



Committee Secretary
Joint Committee of Public Accounts and Audit
PO Box 6021
Parliament House
Canberra ACT 2600

Our ref: 22.24OM

15 August 2024

Submission uploaded via aph.gov.au

Dear Sir / Madam,

TPB SUBMISSION: INQUIRY INTO THE ADMINISTRATION OF COMMONWEALTH REGULATIONS

1. The Tax Practitioners Board (TPB) is pleased to provide you with a submission in relation to the terms of reference of the Joint Committee of Public Accounts and Audit's inquiry into the administration of Commonwealth regulations (the Inquiry).
2. The TPB is supportive of the examination of how Commonwealth entities assess compliance risk, inform compliance and enforcement strategies, and identify areas of non-compliance with Commonwealth rules and regulations. The TPB considers that, having regard to the findings and recommendations from the Auditor-General Reports,¹ this Inquiry presents an opportunity to identify what is working well and ways in which regulation across the Commonwealth can be improved, coordinated and streamlined, ultimately enhancing community confidence in the effectiveness and integrity of compliance and regulatory outcomes.
3. In this regard, the TPB notes that the TPB's regulatory framework is currently undergoing significant reform.² These reforms are supported by the Government's response to a 2019 review of the TPB and from the Government's August 2023 response to the PwC tax leaks scandal. The Government announced a significant package of reforms that will crack down on misconduct and rebuild people's confidence in the systems and structures that keep our tax system and capital markets strong. The TPB welcomes the opportunity to enhance how the TPB can best protect consumers of tax services, particularly in respect of the *Tax Agent Services Act 2009* (TASA) and *Tax Agent Services Regulations 2009* (TASR). Reforms include enhancing the TPB's investigations and sanctions framework, increasing transparency, supporting information sharing between co-regulators, and expanding whistleblower protections. These current reforms and expected future reforms ensure that the TPB carries out its functions in accordance with Government and the community's expectations.

Background

¹ Auditor-General Report No.3 of 2023–24 [Management of Non-Compliance with the Therapeutic Goods Act 1989 for Unapproved Therapeutic Goods](#), Auditor-General Report No.5 of 2023–24 [Trade Measurement Compliance Activities](#), Auditor-General Report No.8 of 2023–24 [Design and Early Implementation of Residential Aged Care Reforms](#), Auditor-General Report No. 15 of 2023–24 [Australian Taxation Office's Management and Oversight of Fraud Control Arrangements for the Goods and Services Tax](#), Auditor-General Report No.26 of 2023–24 [Department of Home Affairs' Regulation of Migration Agents](#)

² Joint media release by The Hon Dr Jim Chalmers MP, Senator the Hon Katy Gallagher, The Hon Mark Dreyfus KC MP, The Hon Stephen Jones MP, [Government taking decisive action in response to PwC tax leaks scandal](#), 6 August 2023

Role of the TPB

4. The TPB is an independent statutory body created under the TASA to register and regulate entities providing tax agent services in Australia. The object of the TASA is to support public trust and confidence in the integrity of the tax profession and tax system by ensuring that the services provided by registered tax practitioners (i.e. registered tax agents and business activity statement (BAS) agents) for a fee or other reward are provided to the public in accordance with appropriate standards of professional and ethical conduct, including the Code of Professional Conduct.
5. As at 7 August 2024, there were a total of 63,268 tax practitioners registered with the TPB. The total number is comprised of 46,299 tax agents and 16,969 BAS agents.
6. The majority of Australians and businesses rely on tax practitioners to support their engagement with the tax and superannuation systems. While most practitioners act lawfully and ethically, misconduct by a small number can have a wider impact on tax non-compliance. This includes tax practitioners who drive tax avoidance or evasion schemes, facilitate the shadow economy or are associated with tax fraud. Tax practitioner misconduct undermines confidence in the profession and in the integrity of the tax system.
7. The government's current reforms to the tax and regulatory system have provided the TPB with another opportunity to assess and improve our compliance strategies including:
 - shaping the law and policy framework through empirical insights and stakeholder co-design
 - greater transparency and effectiveness reporting to Government and stakeholders, and to improve community confidence in systems integrity
 - improving our data, analysis and risk assessment, internally and with partner agencies
 - improving consumer protections with streamlined complaints resolution and early intervention
 - maximising technology and analytical tools to manage data and clarify risks, subject to human verification
 - improving effectiveness and efficiencies, including whole of government coordination of strategies, projects, investigations and capability
 - ensuring effective compliance treatment programs by evaluation of facts, issues, systemic risks, patterns and causation
 - building APS capability, in the TPB and across relevant agencies/ stakeholders.

ANAO reports

8. Having considered the relevant Auditor-General reports, we have noted the following key messages, including instances of good practice, that are relevant to the TPB:
 - a. Governance matters
 - Regulators should consult regularly with stakeholders to inform regulatory decisions and to identify opportunities for improvement. Regulators should offer a range of consultation mechanisms and provide timely information on how stakeholder feedback has been considered and on regulatory changes
 - Where Parliament confers statutory powers to enable officers to monitor and enforce compliance with regulation, it is important that those powers are exercised lawfully by individuals that have been properly appointed, and that appointment instruments are complete and current

- Where Parliament has legislated investigation and sanction powers for regulators, it is important that those powers be used
 - Reliable data is a critical enabler for effective public administration
 - Entities should consider how each of the potential operational policy options under consideration would function in practice as a legal requirement
 - Departments and regulators should clearly define their respective responsibilities in implementing programs to avoid duplication and overlap. Joint processes should be tested to identify and fix issues
 - Performance indicators and any related targets for regulators should be comprehensive by addressing all of the regulatory functions.
- b. Compliance processes and strategies
- Compliance activities should be based on clearly articulated risk-based priorities
 - There needs to be easy-to-access and transparent complaint-handling arrangements
 - Regulators should ensure that they are monitoring, assessing and evaluating against targets and reporting on their effectiveness in achieving regulatory objectives. This can improve organisational effectiveness and assist an entity to make decisions about when and how to deploy its resources
 - Compliance and enforcement activity on areas of higher risk ensures that resources are targeted to the areas requiring the most attention and that resources are appropriately allocated
 - Entities should avoid proliferation of guidance and procedural documentation which may make it challenging for staff to find the 'right' guidance document
 - Entities should regularly assess the risk of a large-scale fraud event, monitor early warning signals and plan for a whole-of-entity response that can mobilise
 - The level and focus of compliance and enforcement activity on areas of higher risk in relation to the stakeholders that are expected to benefit from the regulation ensures that resources are targeted to the areas requiring the most attention and that resources are appropriately allocated commensurate with identified risk areas.

Submission

9. The TPB considers that the terms of reference of the Inquiry are broadly appropriate, noting the high-level regulatory gaps and areas for further consideration identified by the Auditor-General Reports.
10. Having regard to the above key messages from the Auditor-General Reports, the TPB considers it important to recognise that compliance risk can be appropriately addressed in a number of ways, and that investigation and enforcement action is only one aspect of how these risks can and should be addressed. The TPB notes that compliance risks can and in many cases should also be dealt with in alternative ways than through investigation and enforcement action, for example through education, support, guidance and consultation.
11. Noting the findings and recommendations from the Auditor-General Reports, and drawing upon the TPB's regulatory experience, the TPB considers that there are six key focus areas that will enhance regulation across the Commonwealth.
 - a. Clearly established goals, purpose and objectives of regulators and their strategies

The TPB agrees with the findings of the Auditor-General Reports that regulators should have clearly established goals, purposes and objectives to guide them in their regulatory activities and strategies. The TPB's experience is that while regulators frequently have common goals and objectives underpinned by consumer/public protection principles, there may be broad inconsistencies in how these goals and objectives are articulated and planned (including in the development and implementation of governance frameworks and documentation), and in the strategies adopted by regulators in seeking to achieve their respective objectives.

In the TPB's view, greater consistency across jurisdictions in respect of the approach to establishing the goals and objectives of regulators and their strategies will in turn enhance transparency and understanding across Government and within the community, as well as aiding increased co-regulatory collaboration to address shared risks.

b. Cohesion in statutory frameworks, statements of expectations, governance and performance measurement and reporting

Consistent with the above, the TPB considers that cohesion across government in respect of statutory frameworks, statements of expectation, strategies, capability and performance measurement and reporting will assist regulators in adopting a unified and consistent approach in addressing compliance risks. This cohesion will ensure that performance measurement and reporting is consistent, meaningful and informs continuous improvements in how compliance risks are identified and dealt with across government in the future.

Cohesion requires agencies to have appropriate leadership, culture and capability, assessing the changing environment, and implementing strategies to manage highest risks or maximise opportunities for innovation. The TPB's experience suggests that an effective regulatory framework requires close collaboration across stakeholders, including partner agencies and professional associations. Improving compliance coordination may be supported by data and intelligence sharing, coordinated cases or strategies to address higher and shared risks, and the transparent reporting of outcomes.

Clarity of law and policy supports voluntary compliance with legislative regimes. The TPB works with the tax profession to co-design guidance products which support practical services to clients, together with high ethical standards. Guidance products are further enhanced with education and awareness programs to assist the regulated population. Ongoing risk assessment will ensure that regulatory systems are effective, as well as targeting resources to higher risk matters. Further, improvements to performance assessments, within and across agencies, will enhance cohesion and coordination of shared risks.

In addition, the TPB considers that statutory frameworks across jurisdictions need to have consistency, particularly in relation to information and secrecy provisions, to ensure that there is a consistent approach to sharing data and intelligence, supportive of a culture of collaboration and sharing of compliance risks across regulators. The TPB notes that the current review of secrecy provisions being undertaken by the Treasury might be an appropriate mechanism to further explore how this can be achieved in practice.

To further support this, the TPB considers that statements of expectations for all regulators should have consistent expectations that enhance a culture of collaboration and co-regulation across the Commonwealth and enshrine the policy intent of the *Data Availability and Transparency Act 2002* (DAT Act) into the operations of regulators (discussed further below).

c. Governance and reporting

Consistency in the governance framework that regulators have in place to support compliance and enforcement activities and strategies will also aid in enhancing transparency, identification and development of strategies for compliance risks (and in particular, shared risks across regulators), and ultimately will assist in greater consistency in the measuring and reporting of performance.

In particular, the TPB is of the view that performance measurement and reporting should be supported by data, incorporate standardised measures of success (for example, wider revenue effects, compliance trends and statistics) and shared risks by regulators across government should be measured and reported on in a unified and collaborative way, to avoid inconsistencies and duplication.

d. Data analysis, intelligence and assessing risks

The TPB considers that greater capability and shared access to data across the Commonwealth is essential in ensuring that regulators are appropriately identifying and assessing compliance risks, and that the outcomes of compliance activities and strategies are appropriately assessed and reported upon. Enhanced data reliance will assist regulators in ensuring that resources and strategies are appropriately targeted proportionate to risk.

Supported by appropriate legislative frameworks, there needs to be a clearly articulated expectation that regulators across the Commonwealth will engage proactively with co-regulators, to share intelligence and data to support legislative objectives and shared risk.

Consistent with the policy intent of the *Data Availability and Transparency Act 2002* (DAT Act), enhanced and standardised data governance and access will support regulatory outcomes by:

- aiding in a risk-based and data-driven approach to compliance and enforcement action, enabling regulators to devote resources to high-risk behaviours
- enhancing collaboration and consistency across regulators, ensuring that decisions are guided by appropriate data and intelligence and regulators with shared compliance risks have access to the same data and intelligence relevant to the compliance action or strategies being undertaken
- improved measuring and reporting of performance of compliance activities and strategies.

e. Continuous shaping and evaluating

In addition to standardisation in performance measurement and reporting, greater access to data and enhanced data analysis capability will underpin continuous improvement strategies and evaluation of performance.

In turn, consideration of reforms to policy and law (for example, alternative sanctions and regulatory powers needed across the Commonwealth) can be informed by this analysis and evaluation. Measures designed to enhance collaboration across regulators will also enable learnings and insights to be shared across the system, building APS capability and stewardship of the system.

f. Resourcing and capability

The regulatory environment across the Commonwealth is changing rapidly, with the emergence of new technologies and increasingly sophisticated schemes and mechanisms being developed to circumvent Australia's laws and regulations. In order to keep pace and maintain effectiveness, regulators need to have the appropriate legislative tools, resources and capability to address non-compliance in new and innovative forms.

The TPB considers that a whole-of-Government framework is needed to ensure resourcing and capability is appropriately enabling efficient and best practice compliance and enforcement action to meet regulatory objectives across the system. To be effective, this framework should address appropriate staffing security and capability standards, delegations and authorisations guidelines, guidance on structures and internal policies and procedures, as well as a framework for facilitating cross-agency sharing of capability, professional development and resources, and secondment opportunities.

Reform opportunities

12. As highlighted above, the TPB considers that there is opportunity for enhanced regulatory settings across the Commonwealth to ensure that regulatory outcomes are improved. While some improvements can be achieved through operational enhancements and cultural shifts, many require legislative reform and whole-of-Government coordination. In particular, the TPB considers the following reforms as key measures in ensuring enhanced regulation across the Commonwealth:

- enhanced investigations and sanctions powers, allowing regulators to take swift and firm action for high-risk matters, including wide-spread fraud, and graduated sanctions and powers to allow regulators to appropriately respond to lower risk non-compliance
- revised secrecy and information sharing legislative provisions that support regulators in proactively and reactively sharing intelligence and data to support regulatory activities and strategies across the Commonwealth, with appropriate governance measures in place.

Further information

13. We welcome any additional discussions or assistance we can provide to the Inquiry. [REDACTED]

Yours sincerely

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Michael O'Neill
Secretary/CEO
Tax Practitioners Board