3 May 2019

Email: TPBreview@treasury.gov.au

Dear Mr James,

SMSF ASSOCIATION SUBMISSION ON THE REVIEW INTO THE EFFECTIVENESS OF THE TAX PRACTITIONERS BOARD.

The SMSF Association (SMSFA) welcomes the review into the effectiveness of the Tax Practitioners Board (TPB) and the operation of the *Tax Agent Services Act 2009* (the Act) and the *Tax Agent Services Regulations 2009*, which establish the regulatory regime for tax practitioners in Australia. We believe post-implementation reviews are crucial in ensuring that policy intent is continuing to be met effectively.

The TPB has performed admirably as the national body responsible for the registration and regulation of tax practitioners over the past nine years. However, we believe there are areas where the TPB should be reviewed and potentially adjusted to ensure it is appropriately regulating the tax profession in the current regulatory environment.

Royal Commission Recommendation 2.10 - A new disciplinary system

We believe it is important to preface the review with recognition of recommendation 2.10 from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

The recommendation stated:

> *The law should be amended to establish a new disciplinary system for financial advisers that:*
> - *requires all financial advisers who provide personal financial advice to retail clients to be registered;*
> - *provides for a single, central, disciplinary body;*
> - *requires Australian Financial Services Licence (AFSL) holders to report 'serious compliance concerns' to the disciplinary body; and*
> - *allows clients and other stakeholders to report information about the conduct of financial advisers to the disciplinary body.*
>
> *The system should have the following key features:*
> - *First, each financial adviser should be individually registered.*
> - *Second, only those who are registered should be permitted to give financial advice.*
> - *Third, there should be a single, central disciplinary body with the power to impose disciplinary sanctions on financial advisers – the most serious sanction being cancellation of registration.*
> - *Fourth, there should be a system of mandatory notifications, requiring AFSL holders to report particular information about the conduct of financial advisers to the disciplinary body.*

- *Fifth, there should be a system of voluntary notifications, enabling AFSL holders, industry associations and clients to report information about the conduct of financial advisers to the disciplinary body.*

Commissioner Hayne stated, “Existing disciplinary arrangements for financial advisers are fragmented and ineffective, and are hampered by inadequate sharing of information and gaps between the overlapping roles of the different bodies”.

This recommendation is important not only because the TPB regulates tax financial advisers, but it may provide an insight for tax agents as to what features a best practice disciplinary system should value and include today.

We believe the TPB should aim to have each of the key features recommended by the Royal Commission reflected in its policies. This may involve reviewing and amending registration requirements, increased requirements for employers, and increased communication channels.

It is important that the TPB is a proactive and effective regulatory body to ensure misbehaviour which has occurred in other industries does not occur in the highly respected tax agent industry. It is therefore important the TPB does not seek to shelter tax practitioners from change or greater scrutiny expected by the public.

Board structure

One of the primary functions of the TPB, and also recently highlighted as a priority at industry consultative forums, is its mandate to regulate tax practitioners to protect consumers. Therefore, the structure and governance of the Board should aim to reflect this purpose.

The SMSFA understands the benefits of having the eight Board members being registered tax practitioners in their own right and regulating other tax practitioners. This ensures they have the level of knowledge and expertise to regulate with their practical experience. However, there may be a conflict of interest as Board members themselves are subject to TPB regulation. Despite our belief that the TPB has performed admirably and without conflict, it may be perceived by the broader public that this is not always the case.

Therefore, we believe the makeup of the Board deserves scrutiny in the upcoming review. This may include certain measures such as appointing a consumer advocate to the Board, a wider range of individuals who represent each section of the industry or independent board appointments.

Independence and relationship with ATO

We also believe it is important that the TPB is an independent decision maker from all stakeholders, including the Australian Tax Office. However, implementing this independence should not be attained to the detriment of this relationship. The TPB should not shy away from its practical relationship with the ATO, to work cooperatively and share resources. Ultimately, both bodies should aim to protect the consumer.

The TPB review therefore, should acknowledge that the TPB must work in cooperation with the ATO, just as the Australian Securities and Investments Commission (ASIC) will work with the new financial adviser disciplinary body. The review must also clarify the purposes of each entity in regulating tax practitioners and addressing areas of concern in the tax industry, for example how investigations into tax practitioners are undertaken between the bodies.

It is clear that the communication channels between the bodies could be more effective, particularly relating to shared resources and investigations which benefit both bodies primary functions.

Functions of TPB

The SMSFA supports the TPB regulation in the three areas of registration, standards and discipline of tax practitioners. This is analogous to the recommendation made by Commissioner Hayne that a single disciplinary body dealing with registration, standards and discipline as appropriate in today's regulatory environment.

The TPB has typically been perceived to be a low profile and tightly resourced regulator. This may lead to perceptions from the tax agent profession that they are unlikely to be penalised with serious contraventions that affect their daily practice. As highlighted by the Royal Commission, one hallmark of a profession is the existence of a credible and coherent system of professional discipline – the ultimate sanction being expulsion. Experience shows that those who feel they are unlikely to face consequences for their poor conduct are much more likely to engage in that conduct.

The TPB's disciplinary feature is a positive for the sector because it is important for regulators to be seen to be acting in a supervisory capacity in order for there to be trust in the regulators from consumers. Furthermore, individuals are more likely to complain to an independent regulator such as the TPB rather than a professional association.

We support the disciplinary regime of the TPB which can ultimately cancel a tax practitioner's registration and believe the TPB should not shy away from this process. This is important as the TPB now seeks to emphasise this aspect after completing their backlog of registrations built up from transitioning tax financial advisers into the regime.

Therefore, we support the TPB's focus on compliance. This should be reinforced with clear objectives for the TPB to focus on risk based areas and areas that are important for the industry. This includes, targeting individuals who are unaware they need to be registered, or those purposely acting outside of registration.

The review should help the TPB in identifying these areas. For example, increasing awareness that individuals need to be registered and the implications of registration will help in identifying issues and regulating the industry.

It is also important that TPB punishments are effective. This means the review should seek to understand how appropriate the TPB has acted through supervisory measures such as cautioning agents, requiring agents to complete training and subjecting the agent to specified restrictions before termination.

Furthermore, the effectiveness of termination under the current regime should be reviewed. If individuals are able to become an employee of another registered tax practitioner, this would be a failing of the TPB and its regulatory regime.

Qualification and experience

We believe the significant change in requirements for financial advisers due to the increase in education standards made FASEA for financial advisers should be a consideration in the TPB's review.

It may be appropriate to review any change to tax qualification and experience having regard to the FASEA requirements and a move to increased professionalism, ethics and education. However, this is understandably difficult to streamline and create consistency given the wide range of tax practitioners the TPB regulates.

We believe one aspect that requires attention is ensuring that going forward, all new tax practitioners have some form of diploma or higher level qualification in taxation law, commercial law and basic accountancy principles to complement their relevant experience.

Registration

The SMSF Association believes the registration standards requires significant attention in the TPB review.

One of the issues is multiple overlapping registrations, particularly for tax financial advisers. For example, there are scenarios where a tax financial adviser may have to register themselves as an individual, their AFSL and their Corporate Authorised Representative (CAR) structure.

There are also complex and subjective requirements relating to registrations when a partnership or CAR is registered. This includes considering the 'sufficient number of individuals' requirements where the company must have a sufficient number of individuals registered as tax agents to maintain competency.

We would recommend the review to look at streamlining and consolidating the registration requirements for all tax practitioners. For example, it may be worthwhile considering the form of individual registration that the Royal Commission has recommended for financial advisers. Therefore all individuals who are providing tax advice and signing the tax return will be required to register, regardless of the organisational structure they are using. Support staff and employees who are not responsible for tax advice will be able to continue to be unregistered under a simplified registration process. The 'onus' will be on the registered practitioner to ensure that the advice lodged under their registration is compliant as it should be.

Awareness

We believe increasing the awareness of the TPB, particularly for consumers, will be beneficial in allowing the TPB to achieve its primary goal of protecting consumers. It is our anecdotal evidence that the TPB has a very low profile for a regulator, particularly a regulator that moderates a profession that is widely used by many Australians.

If consumers are aware that their tax practitioner must be registered by the TPB to provide their services and will be disciplined in the case of breaches of law, it will strengthen the protection of consumers.

One area where awareness could be improved is the use of the TPB logo by tax practitioners. If this logo is widely understood and known to consumers as essential for their tax practitioner to be a tax agent it will strengthen the effectiveness of the TPB to consumers.

Recently, the increased awareness campaign the by the Australian Financial Complaints Authority (AFCA) has been extremely successful at illustrating this case. AFCA has received a significant increase in complaints and we believe this is because consumers now know they have a single, effective body they can lodge complaints with.

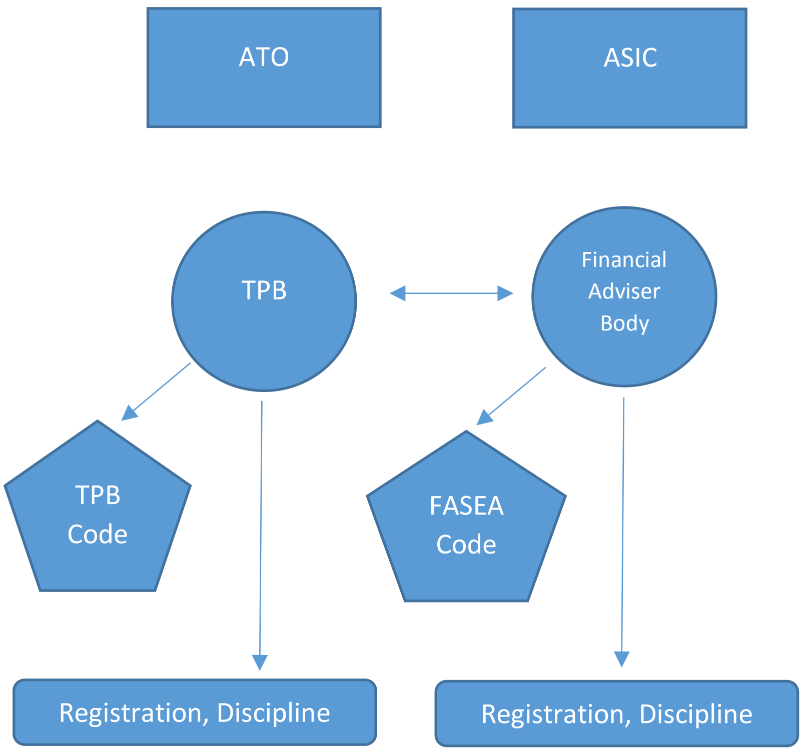
Furthermore, increasing awareness of practitioners would provide for those who are unware they need to be registered to provide the services they are providing.

Tax financial advisers

Given the introduction of a new single disciplinary body, a potential code monitoring body and FASEA standards, the TPB review should assess its position in relation to tax financial advisers.

We believe all competent financial advisers should be providing tax advice in some form when they are providing financial advice to a consumer. Therefore, we continue to believe that tax financial advisers should be held accountable to the Tax Agent Services Act 2009 (TASA) Act.

However, given the multiple registrations that will be required for a tax financial adviser with the TPB, new financial adviser body and code monitoring body, there is a potential for streamlining their regulation. One potential example could involve financial advisers being registered solely with the new financial adviser body only. Those financial advisers who wish to provide tax agent services will then communicate this to the financial body who will organise a dual registration to the TPB for the purposes of the TASA act. An example of structure and communication channels is highlighted below:



We would be happy to explore this in detail as the review is undertaken and Government certainty regarding recommendation 2.10 is provided.

Resourcing

The SMSF Association understands the resourcing challenges the TPB has faced since inception.

The inclusion of tax financial advisers into the TPB's regulatory framework has had significant implications for the TPB's resourcing given this has increased the registered practitioner population by over 35%. We understand the backlog of registrations is now under control and the processes of registration and renewal for all tax practitioners has become streamlined.

This means that the TPB has the ability to shift priorities to ensure that those registered are compliant with their obligations under the TASA, something we support. However, we also understand budget reductions have had a significant impact on the ability for the TPB to undertake complex and targeted investigations.

We believe that the TPB review should consider the allocation of resources to the TPB. It should be noted that proper clarification of roles of the ATO and TPB, and clearer communication between the two bodies should mitigate the need for a significant increase in funding. If these two bodies are working efficiently, we believe the ATO is sufficiently resourced to provide services to the TPB to enable the common goals of both bodies to be achieved.

Noting our support for regulation and investigations, we believe there is an argument for some increased funding to the TPB for the purposes of protecting the consumer.

Scope

We believe the discussion paper should also look into the scope the TPB has regulating such a broad tax practitioner industry. It may be possible that the TPB's scope is too wide to effectively regulate individuals from bookkeepers, who generally have lower compliance requirements, to tax financial advisers, who will now need to be degree qualified.

If you have any questions about our submission please do not hesitate in contacting us.

Yours sincerely,

[redacted]

John Maroney
CEO
SMSF Association

ABOUT THE SMSF ASSOCIATION

The SMSF Association is the peak professional body representing SMSF sector which is comprised of over 1.1 million SMSF members who have $747 billion of funds under management and a diverse range of financial professionals servicing SMSFs. The SMSF Association continues to build integrity through professional and education standards for advisors and education standards for trustees. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial planners and other professionals such as tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them access to independent education materials to assist them in the running of their SMSF.