

2.11. The TPB recognises that to achieve a more efficiently and timely flow of information may require law changes beyond the TASA.

The office of the National Data Commissioner, which was formed in May 2018, has been tasked with reviewing the data privacy and information sharing needs between the different Australian Government agencies. The TPB's information sharing requirements should be considered as a part of this task, which will most likely require law changes.

2.20. Effective information sharing between government organisations is needed to reduce the number of government interactions for practitioners and consumers, and to focus compliance and monitoring activity.

Information should be shared more effectively between government agencies. For example, sharing information between TPB, ASIC and ATO could aid in streamlining the investigation process into an 'unfit tax practitioner'. This would allow all relevant parties to be appropriately informed, in a timely manner, and therefore allow for more efficient operational activities on monitoring and compliance as suggested. Further, there is an opportunity to streamline the investigation process into 'unfit tax practitioners' by running the investigations concurrently, yet independently, by the professional associations and the TPB. Providing data insights and information between the TPB and professional associations, may facilitate better education programs and assistance to the tax professionals. This can lessen the burden of communication on government agencies and possibly allow for a network of relationships to be built between the professional associations and government organisations so everyone is on an even playing field, where appropriate.

2.21. Once the Government's Modernising Business Registers (MBR) program has been implemented, the possibility of incorporating the registration of tax practitioners on the new system could be explored.

The TPB register of tax practitioners should be incorporated into MBR in a future phase of the program.

2.23. Strengthening the information sharing arrangements, perhaps by force of legislation, should strengthen the relationship between the agencies. In our view the model suggested by Commissioner Hayne of mandatory, rather than discretionary sharing of information is worth considering.

Information sharing between government agencies will support the government's mantra of enter-once and removing red tape. It is necessary to amend outdated legislations, making sure to consider the Consumer Data Right in the process, to make better use of available data to provide improved government services and thereby reducing the frustration of citizens, businesses and communities.

The Office of the National Data Commissioner is currently addressing the outdated legislation that prohibits government agencies from sharing information.

The TPB's data and information sharing requirements should be included in this program at the earliest opportunity.

To add to this point, the MBR program will be re-introducing, in due course, new legislation that is flexible, technology and governance neutral. This will allow more flexibility for the Registrar to collect additional data, as deemed necessary, for operational requirements for particular purposes and/or providing government services.

Consultation Point 2.1: We invite submissions on our preliminary views.

See our comments above.

Consultation Point 2.2: Could the sharing of information between the TPB and other Government agencies also be improved?

Yes, please take our replies above into consideration.

3.29. Another advantage that co-location provides is that it encourages and facilitates a close working relationship allowing both agencies to continue to collaborate and consult effectively. Our view is that a close working relationship between the TPB and ATO is essential for the tax practitioner profession to be appropriately regulated.

A close working relationship may further enhance the TPB's understanding of the ATO's current and future direction and co-design with taxation, accounting and technology systems. It would also allow for the development of appropriate measures for regulating and developing the future of the profession.

Consultation Point 3.1: We invite submissions on our preliminary views regarding the level of independence the TPB should have from the ATO.

We agree with the views expressed and support the option described in 3.22.3.

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 innovation and change to work practices.

We strongly recommend that the TPB include a Board member with relevant expertise in current and future information technology and an understanding of the government's Digital Agenda - and its broader impacts on professional advisors, taxpayers and the broader community.

This member should also understand how contemporary technologies are, will be, and can be used by the industry, ATO, other government agencies and the tax profession itself.

The tax profession is arguably the most highly impacted upon profession as a result of global technological changes. More locally, with the Australian Government and ATO's progressive digital vision, further changes are occurring that need to be reflected upon including:

- The Australian Government's continued push for red tape reduction;

- The ATO's 2024 Corporate Plan includes a number of strategic initiatives that will impact the future of the tax "systems"; and
- The methods and mediums (technology tools) by which taxation is administered, collected and enforced are changing fast.

The TPB must understand how the current and future programs, as well as industry advancements in applying technology changes, will affect the tax profession and consequently the TPB's operations in monitoring and regulating the profession.

3.42. Perhaps the same result could be achieved by having a Board member with a cross section of tax and business experience. There has been positive feedback that a model that has "peers judging peers" is desirable.

The same result could not be achieved by only including a Board member who has experience with past and current accounting systems. This is not sufficient. For the new TPB to be truly effective, it must have a forward-looking Board that:

- Understands how regulatory and technology changes, in particular robotics process automation, data analytics and artificial intelligence, will impact the tax profession;
- Can foresee trends of industry convergence, for example, the interconnection of finance and banking services with tax services that will change how practitioners conduct business;
- Safeguards the integrity of the current and future tax "system";
- Monitors and regulates how practitioners are operating within it; and
- Assists and guides the tax profession through the technology revolution and evolution impact on the tax industry.

Consultation Point 3.2: We invite submissions on our preliminary views regarding membership of the Board.

Again, we strongly recommend the inclusion of a Board member with relevant information technology expertise and experience with introducing innovation and change to work practices. Please see our explanations in the points above.

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 consultation with practitioners, professional associations, tertiary institutions and the ATO.

The educational requirements, if mandated, must enhance and support the tax professionals in their businesses and provision of services. Hence why the tertiary courses must also align with the changing digital processes, evolving policies and regulations, and new capabilities that are required for tax professionals to be successful.

5.16.2. On the other hand there are entities that provide a digital service and who in a different capacity also lodge online tax returns with the ATO. These digital service

providers do need to abide by the TPB's Code of Professional Conduct and do need to be registered.

To further clarify, the ATO's Digital Partnership Office (DPO) requires that all entities who produce software and services that connect to the ATO's systems be registered as Digital Service Providers (DSPs).

There is a significant difference between a Software Company and a registered agent who has developed a website or online application that allows a taxpayer to onboard as a client, enter data or provide documentation and ultimately submit an income tax return or activity statement using the credentials of a registered agent. These vendors can be considered to provide 'tax agent services' and should be administered by the TPB (as any other practitioner).

Software Companies are entities whose primary business is to produce software that is consumed by clients who would typically purchase software licenses or subscriptions.

These Software Companies typically have 'Customer Service Desks' to address software functionality, software use or enhancement requests. If these entities also provide a 'Help Desk' function for tax services or tax-related advice, the TPB regulation should only be applied to the tax services and advice roles within the company.

5.23. Many of these tax intermediaries are either regulated or monitored by, or have existing arrangements with, other government agencies which mitigates the need for the TPB's involvement. For example:

We agree with the intent of this statement. However, over the years, with the TPB expanding its reach into the regulation of tax intermediaries, payroll and accounting software providers have found themselves being regulated by multiple government agencies as well as the TPB.

In order for the TPB to understand exactly how the ATO regulates DSPs, we recommend for the ATO to produce a piece of formal documentation that clarifies this process. This will be expanded upon in our comments to the next point.

5.23.1. Digital service providers build products that enable tax professionals, businesses, superannuation funds and individuals to more easily interact with the ATO. The products of digital service providers must comply with the service specifications, messaging standards and security and authentication policies published by the ATO, and must complete testing and provide relevant evidence demonstrating their compliance prior to interacting with any ATO digital services. These digital service providers are not seeking direct access to the ATO's portal.

In this regard, DSPs are governed and administered by the ATO's DPO - and are outside the jurisdiction of the TPB.

We recommend the creation of a formal document which outlines exactly how the ATO regulates DSPs. This should be a collaborative effort between DSPs, ABSIA and the ATO to

ensure a fair and accurate description of this process is produced. This would aid in showing the TPB how the ATO regulates DSPs and avoid the overregulation of DSPs.

In an increasingly digital and connected environment, there is significant scope for new products and features to be developed by Software Companies that provide greater levels of automation. Examples include receipt, document or transaction processing that can determine the amounts and GST components of a source document via Optical Character Recognition (OCR) or from a third-party application via an API. In these cases, financial and transaction data is parsed and allocated using algorithms, memorisations or machine learning based on rules incorporated into the software.

This process is becoming “business as usual” for software products and reduces the need for human intervention or data entry. Currently, this functionality is considered out of scope of the product assessment conducted by the ATO’s DPO with respect to whitelisting and integration with the ATO environment.

A future discussion would be of value to clearly set the boundaries of tax advice and a tax service as a result of increasing automation and systemisation by registered agents, businesses and software providers.

5.23.2. Where an entity that is registered with the ATO as a digital service provider also provides, or markets themselves as providing a tax agent service and lodge returns online they ought to be registered with the TPB and part of their business that provides tax services should be subject to the Code of Professional Conduct (see Chapter 6).

We agree with the above amended statement. Please also see our comment to 5.16.2.

With the increasing technological capabilities and automated services DSPs are able to provide to the tax industry, what constitutes as providing a tax agent service appears to have become blurred. We would like to clearly (re)define what constitutes as a tax agent service in order to allow DSPs to continue to innovate and transform the tax industry while still maintaining the integrity of the tax system. Please see our examples below.

Much of the tax preparation process can be automated and software can even assist with lodging the returns. In this case, DSPs are just handling the data and making it possible for a tax practitioner to easily prepare for tax time as well as having more detailed and accurate information at their fingertips to aid in the decision making and providing tax advice to clients.

A software engineer simply provides the solution, they do not provide the tax advice themselves and therefore, they should not be regulated by the TPB. More and more DSPs should be able to provide this functionality and create seamless products for tax practitioners without needing to be regulated by the TPB.

It is important to clarify that within a software company, there are certain individuals that are required to be registered tax agents as they give tax advice. These people are different from those who develop the software.

In summary, where tax services and advice are given, the individual should become a registered tax agent and therefore be regulated by the TPB.

5.26. However, consultation has to date suggested that there are relatively few other tax intermediaries that currently fall into this category. Considering this, it may be appropriate for the TPB to publish a determination that excludes certain tax intermediaries from registration.

A determination should be published that excludes those tax intermediaries performing tax agent services but not giving tax advice. By publishing this, it would make it clear to DSPs who is included and who is excluded from TPB registration.

Consultation Point 5.8: We invite submissions on our preliminary views regarding tax intermediaries.

See our comments above.

6.14. Having a dynamic code will allow the TPB to appropriately monitor and respond to the evolving digitisation of the profession and the increased prevalence of digital service providers.

We agree that there is a need for a dynamic code. Please also see our comments to 5.16.2 and 5.23 regarding DSPs.

11.12. The information sharing requirements that currently exist should be modified and improved to require better ‘two way’ sharing of information and earlier sharing of information to allow the TPB and the professional associations to address concerning behaviour earlier.

This is in line with our comments about the sharing of information between government agencies, this type of information (where it is possible and reasonable to share) should be shared with professional associations to provide guidance and education in light of concerning behaviours or things going wrong.

11.13. Allowing the TPB to be able to approve programs of the professional associations might also help to apply a consistent approach.

We understand that the TPB itself may not have the time or the capacity to conduct education programs themselves and this would be an appropriate alternative that utilises the broader ecosystem to provide the required education. This approach would still give the TPB the power to approve and set the education standards for the current and future training courses.

11.14. The TPB should cease to be a regulator of the professional bodies and this would then allow the professional bodies to take on a co-regulatory function with the TPB.

We agree that the TPB should be focused on being a regulator of tax agents rather than regulating the professional bodies. Taking on a co-regulatory function would allow the TPB and professional associations to share information and better work together. This would be particularly useful when it comes to investigations and allowing these duties to be shared “across the board” and streamline these processes.

Consultation Point 11.2: What role should the TPB and professional associations have?

See our points in line above about the TPB and professional associations more generally.

ABSIA, as the industry representative for DSPs, works closely with the ATO for tactical implementation as well as more strategically on the ATO’s Corporate Plan initiatives. It may be useful for the TPB to participate in the ATO’s relevant working groups, especially in regard to policy and the future systems.

12.16. As noted by the IGTO in their report into “The Future of the Tax Profession”, the TPB plays a significant role in the tax system through the regulation of tax practitioners. This role may need to expand to keep up with future developments in the profession and with the ever expanding range of services in the gig economy.

We believe that the TPB should be expanding their role in line with our previous comments regarding working with government agencies and professional associations.

The TPB is well-placed to take on the leadership role in understanding the future directions of the tax and super systems. They can also help the different segments of the current tax profession to evolve and transform over the next 5 to 10 years, as well as determining the education and capability requirements for the future generations of tax professionals.

Consultation Point 12.2: Should the review examine the definition of ‘tax agent service’ to flexibly encompass contemporary and future service delivery models not focused on a human providing services? What are some possible ways of defining ‘tax agent service’?

Yes, we have already suggested this under 5.32.2. We would like to establish a line between what constitutes as a tax agent service versus what is not a tax agent service in terms of where tax advice is actually given. Here are the ways we have explored re-defining tax agent services to future-proof the industry and to ensure DSPs can continue to innovate and assist tax practitioners in making smarter tax decisions and giving more evidence-based advice than they have ever been able to do so before.

- A tax agent service is providing tax advice based on financial and tax data but not the preparation of this data or other processes involved in the preparation.
- Tax advice is advice derived from financial and tax data provided by a tax practitioner.
- A DSP can provide data, information and services through the preparation of tax ‘things’ so long as they are not providing any advice based on this information. Such advice must be given by a tax practitioner registered with the Tax Practitioner’s Board.