regulatory amendments. The result is an inefficient advice model which negatively impacts client's access to affordable, quality advice from their choice of trusted adviser. A holistic review of the current regulatory framework, including the interaction between different regulatory regimes is needed.
10.15.2	Option 2 ASIC operates as a 'one stop shop' for the regulation of financial advice and tax advice. The TPB would have no direct role in the regulation of financial advisers. 10.15.2 Option 2 removes the TPB from being directly involved in the regulation of financial advisers that also provide tax advice. That function would instead sit with ASIC.	**Disagree**	While this option would remove some duplication and complexity from the current model, we do not believe it will deliver the potential benefits that could be achieved through streamlining registrations. As ASIC does not currently perform this role, it is likely it would require additional resources, which would be funded by financial advisers who are tax (financial) advisers under the ASIC Funding Model. Given the negative impact of the current funding model on the financial planning sector, especially for those running an independent practice or small business, we do not support any reform that would result in increased fees. Note the current indicative minimum levy for AFS licensees is $1,500 plus $907 per adviser for 2018/2019.

10.15.3	Option 3 ASIC and the TPB operate as co-regulators of financial advisers and ASIC is responsible for the imposition of sanctions for tax related matters. TPB registration as a TFA automatically attaches to all financial advisers, who can then 'opt out' of the TPB regime if they do not provide tax advice. 10.15.3 Option 3 is similar to Option 1, but for the following: • the existing ASIC criteria and requirements set by FASEA would serve as a substitute to the TPB's requirements; • all financial advisers would automatically be registered with the TPB and would be able to opt out of TPB registration as a TFA if they were not required to be registered; and • the TPB would be responsible for investigating conduct to determine if there is a breach, including a breach of the *TASA*'s Code of Professional Conduct; and • where a breach is found by the TPB, ASIC would be responsible for the imposition of any sanctions	**Agree in principle as an interim solution. Prefer option 4.**	We broadly support this as an interim option until a wider review of the broader regulatory framework as recommended in 2.18. With the alignment of the education requirements to become a financial adviser and a tax (financial) adviser, this could provide a pathway for streamlined registration, potentially removing duplicated processes and costs for new entrants to the financial planning sector. However, we would need to understand ASICs potential funding requirements, if any, to support this model and be responsible for the imposition and enforcement of any sanctions. If ASIC requires further funding, this would add further cost burden to this sector under the ASIC Funding Model, which is already having a significant negative impact on smaller and independent practices. Further, the new professional standards reforms for financial advisers do not apply to individuals who are authorised to provide general advice, advice on non-relevant products and wholesale advice to clients. It is not clear from Option 3 how these advisers would register or be regulated under this model.
10.15.4	Option 4 ASIC and the TPB operate as co-regulators of financial advisers and the TPB is responsible for the imposition of sanctions for tax related matter. TPB registration as a TFA automatically attaches to all financial advisers, who can then 'opt out' of the TPB regime if they do not provide tax advice. 10.15.4 Option 4 is similar to Option 3, however, where a breach is found by the TPB, the TPB would impose the relevant sanction	**Agree in principle as an interim solution. Preferred over option 3**	We broadly support this as an interim option in preference to Option 3 until a wider review of the broader regulatory framework as recommended in 2.18. It negates the need for ASIC to potentially seek additional resources, while providing some relief for financial advisers who are tax (financial) advisers. However, further clarity is needed to understand details such as the fees payable, how the process would be streamlined between both regulators and any potential cost implications to implement this approach. Further, the new professional standards reforms for financial advisers do not apply to individuals who are authorised to provide general advice, advice on non-relevant products and wholesale advice to clients. It is not clear from Option 3 how these advisers would register or be regulated under this model.
10.15.5	Option 5 ASIC and the TPB operate as co-regulators of financial	**Disagree**	We do not support this model, as it is unclear how it would ensure any individual who 'opts in' meets the required TFA education and experience requirements.

	advisers and ASIC is responsible for the imposition of sanctions for tax related matter. TPB registration as a TFA attaches to all financial advisers that 'opt in' to the TPB regime if they provide tax advice. 10.15.5 Option 5 is similar to Option 3, however, a financial adviser would be eligible to register with the TPB simply by opting into the TPB regime. As with Option 3, the existing ASIC criteria and requirements set by FASEA would serve as a substitute to the TPB's current registration requirements.		However, we would need to understand ASICs potential funding requirements, if any, to support this model and be responsible for the imposition and enforcement of any sanctions. If ASIC requires further funding, this would add further cost burden to this sector under the ASIC Funding Model, which is already having a significant negative impact on smaller and independent practices. Further, the new professional standards reforms for financial advisers do not apply to individuals who are authorised to provide general advice, advice on non-relevant products and wholesale advice to clients. It is not clear from Option 3 how these advisers would register or be regulated under this model.
10.15.6	Option 6 ASIC and the TPB operate as co-regulators of financial advisers and the TPB is responsible for the imposition of sanctions for tax related matter. TPB registration as a TFA attaches to all financial advisers that 'opt in' to the TPB regime if they provide tax advice. 10.15.6 Option 6 is similar to Option 5, however, where a breach is found by the TPB, the TPB would impose the relevant sanction.	**Disagree**	Further to our comments at 10.15.5, we do not support this model.
10.15.7	Option 7 This would allow financial advisers that provide incidental tax advice to not have to be registered with the TPB. At the same time there are reciprocal arrangements that permit tax advisers/accountants to provide incidental financial advice which in effect restores the concession that was previously available to accountants that are registered tax practitioners 10.15.7 Option 7 would allow financial advisers to provide	**Disagree**	We do not support this model. Tax is a key consideration for the majority of financial planning strategies. It is not incidental, it is material to the advice and recommendations. It is therefore important that a consumer can be confident and trust that the advice they seek from their financial adviser appropriately considers and accounts for any tax (financial) advice considerations. This requires appropriate education, experience and oversight obligations to be meet and adhered to. Further, the accountants' exemption only permitted the recommendation to establish or wind up

	incidental tax advice without needing to be registered with the TPB. In addition, this option would bring back the accountants' exemption and allow accountants to provide basic self-managed super fund advice and services without having to operate in the AFSL environment.		an interest in an SMSF. It was so limited, that it did not even permit a recommendation to not establish an SMSF. Restoring such a limited exemption is not going to address the need to enable affordable, access ble and quality advice by trusted advisers. Rather, significant review of the current regulatory framework is needed to address the current complex environment, which is resulting in increased costs and discouraging clients from seeking advice.
		Our preferred future state	A wholesale review of the current regulatory framework is needed to address the regulatory complexity caused by years of layered regulatory reforms, without any appropriate review to ensure these reforms are meeting their policy intent. For example, the objective of the Future of Financial Advice (FoFA) reforms was to ensure advice is in the best interests of clients and advice should not be put out of reach of those who would benefit from it. The objective of the review should be to identify policy changes needed to ensure that consumers can access quality affordable advice from their choice of trusted adviser. The resulting regulatory framework would need to breakdown the existing silos and ensure: • aligned entry requirements for those providing advice • streamlined registration processes • a common code of ethics, and • harmonised regulatory obligations, including professional development. These changes are needed to ensure that a regulatory framework is established that encourages the provision of affordable, independent quality advice by professionals and importantly seeks to engage, inform and protect the client in the process.

Chapter 11 Relationship with the professional associations

We consider that the TPB should continue to recognise professional associations for registration as well as for their regulatory and compliance activities given that the functions are not mutually exclusive.

We are supportive of efforts to share information and expand cooperation on education and awareness initiatives between the TPB and recognised associations. We look forward to working with the TPB to develop potential models of such cooperation.

Para	Discussion paper view	Position of the Major Accounting Bodies	Comments
11.8	In light of the lif ing of education standards in the financial adviser profession, the TPB is of the view that the role of recognised professional associations in providing their vo ing members with an additional avenue for registration should be reviewed to see if it is still appropriate for this avenue to exist. If this pathway for recognition of professional associations was to be removed, he TPB is of the view that the current liaison and cooperation with professional associations would continue and indeed expand. For example, there could be improved sharing of intelligence and risk assessments, coordination of inves igations/sanctions, and a joint approach to the conduct of practice reviews. Therefore, any form of 'recognition' would be for the purposes of he TPB's regulatory and compliance activities, rather than its registration function.	**Undecided**	Further details and context are required. We consider that the TPB can continue to recognise professional associations for registration as well as for their regulatory and compliance activities given that the functions are not mutually exclusive. We would not accept removal of the membership pathway (item 206) until all related issues are identified and resourced. There are a raft of issues for the recognised associations to explore with the TPB before we can support joint activities such as practice reviews. These include: • The sharing of ATO data relevant to the tax practitioner which has attracted ATO scrutiny in the first place (secrecy and client confidentiality issues) • File selection for quality reviews (practitioners have "good" and "bad" client experiences and a focus only on what the ATO considers "bad" may not reflect the full picture) • Whether broader issues, such as governance, CPD, etc should be a focus for agent reviews. We are however supportive of efforts to share information and expand cooperation on education and awareness initiatives. We look forward to working with the TPB to develop potential models.
11.12	The informa ion sharing requirements hat currently exist should be modified and improved to require better 'two way' sharing of information and earlier sharing of information to allow he TPB and the professional associations to address concerning behaviour earlier.	**Agree in principle**	Further details are required. The secrecy and privacy provisions need to be reviewed to remove barriers to efficient information exchange while balancing the rights of the practitioner. From a professional association perspective, there are also important issues to consider (for example, procedural fairness etc.) in terms of using TPB information – based on ATO collected data – in our member disciplinary processes.
11.13	Allowing he TPB to be able to approve programs of the professional associations might also	**Undecided**	Further details and context are required. What does 'approve programs' and or strategies mean?

Para	Discussion paper view	Position of the Major Accounting Bodies	Comments
	help to apply a consistent approach.		
11.14	The TPB should cease to be a regulator of he professional bodies and this would then allow he professional bodies to take on a co-regulatory function with the TPB.	**More information required**	We agree if this comment in the Discussion Paper means that the recognised associations would no longer be subject to the annual declaration process referred to in paragraph 11.5. The reference to the professional bodies taking on a co-regulatory function with the TPB lacks clarity however. The Discussion Paper envisages that the TPB welcomes ongoing engagement with professional associations in areas such as professional conduct and quality reviews but is not so keen on recognising professional education pathways for agent registration (refer para 11.8). This contrasts markedly with the approach by FASEA which has spent months engaging with our professional associations on recognition of educational qualifications for financial advisers, including extensive mapping of our programs to FASEA competence standards. To be frank, we find this part of the Discussion Paper at odds in view of the ATO's recent random audits on work-related expenses and rental properties which have found many agents wanting in terms of their tax technical skills. Surely the ATO findings would suggest that professional associations whose members undertake intensive post-graduate studies in tax in order to gain membership have a higher standing in the eyes of the TPB. We are not suggesting that the ATO has not come across any CAs or CPAs, however we would have thought that focusing on tax specific components of the educational pathways in our associations would be regarded more favourably. If the TPB is to engage effectively with professional associations, it should look at all the components that make up a "quality" association – including education, ethical standards, quality reviews and disciplinary processes. It should not cherry-pick those aspects which suit its own purposes and ignore those which it finds burdensome to monitor.
11.15	A similar scheme to hat used by ASIC and FASEA of having code monitoring bodies to assist with regulating financial planners might also be appropriate for tax practitioners.		We do not support this model. The new FASEA Code Monitoring framework is yet to commence and therefore its success cannot be measured. Further, the potential costs this framework will have on the sector is yet unknown as ASIC has not yet approved any organisation to be a FASEA Code Monitoring Body. Consideration also needs to be given to recommendation 2.10 in the final report of the Hayne Royal Commission, which recommends the establishment of a single regulatory body which arguably makes the FASEA code monitoring framework redundant in 2022.

Chapter 12 Future landscape

We think the definition of "tax agent service" in section 90-5 is broadly drafted and capable of an ambulatory interpretation to keep up with technological developments etc.

In relation to regulating globalised delivery of tax agent services, we note that the TPB already has guidance on topics such as off-shoring. The real question is whether it has the capability to adequately monitor offshore tax functions and tax service providers. We suspect not.

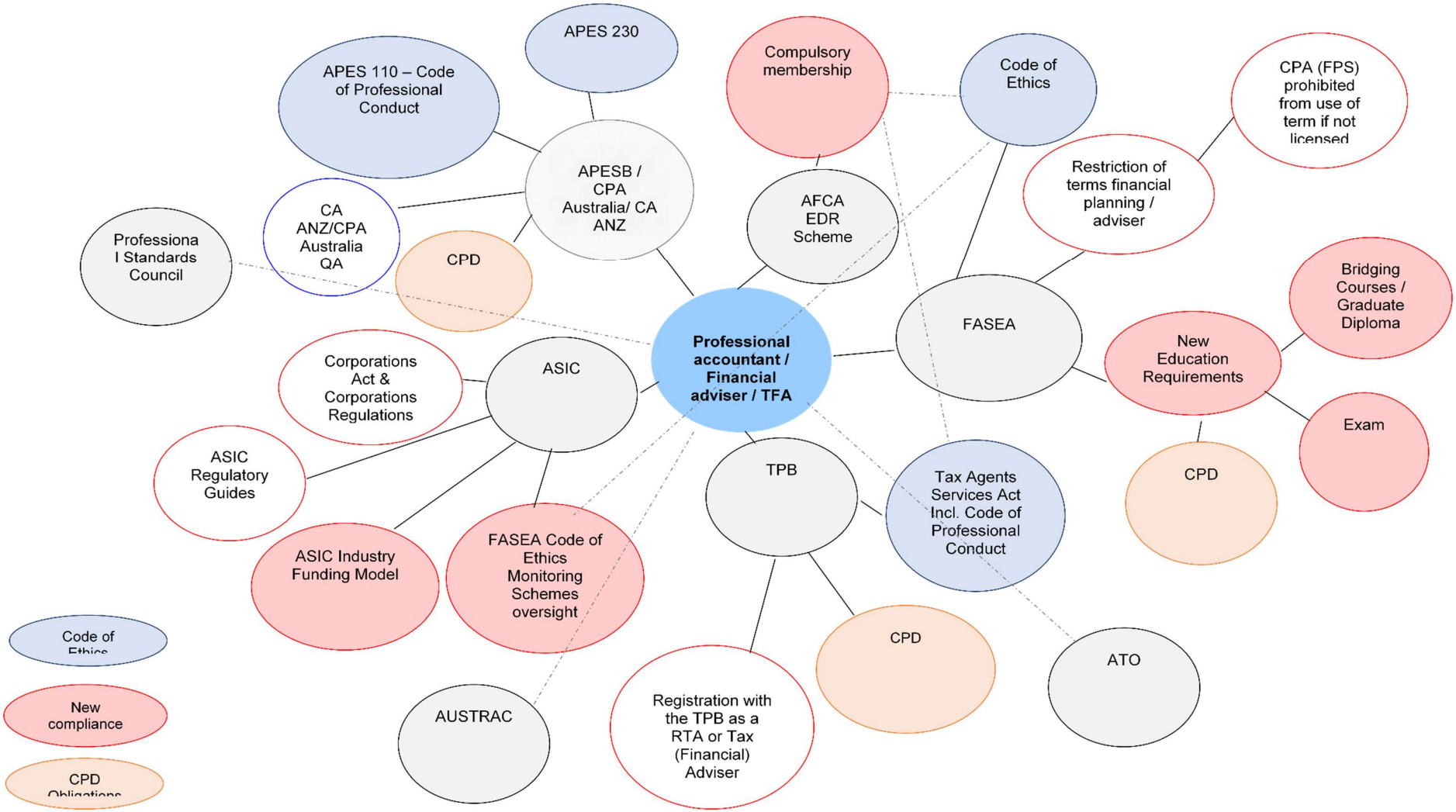
We support a dedicated tax-focused TPB. We are unclear at this stage what improvements would result from the disciplinary functions of the TPB being subsumed by the new disciplinary body recommended by Commissioner Hayne.

Para	Discussion paper view	Position of the Major Accounting Bodies	Comments
12.3	Tax practi ioners add value by interpreting and applying he tax laws to he specific circumstances of their clients' business. Further, the use of software and automa ion is providing opportunities for tax practitioners to bring added value to clients. Technology can free up practitioners to focus on higher-level analysis, advising and streamlining movement of financial informa ion to make a client's business more responsive, efficient and productive		We agree with the comments about technology freeing-up practitioners to focus on higher-level analysis. There is however fears amongst the agent community that technology will displace them and we are monitoring closely TPB statistics around industry exit. The Discussion Paper does not seem to address this issue. Perhaps the authors think it beyond scope. Our view is that tax technology does not make tax Australian law any easier. But it does makes tax compliance seem easier. There is a large inherent risk in this if it is not carefully managed now and into the future.
12.11	The ATO considers that there needs to be more concerted engagement with individuals, lower ier intermediaries and small and micro businesses to better understand and implement information and cyber security, and to provide simple information on security measures to protect clients' personal information.	**Agree**	
12.12	The ATO has suggested a number of ideas to address cyber security risks and contemporise the delivery of tax agent service: 12.12.1 the creation and implementation of information and cyber security governance and assurance standards, in collaboration with the TPB and professional associations;	**Uncertain**	Require further details. These ideas need more work and co-design with the profession. For instance: • tax agents are already subject to mandatory notification of data breaches to the OAIC • education on cyber security rather than penalties should be the focus • 'Know Your Client' obligations may be imposed under the AML/CTF Act

Para	Discussion paper view	Position of the Major Accounting Bodies	Comments
	12.12.2 mandatory notification by TPB registered entities to inform he ATO of data breaches, to support the ATO fraud prevention efforts on affected accounts; 12.12.3 guidelines and regulations for he removal of registration if he practitioner is considered to be repeatedly or systema ically negligent in he areas of information and cyber security (for example, multiple data breaches wi hout implementing a mi igation strategy); and 12.12.4 mandated 'know your client' requirements for agents to prevent fraudulent refunds being created by identity theft and fraud – poten ially hrough use of channels such as the ATO app or myGov to authenticate and connect parties.		
12.16	As noted by the IGTO in their report into "The Future of the Tax Profession", the TPB plays a significant role in he tax system through he regulation of tax practitioners. This role may need to expand to keep up with future developments in the profession and with he ever expanding range of services in he gig economy.		The reference to "future developments in the profession" masks what we see as an opportunity for the ATO to make better use of the agent community and the role they can play in providing trusted assurance services. For example, a taxpayer with a professionally prepared: • business start-up plan should be entrusted with an ABN, • business turn-around plan should be trusted with an ATO-approved tax debt repayment plan • CGT calculation (with cost base documentation sighted) should be accorded a lower risk status in the eyes of the ATO's risk differentiation framework The point we are making is that this TPB review should lead somewhere other than just to a more strengthened TPB. The ATO should use the Review as a springboard to placing greater trust in a tax profession which, publicly at least, it describes as "Critical to our success and to modern tax administration" (paragraph 12.8). If the government, tax regulators and the community can be more confident about the standards of the agent community, then in our view that should result in a discussion with the ATO around a more mutually beneficial relationship.

12.19	It may assist the TPB in addressing these risks if some of the ideas proposed by the ATO were provided for in the Code of Professional Conduct. Code requirements for the management and mandatory notifica ion of data breaches, and mandated know your client requirements, may incentivise the profession to raise their standard of technological knowledge.	**Agree**	Management and mandatory notification of data breaches is currently the domain of the Office of the Australian Information Commissioner (OIAC). If there are improvements to made here, it lies in the ability of OIAC to share information with both the ATO and TPB. Our members do not want to report to multiple agencies. The "Know your client requirements" foreshadows the extension of anti-money laundering obligations to the accounting and other professions and we have yet to see the regulatory model for that. We see little prospect of the TPB – as currently configured and resourced – to "raise the standard of technological knowledge" and in any case, the ATO is driving that already with the rapid move to government online services.

Appendix B


APES 230
APES 110 – Code of Professional Conduct
APESB / CPA Australia/ CA ANZ
CA ANZ/CPA Australia QA
CPD
Professional Standards Council
Compulsory membership
AFCA EDR Scheme
Code of Ethics
CPA (FPS) prohibited from use of term if not licensed
Restriction of terms financial planning / adviser
FASEA
Bridging Courses / Graduate Diploma
New Education Requirements
Exam
CPD
Professional accountant / Financial adviser / TFA
ASIC
Corporations Act & Corporations Regulations
ASIC Regulatory Guides
ASIC Industry Funding Model
FASEA Code of Ethics Monitoring Schemes oversight
TPB
Tax Agents Services Act Incl. Code of Professional Conduct
CPD
ATO
Registration with the TPB as a RTA or Tax (Financial) Adviser
AUSTRAC
Code of Ethics
New compliance
CPD Obligations

Appendix C

Case example: Agent C (Reference paragraph 7.24)

The example highlights the limitations of the administrative sanctions and civil penalties available to the TPB.

The legislation does not restrict the commencement of an investigation. In our view, the issue is not that the TPB could not progress the investigation as the agent was no longer registered but rather:

- administrative sanctions are limited to agents who are registered with the TPB
- civil penalties are not available for the situation described in the case study.

Therefore, there was no sanction or penalty available to the TPB to address the offending.

We note the extended timeframe between ATO referral and TPB decision not to progress the investigation and it is unclear whether the TPB had the opportunity to commence an investigation between the December 2015 referral and May 2016 voluntary cancellation.

A joint investigation or taskforce approach to cases like these may be an efficient way to rapidly respond to such allegations.

The case also indicates the need for pecuniary administrative penalties and, potentially, broader civil penalties that could apply in instances of misuse of client funds or similar behaviours.

The Review should explore the possibility of authorising a TPB review (or the continuation of such a review) even where the agent has voluntarily deregistered.

Case example: Shadow agent (Reference paragraph 7.25)

The fit and proper person test applies to directors for company registrants. The *Corporations Act 2001* definition of directors encompasses shadow directors. As such, the Board can deregister the registered company if information is provided that demonstrates Person A is, in fact, a director of the company for the purpose of the *Corporations Act*.

The case reflects a presumption of guilt in that the employment of Person A is asserted to have caused the poor compliance behaviour at the new company. The inference is that Person A's son would have been denied registration for the new company given Person A's previous behaviour. This raises a number of risks including being judged for another's transgressions, being prevented from practicing by virtue of one's associates and the Board making decisions based on inference rather than direct evidence.

Given that the ATO activities have identified issues at the new company, we would suggest that an investigation on the company is undertaken, including contemplation of civil penalties given the apparent false and misleading statements made to the Commissioner. There could be further penalties.

The introduction of administrative sanctions such as banning orders and pecuniary penalties may also assist in permanently banning Person A and the son from the profession as well levying fines if civil penalties are not pursued.

Case example: Safe harbour limitations (Reference paragraph 9.4)

We agree with the proposal that the safe harbour is extended to taxpayers who can demonstrate, to a high threshold, that the tax agent committed the reckless act and that the taxpayer was not responsible.

In this case example, we envisage the Commissioner of Taxation would remit the penalties given the unique situation of the taxpayers.

However, we do not support the reasoning that the shortfall penalties should then be redirected towards the tax agent by the ATO.

The case indicates that the TPB could seek civil penalties against Agent Y for false and misleading statements as well as to impose sanctions including deregistration.

If new administrative sanctions such as permanent banning orders were introduced, then this may also potentially be applied to Agent Y.

We reiterate our position that the TPB is the responsible agency for the regulation of tax agents and that this authority should not be transferred, even in part or as a residual power, to the ATO.

Appendix D

About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand (CA ANZ) represents a network of more than 125,000 financial professionals, supporting them to build value and make a difference to the businesses, organisations and communities in which they work and live. Around the world, Chartered Accountants are known for their integrity, financial skills, adaptability and the rigour of their professional education and training.

CA ANZ promotes the Chartered Accountant (CA) designation and high ethical standards, delivers world-class services and life-long education to members and advocates for the public good. We protect the reputation of the designation by ensuring members continue to comply with a code of ethics, backed by a robust discipline process. We also monitor Chartered Accountants who offer services directly to the public.

Our flagship CA Program, the pathway to becoming a Chartered Accountant, combines rigorous education with practical experience. Ongoing professional development helps members shape business decisions and remain relevant in a changing world. We actively engage with governments, regulators and standard-setters on behalf of members to advocate in the public interest. Our thought leadership promotes prosperity in Australia and New Zealand.

Our support of the profession extends to affiliations with international accounting organisations.

We are a member of the International Federation of Accountants and are connected globally through Chartered Accountants Worldwide and the Global Accounting Alliance. Chartered Accountants Worldwide brings together members of 13 chartered accounting institutes to create a community of more than 1.8 million Chartered Accountants and students in more than 190 countries. CA ANZ is a founding member of the Global Accounting Alliance which is made up of 10 leading accounting bodies that together promote quality services, share information and collaborate on important international issues.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents more than 870,000 current and next generation accounting professionals across 179 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications.

About CPA Australia

CPA Australia is one of the world's largest accounting and finance bodies, with more than 164,000 members working in 150 countries and regions around the world.

Our aim is to enhance our members' professional knowledge and support their career development. We do this in many ways, starting with the world-class postgraduate CPA Program. Thereafter, we deliver a range of continuous learning programs, utilising our international networks to source leading-edge content and presenters.

We support our members and the profession internationally by advocating for change at the highest levels and contributing to leading networks worldwide in the finance, accounting and business arenas.

A strategic priority and commitment for CPA Australia is to not only advocate on behalf of members, but also to speak up on issues in the public interest.

CPA Australia's members are bound by a strict professional code of conduct, including an obligation to undertake continuous professional development to ensure that the highest professional standards are maintained.