



Mr Jason Lange  
Executive Director  
Office of Best Practice Regulation  
Department of the Prime Minister and Cabinet  
1 National Circuit  
BARTON ACT 2600

Dear Mr Lange

**CERTIFICATION OF INDEPENDENT REVIEW: INDEPENDENT REVIEW OF THE TAX PRACTITIONERS BOARD**

I am writing to certify that the attached independent review of the Tax Practitioners Board (TPB) has undertaken a process and analysis equivalent to a Regulation Impact Statement (RIS).

I certify that this document adequately addresses all seven RIS questions, and is submitted to the Office of Best Practice Regulation for the purposes of a final policy decision on the Government's response to the TPB Review.

Further detail is set out in the attachment to this letter. I am satisfied that the scope of the problems and the recommendations identified in the certified review are substantially the same as the identified problem and recommendations in the policy proposal.

The regulatory burden to business, community organisations or individuals has been quantified using the Australian Government's Regulatory Burden Measurement framework and is provided below.

I note that the implementation of the proposals in the Government Response to the Review of the Tax Practitioners Board will increase the regulatory burden for tax practitioners. A regulatory offset has not been identified. However, Treasury is anticipating net reductions in compliance costs once the implementation details of recommendations that require further consultation and consideration are finalised, and will work with affected stakeholders and across Government to identify regulatory burden reductions where appropriate.

**Regulatory burden estimate table**

**Average annual regulatory costs (from business as usual)**

Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	\$0.4	\$	\$	\$0.4

Accordingly, I am satisfied that the attached report is consistent with the Australian Government Guide to Regulatory Impact Analysis. Should the Office of Best Practice Regulation have any further queries in relation to this matter please contact [REDACTED]

Yours sincerely



Maryanne Mrakovic  
Deputy Secretary  
Revenue Group  
The Treasury

## ATTACHMENT

### 1. What is the problem you are trying to solve?

Overall, the Review examines the effectiveness of the Tax Practitioners Board (TPB) and the operation of the *Tax Agent Services Act 2009* (TASA) and the *Tax Agent Services Regulations 2009*, which establish the regulatory regime for tax practitioners in Australia.

In particular, the Review examined the following issues:

- 1) Is the current regulatory regime for tax practitioners necessary and appropriate, and are the broad regulatory objectives appropriately set?
- 2) Is the TPB (i.e. the regulator) sufficiently independent and appropriately governed?
- 3) Are current registration and education requirements for tax practitioners appropriate?
- 4) Are the regulated behavioural standards for tax practitioners appropriate?
- 5) Are the current powers and sanctions available to the TPB sufficient to enable the objects of the regulatory framework for tax practitioners?
- 6) Is the coverage of the current regulatory regime for tax practitioners appropriate?

### 2. Why is Government action needed?

Government action is needed on these issues to ensure the regulatory regime for tax practitioners remains suitable and effective. Only Government action can ensure this as the body that regulates the tax profession (i.e. the TPB) is a Commonwealth Government entity that applies Commonwealth legislation (i.e. the *Tax Agent Services Act 2009*) and regulations (i.e. the *Tax Agent Services Regulations 2009*).

### 3. What policy options are you considering?

Throughout the Review's discussion paper, public consultation process and final report, a range of options were considered in response to the issues identified under RIS Question 1. The options addressing these issues span the range of recommendations considered and made by the TPB Review process. A non-exhaustive list of key options considered throughout the Review process is below:

- 1)
  - a) Retain the TPB as the statutory authority responsible for regulating tax practitioners and retain the current objects clause in the TASA (i.e. retain the status quo).
  - b) Abolish the TPB.
  - c) Retain the TPB but update the objects clause in the TASA to clarify the aims of the regulatory regime and ensure appropriate coverage of the regime.
- 2)
  - a) Retain the status quo. The TPB would continue to be dependent on ATO funding, infrastructure and staff (via secondments).
  - b) Establish the Chair of the TPB as the relevant accountable authority and develop a model such that the TPB employs its own staff, is located in its own premises, and is responsible for its own budget and reporting.
  - c) The TPB continue to rely on ATO staff (via secondments) and infrastructure. However, establish a special account for TPB funding in the budget to provide the TPB with greater budgetary independence.

- d) Maintain and publish plans and agreements between the ATO and TPB setting out how they would work together. Furthermore encourage co-operation and information sharing between the ATO, TPB and ASIC.

3)

- a) Retain the status quo regarding registration and education requirements for tax practitioners.
- b) Consult with key stakeholders and undertake a review to determine appropriate primary qualification levels (and grandfathering arrangements) for tax practitioners. Furthermore, provide the TPB with greater flexibility to accept qualifications and experience that may not fall within the traditional tax practitioner course of study.
- c) The TPB cease to accredit professional associations as 'recognised professional associations' for the purposes of certain registration entry pathways (with appropriate grandfathering arrangements).
- d) Enhance eligibility requirements around entity governance arrangements and requirements to declare relevant associates.
- e) Convert the registration period (currently 3 years) into an annual registration period and remove the requirement for tax practitioners to submit annual statements to the TPB.

4)

- a) Retain the status quo regarding regulation of tax practitioner behaviour.
- b) Provide the Minister with legislative instrument power to supplement the Code of Professional Conduct to address emerging behaviours and practices in the profession.
- c) Enact legal professional privilege provisions in the *Taxation Administration Act 1953* similar to those in section 70 of the *Australian Securities and Investments Commission Act 2001*.

5)

- a) Retain the status quo regarding TPB regulatory powers and sanctions.
- b) Increase TPB sanction powers which can be applied to both registered and unregistered tax practitioners.
- c) Expand the TPB's scope for conducting investigations and audit of potentially non-compliant tax practitioners.
- d) Introduce an administrative sanctions regime for tax practitioners demonstrating an intentional disregard of the taxation laws in making statements to the Commissioner of Taxation, administered by the ATO.
- e) Extend safe harbour protections to cover instances where tax practitioners demonstrate recklessness or intentional disregard of taxation law.

6)

- a) Retain the status quo regarding coverage of the tax practitioner regulatory regime.
- b) Provide the TPB with power, through the legislative instrument process, to exclude certain other services (e.g. conveyancers) from having to register with the TPB.
- c) Alter regulatory coverage so that tax (financial) advisers are not subject to overlapping regulatory regimes, providing them with a single point of registration, a single code of conduct, and a single disciplinary body.

#### **4. What is the likely net benefit of each option?**

The relative benefits of the various options described above were considered throughout the TPB Review discussion paper, public consultation process and final review report. Regulatory costing of options recommended to proceed show a small increase in regulatory burden of approximately \$0.4m.

## **5. Who will you consult about these options and how will you consult them?**

A full public consultation process was conducted as part of the TPB Review process. An initial consultation round was conducted on the Review's terms of reference, resulting in 33 submissions from various organisations. A discussion paper was subsequently released and a second round of consultation occurred, resulting in an additional 79 submissions from various organisations.

The types of organisations consulted through this process included:

- Professional accounting and book keeping associations
- Financial advice associations
- Legal associations
- Individual tax practitioners
- Universities and other non-profit organisations
- Related Government agencies

## **6. What is the best option from those you have considered?**

Due to the comprehensive nature of the review and its recommendations, a range of options were considered and the Government will proceed with only some of them at this time. A number of other options will be subject to further consultation.

The Government response to recommendations was formulated with reference to relative regulatory effects on the sector, how particular options would impact on consumers of tax advice services and how particular options would improve the effectiveness and independence of the TPB. Some options cannot be costed at this time as they require further consultation by Government, or specific implementation details are yet to be settled.

All of these options and issues are set out in the Government's response to the Review.

## **7. How will you implement and evaluate your chosen option?**

The method of implementation varies depending on the chosen option. Some will be implemented administratively by the TPB and others will require legislative and regulatory changes. A few require further consultation and consideration prior to implementation. Specific detail is set out in the Government's response to the Review.