

PGPA Act and Rule Independent Review TPB Submission on draft report

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. The TPB welcomes the opportunity to provide feedback on the draft report into the PGPA Act and Rule Independent Review (Review). Overall, the TPB are of the view that the draft report and its recommendations will assist in the development and maturity of the governance frameworks set up under the PGPA framework. However, the TPB would like to provide comments in response to some of the specific recommendations in the draft report.

About the TPB

3. Although already included in the TPB's initial submission in response to the Review, it is useful to restate the unique nature of the TPB as an independent statutory body, and the responsibilities of its Board.
4. Section 7 of Schedule 1 of the PGPA Rule specifically provides that for the purposes of the 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.

5. 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. TPB Board members are also considered to be ATO officials for the purposes of the PGPA Act.
6. The status of the TPB under the PGPA Act creates unique issues for the Board 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 ...

7. 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, TPB Board members are independently appointed by, and must report directly to, the Minister for Revenue and Financial Services.

Performance reporting requirements

8. The TPB supports the finding by the Independent Reviewers that the duplicative performance reporting requirements (across the portfolio budget statements, corporate plans, regulatory performance framework, and annual reports) impose an unnecessary reporting burden on entities, particularly for smaller independent Commonwealth statutory bodies like the TPB. The TPB would welcome any simplification of the reporting burden for smaller Commonwealth entities, as reflected in Recommendation 25 of the draft report. It would be useful to have standardised corporate plans and other templates to help reduce the amount of work required.
9. In relation to the issue of independent statutory bodies not having the authority to sign off on their own annual performance statements (under the PGPA Act, it is the responsibility of the accountable authority), the TPB does not agree with the views of the Independent Reviewers at page 51:

“The operation of the PGPA Act for independent statutory office holders or bodies is consistent with its intended operation and appropriate for the manner in which statutory office holders or bodies have been established in their enabling legislation (i.e. not as standalone entities).”

10. The TPB reiterates that the current framework creates a number of issues for the TPB in having to provide assurance to the Commissioner of Taxation, as the accountable authority. This includes the perceived lack of independence of the TPB, and the duplication of work/roles for and between the ATO and the TPB’s separate audit and risk committees. The inefficiencies for both the TPB and ATO arising from this arrangement would be an unintended consequence of the PGPA Act.

11. There should be a more effective way for smaller Commonwealth bodies, such as the TPB, to comply with the PGPA Act, which does not compromise their independence.

Audit committee membership

12. Regarding the findings in relation to the effectiveness of Commonwealth audit committees, the TPB agrees in principle with the statement that the independence of audit committees from the day-to-day activities of management is critical to the contribution that they can make to good governance in an entity. The TPB is of the view that the current PGPA Rule requiring a majority of audit committee members to be independent would be sufficient to meet this objective, and does not agree with the recommendation that all audit committee members are required to be independent, with independence defined as not being an official or employee of a Commonwealth entity.
13. As noted above, TPB Board members are currently considered to be ATO officials for the purposes of the PGPA Act (Section 7 of Schedule 1 of the PGPA Rule). This has negative implications on the perceived independence of TPB Board members and consequently, the TPB as a regulator. The legislation should be amended given TPB Board members are independently appointed by, and must report directly to, the Minister for Revenue and Financial Services. The TPB would welcome a change to this Rule.
14. In relation to the TPB's Audit and Risk Committee, it is comprised of TPB Board members, who remain independent from the day-to-day activities of management. They are all part time members, appointed by the Minister for their experience across relevant professions. They bring varied skills and knowledge, and provide a balance of independence and knowledge of the TPB. The TPB are of the view that it would be unnecessary to require all members of an audit committee to be independent, particularly if TPB Board members remain officials of the ATO for the purposes of the PGPA Act. We note the Independent Reviewers acknowledgement that it would be difficult for entities to find people who are both truly independent and understand the business of the entity. For that same reason, the TPB also does not agree with the recommendation that smaller Commonwealth entities with limited resources and similar purposes should consider sharing an audit committee. This would be difficult to implement in practice.

Ian R. Taylor

Chair of the Tax Practitioners Board

22 June 2018