



Australian Government



PGPA Act and Rule Independent Review – TPB Submission

1. The Tax Practitioners Board (TPB) is an independent Commonwealth statutory body created under the *Tax Agent Services Act 2009* (TASA). The TPB is responsible for the registration and regulation of tax practitioners under the TASA, and its key objective is to provide consumer protection.
2. Section 7 of Schedule 1 of the Public Governance and Accountability Rule 2014 (PGPA Rule) specifically provides that for the purposes of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act):
 - (a) the following combination of bodies and persons is a listed entity:
 - (i) the Commissioner of Taxation, **the Tax Practitioners Board** (TPB), the Australian Charities and Not-for-profits Commission (ACNC) and the ACNC Advisory Board.
 - (b) the listed entity is to be known as the Australian Taxation Office;
 - (c) the **Commissioner of Taxation** is the **accountable authority** of the listed entity;
 - (d) the **Board members** and APS employees whose services are made available to the TPB under section 60-80 of the *Tax Agent Services Act 2009* (TASA) are **officials** of the listed entity; and
 - (e) the purposes of the listed entity include the functions referred to in section 60-15 of the TASA.
3. As such, for the purposes of the PGPA Act, the TPB is considered as part of the Australian Taxation Office (ATO) and the Commissioner of Taxation is the authority responsible for accounting to the Australian Government for the activities of the ATO (including the TPB) under the PGPA Act. Board members are also considered to be ATO officials for the purposes of the PGPA Act.
4. The status of the TPB under the PGPA Act is problematic as paragraph 5.14 of the Explanatory Memorandum to the Tax Agent Services Bill 2008 makes it clear that:

... The statutory functions and powers are vested in the Board independently of any other body including the ATO ...

5. When the TPB began operations in 2010 as a national regulator (when the TASA commenced), it replaced six state-based Tax Agent Boards, which had been administered by the Commissioner of Taxation under now repealed provisions in the *Income Tax Assessment Act 1936*. Under the TASA, Board members are independently appointed by, and must report directly to, the Minister for Revenue and Financial Services.
6. The prohibition on disclosure of official information provisions under the TASA further emphasise the recognition of the TPB's independence from the ATO. Section 70-35 of the TASA provides that it is an offence to make a record of official information (as defined under the TASA) or to disclose official information which has been acquired in the course of performing duties under or in relation to the TASA or the *Tax Agent Services Regulations 2009*. The penalty is imprisonment for two years. Section 70-40 of the TASA sets out the specific exceptions to this prohibition on disclosure and includes an exception to disclose information to the Commissioner of Taxation, but only in certain circumstances.
7. In addition, the TPB also maintains a separate IT environment to the ATO for TASA specific activities.
8. In accordance with the TASA, registered tax practitioners (and the general public) expect that the TPB operates independently of the ATO, exercising powers quite distinct from the Commissioner of Taxation. However, as the TPB must report for PGPA Act purposes through the Commissioner of Taxation, there is an ongoing concern about the public's perception of the TPB's independence, and in particular, that the TPB's independence is somewhat eroded by the PGPA reporting structure.
9. Although the TPB and ATO currently have appropriate processes in place to meet the relevant PGPA requirements, there are difficulties (for example in regards to timing, separation of roles, reporting requirements etc) that arise in the TPB providing the required assurance to the Commissioner of Taxation, as the accountable authority, that it is complying with the PGPA Act and PGPA Rule.. The inefficiencies for both the TPB and ATO arising from this arrangement (duplication of work for and between the ATO and TPB's separate audit and risk committees) is surely an unintended consequence of the PGPA Act. This is because outside of the requirements of the PGPA Act, the Commissioner has no role in the exercise of the TPB's functions and powers.
10. While the TPB recognises the nature of its current funding arrangement via the ATO and the requirement to account to the parliament and the public, it is of the view that there should be a more effective way for smaller Commonwealth bodies, such as itself, to comply with the PGPA Act, which does not compromise their independence. For example, aside from responsibility for financial reporting, other key PGPA Act requirements relating to compliance and management issues, such as the duty to govern the entity and ensure appropriate systems relating to risk and control are in place, should be under the direct responsibility of the TPB. The TPB should not have to report and assure the Commissioner of Taxation of these governance issues as it already reports directly to the Minister. This would

not only minimise the inefficiencies referred to above, but also ensure that the TPB remains appropriately independent.