

22 January 2021

Mr Ian Klug

Chair
Tax Practitioners Board
GPO Box 1620
Sydney
NSW 2001

cc:
Michael O'Neill, CEO/Secretary, Tax Practitioners Board
Deepti Paton, Treasury
Mark Muir, Treasury
Janette Luu, Tax Practitioners Board

Dear Ian, Michael, Deepti, Mark and Janette

CPA Australia and CA ANZ joint response to the recommendations of the TPB Review Report

As the representatives of over 200,000 current and future professional accountants in Australia, the two major Australian accounting bodies CPA Australia and Chartered Accountants Australia and New Zealand (CA ANZ) have considered the recommendations made in the Review of the Tax Practitioners Board Final Report (**the Report**) and submit our preliminary responses for your consideration.

Attachment A summarises our initial response to each of the Report recommendations and Attachment B contains detailed comments.

We would like to highlight the potential cumulative impact of implementing many or all of the proposed changes arising from the Report recommendations. If made within a short timeframe, this may likely impede the efficient operation of regulated entities and increase the risk of unintended consequences. We suggest that implementation of changes should be staggered, and that grandfathering and transitional rules will be required.

We look forward to engaging with the Treasury and the TPB throughout the consultation process and make ourselves available to discuss proposals and potential solutions with you, including on a confidential basis.

If you have any queries about this submission, contact Elinor Kasapidis, Senior Manager Tax Policy (CPA Australia) at elinor.kasapidis@cpaaustralia.com.au or Donna Bagnall, Senior Tax Advocate (CA ANZ) at donna.bagnall@charteredaccountantsanz.com.

Yours sincerely,

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Executive General Manager
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CPA Australia

Michael Croker
Australian Tax Leader
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Summary of initial response to each Report recommendation

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Detailed joint comments on each Report recommendation

No	Recommendation	Initial response	Comments
1.1	Retain the TPB as the statutory authority responsible for regulating tax practitioners, noting that the disciplinary model for tax (financial) advisers may be reviewed.	Support	We believe that retaining and enhancing the TPB gives community confidence in the ethical and professional standards of tax practitioners, and in the integrity of the tax profession. This should ensure consumer protection and achieve a fair and level playing field between practitioners. In turn, it should lead to mutually improved experiences and outcomes for taxpayers and the ATO.
2.1	<p>Update the object clause of the TASA to:</p> <p>a) Include wording to the effect that there should be community confidence in the integrity of the tax system.</p> <p>b) Remove reference to tax (financial) advisers, subject to the adoption of Recommendation 7.1</p> <p>c) Include reference to unregistered agents.</p>	<p>a) Do not support</p> <p>b) Support</p> <p>c) Support</p>	<p>(a) While the case for including wording in relation to tax integrity in the <i>Tax Agent Services Act 2009 (TASA)</i> is well articulated in the Report, we remain concerned about the interpretation and application of such a concept.</p> <p>We recommend that the Objects of the TASA be updated in line with our statements above, in 1.1.</p> <p>We reiterate our previously submitted position¹ "that the TPB's role, and therefore the Objects, should focus on community confidence in the tax profession" and "we are concerned with efforts to legislate amorphous concepts into the [Object of] the TASA".</p> <p>We maintain that in upholding the integrity of the tax profession, the TPB implicitly maintains community confidence in the integrity of the tax system. There is therefore limited benefit to consumers of tax practitioner services in amending the Object, and the inclusion of a direct reference to the tax system potentially conflates the respective roles of the TPB and ATO.</p> <p>We also note that the concept of the "integrity of the tax system" is not legislated in other tax Acts including the <i>Taxation Administration Act 1953</i>. While referenced in the <i>Explanatory Memorandum to A New Tax System (Tax Administration) Bill 1999</i>, it is not included in the Act itself. Updating the TASA Object to include this undefined concept creates greater uncertainty with respect to how this will be used by the TPB, especially in instances where there is no objective evidence of contraventions of the Code of Conduct.</p> <p>Should amendments to the TASA's Object be made as proposed, the concept of "integrity of the tax system" must be clearly defined in the context of tax practitioners and appropriate constraints must be incorporated. In particular,</p>

¹ p.8 and pp.12-13, Chapter 3 TPB Governance, [Joint submission](#) on the Review of the Tax Practitioners Board – Discussion Paper, CPA Australia and CA ANZ, 9 September 2019
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No	Recommendation	Initial response	Comments
			<p>there must be a clear and formal distinction between the role, functions and powers of the TPB and ATO.</p> <p>For these reasons, we believe that wording aligned with our comments above in 1.1 is most appropriate for the TASA's Objects and is preferred over the proposed wording. Such wording more accurately reflects the role, functions and powers of the TPB, as well as the formal distinction between them and those of the ATO whose role is centred on the administration of the tax laws and integrity of the tax system.</p> <p>(b) Subject to the outcome of recommendation 7.1, we support the removal of reference to tax (financial) advisers in the <i>TASA</i> and all other associated regulations, instruments and guidance.</p> <p>(c) As the TPB regulates prohibited conduct (i.e. the activities of unregistered agents), we support reference to unregistered agents in the Objects clause of the <i>TASA</i>.</p>
3.1	The TPB should become a separate agency and receive its own specific appropriation from the Government. This will represent a TPB that is independent from the ATO.	Support in principle	<p>As previously submitted, we support efforts that ensure "<i>the TPB...operates independently of the ATO and other bodies.</i>"</p> <p>A structurally separate TPB agency with its own budget and accountable authority will ensure the TPB can operate independently and in the interests of the TPB's objectives alone, without any sense of accountability to the Commissioner of Taxation, the ATO or ATO staff, or inadvertent perceived influence, perceived loyalties or other pressures from the Commissioner of Taxation's (the Commissioner) duties of "revenue collection".</p> <p>We therefore give in-principle support to this recommendation subject to assurances that:</p> <ul style="list-style-type: none"> • Funding remains at or above current levels and that the TPB is not de-funded or its operations compromised through an alternative budgeting process, and • The "Australian Government Cost Recovery Guidelines" are not used to fund the TPB. <p>As members of the TPB Consultative Forum, we request the opportunity to receive a copy of the Charging Arrangement Review report when available.</p>

No	Recommendation	Initial response	Comments
3.2	<p>In addition to Recommendation 3.1:</p> <p>a) The position of the CEO of the TPB should be accountable to the Board and become a statutory appointment.</p> <p>b) If the TPB second staff from the ATO, there should be formal secondment arrangements.</p>	Support	<p>(a) While we are disappointed that the Government does not support the CEO becoming a statutory appointment, we believe this recommendation is a step in the right direction. Our view is that the CEO role needs to be publicly advertised and that a transparent, meritocratic appointment process should be conducted.</p> <p>(b) We support the establishment of more formal arrangements for secondments and recommend that staff with tax practitioner experience are employed by the TPB. This enhances the diversity of TPB staff and leads to greater awareness of the tax practitioner operating and regulatory environment.</p>
3.3	<p>a) The TPB and ATO should maintain and publish a plan that sets out how they will work together, encouraging early engagement, strengthening information sharing, providing clear responsibilities and accountabilities and setting agreed strategic goals.</p> <p>b) The creation of a Tax Practitioner Governance and Standards Forum (TPGSF) and corresponding Charter of Tax Practitioner Governance.</p>	Support	<p>(a) The joint plan provides transparency and certainty to the profession and stakeholders. We recommend that ongoing consultation on the joint plan is undertaken to inform the strategic direction and co-design approaches.</p> <p>(b) The TPGSF and Charter are very welcome. CPA Australia and CA ANZ are committed to engaging in the TPGSF and co-developing the Charter.</p>
3.4	<p>The law should be amended to oblige each of the TPB and ATO, and the TPB and ASIC to:</p> <p>a) co-operate with the other;</p> <p>b) share information to the maximum extent practicable; and</p> <p>c) notify the other whenever it forms the belief that a breach in respect of which the other has enforcement responsibility may have occurred.</p>	Further discussion required	<p>Given that information-sharing between the TPB, ATO and ASIC is already able to occur, the benefit of imposing a mandatory obligation upon each agency is unclear.</p> <p>The establishment of Memoranda of Understanding between the respective agencies could include the recommended clauses without the need for legislative amendment which may require changes to multiple Acts.</p> <p>To the extent that such a change would facilitate greater information-sharing than currently takes place, further detail is required with respect to the types of information, its purpose and safeguards.</p>
3.5	Amend whistleblower laws such that the TPB is legislatively defined as an 'eligible recipient'.	Support in principle	<p>As previously submitted, we agree that the TPB should be designated an "eligible recipient" of information, subject to the requirements to protect whistleblowers.</p> <p>Greater clarity is required to understand how the TPB intends to utilise the whistleblower information, given the protections relate to "the tax affairs of the entity or associate" rather than the behaviour of advisors. This includes whether the view is that the legislation enables the TPB to take action based on whistleblower disclosures.</p>

No Recommendation	Initial response	Comments
3.6 a) Amend the TASA to mandate that at least one member of the Board is a community member. b) Amend subsection 70 30(2) of the TASA so that only two members of a committee, that is making appealable decisions, have to be Board members and the third member can be a person chosen at the Board's discretion.	Do not support	We agree with the Government's response.
4.1 In relation to the primary qualifications (education and experience requirements): a) Undertake a review to determine if the primary qualification level itself has been set at the right level and what grandfathering arrangements would be appropriate (if required). b) Determine whether it is appropriate to give the TPB greater flexibility to accept other qualifications that may not fall within the traditional tax practitioner course of study.	Support	<p>We welcome the Government's support for a review of the education requirements by the TPB, which is now being undertaken with stakeholders. We also welcome the acknowledgement that legislative or regulatory provisions may require amendment to make the education and experience requirements "contemporary", and to remedy existing flaws or deficiencies in the way the rules are currently operating.</p> <p>Overall, as a matter of principle, we note that the review of educational requirements should be holistic, not just isolated to parts of the TASA or Board policies. All pathways and components need to be reviewed as a whole regulatory system to ensure that the educational requirements are appropriate for the scope of services provided by tax agents and BAS agents. This requires consideration of the Regulations and how they fit with the TAS Act to ensure current mismatches and policy inconsistencies are reconciled and resolved. For example, ensuring the expanded scope of BAS services is complemented with the appropriate level of academic and experience requirements and that BAS agents have sufficient flexibility in their pathways to register, as well as ensuring "policy consistency" in the ability for tax agents and BAS agents to register for the same type of tax services.</p> <p>(a) Our organisations' Education teams are involved in current working groups concerning education requirements. A review of the primary qualifications is currently outside the scope of these working groups and as such we support this recommendation.</p> <p>(b) We support this recommendation and welcome further discussion about the scope the TPB could have in exercising this flexibility.</p>
4.2 The TPB should no longer accredit professional associations as a 'recognised professional association' with appropriate permanent grandfathering arrangements.	Do not support	<p>The current design of the TPB registration pathways is quite prescriptive and narrowly defined as to the academic requirements for registering as a tax agent and as a BAS agent. Given the limited flexibility, the "professional membership" pathway, based on membership of a recognised professional association, is required at least until the main "academic" pathways are redesigned to better</p>

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			<p>reflect the current and future tax profession and its educational system and inputs.</p> <p>We are concerned that if professional associations are no longer accredited by the TPB, the inherent benchmarks established by the accredited associations, as to education standards, professional experience and behaviour, imputed to the registered member will be diluted. We recommend that the potential consequences, unintended or otherwise, of removing the professional membership pathway are comprehensively considered.</p> <p>We note that many highly skilled practitioners utilise the professional membership pathway, including but not limited to overseas talent brought into Australia and those who have joined the profession via non-conventional routes.</p> <p>In addition, by maintaining the two alternate avenues for academic accreditation - being the pathways for those who are not a member of a professional body, and a pathway for those who are a member of a professional body - we believe this encourages achievement of the TPB's desired outcome of increasing the proportion of practitioners who are a member of a recognised professional association, which in turn, should thereby improve governance and standards.</p>
4.3	<p>a) Amend the Tax Agent Services Regulations 2009 to give the TPB greater flexibility to accept different types and periods of experience as being relevant.</p> <p>b) Determine whether an amendment to the TASR is appropriate to amend the amount of relevant experience (and nature of experience) required to be registered as a BAS agent.</p>	Support in principle	<p>We welcome the Government's support for this recommendation. However, we consider this should apply to tax agents, as well as BAS agents, as it is equally relevant and important. Indeed, BAS agents have had the benefit of amendments to the Regulations to assist with parental leave, whereas tax agents have not.</p> <p>We request greater clarity regarding the scope of the flexibility to be exercised by the TPB and the periods of experience that would be accepted as relevant. In particular, the term "relevant experience" needs to be comprehensively defined with a minimum standard as to duration, currency and discipline.</p> <p>The Government and the TPB should ensure that new entrants to the TAS regime are not inadvertently treated more favourably than traditional tax service providers. That is, in the desire to bring new entrants into the regulatory regime, traditional existing service providers should not be treated less favourably by overlooking them or creating new barriers for them to remain registered. Arguably, this is an inequitable trend that is potentially occurring and needs to be examined and adjusted.</p>

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			<p>We also believe that additional guidance from the TPB would be helpful to practitioners registering as a tax or BAS agent, to illustrate examples of other acceptable types of “relevant experience”. Such examples in the guidance would provide important transparency on matters which are currently lacking, e.g. in what scenarios has a Group CFO doing tax work, or an employed BAS service provider been able to demonstrate that they had the required “relevant experience”, and what factors were important.</p>
4.4	<p>Amend the eligibility requirements for company and partnership tax practitioners in the TASA to include a requirement that the entity has appropriate governance arrangements in place that demonstrate who is accountable for the delivery of tax agent services.</p>	<p>Further discussion required</p>	<p>This proposal may have a concerning and uncertain impact on the eligibility of practitioners to register. We require more information and discussion.</p> <p>As previously submitted², our view is that <i>"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."</i></p> <p>While we agree that there is a correlation between well-run practices and good governance processes, the imposition of a governance requirement will not, in and of itself, reduce the risks associated with poor practice management. However, it will increase regulatory costs and potentially create unnecessary barriers for the profession.</p> <p>Caution should be exercised to ensure that any such an eligibility requirement:</p> <ul style="list-style-type: none"> • is not onerous or unnecessarily costly • is practical and accommodates a wide range of operating models • effectively mitigates risks to consumers and improves standards in the profession • includes safeguards to ensure the TPB cannot deny registration merely based on governance paperwork, and • does not take the form of the ATO's Justified Trust Program due to the high costs and limited benefit for the taxpayer/practitioner.

² Response to paragraph 4.14 of the [TPB Review Discussion Paper](#)
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4.5	<p>a) Amend the fit and proper person test in the TASA to ensure greater consistency with the requirements of other Government regulators, such as ASIC and APRA.</p> <p>b) Increase or remove the current 5-year period in TASA in which the TPB must consider certain conduct that may contravene the fit and proper person test.</p> <p>c) Those applying for registration with the TPB, including renewal, must disclose any spent convictions.</p>	Further discussion required	<p>While consistent regulatory requirements improve clarity and administrative efficiency, it is also important to acknowledge that the context and history of "fit and proper person" tests may differ between professions.</p> <p>A more detailed comparative analysis between ASIC requirements, APRA requirements, the Legal Profession Uniform Admission Rules³ and the TPB's current interpretation⁴ should be undertaken, while recognising that the roles, functions performed and relationships under each regulatory framework may differ; thereby requiring different tests.</p> <p>Our view on the 5-year period and spent convictions is to maintain the status quo. This provides certainty for registrants and allows for rehabilitation. We also previously submitted that "<i>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</i>".</p>
4.6	<p>Amend the TASA to include as part of a tax practitioner's eligibility for registration a requirement to declare:</p> <p>a) any close associates relevant in the provision of tax agent services; and/or</p> <p>b) employees involved in the provision of tax agent services; who are affected by any of the fit and proper events in the Tax Agent Services Act 2009; and</p> <p>if they have engaged anyone listed in the proposed unregistered practitioners register.</p>	Do not support	<p>The potential compliance burden, complexity, unfairness, uncertainty and unintended outcomes are of concern with this recommendation. The eligibility to register should not be unnecessarily hindered. Further consultation and consideration is required to ensure the scope is appropriate and the measure is well designed.</p> <p>The Report recommendation addresses many of the concerns that we raised in a submission to the Discussion Paper, by confining the eligibility requirements to align with the legal profession, such as those who "<i>for example, have had their tax practitioner registration terminated by the TPB or have committed a serious criminal offence</i>"⁵. The definitions of "close associate"⁶ and "relevant in the provision of tax agent services" require greater clarity to ensure a consistent and practical approach.</p> <p>However, we remain concerned that such a requirement creates an unreasonable onus on the tax practitioner to apply the fit and proper person test for each close associate and/or employee. There may be privacy, employment law and civil liability issues that arise, exposing the practitioner to potential risks.</p>

³ For example, [New South Wales' Legal Profession Uniform Admission Rules 2015](#)

⁴ [Explanatory Paper TPB\(EP\) 02/2010 Fit and proper person](#)

⁵ P.46, paragraphs 4.43-4.46, Review of the Tax Practitioners Board Final Report, 2019

⁶ For example, the definition of 'associate' in [section 318](#) of the *Income Tax Assessment Act 1936*
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No	Recommendation	Initial response	Comments
			<p>Caution should be exercised to ensure that only high-risk and publicly verifiable events are required to be declared in order to mitigate against "guilt by association" or subjective judgments by the regulator or other agencies (e.g. the ATO). We note that spent convictions are not able to be searched for or verified by a tax practitioner.</p> <p>The Government does not support the introduction of the proposed unregistered practitioners register. Therefore, we are of the view that this part of the recommendation is not in scope.</p>
4.7	<p>a) The registration period be converted to an annual period, subject to the TPB being able to make the necessary system and IT enhancements to reduce the regulatory burden on tax practitioners that are renewing their registration.</p> <p>b) The annual registration fee should be pro-rated, in comparison to the current fee payable for a three-year registration period.</p>	Further discussion required	<p>While we support simplification and reduced regulatory burden on practitioners, we observe that there are a number of Report recommendations that suggest the addition of further requirements to registration eligibility criteria. These include proposals in relation to governance and disclosures on associates.</p> <p>We note that annual registration fees must be affordable and no more than the equivalent of one third of the three-yearly registration fee on an ongoing basis. The move to an annual fee should not be an opportunity in subsequent years to hike the registration fee to proportionately more than its current level.</p> <p>Caution must be exercised to ensure that the registration process is not made more onerous or potentially unworkable for practitioners. The goal should be to have no unnecessary blockers to registration and no greater regulatory burden on practitioners after this round of reforms. This should be complemented by enhanced IT systems to further streamline renewals.</p>
4.8	Following completion of the trial of tax clinics, the issue of tax clinics and the TPB be reviewed to determine if any longer-term amendments may be required.	Support	If the Government continues to support the Tax Clinics program, they should be regulated by and subject to the requirements of the TPB. This is particularly so given the vulnerable status of their clients, as well as the limited professional experience of some Tax Clinic staff. We previously submitted that " <i>[the Tax Clinics] should operate under the supervision of a registered agent at all times.</i> "
4.9	<p>a) Only those tax intermediaries that are not regulated by any other Government body should require registration with the TPB, despite otherwise being required to be registered with the TPB.</p> <p>b) The TPB should have the power, through the legislative instrument process, to exclude certain other services from having to register with the TPB.</p>	Further discussion required	<p>We are supportive of efforts to remove duplication and streamline registration but seek assurance that practitioners registered with other Government bodies will be subject to the same level of professional standards and disciplinary regimes as those regulated by the TPB.</p> <p>Other Government bodies regulating tax practitioners should ensure that they have the necessary capability and powers to administer a parallel regime for their regulated practitioners who provide tax services.</p>

No Recommendation	Initial response	Comments
		<p>In terms of the TPB exemption by way of a legislative instrument, we are concerned that those exempted from the regulatory remit are not performing basic tax functions and there is a potential to reduce consumer protections as a result. We previously submitted our objection to any 'de minimis' exclusion⁷ given the risks to consumers. We proposed that, if excluded, "<i>consumers are explicitly warned in writing that the conveyancer, quantity surveyor etc is not a registered tax agent and is not providing tax advice</i>".</p>
<p>5.1 The relevant Minister be given a legislative instrument power to be able to supplement the Code of Professional Conduct to address emerging or existing behaviours and practices.</p>	<p>Do not support</p>	<p>Our view is that the Code of Conduct is currently sufficiently flexible to incorporate existing and emerging behaviours and practices. The case to modify the Code of Conduct or to delegate authority to the Minister has not been sufficiently made.</p> <p>While the Report proposes constraints and safeguards on the proposed delegated authority, we consider the Code of Conduct to be a fundamental element of the <i>TASA</i> and the Minister should not be given the power to change it.</p> <p>In our view, the Code of Conduct should only be able to be amended via Regulations and more robust parliamentary scrutiny. Non-compliance with the Code of Conduct affects fundamental practitioner rights; including the ability to remain registered and earn a livelihood as a tax practitioner in the manner chosen by the individual. These rights to economic self-sufficiency and self-determination should not be able to be adversely affected by a sub-ordinate legislation process that is of a lower order than Regulations⁸.</p>
<p>5.2 A provision concerning legal professional privilege (LPP) be enacted in the Taxation Administration Act 1953 (TAA). Further, a similar protocol to that being developed between the Law Council of Australia and the ATO in relation to LPP claims should be developed for tax practitioners generally.</p>	<p>Out of scope</p>	<p>We previously submitted that the issues surrounding LPP are out of the scope of the Review and the TPB more generally.⁹ Tax-related LPP and accountant's concession claims are the remit of the ATO and the courts, not the TPB.</p> <p>We support the ongoing dialogue to develop an agreed LPP protocol between the ATO and lawyers, followed by consideration of what may be appropriate for tax clients of accountants.</p>

⁷ Response to paragraph 5.19 of the [TPB Review Discussion Paper](#)

⁸ That is, the same level of sub-ordinate legislation as the Regulations that set out the educational pre-requisites to register, which also cannot be amended except by Regulation.

⁹ Response to paragraph 6.21 of the [TPB Review Discussion Paper](#)

No	Recommendation	Initial response	Comments
6.1	<p>The Board's sanctions powers be increased, including introducing the following sanctions into the TASA:</p> <ul style="list-style-type: none"> a) infringement notices b) enforceable undertakings c) quality assurance audits d) interim suspensions e) permanent disbarment f) external intervention. 	Support in principle	<p>We previously submitted our in-principle support for increased sanctions and acknowledged the need to develop a framework around the imposition of low to mid-range administrative penalties and pecuniary penalties.</p> <p>Detailed discussions are required to design an appropriate sanction system which incorporates the principles of natural justice and due process. This may include infringement notices and administrative penalties such as fines, as well as summary offences which result in a criminal conviction.</p>
6.2	<ul style="list-style-type: none"> a) Investigations are able to commence and/or continue once a registered tax practitioner either has their registration terminated, chooses not to re-register, or is seeking to surrender their registration. b) The limitation on the TPB formally gathering information prior to commencing and notifying a tax practitioner of an investigation be removed. c) The six-month timeframe to conduct an investigation be removed. 	Support in principle	<p>We provide in principle support to these recommendations, noting that TPB actions should remain reasonable and proportionate at all stages.</p> <p>(a) We previously submitted our in-principle support to prevent voluntary deregistration before a formal investigation commences. Further detail and context are required on how the Review believes this mischief should be addressed, and greater clarity provided on the benefits.</p> <p>(b) While we provide in-principle support to improve the TPB's ability to undertake investigations, the expansion of information-gathering powers requires detailed discussions to balance the rights of practitioners and the need for effective investigation processes.</p> <p>(c) We have observed that the TPB does not commence an investigation until they believe they have reasonably solid evidence of a breach, as the 6-month investigation time frame can be very restrictive, if the parties involved are not forthcoming.</p> <p>We previously submitted our in-principle support for longer investigation timeframes, noting that the following factors should be considered in the design of investigation processes:</p> <ul style="list-style-type: none"> • For small practices and sole practitioners especially, drawn out TPB investigations are highly detrimental to the viability of their business • The TPB should commit to a published service standard on its investigations, and • Extensions of time to conduct a formal investigation should be by exception, with suitable checks and balances.
6.3	Amend the Tax Agent Services Regulations 2009 to enable the TPB to publish more detailed reasons for tax practitioner sanctions, including terminations, on the TPB Register. See also Recommendation 8.1.	Support in principle	We agree that transparency is important. Further discussion is required to determine the appropriate details to be published.

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			<p>We consider there are consumer benefits to publishing information on deregistered agents and TPB disciplinary outcomes, with appropriate timeframes and safeguards. As part of our professional conduct activities, identifying practitioners who have had an adverse TPB finding can be challenging, as in the majority of cases the names of agents are not included and outcomes do not remain on the website for long.</p>
6.4	<p>Introduce an administrative penalty regime, administered by the ATO, to impose penalties on tax practitioners who demonstrate an intentional disregard of the taxation laws in making, or being involved in making, a statement to the Commissioner of Taxation</p>	Do not support	<p>We agree with the Government's cautiousness against conferring a new power to impose administrative penalties on tax practitioners. Such an ATO power risks compromising the principle that there should be independence of the administrative decision-maker imposing the penalty on the tax practitioner. Independence is not achieved when the party on the other side of the tax dispute is also imposing penalties.</p> <p>We previously submitted that whilst <i>"we agree with the principle of egregious agents being subject to administrative penalties, ... we do not support the ATO applying these penalties as the TPB is responsible for the regulation of the profession."</i>¹⁰</p> <p>We observe that the Commissioner of Taxation already has administrative and criminal penalties for false and misleading statements, as well as civil promoter penalties which can currently be applied to tax practitioners, but which are subject to appropriate safeguards, burden of proof and natural justice.</p> <p>We do not support the ATO being given these new powers.</p>
6.5	<p>Extend the safe harbour protection as it applies both to false or misleading statement penalties and failure to lodge penalties, to cover instances where the tax agent or BAS agent has demonstrated recklessness or intentional disregard with respect to a taxation law.</p>	Out of scope	<p>As the Government did not support a new administrative penalty regime administered by the ATO (recommendation 6.4), a response to this recommendation is not required.</p> <p>To the extent that the safe harbour in the <i>TAA 1953</i> may be extended, it is administered by the Commissioner of Taxation, and therefore this recommendation falls outside the scope of the TPB Review.</p>
7.1	<p>In alignment with implementing Recommendation 2.10 of the Final Report of the Financial Services Royal Commission, a new model be developed for regulating tax (financial) advisers in consultation with ASIC, FASEA, the TPB and Treasury.</p>	Support in principle	<p>We agree that regulatory complexity and overlap should be reduced. This is integral to ensuring consumers and small business have access to affordable professional advisory services.</p> <p>The new disciplinary system for financial advisers in response to recommendation 2.10 of the Royal Commission has the potential to streamline</p>

¹⁰ Response to paragraph 9.27 of the [TPB Review Discussion Paper](#)
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No	Recommendation	Initial response	Comments
			current regulatory duplication. However, further discussion is required to ensure the design of the new system achieves the policy intent while still upholding robust consumer protections.
7.2	The Government initiate a specific review of what advice accountants can and cannot give in respect of superannuation and which accountants that might apply to.	Further discussion required	<p>We note that the recommendation refers to accountants. However, as this is an undefined term, its use may cause uncertainty when considering advice and services that can be provided or any potential review.</p> <p>Recommendations 7.1 and 7.2 highlight the urgent need for a wholesale review of the current regulatory framework. This 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.</p> <p>We are supportive of the Government's intention to review this recommendation as part of Recommendation 2.3 of the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. However, this review is not scheduled to commence until 2022 and has no defined timeframe.</p> <p>We strongly recommend this review be brought forward to identify the important changes that are needed to establish a regulatory framework that encourages the provision of affordable, independent quality advice by professionals and importantly seeks to engage, inform and protect the client in the process.</p> <p>The urgency of this wholesale review cannot be overstated. Until such time that changes are made to the regulatory framework, other steps may need to be considered to support and preserve a viable financial advisory services market, including in the context of superannuation advice, so that it remains operative and able to provide these important advisory services in the period until a holistic review is completed and changes implemented. CPA Australia and CA ANZ look forward to the opportunity to work with the government to discuss options with respect to professional accountants providing advice on superannuation matters, and we urge that a specific interim consultation be initiated.</p>
8.1	<ul style="list-style-type: none"> a) Expand the details of tax practitioners that are currently included on the TPB Register. b) A register of unregistered tax practitioners be made available. c) The time limits on how long certain information appears on the Register be removed. 	Support in principle	We recommend that a consumer-centric approach be taken to publication of details, and that the information published should improve consumer protection by assisting them to identify registered tax practitioners, including any conditions, restrictions, limitations or important disciplinary matters.

No	Recommendation	Initial response	Comments
			<p>We suggest that if the TPB were to be enabled to exempt certain classes of tax practitioner then there also should be a register for those.</p> <p>The Government does not support recommendations 8.1(b) and (c). Therefore, we are of a view that these parts of the recommendation are not in scope.</p>
8.2	Details of tax practitioners that are included on the TPB Register should ultimately be included on the Modernising Business Register (MBR).	Support in principle	We agree that unification of publicly available information on the MBR is a sound principle.