

Eight years of the Tax Agent Services Act 2009 (TASA) and the Code of Professional Conduct

Conference presentation by Ian Taylor (18 January 2018)

Overview

Almost eight years since the commencement of the Tax Agent Services Act 2009 (TASA), I'm pleased to have this opportunity to discuss how the TASA and the Code of Professional Conduct have maintained the ethical and professional standards of the tax profession.

As Chair of the Tax Practitioners Board (TPB) I believe it has been a progressive new era in tax practitioner regulation and I hope to demonstrate that in my presentation today.

On 26 March 2009, the Parliament of Australia passed the TASA into law to establish a new national regulatory regime for tax practitioners.

The TPB commenced operations in March 2010 as an independent statutory body created under the TASA to register and regulate entities providing tax agent services in Australia.

The new regime which, according to Walpole and Salter in their 2014 article for ATAX UNSW, has '*fundamentally changed the ground rules*¹' was designed to increase community confidence in tax practitioner services.

In this paper I will provide an overview of how the TPB has worked to support compliance with the TASA since 2010. I will cover:

- the transitional journey of registration of tax practitioners
- compliance trends and landmark cases
- the introduction of new compliance approaches, such as the annual declaration.

I will share insights from a review of more than 11,000 compliance cases from over the past eight years and outcomes from Administrative Appeals Tribunal (AAT) and Federal Court cases.

¹ Walpole M, Salter D "Regulation of tax agents in Australia" (2014) *eJournal of Tax Research* 351

I will also look at how our strategic focus as a Board has evolved since 2010 and forecast what may be in store for both tax practitioners and the TPB in the next eight years.

Let me begin this review by providing a summary of the early development of the TPB and some highlights of the first eight years, with a focus on our compliance strategy during this time.

Establishing the TASA regime

While the registration requirements and ongoing obligations were broadly set by the TASA and associated regulations, the TPB's initial focus was articulating them in a way that could be practically applied by the profession.

In the TPB's first annual report of March to June 2010, the inaugural chair of the TPB, Dale Boucher, said:

...maintaining compliance with the TASA will involve a measured approach, tailored to the compliance attitudes of those involved, and disciplinary sanctions for breaches where appropriate. This is aimed at minimising costs for the vast bulk of practitioners who are doing the right thing.

He added:

From September 2010, there will be a graduated increase in our compliance focus on tax agents and BAS agents to ensure understanding of new registration obligations and code of conduct requirements.

The TPB was established with 26,000 registered tax practitioners, comprised solely of tax agents who were previously registered with the six state tax agent boards and administered by the Boards and the Commissioner of Taxation.

It was our first task to register these tax agents. In addition, there were still many specialist tax agents operating outside this regulatory framework. One of our first priorities was to identify, contact and bring these unregistered tax practitioners into the TPB's regulatory domain.

The TPB also had the considerable challenge of bringing the previously unregulated bookkeeper profession into the regime as registered BAS agents.

This also involved ensuring that all BAS agents were registered with the TPB and subsequently met all the educational and compliance requirements of registration, as was the case for tax agents.

Walpole states:

'The inclusion of this latter category of agent was necessary as a result of the introduction of the Goods and Services Tax (GST) and consequential reforms which resulted in the need for taxpayers to complete periodic returns that are not tax returns...

...at the time when the registration of BAS agents was being implemented even fewer bookkeepers [compared to tax agents] would have been members of professional bodies, thus providing further incentive to regulate the ethical framework within which such tax professionals operate².

Over the next few years our focus changed from registration to education and compliance for tax and BAS agents.

² Id, page 340-341

Our journey in developing guidance took time and effort, relying on extensive consultation with the profession to develop policies that outlined how we would implement the TASA and the Code and develop practical guidance to help tax practitioners to comply.

In 2010, the TPB focused on releasing guidance covering the Code, fitness and propriety, professional indemnity insurance and requirements for courses registered tax agents needed to adequately advise the public on the diverse range of tax issues.

In 2011, we finalised our first information sheets, covering the Board's position on professional practice matters ranging from engagement letters, liens over client property as well as the standard educational requirements for BAS agents. Guidance on situations where software providers would be providing tax agent services was also finalised.

In 2012, we finalised our continuing professional education requirements, as well as guidance on situations where registration would be required for insolvency practitioners, contractors and valuers. We also released our first information sheet on a specific Code item, dealing with item 3, holding client money on trust.

This approach continued from onwards 2013, with finalised information sheets on five Code items for tax and BAS agents, as well as new information sheets to prepare for the registration of tax (financial) advisers from 2014.

Following a series of carve outs, the registration of financial planners as tax (financial) advisers commenced from 1 July 2014.

In recent years, our guidance has evolved to reflect the changing nature of the tax profession, and the impact of technological improvements and globalisation of the tax system.

Last year we released our first practice note on cloud computing and the Code, and draft guidance on Code obligations and the practices of outsourcing and offshoring.

While the environment is changing and evolving, the role of the TPB and the obligations and responsibilities of tax practitioners remains the same. The TPB will continue to adapt to recognise changing business practices to help tax practitioners to comply.

The impact of the TASA and the Code in setting the ethical and professional standards for tax practitioners has been a significant change that underpins Australia's tax and super systems.

In their previously cited paper entitled *Regulation of tax agents in Australia*, Walpole and Salter refer to international research on tax culture:

'the Code is a significant advance on what was in place under the previous Tax Agent Registration Boards because while those Boards could deregister agents on the grounds that they were not a 'fit and proper person', they did not have a Code of Professional Conduct against which to measure the propriety of a person's conduct or fitness to act as a tax agent.

The new system in Australia has fundamentally changed the ground rules³.'

³ Ibid 351

Compliance with the TASA and the Code

Nearly eight years on from the start of the TASA, at 30 December 2017, approximately 80,000 tax practitioners are now registered with the TPB, including 42,000 tax agents, 15,000 BAS agents and 23,000 tax (financial) advisers.

Over this time, Australian tax practitioners have mostly responded well to the challenge of rapidly evolving business practices while meeting their Code obligations.

I am pleased to say that more than 98 per cent of tax practitioners are compliant with all aspects of the TASA.

Less than two per cent of the behaviour that breaches the TASA and the Code may affect registration.

Trends in tax practitioner compliance

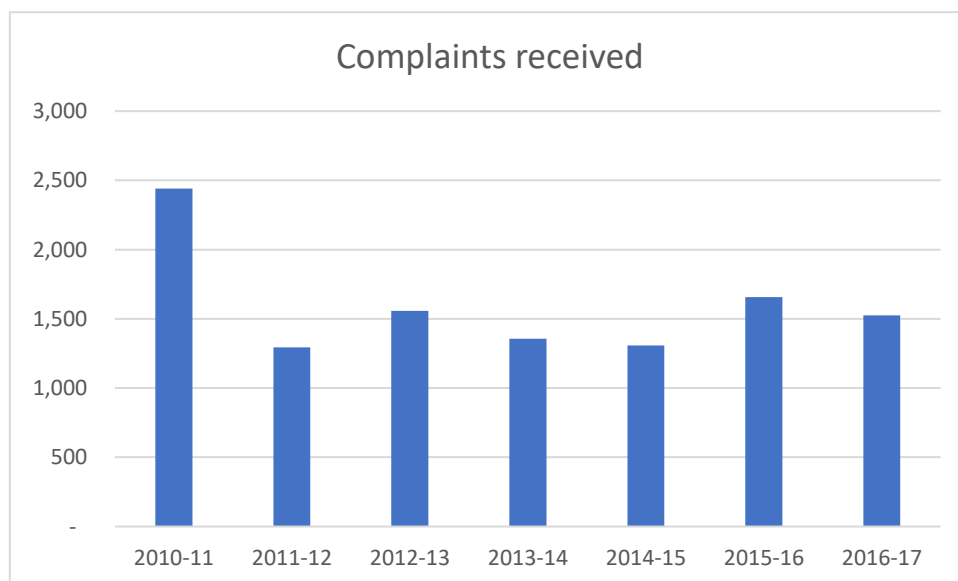
The TPB's compliance approach combines a complaints/referrals process and targeted compliance activities to protect consumers of tax agent services.

The TPB compliance strategy responds to:

- complaints from the public about the conduct of registered tax practitioners and unregistered entities
- concerns raised by tax practitioners and their professional associations
- ATO referrals
- intelligence from a range of other sources, including the media.

We provide assistance and support to address compliance issues for low-risk matters and investigate and impose sanctions for high risk cases where the tax practitioner's behaviour is seen as an unacceptable risk to the public.

Complaints received 2010-2017

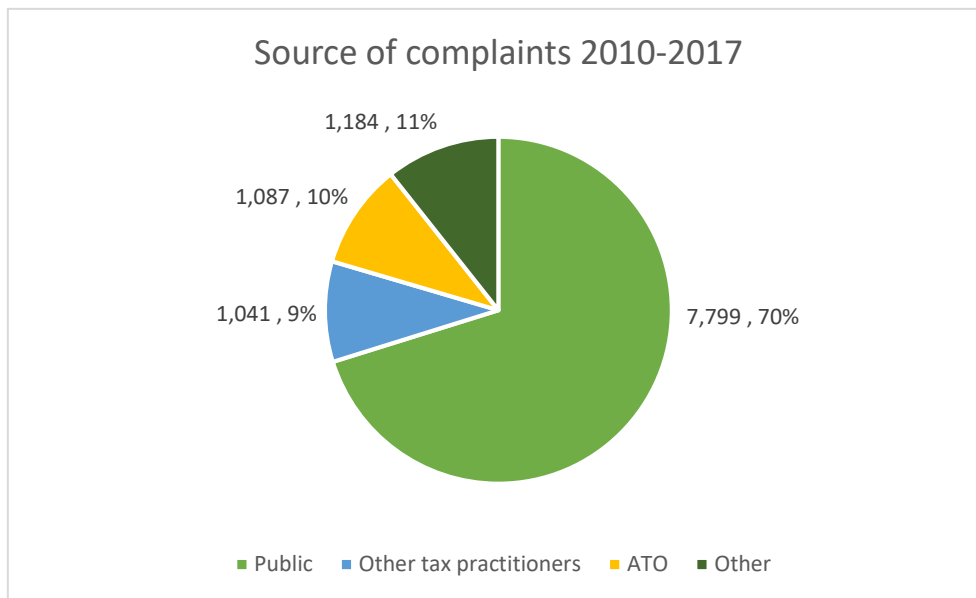


Between 1 July 2010 and 30 June 2017, the TPB received more than 11,000 complaints and referrals regarding tax practitioners.

In its first year of operation, the TPB handled more than 2,400 complaints, with more than 1,580 (65 per cent) coming from the public.

This reflected the growing awareness at the time of the new national regime and the need for tax and BAS agents to be registered with the TPB.

Source of complaints



The sources of complaints to the TPB have been fairly consistent over the past eight years. On average, around 70 per cent of complaints come from the public each year, followed by a fairly even split of complaints from other registered tax practitioners, referrals from the ATO as well as other sources (which includes the TPB’s surveillance and monitoring of media and practices within the tax profession).

Nature of complaints

In 2012, the TPB implemented a case management system that enabled all compliance matters—including complaints, referrals and proactive work—to be mapped across the relevant provisions of the TASA, such as ‘fit and proper’ matters, alleged breaches of the Code and civil penalty provisions.

The system gathers information from a range of sources, to assist in identifying trends in noncompliant behaviour and in planning and allocating resources effectively.

Looking back at the nature of the compliance matters the TPB has managed since 2012 provides some insights into how the TPB and the tax profession has evolved to meet the ethical and professional standards set in the TASA.

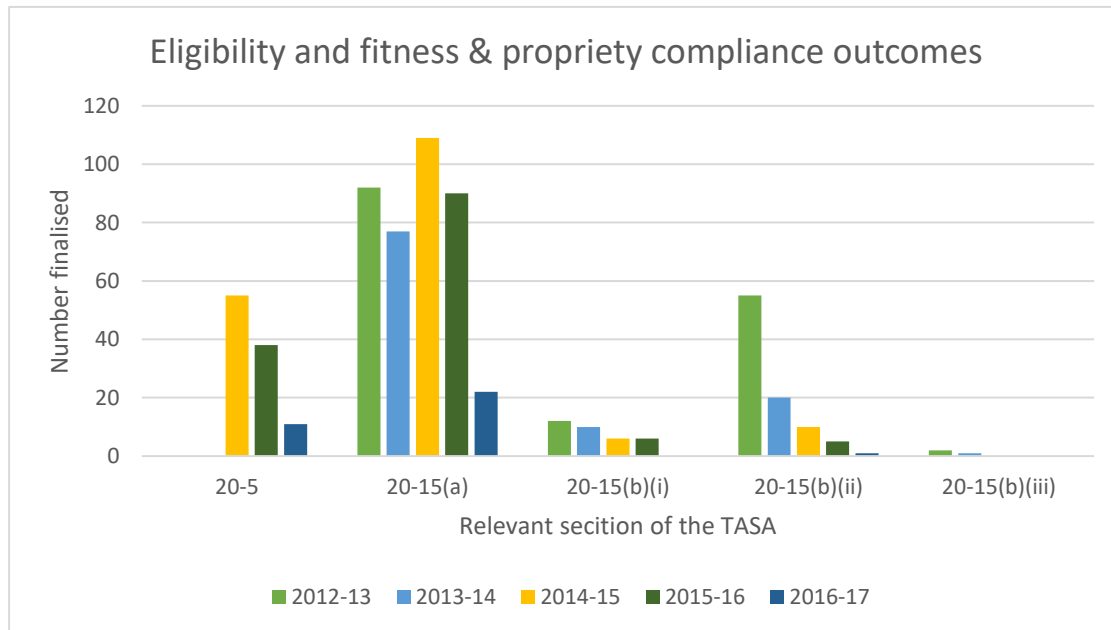
With eight years behind us we are now able to see how trends have developed in compliance with the TASA, including with the Code, as well as fitness and propriety and civil penalties.

It is important to note that as the TPB has matured, we have developed a better understanding of how the Code applies in special circumstances. As might be expected, this improved understanding of the Code and categorisation has led to a refinement of our processes and the way we communicate with tax practitioners.

Eligibility and fitness & propriety

Section 20-5 of the TASA covers eligibility and section 20-15 includes:

- (a) fit and proper (good fame, integrity and character)
- (b)(i) certain events that may affect continued registration
- (b)(ii) undischarged bankruptcy, and
- (b)(iii) term of imprisonment.



There has been a particularly significant drop in compliance matters for both categories of eligibility (20-5) and fit and proper (20-15 (a)) over the past year. Fit and proper matters reduced from 109 cases in 2014-15 to 22 in 2016-17.

To explain this result, we can point to the establishment of the annual declaration process which commenced in January 2016 and has now entered its third year.

Apart from an increase in fit and proper matters between 2014 to 2016, there have been consistent improvements across this section of the TASA over the past eight years.

As you can see, matters primarily related to part (b) of this section of the TASA, are less common.

The incidence of individual status of an undischarged bankrupt in the previous five years has reduced from 55 cases in 2012-13 to one in 2016-17.

Matters related to eligibility for registration decreased from 55 cases in 2014-15 to 11 cases in 2016-17.

Annual declaration

Since January 2016, all registered tax and BAS agents have now completed at least one annual declaration to demonstrate that they are meeting their ongoing obligations.

Other than in their year of registration renewal, tax and BAS agents are required to notify the TPB annually that they continue to meet certain ongoing registration requirements.

The annual declaration replaced a previous process which required all registered practitioners to annually notify the TPB of their professional indemnity (PI) insurance details.

The benefits of the annual declaration process include:

- improved integrity of information (including information publicly available on the TPB Register)
- timelier notification of changes in circumstances and ability to promptly address ongoing registration concerns of some practitioners
- currency of PI insurance information, compliance with continuing professional education (CPE) requirements and disclosure regarding meeting personal tax obligations
- identification of practitioners who are not up to date with their own tax obligations.

Tax practitioners whose annual declaration is due are sent numerous reminders to lodge their annual declaration. Approximately 95 per cent of agents have lodged by the due date.

I will cover how non-lodgement of the annual declaration feeds into our compliance processes when we look at Part 3 of the TASA, in particular, Code item 14, which is not responding to requests from the Board.

Code of Professional Conduct

Contained in section 30-10 of the TASA, the Code of Professional Conduct establishes a set of ethical and professional standards to be observed by tax practitioners. The Code covers 14 principles under five separate categories.

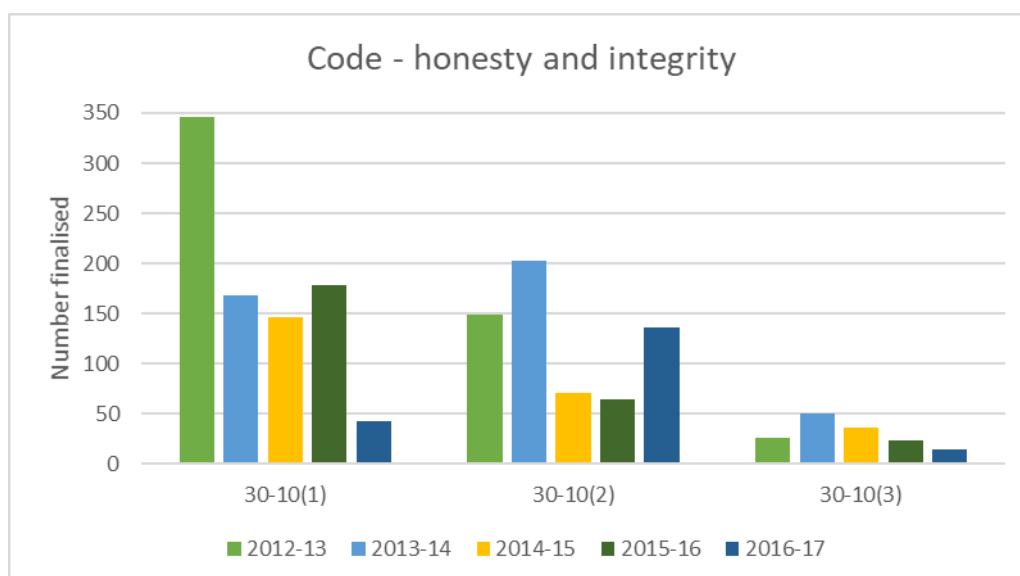
To assist tax practitioners to understand their obligations, from its inception the TPB worked in consultation with the tax profession to increase the availability of information and guidance for tax practitioners on the Code.

Since 2010, we have produced a wide range of guidance material including a comprehensive explanatory paper and ten information sheets on specific Code items.

In addition, the TPB annually publishes a Summary of Penalties publication which uses compliance cases to demonstrate the types of practitioner behaviour that results in a breach.

We have developed a growing range of additional communication activities to explain practical application of the Code, including through our regular TPB eNews, social media channels, speaking engagements, face-to-face outreach and our webinar program.

Honesty and integrity



The first three Code items come under the category of honesty and integrity. Since 2012, around 20 per cent of compliance matters have fallen under this area of the Code.

- 30-10 (1) You must act honestly and with integrity.
- 30-10 (2) You must comply with the taxation laws in the conduct of your personal affairs.
- 30-10 (3) If:
 - you receive money or other property from or on behalf of a client, and
 - you hold the money or other property on trust
 - you must account to your client for the money or other property.

In terms of Code item 1, to determine if a practitioner is acting with honesty and integrity, we take guidance from a range of court decisions that set precedent. This includes considering if the practitioner has:

- acted properly and without deceit
- acted without intent to gain an improper benefit or advantage for themselves or others
- genuinely attempted to carry out their duties and obligations imposed by law
- demonstrated honesty in preparing taxation returns lodged to the ATO
- failed to make full disclosure of circumstances of matters relevant in assessing their suitability to be registered
- accessed a taxpayer's personal taxation information on the ATO's Tax Agent Portal without authority
- failed to notify regulatory authorities, such as the ATO and the TPB, of fraudulent activity that posed a risk to taxpayers and the integrity of the taxation system.

Code item 1 cases have reduced from 346 in 2012-13 to 43 in 2016-17. A larger number of matters were initially attributed to this Code item in the earlier years of the TPB.

Experience and the maturing of our compliance processes has resulted in matters once considered an honesty and integrity issue being more relevant other areas of the TASA and the Code.

There was a spike in Code item 2 matters (comply with taxation laws in the conduct of your personal affairs) in 2013-14 when the first stage of our Personal tax obligations project was implemented.

Personal tax obligations project

The Personal tax obligations project was a joint-initiative of the TPB and the ATO. The project evolved between 2012 and 2014 over a number of iterations. Starting in 2012, the ATO referred large numbers of agents to the TPB who had:

- 1) outstanding lodgements
- 2) debts with the ATO
- 3) been subject to prosecution by ATO.

This project resulted in sanctions ranging from orders to suspensions and termination of registration where Code breaches were found. The project also resulted in a number of civil penalty matters going to the Federal Court as a result of joint investigations by the TPB and the ATO. Three major cases (Kim, Li and Su) went to the Federal Court in 2014.

Case study: Misconduct results in \$70,000 penalty and termination of registration for Mr Tsu Chien Su

The Federal Court ordered Mr Tsu Chien Su (a previously registered tax agent) to pay a \$70,000 penalty for committing 50 breaches of the TASA by recklessly making false statements to the Commissioner of Taxation, and causing loss of revenue to the Commonwealth and personal gain to the agent.

Mr Su admitted to 50 contraventions of the TASA, with 25 of the 50 relating to false information in returns derived from false payment summaries, and the other 25 contraventions relating to the false tax agent certificate contained in each return.

This was the first time the Federal Court imposed a pecuniary penalty on a registered agent for contraventions of the TASA. Among other considerations, in imposing the \$70,000 penalty the Federal Court made allowances for the fact that Mr Su had admitted to the contraventions early in the process and had shown contrition.

Following a finding by the TPB that Mr Su had knowingly breached the Code, the TPB terminated his registration as a tax agent in August 2013, imposing a period of three years before he could re-apply for registration. Mr Su appealed this decision to the AAT. The AAT affirmed the TPB's decision.

The second increase in compliance matters relating to Code item 2 in 2016-17 occurred as a result of the annual declaration process.

Annual declaration project

The start of the annual declaration requirement for tax and BAS agents in January 2016 was a significant event for the TPB.

The annual declaration was part of a concerted effort to encourage ongoing interaction between the TPB and registered tax practitioners to ensure that all tax practitioners continued to meet the ongoing registration requirements, including having PI insurance.

It represents a substantial change from past requirements and is crucial to maintaining the ethical and professional standards of tax practitioners.

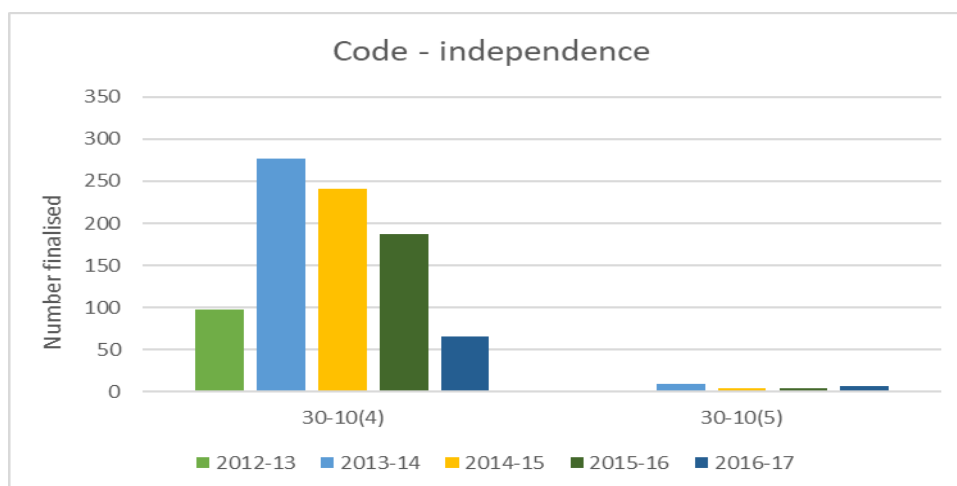
Initially, most tax practitioner interaction with the TPB was limited to their initial registration followed by their renewal every three years. The annual declaration provides a simple, annual 'check-up' so to speak, ensuring a regular focus by practitioners that they are meeting their ongoing registration obligations.

As part of the annual declaration process, the TPB wanted to ensure that agents who had answered questions in the annual declaration form a certain way that did not meet requirements were not inappropriately penalised.

With respect to Code item 2, in most cases a phone call to the practitioner addressed these issues. For example, while a practitioner may indicate in their annual declaration they had overdue personal tax obligations, arrangements may be in place to manage this with the ATO.

Since January 2016, of over 70,000 annual declarations lodged, the TPB has resolved 305 cases through this method.

Independence



- 30-10 (4) You must act lawfully in the best interests of your client.
- 30-10 (5) You must have in place adequate arrangements for the management of conflicts of interest that may arise in relation to the activities that you undertake in the capacity of a registered tax agent, BAS agent or tax (financial) adviser.

The second category of the Code, independence, covers two items that relate to a practitioner's responsibility to achieve balance – in serving their clients and complying with the law, and managing the conflicts that will arise in the course of providing tax agent services.

Since 2012, 11 per cent of Code compliance matters have fallen under this area of the Code.

Code item 4 (You must act in the best interests of your client) matters reduced from 277 cases in 2013-14 to 66 in 2016-17. In 2013-14, a larger number of matters were attributed to this Code item, and experience has shown us that these were more relevant to other areas of the TASA and the Code in later years.

While the number of matters falling under Code item 4 have decreased since 2013-14, it is a growing area of focus with the tax practitioner community facing scrutiny from multiple angles particularly in relation to acting 'lawfully' in the best interests of clients.

From another perspective, the Black Economy Taskforce has been established by the Treasury to consider whole-of-government policy responses to people who operate outside the tax and regulatory system or who are known to the authorities but do not correctly report their tax obligations.

They have recently recommended that greater attention be paid to sanctioning unethical agents involved in the black economy, and the TPB's role in facilitating this.

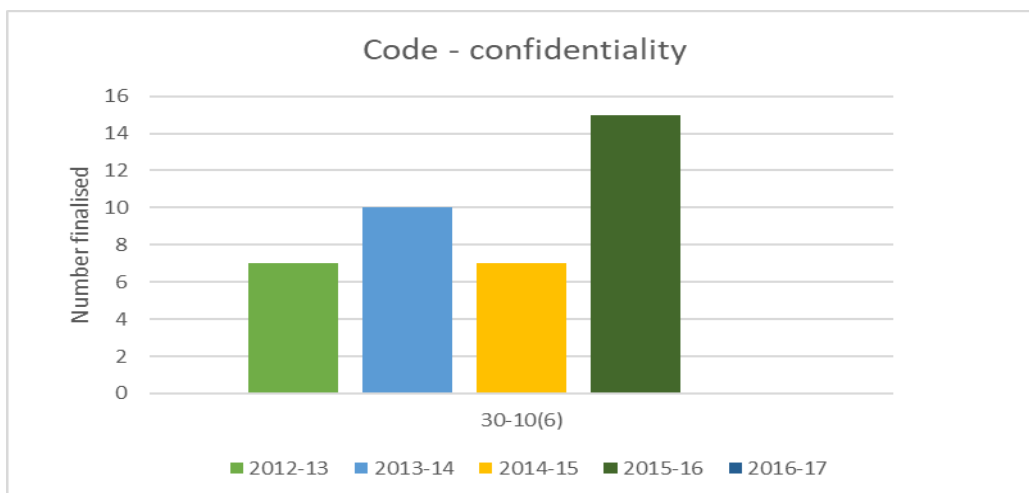
The Taskforce's message will be clear – it will be no longer acceptable for tax practitioners to turn a blind eye to the illegality of their clients' tax affairs.

Code item 5 (You must have in place adequate arrangements for the management of conflicts of interest) has seen a very small number of compliance matters since 2012 – only 27 overall – but it is nonetheless a key focus for the TPB's guidance and education.

Our information sheet on managing conflicts of interest for tax and BAS agents was finalised in 2014, with an information sheet for tax (financial) advisers published in 2016.

We are seeing an increase in cases involving matrimonial disputes involving clients of practitioners and a consequent lack of authorities to act from some parties.

Confidentiality



- 30-10 (6) Unless you have a legal duty to do so, you must not disclose any information relating to a client's affairs to a third party without your client's permission.

Code item 6 is another item in the Code that attracts only a small number of matters - where it is the primary issue.

Since 2012, only 0.5 per cent of Code compliance matters have fallen under this area of the Code. We may have more matters than the statistics might suggest for this Code item, but the primary assessment identifies other Code items that can predominate.

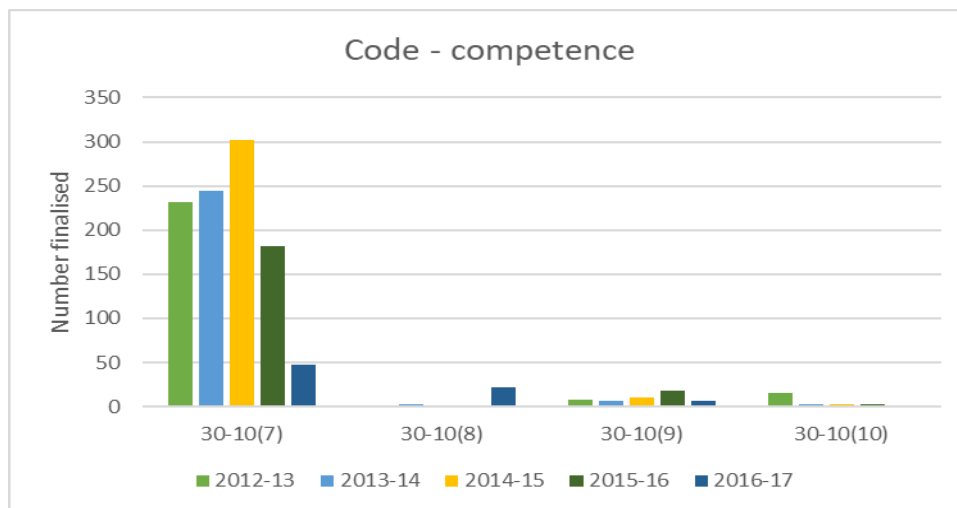
Other relevant considerations that come out of this Code item include the importance of a letter of engagement, understanding mutual obligations, cloud and outsourcing and offshoring.

A specific information sheet on Code item 6 was finalised in 2014 for tax and BAS agents, with an information sheet for tax (financial) advisers being finalised in 2017.

The TPB has seen an evolution in the way the guidance applies to emerging issues facing tax practitioners, with a number of Code items being relevant to a specific practice or issue.

A recent example is Code item 6 covered in guidance released on cloud computing and outsourcing and offshoring, which draws in a number of Code items related to the topic.

Competence



- 30-10(7) You must ensure that a tax agent service that you provide, or that is provided on your behalf, is provided competently.
- 30-10(8) You must maintain knowledge and skills relevant to the tax agent services that you provide.
- 30-10(9) You must take reasonable care in ascertaining a client's state of affairs, to the extent that ascertaining the state of those affairs is relevant to a statement you are making or a thing you are doing on behalf of a client.
- 30-10(10) You must take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which you are providing advice to a client

The Code items under the category of competence have accounted for 14 per cent of Code matters the TPB has dealt with since 2012.

Code item 7 (You must ensure that a tax agent service that you provide or that is provided on your behalf, is provided competently) matters reduced from 302 cases in 2014-15 to 48 in 2016-17.

Again, we can attribute the reduction in matters under this Code item to experience and a better understanding of how complaints related to competence are better related to other Code items.

Code items 8-10 matters are minimal. In 2016-17 there were a several of matters related to Code item 8 arising out of the annual declaration process, where practitioners had failed to meet our CPE requirements.

The annual declaration provides the opportunity to engage with these practitioners to seek further information and to support them to understand and meet the ongoing CPE requirements.

Other responsibilities



- 30-10 (11) You must not knowingly obstruct the proper administration of the taxation laws.
- 30-10(12) You must advise your client of the client's rights and obligations under the taxation laws that are materially related to the tax agent services you provide.
- 30-10(13) You must maintain the professional indemnity insurance that the Board requires you to maintain.
- 30-10(14) You must respond to requests and directions from the Board in a timely, responsible and reasonable manner.

It is encouraging to see very few matters have been investigated that relate to Code items 11 and 12 – the proper administration of and advising clients of their rights under taxation laws. As fundamental elements of the role of a tax practitioner, they reflect the high standards of professionalism within the tax profession.

Code items 13 and 14 together have accounted for 55 per cent of all Code matters considered by the TPB since 2012.

Code item 13 (maintain PI insurance that meets the Board's requirements) reduced from 899 cases in 2013-14 to five in 2016-17.

From 1 July 2011, registered tax and BAS agents had to maintain PI insurance cover, and notify the TPB of the details of their insurance cover arrangements.

At 1 July 2012, around 10 per cent of registered tax and BAS agents had failed to notify us. By 30 June 2013, this figure had fallen to less than three per cent.

The TPB took a number of steps to achieve this improvement in the notification rate.

The TPB commenced a compliance project targeting those agents who had not told us about their PI insurance, completing 813 investigations during 2012–13 into possible breaches of the Code.

As a result, the Board made decisions to suspend the registration of 50 agents and ordered them to obtain PI insurance cover that met the TPB's requirements.

From 30 June 2013, following amendments to the TASA, it has become a legislative registration requirement that all registered tax and BAS agents must demonstrate that they maintain, or will be able to maintain, PI insurance that meets the TPB's requirements. It also remains a requirement under the Code.

Following the introduction of the annual declaration, 99 per cent of those registered tax and BAS agents who were required to complete their annual declaration, have notified the TPB that they meet the TPB's professional indemnity insurance requirement.

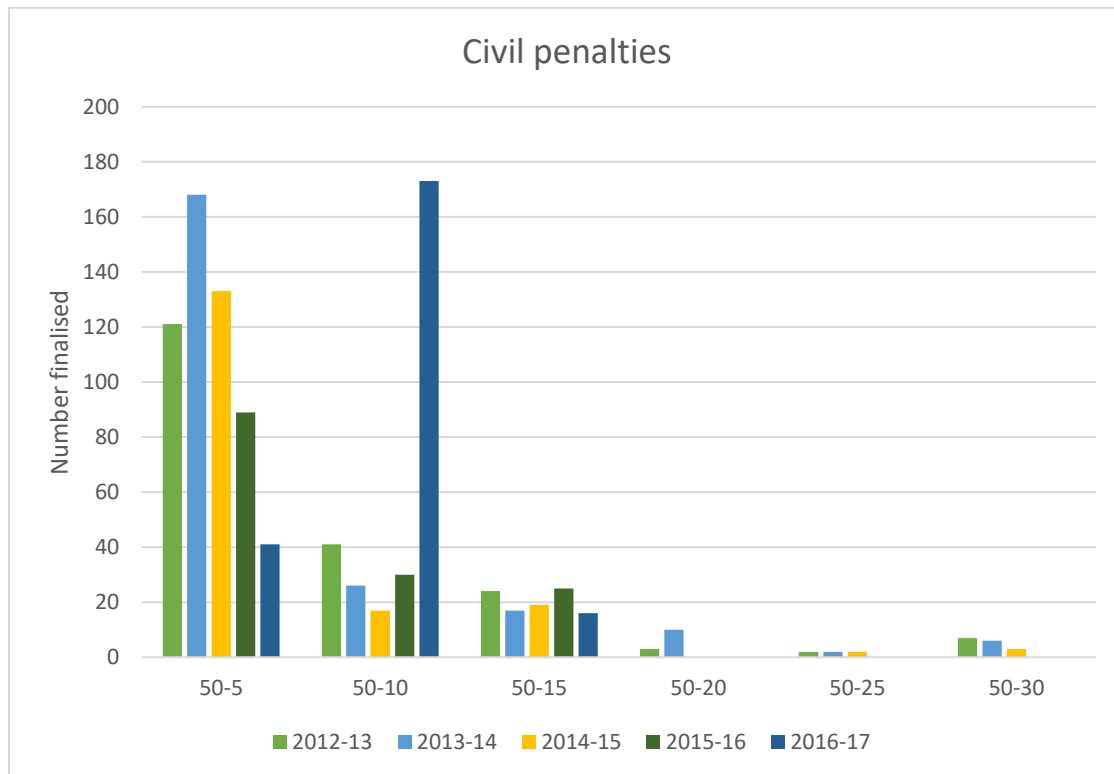
However, the annual declaration has also resulted in an increase in Code item 14 matters (You must respond to requests and directions from the Board in a timely, responsible and reasonable manner).

Of the 2,244 matters relating to a possible breach of the Code investigated in 2016-17, 1,895 (84 per cent) related to Code item 14. Most of these matters relate to failure to respond to requests from the Board to complete the annual declaration by the due date.

Where practitioners fail to complete their annual declaration on time, we contact them and provide a final opportunity for them to complete it before an investigation commences.

These instances generally result in lodgement without the need for an investigation but unfortunately some disregard these opportunities which ultimately leads to termination of registration.

Civil penalties



Civil penalties are pecuniary penalties imposed by courts exercising a civil rather than criminal jurisdiction. The civil penalty provisions in the TASA apply to:

- unregistered entities providing or advertising tax agent services while unregistered, or representing themselves as registered when they are not respectively (50-5, 50-10 and 50-15)
- registered entities making false or misleading statements, employing or using unregistered entities or signing declarations or statements they have not prepared (respectively 50-20, 50-25 and 50-30).

I will focus on the civil penalties provisions related to unregistered entities.

Ensuring appropriate action against unregistered entities is a major focus for the TPB, as both a consumer protection measure and to ensure a level playing field for registered practitioners.

There has been a significant reduction in the number of matters related to unregistered entities providing tax agent services for a fee or other reward, from 168 cases in 2013-14 to 41 in 2016-17.

We can attribute this at least partly to the pro-active educational activities our compliance team has undertaken.

The TPB has taken a more educative approach regarding civil penalty cases with 'cease and desist' letters also being used in the first instance.

Where egregious behaviour occurs, the TPB has taken action in the Federal Court, with some significant outcomes.

Case study: \$900,000 penalty for unregistered tax agents

In May 2015 in a landmark case for the TPB, the Federal Court ordered the unregistered Peter Kolya to pay \$150,000 and his company, HP Kolya Pty Ltd, to pay \$750,000, the largest penalty imposed for breaches of the TASA.

Mr Kolya and his company were not registered tax or BAS agents.

However, from August 2011 until August 2013, Mr Kolya and his company prepared and lodged numerous income tax returns and business activity statements, made amendments to tax returns and charged fees for these services.

Mr Kolya and the company also contravened the TASA by advertising the provision of tax agent services.

The Court imposed a 10-year injunction on Mr Kolya and his company, in which they are not allowed to provide or advertise tax agent or BAS services.

In deciding the appropriate penalty, the court took into account the TPB's submitted evidence, which showed Mr Kolya:

- 'knew that the pleaded conduct was in breach of the TASA'
- 'knew that he was engaging in conduct which he had been prohibited from undertaking by various decisions of courts and tribunals'
- 'was well aware of the likely harm his continued conduct of his business was likely to cause'
- 'has never shown any contrition whatsoever for the pleaded conduct and appears to have no appreciation of its seriousness'.

The Court noted that Mr Kolya's conduct 'displayed a flagrant disregard for the relevant registration requirements under the TASA', and stated that the case required a strong response from the Court to deter Mr Kolya and to:

'make clear to others who may be minded to replicate his conduct that they should think very carefully before doing so because the penalties which will be imposed if caught will be significant'.

Case study: \$81,500 penalty for providing and advertising tax agent services

In February 2016, the Federal Court ordered Lorraine Amede, and her company, Lamede Group Pty Ltd, to pay \$81,500 in penalties for unlawfully providing and advertising tax agent services.

Ms Amede was registered with the TPB as a BAS agent, but neither Ms Amede nor the company was registered as a tax agent to provide and advertise tax agent services.

In determining the appropriate penalty, the court stated that 'these offences occurred over an extended period of time'.

The court noted that the ATO audited the affairs of many the taxpayers who received tax agent services from Ms Amede and the company.

The court also considered that some of the website advertisements for tax agent services were online for approximately one year and that the duration of the advertising was 'a seriously aggravating feature'.

Advertising tax agent services when unregistered cases increased from a low of 17 cases in 2014-15 to 173 cases in 2016-17, but although it is an increase, this is a direct result of the unregistered service provider project.

Unregistered service provider project

During 2016–17, the TPB worked with recognised associations on a targeted compliance activity to address the issue of unregistered service providers.

The project team reviewed and identified entities that were advertising BAS services without appearing to be registered.

A review of many online advertisements for BAS services identified several entities for further compliance action.

Through our intervention, a large number of advertisements were removed or amended to meet the requirements of the TASA.

Many previously non-compliant entities have now registered with the TPB and others are the subject of ongoing investigation which may lead to Federal Court action.

As part of our consumer protection responsibility, the TPB in recent years has invested in awareness activities to ensure consumers of tax practitioner services only engage registered practitioners.

Registered tax practitioner symbol

The TPB released the registered tax practitioner symbol for tax and BAS agents in September 2014. The symbol provides registered tax practitioners with public recognition that they have met the eligibility requirements and maintain the standards of professional and ethical conduct necessary to provide tax agent services.

Registered tax practitioners are encouraged to use the symbol on websites, letterheads, business cards and other promotional material, in accordance with usage guidelines.

At 30 June 2017, a total of 20,280 registered practitioners had requested the symbol to date. This accounts for 40 per cent of tax agents in business and 61 per cent of BAS agents in business.

Only tax (financial) advisers who have met the standard registration requirements can use the symbol. Six per cent of tax (financial) advisers in business have requested the symbol, reflecting the fact that most tax (financial) advisers are yet to meet the standard registration requirements.

Tax time advertising campaign

The TPB's tax time 2015 public awareness advertising campaign encouraged consumers to look for the registered agent symbol when seeking a tax or BAS agent. National radio advertising promoted the symbol to an audience of 6.1 million people, and digital and mobile advertisements reached an audience of 2.3 million people.

Coinciding with the campaign, there was a 23 per cent increase in the number of visitors to the TPB website and 14 per cent more visitors to the TPB Register.

Small business advertising campaign

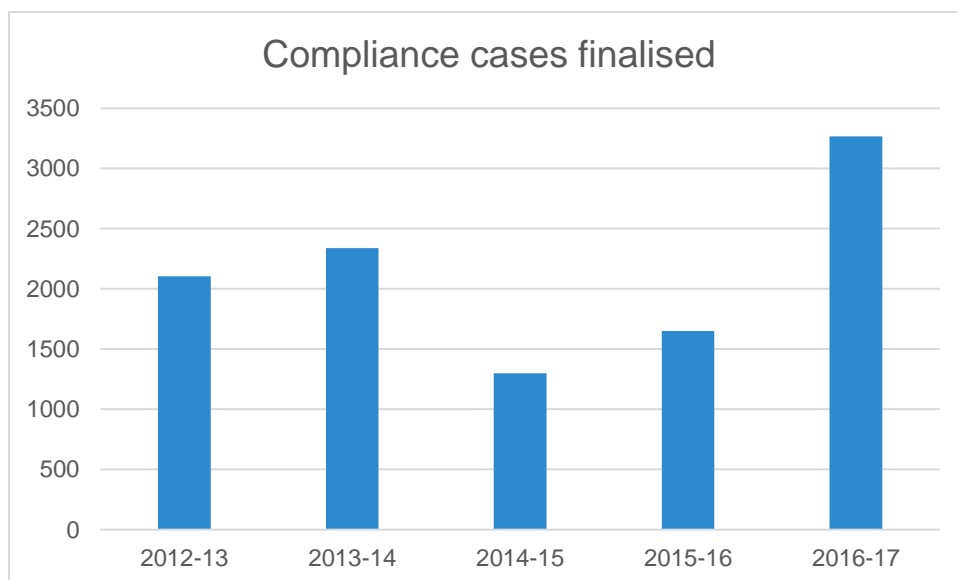
In October and November 2016, our national small business advertising campaign promoted the registered practitioner symbol, to increase public awareness of the need to ensure that the tax or BAS agent they use is registered with the TPB. The campaign resulted in a 59 per cent increase in visitors to the TPB Register during this period.

Financial adviser registration campaign

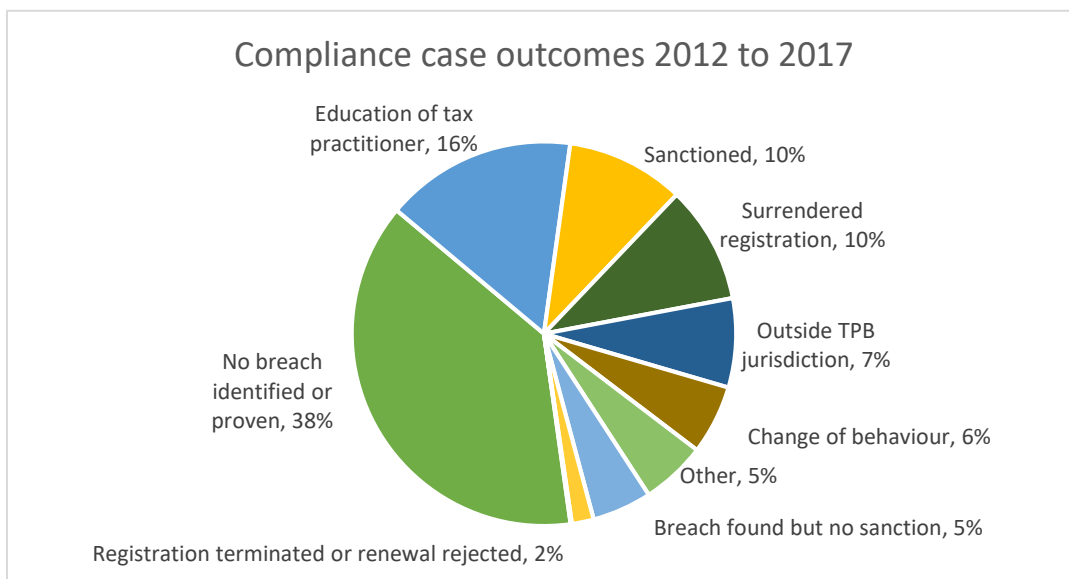
During April last year, we ran an advertising campaign on finance industry websites to encourage unregistered financial adviser entities to consider registering under the transitional option before it ended, on 30 June 2017.

We subsequently saw a large increase in both standard and transitional registrations: 43 per cent of all transitional tax (financial) adviser applications were received in June 2017, the final month of the 18-month transitional period.

Compliance outcomes



Between 1 July 2012 and 30 June 2017, the TPB completed 10,660 compliance cases. The larger number in 2016-17 (3,267) reflects the higher number of compliance matters arising as a result of the annual declaration process.



Looking back at case outcomes between 2012-13 and 2016-17, the largest outcome is 'no breach is identified or proven'.

This can reflect a misunderstanding by the complainant of the obligations under the TASA, or as in many cases, there is insufficient evidence available or provided to prove a breach.

Education of the tax practitioner is the second most common outcome.

The TPB's compliance strategy is risk-based: compliance work and resources are focused on issues where there is the greatest risk of harm to taxpayers and the community.

The risk-based approach is the best use of TPB resources and has the least impact on responsible tax practitioners who seek to comply with the Code and other obligations.

In 2016-17, as a result of the annual declaration the TPB saw a significantly higher number of cases where the outcome was education of the tax practitioner and surrender of registration.

External scrutiny

The TPB's decisions and operations are subject to review by external bodies. Those bodies include the courts and the Administrative Appeals Tribunal (AAT), parliamentary committees, the Australian National Audit Office (ANAO), the Inspector-General of Taxation and the Australian Information Commissioner.

In May 2013 the ANAO undertook a performance audit of the TPB, releasing its report on the regulation of tax practitioners by the TPB. The findings of this report showed that the TPB had established an appropriate governance framework, introduced an effective national registration system for tax practitioners, and was developing a regulatory assurance function to ensure compliance with the provisions of the TASA.

The ANAO reported at the time:

The Board has adopted a risk-based approach to compliance, but current compliance risks do not reflect the TPB's strategic risks, or those outlined in other compliance documents. There are also a number of areas that still require further development, particularly building

a compliance intelligence capability and implementing a formal regulatory quality assurance process.

The ANAO made three recommendations aimed at improving the TPB's administrative arrangements and regulatory assurance function. These include: developing and reporting against KPIs and the TPB's service standards; aligning compliance risks and streamlining the TPB's compliance framework; and developing an intelligence gathering and analysis capability⁴.

In response to the findings of the ANAO audit, the TPB improved its compliance intelligence capability and consolidated and streamlined compliance framework documents in readiness for the start of the 2013-14 financial year.

The TPB also dedicated resources to improve its compliance intelligence capability, which collects external data and analyses results of compliance activities undertaken would benefit planning for future activities. A redeveloped compliance system better captured the outcomes of compliance cases.

AAT and Federal Court

Between 1 July 2011 and 30 June 2017, appeals have been lodged in the AAT on a total of 109 decisions. Of these, 43 matters resulted in a published decision, and in 39 (91 per cent) the TPB's decision was affirmed, reinforcing the TPB's decision-making processes.

It is important to note that in two of the matters where the AAT decided in favour of the appellant, additional information had been provided or a change in behaviour had occurred since the time of the TPB's decision.

Case study: AAT affirms TPB decision to reject tax agent's renewal application

In November 2016 an AAT review affirmed the TPB decision to terminate a tax agent's registration and an associated entity, on the grounds that the practitioner ceased to be a 'fit and proper person'.

The AAT was not satisfied that Mr Gregory Brown of GJ Brown & Co Pty Ltd was a fit and proper person given his repeated failures to comply with the tax laws in both his personal and director's capacities over a lengthy period, delays in addressing that non-compliance, and the fact that some of the non-compliance issues remained unresolved.

The TASA requires that the TPB be satisfied that an individual is a fit and proper person and that each director of a company is a fit and proper person before granting registration to the company.

Once the company is registered, all company directors must remain fit and proper persons.

The non-compliance acknowledged by the AAT included failures to lodge income tax returns and business activity statements by the relevant due dates, and failures to pay tax liabilities as and when they fell due.

⁴ Australian Government *The Regulation of tax practitioners by the Tax Practitioners Board* (2013)
<https://www.anao.gov.au/work/performance-audit/regulation-tax-practitioners-tax-practitioners-board>

Mr Brown had been consequently convicted of six tax offences for failing to lodge, and had also subsequently failed to comply with Court orders requiring rectification of the non-compliance.

The AAT noted that the TPB had previously formally cautioned GJ Brown & Co Pty Ltd for breaching the TASA by failing to lodge income tax returns and business activity statements by the relevant due dates.

The Federal Court has considered nine appeals related to TPB decisions between 1 July 2011 and 30 June 2017. Of these, four matters were resolved prior to a hearing.

All five matters that went to hearing resulted in a decision in favour of the TPB.

Case study: Federal Court dismisses tax agents' appeal against AAT decisions

The Federal Court of Australia has dismissed an appeal by tax agents Mr Hemanshu Juneja, and his associated corporate entity, Three Wickets Pty Ltd, after the Administrative Appeals Tribunal (AAT) affirmed the decisions of the Tax Practitioners Board (TPB) to terminate their respective tax agent registrations.

Mr Juneja was also the sole director of Cudmores Integrated Business Solutions Pty Ltd (Cudmores), which has since ceased to exist as a company.

In 2014, the TPB decided to terminate Mr Juneja's tax agent registration on the basis that he had ceased to be a fit and proper person due to his failures, as sole director of Cudmores, to ensure that it lodged tax returns and business activity statements by the relevant due dates, and pay its tax liabilities as and when they fell due.

The TPB subsequently terminated the tax agent registration of Three Wickets on the basis that Mr Juneja, as its sole director, had ceased to be a fit and proper person.

Following the AAT's decision, Mr Juneja and Three Wickets appealed to the Federal Court, raising various grounds of appeal, and seeking to rely on further evidence.

In dismissing the appeal on 10 August 2017, the Federal Court confirmed that a sole director of a company is responsible for ensuring that the company meets its tax obligations.

The TPB today

On 31 January 2018, the TPB will pass a significant milestone, with the end of transitional arrangements for tax (financial) advisers and all tax practitioners will now need to meet the standard requirements for registration.

Over the past eight years we have managed growth in the tax practitioner population from 26,000 to around 80,000, and supported tax and BAS agents and tax (financial) advisers through this regulatory transition.

The TPB continued to provide practical support for tax and BAS agents in 2016–17.

We worked closely with the ATO to make sure that new processes, such as Simpler BAS and Single Touch Payroll, are workable.

We also provided feedback to the Board of Taxation on mandatory disclosure rules and participated in discussions with the Australian Government's Black Economy Taskforce.

Our community awareness initiatives supported consumer protection and strengthened the integrity of the tax practitioner profession.

In October and November 2016, our national small business advertising campaign promoted the registered practitioner symbol, to increase public awareness of the need to ensure that the tax or BAS agent they use is registered with the TPB.

The campaign resulted in a 59 per cent increase in visitors to the TPB Register during this period.

Since BAS agents were first given official recognition under the TASA we have seen their successful transition into the tax practitioner population and a significant increase in their professional recognition.

As at November 2016, when transitional arrangements ended, all registered individual BAS agents had met the necessary education and experience requirements, reinforcing the skills and qualifications of the BAS agent profession.

Of all tax practitioners, this group has taken up the use of the registered agent symbol most extensively and demonstrates a high level of compliance with the Code.

I acknowledge BAS agents for their positive and important contribution, in a very short period of time, to the professionalism of the registered tax practitioner community and the Australian tax system.

The TPB recognises that tax (financial) advisers have different business models to tax and BAS agents and are making significant efforts to work with tax (financial) advisers more effectively.

The practical guides we developed to help tax (financial) advisers to complete the registration and renewal process have increased the completeness and quality of applications to reduce application-processing times.

The benefits of new technology were harnessed to reach as many tax practitioners as possible, when over 700 financial planners and advisers joined our first live-streamed event in March. The event was recorded and made available on our website.

Through our financial adviser forum and proactive consultation with Australian financial services (AFS) licensees and their representatives, we continued our focus on understanding their business models and helping them to navigate the registration and renewal processes.

We worked with the Australian Securities and Investments Commission to minimise red tape and regulatory overlap wherever possible and adapted our processes so that they are a better fit with ASIC's—for example, in developing the AFS licensee bulk renewal process.

The TPB has established itself as a regulator that focuses on supporting tax practitioners who comply with the Code and other legislative requirements, and takes firm action against those who do not comply.

Looking ahead

As I conclude the review of what we have done to this point in time, I want to emphasise that the TPB faces another challenging year, with a significantly increased workload and extensive IT upgrades within the context of ongoing budgetary constraints.

We are continually looking for ways to improve our processes to achieve greater efficiency.

However, despite the number of tax practitioners we regulate tripling from 26,000 to 80,000, our current budget is around the same level it was when we commenced operations in 2010.

Ultimately, the integrity of the tax profession will depend on adequate resourcing of the TPB to enable the TPB to further expand its compliance activities.

While the Board regularly reviews priorities, and looks strategically at ways to reduce staffing and supplier costs to ensure the TPB operates efficiently and effectively within the allocated budget, the ongoing budget pressures bring about a risk that the TPB is unable to effectively meet its objective, including its important consumer protection role.

As we approach the next few years of TPB operations there are many factors, both internal and external, which will have a bearing on how we continue to evolve as a regulator.

Here is a snapshot of what is ahead for the TPB and tax practitioners compliance-wise in the next few years.

Internally we are moving to include a focus on compliance for tax (financial) advisers.

We hope to implement a community awareness campaign on the need to notify the TPB of tax (financial) adviser noncompliance.

As I have mentioned, we have introduced the annual declaration process for tax (financial) advisers so that now, all registered tax practitioners will advise annually that they comply.

And we are working with new players, such as conveyancers and payroll providers, so that they comply with the TPB regulatory regime.

We have already had significant input into the development of a new payroll diploma course being designed by Skills Australia.

Externally-speaking we foresee a closer working relationship with other government agencies, including ASIC with whom we work in 'regulatory cohesion' so that the requirements of two independent regulators can work side by side, as much as possible.

There is already a great deal of activity on this front with several government reviews or initiatives currently underway or planned, including the:

- Black Economy Taskforce led by the Treasury
- Inspector General of Taxation (IGOT) review into the future of the tax profession
- the Treasury review of the TASA commencing later this year; and
- launch of the Australian Financial Complaints Authority (AFCA) on 1 July.

The work of the Black Economy Taskforce and its focus on tax practitioners represents an opportunity for us to position the TPB as a 'key player' in the government regulation environment and we have made submissions accordingly.

Technological changes and new providers of services and products are expected to continue to increase and evolve at a rapid rate, changing the way services are provided and how tax practitioners, taxpayers and regulators interact.

These include software, such as the development of products to feed into ATO systems to align with initiatives such as single touch payroll; automated online services / robotics and artificial intelligence; and products that transfer risk to third parties such as cyber-security insurance.

We also await the outcome of the IGOT review into the future of the tax profession.

In our submission to the IGOT review we said that the tax practitioner profession currently faces a number of opportunities and challenges as a result of:

- technological change
- globalisation
- client demand for a wider range of services and 'real-time' online responses; and
- generational change.

A relevant focus on the provision of services and support, effective consultation and stakeholder engagement will be required accordingly.

The changing environment and resourcing constraints are expected to place further challenges on the TPB from a policy, communications and compliance perspective.

They will undoubtedly create challenges in ensuring integrated uniform regulatory design and may give rise to emerging issues of concern such as security of taxpayer personal information.

Business models of tax practitioners are also expected to continue to evolve.

For example, the use of cloud computing has become almost commonplace and further changes may arise pursuant to developments in the use of outsourcing, offshoring, and developments in artificial intelligence and robotics.

Increasing cross border transactions, partly facilitated by new technology, generate a demand for a mixture of local and foreign tax business advisory services and this may result in some practices merging, consolidating, transferring or changing business models.

Some tax practitioners hold a view that increased sophistication/automation of accounting software, digitisation and the streamlining of services, such as single touch payroll and simplified BAS, may reduce the need for tax practitioner services.

However, while some of the traditional practitioner tasks are being automated, with software able to complete many processing tasks, the use of software alone does not necessarily ensure compliance with complex tax laws.

Tax practitioners add value in applying the tax law to the specific circumstances of their clients' business (and many practitioners also produce and analyse reports for clients to improve their business).

Further, the use of software/automation facilitates providing opportunities for tax practitioners to bring added value to clients; technology can free up practitioners to focus on higher-level analysis, advising and streamlining movement of financial information to make a client's business more responsive, efficient and productive.

Tax practitioners will be expected to provide a service that involves a high level of qualification, experience and skill, something that technology may never be able to replicate.

Shifts in tax practitioner business models and workforce are expected and some tax practitioners (particularly those whose clients are individual taxpayers with simple tax affairs) may suffer some revenue loss.

However, it is also expected that enterprises will increasingly look for tax practitioners to provide a higher level of advice and representation when dealing with the ATO and less routine processing.

This includes drawing on insights from improved data analytics and helping to set up software to facilitate enabling compliance with obligations.

Even smaller tax practitioner firms are expected to have access to increasingly sophisticated online products and services to facilitate provision of a higher level of advice to clients.

Regarding generational change, there is still a significant proportion of individual tax and BAS agents who are over 50 years of age and those that leave the profession will take knowledge with them that is not transferred adequately to younger practitioners.

However, a new generation will have a new set of values, native digital competency and new career expectations (such as portability) which will drive practice and cultural change.

These developments will require relevant changes to professional capability and oversight of tax practitioners (including issues such as information security, continuing professional education and effective supervision and control arrangements).

Adapting to emerging technology such as cloud computing can bring many benefits and opportunities (including flexibility, reduced costs, low maintenance and potentially reduce the need to do business face-to-face).

However, the TPB continues to highlight the message that tax practitioners must still consider their obligations under the TASA (including the Code) and that these obligations that underpin the integrity of the tax profession do not change.

We await the terms of the Treasury review of the TASA which we are hoping may commence in the later half of this year.

It also remains to be seen how we will work with the new Australian Financial Complaints Authority (AFCA) which is described as 'a new one-stop shop dispute resolution body for all financial disputes' from 1 July 2018.

AFCA will provide 'free, fast and binding dispute resolution for consumers and small businesses' and, with this broad agenda, will undoubtedly need to work closely with existing regulators to fulfil its charter.

So lastly, let me briefly return to cyber-security and how this issue impacts on compliance for tax practitioners. Professional indemnity insurance will resurface around cyber-security insurance due to industry issues.

We recognise the emerging threat of cyber-attacks and the importance of tax practitioners proactively protecting themselves, their practice and their clients.

To provide an industry insight, Chris Mackinnon, the general representative in Australia for Lloyd's, the world's largest cyber insurer, recently said on Radio National:

The speed of change in the cyber risk area that really present some challenges for us around product development, the extent of the coverage that is available under cyber policies worldwide now is changing quite dramatically.

Products are having to move very fast to adapt. But the design and structure of that policy is set prior to the inception of your policy. And then during that 12-month period, risks change. New risks emanate, new threats arise from different areas.

So as an industry we are working very hard on modelling and analysing the potential exposures, and horizon scanning as best we can to try and make sure that the products we are able to offer are fit for purpose and will provide value and protection to businesses to ensure that they can carry on.

The types of liabilities arising from cyber-attacks will generally not have directly arisen during the performance of professional services.

However, it is possible for a cyber-attack to indirectly result in a claim of negligence arising from the provision of professional services.

For example, a client could argue negligence on the part of their tax agent if there has been a denial of service that prevents a tax agent from lodging a client's income tax return on time.

Tax practitioners must have sufficient IT controls in place to protect the security of client records and meet their confidentiality obligations under the Code.

To assist, we have recently developed guidance in response to information that hackers may be targeting tax practitioners and their practices to harvest personal information, commit identity fraud, or launch ransomware and other malicious attacks.

Conclusion

In concluding I would like to refer to the TPB's first annual report, which covered the period from 1 March to 30 June 2010, when the inaugural Chair, Dale Boucher, said:

Our aim is to bring all registered tax practitioners together under a single regulatory framework for the benefit of the Australian community.

In our first eight years I believe the TPB has achieved that objective in working in close partnership with the tax profession, the ATO and other government stakeholders.

This population of registered tax practitioners in Australia is now more than three times the number registered when the TPB first commenced in 2010.

Our experience to this point in time is that a significant majority of tax practitioners are continuing to respond to the challenge of rapidly evolving business practices while meeting their Code obligations

On 31 January 2018, the TPB will pass a significant milestone, with the end of transitional arrangements for tax (financial) advisers. From then on, all tax practitioners will need to meet the standard requirements for registration.

This is yet another major step in the continuing regulatory evolution of the TPB.

We look forward to continuing to assist a growing population of registered tax practitioners to comply with the TASA and the Code, promoting high professional and ethical standards that protect consumers of tax agent services.

The TPB welcomes the challenges of the coming years and will continue to support and engage with all registered tax practitioners and those seeking registration with the TPB.

Thank you for participating in this session.