

6 September 2019

Nick Westerink
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Langton Crescent
PARKES ACT 2600

By email: TPBreview@treasury.gov.au

Dear Mr Westerink,

Review of the Tax Practitioners Board – Comments on the July 2019 Discussion Paper

The Business Law Section of the Law Council of Australia is pleased to provide a submission in response to the Review of the Tax Practitioners Board – Comments on the July 2019 Discussion Paper.

The Business Law Section has a number of different committees which focus on a range of business law areas.

The attached submission has been prepared by the Taxation Law Committee.

Please contact Clint Harding, Chair of the Taxation Committee (charding@abl.com.au or 02 9226 7236) in the first instance, if you require further information or clarification.

Yours sincerely



Rebecca Maslen-Stannage
Chair, Business Law Section

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The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Law Firms Australia, which are known collectively as the Council's Constituent Bodies. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Bar
- Law Firms Australia
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of more than 60,000 lawyers across Australia.

The Law Council is governed by a board of 23 Directors – one from each of the constituent bodies and six elected Executive members. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive members, led by the President who normally serves a 12 month term. The Council's six Executive members are nominated and elected by the board of Directors.

Members of the 2019 Executive as at 28 June 2019 are:

- Mr Arthur Moses SC, President
- Ms Pauline Wright, Treasurer
- Mr Tass Liveris, Executive Member
- Dr Jacoba Brasch QC, Executive Member
- Mr Ross Drinnan, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.

Acknowledgement

The Law Council of Australia is grateful to the Business Law Section Taxation Law Committee for the preparation of this submission.

Introduction

The Taxation Law Committee of the Business Law Section of the Law Council of Australia (**the Committee**) made its first submission (**First Submission**) to the Review of the Tax Practitioners Board (**the Review**) on 30 April 2019 as part of the consultation process.¹

In light of the submissions received, the Review panel has now issued a discussion paper (**the Discussion Paper**),² held further consultation sessions and requested final submissions. This is our final submission. The Committee is disappointed that its First Submission does not appear to have been referenced, referred to or considered in the Discussion Paper. Given that the majority of its members are not registered tax practitioners, the Committee sees itself as being able to provide balanced and valuable information to the Treasury in relation to the Review, as well as an original viewpoint. The Committee is in the fortunate position of being primarily concerned with public interest considerations – at least two of which (independence and integrity) are of overriding importance to the Review.

Background

The Review is more than timely as the *Tax Agent Services Act 2009* (Cth) (**TASA**) has now been in operation for more than eight years.

The Committee has fully participated in all processes of the Review. Its principal concern from the beginning has been to ensure the independence of the Tax Practitioners Board (**TPB**) from the Australian Taxation Office (**ATO**). Specifically, in its First Submission, the Committee listed eight ‘threats to independence’. While the Discussion Paper has addressed concerns in relation to funding, employees and premises, it has not adequately addressed these specific ‘threats to independence’ identified by the Committee. The Committee is pleased that the Discussion Paper includes support for the changes to the structural independence of the TPB. However, much more can be done in relation to structural independence and the Discussion Paper is silent on threats to independence posed by relationships and priorities – as detailed in Schedule B hereto.

Even more concerning is the support given in the Discussion Paper for imposing some kind of new duty on tax practitioners and the TPB to uphold ‘the integrity of the tax system’³ – whatever that is intended to mean. If it states the obvious, that tax practitioners and the TPB must support the effective operation of the TASA, then there is no need for it to be made a new objective of the TASA. If it seeks to impose a new obligation on tax practitioners and the TPB to the revenue (including to enhance collection of the revenue) then the concept is emphatically rejected by the Committee.

Executive Summary

Independence, and the appearance of independence, of the TPB from the ATO remains the principal concern of the Committee, which is addressed in Schedule B. The Committee rejects any contention that lack of independence is a matter of perception only, and not also of reality.

Additionally, the Committee rejects any proposition or amendment of the TASA requiring tax practitioners or the TPB to uphold ‘the integrity of the tax system’. First, because the

¹ Law Council of Australia, Submission No 15 to Treasury, *Taxation Practitioners Board Review* (30 April 2019) <<https://treasury.gov.au/sites/default/files/2019-06/c2019-391676-law-council.pdf>> (‘First Submission’).

² Treasury (Cth), *Review of the Tax Practitioners Board* (Discussion Paper, July 2019).

³ *Ibid* [3.53].

terms ‘the tax system’ and ‘integrity of the tax system’ are unclear and not defined in the Discussion Paper. Second, because the Committee does not see the need to amend the TASA to require tax practitioners and the TPB to act in accordance with the law.

The Committee interprets ‘integrity’ to mean ‘effective operation’, so that ‘the integrity of the tax system’ means the effective operation of the tax system as required by law. The Committee believes that the phrase ‘the tax system’ merely describes the way in which taxes are collected in Australia, in accordance with the law. This system comprises various components, each of which is governed by its own legislation and regulation. Although voluntary compliance with the legislation is preferable to enforced compliance, the system itself (and each component) is not dependent on voluntary compliance. These submissions are expanded in Schedule A. As indicated in that schedule, the use of the phrase ‘the integrity of the tax system’ seems to be based on highly questionable propositions and gives rise to great uncertainty and confusion. One of the causes of that uncertainty (but by no means the only one) is the confusion between the concept of enhancing the integrity of tax practitioners (which the Committee supports) and enhancing the integrity of the tax system (which the Committee strongly opposes as a flawed concept). Subsidiary to these concerns, but nonetheless important, are the other submissions made by the Committee in Schedules C–E.

Methodology

The Discussion Paper comprises 12 Chapters and many consultation points. The independence of the TPB from the ATO was the central feature of the Committee’s First Submission and is the central feature of the Discussion Paper.⁴ Accordingly, it is one of the two central features of this submission.

Closely related to ‘independence’ is the concept of ‘the integrity of the tax system’. This concept is first raised by the Ethics Centre in its analysis of independence.⁵ The reasons for the Committee rejecting this concept are set out in Schedule A.

In addition to its consideration of ‘integrity’ and ‘independence’, the Committee is uniquely qualified to comment on those parts of the Discussion Paper dealing with legal professional privilege. There are also some other important areas the Committee believes it is necessary to comment upon in the public interest.

For ease of reference, the Committee deals with each of these subjects in separate schedules as follows:

- Schedule A: Integrity of the Tax System – Consultation Point 3.1;
- Schedule B: Independence – Consultation Points 3.1 and 3.2;
- Schedule C: Safe Harbour– Consultation Point 9.1;
- Schedule D: Legal Professional Privilege – Consultation Points 6.2 – 6.4;
- Schedule E: Registration, Education and qualifications – Consultation Points 5.1, 5.8 and 5.9;
- Schedule F: Consultation Points summary; and
- Schedule G: Glossary.

Fundamental Propositions

⁴ Treasury (Cth), *Review of the Tax Practitioners Board* (Discussion Paper, July 2019) 6–7.

⁵ *Ibid.*

- 1) That the term 'the tax system' does no more than describe the manner in which taxes are collected in Australia;
- 2) That the tax system is governed by law and does not depend on voluntary compliance;
- 3) That the term 'integrity of the tax system' does no more than describe the way in which the various components of that system are intended to operate;
- 4) That the ATO and the TPB are separate and independent components of that system – governed by separate legislation and regulation and having separate functions and priorities; and
- 5) That the tax system works as intended when the independence of the TPB from the ATO is maintained – and appears to be maintained.

What the Committee Supports

- 1) The maximum possible independence of the TPB from the ATO – Schedule B;
- 2) Changes to the safe harbour provisions – Schedule C; and
- 3) Independent policymaking by the TPB – Schedule B.

What the Committee Does Not Support

- 1) The imposition of any new overriding duty of tax practitioners to 'the integrity of the tax system' – Schedule A;
- 2) Any major changes to the Code of Professional Conduct (**the Code**); and
- 3) Any major changes to the TASA or the Code by legislative instrument rather than by legislation.

Schedule A - Integrity of the Tax System

Introduction

- 1) The preliminary view in the Discussion Paper supports the views of the ATO and the TPB that upholding the integrity of the tax system should become an additional object of the TASA.⁶
- 2) The Committee believes that such support is based on the propositions that:
 - a) there is utility in treating the 'tax system' as a separate entity which exists separately from its component entities – parliament, the ATO, taxpayers, the TPB and tax practitioners⁷ (**entities**);
 - b) for the tax system to work effectively, the public and each of those parts must have confidence in the 'tax system' as a separate entity;⁸ and
 - c) therefore, upholding the integrity of the 'tax system' is the duty of each of those entities.
- 3) The Committee rejects each of those propositions.

⁶ Treasury (Cth), *Review of the Tax Practitioners Board* (Discussion Paper, July 2019) [3.53].

⁷ *Ibid* 7.

⁸ *Ibid*.

- 4) The Committee does not believe that describing the ‘tax system’ as other than the sum of its parts, is meaningful or useful.
- 5) Therefore, there can be no ‘integrity’ of the ‘tax system’ as such, or any duty to uphold its ‘integrity’.
- 6) The Committee’s concerns centre on the 2 main concepts underlying support for the additional object:
 - a) ‘the tax system’; and
 - b) ‘the integrity of the tax system’.
- 7) This submission now deals with each of those concepts in turn.

What is meant by ‘the tax system’?

- 8) ‘The independence of the TPB, as the regulator of tax practitioners, is crucial to the integrity of the tax system.’⁹
- 9) In its First Submission, the Committee used ‘tax system’ to refer to the separate and independent roles of taxpayers, the ATO, tax practitioners and the TPB – as intended by the respective laws governing each entity.¹⁰
- 10) The Committee did not imply the existence of any overarching ‘system’ as such. Nor did it imply the existence of any duty by tax practitioners or the TPB to the system by which tax is collected, in contrast to the overarching duty of legal practitioners to the court. The Committee strongly rejects any overarching duty of tax practitioners to the ‘tax system’ regardless of what that term might mean. Any such duty would conflict with the Code, Item (4), in the TASA, which states, ‘You must act lawfully in the best interests of your client’¹¹ and would present tax practitioners with a conflict between their duty to the client and their duty to the tax system.
- 11) Accordingly, ‘the tax system’ is only useful, if at all, as a term to describe the way in which taxes are collected in Australia, that is by a combination of various separate and independent components – each of which is designed to operate independently and in accordance with its own legal requirements.
- 12) Parliament makes the law; the ATO administers the law; taxpayers are required by the law to meet their tax obligations;¹² and tax practitioners help taxpayers understand and meet their tax obligations.
- 13) While the sum of these parts can be described as the Australian system for collecting the revenue, such description is no more than a convenient way of describing these separate elements and entities.
- 14) The following advice from ‘The Ethics Centre’ is reproduced in the Discussion Paper:

⁹ Treasury (Cth), *Review of the Tax Practitioners Board* (Discussion Paper, July 2019) 7.

¹⁰ Law Council of Australia, Submission No 15 to Treasury, *Taxation Practitioners Board Review* (30 April 2019) <<https://treasury.gov.au/sites/default/files/2019-06/c2019-391676-law-council.pdf>> (‘First Submission’).

¹¹ *Tax Agent Services Act 2009* (Cth) s 30-10(4).

¹² Treasury (Cth), *Review of the Tax Practitioners Board* (Discussion Paper, July 2019) 7, reproducing advice from ‘The Ethics Centre’.

*The taxation system is only efficient and effective if it is trusted by all concerned to serve the public interest through means that are lawful, fair and in accordance with the highest standards of integrity.*¹³

15) This proposition underpins the important ‘preliminary view’ of the Discussion Paper that an additional object of the TASA should be ‘to uphold the integrity of the tax system’.¹⁴

16) In the words of the Discussion Paper:

*it was always intended that as well as the TASA providing consumer protection to clients of tax practitioners it should also be ensuring that the integrity of the tax system is upheld.*¹⁵

17) The ‘preliminary view’ in the Discussion Paper supports ensuring the integrity of the tax system as an additional object of the TASA.¹⁶

18) This view postulates an overarching system to which taxpayers owe a duty. That system is never articulated, but presumably comprises the efficient and effective collection of revenue.

19) The Committee does not believe there is such an overarching system, as such. The ‘system’ is an artificial construct comprising the four components referred to above – each of which operates independently and is the subject of its own legal requirements.

20) Each component has its own set of obligations, sanctions, oversight and review – imposed by the relevant law.

21) Once it is accepted that ‘the tax system’ as a concept has no existence, other than to describe its component parts, there can be no ‘integrity of the tax system’, as such – except to describe the independent and proper operation of each of its components.

22) We now deal with the concept of ‘integrity’ in this context.

What is meant by ‘the integrity of the tax system’?

23) The above analysis is based on interpreting ‘integrity’ as requiring that the system should work effectively and efficiently. Far more worrying would be any implication that ‘integrity’ is used in the Discussion Paper to require some kind of duty to the revenue on either or both of the TPB and tax practitioners.

24) For taxpayers, clearly the *Duke of Westminster* case,¹⁷ and many subsequent authorities, establish that taxpayers are only obliged to meet the legal obligations imposed on them by the tax laws and have no further over-arching obligations to the revenue:

*It has to be recognised that the subject, whether poor and humble or wealthy or noble, has the legal right to dispose of his capital and income as to attract upon himself the least amount of tax.*¹⁸

¹³ Treasury (Cth), *Review of the Tax Practitioners Board* (Discussion Paper, July 2019) 7, reproducing advice from ‘The Ethics Centre’.

¹⁴ *Ibid* [3.48].

¹⁵ *Ibid* [3.51].

¹⁶ *Ibid* [3.52].

¹⁷ *IRC v Duke of Westminster* [1936] AC 1 (‘*Duke of Westminster*’).

¹⁸ *Ibid* (Lord Atkin).

- 25) For tax practitioners, there should be no duties other than those imposed by law – particularly the TASA.
- 26) Based on this analysis, the Committee draws the following conclusions:
- a) tax practitioners, and the TPB (as the regulator of tax practitioners), have no duties in relation to tax – except as imposed by law;
 - b) while it is possible to postulate a tax system (by way of description only), it is more realistic to look at each of the components as separate entities – with their own legal obligations, sanctions and requirements;
 - c) so, the obligations of tax practitioners are exclusively governed by the law – and in particular the TASA;
 - d) similarly, the obligations of the TPB are exclusively governed by the law – and in particular the TASA;
 - e) thus, there can be no justification for imposing any over-arching obligation to uphold ‘the integrity of the tax system’ on either tax practitioners or the TPB; and
 - f) indeed, the concept is inimical to the fundamental independence of each of the components – relevantly the TPB and the ATO – in that it connotes some kind of common enterprise binding all components and entities to uphold the integrity of the tax system.
- 27) The concept itself first appears in the advice of ‘The Ethics Centre’.¹⁹ In the one paragraph ‘The Ethics Centre’ uses ‘integrity’ to mean two entirely different things:
- a) ‘ensure that tax practitioners operate with integrity’ – using integrity to mean honesty; and
 - b) ‘it is equally important that tax practitioners have confidence in the integrity of the system as it applies to them’ – using integrity to mean the proper operation of the system.
- 28) The advice of ‘The Ethics Centre’ is used throughout the Discussion Paper to support the argument for this additional duty. The advice is flawed by not defining what is meant by the integrity of the tax system and by the undifferentiated use of the word ‘integrity’ to mean two entirely different things (‘honesty’ in relation to individuals and ‘effective operation’ in relation to systems).
- 29) Accordingly, the Committee strongly rejects the desirability or need for any additional object of the TASA in relation to upholding the integrity of the tax system.
- 30) In the opinion of the Committee, any attempt to seek to impose an over-arching duty on tax professionals or the TPB to uphold the integrity of the tax system, possibly modelled on the over-arching duty of lawyers to the court, should be strongly resisted. There is no justification for the view expressed by the ATO that:

¹⁹ Treasury (Cth), *Review of the Tax Practitioners Board* (Discussion Paper, July 2019) 7, reproducing advice from ‘The Ethics Centre’.

"... the TPB are concerned with the integrity of the tax profession" (we agree) "who the ATO have observed to have a key role in protecting the integrity of the tax system"²⁰ (we strongly disagree).

- 31) The Committee rejects this description of the roles of the ATO and the TPB and their inter-relationship. Under their respective statutes, the ATO has the general administration of tax legislation²¹ and the TPB administers the TASA. Neither has a duty to protect the integrity of the tax system, whatever that might mean. The TPB is concerned with the integrity of the tax profession (to ensure that tax professionals comply with their obligations under the law), but certainly not with the integrity of the tax system.
- 32) As stated in the First Submission, for the public and tax professionals to have confidence that the TASA will work as intended, it is necessary for there to be strict independence of the TPB from the ATO.²²
- 33) It can be argued that a reference to the integrity of the tax system can first be found on page 5 of the Explanatory Memorandum with reference to the introduction of civil penalties.²³ However, the introduction of civil penalties strengthened the range of sanctions available to the TPB to perform its role of protecting the public. Such a role, as assisted by civil penalties, has nothing to do with enhancing the integrity of the tax system.
- 34) The confusion in the use of this term is further compounded in paragraph [5.41] of the Discussion Paper which refers to subsection 20-15(a) of the TASA in relation to fitness and propriety. Once again 'integrity' (meaning honesty in relation to an individual) is confused with 'integrity' (meaning effective operation in relation to a system).

Need for any additional object of the TASA?

- 35) It therefore follows that the Committee opposes the proposed additional object of upholding the integrity of the tax system.
- 36) The Committee believes that the existing object in section 2-5 of the TASA does more than just provide 'consumer protection to clients of tax practitioners'.²⁴
- 37) If the TASA works as intended 'to ensure that tax agent services are provided to the public in accordance with appropriate standards of professional and ethical conduct',²⁵ the public and tax practitioners should have confidence that professional standards will be upheld, the public will be protected and tax practitioners appropriately regulated.
- 38) Although the TPB supports the need for such an additional object,²⁶ the Committee believes that such support is inconsistent with its very recent 2019/2020 Corporate Plan. That plan sets out 'three strategic objectives to achieve our purpose', summarised as:
 - a) consumer protection;

²⁰ Treasury (Cth), *Review of the Tax Practitioners Board* (Discussion Paper, July 2019) [3.48].

²¹ *Income Tax Assessment Act 1936* (Cth) s 8.

²² Law Council of Australia, Submission No 15 to Treasury, *Taxation Practitioners Board Review* (30 April 2019) <<https://treasury.gov.au/sites/default/files/2019-06/c2019-391676-law-council.pdf>> ('First Submission').

²³ Treasury (Cth), *Review of the Tax Practitioners Board* (Discussion Paper, July 2019) [3.51] and fn 49.

²⁴ *Ibid* [3.51].

²⁵ *Tax Agent Services Act 2009* (Cth) s 2-5.

²⁶ Treasury (Cth), *Review of the Tax Practitioners Board* (Discussion Paper, July 2019) [3.47].

- b) enhance the integrity of the registered tax practitioner profession; and
 - c) strengthen the TPB as an efficient and effective regulator.
- 39) The Committee believes that these three objectives cover the field so that there is no need or justification for any overarching obligation to the tax system as such, whatever that might mean. Enhancing the integrity of tax practitioners is appropriate but not enhancing the integrity of the tax system, whatever that might mean.
- 40) The Committee believes that the preliminary view taken in paragraph [3.52] of the Discussion Paper that the integrity of the tax system 'as an objective of the TASA is evident' and as such should be made express, is based on the following flawed premises:
- a) that the Explanatory Memorandum supports its inclusion (rebutted above);
 - b) that it is justified by section 20-15(a) of the TASA (rebutted above);
 - c) that it is justified by the advice from 'The Ethics Centre' (rebutted above); and
 - d) that there is some correlation between enhancing the integrity of tax practitioners (supported by the Committee as the proper role of the TPB and not requiring any change to the TASA) and enhancing the integrity of the tax system (whatever that might mean).

Schedule B - Independence

Importance of independence

- 1) Rightly, the Discussion Paper positions the independence of the TPB from the ATO as its top priority:

The key question for this paper is the role and powers of the ATO and whether this is an impairment (perceived or otherwise) of the TPB's independence.²⁷

- 2) Independence is also the central focus of the Committee's First Submission.
- 3) While the Discussion Paper takes the view that independence is only a precondition to the voluntary submission by tax practitioners to the authority of the TPB and that voluntary compliance 'enhances both efficiency and effectiveness',²⁸ the Committee believes that the actual and perceived independence of the regulated (tax practitioners) from the regulator (the TPB) is a fundamental principle of administrative law and that compliance is required by law – voluntary compliance not being an option.
- 4) However, on any view, the importance of actual and perceived independence of the TPB from the ATO is fundamental to the proper working of the regulatory system.

Elements of Independence

- 5) For present purposes, independence can be achieved or compromised by:

²⁷ Treasury (Cth), *Review of the Tax Practitioners Board* (Discussion Paper, July 2019) 7.

²⁸ *Ibid* 8.

- a) structure;
 - b) relationships; and
 - c) priorities.
- 6) In dealing with each of these categories, the Committee considers both actual independence and perceived independence.

Structural independence

- 7) In an ideal world the TPB would be a totally independent agency – like ASIC, APRA or the IGT.
- 8) Obviously, budgetary and resource constraints made this impossible when the TPB was established in 2010. The Discussion Paper quotes from paragraph [5.32] of the Explanatory Memorandum to the effect that ‘administrative obligations’ make it necessary for the TPB ‘to sit within the ATO’.²⁹
- 9) Now that the TPB has been in operation for over eight years and the number of tax practitioners has grown from about 26,000 (all being tax agents) in 2010 to 78,270 (including tax agents, BAS agents and financial planner agents) in 2019,³⁰ it is more than timely to revisit the need for structural independence.
- 10) Structural independence would require:
- a) an independent Chair;
 - b) an independent Board;
 - c) budget and financial control;
 - d) staff appointment, dismissal and control;
 - e) premises control; and
 - f) control of its own register.
- 11) In looking at each of these, the Committee considers:
- a) the current position;
 - b) the preferred option espoused by the Discussion Paper; and
 - c) the Committee view.

²⁹ Treasury (Cth), *Review of the Tax Practitioners Board* (Discussion Paper, July 2019) 6.

³⁰ *Ibid* [1.28].

Chair

Current position

- 12) The Committee has previously drawn attention to the recent downgrading of the role of chair from about four days per week to about one day per week.³¹
- 13) As expressed in our First Submission, the Committee remains concerned that the executive and public face of the TPB is now the CEO (an employee of the ATO), rather than the independent chair.³²

Discussion Paper preliminary view

- 14) There is no direct reference to the role of the Chair, except in relation to financial matters (as referred to below).
- 15) However, reference is made to the possibility of making 'the position of the CEO a statutory appointment that is made either by the Board or by the relevant Minister'.³³

Committee view

- 16) The Committee remains concerned that the independent Chair will remain of lesser importance than the CEO – unless the CEO becomes a statutory appointment and has no continuing connection with the ATO.
- 17) The Committee would prefer a full-time executive Chair as well as a statutorily appointed CEO. There is much work to be done in the new regime contemplated by the Discussion Paper. However, having a part time Chair (hopefully working at least three days per week) and a full-time CEO appointed by statute, is a step in the right direction.

Board

- 18) The Committee is reasonably satisfied with the independence of the current board of the TPB and the manner in which it is appointed.
- 19) As mentioned above, the Committee's concerns centre on the role and powers of the Chair and board (as independents) versus the role and power of the CEO and other staff seconded from the ATO.
- 20) Accordingly, the Committee has no meaningful contribution to make on the matters raised in paragraphs [3.38]–[3.42] of the Discussion Paper, except to say that independence means far more than ensuring independent decision-making on professional conduct cases. Of far greater importance is independence of policymaking and priority-setting.
- 21) In any event the Committee is strongly opposed to having an ATO officer as a member of the board as postulated in paragraph [3.43] 'if the TPB were to become an accountable authority under the PGPA Act'.

³¹ Law Council of Australia, Submission No 15 to Treasury, *Taxation Practitioners Board Review* (30 April 2019) <<https://treasury.gov.au/sites/default/files/2019-06/c2019-391676-law-council.pdf>> ('First Submission') 8.

³² *Ibid.*

³³ Treasury (Cth), *Review of the Tax Practitioners Board* (Discussion Paper, July 2019) [3.24].

22) It will also be clear that under no circumstances would the Committee be happy with the independent board containing an ATO employee.

Finances

Current position

23) The ATO is the accountable authority under the *Public Governance, Performance and Accountability Act 2013* (Cth) (**PGPA Act**).³⁴

24) For the purposes of that Act, the TPB is considered to be part of the ATO and board members are also considered to be ATO officials.³⁵

25) In relation to independence, this position is considered unsatisfactory by the Committee, 'The Ethics Centre', the ATO and the TPB.

Discussion Paper preliminary view

26) Two options are postulated:

- a) retain the status quo; or
- b) the TPB becomes the accountable authority with its own budget and reporting.³⁶

27) The third option postulated is in relation to staff.³⁷

28) The Discussion Paper preferred option is b) above.³⁸

Committee view

29) The Committee supports the TPB becoming the accountable authority with its own budget and reporting.

Staff

Current Position

30) All staff of the TPB (including the CEO) are provided on secondment by the ATO.³⁹

31) 'Unlike secondment arrangements that the ATO has with other agencies there is no specific right for the TPB to terminate the secondment'.⁴⁰

32) The terms of the secondment are governed by a Memorandum of Understanding (**MOU**) between the ATO and the TPB, which is currently being negotiated and which is not a public document.

³⁴ Treasury (Cth), *Review of the Tax Practitioners Board* (Discussion Paper, July 2019) [3.3].

³⁵ *Ibid* [3.4].

³⁶ *Ibid* [3.22].

³⁷ *Ibid*.

³⁸ *Ibid* [3.23].

³⁹ *Ibid* [3.1].

⁴⁰ *Ibid* [3.28.3].

33) The Committee finds the current arrangements opaque and unsatisfactory in relation to independence.

Discussion Paper preliminary view

34) There is no support for the TPB employing its own staff.⁴¹

35) As mentioned above, the position of the CEO could become a statutory appointment.⁴²

36) Additionally, 'those staff of the TPB who report directly to the CEO and are responsible for decisions regarding sanctions and litigation' could also become employees of the TPB.⁴³

37) 'Staffing arrangements could be formalised by requiring ATO's secondees to have a signed Secondment Agreement. Alternatively, it might be that they take leave without pay from the ATO while on secondment'.⁴⁴

Committee view

38) While not achieving total independence of the TPB staff from that of the ATO, the Committee supports the following three initiatives mentioned above as steps in the right direction:

- a) the CEO becomes a statutory appointment – preferably of a person not previously or recently employed by the ATO;
- b) as many staff as possible become direct employees of the TPB; and
- c) there is a transparent Secondment Agreement – clearly delineating complete separation from the ATO while on secondment and giving the TPB complete control of all staff on secondment.

39) It is regrettable that the MOU between the ATO and the TPB has and still remains invisible to the public and the profession – so that stakeholders are still unable to comment on its contents.

40) Whatever else happens in the future regarding the documented relationship between the ATO and the TPB (whether by way of MOU or Secondment Agreement), such documented relationship should be made public – or at least made available to stakeholders.

41) As mentioned above, the Committee sees staff independence and independence generally as far more than just relating to decisions regarding sanctions and litigation. Independence at board and staff level requires the TPB setting its own policies, agendas and priorities.

⁴¹ Treasury (Cth), *Review of the Tax Practitioners Board* (Discussion Paper, July 2019) [3.23].

⁴² *Ibid* [3.24].

⁴³ *Ibid* [3.25].

⁴⁴ *Ibid* [3.28.7].

Premises

Current position

42) 'TPB staff are co-located with ATO staff in the same ATO premises'.⁴⁵

Discussion Paper preliminary view

43) Locating the TPB in separate premises is not the preferred option.⁴⁶

44) Cost savings is the main reason.⁴⁷

45) '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.'⁴⁸

Committee view

46) The Committee is reluctantly prepared to accept cost savings as a valid reason for co-location.

47) However, the Committee is completely opposed to the argument that co-location is desirable because it facilitates a close working relationship with the ATO and that such a relationship is essential to the system of regulation. A close working relationship may be desirable in some limited (defined) situations, but such a relationship is the antithesis of independence, as discussed below.

48) So long as the TPB does not have separate premises, the public perception (if not the reality) is lack of independence from the ATO.

49) However, it may be that a strong case can be made on the basis of cost savings. Such a case has not yet been made out.

Register

50) The suggestion in paragraph [4.19] of the Discussion Paper that the TPB register 'should be included in the Modernising Business Registers program' is strongly rejected by the Committee, because that program will be administered by the ATO.

51) While not impugning the ability of the ATO to run the MBR program, to include the TPB register would be totally inconsistent with maintaining the independence of the TPB from the ATO – both actual and perceived.

52) Accordingly, while the Committee makes no submission on the 'public register' content of the Discussion Paper, we strongly oppose any situation in which the public register of tax practitioners is not run exclusively and independently by the TPB.

⁴⁵ Ibid [3.1].

⁴⁶ Treasury (Cth), *Review of the Tax Practitioners Board* (Discussion Paper, July 2019) [3.23].

⁴⁷ Ibid [3.27].

⁴⁸ Ibid [3.29].

Relationships

Current position

- 53) Currently there are MOUs with the ATO and ASIC designed to facilitate the flow of information between each agency.⁴⁹
- 54) The MOU between the TPB and the ATO also covers the terms on which staff are seconded and is being revised.⁵⁰
- 55) As mentioned above, the current dependence by the TPB on the ATO for budget, staff and premises ensures a very close working relationship.

Discussion Paper preliminary view

- 56) That a close working relationship between the TPB and ATO is essential to the system of regulation.⁵¹
- 57) This view of the need for a close working relationship permeates throughout the Discussion Paper.

Committee view

- 58) Too close a relationship and the appearance of too close a relationship is a threat to the independence of the TPB – as discussed in the First Submission.
- 59) While a close working relationship between the ATO and the TPB makes sense where necessary and justified, care must be taken to avoid both the appearance and reality of the TPB doing the work of the ATO and being too influenced by ATO goals and priorities.

Priorities

From the First Submission

- 60) In protecting the revenue, currently the ATO has widely publicised some of the following priorities:
- a) the black economy;
 - b) work related expenses; and,
 - c) the personal obligations of tax practitioners.
- 61) In the opinion of the Committee, to achieve its objectives under the TASA, the TPB should observe the following priorities:
- a) unregistered practitioners;
 - b) serious misconduct requiring intervention to protect the public; and,
 - c) personal misconduct (which does not directly affect the public).

⁴⁹ Ibid [2.4].

⁵⁰ Treasury (Cth), *Review of the Tax Practitioners Board* (Discussion Paper, July 2019) [3.28.1] and [3.28.6].

⁵¹ Ibid [3.27].

62) To the extent that the resources of the TPB are spent in investigating tax practitioners for work-related expenses and breaches of their personal obligations, there is the appearance (if not the reality) of the TPB being unduly influenced by the ATO.

Discussion Paper preliminary view

- 63) These concerns, raised in the First Submission, have not been dealt with in the Discussion Paper.
- 64) Instead, emphasis is placed in Chapter 2, 'Whole of Government Interactions', on increased cooperation and sharing of information between the various government departments.⁵²
- 65) While the Committee supports this proposition, it is less important than taking appropriate steps to preserve the independence of the TPB from the ATO.
- 66) Also relevant is the recurring theme in the Discussion Paper that the integrity of the tax system requires the TPB to support the objectives of the ATO in enhancing the integrity of the tax system, whatever that might mean.

Committee view

- 67) It will be apparent from the foregoing that the Committee believes that independence of the TPB from the ATO requires that the TPB sets its own policies and priorities and is seen to do so. Only then will the TPB be, and be seen to be, independent from the ATO.
- 68) To the extent that the new concept of enhancing the integrity of the tax system find its way into the TASA in any shape or form, that will be, and be seen to be, a retrograde step in relation to the independence of the TPB from the ATO.

Schedule C - Safe Harbour

- 69) The Committee's views on 'Safe Harbour', as discussed in Chapter 9 of the Discussion Paper, are in line with the principle that protection of the public interest is of the highest importance.
- 70) The areas that the Committee comments further on are:
- a) that there also appears to be a requirement for taxpayers to prove the elements of the agent's culpability;⁵³
 - b) that taxpayers hold a certain level of control over the preparation of a return by a tax agent;⁵⁴ and
 - c) that, when reliance has resulted in a shortfall penalty being imposed, it is the taxpayer who generally pays the penalty and may need to sue the agent to recover their loss.⁵⁵
- 71) The concept of safe harbour and the propositions above are discussed below:

⁵² Treasury (Cth), *Review of the Tax Practitioners Board* (Discussion Paper, July 2019) [2.23].

⁵³ *Ibid* [9.8].

⁵⁴ *Ibid* [9.9].

⁵⁵ *Ibid* [9.11].

Safe harbour generally

72) A liability to penalties depends on the acts of either the taxpayer or its agent. In other words, the acts of a registered tax agent, including statements made to the Commissioner, are imputed to the taxpayer, who is treated as if it made the relevant statement.

73) Following the introduction of the TASA, a tax agent now has a liability under the Code if it breaches any of the requirements of the Code. Item 9 of the code says:

*You must take reasonable care in ascertaining a client's state of affairs, to the extent that ascertaining the state of those affairs is relevant to a statement you are making or a thing you are doing on behalf of the client.*⁵⁶

74) Since 1 March 2010, a taxpayer may not be liable to an administrative penalty for making a false or misleading statement that results in a shortfall amount if:

- a) the taxpayer engages a registered tax agent or BAS agent; and
- b) the taxpayer gives the registered tax agent or BAS agent all relevant taxation information; and
- c) the registered tax agent or BAS agent makes the statement; and
- d) the false or misleading nature of the statement did not result from:
 - i) intentional disregard by the registered tax agent or BAS agent of a taxation law; or
 - ii) recklessness by the agent as to the operation of a taxation law.⁵⁷

75) In other words, if the statement is made by a registered tax agent and the taxpayer provided all relevant taxation information to the agent to enable the statement to be made correctly, but, because of the agent's lack of reasonable care there is a shortfall, the taxpayer is not liable. The burden of proving the taxpayer gave all relevant information to the agent rests on the taxpayer.⁵⁸ Safe harbour cannot apply to an agent who is not registered.

76) The introduction of the safe harbour regime has been seen as being a double-edged sword, because if the taxpayer obtains the benefit of any elimination of penalties because its agent has failed to take reasonable care, the agent will have breached the relevant provisions of the Code.

77) This means that the Commissioner may, depending on the circumstances, refer the matter to the TPB. The TASA provides for severe penalties if the Code is breached.

Taxpayer to prove elements

78) Generally, when the Commissioner issues a notice of penalty, the reasons for the decision are provided to the taxpayer who can object against the penalty decision under Part IVC of the *Taxation Administration Act 1953* (Cth) (**TAA**).

⁵⁶ *Tax Agent Services Act 2009* (Cth) s 30-10(9).

⁵⁷ *Taxation Administration Act 1953* (Cth) sch 1, s 284-75(6).

⁵⁸ *Ibid* s 284-75(7).

- 79) Unless the Commissioner takes the initial view that any tax shortfall arose because of a failure by the tax agent to take reasonable care, safe harbour cannot apply. However, even if the Commissioner can be persuaded that the relevant base penalty amount arises because of a failure by the tax agent to take reasonable care, safe harbour does not necessarily apply.
- 80) The Committee welcomes the TPB's proposal to establish objective criteria for a tax agent's conduct warranting an administrative penalty, as discussed in paragraphs [9.18] and [9.26], so that recklessness or intentional disregard by the relevant agent opens the question of whether the penalty should shift to the agent where the safe harbour test is satisfied, but such criteria should recognise that what needs to be proven is not only the agent's culpability, but also that all relevant taxation information was provided to the tax agent.
- 81) Attempting to discharge the burden of having provided all necessary information, can often devolve into an argument between taxpayer and tax agent about whether certain information was provided, how it was provided and whether it was necessary in order for the tax agent to not make a false or misleading statement.
- 82) The Committee believes that this issue is fraught with both conceptual and practical difficulties, and in order to ensure a fair and balanced outcome, suggest that it be the subject of further discussion and consultation.

Taxpayer control

- 83) In practice, the suggested level of control is illusory. The usual practice arises from an embedded frequent routine of primary information gathering by the tax agent from various sources, such as Banklink, and data from cloud-based software to attend to the usual statutory compliance requirements such as business activity statements (**BAS**) lodgements and the preparation and lodgement of income tax returns.
- 84) Where a taxpayer conducts an enterprise, amounts arising from payables, receivables, inventories, etc, can all be procured independently of the taxpayer, again usually from cloud-based software. Any adjustments made because of timing issues, or adjustments of a permanent nature to any amounts affecting the calculation of taxable income, are often initiated by the tax agent and advised to the taxpayer, who usually accepts the knowledge and advice of the tax agent. This is despite the taxpayer being responsible for its return and signing a declaration to that effect, which usually tends to be ignored in practice.
- 85) Whilst a taxpayer can control the preparation of a return by its agent, by say, changing to another agent, this does not usually occur unless there are more serious substantive issues affecting the taxpayer/tax agent relationship.

The taxpayer may need to sue the agent to recover their loss

- 86) An important legislative provision in favour of taxpayers, which has since been repealed, was on balance a better approach.
- 87) Section 251M of the *Income Tax Assessment Act* 1936 (Cth) (**ITAA**) prior to its repeal, was a common law entitlement predicated upon common law negligence and provided:

If, through the negligence of a registered tax agent, or of a person exempted under section 251L, a taxpayer becomes liable to pay a fine or other penalty, any

*additional tax or any interest under section 170AA or 207A, the registered tax agent, or the person, as the case may be, shall be liable to pay to the taxpayer the amount of that fine or other penalty, additional tax or interest, and that amount may be sued for and recovered by the taxpayer in any court of competent jurisdiction.*⁵⁹

88) According to the New South Wales Supreme Court:

- a) Section 251M created a statutory cause of action which was independent of any concurrently available cause of action based upon common law negligence;
- b) The amount properly recoverable in a section 251M action could not be reduced because of the taxpayer's contributory negligence; and
- c) A taxpayer who established concurrent entitlements to section 251M damages, and to common law damages for negligence, would have been awarded the greater of the two entitlements.⁶⁰

89) Whilst the concept of both negligence and a failure to take reasonable care are forms of each other, the threshold requirement for an administrative decision that there has been a failure to take reasonable care is a far lower one than proof on the balance of probabilities that there has been a finding of negligence. However, the lower threshold only gives protection against penalties, whilst the statutory protection under the then section 251M not only included penalties, but also included additional taxes and interest charges.

90) For the reasons set out above, it is difficult to justify the current safe harbour regime as only applying if the tax agent in question failed to take reasonable care so as to ensure that taxpayers retain primary responsibility for complying with their tax obligations,⁶¹ when the norm is that taxpayers simply place more reliance on their tax agent to ensure that all taxation obligations have been properly complied with.

91) Therefore, consideration should be given to either broadening the current safe harbour rules to take into account all penalties imposed on taxpayers for the conduct of their tax practitioner, regardless of what behavioural assessment has been made against that practitioner (that is, as between the three behaviours set out in paragraph [9.6] of the Discussion Paper) or imposing a similar regime to that formerly found in the ITAA.

92) It could be as simple as amending paragraph (d) of subsection 284-75(6) or inserting a fresh section in the TASA similar to section 251M but imposing a lower threshold of proof and whether 'negligence' is necessary or merely a false or misleading statement. A choice of either would be an improvement of the current system.

93) Again, as this represents a material shift away from the current system, the Committee believes that it should be subject to further consultation and industry involvement before formulating a final position.

Other issues

94) Unlike the current system of safe harbour from an *administrative* penalty because of an agent's failure to take reasonable care, the position is less clear when an agent undertakes a criminal act, which is outside the scope of its ostensible and actual authority.

⁵⁹ *Income Tax Assessment Act 1936* (Cth) s 251M (emphasis added).

⁶⁰ *Divune Pty Limited v Gould Ralph Services Pty Ltd* [2004] NSWSC .

⁶¹ Treasury (Cth), *Review of the Tax Practitioners Board* (Discussion Paper, July 2019) [9.7].

- 95) In a recent decision before the Victorian County Court, a former tax agent convicted of numerous criminal offences involving the theft of monies that should have been devoted to the payment of income tax over many years, left many taxpayer clients facing the prospect of paying many hundreds of thousands of dollars in back-taxes.⁶²
- 96) Currently there is nothing in the TASA or TAA that deals with this rare occurrence, but the question of an innocent taxpayer being victimised twice under circumstances where a tax agent has stolen funds used to pay taxes, and then the taxpayer still being required to pay taxes, is unjust, even if subsequent court orders have been obtained for reparation from impecunious criminals. This is an issue that should also be addressed in such a broad review. This situation can be addressed by providing a robust mechanism for the statutory dispensation for innocent victims of crime in relation to unpaid tax debts.

Schedule D - Legal Professional Privilege (LPP)

Comments on preliminary views

- 1) The TPB review is neither the time nor place for dealing with how Legal Professional Privilege (**LPP**) disputes can be resolved more quickly and effectively. It is also not the place for the ATO to ventilate concerns regarding the practices of what is, without further information, potentially only a problem caused by a very, very small minority of practitioners.
- 2) There is an important balance to be struck between providing the Commissioner with the information and materials he is entitled to under law and the preservation of the confidentiality of communications between taxpayers and their lawyers that the community is entitled to have respected through the long-established LPP doctrine.
- 3) Finding this balance is difficult and the ATO and the Committee are currently developing a protocol that will provide a framework for lawyers when dealing with information requests from the ATO, some of which potentially capture a very large number of documents and emails. As part of that process, the Committee has also raised concerns with the ATO about taxpayers and their advisers not being given sufficient time to respond to information requests, which the protocol may help overcome.
- 4) The Committee believes that the TPB should play a more proactive role in educating tax practitioners about their obligations concerning LPP generally. Such advice should extend not only to seeking legal advice from a qualified legal practitioner before making an LPP claim on behalf of a client, but also to the obligations that exist to preserve a client's right to claim LPP over documents in the tax adviser's possession. In the general experience of the Committee, many tax agents (particularly in the smaller firms) are not aware of this obligation.
- 5) The Committee would also note that concerns around the delay, costs, lack of uniformity and clarity around resolving claims for LPP are not new. The Australian Law Reform Commission (**ALRC**), in its 2007 report, *Privilege in Perspective: Client Legal Privilege and Federal Investigatory Bodies*, recognised concerns raised during the

⁶² See Nassim Khadem, 'No justice at all: How 50 victims of tax fraudster Richard Hogg got lumped with big ATO debts', ABC News (Web Page, 14 June 2019) <<https://www.abc.net.au/news/2019-06-14/how-victims-of-tax-fraudster-richard-hogg-got-left-with-ato-debt/11169232>>.

inquiry around significant delays, costs in resolving client legal privilege claims and the lack of clear, uniform and expeditious processes to deal with privilege disputes.⁶³

Schedule E – Registration, Education and Qualifications

- 1) The Discussion Paper acknowledges the growing number of specialist practitioners and a move away from traditional tax compliance work towards tax advice work.⁶⁴ It also acknowledges that registration:

*ensures that tax practitioners have the necessary qualifications and experience to provide tax agent services, meet the fit and proper purpose requirements and have appropriate professional indemnity insurance cover to protect consumers.*⁶⁵
- 2) The Discussion paper also provides examples of certain practices and behaviours that might benefit from a more dynamic code of conduct and one of these examples is the provision of legal services such as the drafting of legal documents or matters relating to the maintenance of LPP.⁶⁶ The provision of legal services by a non-lawyer is an issue that is relevant to all of the things listed above as being of primary importance – necessary qualifications and experience, fit and proper purpose, and professional indemnity insurance.
- 3) The Committee notes the submission of Mr John Morgan, Barrister, Victorian Bar, in response to the Review and supports several of the points raised in that submission in the context of the registration, education and qualifications of ‘non-lawyer’ tax practitioners. Namely:
 - a) The TPB should play a more active role in educating and guiding tax practitioners with respect to the distinction between the provision of tax agent services (including tax advice) and the provision of ‘unqualified’ legal services. Further guidance could also be given by the TPB to tax practitioners about the consequences of inadvertently providing legal services, such as how it may affect the cover provided by professional indemnity insurance.
 - b) The TPB should liaise regularly with the state and territory authorities that regulate legal practice. Better communication between the TPB and the relevant authorities will help both parties better understand what conduct is occurring in the market, and will ensure they are best placed to address in a timely manner any behaviour that may be viewed as contrary to the public interest.
 - c) The TPB should take into account any instances of unqualified legal practice as another relevant factor in any assessment of the fit and proper person test for the registration of tax practitioners.
- 4) One of the key core principles in the Code, and one that is directly linked to the objects of the TASA itself, is competence. If registration as a tax practitioner is the primary means through which the public can be confident that tax practitioners have the necessary qualifications and experiences to provide the relevant services, the TPB must do everything in its power to ensure the relevant boundaries and distinctions are well-understood by practitioners.

⁶³ Australian Law Reform Commission, *Privilege in Perspective: Client Legal Privilege and Federal Investigatory Bodies* (Report No 107, 2007) 432.

⁶⁴ Treasury (Cth), *Review of the Tax Practitioners Board* (Discussion Paper, July 2019) [5.11].

⁶⁵ *Ibid* [5.1].

⁶⁶ *Ibid* [6.12].

Schedule F - Consultation Points Summary

Point	Subject	Schedule	Comment
2.1	whole of government interaction	A	no overarching duty to enhance integrity of the tax system
2.2	information sharing	A and B	increased information sharing supported by the Committee, subject to independence being preserved
3.1	Independence	B	maximum independence of the TPB from ATO strongly advocated
3.2	Board independence	B	Strongly advocated
3.3	Object of TASA	A	any change undesirable and unnecessary – particularly in relation to integrity of the tax system
4.1	Community awareness	–	no view expressed
4.2	Public register	–	No view expressed except that we strongly oppose including the TPB register on the single public register (MBR), because the MBR will be administered by the ATO and this would be completely contrary to our submission about maintaining strict separation between the TPB and the ATO – in the interests of actual and perceived independence.
4.3	Governance arrangements in firms	–	no view expressed
4.4	Governance rules in firms	–	No view expressed
5.1 – 5.7	Registration, education and qualifications	E	No view expressed except in relation to the need to ensure that tax practitioners do not contravene legal profession statutes – as indicated in Schedule E.
5.8	Tax intermediaries	–	no change needed to lawyers exemption or carve out (para 5.25)

5.9	Fit and proper test	A E	Addition of integrity requirement (para 5.41) opposed unqualified legal practice to be taken into account – as indicated in Schedule E
5.10	tax clinics	–	no view expressed
5.11	gazettal	–	No view expressed
6.1	A more dynamic code	A	– Strongly opposed inserting integrity of the tax system as an additional code item – otherwise, supported in principle provided changes are by legislation and not by legislative instruments
6.2 – 6.4	Legal professional privilege	D	Not an appropriate subject for the Review
7.1	Additional sanctions	–	Supported provided introduced by legislation rather than by legislative instruments
7.2	TPB to demand information before investigation	–	Supported in principle
8.1	Unregistered agents	–	The suggested measures supported in principle
9.1	safe harbour	C	the changes suggested in para 9.25 are supported as well as the other issues we have raised
9.2	administrative penalties	C	In assessing whether a tax agent should be liable for a penalty that would otherwise have been imposed on a taxpayer, an appropriate mechanism: 1. Should be sufficiently robust to commence with an inquiry whether a tax agent was provided with all relevant taxation information, which is in line with the current legislation; 2. If information that was relevant to the making of a false or misleading statement was not provided, the taxpayer should bear the penalty, subject to a possibility of sharing the penalty between both taxpayer and tax agent in the form of a contributory negligence assessment;

			<p>3. If information that was relevant to the making of a false or misleading statement was provided, the ATO will need to show that the tax agent used such information in a way that caused the making of the false or misleading statement and assess the tax agent as if it was the taxpayer using the current guidelines.</p> <p>As can be appreciated such a mechanism needs a substantial amount of work and consultation to be undertaken first.</p>
10.1 – 10.2	tax (financial) advisers	–	no view expressed
11.1 – 11.4	professional associations	–	<p>– para 11.12 as to improved information sharing is supported</p> <p>– para 11.14 as to TPB ceasing to be a regulator of professional bodies is supported</p>
12.1 – 12.5	future landscape	–	no view expressed

Schedule G - Glossary

Abbreviations	Meanings
Annual report	TPB annual report 2017 – 2018
ATO	Australian Tax Office and Commissioner of Taxation
Code	TASA, Part 3, The Code of Professional Conduct
Consultation Points	As set out in each chapter of the Discussion Paper
Corporate Plan	TPB Corporate Plan 2019 – 2020
Discussion Paper	Discussion Paper dated July 2019 and produced by the Review
First Submission	Submission by Committee to the Review dated 30 April 2019
Forum	TPB Consultative Forum
IGT	Inspector-General of Taxation
Committee	the Taxation Law Committee of the Business Law Section of the Law Council of Australia
PGPA Act	Public Governance, Performance and Accountability Act 2013
Review	Review of the Tax Practitioners Board
Safe Harbour	As described in chapter 9 of the Discussion Paper
TASA	Tax Agent Services Act 2009
TPB	Tax Practitioners Board