

**30 April 2019**

The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [TPBreview@treasury.gov.au](mailto:TPBreview@treasury.gov.au)

Dear Sir/Madam,

### **Taxation Practitioners Board Review**

The Taxation Law Committee of the Business Law Section of the Law Council of Australia (**the Committee**) commends the Taxation Practitioners Board (**TPB**) for 8 years of progress. In that time the number of registered tax practitioners has increased from about 26,000 to over 70,000. In addition to the increasing number of tax agents the TPB has coped with registering Business Activity Statement (**BAS**) agents and tax (financial) advisers. It has also communicated effectively with its stakeholders through many publications. We understand that the TPB now believes it can focus on regulation, being satisfied that its systems can cope with registration. All this progress is to be applauded.

As the Review focuses on the future governance of tax practitioners, we have focused on independence and threats to independence. We believe this is the most important area of concern for the Review.

However, we also support the submission by Mr Frederick John Morgan in relation to breaches of statutes designed to protect the public from the provision of legal services by non-lawyers.

We also believe that the *Tax Agents Services Act 2009 (TASA)* should be amended to enable qualified and experienced lawyers and accountants to be included on disciplinary subcommittees chaired by a member of the TPB.

However, the main thrust of our submission is independence, which we see as the major threat to the acceptance by all stakeholders and the community of the role of the TPB as an efficient, effective and independent regulator of tax practitioners.

### **Executive Summary**

The independence of the TPB, as the regulator of tax practitioners, is crucial to the integrity of the tax system. The TPB must be, and be seen to be, independent of the Australian Taxation Office (**ATO**). Unless tax professionals, as the regulated, and the public, as the consumer of tax services, have confidence that the TPB will act independently of the ATO, the integrity of the system will be undermined.

The TPB, and its predecessor State boards, have always depended on the ATO for personnel, premises, facilities and other resources. However, the TPB and its predecessors have always had an independent chair and board members. The chair and board have to be ever vigilant in the current climate of resource scarcity and increasing pressure by the government on the ATO for revenue maximisation and protection.

After 8 years of operation, it is timely to review the threats to independence facing the TPB. The Committee submits that these threats are ever increasing and must be recognised if the TPB is to continue to have the confidence of tax professionals and the community. These threats are real – not just perceived. Looking forward, the independence of the TPB should be enshrined in legislation and the TPB should be as independent from the ATO as the Inspector General of Taxation (**IGT**). In highlighting threats to independence we do not reflect on the integrity of any past or present officeholders – simply on the system, including flaws in the structure and the absence of necessary resources.

### **Law Council Involvement**

Before the TASA commenced, the Law Council of Australia (**LCA**) was a substantial contributor to the *1994 Report of the National Review of Standards for the Tax Profession (National Review)*. Since 2010 the LCA has continued to play a major role as a member of the TPB consultative forum (**Forum**). Additionally, the Law Society of New South Wales (**Law Society**), a constituent body of the LCA, has been a recognised tax agent association since 23rd of March 2012 and is also a member of the Forum.

The LCA and Law Society representatives on the Forum have always championed the cause of independence of the TPB from any outside influence, including the professions and the ATO.

### **Times Have Changed**

In the March 2019 Treasury memorandum headed "Background to the Review", under the heading "Why Is There a TPB Review " the first bullet point reads as follows:

*As part of its establishment phase, it was considered efficient for the TPB to sit within the ATO, due to the administrative obligations that would otherwise apply to it as a separate agency. However, it was intended for there to be a post-implementation review to assess whether this arrangement remains appropriate and satisfactory.*

Much has changed since the TPB commenced operations in March 2010. Importantly, the total number of tax practitioners administered by it has increased from 26,000 in March 2010 to almost 78,000 in June 2018. Adding to the numbers is the complexity of administering 3 different categories of tax practitioner. Initially all practitioners were tax agents while currently, in addition to over 42,000 tax agents there are over 15,000 BAS agents and 19,000 tax (financial) advisers. This massive increase in numbers and complexity is itself sufficient to merit reconsideration of the relationship between the ATO and the TPB – including making the TPB a separate agency, similar to the IGT. The Committee submits that the TPB should now be completely separated from the ATO – having a separate budget, separate staff, premises, systems and all facilities. The existing arrangements are no longer appropriate or satisfactory.

The recently released report by the IGT into "*The Future of the Tax Profession*" (**IGT Report**) provides additional reasons for the elevation of the status of the TPB to become

an independent stand-alone regulator, like the IGT. The following paragraph from that Report indicates the potential dramatic expansion of the tax profession:

*6.74 As a first step, a broader definition of the tax profession may need to be considered. Such a definition may include all those who, either directly or indirectly, provide services or products which constitute provision of tax advice or otherwise assist taxpayers to comply with their tax compliance obligations. It may encompass traditional tax professionals, such as tax agents, BAS agents and bookkeepers as well as newer entrants such as TFA's, data analysts, software providers and those who have always been tangentially part of the tax profession such as economists, tax educators, ATO officers, lawyers and conveyancers. This approach would provide a central administrative focus around the tax system and the professionals who support it along with its regulation in a manner that may provide the best outcome for taxpayers.*

The IGT Report then recognises that any such expansion of the tax profession would require additional resources: –

*6.76 Any expansion of the TPB's remit may need to be accompanied by additional resources not only to facilitate registration and provide an appropriate level of guidance but to also adequately risk assess and take compliance action against those who offer tax services without being registered or engage in a range of other inappropriate behaviours such as charging exorbitant fees, or withholding information or credits from the client.*

Whether or not this expansion becomes a reality, there is already more than sufficient justification to make the TPB a stand-alone agency, like the IGT.

A useful summary of the current TPB regulatory regime is contained in paragraphs 6.2 – 6.10 of the IGT Report.

## **How the Tax System Is Intended to Work**

Simplistically, the system is intended to work as follows:

- the taxpayer must comply with its obligations under the tax laws and take full responsibility for its tax returns in accordance with the Taxpayer Declaration;<sup>1</sup>
- the tax laws are administered by the ATO;
- the tax practitioner<sup>2</sup> as the agent of the taxpayer, is obliged to act lawfully in the best interests of its client<sup>3</sup> but, pursuant to the Tax Agent Certificate<sup>4</sup>, is not responsible for its client's tax returns, and is not the agent of the ATO; and
- the tax practitioner is regulated by the TPB and not the ATO.

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<sup>1</sup> See attached glossary.

<sup>2</sup> Tax Practitioner includes registered tax agents, registered BAS agents and registered tax (financial) advisers.

<sup>3</sup>TASA, section 30 – 10 (4).

<sup>4</sup> See attached glossary.

This system can only work effectively if the TPB is independent from the ATO. Threats to its independence arise both from the structure of its relationship with the ATO and its dependence on the ATO for resources. While these threats have always existed, they have recently become more apparent. After 8 years of operation, the Review presents a timely opportunity to reconsider the independence of the TPB, particularly in the light of current and perceived threats.

## **Role of the Tax Practitioner**

Tax practitioners lodge 72.4% of all income tax returns, including 96.7% of business returns<sup>5</sup>. Therefore, they play a vital role in ensuring the integrity of the tax system. It therefore follows that the TPB, as the regulator of tax practitioners, also plays a vital role in ensuring the integrity of the tax system<sup>6</sup>. However, the tax practitioner is the agent of the taxpayer and not of the ATO. The regulation of tax practitioners is the province of the TPB and not the ATO<sup>7</sup>. Such regulation is designed to ensure integrity, competence and diligence<sup>8</sup> – but not to protect the revenue. Each tax practitioner must comply with its obligations under the law, including TASA and the Code of Professional Conduct<sup>9</sup>, relevantly in relation to "competence"<sup>10</sup>. A competent tax practitioner must comply with the law but has no further obligation to protect the revenue and owes its primary duty to its client taxpayer (section 30-10(4)). This can be misunderstood by the ATO, which often assumes that the tax practitioner has a duty to protect the revenue and looks to the TPB to bring this about.

The TPB has got it right in the following statement:

*Tax practitioners play an important role in helping individuals and businesses meet their taxation obligations<sup>11</sup>.*

The taxpayer is responsible to meet its tax obligations. The tax practitioner has responsibilities to its client and under the law, including TASA, but is not responsible for the tax obligations of the client.

So there is an inherent tension between the differing roles of the ATO and the TPB, compounded by the facts that the ATO provides all the staff of the TPB<sup>12</sup> and that the budget of the TPB is a subset of that of the ATO<sup>13</sup>. This tension has existed since the creation of the TPB and since the inception of the registration of tax practitioners (see below).

In our submission, threats to the independence of the TPB from the ATO, and to the appearance of independence, have recently increased.

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<sup>5</sup> ATO, 2016, Taxation Statistics 2015 – 16.

<sup>6</sup> TPB Annual Report 2017 – 2018 (Annual Report) page 12

<sup>7</sup> TASA section 2 – 5.

<sup>8</sup> *Stasos v TAB* [1990] FCA 379

<sup>9</sup> TASA, Part 3 (Code).

<sup>10</sup> Code sections 30 – 10 (7) to 30 – 10 (10).

<sup>11</sup> TPB Regulator Performance Framework Self-Assessment 2017 – 18 at page 12.

<sup>12</sup> Annual Report page 18.

<sup>13</sup> *Ibid* page 20.

## **Role of the TPB**

The role of the TPB is to administer the TASA<sup>14</sup>. The object of the TASA is “to ensure that tax agent services are provided to the public in accordance with appropriate standards of professional and ethical conduct...”<sup>15</sup>. This is to be achieved by the registration and regulation of tax practitioners. Provided tax practitioners comply with their obligations under the law, particularly TASA, they have no further obligations to protect the revenue.

## **Importance of independence**

The independence, and perception of independence, of the TPB from the agencies of Executive Government and, in particular, the ATO is critically important to the role of the TPB as the regulator of tax practitioners.

Unlike Government regulatory activities in areas such as corporations law, trade practices and the finance industry, the raising of revenue from taxes is a matter in which the Government and, in particular, Treasury, has a direct pecuniary interest.

Put shortly, in matters of potential disputation as to how much of a taxpayer’s income is assessable to tax, the Government has a direct stake in the outcome.

Consequently, the need for the TPB to be, and be seen to be, independent from the ATO is essential to public confidence and, in particular, to the confidence of tax practitioners who are subject to its regulation.

Further, in circumstances where the appointment of the Chair and TPB board members is in the gift of the Treasurer, it is submitted that there is a need for the TPB to actively assert its independence from the ATO specifically.

A matter which should also be taken into consideration is that, under TASA, tax practitioners are given a statutory right to provide limited legal advice to their clients regarding federal taxation laws.

It is a fundamental requirement of good government that the provision of advice that affects the legal rights of citizens must always be given in circumstances where the person who provides that advice lawfully can do so without fear of adverse consequences from Government.

This becomes particularly relevant where matters of controversy arise between the ATO and tax practitioners on the interpretation of tax law in a particular area.

In those cases, to the extent that tax practitioners may regard the ATO as being able to achieve what are more properly ATO internal administrative outcomes by seeking instead to engage the TPB’s disciplinary powers, the perception problems raised above may extend to broader concerns regarding the effect on the rule of law.

Thus, the ATO is in a position to refer tax practitioners to the TPB when the ATO believe the TASA has been breached – and to put pressure on tax practitioners accordingly. Clearly, the ATO has this right of referral and exercises it to the full extent. For example, TPB figures indicate that for year-to-date complaints received in January 2019 totalling 883, some 59 came from the ATO. However, because the ATO is in the unique position of

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<sup>14</sup> TASA, section 1 – 15.

<sup>15</sup> TASA, section 2 – 5.

confronting tax practitioners in the course of its administration of the tax laws, there is a public perception that the ATO has an unfair advantage in being able to put pressure on tax practitioners by the threat of referral to the TPB for disciplinary action. While this may be a perception, rather than a reality, it is yet another reason why the TPB should be totally independent of the ATO, including having its own staff and not ATO staff on secondment.

According to the Terms of Reference<sup>16</sup>, the second objective of the TPB is:

*(b) to promote the Tax Practitioners Board as an independent, efficient and effective regulator.*

Unless the TPB is, and is perceived to be, independent of the ATO then tax practitioners will have little confidence in its ability to fulfil its first objective:

*(a) to maintain, protect and enhance the integrity of the registered tax practitioner profession.*<sup>17</sup>

The problem of independence has always dogged the relationship between the tax practitioner regulator and the ATO. Historically and inevitably the tax practitioner regulator has always been dependent on the resources of the ATO. Until 1 March 2010, tax practitioner regulation was the responsibility of State boards. Although each board struggled to maintain its independence from the ATO, having an independent Chair was very important. While the TPB has always had an independent Chair, recently the role appears to have been substantially downgraded, constituting a major threat to independence. Also, it is difficult to find any evidence that the TPB consciously and routinely takes steps to preserve its independence from the ATO.

As discussed below, the major threats to independence can be categorised as either structure or resource based. The structure of the relationship between the TPB and the ATO is very important. So too is the dependence of the TPB on the resources of the ATO. Both structure and resources can give rise to threats to the independence of the TPB.

## **Terms of Reference**

The first term requires an examination of the "legislative framework". A strategic objective of the Board is to promote itself as an independent regulator. While this is not expressed in the TASA, it is implicit. In any redraft of the TASA, the independence of the TPB should be expressed in the legislation. Accordingly, independence is relevant to the first term.

The second term requires an examination of the "governance framework". In the light of the TPB strategic objectives, independence is relevant to this framework. Of particular relevance will be our submissions on the structure of the TPB in relation to the ATO.

The third term requires an examination of the "governance arrangements". Both structure and resourcing are relevant here. The current arrangements, including the MOU between the TPB and the ATO, will need to be considered.

The fourth term requires consideration of whether TASA needs updating. As noted above, we recommend that the independence of the TPB be enshrined in legislation. The fifth term requires consideration of whether the existing powers and functions of the TPB need

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<sup>16</sup> Terms of Reference for the Review.

<sup>17</sup> Ibid.

amendment. We want to ensure that the powers and functions of the TPB reflect its independence from the ATO.

The sixth term, while catch-all in intent, specifically refers to "interaction with the regulation of relevant related professional activities". This probably requires consideration of interaction between the TPB, the ATO, Australian Securities and Investments Commission (**ASIC**) and other relevant regulators. Interaction with the ATO is central to our submission.

The Treasury has subsequently expanded the Review by issuing 6 "focus questions". Presumably these amplify the official 6 terms of reference. Our submissions are relevant to focus questions 1, 4 and 6, which we summarise as follows:

- question 1 relates to governance arrangements which is similar to term 3;
- question 3 relates to legislative measures to protect consumers, which is similar to term 4; and
- question 6 asks for any other suggestions to strengthen the legislative framework.

### **TPB Publications**

The main publications relevant to our submissions are the:

- *TPB Annual Report 2017-2018 (Annual Report)*;
- *TPB Regulator Performance Framework Self-Assessment 2017-2018 (Regulator Performance Framework)*; and
- *TPB Corporate Plan 2018-2019 (Corporate Plan)*

While there is much other material on the website of the TPB and elsewhere, the Committee has been mainly guided by the information contained in the Annual Report and other publications referred to above.

### **How the TPB regards its independence**

In its Corporate Plan<sup>18</sup>, the TPB lists 3 strategic objectives, which can be summarised as follows:

1. consumer protection;
2. integrity of the profession; and
3. promoting the TPB "as an independent, efficient and effective regulator"<sup>19</sup>.

Nothing in that plan expressly mentions the independence of the TPB from the ATO. The plan appears to focus on achievements, although "resourcing" is mentioned as the first

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<sup>18</sup> TPB Corporate Plan 2018 – 2019, as published on its website (Corporate Plan).

<sup>19</sup> Ibid at page 4.

subject under "*Emerging Risks*"<sup>20</sup>. No mention is made of its relationship with the ATO under the heading "*Relationships*"<sup>21</sup>.

However, under the heading "*Who we are*", the opening paragraph is as follows:

*The TPB is an independent statutory body created under the TASA and comprised of members appointed by the Minister.*

### **Threats to Independence**

We submit that the independence of the TPB from the ATO is threatened by the following recent developments: –

1. the role of the Chair has been downgraded;
2. the secretary of the Board is now also its CEO;
3. the CEO has now taken over many of the functions previously performed by the Chair;
4. the CEO is a senior ATO employee seconded to the TPB;
5. resourcing constraints, including the continuing need to pay an efficiency dividend;
6. prioritising action against tax practitioners for late lodgements and late payment;
7. joint investigations with the ATO in certain areas including tax practitioners personal tax obligations, the black economy and the over claiming of work-related expenses by taxpayer clients; and
8. the absence of any KPI to monitor the TPB independence generally and, in particular, its independence from the ATO.

These threats may be divided into 3 broad categories as follows: –

- structural: points 1 – 4 and 8;
- resource: point 5; and
- priorities: points 6 and 7.

### **Structural Threats**

Having made enquiries, as far as we are aware there has been no public announcement (even to the Forum) about the downgrading of the role of chair from 4 days per week (under the previous chair) to 1 day per week (under the current chair). However, the Forum has been told that the Secretary/CEO will now make public statements and be the public face of the TPB. While we have no cause for complaint about the new CEO, the fact that he is a senior officer of the ATO on secondment (like all the staff of the TPB) to the TPB raises concerns about the continuing independence of the TPB. The chair of the IGT is a full-time

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<sup>20</sup> TPB Corporate Plan 2018 – 2019 at page 5.

<sup>21</sup>ibid at pages 7 – 8.

independent person. In our submission, so should the chair of the TPB – whether or not this requires an amendment of the TASA. To the extent that the role of the independent board now becomes advisory and policy setting only, that is a further threat to the independence of the TPB- leaving a vacuum to be filled by ATO staff on secondment.

### **Dependence on the ATO (resource threat)**

*Under the TASA, the ATO provides administrative support to the Board, including staffing, accommodation, and financial and other systems. The Board is assisted by the Secretary and staff, who are employees of the ATO and made available to the Board by the Commissioner of Taxation.<sup>22</sup>*

At 30 June 2018 "its workforce comprised 130 ongoing and non-ongoing staff" located in Brisbane, Canberra, Melbourne and Sydney<sup>23</sup>.

*While the TPB operates with statutory independence and reports directly on its operations to the Minister, the TPB's funding is derived through ATO program funding under the Treasury portfolio and it is assisted by APS employees whose services are made available by the Commissioner of Taxation<sup>24</sup>.*

...

*The work of the TPB constitutes Program 1.2: Tax Practitioners Board of the ATO, as defined in the Treasury Portfolio Budget Statements 2017 – 2018.*

*The Annual Performance Statement included in this annual report reflects the TPB's performance against the deliverables and performance criteria set out in the ATO's PBS and the TPB Corporate Plan 2017 – 2018<sup>25</sup>.*

There is nothing in the "Regulator Performance Framework", as set out in the Annual Report, or the key performance indicators to measure or record the independence of the TPB from the ATO<sup>26</sup>. While the Annual Report states that its "strategic goal 5" is that the "TPB is recognised as an independent, efficient and effective regulator", the Report focuses on reform, consultation, digital improvements and external scrutiny<sup>27</sup>. Once again, there is nothing in this section in relation to the independence of the TPB from the ATO.

The following quotations from the latest TPB Corporate Plan illustrate the extent of the dependence of the TPB on the ATO for funding and the difficulties being experienced by the TPB with the increased number of tax practitioners who have already come under its jurisdiction.

*The Commissioner of Taxation and the Chair of the Board (on behalf of the TPB) must agree on funding for the TPB to perform its functions and exercise its powers under the TASA.*

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<sup>22</sup> Annual Report page 18.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid page 20.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid. page 21.

<sup>27</sup> Ibid pages 44 – 50.

*Consistent with these arrangements, the TPB's financial operations appear in the ATO's annual report as part of the ATO's financial operations<sup>28</sup>.*

*"The primary challenge for the TPB in delivering its objectives is its budget, which is derived via an allocation from the Commissioner"<sup>29</sup>.*

*"The inclusion of tax (financial) advisers into the TPB's regulatory framework will continue to have implications for the TPB's resourcing given this has increased the registered practitioner population by approximately 38%<sup>30</sup>.*

*"While recognising many government agencies are undergoing similar budgetary challenges, the negative impacts arising from budget reductions are much more significant for a small regulatory body like the TPB, particularly given many of our activities are driven by our obligations under the TASA and are non-discretionary"<sup>31</sup>.*

*"The TPB has experienced significant growth over the last couple of years, with the inclusion of some 19,000 tax (financial) advisers into the TPB's regulatory framework"<sup>32</sup>.*

*"Since the commencement of the TASA and the legislated Code of Professional Conduct (Code), by 30 June 2018 the registered tax practitioner population had tripled to 77,749 with 42,561 tax agents, 15,638 business activity statement (BAS) agents and 19,550 tax (financial) advisers now part of the TPB's regulatory framework"<sup>33</sup>.*

### **Work-Related Expenses (structural threat)**

*Looking to the future, the TPB and the tax profession face challenges with a rapidly changing tax environment, new technology, and risks associated with the black economy and the overclaiming of work-related expenses.*

*The TPB is prepared to meet these challenges with dedicated investigations teams, sharing intelligence with other agencies, and proactive compliance strategies<sup>34</sup>.*

...

*The ATO's focus on work-related expenses and the role tax agents play in ensuring compliance with taxation laws will continue. We will actively educate tax practitioners in the coming months to ensure that they meet their obligations throughout tax time<sup>35</sup>.*

This is a current example contrasting the duty of the taxpayer to obey the tax laws with the duties of the tax practitioner under the Code. There is a real possibility of these duties conflicting and the tax practitioner being held accountable by the TPB for the over claiming of work-related expenses by its client, the taxpayer. Code item 9 is highly relevant together with the 2 new "examples" added by the TPB to its Information Sheet on 22 January 2019<sup>36</sup>.

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<sup>28</sup> Ibid page 58.

<sup>29</sup> Corporate Plan at page 5.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Regulator Performance Framework at page 5.

<sup>33</sup> Annual Report at page 2.

<sup>34</sup> TPB press release 29 October 2018.

<sup>35</sup> Annual Report at page 8.

<sup>36</sup> TPB Information Sheet: TPB (I) 17/2013.

In example 7 the tax agent resigns when the client fails to substantiate its expense claims and in example 8 the client amends its return. In adding these examples to the 2013 Information Sheet, has the TPB being influenced by the current campaign of the ATO to combat over claiming of work-related expenses? Example 7 can be seen as controversial. It is the client's tax return and it can be argued that the agent has done its duty (under the Code) by requesting substantiation. If the client fails to do so, is the only alternative for the agent to resign – or otherwise face scrutiny by the TPB for lodging a false return or being in breach of the Code? These are controversial matters, at law, and there may be no easy answer. However, they underscore the need to ensure that the TPB does not succumb to undue pressure from the ATO to clamp down on agents whose clients are over claiming on work-related expenses.

## **Priorities**

Protection of the public, in accordance with the "object" of the TASA<sup>37</sup>, should be the main concern and priority of the TPB. The Act particularly specifies, as part of its objects clause, that this is to be achieved by registration, the introduction of the Code and the provision of disciplinary sanctions. Public protection should require investigating and prosecuting first, unregistered practitioners and second, those who can be described as "rogue"<sup>38</sup> practitioners. The Committee submits that these two categories rank ahead of prosecuting practitioners who fail to comply with their own personal tax obligations and those practitioners in breach of the Code for less serious matters. Here is where we see the potential, and possibly real, conflict between the ATO whose duty it is to ensure revenue collection, and the TPB whose major focus should be on public protection.

We've indicated above some concern about the priority currently being given by the TPB to disciplinary proceedings against practitioners who fail to comply with their own tax obligations and practitioners whose clients are over claiming work-related expenses. We see this as the practical consequence of the lack of independence of the TPB in setting its own priorities.

## **Recommendations**

1. The TASA be amended to include a specific requirement that the TPB be an independent, stand-alone body.
2. The TASA be amended to require that the TPB have a separate budget – similar to the IGT.
3. The TPB employ its own staff and have its own separate premises – similar to the IGT.
4. The TASA be amended to provide for the appointment of a full-time independent chair of the TPB – similar to the IGT.

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<sup>37</sup>TASA, section 1 – 15.

<sup>38</sup> This includes dishonest practitioners and those guilty of professional misconduct – in the broadest sense.

5. The Regulator Performance Framework be amended to include an additional Key Performance Indicator to monitor, measure and record the independence of the TPB.
6. The independence of the TPB, so far as possible, be modelled on the IGT.
7. An annual or regular review of the independence of the TPB be undertaken by the IGT.

## **Conclusion**

To be truly independent and satisfy all stakeholders (including the public) of its independence, we submit that the above recommendations should be put into effect. If so, in our submission, this is what needs to be done (by legislation or legislative instrument):

- (a) a requirement that the TPB be independent;
- (b) a requirement that the independence of the TPB be monitored on a regular basis (at intervals of not more than 3 years) by the IGT;
- (c) a requirement that the TPB have its own budget and premises completely separate from the ATO;
- (d) a requirement that the TPB be adequately resourced, having regard to the increased numbers of those already regulated, possible increases in the future and the necessity in the future to be a stand-alone independent agency;
- (e) a requirement that the chair be a full-time independent appointee;
- (f) a requirement that all employees of the TPB be independent of the ATO; and
- (g) a requirement that independence should be added as a key performance indicator so as to measure the independence of the board on an annual basis.

Because the TPB now regulates over 80,000 practitioners, with the possibility of many more being added (in accordance with the IGT Report), it must now be, and be seen to be, an independent stand-alone agency – in order to satisfy all stakeholders and the public that it is truly fit for purpose in 2019 and beyond.

Should you wish to discuss further any aspects of the submission, please do not hesitate to contact Clint Harding, Chair of the Taxation Law Committee ([charding@abl.com.au](mailto:charding@abl.com.au) or 02 9226 7236).

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'R Maslen-Stannage', with a long horizontal flourish extending to the right.

**Rebecca Maslen-Stannage**  
**Chair, Business Law Section**