

Devos and Morton
Submission to The Treasury on Enhancing the Tax Practitioners Board's Sanctions Regime.

24 January 2024

Director, Tax Agent Regulation Unit
Personal, Indirect Tax and Charities Division
The Treasury
Langton Crescent
PARKES ACT 2600
pwcreponse@treasury.gov.au

Dear Director,

Enhancing the Tax Practitioners Board's Sanctions Regime Consultation Paper

Associate Professor Ken Devos (Swinburne University of Technology) and Dr Elizabeth Morton (RMIT University), tax academics, make this submission to Treasury. We are part of a team of authors, who obtained research funding in 2022 from CPA Australia to investigate the tax professions response to the TPB Review and related recommendations. As part of this research, we interviewed twenty tax practitioners nationally to gather their views on the recommendations concerning, the Code of professional conduct, investigations, and sanctions.¹ This work was preceded by earlier work in 2021 which surveyed some 145 tax practitioners to gather their views on selected TPB Review recommendations.² We have previously made a copy of our publications/papers available to Treasury.³ As part of this submission, as independent researchers we put forward some of the main findings our research has uncovered that relate to the issues raised in the government's response and how certain problems/issues may be addressed. We would be pleased to provide any further information regarding our submission.

Yours faithfully,



Assoc Prof Ken Devos
Director MPA
Department of Accounting, Economics and
Finance
Swinburne University



Dr Elizabeth Morton
Senior Lecturer and Research Fellow
School of Accounting, Information Systems
and Supply Chain
RMIT University

Encl. Proposed questions and responses/empirical evidence tables.

¹ Ken Devos, Elizabeth Morton, Michael Curran, and Chris Wallis, 'The tax profession's response to the recent review of the TPB, the TASA 2009 Code of Professional Conduct, investigations, and related sanctions' (2023) 21(2) *eJournal of Tax Research* 253 ('Tax Profession Response'). Available online at [https://www.unsw.edu.au/content/dam/pdfs/uns-w-adobe-websites/business-school/faculty/research/ejournal-of-tax-research/23-12-14.2-eJTR-21\(2\)-compilation-final.pdf](https://www.unsw.edu.au/content/dam/pdfs/uns-w-adobe-websites/business-school/faculty/research/ejournal-of-tax-research/23-12-14.2-eJTR-21(2)-compilation-final.pdf).

² Ken Devos, Elizabeth Morton, Michael Curran, and Chris Wallis, 'Tax practitioner perspectives on selected 2019 TPB review recommendations' (2023) 38(1) *Australian Tax Forum* 151 ('Selected 2019 TPB review recommendations').

³ These papers can be provided in confidence on request, not for distribution nor publication.

PROPOSED QUESTIONS AND RESPONSES/EMPIRICAL EVIDENCE TABLES

Table 1. Reintroduction of criminal penalties for unregistered preparers

Consultation questions	Responses/Empirical evidence found
<p>1. How effective would the introduction of criminal penalties (and resultant risk of imprisonment) be in deterring unregistered preparers? Are the penalty unit amounts outlined in the previous sanction’s regime appropriate?</p>	<p>Penalties per se will always have some deterrent effect, particularly criminal penalties. However, penalties must be used in conjunction with adequate monitoring, enforcement, and education to be effective. Moreover, penalties need to be clear and explicit.⁴ The following reflections relate to the Consultation paper broadly.</p> <p>Reflecting on the broader context of penalties, TPB Recommendation 6.1 of the Independent Review led by Keith James (‘The Review’) advocated for increased sanctions in addressing high-risk behaviour (i.e., egregious practitioners).⁵ The Review noted a major contributor to the tax gap was the failure to take reasonable care. This is an issue that can be observed in perusing the TPB Annual Report trends in breach allegations.⁶ Between 2016-2022 there has been a clear increase in raw numbers of practitioners alleged to have breached s30-10(7) on providing tax agent services competently (trending as low as 48 in 2017 to 872 in 2022).⁷</p> <p>Inherently, re-introducing criminal penalties for unregistered preparers naturally does not attend to the issues of egregious tax practitioners who are registered. Thus, the query arises as to the proportion of egregious behaviour stemming from those unregistered. Note that returning to TPB reported figures, there are less frequent statistics in respect to civil penalties pursuant to unregistered parties. For example, 133 alleged breaches of s50-5 (providing tax agent services if unregistered) and 65 alleged breaches of s50-10 (advertising tax agent services if unregistered) in 2022.⁸ Whether these lower statistics are a result of the civil penalties acting as a deterrent is not examined here. This proposal aligns however with expanding investigations to those who are no longer/not registered – a further recommendation of the Review and has the potential to close a clear loophole. This is particularly the case if the TPB find these parties continue to provide services following action taken. We propose research and/or transparency is needed on the egregious behaviour carried out by unregistered v. registered tax practitioners. Furthermore, the link</p>

⁴ For a more detailed outline on the relevant literature, see Devos et al. (n 1) ‘Tax Profession Response’ and Devos et al. (n 2) ‘Selected 2019 TPB review recommendations’.

⁵ Australian Treasury, Review of the Tax Practitioners Board: Discussion Paper (July 2019); Australian Treasury, Independent Review of the Tax Practitioners Board: Final Report (31 October 2019) (‘The Review’).

⁶ See <https://www.tpb.gov.au/annual-report>.

⁷ As being examined by Ken Devos and Elizabeth Morton, ‘Investigations and Sanctions in light of the Government’s crackdown on Tax Adviser Misconduct’ (January 2024) working paper (‘Investigations and Sanctions’).

⁸ Ibid.

	<p>to the tax register is pertinent, given the lack of disclosure on unregistered preparers. Again, highlighting the holistic nature of the Treasury’s proposed amendments for tax practitioners.</p> <p>Note that to follow the criminal/civil approach is flagged in the Consultation paper to be a TPB discretion. The concern here would be the lack of explicit and clear consequence of such or the potential for egregious preparers ‘gaming’ the system. We note, however, the expanded levels of severity being clearly articulated goes some way to this issue.</p> <p>Our research did not specifically examine in depth perspectives on <i>criminal penalties on unregistered practitioners</i> as our research focused on registered tax practitioners and proposed amendments stemming from The Review. Our findings indicate that tax practitioners generally supported increasing and introducing new sanctions as well as investigating unregistered tax practitioners.⁹ This reflects a broader toolkit for tailored responses towards improving standards for the profession. These are relevant in maintaining the integrity of the profession; however, there needs to be consideration towards trust, justice, and respect. However, not all agreed, and concern was raised over impacts for example on interim suspensions on livelihoods of practitioners. Proper process and procedural fairness are critical. Practitioners did flag concern over investigating de-registered tax practitioners.¹⁰ We note that investigations are subject to a separate review.¹¹</p> <p>We also note that in our research, interviewee evidence indicated that sanctions alone would be insufficient in curbing undesirable behaviour. We reflect that,</p> <p style="padding-left: 40px;">“...[A] conundrum – or perhaps a spectrum – arises. The perceptions largely presented indicate: (i) those egregious tax practitioners are unlikely to be swayed by increasing sanctions or penalties; (ii) those that ought to benefit from early intervention and education to drive improving standards of practice, and (iii) those somewhere in between that may trend towards responding to either/or sanctions and educational approaches. The objective of reform is about the community, it is not punitive but protective. Practitioners serve the community.”¹²</p> <p>Finally, we highlight the fine balance between protecting the community through a more holistic penalty toolbox and the timeliness of outcomes along with wellbeing consideration.</p>
<p>2. Having regard to other legislative regimes, what would be an appropriate intent threshold to attach</p>	<p>Intentional disregard reflects the highest threshold on scale encompassing the deliberate nature of the action. Matching the gravity of the offence to the appropriate penalty is inherently desirable – as detailed above. The principal of proportionality suggests that for criminal offences a harsher penalty is appropriate and desirable.</p>

⁹ Devos et al. (n 1) ‘Tax Profession Response’ and Devos et al. (n 2) ‘Selected 2019 TPB review recommendations’.

¹⁰ Ibid.

¹¹ As per page 4 of the Consultation paper.

¹² Devos et al. (n 2) ‘Selected 2019 TPB review recommendations’ 280. Citations omitted.

<p>to the proposed criminal offence (e.g. intentional disregard, recklessness, etc.)?</p>	<p>However, having an intent threshold of “intentional disregard” may be difficult to prove in practice and gathering the required evidence to meet that threshold could be problematic.</p>
<p>3. Are there any limitations, risks or unintended consequences that may result from implementing a criminal penalty for unregistered preparers who provide taxation services for a fee?</p>	<p>Whilst our research did not gain insights from preparers that are unregistered, tax practitioners raised concern over the independence of the TPB and procedural fairness. We raise the question over whether it is the role of the TPB to extend jurisdiction to criminal proceedings and whether there are already appropriate avenues for criminal activities to be prosecuted. Where a criminal penalty is introduced, the penalty ought to be timely and appropriate and be accompanied by mechanisms to object / appeal as evidenced by tax practitioners.¹³</p> <p>We find there is a need to balance strategic resourcing, with due process and effective timeframes. Tax practitioners being professionals in the first instance, rather than criminals, should lead to regulation reflecting this. Yet, those choosing to operate as rogue preparers deceiving clients (taxpayers) are a clear threat to the profession. We also flag the likely mix of intentional or unintentional factors leading to unregistered parties participating in the profession. For a holistic toolkit, there is a need for more than punishment, but also education and enforcement.</p> <p>Finally, the issue around conflict of interest between the preparer, the client, firm culture, and the community warrant further consideration. There is a fundamental limitation in the current/prior reviews undertaken in focusing solely on the tax practitioner (particularly when considering safe harbour, intentional disregard, and recklessness). We found further examination of taxpayer conduct is needed in contemplating holistically egregious behaviour.</p>
<p>4. Are there any relevant sanction measures in existing comparable regimes that have been effective in deterring and/or penalising unregistered persons and/or entities</p>	<p>As indicated penalties per se will always have some deterrent effect and is a necessary part of a regulatory system but this must be used in conjunction with adequate enforcement and education to be effective. Higher penalties alone will not create the desired deterrent. In this regard the increased budget of the TPB should assist in improving compliance activity and enforcement but wider education and awareness of the tax profession is also critical as evidenced by previous research.¹⁴</p> <p>Our research did not investigate the sanctions of other regimes such as ASIC, but we would consider this appropriate in deriving support for penalising unregistered persons/entities.</p>
<p>5. Are there any other deterrent mechanisms not covered in this consultation paper? Such as strict</p>	<p>Reputational damage by way of publication in the TPB register can be a quite effective deterrent and most feared amongst registered practitioners as supported by previous research.¹⁵ However, unregistered preparers may not be affected by business/reputational damage for the very reason that they are unregistered. Hence a dedicated register</p>

¹³ As examined in Devos et al. (n 1) ‘Tax Profession Response’ and Devos et al. (n 2) ‘Selected 2019 TPB review recommendations’.

¹⁴ See Devos and Kenny, (2017),” An assessment of the Code of Professional Conduct under the TASA 2009- six years on,” *Australian Tax Forum*, 629-676.

¹⁵ See Braithwaite and Drahos (2002), Zero Tolerance Naming and Shaming: Is there a case for it with Crimes of the Powerful? 35(3) *The Australian and New Zealand Journal of Criminology* 269.

<p>liability offences for less serious offences and the reintroduction of criminal penalties to the extent of the previous ITAA provisions that would be more effective in preventing unregistered preparers from providing tax services for a fee</p>	<p>of “unregistered practitioners” is desirable to alert the public. This will also serve as a time saver and assist taxpayers identify unregistered preparers more quickly and easily.</p>
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Table 2. Broader and increased civil penalties in the TASA

<p>6. What are the benefits or risks associated with expanding section 50-20 of the TASA to address registered tax practitioners and unregistered preparers who make false and/or misleading statements to the Commissioner and/or the TPB</p>	<p>Whilst our research did not explicitly examine expanding civil penalties, expanding s50-20 of the TASA appears in theory appropriate to strengthen the regulatory regime overall. In contemplating our research findings, we flag strong caveats with regards to TPB Recommendation 6.4 of the Review covering an administrative penalty for intentional disregard of tax laws.</p> <p>Our research identified that practitioners had concerns with regards to the concept of proving <i>intentional disregard and that procedural justice measures needed to be in place to provide a safeguard against false accusations</i>.¹⁶</p> <p>However, tax practitioners indicated that while proving intentional disregard could be difficult, this would develop naturally over time and build on the existing law and precedents that we have already. The following quote from a practitioner illustrates this contention: <i>“Particularly establishing sufficient evidence to prove intentional disregard however there is a good body of law from which to draw on to develop appropriate frameworks.”</i>¹⁷</p>
<p>7. Would the proposed increase in civil penalties serve as an effective deterrent to protect consumers and prevent breaches of the code and the TASA more generally?</p>	<p>The same issues apply as raised for criminal penalties with regards to adequate enforcement and education of penalties for practitioners so as to act as an effective deterrent. Thus, the above discussed considerations are relevant to this line of inquiry.</p> <p>We raise a genuine concern over the proposed maximum increase in penalty unit for an individual (2,500 units= \$782,500) increased 10 times will have a detrimental and somewhat permanent effect on offender’s livelihood. This can be compared to the 40 times increase for corporate and SGE offenders who have a greater capacity to pay.</p>

¹⁶ See Devos et al. (n 1) ‘Tax Profession Response’ and Devos et al. (n 2) ‘Selected 2019 TPB review recommendations’.

¹⁷ Ibid.

<p>Are the proposed penalties appropriately scaled to adequately address individuals, bodies corporate, trusts, partnerships and SGEs?</p>	<p>Considerations of proportionality are important here – both in terms of factors such as the wrongdoing, the benefit obtained from the wrongdoing as well as the harm.</p>
<p>8. Are there any lessons that can be learnt from other enforced code regimes (e.g. ASIC’s enforcement of the code of Ethics within the Corporations Act 2001 (Cth) for financial advisors)</p>	<p>Our research only focused on the TASA regime however, it is suggested that issues regarding code violations and conflicts of interest in other regimes could be appropriately dealt with through a graduated set of civil penalties.</p>

Table 3. Introduction of an infringement notice scheme

<p>9. What are the benefits and risks associated with introducing infringement notices as a sanction?</p>	<p>In our research, we observed that tax practitioners were generally supportive of widening the range of sanctions the TPB could instigate, including infringement notices as outlined in Recommendation 6.1 of the Review. We found that the majority of practitioners interviewed found that the proposed sanctions offer balance between regulation and procedural fairness.¹⁸ Note again the need for proactivity and early engagement rather than a focus on punishment.</p> <p>Infringement notices in theory allow for greater flexibility and better use of TPB resources. The risk is that any disputed infringement notices are only reviewed internally by the TPB not independently, although this would be the case in most public organisations (e.g., traffic infringement notices). There should not be an over-reliance on this penalty to the detriment of other sanctions including orders.</p> <p>We also note that infringement notices are proposed to provide for an <i>allegation</i> of contravention only and require that the TPB conclude only on the balance of probabilities that it has occurred, without the need for a formal investigation. Whilst this clearly indicates an efficiency in TPB resources and timeliness of outcomes (and perhaps reduces concern in investigation length being extended from the standard 6-month timeframe), there are several concerns.</p> <p>On one hand, there is concern that this could lead to issues of due process and procedural fairness. There is a fundamental risk that decisions to issue sanction notices will not be adequately based on probative evidence.</p>
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¹⁸ Devos et al. (n 2) ‘Selected 2019 TPB review recommendations’.

	<p>Similarly, unlike traffic infringement notices, contraventions of the TASA are significantly more nuanced – even when circumstances relate to low-medium level contraventions. We reiterate the need for early intervention and education in contemplating tax practitioners that are characterised as undertaking low level breaches.</p> <p>On the other hand, there is also the risk that the notices will be considered a cost of doing business by egregious tax practitioners. Note that infringement notices do not require an admission of guilt, thus can be paid to promptly dismiss and disregard wrongdoing. The status of allegation also raises concerns for how these contraventions link with future alleged contraventions, the register, and with the civil penalty regime for example.</p> <p>We also raise the question as to the level of transparency that will be maintained on the use of such sanctions, including for allegations. We observe in the 2023 TPB Annual Report a reduction of key quantitative data such as for (i) sources of complaints, (ii) BCC matters and decisions, and TASA 2009 breach allegations in the 2023 Annual Report.¹⁹</p>
<p>10. Does the ability to impose infringement notices in certain circumstances adequately address the perceived gaps in the TPB’s sanction powers for low to medium level contraventions</p>	<p>As indicated above, while there is merit in introducing infringement notices to expand the TPB toolkit and provide another option in the low to medium level contraventions, there are also important concerns and limitations which reduce its effectiveness. This needs to be carefully weighed up and considered if deciding to introduce this sanction.</p>
<p>11. Are the 12-penalty unit (individuals) and 60-penalty unit (bodies corporate) default levels for infringement notices appropriate? Is the proposed infringement notice regime fair and practical for individuals and bodies corporate?</p>	<p>It is understood that the 12-penalty unit (individuals) is a maximum as specified, given in the example provided that only 3 penalty units were imposed. If there is a discretion for the TPB to impose anywhere between 1-12 penalty units depending on the breach that would be appropriate.</p> <p>However, as indicated above the pros and cons of the infringement notice regime needs to be carefully weighed up before it is implemented.</p>
<p>12. Are there additional safeguards that should be in place to ensure that the imposition of infringement notices by the TPB are reasonable and appropriate</p>	<p>It is suggested that there would need to be guidelines made available with regards to the circumstances in which infringement notices are issued and the right of review by someone independent of the TPB officer issuing the notice. Moreover, clear guidelines for TPB officers in their duties to establish reasonable grounds.</p>

¹⁹ See <https://www.tpb.gov.au/annual-report>. As being examined by Devos and Morton (n 7).

Table 4. Clarifying TPB orders

<p>13. Are there other types of orders that the TPB could issue that would be an effective tool to address tax practitioner misconduct and protect consumers?</p>	<p>The TPB can make a number of orders in relation to undertaking a course of education for example, to address some shortfall in knowledge. As indicated previously its education in addition to penalties and enforcement that will have the greatest deterrent impact and change behaviour.</p> <p>While our research found that tax practitioners were generally supportive of wide range of sanctions, some had indicated that orders could be made by the TPB for many penalties without necessarily having the penalty prescribed as proposed in Recommendation 6.1.</p> <p>One practitioner commented that <i>“the use of guidance documents instead of further penalty types would be OK... If you look at comparative penalty regimes, I think its pretty much wide enough in my view to cover the sorts of behaviour that they would want to prevent.”</i>²⁰</p> <p>This research evidence indicates that adequate guidance/education on the types of orders the TPB can make could be more useful in changing behaviour, without relying purely on issuing an order to impose a sanction per se.</p>
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Table 5. Introduction of enforceable voluntary undertakings with tax practitioners

<p>14. Are enforceable undertakings an effective regulatory feature to enhance standards and behaviour</p>	<p>Our research evidence suggested that enforceable undertakings were generally considered appropriate by practitioners in that it allowed the practitioner to take corrective action and improve their future operations and be accountable to the TPB. It allows for external invention where required.²¹</p> <p>However, we do acknowledge that while enforceable undertakings and external intervention are great in theory, in practice they may be difficult to execute. The time spent and the cost involved in carrying out voluntary undertakings may make it unviable.</p> <p>It is noted that if information regarding a voluntary undertaking is also detailed in the TPB register it will allow for greater public transparency and understanding and increase the deterrent effect.</p>
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²⁰ Devos et al. (n 2) ‘Selected 2019 TPB review recommendations’.

²¹ Ibid.

<p>15. What implementation issues could arise from the use of enforceable undertakings?</p>	<p>Enforceable undertakings would require strong guidance from the TPB as to what exactly is expected of the tax practitioners.</p> <p>Despite the difficulties that may be experienced in carrying out enforceable undertakings a court order may nevertheless still be required if there was non-compliance with the original TPB order in practice.</p>
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Table 6. Introduction of contingent and interim suspensions

<p>16. Given how significant suspensions are likely to be for registered tax practitioners, should interim suspensions be limited to certain behaviours?</p>	<p>While our research did not uncover any specific details with regards to contingent and interim suspensions, it is suggested that it is highly desirable to have checks and balances in place with regards to the imposition of suspensions and as long as the reasons for the decision are transparent there is no need to limit them to certain behaviours.</p>
<p>17. Are there any risks as to whether an interim suspension may affect clients/taxpayers and are there any additional safeguards that can be put in place to mitigate these risks?</p>	<p>As powerful as the Interim suspension can be, the fact that it is reviewable and can only be imposed for a maximum of 3 months at a time before being considered by the Board, provides adequate protection, and assists in mitigating any risk. The contingent and interim suspension decisions being reviewable, provides practitioners with natural justice and procedural fairness.</p>
<p>18. Are the safeguards proposed sufficient to protect tax practitioners</p>	<p>Yes, as indicated above, although, the requirement of the TPB to have an investigation on foot could also be considered the whole purpose of having the interim suspension was to make it immediate and not delayed via formal investigation. The current checks and balances should be adequate.</p>

Table 7. Additional consultation questions

<p>19. How could unregistered tax practitioner behaviour be best addressed?</p>	<p>It is suggested that having a register of unregistered tax practitioners so the public is aware of who is operating and are able to identify those practitioners quickly would be best. Reputational damage can still be one of the strongest deterrents as indicated in the tax compliance literature²² and so a register that the public could go to and see who to avoid would potentially limit the operations of unregistered practitioners. Those who have chosen to deliberately operate outside the system tend not to be swayed by traditional methods of higher penalties and further education.</p>
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²² John Braithwaite and Peter Drahos, ‘Zero Tolerance: Naming and Shaming: Is There a Case for It with Crimes of the Powerful?’ (2002) 35(3) *The Australian and New Zealand Journal of Criminology* 269.

	<p>Also given unregistered practitioners are hard to detect by their very nature, these actors can only be stopped by using more unconventional methods.</p>
<p>20. Are there any other unethical practices or behaviours that are not adequately addressed under the proposed regulatory framework?</p>	<p>Further to the Greens amendment in November 2023 requiring BAS and tax agents to notify the TPB in writing within 30 days if they believe that another agent has “significantly” breached the Code of conduct is causing much unease in the profession given the broad interpretation of the definition of “significant”. Consequently, there needs to be some guidance put in place to urgently improve clarification. What would be the thresholds of significance and what actions would be examples of a significant breach? Operating as an unregistered agent? Other?</p> <p>The role of taxpayers in egregious conduct. Inherently the issue around conflict of interest re the client and the community warrants further consideration. There is a fundamental limitation in the current/prior reviews undertaken in focusing solely on the tax practitioner (particularly when considering safe harbour, intentional disregard, and recklessness). We found further examination of taxpayer conduct is needed in contemplating holistically egregious behaviour. There is research evidence that suggests that taxpayers do play a role in the choice of either reputable or egregious tax practitioners²³ and it is in this regard that further investigation is warranted.</p> <p>Transparency of TPB investigations and sanctions. We also raise the question as to the level of transparency that will be maintained on the proposed and newly enacted amendments to the tax profession. As outlined above, we observe in the 2023 TPB Annual Report a reduction of key quantitative data such as for (i) sources of complaints, (ii) BCC matters and decisions, and TASA 2009 breach allegations in the 2023 Annual Report.²⁴ Given the significance of the regulatory changes to the tax profession amounting to unprecedented regulation of tax practitioners, we argue that there needs to be contemporaneously an increase and improvement to the disclosures in TPB Annual Reports.</p>
<p>21. Does this proposed package of changes collectively strike the right balance in promoting the integrity of the system, protecting consumers' interests, and facilitating access to quality tax advice?</p>	<p>The proposed package is generally acceptable in principle, but requires, clear guidance and direction with regards to the operation of the regime, including appeal avenues and tax practitioner rights. Our research findings also indicated that improved transparency is <i>paramount to truly evidence the independence of the TPB from the ATO which was found to be a concern for many practitioners.</i>²⁵</p>
<p>22. Does the proposed package ensure the TPB as regulator has the</p>	<p>The widen number of sanctions has certainly improved the TPB’s tool kit and is generally supported by tax practitioners based on our research findings.²⁶ The increased TPB budget should also allow for improved audit and</p>

²³ Wruth and Braithwaite (2016) Tax practitioners and tax avoidance: Gaming through authorities, cultures and markets, Regnet Research papers, No 119, Australian National University.

²⁴ See <https://www.tpb.gov.au/annual-report>. As being examined by Devos and Morton (n 7).

²⁵ Devos et al. (n 2) ‘Selected 2019 TPB review recommendations’.

²⁶ Ibid.

<p>right tools to deter, detect and punish bad behaviour by tax practitioner?</p>	<p>detection. However, in achieving an overall deterrent, greater education and early intervention is also critical as indicated above.</p>
<p>23. Are there any other deficiencies in the regulatory framework</p>	<p>Our research findings indicate that in improving regulation it was also vital that procedural fairness be maintained. In particular, having a series of different sanctions and different levels of court culpability does not mean they bypass due process.²⁷</p> <p>The role of taxpayers in egregious conduct. Inherently the issue around conflict of interest re the client and the community warrants further consideration. There is a fundamental limitation in the current/prior reviews undertaken in focusing solely on the tax practitioner (particularly when considering safe harbour, intentional disregard, and recklessness). We found further examination of taxpayer conduct is needed in contemplating holistically egregious behaviour.</p>
<p>24. Are there any other sanctions, including from the 2019 TPB Review that should be considered</p>	<p>From the 2019 TPB Review recommendations our research findings indicate there was further support for the introduction of quality assurance audits and external interventions. It was understood that the audits allow for important checks and balances and should not come as a great cost to practitioners.²⁸</p> <p>Likewise in the event of a termination or cessation of a practitioners practice which is highly likely given the number of cases that have come to bear recently, the possibility of appointing an independent person to manage the practice during this period is totally appropriate, particularly from a client’s perspective.</p> <p>However, it is noted that there was less support for permanent disbarment of practitioners based on the research evidence.²⁹We note here issues of harm and wellbeing across the various stakeholders within the profession and that extreme measures are not warranted or necessary.</p>

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

APPENDIX 1

Table 1A: Tax Practitioner Interview Findings with respect to Penalties and Sanctions

Research Question Set	Interviewee Spread (Percentages)	Key Themes										
<p>RQ_{3.1} Overarching agreement (dis-agreement) with Recommendation 6.1, 6.3 and 6.4</p>	<table border="1"> <tr> <th>Category</th> <th>Percentage</th> </tr> <tr> <td>Green</td> <td>80</td> </tr> <tr> <td>Blue</td> <td>10</td> </tr> <tr> <td>Yellow</td> <td>10</td> </tr> </table>	Category	Percentage	Green	80	Blue	10	Yellow	10	<p>Trust, system, the principles of the Code, sanctions, professional bodies, procedural fairness, uncertainty</p>		
Category	Percentage											
Green	80											
Blue	10											
Yellow	10											
<p>RQ_{3.2} Sufficient penalties are needed to curb undesirable behaviour</p>	<table border="1"> <tr> <th>Category</th> <th>Percentage</th> </tr> <tr> <td>Green</td> <td>35</td> </tr> <tr> <td>Blue</td> <td>15</td> </tr> <tr> <td>Yellow</td> <td>50</td> </tr> </table>	Category	Percentage	Green	35	Blue	15	Yellow	50	<p>Judicial process, sanctions, registration status, rogue behaviour, severity of the penalty, procedural fairness, fraud technique, the principals of the Code, parliamentary process, tax practitioners’ profession, safe harbour, consequences, careless</p>		
Category	Percentage											
Green	35											
Blue	15											
Yellow	50											
<p>RQ_{3.3} The proposed sanctions offer balance between regulation and procedural fairness (re Recommendation 6.1)</p>	<table border="1"> <tr> <th>Category</th> <th>Percentage</th> </tr> <tr> <td>Green</td> <td>60</td> </tr> <tr> <td>Blue</td> <td>10</td> </tr> <tr> <td>Yellow</td> <td>15</td> </tr> <tr> <td>Grey</td> <td>15</td> </tr> </table>	Category	Percentage	Green	60	Blue	10	Yellow	15	Grey	15	<p>Sanctions, procedural fairness</p>
Category	Percentage											
Green	60											
Blue	10											
Yellow	15											
Grey	15											
<p>RQ_{3.4} Concern increasing sanctions will impact power and independence of the TPB (re Recommendation 6.1)</p>	<table border="1"> <tr> <th>Category</th> <th>Percentage</th> </tr> <tr> <td>Green</td> <td>65</td> </tr> <tr> <td>Blue</td> <td>5</td> </tr> <tr> <td>Yellow</td> <td>20</td> </tr> <tr> <td>Grey</td> <td>10</td> </tr> </table>	Category	Percentage	Green	65	Blue	5	Yellow	20	Grey	10	<p>Independence issues, power</p>
Category	Percentage											
Green	65											
Blue	5											
Yellow	20											
Grey	10											
<p>RQ_{3.5} Proposed publication of further detail in the TPB register will improve transparency and public trust (re Recommendation 6.3)</p>	<table border="1"> <tr> <th>Category</th> <th>Percentage</th> </tr> <tr> <td>Green</td> <td>75</td> </tr> <tr> <td>Blue</td> <td>10</td> </tr> <tr> <td>Yellow</td> <td>15</td> </tr> </table>	Category	Percentage	Green	75	Blue	10	Yellow	15	<p>Registration status, the severity of the penalty, procedural fairness, judicial process, the principles of the Code, the nuance of the register, protective approach,</p>		
Category	Percentage											
Green	75											
Blue	10											
Yellow	15											

RQ_{3.6}

Proposed administrative penalty regime will be effective in dealing with high-level of misconduct (re Recommendation 6.4)

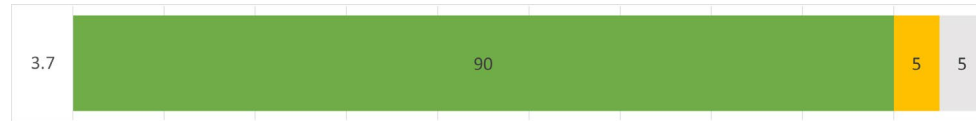


consumer protection, balance, length of time, the content of the register

Duty of care, information gathering process, proportionate the penalty, the principles of the Code, confidentiality, the onus of proof, affected party, judicial process

RQ_{3.7}

Appropriate avenues of appeal are required regarding the proposed administrative penalty regime (re Recommendation 6.4)



Appeal process, judicial process



Source: Devos et al. (2023)³⁰

³⁰ Ibid 298-9.