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Performance Audit

The Regulation of Tax Practitioners by the Tax Practitioners Board

**Tax Practitioners Board
Australian Taxation Office**

Australian National Audit Office

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Canberra ACT
8 May 2013

Dear Mr President
Dear Madam Speaker

The Australian National Audit Office has undertaken an independent performance audit in the Tax Practitioners Board and the Australian Taxation Office in accordance with the authority contained in the Auditor-General Act 1997. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit to the Parliament. The report is titled *The Regulation of Tax Practitioners by the Tax Practitioners Board*.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's Homepage—<http://www.anao.gov.au>.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian McPhee', is positioned above the printed name and title.

Ian McPhee
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

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Contents

Abbreviations and Glossary	8
Summary and Recommendations	11
Summary	12
Introduction	12
Audit objective, criteria and scope	15
Overall conclusion	15
Key findings by chapter	18
Summary of responses to the proposed report	26
Recommendations	28
Audit Findings	29
1. Background and Context	30
Introduction	30
The history of tax practitioner regulation	32
Current regulatory arrangements	33
The Tax Practitioners Board	34
Relationship between the Tax Practitioners Board and the ATO	36
Audit objective, criteria, and scope	37
Report structure	38
2. Implementation of the Tax Practitioners Board	39
Introduction	39
Policy development and legislation	40
Tax Practitioners Legislative Framework Budget Measure	41
Establishment of the Tax Practitioners Board	47
Conclusion	54
3. Management Arrangements Supporting the Tax Practitioners Board	57
Introduction	57
Governance framework	59
Tax Practitioners Board resourcing	66
Stakeholder engagement strategy	73
Conclusion	76
4. Registrations	79
Introduction	79
The Board's registration strategy	80
Registration processes and procedures	82
Performance of the Tax Practitioners Board in conducting registrations	89
Improvements to application processing	93
Conclusion	98

5. Regulatory Assurance.....	100
Introduction	100
Development of the regulatory assurance approach	101
Regulatory assurance processes and procedures	105
Case selection, outcomes and future compliance activities	109
Conduct of regulatory assurance cases.....	115
Conclusion	121
Appendices	125
Appendix 1: Agency Responses.....	126
Appendix 2: Responses from other parties with a special interest in the report ..	129
Appendix 3: Committee Structure of the Tax Practitioners Board as at January 2013.....	134
Appendix 4: ICT Support Arrangements for iMIS	135
Index.....	136
Series Titles.....	138
Current Better Practice Guides	142

Tables

Table 1.1	Report structure.....	38
Table 2.1	Public consultations conducted during development of the legislation.....	41
Table 2.2	Tax Practitioner Legislative Framework funding and expenditure	43
Table 3.1	Tax Practitioners Board key strategic risks as at October 2012	60
Table 3.2	Tax Practitioners Board program deliverables for 2010–11 and 2011–12.....	62
Table 3.3	Tax Practitioners Board key performance indicators for 2010–11 and 2011–12.....	62
Table 3.4	Service standards and reported performance for 2010, 2010–11 and 2011–12.....	64
Table 3.5	Direct expenditure against budget for 2009–10, 2010–11 and 2011–12.....	67
Table 4.1	Numbers of new registrations by approval method.....	86
Table 4.2	Application types received by the Tax Practitioners Board	87
Table 4.3	Total applications received in relation to the deadlines for applications.....	89
Table 4.4	Numbers of tax and BAS agents registered and applications received, finalised and rejected as at 30 June 2010, 2011 and 2012.....	90
Table 4.5	Percentage of applications finalised within particular timeframes for 2011–12	92
Table 4.6	Average processing times ('cleanskins') in days, July 2012 to January 2013.....	92

Table 5.1	Comparison of risks, case estimates and service standards	105
Table 5.2	Finalised regulatory assurance cases by decision method for 2011–12 and from July 2012 to January 2013	108
Table 5.3	Number of complaints received from March 2010 to January 2013	109
Table 5.4	Number of complaints received, cases created, escalated and finalised for 2011–12 and from July 2012 to January 2013	110
Table 5.5	Decision outcomes of compliance cases for 2011–12 and from July 2012 to January 2013	112
Table 5.6	Applications lodged with the Administrative Appeals Tribunal for a review of a Board decision from March 2010 to January 2013	113
Table 5.7	Regulatory assurance initiatives and focus area	114
Table 5.8	Performance against regulatory assurance cycle times for 2011–12 and up to January 2013	116
Table 5.9	Results of the ANAO's examination of preliminary enquiry cases ...	118
Table 5.10	Results of the ANAO's review of investigation cases	120

Figures

Figure 3.1	Structure of the Tax Practitioners Board as at January 2013	58
Figure 4.1	The Tax Practitioners Board's registration business process	83
Figure 4.2	Applications received, finalised and on hand from February 2010 to January 2013	91
Figure 5.1	The Tax Practitioners Board's Compliance Model	104
Figure 5.2	The Tax Practitioners Board's regulatory assurance business process	106

Abbreviations and Glossary

AGIS	Australian Government Investigations Standards
ANAO	Australian National Audit Office
APS	Australian Public Service
ATO	Australian Taxation Office
BAS	Business Activity Statement
Board	appointed chair and members of the Tax Practitioners Board
The Code	the Code of Professional Conduct for tax practitioners
CWC	Client Contact-Work Management-Case Management, a case management system used by the ATO
FMA Act	<i>Financial Management and Accountability Act 1997</i>
FTE	full time equivalent staff
ICT	information and communication technology
iMIS	the registration and case management system used by the TPB
ITAA	<i>Income Tax Assessment Act 1936</i>
KPI	key performance indicator
TABecat	case management system developed by the ATO
TAS Act	<i>Tax Agent Services Act 2009</i>
TAS Regulations	Tax Agent Services Regulations 2009

Tax practitioner	a professional who provides tax agent services for a fee
TPB	appointed chair and members of the Tax Practitioners Board and supporting staff
Treasury	Department of the Treasury

Summary and Recommendations

Summary

Introduction

1. The self-assessment taxation regime, introduced by the Government between 1986 and 1990, and changes to the tax system have meant that taxpayers now placing greater reliance on tax practitioners.¹ In 1980, only some 20 per cent of individuals used tax practitioners to lodge their tax returns.² By 2011–12, tax practitioners lodged over 70 per cent of individual income tax returns and over 90 per cent of business tax returns.³
2. On 26 March 2009, recognising the importance of consumer confidence in tax practitioners, the Commonwealth Parliament passed the *Tax Agent Services Act 2009* (the TAS Act) to establish a new national regulatory regime for tax practitioners. Prior to 2010, six independent statutory bodies, the state Tax Agents Boards, were responsible for registering and regulating tax agents.
3. The TAS Act established the Tax Practitioners Board as the national independent statutory authority responsible for the general administration of the TAS Act.⁴ The objectives of the new regime are to provide consumer protection and assurance that practitioners are meeting appropriate standards of competence, and professional and ethical conduct. The regime: applies to a broader range of service providers than in the past; introduced a Code of Professional Conduct (the Code) to govern tax practitioners; provided for the imposition of administrative sanctions; and replaced criminal penalties for certain misconduct by practitioners and unregistered entities with civil penalties and injunctions.
4. In 2009–10, under the previous regulatory regime, there were around 26 000 registered tax agents and 12 000 nominees.⁵ Registration under the new regime applies to professionals who provide tax agent services for a fee. These are known as tax practitioners, and are differentiated between two types: tax

¹ M D'Ascenzo, Second Commissioner of Taxation, *Relationships between Tax Administrations and Tax Agents/Taxpayers* (speech), November 2005, <<http://www.ato.gov.au/corporate/content.aspx?doc=/content/66215.htm>> [Accessed 26 February 2013].

² Explanatory Memorandum, Tax Agent Services Bill 2008, p. 124.

³ Australian Taxation Office, *Compliance Program 2012–13*, ATO, Canberra, 2012, p. 12.

⁴ In accordance with s1–15 of the TAS Act.

⁵ A registered agent could nominate a partner or employee to sign income tax returns and provide supervision to staff on the tax agent's behalf.

agents, who can provide a full range of services related to an entity's tax affairs; and Business Activity Statement (BAS) agents⁶, who can only provide services related to an entity's BAS. In 2011–12, there were around 52 000 registered tax practitioners, made up of 38 000 tax agents and 14 000 BAS agents. Tax practitioners can encompass a range of occupations and professional groups including accountants, lawyers, solicitors, specific tax specialists, quantity surveyors, and bookkeepers. From 1 July 2013, financial planners who provide tax agent services for a fee will also be subject to the TAS Act.⁷

Policy development and implementation of the new regime

5. In 2002, the Department of the Treasury (Treasury) became responsible for developing the new regulatory regime's policy and legislation. The Treasury consulted with tax practitioner professional associations, government departments and taxpayers, and issued four exposure drafts of legislative packages between 2007 and 2009.⁸

6. In the May 2006 Budget, the Government provided \$57.5 million⁹ to the Australian Taxation Office (ATO) for the implementation of the new 'Tax Practitioner Legislative Framework', which was the basis for the TAS Act. The new regulatory regime was given effect by the TAS Act, the Tax Agent Services Regulations 2009 (TAS Regulations), and the *Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009*. The TAS Act received Royal Assent on 26 March 2009, although most sections did not take full effect until 1 March 2010.¹⁰

7. Under the TAS Act, the appointed members of the Board are responsible for making decisions that relate to statutory functions.¹¹ These appointed members are supported by a Secretary and administrative staff. For

⁶ Business Activity Statements are used by businesses to report various tax obligations and entitlements to the Australian Taxation Office, and by individuals who are required to pay quarterly 'pay as you go' instalments.

⁷ The Hon. Bill Shorten MP, Assistant Treasurer and Minister for Financial Services & Superannuation, Media Release No. 49, *Future Regulation of Financial Planners Providing Tax Advice*, 7 April 2011.

⁸ Explanatory Memorandum, Tax Agent Services Bill 2008, p. 140 and <<http://archive.treasury.gov.au/content/consultations.asp?ContentID=1013&titl=Reviews,%20Inquiries%20%26%20Consultations>> [Accessed 28 September 2012].

⁹ Funding was over four years, and commenced in 2006–07.

¹⁰ Only the provisions relating to the establishment of the Board commenced on the day on which the Bill received Royal Assent.

¹¹ The TAS Act provides the framework for the Board's formal decision-making processes. The Board has some power to delegate its powers and functions but there are limitations in what can be delegated and to whom.

operational purposes, the appointed members are referred to as ‘the Board’ and collectively, the Board and supporting staff are known as the Tax Practitioners Board (TPB).

8. Key statutory functions are to: administer a single national system for the registration of tax practitioners; assess applications for registration; and investigate and impose sanctions for breaches of the Code and other provisions of the TAS Act, where necessary. In addition, the Board may issue binding written guidelines for the interpretation and application of topics such as the Code.¹² The Board also works with stakeholders, including the ATO, tax practitioners, professional associations, other industry and government bodies and the public, to promote compliance with the Code, registration requirements and the TAS Act more generally.

9. In November 2009, the inaugural Board, which included 10 part-time members and a full-time chair, began its three-year term. The Assistant Treasurer subsequently extended this term to January 2013. A new Board was appointed in January 2013 for a term of three years and includes eight part-time members and a part-time chair. Five board members were reappointed.

10. Although the Board has general administration of the TAS Act, for the purposes of the *Financial Management and Accountability Act 1997* (FMA Act), the Board is considered to be part of the ATO. The ATO provides general corporate support to the Board and administrative support staff, which totalled 136 in 2011–12. The budget allocation for the operations of the TPB was \$16.36 million in 2011–12, and \$15.95 million in 2012–13.

11. In 2011–12, the TPB:

- received 22 366 applications for registration, and finalised 18 786 applications¹³;
- received 1293 complaints and referrals against registered and unregistered practitioners; and
- finalised 725 compliance cases.¹⁴

¹² These guidelines become legislative instruments once tabled in both houses of the Australian Parliament.

¹³ 18 037 applications were approved, 88 applications were rejected, and 661 applications were withdrawn by the applicants.

¹⁴ A compliance case may involve more than one complaint, and may be started or finalised in the year(s) after it was received.

12. For the 2011–12 compliance cases where the Board made a formal determination under the TAS Act, seven registrations were terminated, and three written cautions and one order were issued. In 2011–12, the Board applied to the Federal Court of Australia for a civil penalty order in four cases, with all cases subsequently being concluded in the Board’s favour.¹⁵

Audit objective, criteria and scope

13. The objective of the audit was to assess the effectiveness of the Tax Practitioners Board’s implementation and administration of the regulatory arrangements for tax practitioners under the *Tax Agent Services Act 2009*.

14. The audit examined whether:

- management and governance arrangements for the TPB are in place and support the effective implementation and administration of the TAS Act;
- arrangements for tax practitioner registration by the TPB have been established, meet legislative requirements and operate effectively; and
- the TPB’s regulatory assurance activities are appropriate and effective.

15. The Explanatory Memorandum to the TAS Bill notes that the Government may conduct a post-implementation review of the TAS Act and the TPB during 2013.¹⁶ For this reason, the audit excluded matters that are likely to be included in such a review, including the operation of the legislation, and consideration of the appropriateness of the ATO’s administrative support.

Overall conclusion

16. Taxpayers make extensive use of the services offered by tax practitioners. In 2011–12, tax practitioners lodged over 70 per cent of individual income tax returns and over 90 per cent of business tax returns. Accordingly, the effective regulation of tax practitioners is a critical element of Australia’s taxation regime. In 2010, after an extended period of policy and legislative development, the *Tax Agent Services Act 2009* (TAS Act) established a new national regime for the regulation of tax practitioners. The new regime

¹⁵ The four cases were each for operating as an unregistered tax practitioner.

¹⁶ Explanatory Memorandum, *Tax Agent Services Bill 2008*, pp. 97 and 143.

applies to all professionals who provide tax agent services for a fee and includes Business Activity Statement (BAS) agents as well as tax service providers. In 2011–12, there were around 52 000 registered tax practitioners. The TAS Act also established the Tax Practitioners Board, an independent statutory authority that is responsible for the new regulatory regime. For operational purposes, the appointed members are known as ‘the Board’ and collectively the Board and its supporting staff are known as the Tax Practitioners Board (TPB). The inaugural Board was constituted in November 2009 and the regulation of tax practitioners under the TAS Act commenced on 1 March 2010.

17. In its first three years of operation the Board has established an appropriate governance framework, introduced an effective national registration system for tax practitioners, and is developing a regulatory assurance function to ensure compliance with the provisions of the TAS Act. The Board initially focussed on clarifying its legislated powers under the TAS Act and establishing key policies for registering and regulating tax practitioners. Nevertheless, intense periods of registration activity¹⁷ have tested the TPB’s processes and there have been considerable delays in dealing with applications, prompting concerns being raised by stakeholders.¹⁸ In response, the TPB streamlined registration processes and has largely overcome the registration backlog. In a similar vein, the new regulatory assurance arrangements established by the TAS Act, which require the Board to administer a Code of Professional Conduct and civil penalties regime, have taken time to implement. The Board is still refining its approach and processes for some regulatory arrangements.

18. By way of background, upon appointment in November 2009 the Board determined its priorities, noting that it had less than four months to develop policy, procedures and systems to commence registration of tax practitioners on 1 March 2010. The approach taken by the Board in setting its priorities demonstrated an awareness of the key issues it faced in implementing the new regulatory regime. These included bringing new groups of tax practitioners

¹⁷ Transitional arrangements in the *Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009* provided for the registration of eligible previously registered practitioners, and for the registration of those not previously required to be registered. This created deadlines by which different application types were due.

¹⁸ The TPB did not record or report its registration processing times for the first two years of operations, but advised stakeholders via its website that it could take up to six months to process a new application. Applications for a renewal of registration could take longer, but these practitioners remained registered until their application was processed. In 2011–12, when the TPB began to record processing times, only 51.4 per cent of new applications were processed within the 30 day service standard.

(notably BAS agents) within the regulatory ambit and publishing draft policies on a number of important aspects of the new requirements. By 1 March 2010, the Board had a new national registration system functioning, albeit still requiring further development, and had begun to develop registration policies, established a committee structure and undertaken extensive stakeholder consultation. Notwithstanding these achievements, there would have been benefits in the Board formalising its implementation strategy and monitoring its progress against defined outcomes and timeframes. It would also have assisted the Board to prioritise administrative arrangements and determine timeframes for making the transition from implementation to a business-as-usual state.

19. The Board takes an active role in setting the direction for TPB operations and has implemented governance arrangements including business planning, risk management and performance monitoring. These are at various stages of maturity and, in some respects, have taken longer to establish than might be expected. The TPB's Portfolio Budget Statements key performance indicators (KPIs) are activity measures without any associated performance targets. An important area for attention in the near future is developing appropriate KPIs for measuring the effectiveness of the program in achieving its objective, and reporting achievements against these KPIs and deliverables, including associated service standards.

20. The registration of tax practitioners is a key responsibility of the Board. The standard registration requirements of the TAS Act and transitional arrangements created large workload peaks often outside the control of the TPB. This situation, and the volume of applications received, challenged the registration system capability and the capacity of the TPB to process applications in a timely way. The time taken, and information systems problems, created dissatisfaction among stakeholders. From a peak in August 2010 of 18 000 applications (an existing backlog of about 8000 applications and 10 000 applications being received), the backlog at the beginning of 2013 was less than 2000 applications and continues to diminish with the introduction of streamlined applications processing and improved system capability. Of some concern though, is that the proposed quality assurance framework has not been finalised and implemented, and a number of important draft registration procedures have yet to be finalised and approved.

21. A key objective of the new regulatory regime is to provide assurance that tax practitioners meet appropriate standards of professional and ethical conduct. The Board has civil penalty and injunction options and may apply a

range of administrative sanctions for misconduct. In the last three years, the TPB has actioned over 5090 complaints against tax practitioners, including four cases where a civil penalty was imposed by the Federal Court of Australia.

22. In 2011, the Board established a policy framework to guide its regulatory assurance activities, but the constituent documents were developed progressively and many of the principles, objectives, workload estimates and performance measures in the various documents do not align. 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. In addition, a number of key regulatory assurance procedures were still in draft form as at January 2013.

23. The ANAO has 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 capability.

Key findings by chapter

Implementation of the Tax Practitioners Board (Chapter 2)

24. In 2005, the ATO developed a new policy proposal for consideration by government outlining the work required to prepare for the new regime and Board, anticipating that the legislation could be given effect at the end of 2007. In May 2006, the ATO was allocated \$57.5 million over four years, for the implementation of the Tax Practitioner Legislative Framework.¹⁹ The ATO prepared a number of proposed strategies and procedures for the new Board and an interim website. It also consulted extensively with the previous state boards, but was not able to finalise development of the registration system. The legislative process also took longer than originally anticipated, and the ATO was awaiting the appointment of the new Board for advice of (rather than to anticipate) their preferred administrative arrangements. Consequently, at

¹⁹ This funding was for preparing the ATO's administration for the start of the new regime, as well as for preparing systems and administrative processes for the new Board.

30 June 2010, the ATO's project budget was underspent by \$11.1 million in operating expenditure and the \$7.2 million budgeted capital expenditure.

25. The TAS Act specified that the new regulatory arrangements for tax practitioners would commence on 1 January 2010, and the Board was established in early November 2009 with the appointment of the Chair and Board members. The commencement date of the new regime was delayed to 1 March 2010, to allow more time for industry to prepare for the new regulatory approach.

26. The Board had less than four months to prepare for the commencement of the new regime on 1 March 2010, and faced a number of challenges. The Board had to finalise organisational arrangements, including information and communication technology (ICT) systems for registration, and develop policies and explanatory material on the provisions of the TAS Act. In early December 2009, the Board set five goals for the TPB's 2010 operations, covering: registrations; stakeholder communication; ensuring high standards of the tax practitioners' profession; designing and implementing a compliance regime; and ensuring new groups such as BAS agents were effectively incorporated into the regime.

27. The Board's approach demonstrated an awareness of the new regulatory arrangements, and was responsive to stakeholder groups. A national registration system began functioning on 1 March 2010, albeit still requiring further development. By the end of 2010, the Board had finalised seven major policies relating to registering and regulating tax practitioners, and also developed policies and released exposure drafts on educational requirements for BAS agents and course approval processes. Elements of implementation planning existed, but there would have been benefits in formalising an implementation strategy and monitoring progress against defined outcomes and timeframes.

28. The TAS Act and Regulations establish the basic framework for the organisation and operation of the TPB. The Board may establish committees, delegate some of its functions and powers, and authorise administrative support staff to assist. In late 2009 and early 2010, the Board established a stakeholder consultative committee, policy committees to provide guidance on developing board policies, and operational committees to make reviewable decisions.

29. Some non-reviewable registration and regulatory assurance powers were delegated to staff during 2010.²⁰ However, staff did not use these powers in the formative year as the Board considered it needed to develop policies and procedures, assess the training needs of staff and clarify the application of those powers under the new legislation.²¹ This approach had the potential to contribute to delays in processing registration applications, and the TPB received complaints from stakeholders about these delays.²²

Management Arrangements Supporting the Tax Practitioners Board (Chapter 3)

30. The TPB has established a governance framework that includes business planning, risk management and performance monitoring. The TPB 2011–13 Strategic Plan sets out strategies and activities for the upcoming year, but would benefit from the better alignment between high-level strategies and activities, and the inclusion of performance measures (performance indicators, service standards and targets) in all key business area plans. The TPB's Risk Management Policy and Framework was finalised in August 2011, and a six monthly review cycle of the risk register and associated treatment strategies has been instigated.

31. The TPB's Portfolio Budget Statements KPIs are activity measures without any associated performance targets and do not enable the TPB to determine the extent to which the program objective is being achieved. The TPB's three service standards for processing registrations, responding to enquiries, and resolving complaints were not reported against publicly until 2011–12, and then only for the registrations service standard. Formal internal reporting on performance occurs through the monthly Secretary's report to the Board and, since early 2012, monthly reports on the registrations and regulatory assurance functions. However, there has been no formal review of performance against the strategic plan or business area plans.

²⁰ Delegated powers included approving applications for registration in specific circumstances, and finalising low risk compliance cases.

²¹ In March 2010, the Board delegated some non-reviewable compliance powers and functions to the Secretary and staff but decided that staff would not exercise these delegated powers pending legal advice from the Australian Government Solicitor on the operation of the TAS Act. Also in March 2010, the Board delegated non-reviewable registration powers to the Secretary, and in June 2010 the Secretary authorised TPB staff to act in his name, subject to Board approval. TPB staff first exercised these powers in January 2011 for tax agent applications that met all requirements for registration, with different types of applications or renewals being progressively exercised from this date.

²² As the TPB did not record or report its registration processing times, or the decision-maker, for the first two years of operations, it was not possible to determine the reasons for the delays in registration processing. The TPB advised stakeholders via its website that it could take up to six months to process a new application.

32. The Memorandum of Understanding between the Board and the ATO states that the ATO will allocate an annual direct cost budget of \$13.534 million for each of the financial years 2010–11, 2011–12 and 2012–13 to cover direct employee and supplier costs (including legal costs). The Board can seek agreement from the ATO for an increase if it is unable to deliver its core operations, and the actual allocation to the TPB was revised upwards in 2010–11 to \$17.06 million and in 2011–12 to \$16.36 million for this reason.

33. The Board has ongoing concerns about its budget and ability to deliver on responsibilities under the TAS Act, but it has not conducted a budget review to determine its existing or future budgetary needs. It was only during the course of this audit that the TPB was made aware that the total amount of capital funding available was \$7.2 million. There would be benefits in the Board conducting an internal budget and expenditure review to better understand the costs of its various functions.

34. The TPB's general ICT infrastructure is provided and managed by the ATO, but the TPB's website, online registration capability and registration/case management system (iMIS) are supplied by a third party provider. Reviews commissioned by the TPB (and the ANAO's testing) of its external ICT support arrangements identified the lack of some security, system and business continuity documentation. In November 2012, the TPB finalised a request for tender to deliver a new ICT environment, and advised that its ICT governance framework, and associated policy and procedural documents, will be completed once the new provider was established. Data quality is also problematic for the TPB in terms of analysing registration and regulatory assurance data and for management reporting and decision-making. Data quality will potentially be improved through ongoing system enhancements and the redesign of online application forms for registration.

35. The TPB's stakeholder engagement strategy includes a stakeholder consultative forum, website and information and guidance material. At the time of the audit, the TPB did not have a client service charter. The inaugural Board advised that, because it needed to give attention to other priorities, this would be for the new Board to progress. Stakeholder feedback received by the ANAO was positive about the TPB's stakeholder consultation and communication methods. Complaints about the website were addressed by the TPB with the launch of a new version in September 2012. A large range of information is on the TPB website that includes the Board's position on key aspects of the TAS Act, general guidance, and instructions on how to register as a tax practitioner. Additionally, during the course of this audit a system for

the online recording and reporting of complaints against the TPB was established.

Registrations (Chapter 4)

36. The TAS Act requires the Board to register tax practitioners if satisfied that an entity meets certain registration requirements. This includes a fit and proper person test²³, and prescribed qualifications and experience requirements. Developing the registrations function was a priority for the Board, and it consulted on and implemented policies for minimum registration criteria (qualifications, membership of recognised professional associations, and eligible experience) for both tax and BAS agents. In particular, the Board has invested considerable effort in determining the educational requirements for these agents. It is also working with the Treasury to prepare policies for the upcoming registration of financial advisors.²⁴

37. The TPB has processes and procedures in place to accept registration applications, and has been developing procedures for staff to follow in each aspect of the registration process. Of 21 procedures covering important functions for processing applications, seven were still in draft form as at 31 January 2013.²⁵

38. Transitional arrangements in the TAS Act allow for different types of applications to be made at particular times. Consequently, there have been substantial peaks in the registrations workload. These included 8280 legacy applications on hand at the time of transition from the state boards, 11 500 'triennial' registrations of those agents registered prior to 1988, and 12 094 BAS agent 'notifiers'.²⁶ This created challenges in making adequate resources available at peak times, and in planning for future workloads. In February 2012, there was another peak of over 12 000 applications received, but by January 2013 the applications on hand had reduced to around 2000.

²³ Part 2 Division 20 of the TAS Act (ss 20–15 and 20–45), specifies that the individual must be of good fame, integrity and character, and not have been convicted of a serious taxation offence during the previous five years or is not under a sentence of imprisonment for a serious taxation offence.

²⁴ The TPB is planning for the regulation from 1 July 2013 of financial advisers who provide tax advice, with transitional registration arrangements including an extended notification phase, to manage anticipated workload increases.

²⁵ Procedures still unapproved included those for new tax agent applications (both for individuals and partnerships/companies).

²⁶ Eligible BAS service providers were taken to be registered under the TAS Act if they notified the TPB by 31 August 2010.

39. Stakeholders expressed concerns about delays in processing, both to the TPB and during ANAO consultations. These concerns related to the design and efficiency of the registration process, as well as the need for better communication from the TPB about the causes of delays and the status of practitioners' applications. The Board acknowledged these delays and introduced changes to the registration process such as improved online forms and particularly from the beginning of 2012, streamlined processing. These initiatives were successful in reducing the time taken to process an application and the number of applications on hand.

40. Service standards for processing registration applications are: process complete and accurate new applications and notify applicants within one month; and process complete renewal applications and notify applicants within three months. In 2011–12, 51.4 per cent of new applications were finalised within 30 days, and 58.3 per cent of renewals within 90 days.²⁷ The TPB has a goal to improve this performance to 80 per cent of valid new applications processed within 30 days by 1 March 2013. The TPB advised that as at January 2013, 73 per cent of valid new applications were being processed within 30 days.

41. The TPB has a draft quality assurance framework for the registration function, and in January to March 2012 conducted a review using the process.²⁸ The TPB advised that, as at January 2013, no other quality assurance reviews have been undertaken as neither time nor resources were available. As resourcing is a limiting factor to the conduct of quality assurance reviews, the TPB could consider these reviews at six monthly intervals rather than every two months as currently proposed.

42. The ANAO examined 306 records for registration in the iMIS system.²⁹ Results of this testing confirmed there are issues with the quality and consistency of data. For example, documentation from applicants in support of claims for eligibility (such as educational qualifications or proof of voting membership of a professional association) was inconsistently labelled, attached in emails which were not logically titled, stored in different locations within the record, or not attached.

²⁷ A practitioner applying to renew their registration remains registered until the TPB determines their application.

²⁸ Of the 41 cases tested: three did not properly document all actions taken; five had errors in recording practitioner details and the outcomes of cases; and in 11 cases there was a failure to contact the practitioner in a timely manner.

²⁹ The applications spanned the date range 30 November 2009 to 24 October 2012.

Developing the Regulatory Assurance Function (Chapter 5)

43. A key objective of the new regime is to provide assurance that tax practitioners meet appropriate standards of professional and ethical conduct. The new principles-based statutory Code and other provisions of the TAS Act establish the standards tax practitioners are to meet. The inaugural Board advised the ANAO that the regulatory assurance function is still being refined and key elements developed.

44. In the period to June 2011, the Board worked with industry to develop policies relating to the new regulatory regime, including publishing detailed information on the application of the Code to tax practitioners. The Board also began to provide training and disseminate compliance framework documents for Regulatory Assurance staff. In December 2011, an internal audit requested by the Board concluded that the regulatory assurance function was not working well as staff were unfamiliar with the new legislation and needed skills development, a compliance framework and consistent procedural documents.

45. In response, the TPB progressively developed additional compliance framework documents (the Compliance Model, Compliance Strategy and Compliance Roadmap) to provide the policy framework for compliance activities, including a Risk Assessment Guide (that provides instruction on allocating a low, medium or high risk rating to complaints received). Many of the objectives, risks, activities and service standards do not align between the framework documents, or the Regulatory Assurance Business Plan. Additionally, the risks identified in the Risk Assessment Guide do not align with the relevant compliance risks in the TPB's corporate-level risk register. There would be benefit in simplifying and better coordinating these documents.

46. In March 2012, an internal audit found that procedural documentation was in place for all key regulatory assurance activities but that none of the procedures had been reviewed and approved by the Board. In late 2012, key procedural documents were approved for activities such as conducting initial complaints assessment, preliminary enquiries, and procedures for referring cases to the Board Conduct Committee. However, as at 31 January 2013, important procedures for conducting investigations still had not been finalised and approved.

47. The TPB receives complaints against registered and unregistered tax practitioners from members of the public and registered tax practitioners, and

referrals from other entities. The TPB actions all complaints, and there were in excess of 5090 complaints against tax practitioners and other work items actioned by the TPB between March 2010 and January 2013. In:

- 2011–12, there were 1293 complaints received, resulting in 781 cases being created, and 725 cases finalised; and
- 2012–13 (up to January 2013), there were 1356 complaints received, resulting in 997 cases being created and 825 cases finalised.

48. Prior to 2012–13, externally generated complaints formed the majority (93 per cent) of compliance cases that were conducted. In 2012–13, the TPB began generating more cases using its own internal processes, with 30 per cent of cases coming from internal sources. Many of these cases have been generated from the targeted compliance initiatives that align with three major areas of risk in its Compliance Strategy: civil penalties; professional indemnity insurance; and agent's personal tax obligations.

49. The TPB's targeted compliance initiatives are seen as an important aspect of developing its compliance intelligence capability. The development of external data sources and analysing the results of compliance activities and recent initiatives will be important early steps in this process.

50. The TPB has process controls for the individual phases of compliance cases, but no quality assurance framework. Three case management ICT systems have been progressively used, the current being iMIS. The ANAO examined a sample of 296 (22 per cent) of finalised preliminary enquiry cases.³⁰ There are significant difficulties in saving documents in iMIS, and consequently documents have been stored on a combination of paper files, in legacy case systems, in iMIS and in TPB computer share drives. The ANAO found that 15 per cent of cases did not have a completed profiling document, 19 per cent of cases did not have a completed risk assessment, and 14 per cent of cases did not have a finalisation submission. The ANAO's assessment of finalisation letters to complainants and tax practitioners found that case outcomes were clearly communicated in only 58 per cent of cases. The TPB reviewed its finalisation letters following feedback from the Commonwealth

³⁰ A preliminary enquiry gathers information and evidence to determine whether a complaint warrants an investigation. Cases tested spanned the period 1 March 2010 to 15 October 2012 and were selected to represent all three case management systems.

Ombudsman in 2011–12, and improved letters have been in use since August 2012.

51. The ANAO also examined the 33 investigations conducted between March 2010 and August 2012. Of these, two cases did not have a case finalisation submission, and six cases did not record the Board Conduct Committee's decision regarding the case. Record keeping for regulatory assurance cases has improved over time, particularly in 2012, mirroring improvements to the ICT environment and staff training. The TPB has advised that a document storage solution will be part of the new ICT environment being delivered in 2013.

Summary of responses to the proposed report

52. The TPB and the ATO provided the following summary responses.

Tax Practitioners Board

53. The TPB provided the following summary response, with the formal response at Appendix 1:

The Tax Practitioners Board (TPB) welcomes this, its inaugural ANAO review and considers the report generally supportive of the effectiveness of the TPB's implementation and administration to date of the regulatory arrangements for tax practitioners under the *Tax Agent Services Act 2009*.

The TPB also appreciates the recognition by the ANAO of the evolving nature of the TPB as a government regulatory authority.

Since commencement on 1 March 2010, the TPB has established a national regulatory framework and registration system and achieved a strong awareness in the tax profession of the new regime.

The TPB agrees with the three recommendations contained in the review.

The TPB recognises that the TPB's Portfolio Budget Statements key performance indicators are currently without associated performance targets and hence do not readily enable the measurement of effectiveness of its programs. The TPB has begun to address this matter and expects to include performance targets in the TPB's Portfolio Budget Statements for the 2013/14 financial year.

It is acknowledged that the TPB's current compliance framework documents need revision with a view to consolidating and streamlining content contained therein. The TPB expects these documents will be reviewed in May 2013 and updated in readiness for the commencement of the 2013/14 financial year.

The TPB also recognises that to improve the TPB's regulatory assurance capability, a compliance intelligence capability which collects external data and analyses results of compliance activities undertaken would benefit planning for future activities. In the last 12 months the TPB has redeveloped its compliance system to better capture the outcomes of compliance cases and also commenced gathering relevant external data. The TPB expects its compliance intelligence capability to be fully functional in the 2013/14 financial year.

The TPB is committed to continuous improvement and recognises the review highlights several opportunities to strengthen and further improve the management of the program and enhance our decision making processes.

Australian Taxation Office

54. The ATO provided the following summary response, with the formal response at Appendix 1:

We note the three recommendations directed to the Tax Practitioners Board.

55. The ANAO also provided all or part of the proposed report to other parties whom it was determined had a special interest in the report. Comments received from these parties are also required to be included in full in the report and are set out in Appendix 2. The comments of these parties cover a wide range of issues and perspectives and were considered by the ANAO in finalising this audit report.

Recommendations

Recommendation No. 1

Para 3.66

To better measure and report the performance of the Tax Practitioners Board (TPB), the ANAO recommends that the TPB:

- (a) develops key performance indicators (KPIs) for the Portfolio Budget Statements that allow for the assessment of the TPB objective; and
- (b) reports performance against KPIs and service standards through reports to the Board as well as externally through the Annual Report.

TPB response: *Agreed*

ATO response: *Noted*

Recommendation No. 2

Para 5.59

To provide a consistent compliance framework, the ANAO recommends that the Tax Practitioners Board:

- (a) aligns compliance risks outlined in the compliance framework documents with those in the corporate risk register; and
- (b) reviews compliance framework documents with a view to consolidating and streamlining their content.

TPB response: *Agreed*

ATO response: *Noted*

Recommendation No. 3

Para 5.64

To improve the regulatory assurance function of the Tax Practitioners Board (TPB), the ANAO recommends that the TPB:

- (a) develops a compliance intelligence capability that considers information collected from appropriate external data sources; and
- (b) analyses the results of compliance activities and initiatives, and incorporates this analysis into the planning of future compliance activities.

TPB response: *Agreed*

ATO response: *Noted*

Audit Findings

1. Background and Context

This chapter provides the background and context for the audit, including an overview of the regulatory environment for tax practitioners and the structure and functions of the Tax Practitioners Board. The audit objective is also outlined.

Introduction

1.1 In 1986–87 the Government introduced self-assessment for personal income tax and in 1989–90 for company and superannuation fund returns. Previously, taxpayers could submit documentation with their returns and the Australian Taxation Office (ATO) would calculate the tax payable.³¹ Under self-assessment, taxpayers are required to interpret tax law correctly, to calculate their taxable income. Given the risks associated with incorrect interpretations and changes to the tax system, taxpayers are now placing greater reliance on tax practitioners.³² In 1980, prior to the move to self-assessment, approximately 20 per cent of individuals used tax practitioners to lodge their tax returns.³³ In 2011–12, tax practitioners lodged over 70 per cent of individual income tax returns and over 90 per cent of business tax returns.³⁴ The importance of consumer confidence in tax practitioners has subsequently increased.

1.2 The regulation of tax practitioners has recently undergone significant change. On 1 March 2010, the *Tax Agent Services Act 2009* (the TAS Act) established a new national regulatory regime for tax practitioners. The TAS Act established the Tax Practitioners Board, which is an independent statutory authority that is responsible for the general administration of the TAS Act.³⁵

1.3 The objectives of the new regime are to provide consumer protection and assurance that practitioners are meeting appropriate standards of competence, and professional and ethical conduct. The regime: applies to a broader range of service providers than in the past; introduced a Code of

³¹ Department of the Treasury, *Report on Aspects of Income Tax Self Assessment*, 2004, paragraph 1.2, <http://selfassessment.treasury.gov.au/content/report/final_report-01.asp> [Accessed 30 January 2013].

³² M D'Ascenzo, Second Commissioner of Taxation, *Relationships between Tax Administrations and Tax Agents/Taxpayers* (speech), November 2005, <<http://www.ato.gov.au/corporate/content.aspx?doc=/content/66215.htm>> [Accessed 26 February 2013].

³³ Explanatory Memorandum, Tax Agent Services Bill 2008, p. 124.

³⁴ Australian Taxation Office, *Compliance Program 2012–13*, ATO, Canberra, 2012, p. 12.

³⁵ A statutory authority is set up by law and is authorised to enforce legislation on behalf of the Commonwealth.

Professional Conduct (the Code) to govern tax practitioners; provided for imposition of administrative sanctions; and replaced criminal penalties for certain misconduct by practitioners and unregistered entities with civil penalties and injunctions.

Tax practitioners in Australia

1.4 In 2009–10 there were around 26 000 tax agents registered under the previous regulatory regime and around 12 000 nominees.³⁶ Registration under the new regime applies to professionals who provide tax agent services for a fee. These are known as tax practitioners, and are differentiated between two types: tax agents, who can provide a full range of services related to an entity's tax affairs; and Business Activity Statement (BAS) agents³⁷, who can only provide services related to an entity's BAS. In 2011–12 there were up to 52 000 registered tax practitioners, made up of 38 000 tax agents and 14 000 BAS agents.³⁸ These figures are not mutually exclusive, as one practitioner can register as both a tax agent and a BAS agent, and registrations include individuals, partnerships and companies. Partnerships and companies can register if they meet requirements such as having a sufficient number of registered practitioners to provide competent services, and the fitness and propriety of their partners and directors.

1.5 There are also a number of professional associations that represent tax practitioners in Australia.³⁹ Around 50 per cent of registered tax practitioners are members of a professional association.⁴⁰ Fourteen of these associations are recognised by the Tax Practitioners Board, which enables an applicant to use 'voting membership' of that association to meet a criterion for their registration application.⁴¹

³⁶ A registered agent could nominate a partner or employee to sign income tax returns and provide supervision to staff on the tax agent's behalf. The concept of 'nominee' ceased to apply as registered nominees were themselves taken to be registered tax agents within the meaning of the TAS Act.

³⁷ Business Activity Statements are used by businesses to report various tax obligations and entitlements to the ATO, and by individuals who are required to pay quarterly 'pay as you go' instalments.

³⁸ TPB, *Annual Report 2011–12*, Canberra, 2012, p. ii.

³⁹ These associations represent tax agents, BAS agents, and bookkeepers, as well as law and accounting organisations.

⁴⁰ TPB, *Annual Report 2010–11*, Canberra, 2011, p. 13.

⁴¹ The TPB advised that only four per cent of BAS agents and six per cent of tax agents had registered using this criterion.

The history of tax practitioner regulation

1.6 Prior to 2010, six independent statutory bodies—the state Tax Agents’ Boards (state boards)—were responsible for administering the registration of tax agents. Tax agents resident in the Australian Capital Territory were registered with the New South Wales Tax Agents’ Board, and those in the Northern Territory with the South Australian Board. Each state board was administered by the Commissioner of Taxation and had an appointed secretary, responsible for providing administrative support to the board. The secretary and secretariat staff of each board were ATO officers, but undertook work at the direction of the board.⁴² The state boards were resourced individually (but each to the same level, regardless of workloads) by the ATO through its annual appropriations. Although the state boards administered a national framework of tax agent regulation, each had their own rules and procedures and made decisions independently of each other.⁴³ The ATO was responsible for the identification of unregistered tax return preparers and any subsequent action against them for non-compliance.

1.7 Commonwealth administered state boards were first introduced in 1943 when the *Income Tax Assessment Act 1936* (ITAA)⁴⁴ was amended to mandate a registration system for entities providing tax agent services for a fee. Registration was considered necessary for consumer protection⁴⁵, a rationale that remains relevant today. The state boards remained in place for more than 60 years.

1.8 In 1992, a national review of standards for the tax profession was undertaken by a working group comprising tax professionals, the NSW State Tax Board, the Attorney-General’s Department and the ATO. The need for a new legislative framework was identified in the subsequent report, *Tax Services for the Public: The Report of the National Review of Standards for the Tax Profession*, issued in 1994.⁴⁶ A number of improvements to tax agents’ regulation were recommended, including streamlined registration processes, the establishment

⁴² Australian National Audit Office Audit Report No. 30 2006–07, *The Australian Taxation Office’s Management of its Relationship with Tax Practitioners: Follow-up Audit*, p. 31.

⁴³ Explanatory Memorandum, Tax Agent Services Bill 2008, p. 134.

⁴⁴ Part VIIA of the ITAA and Part 9 of the Income Tax Regulations 1936 (as amended).

⁴⁵ Explanatory Memorandum, Tax Agent Services Bill 2008, p. 123.

⁴⁶ Department of Parliamentary Services, Tax Agent Services Bill 2008, Bills Digest, No. 64 of 2008–09, 26 November 2008, pp. 7–8.

of a national tax administration board and clearer definition of the standards of conduct required of tax agents. The new regulatory regime was initially to commence on 1 July 1999; however, its introduction was deferred at the request of the tax profession to allow tax agents to prepare for the reforms introduced by *A New Tax System* from 1 July 2000.⁴⁷

1.9 The Department of the Treasury (Treasury), as the department responsible for all taxation policy matters, progressed the proposal for a new regulatory regime from 2002.⁴⁸ The Treasury's public consultation on the regime was extensive, including direct consultation with tax practitioner professional associations, government departments and taxpayers, and four public releases of exposure drafts of legislative packages between 2007 to 2009.⁴⁹

1.10 In the 2006 Budget, the Government provided \$57.5 million to the ATO over four years, commencing in 2006–07, for the implementation of the new 'Tax Practitioner Legislative Framework' – which was to become the TAS Act.

Current regulatory arrangements

1.11 The new regulatory regime was given effect by the TAS Act, the Tax Agent Services Regulations 2009 (TAS Regulations), and the *Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009*.⁵⁰ The TAS Act received Royal Assent on 26 March 2009, although most sections did not take full effect until 1 March 2010.⁵¹ As previously noted, the compliance regime established by the TAS Act is also different from that in place previously, in particular, the introduction of a Code of Professional Conduct, administrative sanctions, civil penalties and injunctions.

⁴⁷ Explanatory Memorandum, Tax Agent Services Bill 2008, p. 8.

⁴⁸ Treasury provides advice and assists in the formulation and implementation of government taxation policies and legislation. Explanatory Memorandum, Tax Agent Services Bill 2008, p. 8.

⁴⁹ Explanatory Memorandum, Tax Agent Services Bill 2008, p. 140; and <<http://archive.treasury.gov.au/content/consultations.asp?ContentID=1013&titl=Reviews,%20Inquiries%20%26%20Consultations>> [Accessed 28 September 2012].

⁵⁰ Among other things, the *Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009* amended the *Tax Administration Act 1953* to introduce two 'safe harbour' provisions, under which taxpayers may be exempt from certain penalties where their tax practitioner has been careless by making a false and misleading statement, or lodging their return late. The safe harbour provisions are administered by the Commissioner of Taxation, and were not specifically considered in the scope of this audit.

⁵¹ Only the provisions relating to the establishment of the Board commenced on the day on which the Bill received Royal Assent. Explanatory Memorandum, Tax Agent Services Bill 2008, p. 3.

Code of Professional Conduct

1.12 The Code of Professional Conduct (the Code) establishes mandatory requirements for the professional and ethical conduct of registered tax practitioners, including the duties such practitioners owe to their clients and the regulator. It is aimed at setting out the appropriate ethical and professional standards expected of all tax practitioners, including those that are not members of a professional association. The legal obligations of the Code are in addition to any professional and ethical requirements that may be imposed on registered tax practitioners through their membership of a professional body.

Administrative sanctions, civil penalties and injunctions

1.13 The TAS Act prescribes a graduated range of administrative sanctions for breaches of the Code including: a written caution; an order that requires a tax practitioner to undertake one or more actions (such as completing a course of education); and suspension or termination of a practitioner's registration.

1.14 Applications may also be made to the Federal Court of Australia for an order for a civil penalty or an injunction for serious misconduct (such as an entity providing tax agent services while unregistered).⁵² While the Code applies only to registered tax practitioners, the civil penalty provisions also apply to unregistered tax practitioners.

The Tax Practitioners Board

1.15 Under the TAS Act, the appointed members of the Board are responsible for making decisions that relate to statutory functions. These appointed members are supported by a Secretary and administrative staff. For operational purposes, the appointed members are referred to as 'the Board' and collectively, the Board and supporting staff are known as the Tax Practitioners Board (TPB).

1.16 The members of the Board are appointed by the Assistant Treasurer. In November 2009, the inaugural Board began its three-year term and consisted of 10 part-time members and a full-time chair.⁵³ The term of this Board was

⁵² A civil penalty is a financial penalty imposed by courts exercising a civil rather than criminal jurisdiction. Unlike criminal penalties, civil penalties do not include criminal convictions or imprisonment.

⁵³ Board members were appointed in late October 2009, and the Chair was appointed on 2 November 2009. At the end of its term, the inaugural Board consisted of eight part-time members and the full-time Chair following the resignation of three members and the appointment of one additional member during the period.

subsequently extended from October 2012 to January 2013, when a new Board was appointed for a term of three years. The new Board consists of eight part-time members and a part-time chair. Five board members were reappointed.

1.17 Under arrangements consistent with the TAS Act, the ATO provides administrative support to the Board including accommodation, payroll and support staff. At 30 June 2012, there were 136 ATO staff supporting the Board, located in Brisbane, Canberra, Melbourne and Sydney.⁵⁴ The annual budget allocation for the operations of the TPB was \$16.36 million in 2011–12, and \$15.95 million in 2012–13.⁵⁵

1.18 Key statutory functions are to: administer a single national system for the registration of tax practitioners; assess applications for registration; and investigate and impose sanctions for breaches of the Code where necessary. In addition, the Board may issue binding written guidelines for the interpretation and application of topics such as the Code.⁵⁶ The Board may also issue non-binding explanatory information on its position on key aspects of the legislation.⁵⁷ Under the TAS Act, the Board is able to delegate some of its regulatory powers and functions, but there are limits to what functions it can delegate and to whom it can delegate.⁵⁸

1.19 The TPB works with stakeholders, including tax practitioners, professional associations, other industry and government bodies and the general public, to promote compliance with the Code, registration requirements, and the TAS Act generally.

⁵⁴ TPB, *Annual Report 2011–12*, Canberra, 2012, p. 63.

⁵⁵ Overhead related expenses such as corporate support (for example, payroll, procurement and accommodation) are not included in these totals, as these costs are incurred by the ATO.

⁵⁶ These guidelines become legislative instruments once tabled in both houses of the Australian Parliament.

⁵⁷ Examples of topics on which the TPB has provided explanatory information are: fitness and propriety; educational requirements for registration; and professional indemnity insurance.

⁵⁸ For example, the Board cannot delegate the power to issue guidelines, but can delegate the power to make a decision reviewable by the Administrative Appeals Tribunal, but only to a committee of at least three members, all of which are Board members.

1.20 In 2011–12, the TPB:

- received 22 366 applications for registration, and finalised 18 786 applications⁵⁹;
- received 1293 complaints and referrals against registered and unregistered practitioners; and
- finalised 725 compliance cases.⁶⁰

1.21 For the 2011–12 compliance cases where the Board made a formal determination under the TAS Act, seven registrations were terminated, and three written cautions and one order were issued. In 2011–12, the Board applied to the Federal Court of Australia for a civil penalty order in four cases of allegedly operating as unregistered practitioners, with all cases subsequently being concluded in the Board’s favour.

Relationship between the Tax Practitioners Board and the ATO

1.22 The TPB has a close relationship with the ATO as both interact with tax practitioners, and it also receives administrative and financial support from the ATO. The Board is an independent statutory authority, however, for the purposes of the *Financial Management and Accountability Act 1997* (FMA Act) the TPB is considered to be part of the ATO.⁶¹ Arrangements for administrative support for the Board are set out in section 60–80 of the TAS Act and in Part 4 of the TAS Regulations and funding is agreed between the Commissioner of Taxation and the Board.⁶² The administrative support provided by the ATO includes general corporate support such as accommodation, payroll and human resource services, as well as more specific support such as assistance with data matching.⁶³

⁵⁹ 18 037 applications were approved, 88 applications were rejected, and 661 applications were withdrawn by the applicants.

⁶⁰ A compliance case may involve more than one complaint, and may be started or finalised in the year(s) after it was received.

⁶¹ Schedule 1 of the Financial Management and Accountability Amendment Regulation 2012 (No. 1) amended the Financial Management and Accountability Regulations 1997 to include the TPB as part of the ATO.

⁶² Part 4 of the TAS Regulations specifies the provision of an ATO employee to be the Secretary to the Board, and ATO staff to give administrative assistance to the Board.

⁶³ Data matching is the comparison of data held by the ATO and data obtained from others sources that can enable the detection of potential non-compliance.

1.23 Within the ATO, primary responsibility for tax practitioners and liaison with the TPB rests with the Tax Practitioner and Lodgement Strategy Business Line. Broadly, the ATO:

- provides support to tax practitioners such as online portals, information services and interpretative advice;
- consults with tax practitioners and professional associations; and
- undertakes compliance activities (primarily under the ITAA) to ensure a level playing field for tax practitioners and the community.⁶⁴

1.24 Tax practitioner registrations are a key interaction point between the ATO and the TPB. The TPB shares information with the ATO on registered and unregistered tax practitioners to enable the ATO to perform its functions. In turn, the ATO identifies and refers potential cases of tax practitioner misconduct to the TPB for investigation, and provides information to assist with TPB investigations.

Audit objective, criteria, and scope

1.25 The objective of the audit was to assess the effectiveness of the Tax Practitioners Board's implementation and administration of the regulatory arrangements for tax practitioners under the *Tax Agent Services Act 2009*.

1.26 The audit examined whether:

- management and governance arrangements for the TPB are in place and support the effective implementation and administration of the TAS Act;
- arrangements for tax practitioner registration by the TPB have been established, meet legislative requirements and operate effectively; and
- the TPB's regulatory assurance activities are appropriate and effective.

1.27 The Explanatory Memorandum to the TAS Bill notes that the Government may conduct a post-implementation review of the TAS Act and the TPB during 2013.⁶⁵ For this reason, the audit excluded matters that are likely to be included in such a review, including the operation of the

⁶⁴ Australian Taxation Office, *Compliance Program 2012–13*, ATO, Canberra, 2012, p. 10.

⁶⁵ Explanatory Memorandum, Tax Agent Services Bill 2008, pp. 97 and 143.

legislation, and consideration of the appropriateness of the ATO’s administrative support.

Methodology

1.28 The Australian National Audit Office (ANAO) examined documentation and interviewed Board members and TPB staff, ATO staff and representatives of the various tax professional associations. The systems and processes that the TPB uses to administer the registration and regulation of tax practitioners were also reviewed, including a detailed examination of a sample of registration and compliance cases.

1.29 The audit has been conducted in accordance with the ANAO’s auditing standards at a cost of approximately \$518 000.

Acknowledgements

1.30 The ANAO appreciates the contribution and support of the Board members and staff of the TPB and staff of the ATO, as well as external stakeholders who provided information and feedback during the conduct of the audit.

Report structure

1.31 Table 1.1 outlines the structure of the report.

Table 1.1

Report structure

Chapter		Chapter overview
2.	Implementation of the Tax Practitioners Board	Examines the implementation of the new regulatory regime for tax practitioners, including the establishment of the TPB. It sets out information on the policy and legislative framework, and the ATO’s role in managing the transition to the new arrangements.
3.	Management Arrangements Supporting the Tax Practitioners Board	Examines the management and governance arrangements supporting the operation of the TPB.
4.	Registrations	Examines the TPB’s processes and procedures for registering tax practitioners.
5.	Regulatory Assurance	Examines the TPB’s development of its regulatory assurance function and the implementation of the new regulatory regime.

2. Implementation of the Tax Practitioners Board

This chapter examines the implementation of the new regulatory regime for tax practitioners, including the establishment of the Tax Practitioners Board. It sets out information on the policy and legislative framework, and the Australian Taxation Office's role in managing the transition to the new arrangements.

Introduction

2.1 The TAS Act specified that the new regulatory arrangements for tax practitioners would commence on 1 January 2010. At industry's request, the date of commencement of the regime was delayed to 1 March 2010⁶⁶, to provide more time for industry to prepare for the new regulatory approach.⁶⁷

2.2 The Board was formally constituted in early November 2009, with the appointment of the chair and board members.⁶⁸ The appointees included registered tax practitioners, representatives of the bookkeeping industry, members of previous state boards, tax academics and legal professionals. The Treasury advised the ANAO that the appointment of a full-time chair to the new Board reflected the level of work to be undertaken by the chair, particularly leading up to and immediately following the commencement of the new regulatory regime.

2.3 The ANAO reviewed the transition to the new regulatory regime, with particular emphasis being given to the:

- policy and legislative base established by the Treasury;
- preparations, including resource allocations, made by the ATO for the transition to the new regulatory arrangements through the 'Tax Practitioner Legislative Framework' Budget Measure; and

⁶⁶ The date was set by a proclamation to the TAS Act, made on 25 November 2009 on the authority of the Assistant Treasurer.

⁶⁷ Senator the Hon. Nick Sherry, Assistant Treasurer, Media Release No. 96, *Historic Tax Agent Reforms to Start on March 1*, 26 November 2009.

⁶⁸ The Assistant Treasurer is responsible for Board appointments in accordance with the Government's process for the selection of statutory office holders. The TAS Act provides for a minimum of seven Board members, the Chair and at least six others, but does not cap the maximum number of members. Board members may be appointed on a full-time or part-time basis.

- organisational model and priorities adopted by the Board in establishing the new regulatory regime.

Policy development and legislation

2.4 The development of a new regulatory regime for tax practitioners began in 2001, when the ATO formed a Regulatory Framework Working Group to its National Tax Liaison Group.⁶⁹ In 2002, policy responsibility for the design of taxation law and regulation shifted to the Treasury, and with it responsibility for policy regarding tax practitioners. From then until 2005, the ATO and the Treasury collaborated to implement the new regulatory regime. In 2005, the ATO put forward to government a new policy proposal costing paper for the work required to prepare for the new regime. This incorporated preparatory work for the new TPB to begin operating, as well as necessary changes to ATO systems and processes to enable compatibility with the new regime. In the May 2006 Budget, the Government allocated \$57.5 million to the ATO over four years, for the implementation of the Tax Practitioner Legislative Framework.

2.5 The Treasury continued to work on the policy and legislative aspects of the new regime. It undertook confidential and public consultation with representatives of: the tax, accounting, bookkeeping and legal professions; community organisations; government agencies (including the ATO); and the state boards and taxpayers.⁷⁰ During the legislation's development, the Treasury conducted four public consultations, outlined in Table 2.1.⁷¹

⁶⁹ The National Tax Liaison Group is the ATO's peak consultative forum with tax professional associations. The terms of reference and minutes are publically available on the ATO's website.

⁷⁰ Explanatory Memorandum, Tax Agent Services Bill 2008, p. 140.

⁷¹ Three further public consultations were conducted after the introduction of the TAS Act. On 9 July 2010, Treasury released an exposure draft on the Tax Agent Services Amendment Regulations and on 29 November 2010, an options paper on the regulation of tax agent services provided by financial planners. On 8 February 2013, Treasury released an exposure draft of proposed TAS Act legislative amendments related to financial advisors, and other matters.

Table 2.1**Public consultations conducted during development of the legislation**

Date	Exposure draft
7 May 2007	Tax agent services bill, related regulations and explanatory material
29 May 2008	Revised exposure draft of the tax agent services bill, consequential and transitional provisions, regulations, and explanatory material
12 February 2009	Exposure draft of the tax agent services (transitional provisions and consequential amendments) bill and explanatory material
2 August 2009	Exposure draft of the TAS Regulations and explanatory statement

Source: Consultations conducted by the Treasury, available at <http://archive.treasury.gov.au/content/consultations.asp?ContentID=1013&titl=Consultations> [Accessed 11 October 2012].

2.6 The Treasury received 114 submissions to the first public consultation in May 2007 and amended the draft legislation in response to these submissions. This included enhancing the independence of the TPB from the ATO by proposing the legislation be standalone rather than part of the *Taxation Administration Act 1953*, and modifying the definitions for whom the new regime would apply.⁷² A revised exposure draft was released in May 2008, resulting in minor amendments such as wording of the Code and definitions. The TAS Act was introduced into Parliament on 13 November 2008, and received Royal Assent on 26 March 2009. The TAS Regulations, which contain more specific rules for the administration of the TAS Act, received Royal Assent on 12 November 2009.

Tax Practitioners Legislative Framework Budget Measure

2.7 The 2006–07 Budget Paper described the \$57.5 million appropriation to the ATO as being for:

... the implementation of a new Tax Practitioners Legislative Framework to ensure nationally consistent, high quality and accessible tax practitioner services to the community.⁷³

2.8 Over time, the proposal was expected to provide benefits to the ATO's core activities in terms of: more accurate returns from taxpayers; a reduction in general enquiries; a greater take up of electronic reporting options; and scope

⁷² The Hon. Chris Bowen MP, Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, Media Release No. 39, *Government Releases Draft Legislation for Tax Agent Services Regime*, 29 May 2008.

⁷³ Australian Government, Budget 2006–07, *Budget Paper No. 2, Part 2: Expense Measures: Treasury*, p. 330.

to reduce audit activity. The appropriation included \$7.2 million in capital funding for information and communication technology (ICT) infrastructure.

2.9 The ATO's high-level deliverables were to:

- design the new TPB's administrative processes for registration and regulation, and the administrative support processes for the Board;
- design ATO processes and adjust some internal systems—such as extending to BAS agents the existing support provided to tax agents—to integrate with the new regime;
- develop and build ICT systems, including a website for the new TPB;
- manage and engage with stakeholders, including through tailored communications and educational information on the upcoming new regime; and
- contribute to the Treasury's policy and legislation design.

2.10 In 2005, when the ATO submitted the new policy proposal costing paper, it was assumed that the new regulatory arrangements could be given effect at the end of 2007. Funding was accordingly budgeted for salaries for the new Board's support staff from 2006–07 onwards. However, following the first public consultation in May 2007, the Treasury amended the draft legislation, and issued a revised exposure draft. This delayed the introduction of the legislation until March 2009.

2.11 The ATO's 2008 internal review of the Tax Practitioner Legislative Framework implementation measure stated that delays to the introduction of the legislation had caused difficulties in their ability to progress work under the measure. Activities that relied upon the final design of the legislation could not be progressed, and this had an adverse impact on the delivery of agreed outcomes within the agreed timeframes. Other activities, such as work to analyse the BAS agent population, were undertaken instead or brought forward in the schedule. This situation caused overspending in some areas of the budget but not of the overall budget. For example, for 2006–07 to 2008–09 the ATO estimated the total cumulative full time equivalent (FTE) for the period would be 418 FTE, but the actual was 257 FTE.

2.12 In July 2009, the ATO restructured its financial reporting to prepare for the commencement of the TPB, recording expenditure as if it were another business line within the ATO, with cost centres that reflected the organisational structure of the Board's administrative support areas. Table 2.2

provides the breakdown of the total budget across the four financial years from 2006–07 to 2009–10, and the actual expenditure reported by the ATO. The ATO later sought approval to use the underspend as supplementary funding for the TPB from 2010–11 through to 2012–13.

Table 2.2

Tax Practitioner Legislative Framework funding and expenditure

Expenditure type	Expenditure by year (\$m)				TOTAL
	2006–07	2007–08	2008–09	2009–10	
Budgeted direct funding	12.7	13.8	13.1	10.7	50.3
Actual direct funding	8.4	8.7	8.2	13.9	39.2
<i>Over/(under) spend</i>	<i>(4.3)</i>	<i>(5.1)</i>	<i>(4.9)</i>	3.2	<i>(11.1)</i>
Budgeted capital	1.3	3.3	2.6	0	7.2
Actual capital	0	0	0	0	0

Source: Australian Government, Budget 2006–07, *Budget Paper No. 2, Part 2: Expense Measures: Treasury*, p. 330; and information provided by the ATO.

Administrative support for the Tax Practitioners Board

2.13 An ATO Senior Executive Service Band 2 officer was assigned to lead the Tax Practitioner Legislative Framework implementation project in late May 2009. This officer's experience as the ATO representative on a state board assisted the transition from the state boards to the TPB. This officer was appointed as the Interim Secretary, and subsequently became the first Secretary appointed to the Board until April 2010.

2.14 The TAS Regulations broadly set out the arrangements for the ATO's provision of administrative assistance to the Board. The Commissioner of Taxation is responsible for determining the number of staff provided, taking into account the:

- resources the Board requires to perform its functions and exercise its powers under the TAS Act; and
- funding that has been allocated, as agreed between the Commissioner of Taxation and the Board, for the purpose of allowing the Board to perform its functions and exercise its powers under the TAS Act.⁷⁴

⁷⁴ Commonwealth of Australia, *Tax Agent Services Regulations 2009*, Part 4, 11(1)(c), p. 17.

2.15 In preparation for the appointment of the Board, in August 2009 the ATO transferred 131 staff to positions within the TPB. These staff consisted of:

- 52 staff who had previously conducted tax agent registrations, and 14 staff previously involved with providing legal advice in support of the state boards;
- 54 staff involved in tax agent compliance work transferred from the Tax Agent Integrity Unit of the Tax Practitioner and Lodgement Strategy Business Line, consistent with the new investigation and sanctions powers of the TPB; and
- 11 corporate and ICT support staff.

Funding for the Tax Practitioners Board

2.16 During the development of the TAS legislation, it was intended that funding for the TPB be via a special account, ensuring the requisite degree of financial independence from the ATO.⁷⁵ Subsequent advice from the Department of Finance and Deregulation in July 2009 was that the TPB could maintain operational independence, be appropriately funded, and report on its activities, by treating the TPB as a separate business line within the ATO.⁷⁶ Consequently, there is no special account or separate appropriation for the TPB, and funds are sourced from the ATO's departmental appropriations.

⁷⁵ Explanatory Memorandum, Tax Agent Services Bill 2008, p. 96.

⁷⁶ This advice is consistent with Department of Finance and Deregulation, *Guidelines for the Management of Special Accounts*, October 2003, p. 9, which does not recommend establishing a special account where this will be costly or inefficient to administer due to its small size.

2.17 An important issue addressed in early 2010 was the TPB's funding base. The Explanatory Memorandum to the TAS Bill noted that ongoing administrative costs for the TPB were estimated by the ATO to be at least \$14 million a year.⁷⁷ As the ATO does not receive a separate appropriation for the TPB's funds, any increases are sourced from the ATO's departmental appropriations. For the 2009–10 financial year, the Commissioner of Taxation and the Chair of the TPB agreed that \$14.5 million in direct funding would be provided, consisting of:

- \$5.9 million, reflecting the cost of administering the former state boards⁷⁸;
- \$8 million from the 2009–10 funding of the Tax Practitioner Legislative Framework measure⁷⁹; and
- \$600 000, being a proportion of the funding received by the ATO for the ATO Compliance Dividend measure for tax agent integrity investigations.

2.18 The use of the available equity funding was restricted to capital expenditure on ICT infrastructure. The ATO sought approval in 2010–11 to shift unspent equity from prior years into 2010–11 to 2012–13. Of the unspent \$7.2 million, approval was provided by the Department of Finance and Deregulation to move \$2.4 million into each of 2010–11, 2011–12 and 2012–13 to better align the funding with expected expenditure by the TPB.

Transition to the new national regime

2.19 Before the Board was appointed the ATO had undertaken preparation to enable its own processes and systems to integrate with the new regime. The key preparatory activities included: working with the Treasury on the legislation's design; researching BAS agent populations and designing a BAS agent portal; and designing referral processes for information transfer with the TPB.

2.20 The ATO had undertaken extensive consultation with the previous state boards to assist the development of administrative processes for the TPB.

⁷⁷ Explanatory Memorandum, Tax Agent Services Bill 2008, p. 136.

⁷⁸ This is the pro-rata amount from 1 October 2009 to 30 June 2010. The annual cost was \$7.9 million.

⁷⁹ This is the total direct funding of \$10.7 million, minus \$2.7 million that the ATO held for funding indirect costs of the TPB, such as property costs, ICT costs, and human resources management.

The ATO had also consulted with professional associations on transition between the old and new regimes, the topics of proposed fact sheets, and prepared 26 draft fact sheets and 'frequently asked questions' documents for tax and BAS agents.

2.21 Other work undertaken included:

- developing draft corporate documents for the TPB, such as a three-year strategic statement (including a business model), suggested organisational structure, a logo, letterhead, and style guides;
- developing business requirements for a TPB website and registration system (iMIS—discussed in Chapters 3, 4 and 5). The website became functional in October 2009, but the registration system was still being procured and configured, and no TPB email address was developed⁸⁰;
- engaging a consultant to conduct workforce planning, including: identifying and piloting work processes for complaints handling, registrations, regulatory assurance and legal processes; staff skill needs; and suggested corporate structures; and
- re-aligning the responsibilities of the 131 ATO staff into four streams (registrations, regulatory assurance, corporate and business systems, and legal). Staff remained in their previous physical locations.⁸¹

2.22 Some of the originally planned work was not completed. For example, the ATO was not able to provide the Board with a working model of the registration system. There were also aspects of the preparatory work (such as the draft fact sheets, TPB corporate documents and advice informing professional associations of the new requirements) that could not be completed until the Board was appointed. It was not considered appropriate for the ATO to complete all of the preparatory work, as the ATO was awaiting the appointment of the new Board for advice of (rather than to anticipate) the Board's preferred administrative arrangements.

⁸⁰ At the time of this audit, the TPB was still using an '@ato.gov.au' email address.

⁸¹ Staff were in 13 locations: Brisbane, New South Wales (Hurstville, Newcastle, Paramatta and Wollongong), Canberra, Victoria (Albury, Box Hill, Dandenong, Latrobe, and Moonee Ponds), Adelaide and Perth.

Establishment of the Tax Practitioners Board

2.23 Shortly after the formal constitution of the Board in early November 2009, the Chair wrote to Board members outlining the status of preparation for the commencement of operations. At this time, the Chair and the Secretary had been discussing among other things: accommodation for the TPB; the proposed budget; the procurement of the registration ICT system; provision of staff; an induction program for Board members; suggested operational models for the Board; delegations and Board committees; and a draft agenda for the first Board meeting.

2.24 On 8–9 December 2009 there was an induction program for all Board members and on 10 December 2009 the Board's inaugural meeting was held. The induction program and this meeting were the first opportunities the Board had to consider the transitional arrangements developed by the ATO, and priorities for implementing the new regime.

Board priorities in 2010

2.25 The Board's approach to implementation was informed by a review of tax practitioner regulatory settings in 2007, conducted by the Chair prior to his appointment to the Board, as well as a review of the ATO's Tax Agent Integrity Unit conducted in 2006. From these reviews, the Chair was aware of key implementation issues, and potential constraints in establishing the new regulatory regime. This view took into account the responsibility vested solely in the Board under the TAS Act for the regulation of tax practitioners. The Board also recognised the significant new dimensions of the legislation, including that it established a new national regime for regulation, brought new entities into the regime and created new educational requirements, and a civil penalties regime.

2.26 The Board focused on ensuring that it understood and communicated its responsibilities under the TAS Act, and the legal obligations on tax practitioners, so that the new regime would have full effect. The Board sought extensive legal advice on matters of interpretation to assist in clarifying its own responsibilities. Members of the Board advised the ANAO they considered this an investment for the long-term.

2.27 During the period between when the Board was established in November 2009 and the commencement of the new regime on 1 March 2010, the TPB prepared for its role of registering and regulating tax and BAS agents. At the Board's induction program, the Treasury gave a legislative overview

presentation outlining its view that, when the regime commenced, the majority of the TPB's resources would be devoted to transitioning previously registered entities to the new regulatory regime and processing new applications for registration. The Board advised the ANAO that this view underestimated the amount of preparation required to implement the new regime.

2.28 In view of the limited time available, the Board needed to decide its priorities. The Board advised that an important consideration was the representations it received from the industry sector, seeking clarification about the scope of the regime, and practicalities surrounding registration requirements. The key challenges the Board faced included:

- building on work done by the ATO in drafting stakeholder guidance material, to clarify aspects of the new regime;
- developing internal governance, and operational processes and procedures (including the development of ICT systems, registration processes and the regulatory assurance framework) to enable the Board to function effectively in its regulatory role;
- preparing to assess a significant number of applications (both new and renewals) expected to be received during the first six months of the operation of the regulatory provisions; and
- ensuring that it clearly communicated the changes between the old and new regimes to the industry sector.

2.29 The core issues for the Board were getting 'registrations right' and implementing the Code. The Board needed to: establish policies on entities eligible for registration; minimum eligibility criteria (including Board approved courses); and fit and proper person requirements. In this regard, the Board had a particular focus on determining requirements for BAS agents and specialist agents who were not included in the old regime. The Board also identified the need to develop policies for matters such as professional indemnity insurance and continuing professional education, recognising that there needed to be extensive consultation with industry.

2.30 On 8–9 December 2009, the Board set the following five main goals for the TPB's 2010 operations:

- deal with registrations efficiently and effectively at a national level;
- communicate and engage with key stakeholders, including the tax practitioner community, the Minister, and the public;

- ensure high standards for the tax practitioner profession, through appropriate coverage, accrediting associations, and assuring qualifications;
- design and implement a new compliance regime; and
- ensure newly-regulated groups, such as BAS agents and unregistered practitioners, are incorporated effectively into the regime.

2.31 In subsequent board meetings the Board discussed the work being undertaken to meet these priorities, and tracked its progress. The Board also engaged with professional associations, holding its first stakeholder consultative forum in January 2010, and then workshops with associations and practitioners in major capital cities. The Board consulted extensively with stakeholders on its position on key aspects of the TAS Act to inform its approach on the development of a range of explanatory material.

2.32 Seven major policies relating to registering and regulating tax practitioners were finalised by the end of 2010, and all had been through a process of exposure drafts with industry. These policies included requirements for: approved educational courses; professional indemnity insurance; fit and proper persons; and the application of the Code. The Board had also developed policies and released exposure drafts on educational requirements for BAS agents and course approval processes, as well as publishing a number of information products on the TPB's website.

2.33 The Board's approach to implementation demonstrated an awareness of the key issues relating to the new regulatory arrangements, and was responsive to representations received from stakeholder groups. Elements of implementation planning existed, but these were not integrated into a coordinated implementation plan. The benefit of such a plan is that it gives an understanding of the work needed to reach business-as-usual, and would have assisted the Board to: communicate its priorities, key tasks and timeframes for operation; assign responsibilities; determine success factors; and monitor progress. For example, important tasks would have been to develop operational policies and procedures to support staff in the registration and regulatory assurance functions, and to assess the risks to the effective operation of the TPB. As it stood, some staff procedures were still not finalised at the time of this audit, and a risk management framework was not in place until August 2011 (discussed in Chapter 3). During the course of this audit the Board advised the ANAO that the TPB is still maturing, and many operations

have not yet reached a business-as-usual state, although this should occur for the registrations functions in early 2013.

Organisational model adopted by the Board

2.34 The TAS Act and TAS Regulations establish the basic framework for the organisation and operation of the TPB. They affirm the:

- Board has the general administration of the legislation;
- role of the Chair to preside over meetings of the Board, with other potential functions to be at the discretion of the Board;
- Commissioner of Taxation's role as the FMA Act chief executive of the TPB, which is a statutory authority prescribed by the FMA Act within the ATO, including having responsibility for promoting the efficient, effective and ethical use of the Commonwealth's resources⁸²;
- Secretary's role in terms of the usual secretariat functions to be performed on behalf of the Board, and to manage the resources made available to provide administrative assistance to the Board⁸³; and
- Board may establish committees, delegate some of its functions and powers, and authorise administrative support staff to assist.

2.35 In December 2009, the Board considered and agreed on role descriptions for the Chair and Secretary. The Secretary, among other things, is to oversee the work of all staff providing administrative assistance to the Board in the exercise and performance by the Board of its powers and functions. The Chair, subject to the Board, is responsible for the overall leadership and performance of the TPB and its operations; and should exercise all of the powers and perform all of the functions of the Board, other than those functions that are not able to be delegated.

⁸² FMA Act, Part 7, s 44–1.

⁸³ Explanatory Statement, Select Legislative Instrument 2009 No. 314, *Tax Agent Services Act 2009* and Tax Agent Services Regulations 2009, p. 15.

2.36 In terms of the Board's ability to establish committees and delegate some functions, the Explanatory Memorandum to the TAS Bill explains:

The Board may establish committees, consisting of such person(s) as the Board thinks fit (whether or not Board members), to assist the Board in the performance of its functions and the exercise of its powers; and also

The Board's ability to delegate certain functions and powers will improve its ability to manage its resources and workload, without exposing it to risk. In particular, functions which do not have the potential to impact significantly on a person's livelihood, such as many of the routine administrative functions, may appropriately be performed by others.⁸⁴

2.37 The TAS Act also provides the framework for the Board's formal decision-making processes. The Board has some power to delegate its regulatory powers and functions to a Board member or a committee but there are limits to what powers and functions it can delegate and to whom. For example, the Board cannot delegate its responsibility for issuing guidelines or establishing committees.⁸⁵ The Board may delegate the power to make a reviewable decision⁸⁶ but only to a committee of at least three members all of which are Board members. Non-reviewable decisions such as the power to grant or renew registration and conduct an investigation may also be delegated to Board members and TPB staff.

2.38 These arrangements, along with the administrative support provided by the ATO, established a basic organisational and operational framework that allows the Board flexibility to administer the system of regulation of tax practitioners effectively and efficiently.

2.39 At its inaugural meeting on 10 December 2009, the Board agreed to immediately establish five policy committees, one consultative, and one operational committee.⁸⁷ In March 2010, the Board also established three operational committees, the Board Conduct Committee, Registrations Exceptions Committee, and the Secretary's Committee. The Board delegated to

⁸⁴ Explanatory Memorandum, Tax Agent Services Bill 2008, paragraph 5.37, p. 98 and paragraph 5.45, pp. 99–100.

⁸⁵ A committee may have: one or more members and consist entirely of Board members; a mix of Board members and non-Board members; or entirely non-Board members. Non-Board members may be external appointees or TPB staff.

⁸⁶ There are nine reviewable decisions. These include: rejecting registration applications; imposing conditions on registrations; terminating registrations or imposing other sanctions; and extending investigation periods.

⁸⁷ The policy committees were the: Implementation/Coverage Issues; Entry, Registration, Experience and Qualifications Issues; Professional Practice; Compliance/Investigations; and Professional Indemnity Insurance. The establishment of the Audit and Risk Committee was delayed until April 2011 and is discussed further in Chapter 3. A summary of the purpose of these committees and of subsequently formed committees is provided in Appendix 3.

these committees the power to exercise reviewable decisions under the TAS Act. Non-reviewable registration powers were delegated to individual Board members and the Secretary.⁸⁸ In June 2010, the Secretary authorised TPB staff to act in his name, subject to Board approval. TPB staff first exercised these powers in January 2011 for tax agent applications that met all requirements for registration, with different types of applications or renewals being progressively exercised from this date.

2.40 In March and April 2010, the Board delegated some non-reviewable compliance powers and functions to:

- individual Board members to investigate conduct, requiring people to appear before the Board, and to seek an injunction;
- the Secretary to investigate applications for registration; and
- TPB staff to require people to appear before the Board, provide information and for the Board to retain documents.

2.41 The Board decided in March 2010 that staff would not exercise these delegated powers pending legal advice from the Australian Government Solicitor on the operation of the TAS Act. At the time of conducting this audit, the compliance powers mentioned in the previous paragraph had only been exercised by Board members. Other compliance decisions have been devolved to staff, such as in July 2010 Team Leaders were able to finalise all low-risk compliance cases.⁸⁹

2.42 The Board's decision that staff would not use their delegated powers in the formative year of the TPB's operation was based on the need for the Board to develop a full understanding of the implication of its powers under the new legislation. In addition, the Board had to develop its policies relating to the new regime, translate these into procedures for staff, and assess the training needs of staff. The Board advised the ANAO that procedures could only be developed from 2011, after key policies had been finalised by the Board.

2.43 The organisational structure adopted by the Board placed heavy reliance on Board members for non-reviewable decision-making, particularly during 2010 and 2011. While recognising the reasons why the Board adopted

⁸⁸ Reviewable decisions are to approve or reject applications for registration and re-registration, impose conditions on registration, and impose sanctions. Non-reviewable registration powers include approving applications for registration and re-registration in specified circumstances.

⁸⁹ Discussion of the risk rating and the process for conducting compliance cases is contained in Chapter 5.

such an approach, it had the potential to impact in terms of resource costs and time taken to process registration applications.⁹⁰ The TPB has also attracted complaints from stakeholders about delays in processing (discussed in Chapter 4).

2.44 There is no standardised organisational structure for Australian Government entities, including the roles of a Board, a Chair, a Secretary, and support staff. It is important that the arrangements implemented are appropriate for the entity given its functions. The administrative support provided by the ATO allows the Board to exercise its independent decision-making authority, and the secretariat and staff to implement the Board's decisions through management actions and operational support. The TPB has moved into the third full year of operation, and the appointment of the new Board and a part-time chair will provide the opportunity for the Board to evaluate whether the balance of operational decision-making between committees, the Secretary, and staff of the TPB continues to be appropriate.

Views of Board members and stakeholders

2.45 As part of the audit, the ANAO interviewed all current and previous members of the inaugural Board (12 members) and eight tax practitioner professional associations.⁹¹ The following section reflects the common views expressed by these associations and individuals. Board members and professional associations were not specifically asked to comment on the composition of the Board. However, five of the Board members and five of the professional associations considered that the make-up of the Board would benefit from a membership that better reflected the practitioners it regulated. The composition of the inaugural Board was perceived as having a legal and academic focus. The same five Board members also considered that the Board had focused too much on the regulatory assurance functions (such as testing the legislation and getting cases to court) at the expense of other responsibilities.⁹² Of the remaining Board members, three thought the

⁹⁰ As the TPB did not record or report its registration processing times, or the decision-maker, for the first two years of operations, it was not possible to determine the reasons for the delays in registration processing. The TPB advised stakeholders via its website that it could take up to six months to process a new application

⁹¹ These professional associations are: CPA Australia; Institute of Chartered Accountants; Tax Institute of Australia; Self-Managed Super Fund Professionals Association; Association of Accounting Technicians; Taxpayers Australia; Australian Association of Professional Bookkeepers; and the Law Council of Australia. Written feedback was received from one professional association.

⁹² The Board's regulatory assurance function is discussed in Chapter 5.

approach taken by the Board was appropriate, and four did not raise the issue. Board members also noted the substantial workload in the first three years (five members), and the achievements of the Board (four members).

2.46 The ANAO asked members of the inaugural Board about their views on the functionality of the Board's operating model. Responses were mixed, and as would be expected with the benefit of hindsight, all members could suggest improvements. Seven members considered that the current board and committee structure could be improved. Their suggestions included:

- more devolution of authority could be practised as some Board members were under-utilised (four members);
- experienced external people, such as professional association staff, should be appointed to certain committees to provide practical input (three members);
- more authority should be given to TPB staff (three members); and
- the Secretary's role should be more like that of a Chief Executive Officer (three members).

Conclusion

2.47 Between 2005 and 2009, the Treasury consulted with industry and interested parties, and held four public consultations. Submissions received to the first consultation in May 2007 resulted in the Treasury amending the draft legislation to enhance the independence of the TPB from the ATO, and proposing the legislation be standalone. The TAS Act was introduced into Parliament on 13 November 2008, and received Royal Assent on 26 March 2009. The TAS Regulations, which contain specific rules for how the TAS Act is applied, received Royal Assent on 12 November 2009.

2.48 In 2005, the ATO developed a new policy proposal for consideration by government outlining the work required to prepare for the new regime and Board, anticipating that the legislation could be given effect at the end of 2007. In May 2006, the ATO was allocated \$57.5 million over four years, for the implementation of the Tax Practitioner Legislative Framework. The ATO prepared a number of proposed strategies and procedures for the new Board and an interim website. It also consulted extensively with the previous state boards, but was not able to finalise development of the registration system. The legislative process also took longer than originally anticipated, and the ATO was awaiting the appointment of the new Board for advice of (rather than

to anticipate) their preferred administrative arrangements. Consequently, at 30 June 2010, the ATO's project budget was underspent by \$11.1 million in operating expenditure and the \$7.2 million budgeted capital expenditure.

2.49 The TAS Act specified that the new regulatory arrangements for tax practitioners would commence on 1 January 2010, and the Board was established in early November 2009 with the appointment of the Chair and Board members. The commencement date of the new regime was delayed to 1 March 2010, to allow more time for industry to prepare for the new regulatory approach.

2.50 The Board had less than four months to prepare for the commencement of the new regime on 1 March 2010, and faced a number of challenges. The Board had to finalise organisational arrangements, including ICT systems for registration, and develop policies and explanatory material on the provisions of the TAS Act. In early December 2009, the Board set five goals for the TPB's 2010 operations, covering: registrations; stakeholder communication; ensuring high standards of the tax practitioners' profession; designing and implementing a compliance regime; and ensuring new groups such as BAS agents were effectively incorporated into the regime.

2.51 The Board's approach demonstrated an awareness of the new regulatory arrangements, and was responsive to stakeholder groups. A national registration system began functioning on 1 March 2010, albeit still requiring further development. By the end of 2010, the Board had finalised seven major policies relating to registering and regulating tax practitioners, and also developed policies and released exposure drafts on educational requirements for BAS agents and course approval processes. Elements of implementation planning existed, but there would have been benefits in formalising an implementation strategy and monitoring progress against defined outcomes and timeframes.

2.52 The TAS Act and Regulations establish the basic framework for the organisation and operation of the TPB. The Board may establish committees, delegate some of its functions and powers, and authorise administrative support staff to assist. In late 2009 and early 2010, the Board established a stakeholder consultative committee, policy committees to provide guidance on developing board policies, and operational committees to make reviewable decisions.

2.53 Some non-reviewable registration and regulatory assurance powers were delegated to staff during 2010. However, staff did not use these powers in

the formative year, as the Board considered it needed to develop policies and procedures, assess the training needs of staff and clarify the application of those powers under the new legislation. This approach had the potential to contribute to delays in processing registration applications, and the TPB received complaints from stakeholders about these delays.

3. Management Arrangements Supporting the Tax Practitioners Board

This chapter examines the management and governance arrangements supporting the operation of the Tax Practitioners Board.

Introduction

3.1 In performing its statutory functions under the TAS Act, the Board is assisted by a Secretary and support staff.⁹³ The Board oversees the operations and the performance of the TPB, and has internally allocated responsibility for certain matters to its members, through their membership on committees or individually. The Secretary has a dual role, in supporting the Board, but also in the day-to-day management of the staff supporting the Board.

3.2 As at January 2013, the Board had 14 committees:

- seven policy and consultative committees established to develop and finalise Board policies, procedures and approaches for a range of matters⁹⁴; and
- seven operational committees established to make reviewable decisions, and also to undertake operational decision-making.⁹⁵

Appendix 3 outlines the Board's committee structure at this time.

3.3 At the same time, there were 134 TPB staff (131 full time equivalent staff) organised into six business areas located in Albury, Box Hill, Brisbane, Canberra, Hurstville, and Newcastle. Figure 3.1 illustrates the organisational structure of the TPB.

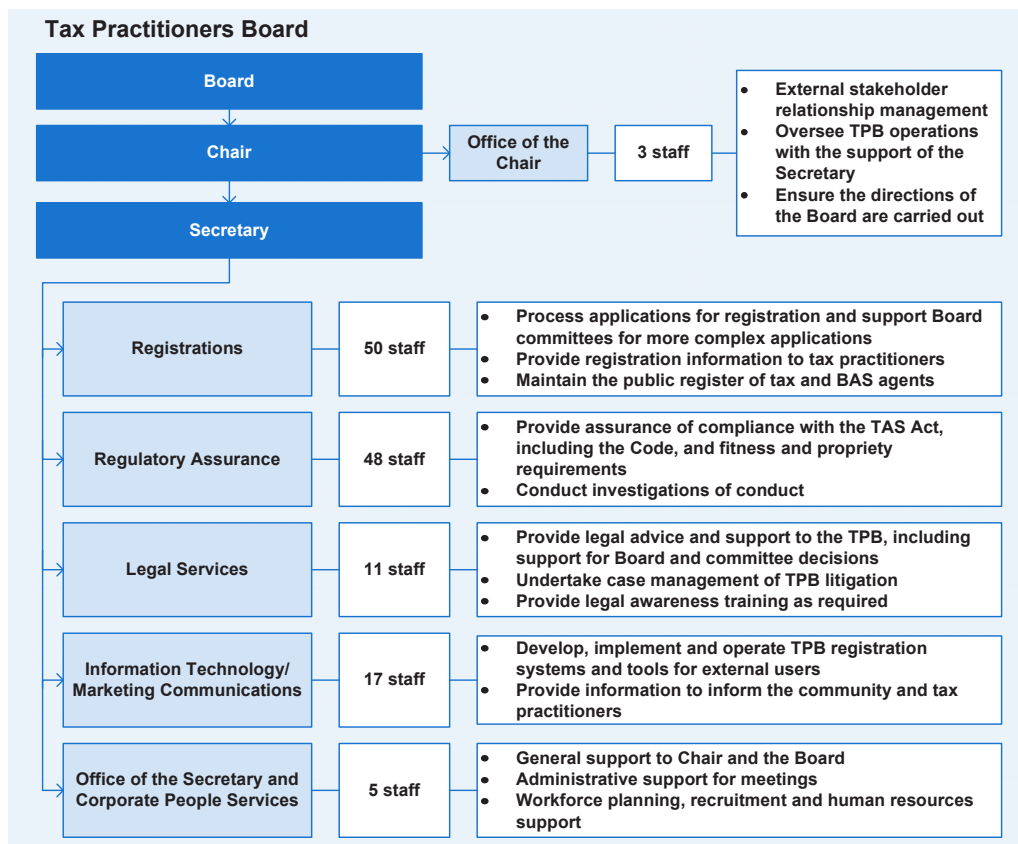
⁹³ Collectively, the Board and supporting staff are known as the TPB.

⁹⁴ The seven policy and consultative committees were the: Consultative Forum; Implementation/Coverage Issues; Entry, Registration, Experience and Qualifications Issues; Professional Practice; Compliance/Investigations; Professional Indemnity Insurance; and Continuous Professional Education.

⁹⁵ The seven operational committees were the: Audit and Risk; Strategic Budget; Recognising Professional Associations; Secretary's; Registrations Exceptions; Board Conduct; and Course Approval Process.

Figure 3.1

Structure of the Tax Practitioners Board as at January 2013



Source: TPB, *Annual Report 2011–12*, Canberra, 2012, pp. 27–28, and information provided by the TPB.

Note: Staff numbers include part-time employees.

3.4 The nature of the financial accountability and administrative support arrangements in place between the TPB and the ATO result in the TPB being subject to a number of ATO governance processes and procedures. Within this broader context, the ANAO examined the TPB’s management arrangements and whether they incorporated:

- a governance framework that includes business planning, risk management and performance management and reporting;
- the oversight and control of resources (financial and staff) and ICT development and support; and
- engagement with stakeholders, including the actioning of complaints.

Governance framework

Business planning

3.5 The TPB's three-year Strategic Plan sets out its strategic direction and key activities for 2011–13.⁹⁶ These activities are to be incorporated in the annual plans of the TPB's functional areas (shown in Figure 3.1). The Strategic Plan, and associated functional area plans, were first developed for 2011–12, although the Board had discussed and agreed on key priorities and activities at strategic planning days in December 2009 and September 2010.

3.6 The functional area business plans include planned activities to meet the high-level strategies outlined in the Strategic Plan. However, neither the Strategic Plan nor any of the area business plans have performance indicators. The 2011–12 Registrations and Regulatory Assurance plans did include some performance targets and service standards, but these standards did not align with those in the TPB 2011–12 Annual Report. There were no performance measures (performance indicators, service standards or targets) in the Legal Services, Marketing Communications, and Business Systems plans.

Risk management

3.7 The TPB's Audit and Risk Committee first met on 12 April 2011 and its primary objective is to review the TPB's administrative processes and identify areas of risk and/or improvement to any element of its operations. Membership is an externally appointed Chair and two Board members, with the TPB's Secretary and representatives from the internal audit provider as observers. The committee meets two to four times a year, and has developed a forward work plan of topics for investigation, as well as the TPB's *Risk Management Policy and Framework*.

3.8 The risk framework was finalised in August 2011 and sets out the procedures for undertaking an annual risk assessment in March, which aligns with the annual business planning cycle. The framework contains templates and a methodology for identifying, analysing, evaluating and treating risks, as well as a risk matrix to assist decision-making. The framework was to be reviewed after 12 months, but at the time of conducting the audit this had not occurred.

⁹⁶ Key strategies include: centralise, refine and improve the registration processing function; improve and build a strong regulatory assurance capability; and work with other stakeholders to procure an effective TPB ICT environment.

3.9 The TPB Risk Register (and associated treatment strategies), is intended to be reviewed on a biannual basis. The risk register was initially approved by the Board in March 2012. It was revised and approved by the Board in October 2012 following the: re-categorising of some risk ratings; updating of some mitigation strategies; and review of the status of work undertaken on these strategies. Table 3.1 summarises the key risks as at October 2012.

Table 3.1

Tax Practitioners Board key strategic risks as at October 2012

Risk number	Strategic risk description	Risk rating
1	Registration applications not assessed correctly and/or processed within agreed timelines	Moderate
2	Eligible entities do not apply to register but continue to provide tax services	High
3	Resources are inadequate to deliver TPB strategic outcomes	Medium
4	There is not a strong and effective relationship with the TPB's key stakeholders	Medium
5	Failure to implement an effective risk-based approach to detecting, managing and preventing non-compliance with the TAS Act	High
6	Registered agents do not have the appropriate knowledge and skills to provide tax agent services to a competent and reasonable standard	Moderate
7	Board governance procedures are not effective, including failing to meet legislative requirements other than the TAS Act	Moderate
8	ICT systems do not adequately support or backup TPB business processes	High

Source: Information supplied by the TPB.

3.10 The TPB's risk management framework provides a basis for identifying and managing the TPB's risks, and will support the better allocation of resources in the future. The next step is to implement this risk management approach to each of the business areas.⁹⁷

Performance management and reporting

3.11 Agencies are required to publish in their Portfolio Budget Statements their outcomes, program objectives, deliverables and KPIs for each program.

⁹⁷ For example, the relevant strategic risks are not reflected in the regulatory assurance Risk Assessment Guide (discussed in Chapter 5).

Deliverables represent the goods and services produced and delivered by the program in meeting its objective. The effectiveness of the program in achieving its objective is measured through the program's KPIs.⁹⁸

Tax Practitioners Board Outcome and Program Structure

3.12 In 2009–10, the TPB was not specifically mentioned in the ATO's Portfolio Budget Statements.⁹⁹ In 2010–11 and 2011–12, the TPB contributed to reporting against Outcome 1 of the ATO's Portfolio Budget Statements:

Confidence in the administration of aspects of Australia's taxation and superannuation systems through helping people understand their rights and obligations, improving ease of compliance and access to benefits, and managing non-compliance with the law.

3.13 Program 1.2 of this Outcome was specific to the TPB, and for 2010–11 and 2011–12 the objective was:

... to strengthen the integrity of the taxation system and tax profession by including all tax practitioners in a single national regulatory regime and regulating them fairly, consistently and with flexibility.

The Tax Practitioners Board provides protection to clients of tax practitioner services by reducing the level of uncertainty and risks for people through a new, national, independent regulatory regime for tax agent services.¹⁰⁰

Table 3.2 outlines the deliverables for Program 1.2 for the period 2010–11 and 2011–12.

⁹⁸ Department of Finance and Deregulation, *Guidance for the Preparation of the 2012–13 Portfolio Budget Statements*, March 2012, pp. 35 and 37.

⁹⁹ The TPB contributed to the ATO's departmental program 1.5: *Services to government and agencies*.

¹⁰⁰ Australian Government, *Portfolio Budget Statements 2011–12, Budget Related Paper No. 1.19, Treasury Portfolio*, Commonwealth of Australia, Canberra, 2011, p. 196.

Table 3.2

Tax Practitioners Board program deliverables for 2010–11 and 2011–12

Program deliverables
<ul style="list-style-type: none">• Register tax practitioners• Ensure that records are current and accurate• Cancel the registrations of tax practitioners that are no longer active or entitled to be registered• Administer the Code of Professional Conduct that clearly provides high standards and expectations for professionals providing tax agent services• Apply consistent sanctions for those who do not comply with the law, including civil penalties and injunctions and other sanctions• Fairly investigate referrals from the ATO and community• Provide the community with access to public data to assist in verifying registered tax practitioners• Manage and promote the role and functions of the board

Source: Australian Government, *Portfolio Budget Statements 2010–11, Budget Related Paper No. 1.18, Treasury Portfolio*, Commonwealth of Australia, Canberra, 2010, pp. 202–203; and

Australian Government, *Portfolio Budget Statements 2011–12, Budget Related Paper No. 1.19, Treasury Portfolio*, Commonwealth of Australia, Canberra, 2011, pp. 196–197.

3.14 The deliverables for 2010–11 and 2011–12 support the objective of the TPB. However, performance targets or service standards would allow the Board to develop a baseline of acceptable performance, which can be revised over time to support ongoing performance improvement.

3.15 Table 3.3 outlines the KPIs for Program 1.2 for 2010–11 and 2011–12.

Table 3.3

Tax Practitioners Board key performance indicators for 2010–11 and 2011–12

Key performance indicators
<ul style="list-style-type: none">• Establish and broaden the regulatory framework across tax practitioners• Maintain acceptable service standards• Work cooperatively with tax practitioners• Reduce risks for consumers in using tax practitioners• Increase awareness and engagement amongst tax practitioners

Source: Australian Government, *Portfolio Budget Statements 2010–11, Budget Related Paper No. 1.18, Treasury Portfolio*, Commonwealth of Australia, Canberra, 2010, pp. 202–203; and

Australian Government, *Portfolio Budget Statements 2011–12, Budget Related Paper No. 1.19, Treasury Portfolio*, Commonwealth of Australia, Canberra, 2011, pp. 196–197.

3.16 The KPIs do not measure the TPB's performance in achieving the program objective. The KPIs should relate to the main components of the objective, and be relevant, reliable and complete. In this regard the KPI:

- 'maintain acceptable service standards' is more clearly related to the deliverables of the TPB, than to any elements of the objective; and
- 'work cooperatively with tax practitioners' and 'increase awareness and engagement amongst tax practitioners' should align with the objective, particularly the element 'regulating them fairly, consistently and with flexibility'. This could be measured as part of a repeatable survey of tax practitioners and professional associations and enable comparison of the results over time.

3.17 To better demonstrate the effectiveness of the program, there would be benefit in the TPB more clearly relating its program objective¹⁰¹ to the program outcome, developing performance targets for its deliverables, and reviewing its KPIs to measure the impact of the TPB's contribution in this context. Strategies also need to be put in place to collect and analyse all relevant performance data.

TPB service standards

3.18 The TPB has set three service standards: for processing an application to register; the response time for enquiries; and complaint resolution. The service standards have been revised each year since the TPB's 2010 Annual Report.¹⁰² Quantitative reporting against the service standards only began in 2011–12, and then only for the registration-related standard. In 2011–12, the TPB's Annual Report stated that it 'aims to achieve and over time to improve on the registrations service standards'. Table 3.4 summarises the TPB's service standards and performance reported against them for 2010, 2010–11 and 2011–12.

¹⁰¹ In particular, the objective does not explicitly address the outcome requirement to help people understand their rights and obligations.

¹⁰² The Board began regulating tax practitioners from 1 March 2010, and consequently its annual report is for the period 1 March 2010–30 June 2010.

Table 3.4**Service standards and reported performance for 2010, 2010–11 and 2011–12**

Topic	2010 ⁽¹⁾	2010–11	2011–12
Registrations	Finalise on average 85 per cent of registration applications within 90 days.	Process complete and accurate new applications/notifications and notify applicants within one month.	Process complete and accurate new applications and notify applicants within one month.
		Process complete renewal applications and notify applicants within three months.	
Reported performance	Nil reported	Nil reported	New applications—53 per cent processed within 30 days. Renewals—58 per cent processed within three months of receipt.
Enquiries	Initial response or acknowledgment to an enquiry or application within seven working days of receipt, to be achieved 90 per cent of the time.		
Reported performance	Nil reported	Nil reported	Nil reported
Complaints	Resolve on average 60 per cent of complaints within 28 days.		Resolve on average 50 per cent of complaints about tax and BAS agents within 30 days.
	More complex issues or those that require further clarification of the facts will generally take longer to resolve, particularly where a formal investigation may be warranted.		
Reported performance	Nil reported	Nil reported	Nil reported

Source: ANAO analysis of TPB, *Annual Report 2010*, Canberra, 2010; TPB *Annual Report 2010–11*, Canberra, 2011; and TPB, *Annual Report 2011–12*, Canberra, 2012.

Note 1: Information for 2010 is for 1 March to 30 June 2010.

3.19 At the time of the audit, the TPB did not have a client service charter, nor were any of the service standards published on the TPB's website. The inaugural Board agreed to a client service charter in principle, expecting it to be developed by the new Board, because of the need to give attention to other priorities. Typically, service charters formally define what an organisation and its clients can expect from each other. For regulatory bodies a service charter also helps to ensure that clients are being treated fairly and consistently.

External reporting of performance

3.20 As previously mentioned, agencies are required to report against Portfolio Budget Statements KPIs in their annual report. The TPB's 2010 Annual Report included commentary on the activities undertaken by the TPB in developing policies relating to the new regime (such as registration

eligibility criteria), developing registration and regulatory assurance processes, and implementing a community and industry communication strategy. The numbers of registration applications, complaints and resources (financial and staff) were also included.¹⁰³

3.21 Similarly, the TPB's Annual Reports 2010–11 and 2011–12 included commentary on activities undertaken to establish the regulatory regime, cooperative work with tax practitioners (such as exposure drafts of policy documents and the stakeholder consultative forum), and a communications program to increase awareness among tax practitioners. Numbers of registration applications, complaints, outcomes of compliance cases and resources (financial and staff) were also included. The Annual Reports did not specifically address reducing the risks for consumers in using tax practitioners, or 'maintain acceptable service standards' (except for the registrations service standard in 2011–12).

Internal reporting of performance

3.22 Within the TPB, one of the key means of monitoring and reporting performance against the business plans has been the monthly Secretary's report to the Board. These reports contain information on general corporate topics such as recruitment, staff movements, and budget performance, as well as reporting on each business area's current issues and progress. In addition to this formal reporting process, there are regular meetings between the Chair, Secretary and TPB Director-level staff to discuss work progress and priorities.

3.23 There has been no formal Board annual review of performance against the strategic plan, or of the business plans at year end. Two *Strategic Priorities Reports*, intended to provide a snapshot of progress against key activities from the strategic plan, were produced in August and November 2011. The November report: listed the key activity; identified the TPB team responsible for progressing the activity; provided a brief description of major actions either completed, underway, or planned for the immediate future; and contained an assessment of overall progress using the traffic light approach of 'red', 'amber' or 'green'.

3.24 The TPB advised that reporting is maturing, and much of the ability to report against service standards has been reliant on improvements to the iMIS

¹⁰³ As discussed in paragraph 3.12, in 2009–10, the TPB was not specifically included in the ATO's Portfolio Budget Statements.

ICT system data collection and reporting capability. Since early 2012, the Registrations and Regulatory Assurance business areas have also provided monthly reports to the Board. These reports give a monthly and year to date snapshot of the number of applications, complaints and cases received, in progress and finalised. Since July 2012, these reports have included performance against the registrations and regulatory assurance service standards.

3.25 There would be benefit in the Board documenting its annual progress against the activities listed in the strategic plan and business plans and reporting against all service standards.

Tax Practitioners Board resourcing

Financial management

3.26 The Memorandum of Understanding between the Board and the ATO, signed in December 2010, states that the ATO will allocate an annual direct cost budget of \$13.534 million for each of the financial years 2010–11, 2011–12 and 2012–13 to cover direct employee and supplier costs (including legal costs).¹⁰⁴ The allocation does not include the corporate functions provided by the ATO. It was agreed that if the Board is unable to deliver its core operations within the direct costs allocated, the Board could approach the ATO and the ATO would, in good faith, consider whether it could meet those costs in accordance with its stated obligation under the TAS Regulations.

3.27 The ATO identifies in its annual Portfolio Budget Statements the funding that it has allocated to the TPB and in each year the initial budget has been revised upwards. The TPB publishes a summary of its direct expenditure each year in its Annual Report. Table 3.5 shows the TPB's budgeted and actual expenditure on salaries and supplier costs for each of the three years 2009–10, 2010–11 and 2011–12.

¹⁰⁴ The budget amount of \$13.534 million was derived from the costs that the ATO incurred historically to deliver tax agent regulation and surplus Tax Practitioner Legislative Framework funding. It was not based on the costs to deliver the outcomes under the new regime.

Table 3.5**Direct expenditure against budget for 2009–10, 2010–11 and 2011–12**

	2009–10 ⁽¹⁾	2010–11	2011–12
	\$	\$	\$
ATO revised budget for TPB (per Portfolio Budget Statements)	14 546 000	17 057 000 ⁽²⁾	16 360 000
Reported actual TPB costs			
Salary costs	11 069 810	13 932 847	12 747 596
Supplier costs	2 806 676	2 896 404	3 730 349
Total	13 876 486	16 829 251	16 477 945
Variance	(669 514)	(227 749)	117 945

Source: ANAO analysis of TPB, *Annual Report 2010*, Canberra, 2010, p. 38; *Annual Report 2010–11*, p. 53; and *Annual Report 2011–12*, p. 49.

Australian Government, *Portfolio Budget Statements 2010–11, Budget Related Paper No. 1.18, Treasury Portfolio*, Commonwealth of Australia, Canberra, 2010, p. 202; *2011–12*, p. 196; *2012–13*, p. 194.

Note 1: 2009–10 operations were for the period 1 March 2010 to 30 June 2010, but as stated in the TPB Annual Report for 2009–10, include costs for pre-commencement preparations of the TPB throughout the financial year.

Note 2: During 2010–11 the ATO agreed to provide an additional \$3.3 million to the TPB.

3.28 The TPB also received funding from the ATO for capital expenditure. As discussed in Chapter 2, the ATO reallocated unspent Tax Practitioner Legislative Framework equity funding to subsequent years. This amounted to \$2.395 million in 2010–11, 2011–12 and 2012–13, totalling \$7.2 million. The TPB advised that it was not aware that this amount of capital funding was available. Confusion at the time the amount was allocated led the TPB to mistakenly understand that the total allocation was \$2.395 million divided over the three financial years.

3.29 From March 2011, the TPB commenced capitalising expenditure related to configuring the iMIS ICT system. The TPB advised that capital expenditure was \$0.47 million in 2010–11, \$0.37 million in 2011–12, and as at 31 January 2013, \$0.31 million in 2012–13.

3.30 The ATO's capital budget is managed separately to the ATO's operating budget, and is not allocated to Business Lines (or in this case, the

TPB).¹⁰⁵ As this funding is specifically for ICT systems development, the capital budget is managed by the ATO's Enterprise Solutions and Technology area. The TPB had been in discussion with the ATO about how it could use the available funds, noting at that time the TPB was subject to the ATO's thresholds for capitalising expenditure.¹⁰⁶ In July 2012, the ATO's Chief Financial Officer approved lower capitalisation thresholds for the TPB.¹⁰⁷

3.31 The Board has ongoing concerns about its budget and has identified a number of funding-related issues, including its wider set of responsibilities than the state boards it replaced. As at January 2013, an independent review of the TPB's funding had not been conducted.¹⁰⁸ The Board has also not conducted a budget review to determine its existing or future budgetary needs, and identify, analyse and manage key drivers of costs. In addition, under existing accounting procedures, the TPB is unable to determine the cost of Board and Committee meetings in total, or individually, as financial reporting codes combine the costs of the appointed Board members and administrative support staff.

3.32 To address ongoing concerns about the TPB's funding, there would be benefit in the Board conducting an internal budget and expenditure review to better understand the cost of its operations. Consideration could also be given to restructuring the financial reporting codes currently used (part of the ATO financial reporting system).

Human resource management

3.33 At the time the Board was established, the ATO made staff available from the units supporting the previous state boards and from the Tax Practitioner and Lodgement Services business line.¹⁰⁹ Staff were in 13 locations and their work practices varied significantly between these locations, largely depending on whether their previous functions were to support the state

¹⁰⁵ The ATO's Business Lines are the delivery areas responsible for a defined set of taxpayers or topics. For financial accounting purposes, the TPB is treated as a Business Line within the ATO's structure.

¹⁰⁶ The ATO's capitalisation thresholds are set at a relatively high-level, consistent with the size of the ATO's capital expenditure budget. For example, for expenditure to be classified as capital it must have been equal to or greater than \$1 million for internally developed software, equal to or greater than \$500 000 for an enhancement to previously capitalised software, or equal to or greater than \$100 000 for purchased software.

¹⁰⁷ The new thresholds are: equal to or greater than \$10 000 for internally developed software; equal to or greater than \$5000 for an enhancement to previously capitalised software, or equal to or greater than \$2000 for purchased software.

¹⁰⁸ A review of funding may be considered by the Government's post-implementation review discussed in Chapter 1 or by the Government's five-yearly legislative review requirements.

¹⁰⁹ These staff remain employed under ATO conditions, and are subject to ATO human resources policies and procedures.

boards or to conduct other tasks for the ATO.¹¹⁰ The diversity of experience and skill levels, and the challenges of managing remote staff, made it difficult for the Board to initially achieve consistent work practices.

3.34 In 2011–12, the Board decided to move all registration functions to Hurstville, New South Wales, from the previous three locations of Hurstville, Box Hill and Brisbane. In the same year, the structure of the Regulatory Assurance function was consolidated into Hurstville, Box Hill and Brisbane. The Board advised that this move assisted the development of more consistent work practices and improved the efficiency of staff management. Staff also needed to develop their skills as the new regulatory assurance function had moved from a criminal penalty to a civil penalty regime.

3.35 The significant changes resulting from the introduction of the new regulatory regime required the development of a learning and development program for staff. The Board needed to give specific attention to developing the TPB workforce through capability assessments, targeted training programs and workforce planning strategies.

3.36 There have been staff development initiatives. Board members and support staff have been involved in delivering staff training sessions and workshops. While the Board's approach to undertaking its regulatory functions has been developing, a formal and structured approach to developing a workforce strategy is not yet in place. The Board advised that a new human resources director was appointed in September 2012 to lead the development of a workforce plan, and a learning and development strategy.¹¹¹

¹¹⁰ Staff were located in Brisbane, New South Wales (Hurstville, Newcastle, Paramatta and Wollongong), Canberra, Victoria (Albury, Box Hill, Dandenong, Latrobe, and Moonee Ponds), Adelaide and Perth.

¹¹¹ It is also important that the TPB finalise processes and procedures for registrations and regulatory assurance functions. Discussed further in subsequent chapters, work practices and ICT systems have been continually evolving since 2010, and staff have been operating with procedural documents that have not yet been approved in some circumstances.

ICT development and support arrangements

3.37 The TPB's general ICT infrastructure, including the desktop environment, helpdesk functions, share drives, corporate systems and email facilities, is provided and managed by the ATO. The TPB is responsible for the development, implementation, operation, and management of the system used by the TPB for registration, regulatory assurance case management and other support functions, including online forms and the TPB website.

3.38 A third party provider supplies services to the TPB, through the iMIS system (the ICT system used by the TPB for registration and compliance case management), as well as hosting the TPB's website. The ICT solution uses a web-based application and multiple servers to support the various components of iMIS and the underlying database. The third party provider also has a separate environment in place to allow the development and testing of any changes to occur in a controlled manner. Connectivity of the TPB to the iMIS system is via a secure connection.

3.39 The TPB has commissioned a number of reviews of its externally hosted ICT solution, including an:

- internal audit security review in September 2011, relating to the external hosting and support of the iMIS system. Major findings were the lack of security and system documentation, and lack of proactive system monitoring;
- ICT governance review by internal audit in a *Status of Procedures* report in March 2012. All necessary ICT policies and procedures were not in place, or not current for iMIS functions and responsibilities; and
- iMIS infrastructure review in July 2012, to identify the likely causes of the performance issues being experienced in January 2012 (the server became unstable during a peak registration application period) and to provide suggestions for an ICT governance framework to manage the TPB's service agreement with the external provider.

3.40 The ANAO examined the ICT support arrangements in place at the TPB for the iMIS system, including ICT governance, change management and security. Overall, the ANAO findings were similar to the outcomes of the reviews mentioned above. Detailed findings are reported in Appendix 4.

3.41 In June 2012, the TPB advised the third party provider that:

- its ICT business model was still immature;
- there was an absence of policies and procedures;
- substantive re-work of the system to better meet business needs was necessary;
- there were performance and design problems with the website, particularly in times of high demand; and
- there were also significant difficulties with the document management functionality of iMIS.¹¹²

3.42 To address some of these issues, the TPB finalised a request for tender for a new provider in November 2012. The tender incorporates a request for a new document management solution that integrates with iMIS, and significant business process re-design. The TPB advised that its ICT governance framework, and associated policy and procedural documents, would be completed once the new provider is engaged.

Data quality

3.43 The TPB maintains a public register of the details of registered and terminated tax practitioners that is updated from the underlying iMIS data on registration records.¹¹³ The register is on the TPB's website and members of the public can search the register to find a registered tax practitioner. The ANAO analysed registration processes and data in the iMIS system to assess whether: the data is systematically reviewed and updated; is accurate, timely, and complete; and supports the needs of the users of the system.

3.44 Of the 55 225 practitioners listed on the public register as at 21 November 2012, only four could not be traced back to a iMIS record using their practitioner number. The TPB advised that the allocation of iMIS record numbers for these cases was in progress at the time. The TPB's updating of the online register is timely—250 records of practitioners recorded in iMIS as 'terminated' between 20 September 2012 and 15 November 2012 had their status updated in the online register by 21 November 2012. Only one record

¹¹² The TPB currently use three ATO-hosted share drives for document storage. Difficulties associated with this are discussed in Chapter 5.

¹¹³ Practitioners are 'terminated', as defined under the TAS Act for reasons such as death, the company ceasing to exist or misconduct. This record is maintained for 12 months after the termination date.

listed a practitioner as registered when the underlying iMIS data had a 'terminated' status. The TPB subsequently advised that this practitioner was correctly listed as registered, and removed the error in the underlying record.

3.45 The ANAO also analysed records of tax practitioner applications for registration held in iMIS.¹¹⁴ The ANAO found that, overall, the quality of the data within iMIS is poor, but has improved over time. Some analysis could not be completed because of the quality and inconsistency of the data. In particular, the analysis found that:

- date fields for recording stages of assessment of an application are not mandatory and therefore not used consistently, and the date lodged field (part of the application status table) was only implemented in late 2011. Consequently, analysis of lodgement and approval cannot be reliably conducted for the entire period that the TPB has been operating; and
- of the 5636 records that had a date recorded for the registration quality control assessment, only 3986 had the assessing officer's identifier recorded.¹¹⁵

3.46 The TPB informed the ANAO that data quality was a major issue in the first year of receiving registration applications. Some of this arose from:

- state board data being migrated from the ATO's systems in the early stages of the TPB's operations;
- early versions of online registration forms allowed free text entries, and some information in iMIS is pre-filled from these online application forms;
- Registrations staff in different states entered data in different ways; and
- the lack of procedural documents and system validation checks for data entry.

3.47 The TPB has advised the ANAO that the majority of data quality issues have been resolved or are being addressed going forward. Contributing to improved data quality was the centralisation of Registrations staff in Hurstville

¹¹⁴ The data was downloaded on 15 November 2012.

¹¹⁵ There were also inconsistent formats for completion—for example, there were 559 records filled in with '80 per cent' instead of the assessor's identifier.

during 2011, and the ongoing finalisation of documented procedures. From June 2012, online forms were also improved to limit the amount of free text entries, and some data will be checked as currently registered practitioners apply to re-register.

Stakeholder engagement strategy

3.48 The TPB engages stakeholders using three main methods—a stakeholder consultative forum, the TPB website, and through explanatory publications. The TPB also works with the ATO to include messages from the TPB in a variety of ATO communication material.¹¹⁶

Stakeholder consultative forum

3.49 The TPB's stakeholder consultative forum has representatives from key professional associations. The forum was held four times in 2010, twice in 2011, and three times in 2012 and reports from meetings are publically available on the TPB's website. Topics covered at the forum include: progress reports from the Chair and Secretary; updates on the development of all key policies, such as notification processes for tax practitioners, professional indemnity insurance, and education standards; and draft explanatory material published by the TPB.

3.50 To gain feedback about the TPB's stakeholder consultation and communication methods, the ANAO interviewed seven tax practitioner professional associations, and received written feedback from one.¹¹⁷ The associations were generally positive about the stakeholder consultative forum, stating that they received key sources of information, which they disseminated to their members.

Website

3.51 The TPB website provides tax practitioners with a range of resources and, for taxpayers, the TPB also provides a searchable public listing of registered tax practitioners. Stakeholder feedback received by the ANAO prior to September 2012 rated the website as difficult to use. An example given was

¹¹⁶ This communication material includes the ATO's annual report, compliance program, website, online magazines targeted at tax practitioners, brochures, taxpayer's charter, broadcasts and road shows.

¹¹⁷ These professional associations are: CPA Australia; Institute of Chartered Accountants; Tax Institute of Australia; Self-Managed Super Fund Professionals Association; Association of Accounting Technicians; Taxpayers Australia; Australian Association of Professional Bookkeepers; and the Law Council of Australia.

that potential registrants could not find the online registration form, and the association had to email the link to members. The TPB had received similar feedback, and in August 2011, commissioned advice to redesign the website, including a review of the online forms. A new version of the website went live on 26 September 2012. The TPB advised the ANAO that the structure of the site was improved, some content was updated to improve readability and accessibility, and the website was well received by stakeholders.

Information and guidance

3.52 The Board publishes a range of information on its website that includes proposed guidelines (intended to become binding legislative instruments), detailed explanatory papers of the Board's position on key aspects of the TAS Act, and more general information for tax practitioners and the wider community. The Board has been active in documenting its position on the legislation and in consulting with stakeholders.¹¹⁸

3.53 The ANAO sought stakeholder feedback on two topics related to the TPB's information and guidance: whether associations had the opportunity to contribute to the policy process; and how useable the TPB's information was for tax practitioners. Associations were appreciative of the ability to comment on exposure drafts, and generally rated the TPB as very responsive to discussing their issues. However, three associations considered that the TPB's response time to submissions was too long, and sometimes they were unsure if their feedback had been received or considered.

3.54 There were mixed views about the volume, quality, and accessibility of material published on the TPB's website. Associations that represent tax agents were more accepting of complex information, whereas those that represent BAS agents indicated a preference for more 'plain English' presentation, saying the information was too complicated and 'legalistic'. In response, the TPB added a 'recent updates' section to their website during the September 2012 refresh, and has also rewritten BAS agent web pages to make them easier to understand.

3.55 In June 2012, the TPB undertook a communications review that resulted in a structured plan for refining external communications. The review

¹¹⁸ For example, the Board had issued five exposure drafts on proposed registration requirements by June 2010. Since 2010, the Board has developed 19 publications on its position on aspects of registration, 21 flowcharts on meeting registration requirements and six online videos on how to register as a BAS agent.

identified that TPB communications are not always easy to quickly read and fully comprehend. The ANAO conducted readability testing on 16 different TPB information items, including items specific to tax agents and BAS agents; overview items; and more detailed explanatory papers. These tests used the Flesch Reading Ease Formula and the Flesch–Kincaid Grade Level test.¹¹⁹

3.56 Average results for the 16 items tested were 40.4 for Flesch Reading Ease, and 12.1 for the Flesch–Kincaid Grade Level Test. The test results were outside benchmarks for readability of general online information, but for tax agents they remain at acceptable levels, considering that the subject matter is of a technical nature and the target audience generally have tertiary qualifications. The TPB advised that information sheets and explanatory papers on the TPB website set out the Board’s views on issues and by their nature are sometimes complex, but it has provided other supporting material to assist tax practitioners.

Complaints reporting

3.57 The TPB website has a dedicated ‘complaints’ section, giving details on how to make a complaint against the TPB, or against a tax practitioner (the process for managing complaints against practitioners is discussed in Chapter 5). Prior to December 2012, the TPB’s internal complaints actioning process covered complaints against tax practitioners and enquiry management (for example, assisting practitioners with questions about registration). High-level statistics were captured on these topics, but the TPB advised that statistics on complaints about the TPB itself were not necessarily captured unless they were referrals from the Commonwealth Ombudsman or through ministerials.

¹¹⁹ The Flesch Reading Ease and Flesch–Kincaid Grade Level tests are among the best known readability tests. Generally accepted levels of readability for online information are a:

- Flesch Reading Ease score of between 60 and 70 out of 100, where a high score indicates greater readability; and
- Flesch–Kincaid Grade Level of eight, where a high grade level indicates lesser readability. There is no ‘maximum’ score for the Flesch–Kincaid Grade Level, as this scoring relates to the number of years of education required to comprehend the text.

3.58 During the course of this audit, the TPB advised that it has reviewed its formal complaints process and identified actions to rectify this situation, including:

- making a clear separation on complaints forms between formal complaints against the TPB, and enquiries or complaints about tax practitioners; and
- developing a central recording system to capture Ombudsman referrals, complaints received by the Minister, and other formal complaints.

3.59 The TPB began internally reporting complaints numbers and topics in December 2012. The implementation of these measures will assist the TPB to identify areas for improvement and to analyse and monitor trends.

Conclusion

3.60 The TPB has established a governance framework that includes business planning, risk management and performance monitoring. The TPB 2011–13 Strategic Plan sets out strategies and activities for the upcoming year, but would benefit from the better alignment between high-level strategies and activities, and the inclusion of performance measures (performance indicators, service standards and targets) in all key functional area plans. The TPB's Risk Management Policy and Framework was finalised in August 2011, and a six-monthly review cycle of the risk register and associated treatment strategies has been instigated.

3.61 The TPB's Portfolio Budget Statements KPIs are activity measures without any associated performance targets and do not enable the TPB to determine the extent to which the program objective is being achieved. The TPB's three service standards for processing registrations, responding to enquiries, and resolving complaints were not reported against publicly until 2011–12, and then only for the registrations service standard. Formal internal reporting on performance occurs through the monthly Secretary's report to the Board and, since early 2012, monthly reports on the registrations and regulatory assurance functions. However, there has been no formal review of performance against the strategic plan or business area plans.

3.62 The Memorandum of Understanding between the Board and the ATO states that the ATO will allocate an annual direct cost budget of \$13.534 million for each of the financial years 2010–11, 2011–12 and 2012–13 to cover direct

employee and supplier costs (including legal costs). The Board can seek agreement from the ATO for an increase if it is unable to deliver its core operations, and the actual allocation to the TPB was revised upwards in 2010–11 to \$17.06 million and in 2011–12 to \$16.36 million for this reason.

3.63 The Board has ongoing concerns about its budget and ability to deliver on responsibilities under the TAS Act, but it has not conducted a budget review to determine the TPB's existing or future budgetary needs. It was only during the course of this audit that the TPB was made aware that the total amount of capital funding available was \$7.2 million. There would be benefits in the TPB conducting an internal budget and expenditure review to better understand the costs of its functions.

3.64 The TPB's general ICT infrastructure is provided and managed by the ATO, but the TPB's website, online registration capability and registration/case management system (iMIS) are supplied by a third party provider. Reviews commissioned by the TPB (and the ANAO's testing) of its external ICT support arrangements identified the lack of some security, system and business continuity documentation. In November 2012, the TPB finalised a request for tender to deliver a new ICT environment, and advised that its ICT governance framework, and associated policy and procedural documents, will be completed once the new provider was established. Data quality is also problematic for the TPB in terms of analysing registration and regulatory assurance data and for management reporting and decision-making. Data quality will potentially be improved through ongoing system enhancements and the redesign of online application forms for registration.

3.65 The TPB's stakeholder engagement strategy includes a stakeholder consultative forum, website and information and guidance material. At the time of the audit, the TPB did not have a client service charter. The inaugural Board advised that, because it needed to give attention to other priorities, this would be for the new Board to progress. Stakeholder feedback received by the ANAO was positive about the TPB's stakeholder consultation and communication methods. Complaints about the website were addressed by the TPB with the launch of a new version in September 2012. A large range of information is on the TPB website that includes the Board's position on key aspects of the TAS Act, general guidance, and instructions on how to register as a tax practitioner. Additionally, during the course of this audit a system for the online recording and reporting of complaints against the TPB was established.

Recommendation No.1

3.66 To better measure and report the performance of the Tax Practitioners Board (TPB), the ANAO recommends that the TPB:

- (a) develops key performance indicators (KPIs) for the Portfolio Budget Statements that allow for the assessment of the TPB objective; and
- (b) reports performance against KPIs and service standards through reports to the Board as well as externally through the Annual Report.

TPB response: *Agreed*

ATO response: *Noted*

4. Registrations

This chapter examines the Tax Practitioners Board's processes and procedures for registering tax practitioners.

Introduction

4.1 The TAS Act requires the Board to register tax practitioners if satisfied that a person or entity meets certain registration requirements. This includes a fit and proper person test¹²⁰, and prescribed qualifications and experience requirements. Registration can apply to individuals, partnerships, companies or trusts.¹²¹ The *Tax Agent Services (Transitional and Consequential Amendments) Act 2009* also provided transitional registration arrangements that allowed:

- already registered practitioners and their nominees to continue as registered practitioners; and
- certain types of practitioners who were not previously required to be registered, or who did not meet the registration requirements, to take up 'transitional' registrations.

4.2 The Board's policy committees provide guidance in relation to the development of registration policies and its operational committees make reviewable and non-reviewable decisions associated with registrations.¹²² The two operational committees that have the greatest involvement in registrations decision-making are the:

- Secretary's Committee: TPB staff have been authorised to use the Secretary's delegation to approve standard and transitional applications for registration and renewal where the applicants meet all requirements; and
- Registration Exceptions Committee: makes decisions to approve or reject registrations, impose conditions and impose professional indemnity insurance requirements. The committee also considers

¹²⁰ Part 2 Division 20 of the TAS Act (ss 20–15 and 20–45), specifies that the individual must be of good fame, integrity and character, and not have been convicted of a serious taxation offence during the previous five years or is not under a sentence of imprisonment for a serious taxation offence.

¹²¹ For trusts, the registered entity must be a trustee of the trust.

¹²² The two registrations policy committees are: Implementation/Coverage Issues; and Entry, Registration, Experience and Qualifications Issues. The four operational committees are: Recognising Professional Associations; Secretary's; Registration Exceptions; and the Course Approval Process.

requests to review the requirement to maintain professional indemnity insurance. These decisions cannot be delegated to staff, and members are therefore Board appointees.

4.3 Members of the Registration Exceptions Committee are also available to provide guidance to staff and advice on matters that are outside a standard application.

4.4 Administrative support for the registrations function is provided by 50 staff organised into five teams located in Hurstville, New South Wales. Four teams are responsible for assessing applications for registration and renewal; maintaining a public register of registered and deregistered practitioners; and the TPB's enquiry management telephone line. The fifth team is responsible for procedural support and reporting.

4.5 The ANAO examined the administrative arrangements established by the TPB for registering tax and BAS agents, including the:

- strategy in place for consistent decision-making in registration activities;
- alignment between the TPB's registration processes and procedures with the legislation; and
- TPB's performance in conducting registrations.

The Board's registration strategy

4.6 As discussed in Chapter 2, during late 2009 and early 2010, the Board needed to address a number of matters before the registration process could begin on 1 March 2010. These included:

- making essential policy decisions such as minimum registration criteria;
- documenting these policies for the information of stakeholders; and
- establishing internal processes and procedures for the registration of tax and BAS agents, including the development of ICT systems.

4.7 In terms of policy decisions, the TAS Act and TAS Regulations set out the requirements for the recognition of professional associations, and prescribe requirements for eligibility for registration as BAS agents or tax agents (including qualifications, membership of professional associations and relevant experience). However, the Board must recognise, accredit and/or approve each

professional association if the criteria set out in the Regulations are met. The Board is also working with the Treasury to prepare policies for the upcoming registration of financial advisors, who will become subject to the TAS Act from 1 July 2013.

Education requirements

4.8 Schedule 2 of the TAS Regulations prescribes educational qualification requirements for tax agent and BAS agent registration eligibility. The TAS Regulations note that ‘the Board may approve a course by an approval process, an accreditation scheme, or by other means’.¹²³ The Board has invested considerable effort in determining educational requirements for tax and BAS agents, including commissioning academic advice, and consulting with professional associations. In April 2010, the Board issued three draft proposed guidelines on the content of courses that would meet registration eligibility requirements for tax agents—in basic accountancy principles, commercial law, and taxation law.

4.9 In 2010, the Board also identified a need for suitable courses for BAS agents, and began working with the Vocational Education and Training sector. In 2011–12, the Board finalised a course in basic GST/BAS taxation principles.¹²⁴ In recognition that some BAS agents had years of practical experience rather than formal training, the TPB also published challenge test criteria that must be passed before prior learning will be recognised for registration purposes.

4.10 During the ANAO’s consultation with professional associations, concerns were raised in relation to commercial law education requirements for tax agents. Certain eligibility items in the TAS Regulations specify that, to become a registered tax agent, individuals have to successfully complete a course in commercial law that is approved by the Board. In April 2010, the Board after seeking external advice developed an exposure draft that set out the commercial law requirements relevant to tax agents registering under the TAS Act. After considering submissions, the Board determined that the commercial law course should be the equivalent of three tertiary subjects amounting to a total of 300 to 390 hours of study, covering defined topic

¹²³ Parliament of Australia, Tax Agent Services Regulations 2009, Schedule 2, pp. 27–32.

¹²⁴ Designed to be incorporated into a Certificate IV in Financial Services (Bookkeeping) and (Accounting).

areas.¹²⁵ At the Government's request, the Board is reviewing these broader commercial law requirements.¹²⁶

Registration processes and procedures

4.11 On 1 March 2010, the TPB began registering tax practitioners. The workload consisted of new applications, as well as renewing registrations for practitioners previously registered under the old regime. Practitioners not previously required to be registered, such as BAS agents, were also given the opportunity to notify the TPB of their practicing status.

The registration business process

4.12 The registration process includes the activities undertaken by tax practitioners in applying to register, and the TPB in assessing registration applications. These processes are illustrated in Figure 4.1. The TAS Act specifies that new applications must be assessed within six months or they are taken to be rejected, however practitioners applying to renew their registration remain registered until their renewal has been processed.¹²⁷

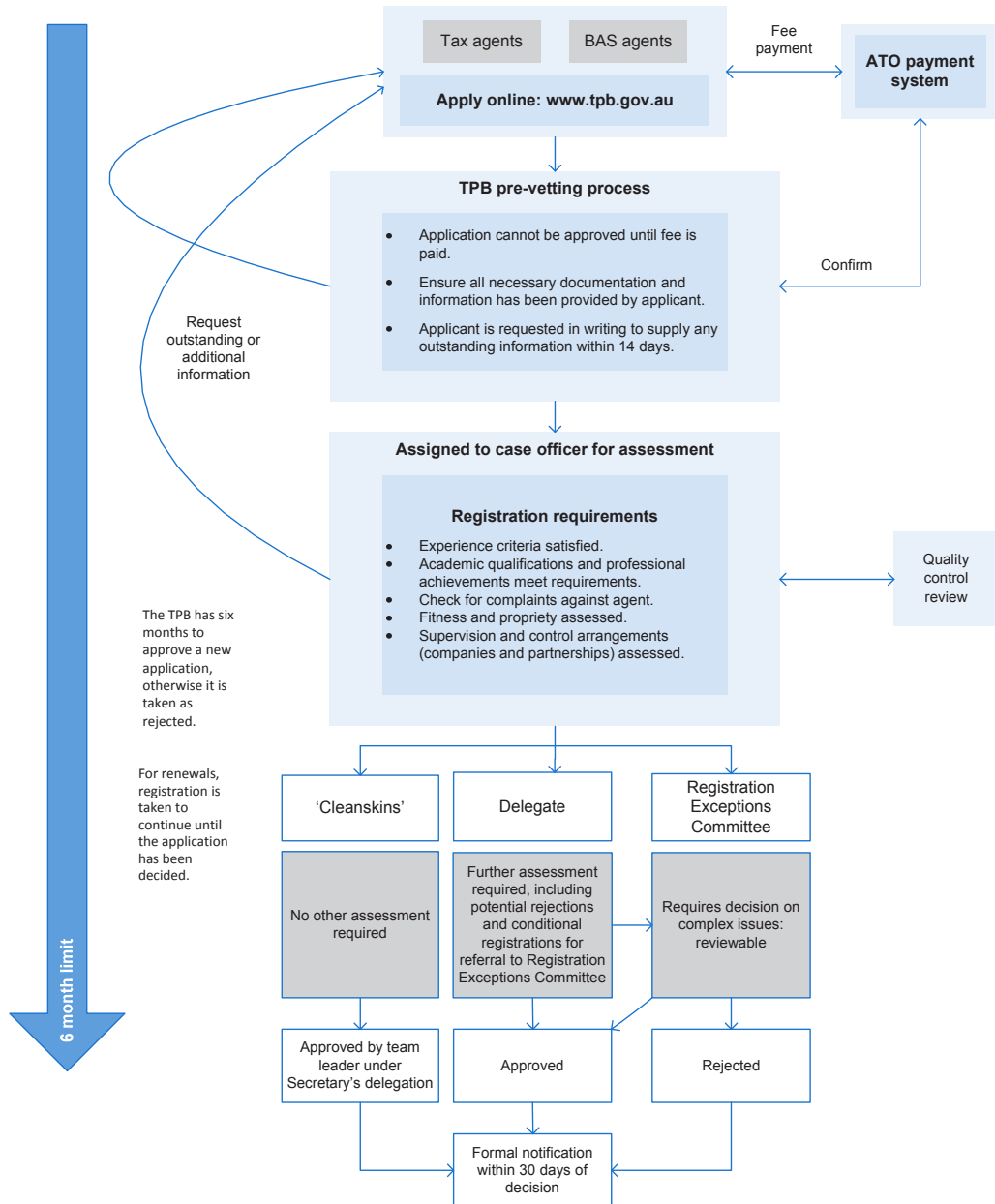
¹²⁵ TPB, *Proposed TPB Guideline, Course in Commercial Law that is Approved by the Board*, TPB (PG) 02/2010, pp. 5 and 9.

¹²⁶ The Hon. David Bradbury MP, Assistant Treasurer, *Appointments and Reappointments to the Tax Practitioners Board*, Media Release no 165, 14 December 2012.

¹²⁷ In accordance with the legislated requirement in the TAS Act, s 20–25 and 20–50.

Figure 4.1

The Tax Practitioners Board's registration business process



Source: ANAO interpretation of TPB procedural documents.

Note: Applications that meet all requirements for registration are termed 'cleanskins'.

Online application and pre-vetting by the TPB

4.13 Practitioners apply online, answer questions on fitness of character and propriety, and attach documents in support of their claims. Applicants also state whether they are seeking exemption for professional indemnity insurance requirements¹²⁸ and pay the application fee separately.¹²⁹ TPB staff check applications to determine whether all necessary documentation and information has been provided, as well as the correct fee paid.

Assessment process

4.14 Applications are assessed on the basis of the documentation provided. TPB staff do not generally verify the information provided unless there is reason to do so, as this would increase the timeframe needed for assessments.¹³⁰ The case officer also checks in iMIS for any complaints against the practitioner, and where necessary, requests more information from the applicant.

4.15 A second staff member undertakes a quality control review of between five to 100 per cent of applications depending on the experience of the case officer who undertook the assessment. Reviewing officers provide feedback to the team member and the assessment is amended if necessary, and the reviewing officer signs off the assessment.

Decision-making process

4.16 Applications that meet all requirements for registration are termed 'cleanskins'. Team leaders, authorised under the Secretary's delegation, approve these applications. If applications need to be further assessed in relation to relevant experience, qualifications or the competency of service provided, they are referred to a Delegate of the Board. Where these issues are considered to have been appropriately addressed, either the Team Leader or the Delegate approves the application. Decisions on registrations with a potential condition¹³¹ or registrations that could possibly be rejected go to the Registration Exceptions Committee, as these are reviewable decisions.

¹²⁸ The Board can only require a practitioner to have professional indemnity insurance if they are registered.

¹²⁹ Fees for an individual carrying out a business as a tax agent are \$500 and \$100 as a BAS agent. Fees for individuals not carrying out a business are \$250 for a tax agent and \$50 for a BAS agent. The application fee is received by the Commissioner of Taxation on behalf of the Commonwealth, and is not retained by the TPB.

¹³⁰ For example, information would be verified if the name on an educational certificate does not match the name of the applicant. This can occur after marriage, and the applicant would be asked for proof of the name change.

¹³¹ For example, applications made by a quantity surveyor or research and development consultant.

4.17 If approved, an email is sent to the practitioner notifying them that registration has been granted, and the date of its expiry. This is followed within 30 days¹³² by formal notification, together with their certificate of registration. The practitioner is informed of their responsibilities and is advised that the TPB is required¹³³ to inform the ATO of approved registrations. The TPB also advises the practitioner to provide contact details to the ATO, particularly if they wish to access ATO systems. If rejected, a letter is sent within 30 days to the applicant giving the reasons for the rejection and the applicant's right of appeal to the Administrative Appeals Tribunal.

4.18 The ATO's Tax and BAS Agent Portals assist practitioners to prepare, lodge, view and print income tax returns and activity statements for clients; request refunds and credit transfers on behalf of clients; view and update client registration details; and securely communicate with the ATO. Prior to the TAS Act, the ATO had access to information relating to registered tax agents requiring portal access. On taking over the registration function in March 2010, the TPB continued to provide the ATO with similar registration information until October 2011, when it obtained legal advice from the Australian Government Solicitor that not all registration information could be shared with the ATO.

4.19 The TPB now provides the ATO with a sub-set of information regarding registered and deregistered tax practitioners. In August 2011, the Australian Government Solicitor recommended legislative amendment to support information disclosures to the ATO that would facilitate interaction between the Commissioner of Taxation and practitioners. The Treasury agreed this was a priority to resolve, and exposure draft legislative amendments to bring effect to this, and other changes, were issued for public consultation on 8 February 2013.

Recording, monitoring and reporting

4.20 The TPB has developed its approach to recording, monitoring and reporting registrations over time. The iMIS capability to provide automated internal reporting of results against registration service standards has only been in place from July 2011. Recording and reporting statistics on the approval methods for applications (that is Team Leader, Delegate, or the

¹³² In accordance with the legislated requirement in the TAS Act, s 20–30(1).

¹³³ In accordance with the legislated requirement in the TAS Act, s 20–30(2).

Registration Exceptions Committee) began in late 2011. However, in 2012 the approval method was still not being consistently recorded in iMIS. Table 4.1 details the data available for 2011–12 and up to 31 January 2013 in relation to new registrations.

Table 4.1

Numbers of new registrations by approval method

Application type	Decision method	2011–12 ⁽¹⁾	2012–13 ⁽²⁾	Total
Tax agent	Cleanskin to Team Leader	1276	1256	2532
	Complex to Board Delegate	94	198	292
	Complex to Registration Exceptions Committee	141	45	186
	No classification ⁽³⁾	376	-	376
BAS agent	Cleanskin to Team Leader	1660	1557	3217
	Complex to Board Delegate	1	26	27
	Complex to Registration Exceptions Committee	19	17	36
	No classification ⁽³⁾	554	-	554
Total new applications		4121	3099	7220

Source: Data provided by the TPB.

Note 1: No start date for recording of these statistics is available, as their introduction was staggered across assessment teams in 2011–12.

Note 2: Data for 2012–13 is for 1 July 2012 to 31 January 2013.

Note 3: For 2011–12, registrations recorded as having 'no classification' were either: finalised before the recording field was available in iMIS; or after this time, the approval method was not entered.

Registration application types and impact on workload

4.21 There are a number of different application types prescribed by the TAS Act. Several of these relate to the establishment of the new regulatory regime and were only available for specified periods. Consequently, the workload of TPB Registrations staff has fluctuated, with substantial peaks related to the deadlines for certain types of application. Table 4.2 summarises the types of applications received by the TPB since 1 March 2010.

Table 4.2**Application types received by the Tax Practitioners Board**

Application type	Description	Comment
Legacy	Unfinalised applications made to the state boards were decided by the TPB in accordance with the old law by 31 August 2010 and registered under the TAS Act.	The TPB inherited 8280 legacy applications from the state boards.
Triennial	Tax agents registered prior to 1 November 1988 and still registered before 1 March 2010 were eligible for registration under the TAS Act even if they did not meet the new prescribed registration requirements.	There were 11 500 triennial registrations due for renewal in bulk on 1 April 2010, with further renewal in 2013.
Notifier	Eligible unregistered tax and BAS service providers were taken to be registered under the TAS Act if they notified the TPB by 31 May 2010 (tax agents), and 31 August 2010 (BAS agents).	These entities were registered by the TPB until 29 February 2012. On renewal, tax and BAS agents had to meet standard registration requirements. BAS agents could apply for a further transitional registration until 28 February 2013.
Transitional	Entities that did not meet registration requirements could apply for transitional registration by: <ul style="list-style-type: none"> • 31 August 2010 for tax agents; or • 28 February 2013 for BAS agents. 	Transitional tax and BAS agents had to have provided a tax or BAS service to a competent standard for a reasonable period before making the application.
Standard new application	New applications from individuals, companies or partnerships to become tax or BAS agents.	All approved registrations must be granted by the TPB for at least three years.
Renewal	Tax agents and their nominees who were registered before 1 March 2010 retained their registration until it was due to expire under the old law. Agents registered under the new Act must apply for renewal of their registration prior to the expiry term of their registration (usually three years).	10 200 tax agents and nominees were due to renew their registration between December 2009 and December 2010 with almost 8000 nominees due for renewal in January and February 2010.

Source: ANAO summary of Schedule 2 of the *Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009*; and information provided by the TPB.

4.22 While the number of some types of applications could be predicted, BAS agent applications in particular were difficult to estimate. In 2009, the ATO had estimated that between 12 000 and 18 000 bookkeepers were lodging BAS returns for clients and it was expected that many of these would seek registration. BAS agents were eligible to apply as ‘notifiers’, giving them until 29 February 2012 to meet the standard registration requirements. A further transitional registration was available to them, extending the date to meet standard registration requirements until at least 28 February 2013. While these provisions allowed time for practitioners to meet the new registration

requirements, they have created peaks in workload, as well as increasing the number of potential applications.¹³⁴

4.23 This uncertainty created a challenge in terms of making adequate resources available at peak times, and the Board has acknowledged that it experienced difficulties in processing certain types of applications in a timely manner. The TPB did not record or report its registration processing times for the first two years of operations, but advised stakeholders via its website that it could take up to six months to process a new application. Applications for a renewal of registration could take longer, but these practitioners remained registered until their application was processed. In a message published on the TPB website in August 2010, the Chair noted that the TPB had received high volumes of registration applications, and its priority was clearing registration backlogs.¹³⁵

Developing internal procedures

4.24 The TPB has been developing procedures for staff to follow in each aspect of the registration process. These range from: processing different types of applications; raising a Statement of Fact or preparing an agenda for the Registration Exceptions Committee; to post-Board and change-of-detail procedures. Procedural documents have also changed over time, following iMIS system changes and the outcomes of Committees and Board meetings.

4.25 Of 21 procedures covering important processing functions, seven were still in draft form as of 31 January 2013. Of these, some significant procedures were still unapproved, including revised procedures for new tax agent applications (both for individuals and partnerships/companies), and post-Board procedures. There would be benefit in the TPB giving priority to finalising its registration procedures to help ensure that staff have appropriate guidance, operations are consistent, and quality control tests are relevant.

¹³⁴ For example, a BAS agent 'notifier' who later becomes a 'transitional', and then applies for a standard new application.

¹³⁵ TPB, *Message from the Chair*, 27 August 2010
<http://www.tpb.gov.au/TPB/Publications_and_legislation/2010_Messages_from_the_Chair/0056_27_Aug_2010_Message_from_the_Chair.aspx> [Accessed 11 December 2012].

Performance of the Tax Practitioners Board in conducting registrations

4.26 As previously noted, the TPB is not always faced with a steady stream of work. As well as the regular flow of new and renewal applications, the TPB is also subject to peaks because particular types of applications are to be received by specific dates. These due dates were legislated, with the exception of the date for the triennial renewals, which was set by the Board. Table 4.3 shows the number of applications received for the different types of registration. The TPB advised that applications tended to be submitted over a relatively short timeframe prior to these deadlines. It has attempted to stagger application peaks by encouraging practitioners to apply early (before the deadline), and by staggering the registration date when those practitioners are due to re-apply.

Table 4.3

Total applications received in relation to the deadlines for applications

Deadline	Application type	Number
1 April 2010	Triennial renewals	9 467
31 May 2010	Tax agent notifiers	1 124
31 August 2010	BAS agent notifiers	12 094
31 August 2010	Tax agent transitionals	948
29 February 2012	Tax agent notifier renewals	866
29 February 2012	BAS agent notifier renewals	9 327

Source: Data provided by the TPB.

Note: BAS agent transitionals were not due until 28 February 2013.

4.27 Table 4.4 provides a breakdown of tax and BAS agents reported as registered on 30 June of each year the TPB has operated, and the number of applications received, finalised and rejected each year. The number of registered agents does not reconcile with the volume of applications received as they include those agents who were registered under the old regime, and whose registrations were retained until they were due for renewal.

Table 4.4

Numbers of tax and BAS agents registered and applications received, finalised and rejected as at 30 June 2010, 2011 and 2012

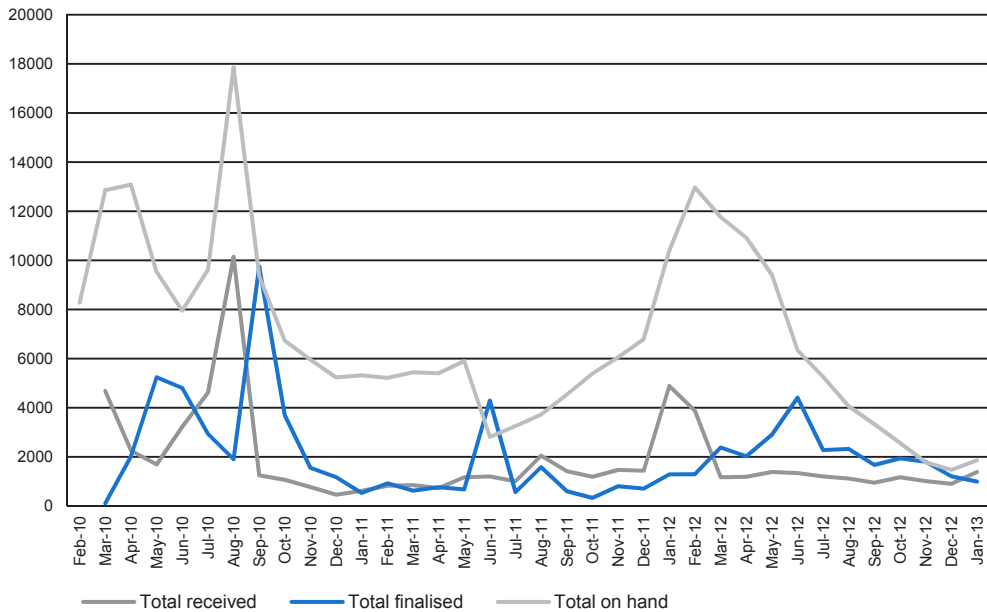
	30/6/2010 ⁽¹⁾	30/6/2011	30/6/2012
Registered tax agents	34 134	37 435	38 100
Registered BAS agents	4747	16 990	14 247
Total	38 881	54 425	52 347
Applications received	20 113	23 718	22 366
Applications finalised ⁽²⁾	12 166	28 861	18 786
Applications rejected	0	70	88

Source: TPB, *Annual Report 2010*, Canberra, 2010, pp. 10 and 33; 2010–11, pp. 39–40; 2011–12, pp. 35–37 and data provided by the TPB.

Note 1: Data for 2010 is for 1 March–30 June 2010. Applications received include 8280 legacy applications on hand prior to 1 March 2010.

Note 2: Finalised applications include those approved, withdrawn by the applicant and rejected.

4.28 Figure 4.2 illustrates the volumes of applications received, finalised and on hand from February 2010 (the 8280 legacy applications from the old regime) to January 2013. The numbers illustrate the peaks in workload experienced at each of the legislated deadlines. From a peak in August 2010 of 18 000 applications (an existing backlog of about 8000 applications and 10 000 applications being received), and another peak in February 2012, the backlog in January 2013 was less than 2000 applications. The persistent backlog of applications remained until streamlined processes (implemented in February 2012 and discussed later in this chapter) began to have an impact.

Figure 4.2**Applications received, finalised and on hand from February 2010 to January 2013**

Source: ANAO analysis of data provided by the TPB.

Service standards

4.29 The Board amended the service standards for registrations in 2010–11 and the results were reported externally in the 2011–12 Annual Report. In that financial year, only 51.4 per cent¹³⁶ of new applications were processed within 30 days of receipt of all the necessary documentation, and 58 per cent of renewal applications within three months. At 30 June 2012, internal reporting against service standards detailed the percentage of cases (other than notifier renewals) finalised in 0–30 days, 31–60 days, 61–90 days and more than 90 days (summarised in Table 4.5).¹³⁷

¹³⁶ The TPB has advised that the figure of 53 per cent given in the Annual Report was incorrect.

¹³⁷ As discussed in Chapter 3, the service standards given in the 2011–12 Annual Report for registration are: process complete and accurate new applications and notify applicants within one month; and process complete renewal applications and notify applicants within three months.

Table 4.5**Percentage of applications finalised within particular timeframes for 2011–12**

Application type	0–30 days %	31–60 days %	61–90 days %	> 90 days %	Total %
New tax/BAS agent registrations	51.4	10.9	5.8	31.9	100
Tax agent renewals	22.7	25.8	9.8	41.7	100

Source: Data provided by the TPB.

4.30 From July 2012, the average processing times for many application types has improved. The average number of days taken to process a ‘cleanskin’ application is summarised in Table 4.6.

Table 4.6**Average processing times (‘cleanskins’) in days, July 2012 to January 2013**

Application type	Jul 12	Aug 12	Sep 12	Oct 12	Nov 12	Dec 12	Jan 13
Tax agent new	38	38	37	37	18	16	16
BAS new	38	25	24	20	18	16	23
BAS transitional	20	21	26	17	16	15	26
Tax agent standard renewal	42	31	32	30	36	25	24
Tax agent notifier renewal ⁽¹⁾	157	222	222	259	270	334	345
BAS notifier renewal ⁽¹⁾	180	233	237	252	308	341	367

Source: Data provided by the TPB.

Note 1: These averages are affected by a number of difficult cases that are taking longer to finalise.

4.31 In July 2012, performance was forecast to improve with the introduction of new streamlined work methods (discussed below). Eighty per cent of valid new applications were to be processed within 60 days by 1 September 2012; and within 30 days by 1 March 2013; with 80 per cent of valid tax agent renewals to be processed within 30 days by 31 August 2012. The goals stated for 31 August and 1 September were met. The TPB advised that progress towards the 1 March 2013 goal was promising because as of

31 January 2013, 73 per cent of valid new applications were being processed within 30 days.

Improvements to application processing

4.32 The Board acknowledged the delays in processing applications, and put processes in place to improve timeliness. In March 2012 the Registration Exceptions Committee Board members and TPB Registration Team Leaders agreed to make significant adjustments to registration procedures, including:

- allowing staff to approve applications as 'cleanskins', with Team Leader approval, if a relevant educational course meets the requirements but does not currently appear on the qualifications list; and
- revising the Statement of Facts presented to the Registration Exceptions Committee to include only the issues impacting the registration application.

New tax agent applications

4.33 In February 2012, new work arrangements were introduced, with a 'hit team' created to clear backlogs in new tax agent applications. This team assumed responsibility for around 600 cases received in November and December 2011. By the end of June 2012, 541 of these cases were reported as finalised. A further 145 cases received in May 2012 were then prioritised for action by this team.

BAS agent and tax agent notifier renewals

4.34 The TPB received 9327 applications for renewal from BAS agent notifiers whose renewal date was 29 February 2012, together with 866 tax agent notifier renewals due by the same date. Processing these was, in effect, like processing new applications because, at renewal, applicants were required to demonstrate that they met either standard requirements including qualifications and experience, or the transitional requirement of having provided BAS services to a competent standard for a reasonable period of time.

4.35 The Board was advised in July 2012 that only 24 per cent of standard individual applications, and 30 per cent of standard applications from companies and partnerships, were complete. TPB staff had to contact the remaining applicants to seek further information, including evidence of appropriate qualifications, and this was a time-consuming process.

4.36 To expedite the processing of BAS notifier renewals, a separate team was established to implement a streamlined process. The new process eliminated the independent verification of competency for transitional or standard individual applications¹³⁸, allowing faster processing times and enabling staff to process other applications. The Board considered that the risk associated with not maintaining the requirement for independent verification of competency was very low, as the agents had been registered and practising for two years.

4.37 The TPB advised that this streamlined process has had a high degree of success, enabling it to reduce the backlog of applications. As at 31 January 2013, there were 257 still to be processed—these being the more difficult cases. These practitioners remain registered until their renewal has been processed.

4.38 The TPB is now planning for the processing of registrations in 2013 including: transitional BAS applications before 1 March 2013; and approximately 10 000 renewal applications from triennials; and financial advisers entering the system from 1 July 2013.

Quality assurance

4.39 In April 2011, the TPB's internal auditor reviewed the appropriateness and effectiveness of a draft quality assurance process being trialled by the Registrations team. At that time quality assurance testing had been undertaken by the Registrations team, on 18 new tax agent registrations. This testing found a number of administrative and record keeping errors, but only one case was deemed to fail the tests, because of the lack of a recorded decision.

4.40 An internal audit tested six of the initial 18 cases and an additional five cases. One case previously tested was found to require referral to the Registration Exceptions Committee on the grounds of insufficient experience.¹³⁹ To confirm this was not a systemic issue, the internal audit review tested a further 33 'cleanskin' cases to verify that the correct classification has been made. Further record keeping issues such as missing documentation were identified, but no incorrect decisions were found. The

¹³⁸ BAS notifier renewals had to demonstrate that they met either standard requirements including qualifications and experience or the transitional requirements of having provided BAS services to a competent standard for a reasonable period, including providing independent statements as to hours worked and competency.

¹³⁹ Both the initial quality control review and the quality assurance process had identified the case as a 'cleanskin'.

internal audit recommended that some registration procedures be improved, and concluded that a risk-based methodology should be further developed and used for selecting cases for quality assurance review.

4.41 In October 2011, the Registration Exceptions Committee members authorised the risk-based quality control process, discussed in paragraph 4.15, based on the knowledge and experience of the staff processing the applications. At the same time, two Registration Exceptions Committee Board members independently reviewed and reported on two small samples of cleanskin cases: a sample of 12 tested in October 2011; and a sample of 19 tested in December 2011.¹⁴⁰ The focus of these reviews was on the correctness of decisions. No examples were found of a registration being granted that should have been rejected. However, a number of cases were found in each sample (nine of 12 in the October sample, and five of 19 in the December sample) where the Board members identified incorrect assessments in relation to such matters as qualifications, experience and fitness and propriety.

4.42 A revised risk-based quality assurance process was to be introduced. This process (intended to be conducted every two months) has been documented, but had not been finalised as at 31 January 2013. The only testing under the revised process was carried out for the period January to March 2012. Of the 41 cases examined: three cases did not properly document all actions taken; five cases had errors in recording practitioner details and the outcomes of cases; and in 11 cases there was a failure to contact the practitioner in a timely manner (in some cases three to four months after lodgement). Following these results, refresher training was conducted for teams in relation to applying qualifications and experience criteria, as well as a workshop with Board members in March 2012 to streamline the process.

4.43 The TPB advised that, as at January 2013, no other quality assurance reviews have been undertaken as there was neither the time nor resources available. There would be benefit in the TPB finalising the quality assurance process, and conducting regular reviews and analysing the results, to gain assurance over the quality of the registration process and to identify process improvement. This is particularly important given the reductions in checks

¹⁴⁰ The 12 cases tested in October 2011 were selected to cover different types of registrations, out of a random sample of 97 from a total population of 1297. The 19 cases tested in December 2011 were additional selections from the original sample of 97, and targeted to encompass the work of more staff.

and controls introduced with the 'streamlined' application process (discussed in paragraphs 4.32 to 4.37).

Results of ANAO testing of registrations cases

4.44 The results of the ANAO's examination of registration data in the iMIS system were reported in Chapter 3. The ANAO also examined 306 registration assessment records in the iMIS system.¹⁴¹ The ANAO's examination focused on three key areas of case conduct that were consistent over the period of the TPB: the attachment of supporting documentation for an application; checks conducted by case officers when assessing the application; and recording of contact with applicants.¹⁴²

4.45 Results confirmed there are issues with the quality and consistency of data. For example:

- only 102 (33 per cent) of the records reliably identified the application type (such as tax agent new application, or BAS agent notifier).¹⁴³ These records were created after the introduction of the iMIS capability to record application type and decision type; and
- documentation provided in support of claims for eligibility (such as educational qualifications or proof of voting membership of a professional association) were inconsistently labelled, attached in emails that were not logically titled, stored in different locations within the record, or not attached.

4.46 The ANAO found a high number of cases, 167 (55 per cent), recorded contact with the applicant. This contact was either instigated by the applicant or by the case officer to pursue missing information, clarify what had been supplied, or request further information to satisfy the level of documentation needed. Although highlighting the difficulty for the TPB in obtaining all the required documentation, it could also indicate that requirements are not being clearly communicated to applicants, or that the online form was allowing applicants to apply without providing the required level of documentation. The TPB has advised that online forms have been updated progressively over

¹⁴¹ The applications spanned the date range 30 November 2009 to 24 October 2012.

¹⁴² The ANAO did not test the legality of decision-making, or whether an applicant had met the criteria. These assessments require considerable training and experience.

¹⁴³ The TPB is able to identify application type through other means.

the 18 month period leading up to January 2013, and now make the attachment of documents mandatory.

Stakeholder feedback on the Tax Practitioners Board registration process

4.47 Feedback to the ANAO from eight professional associations and one large practice was that the level of documentation required is onerous:

- five stakeholders questioned whether it is necessary, especially as to what constitutes ‘experience’¹⁴⁴; and
- six stakeholders, while supporting the use of online forms, considered their design, language, format and usability to have been poor since inception, and remained below an acceptable standard. This resulted in incomplete submissions that delayed the processing of the registrations.¹⁴⁵

4.48 Stakeholders expressed considerable concern about the delays applicants were experiencing in the processing of their applications:

- six of the stakeholders did not consider the registration process to be efficient, well designed, explained or executed. There had been significant delays in the initial stages, with follow-up by applicants needed as there was no function such as ‘track my application’s progress’ on the website; and
- four associations felt that the TPB could have better communicated the causes of these delays and the status of applications, as practitioners were concerned that they were practicing without being registered.¹⁴⁶

4.49 One association commented that its members appreciated efforts by the TPB to fast-track critical applications, and two stakeholders commented that TPB staff were extremely helpful in their dealings with them.

4.50 The large practice expressed concern that no bulk registration facility was available for registering their 150 tax practitioners, or notifying the Board

¹⁴⁴ The Board advised that the level of detail required is a result of the legislative settings it has to administer, particularly that it be satisfied that an applicant meets education and experience requirements.

¹⁴⁵ As previously mentioned in paragraph 4.46, online forms have been progressively improved.

¹⁴⁶ The TPB’s standard communication to applicants was that it may take ‘up to six months’ for their application to be processed, and stakeholders felt that this indicated that processes or systems should be further improved. A standard six-month processing time for applications was considered neither adequate nor practical for practitioners whose livelihoods, businesses, employees, and obligations to clients depended on their timely registration.

of their professional indemnity insurance cover (the deadline for notification was 30 June 2011). The TPB introduced a form in June 2011 for bulk declaration of the insurance cover for practitioners in their business, but practitioners still need to register individually.

Conclusion

4.51 The TAS Act requires the Board to register tax practitioners if satisfied that an entity meets certain registration requirements. This includes a fit and proper person test, and prescribed qualifications and experience requirements. Developing the registrations function was a priority for the Board, and it consulted on and implemented policies for minimum registration criteria (qualifications, membership of recognised professional associations, and eligible experience) for both tax and BAS agents. In particular, the Board has invested considerable effort in determining the educational requirements for these agents. It is also working with the Treasury to prepare policies for the upcoming registration of financial advisors.

4.52 The TPB has processes and procedures in place to accept registration applications, and has been developing procedures for staff to follow in each aspect of the registration process. Of 21 procedures covering important functions for processing applications, seven were still in draft form as at 31 January 2013.

4.53 Transitional arrangements in the TAS Act allow for different types of applications to be made at particular times. Consequently, there have been substantial peaks in the registrations workload. These included 8280 legacy applications on hand at the time of transition from the state boards, 11 500 'triennial' registrations of those agents registered prior to 1988, and 12 094 BAS agent 'notifiers'. This created challenges in making adequate resources available at peak times, and in planning for future workloads. In February 2012, there was another peak of over 12 000 applications received, but by January 2013 the applications on hand had reduced to around 2000.

4.54 Stakeholders expressed concerns about delays in processing, both to the TPB and during ANAO consultations. These concerns related to the design and efficiency of the registration process, as well as the need for better communication from the TPB about the causes of delays and the status of practitioners' applications. The Board acknowledged these delays and introduced changes to the registration process such as improved online forms, and particularly from the beginning of 2012, streamlined processing. These

initiatives were successful in reducing the time taken to process an application and the number of applications on hand.

4.55 Service standards for processing registration applications are: process complete and accurate new applications and notify applicants within one month; and process complete renewal applications and notify applicants within three months. In 2011–12, 51.4 per cent of new applications were finalised within 30 days, and 58.3 per cent of renewals within 90 days. The TPB has a goal to improve this performance to 80 per cent of valid new applications processed within 30 days by 1 March 2013. The TPB advised that as at January 2013, 73 per cent of valid new applications were being processed within 30 days.

4.56 The TPB has a draft quality assurance framework for the registration function, and in January to March 2012 conducted a review using the process. The TPB advised that, as at January 2013, no other quality assurance reviews have been undertaken as neither time nor resources were available. As resourcing is a limiting factor to the conduct of quality assurance reviews, the TPB could consider these reviews at six monthly intervals rather than every two months as currently proposed.

4.57 The ANAO examined 306 records for registration in the iMIS system. Results of this testing confirmed there are issues with the quality and consistency of data. For example, documentation from applicants in support of claims for eligibility (such as educational qualifications or proof of voting membership of a professional association) was inconsistently labelled, attached in emails which were not logically titled, stored in different locations within the record, or not attached.

5. Regulatory Assurance

This chapter examines the Tax Practitioners Board's development of its regulatory assurance function and the implementation of the new regulatory regime.

Introduction

5.1 A key objective of the new regime is to provide assurance that tax practitioners meet appropriate standards of professional and ethical conduct. The new principles-based statutory Code and other provisions of the TAS Act establish these standards. The Code consists of 14 core obligations under five key principles: honesty and integrity; independence; confidentiality; competence; and other responsibilities, such as compliance with Board requests and directions. The Board is responsible for administering the Code and investigating any conduct that may breach the Code or other provisions of the TAS Act.¹⁴⁷ As discussed in Chapter 1, the new compliance regime is significantly different to the previous regime.

5.2 Two Board committees are involved in regulatory assurance related matters. The Compliance Committee makes policy recommendations about the Board's exercise of its compliance function.¹⁴⁸ The Board Conduct Committee is an operational committee that decides whether a breach of the TAS Act has occurred and if so, the appropriate action, such as imposing an administrative sanction.

5.3 Administrative support for the regulatory assurance function is provided by staff organised into three key areas.¹⁴⁹ The National Management Team provides procedural support and reporting; the Risk and Issue Management Team assesses complaints and referrals about registered and unregistered tax practitioners; and four Preliminary Enquiry and Investigations Teams conduct enquiries and formal investigations for more serious complaints and submit their findings to the Board for a decision.

¹⁴⁷ The TAS Act civil penalty provisions relate to both conduct that is prohibited for unregistered practitioners, and the conduct of registered practitioners.

¹⁴⁸ The TPB has advised that this committee has only met on three occasions, in February and June 2010, and February 2012 as much of the work of this committee is undertaken at joint meetings of the three Single Delegates (discussed later in this chapter).

¹⁴⁹ Regulatory Assurance staff are located in Box Hill, Brisbane, and Hurstville. As at 31 January 2013, there were 48 staff working in the three organisational areas.

5.4 Three Board members are designated as ‘Single Delegates’ for regulatory assurance functions. These members have delegated regulatory assurance non-reviewable powers. They also: provide guidance to staff regarding the priority of and approach to compliance cases; oversee the case workload; and provide policy advice.

5.5 To assess the TPB’s regulatory assurance activities, the ANAO examined:

- the development of the TPB’s regulatory assurance approach and compliance framework;
- the TPB’s regulatory assurance processes and procedures;
- how the TPB selects cases, records their outcome and incorporates analysis of the outcomes into future compliance activities; and
- the TPB’s conduct of regulatory assurance cases.

5.6 In most instances, the ANAO has used regulatory assurance data from 1 July 2011 onwards. The TPB advised that prior to this date: some data fields were not available; different methods were used to record the complaints, referrals and cases; and data was held in three different compliance case-management systems (discussed later in this chapter).

Development of the regulatory assurance approach

5.7 The Board had to develop a regulatory approach for managing compliance cases under the TAS Act. In addition, it had to consider compliance cases that the state boards and the ATO were unable to finalise before the changeover to the new regime on 1 March 2010. On this date, the Board inherited 139 legacy cases from the state boards and 66 cases from the ATO’s Tax Agent Integrity Unit relating to registered and unregistered tax agent conduct under the *Income Tax Assessment Act 1936* (ITAA).

5.8 The Board sought to clarify its responsibilities under the ITAA, and in September 2010, received advice from the Australian Government Solicitor that it had limited jurisdiction over the 205 inherited cases.¹⁵⁰ In this context, a subsequent review found that approximately 75 per cent of these cases did not

¹⁵⁰ The Board could not investigate the cases, except where a state board had issued a ‘show cause notice’, and could not terminate registration unless the conduct would have led to termination under the ITAA. The new provisions of the TAS Act could not be applied to conduct that occurred before 1 March 2010.

warrant further attention and the remaining 25 per cent (51 cases), where these involved 'fit and proper person' issues, could be progressed under the Board's compliance processes. The TPB's 2009–10 Annual Report separately reported on the number of state board legacy cases that were finalised (which includes no further action being taken) by 30 June 2010 (72 of the 139 cases). The TPB advised that seven state board legacy cases remained outstanding at 31 January 2013, six of which are on hold pending the outcome of court proceedings associated with Operation Wickenby.¹⁵¹

5.9 In the period up to June 2011, the Board initiated a range of activities to develop the regulatory assurance function. These activities included working with industry associations to publish a range of information about the new arrangements for tax practitioners, such as the application of the Code and the fit and proper person requirement. In addition: training was provided to Regulatory Assurance staff; new processes were workshopped; and draft procedures for all key compliance activities were developed. During this period, individual Board members also worked closely with Regulatory Assurance and Legal Services staff to provide guidance on progressing cases under the TAS Act.

5.10 Developing a compliance/risk management framework and associated processes, procedures and systems was a key strategy in the TPB's first strategic plan (June 2011). A Compliance Philosophy (stating the Board's approach in response to non-compliance) was included in this strategic plan.

¹⁵¹ Operation Wickenby, led by the Australian Crime Commission, involves specific criminal investigations to gather intelligence on, and investigate and prosecute abusive tax haven arrangements.

5.11 In December 2011, an internal audit report requested by the Board on the regulatory assurance function concluded that the function was not working well and, although progress had been made, it was not yet effective or efficient. The primary reasons for these problems were the comparatively new and untested legislation, high rate of staff turnover, and extent of unmet staff training needs. The report described the regulatory assurance environment as:

...one where the Board and Legal Services are focussed on raising the quality of RA [regulatory assurance] work to ensure procedural fairness and allow appropriate formal decisions to be made. Unfortunately this is being done in the absence of a clearly defined compliance framework, and without sufficient change management within RA.

5.12 The internal audit also found that some staff had little faith in draft procedural documents, as directions from Board members and committees and Legal Services often contradicted these documents. The report recommended that a compliance policy framework be developed for Board approval, and procedures be standardised and approved by the Board.

The Tax Practitioners Board's compliance framework

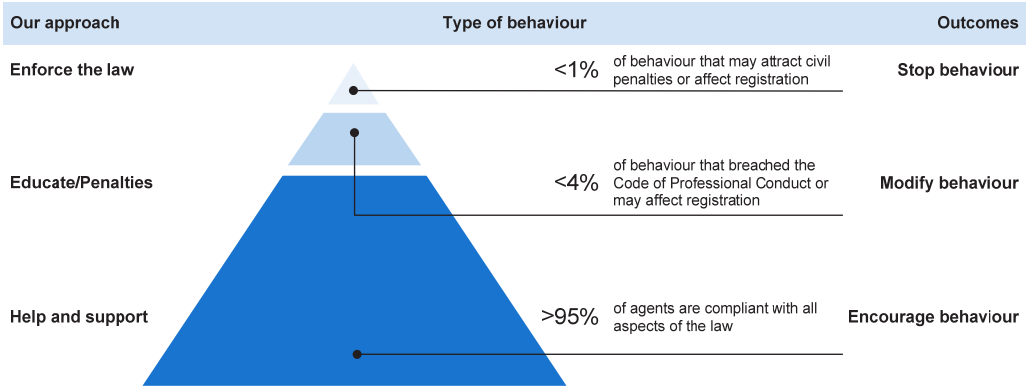
5.13 In December 2011, the TPB developed a Compliance Model, Compliance Strategy and Compliance Roadmap, which along with the Compliance Philosophy provided a policy framework for its regulatory assurance activities.¹⁵²

5.14 The Compliance Model, illustrated in Figure 5.1, reflects the Compliance Philosophy's approach that compliance activities and responses need to be appropriate and proportionate to the nature of the issues involved. The model assumes that less than five per cent of all tax practitioners are non-compliant, with less than one per cent of these engaging in behaviour that may affect registration or attract a civil penalty. The TPB has not validated these assumptions but advised that it intends to do so when it has collected sufficient relevant data.

¹⁵² The Board adopted the Compliance Model in December 2011 and endorsed the Compliance Strategy and Compliance Roadmap at the same time, subject to feedback from the February 2012 meetings of the Compliance Committee and joint delegates committee.

Figure 5.1

The Tax Practitioners Board’s Compliance Model



Source: TPB, *Annual Report 2011–12*, Canberra, 2012, p. 43.

5.15 The Compliance Strategy identifies areas of major compliance risk for 2011–13. The strategy also outlines the principles, values and objectives for the TPB’s compliance approach, and estimates the number of compliance cases to be undertaken in forward years, and service standards. Actions to build the TPB’s compliance function (including staff training and systems updates) are identified in the Compliance Roadmap. In addition, the 2012–13 Regulatory Assurance Business Plan identifies compliance activities, estimates case numbers and outlines service standards. These estimates and service standards differ from those in the Compliance Strategy.

5.16 Supporting the TPB’s compliance framework is the TPB’s Risk Assessment Guide, to assist staff in determining a risk rating for complaints and referrals.¹⁵³ The risk assessment process allocates each complaint a risk rating of ‘low’, ‘medium’ or ‘high’ based on a likelihood and consequence matrix, and allocates a potential mitigation strategy (for the Risk and Issues Management, Preliminary Enquiry or Investigations Teams). A comparison of risks, case number estimates and service standards between the Compliance Strategy, Risk Assessment Guide and the 2012–13 Regulatory Assurance Business Plan is provided in Table 5.1.

¹⁵³ The TPB has advised that the Risk Assessment Guide is in use but was unable to provide documentation demonstrating approval by the Board.

Table 5.1**Comparison of risks, case estimates and service standards**

Compliance Strategy		Risk Assessment Guide
Risks	<ul style="list-style-type: none"> Unregistered agents Fitness and propriety Enforcing the Code (in particular, agent's compliance with their personal tax obligations and satisfying the Board's requirement to hold professional indemnity insurance) 	<ul style="list-style-type: none"> Consumer protection Government revenue Reputation of the TPB Administration of the tax system Non-compliance with Board imposed sanctions
Compliance Strategy		Regulatory Assurance Business Plan
Case number estimates	2012–13: <ul style="list-style-type: none"> Expect to receive and action around 2000 complaints Undertake around 900 cases Undertake around 100 investigations 	2012–13: <ul style="list-style-type: none"> Receive around 1400 complaints Undertake at least 435 preliminary enquiries Expect to conduct 85 investigations
Service standards	Up to 70 per cent of complaints and referrals will be actioned by Risk and Issues Management and completed within 30 days	2012–13: <ul style="list-style-type: none"> Finalise at least 75 per cent of Risk and Issues Management matters within 30 days of receipt by the Board

Source: ATO analysis of TPB documents.

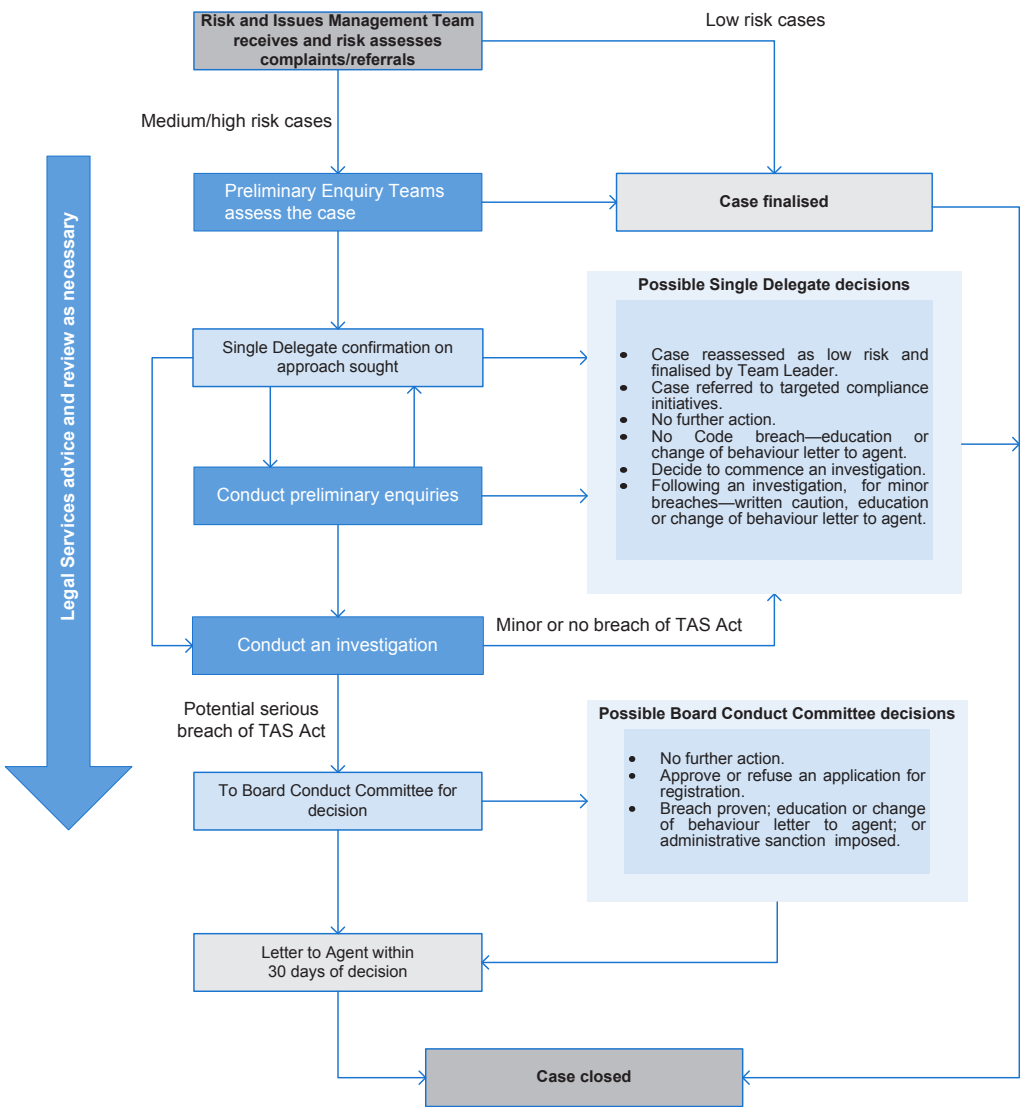
5.17 Although the mitigation strategies in the Risk Assessment Guide align with the TPB's Compliance Model, the Risk Assessment Guide could be improved. Notably, the strategic risks listed by the Risk Assessment Guide do not align with the relevant compliance risks in the TPB's corporate risk register (discussed in Chapter 3), or with those given in the Compliance Strategy. The TPB advised the ANAO that the Risk Assessment Guide was undergoing review to ensure alignment with current regulatory assurance processes and procedures. At the time of the audit this review had not concluded.

Regulatory assurance processes and procedures

5.18 The TPB receives complaints against registered and unregistered tax practitioners from members of the public and tax practitioners, and referrals of possible misconduct or breaches of the Code from other sources such as the ATO. In actioning these complaints and referrals, the TPB's processes for creating a case are the same, so for the purpose of this audit they are both

referred to as ‘complaints’. The usual business process for actioning these complaints is illustrated in Figure 5.2.

Figure 5.2
The Tax Practitioners Board’s regulatory assurance business process



Source: ANAO interpretation of TPB procedural documents.

Note: There are variations to the process for handling some cases not noted in this diagram, such as for high risk civil penalty and fitness and propriety cases, which are escalated immediately to the Director of Regulatory Assurance for allocation.

5.19 The Risk and Issues Management Team creates a complaint record and conducts a preliminary risk assessment, using the TPB’s Risk Assessment

Guide. Most complaints assessed as low risk are finalised by the Risk and Issues Management Team. Complaints assessed as medium or high risk, and those not resolved by the Risk and Issues Management Team within 30 days, are escalated to the Preliminary Enquiry and Investigations Teams for action.¹⁵⁴

5.20 A preliminary enquiry gathers information and evidence to determine whether a complaint warrants an investigation or can be finalised at that stage. In conducting an investigation, the TPB must comply with specific provisions of the TAS Act, such as notifying the practitioner or entity in writing within two weeks of its decision to conduct an investigation, and conducting an investigation within six months, unless otherwise determined by the Board.¹⁵⁵ Regulatory Assurance staff, in particular the Preliminary Enquiry and Investigations Teams, work closely with Legal Services when conducting a preliminary enquiry or investigation. The Single Delegates may also provide guidance and advice throughout this process.

Decision-making process

5.21 The decision to finalise cases can be made by:

- Team Leaders, where the complaint has been withdrawn, has no substance, or has been resolved. They also have the Secretary's delegation to finalise low risk cases;
- Single Delegates who authorise preliminary enquiries, investigations and referrals to the Board Conduct Committee, as well as finalising cases where no breach has been found and referring cases to the civil penalties project; and
- the Board Conduct Committee, which makes reviewable decisions such as refusing or terminating registrations and imposing sanctions and/or conditions. The Committee may also decide to take no specific action, or issue a written caution for isolated mistakes or minor breaches of the Code.¹⁵⁶

¹⁵⁴ Examples of high risk cases are unregistered preparers with potentially large client bases, multiple complaints involving a practitioner withholding refunds, or multiple complaints against practitioners who clients are unable to contact.

¹⁵⁵ The Board may extend the investigation period due to delays beyond its control but any such decision is reviewable by the Administrative Appeals Tribunal.

¹⁵⁶ Details of a sanction, other than a caution, on a registered tax practitioner, are recorded on the TPB's public register of practitioners.

5.22 The TPB began recording who made the decision to finalise a case in March 2011.¹⁵⁷ Table 5.2 summarises the total number of finalised cases by decision method for the period 2011–12 and up to 31 January 2013. The majority of cases (62.2 per cent) are finalised by Team Leaders, followed by Single Delegates (33.9 per cent), and the Board Conduct Committee (3.9 per cent).

Table 5.2

Finalised regulatory assurance cases by decision method for 2011–12 and from July 2012 to January 2013

Decision method	Number of finalised cases		
	2011–12	2012–13 ⁽¹⁾	Total
Team Leader	470	495	965
Single Delegate	224	301	525
Board Conduct Committee	31	29	60
Total	725	825	1550

Source: Data provided by the TPB.

Note 1: Data for 2012–13 is for 1 July 2012 to 31 January 2013.

Developing internal procedures

5.23 In March 2012, an internal audit found that procedural documentation was in place for all key regulatory assurance activities but that none of the procedures had been finalised or approved by the Board. The report noted the procedures included links to template documents and checklists but concluded that more detailed guidance on recordkeeping was required. In late 2012, key procedural documents were approved for activities such as initial complaints assessment, preliminary enquiries and procedures for submitting cases to the Board Conduct Committee. At 31 January 2013, three important procedures were still not finalised or approved (investigating registered agents, investigating unregistered agents, and preliminary enquiries for unregistered agents).

¹⁵⁷ The two previous case management ICT systems were not configured to provide this information.

Case selection, outcomes and future compliance activities

5.24 The TPB actions all complaints against tax practitioners, and its primary source for regulatory assurance cases has been the complaints received from external sources (93 per cent of cases in 2011–12). TPB Annual Reports give the number of complaints received each year, and these are outlined in Table 5.3.

Table 5.3

Number of complaints received from March 2010 to January 2013

	2009–10 ⁽¹⁾	2010–11 ⁽²⁾	2011–12	2012–13 ⁽³⁾	Total
Complaints received	594	1847	1293	1356	5090

Source: TPB, *Annual Report 2010*, Canberra, 2010, p. 35; TPB, *Annual Report 2010–11*, 2011, p. 45; TPB, *Annual Report 2011–12*, 2012, p. 44 and data provided by the TPB.

Note 1: Data for 2009–10 is for 1 March 2010 to 30 June 2010.

Note 2: The *TPB Annual Report 2010–11* reported a total of 2441 complaints. This figure represented the total number of complaints and referrals received in 2009–10 and 2010–11.

Note 3: Data for 2012–13 is for 1 July 2012 to 31 January 2013.

5.25 The figures for 2011–12 onwards are not comparable to those reported in previous years, as the TPB now records compliance intelligence and other information separately, and does not include this in the total for complaints. Even with the change in recording complaint numbers, these figures still provide an indicative number of complaints against tax practitioners processed by the TPB—over 5090 since 1 March 2010.

5.26 Table 5.4 summarises the number of complaints received by the TPB in 2011–12, and up to 31 January 2013, and the number of cases that were created, escalated, finalised and on hand for that period. The number of cases does not correlate with the number finalised, as not all cases are finalised in the year they are begun.

Table 5.4

Number of complaints received, cases created, escalated and finalised for 2011–12 and from July 2012 to January 2013

Number	2011–12		2012–13 ⁽¹⁾	
Complaints received	1293		1356	
	Cases	Finalised	Cases	Finalised
Cases created by the Risk and Issues Management Team	781	382	997	302
Cases escalated for preliminary enquiry	376	329	703	343
Cases escalated for investigation	30	14	373	180
Total finalised cases	725		825	
Cases on hand	383 (at 30 June 2012)		554 (at 31 January 2013)	

Source: ANAO analysis of the TPB, *Annual Report 2011–12*, Canberra, 2012, and data provided by the TPB.

Note 1: Data for 2012–13 is for 1 July 2012 to 31 January 2013.

5.27 In 2012–13, the TPB started generating more regulatory assurance cases internally, and as at 31 January 2013, 405 cases (29.9 per cent) were sourced from internal data. In 2012–13, there was also a significant increase in the number of preliminary enquiry and investigation cases. The TPB advised that the increase is a direct result of three targeted compliance initiatives, including a ‘fast track process’ instigated by the TPB. Of the 373 cases escalated for investigation in 2012–13, 329 were generated by the TPB as part of its professional indemnity insurance and personal obligations initiatives, discussed later in this chapter.

Outcomes of compliance cases

5.28 The Board has access to a wide range of administrative sanctions, including: a written caution; an order that requires a tax practitioner to undertake one or more actions (such as complete a course of study); and suspension or termination of a practitioner’s registration for more serious breaches (such as damage to the integrity of the taxation system). The Board can also apply to the Federal Court of Australia seeking a civil penalty order, or an injunction on a registered or unregistered practitioner.

5.29 The TPB’s 2011–12 Annual Report states that a large number of cases are finalised without the need to impose a sanction or other penalty. These cases may involve, for example, complaints about:

- fees, which can be outside the Board's jurisdiction if the dispute is a commercial matter best resolved between the practitioner and their client; or
- practitioners not forwarding tax refunds to their clients, which can often be resolved by contacting the tax practitioner, who may not have forwarded the refund as quickly as the client had wished.

5.30 In contrast, the Board has terminated the registration of practitioners where multiple complaints were received about tax practitioners failing to forward tax refunds, and failing to respond to clients' concerns. In another example, a \$64 500 civil penalty and injunction were imposed by the Federal Court of Australia on an unregistered practitioner who breached the TAS Act by requesting amendments to previous tax returns for 13 people. Many of those clients were penalised by the ATO for lodging incorrect tax returns, and some incurred large tax bills as a result.

5.31 Table 5.5 summarises the outcome of regulatory assurance cases for 2011–12, and up to 31 January 2013.

5.32 For the period 2011–12 and up to 31 January 2013, more than 81 per cent of all cases were: finalised with no breach proven or identified (839 cases); outside the Board's jurisdiction (234 cases); or the complaint was withdrawn, resolved between the parties or due to non-return of documents (190 cases).¹⁵⁸ Four per cent (55 cases) resulted in a termination as a result of compliance work conducted by the TPB. Only one per cent (17 cases) of cases resulted in the Board imposing an administrative sanction (11 cases) or applying to the Federal Court of Australia for a civil penalty and/or injunction (six cases).

5.33 Of the six applications to the Federal Court, four had been finalised at the time of the audit, and resulted in combined penalties of \$174 500 and injunctions being imposed on four unregistered tax agents. The TPB has used these and other results to encourage practitioners to comply with the Code and other legislative requirements, through issuing media releases and in October 2012, the online publication *Summary of Penalties, Sanctions and Terminations*.

¹⁵⁸ Tax practitioners not returning documents to clients is a specific complaint type recorded by the TPB.

Table 5.5**Decision outcomes of compliance cases for 2011–12 and from July 2012 to January 2013**

Case outcome	2011–12	2012–13 ⁽¹⁾	Total
Applied to the Federal Court for a civil penalty order	4	2	6
Administrative sanction	5	6	11
Terminated ⁽²⁾	10	45	55
Registration/renewal approved	1	0	1
Education of agent or change of behaviour ⁽³⁾	86	128	214
No breach proven or identified	381	458	839
Complaint withdrawn, resolved between parties, or non-return of documents	102	88	190
Outside the Board's jurisdiction	136	98	234
Total	725	825	1550

Source: ANAO analysis of TPB data.

Note 1: Data for 2012–13 is for 1 July 2012 to 31 January 2013.

Note 2: These terminations are not sanctions imposed under the Code. The Board may also terminate registration where a tax practitioner: surrenders registration or dies during the course of conducting a compliance case; ceases to be a fit and proper person or meet a registration requirement; or breaches a condition of registration.

Note 3: The Board may decide to take no specific action for isolated mistakes or minor breaches of the Code. In such cases the TPB issues an education or change of behaviour letter to the practitioner, drawing to his or her attention the relevant provision of the Code.

External review of decisions

5.34 Where the Board makes a reviewable decision, such as imposing an administrative sanction, terminating a registration or rejecting an application for registration, the tax practitioner may apply to the Administrative Appeals Tribunal for a review of that decision. Table 5.6 summarises the number of applications for review lodged with the Administrative Appeals Tribunal, for the period 1 March 2010 to 31 January 2013. The number of matters received does not correlate with the number of decisions as some matters are not finalised in the financial year they are received.

Table 5.6**Applications lodged with the Administrative Appeals Tribunal for a review of a Board decision from March 2010 to January 2013**

Year	Number of matters received	Number of matters finalised ⁽¹⁾	Decision against TPB	Decision in TPB's favour
2010 ⁽²⁾	10	4	0	2
2010–2011	9	8	2	1
2011–2012	5	8	0	5
2012–2013 ⁽³⁾	5	6	0	6
Total	29	26	2	14

Sources: ANAO analysis of TPB, *Annual Report 2010*, Canberra, 2010, p. 45; *2010–11*, p. 61; and *2011–12*, p. 60 and information provided by the TPB.

Note 1: Finalised matters include withdrawn matters.

Note 2: Data for 2010 is for 1 March to 30 June 2010 and includes eight matters inherited from state boards under Part VIIA of the ITAA.

Note 3: Data for 2012–13 is for 1 July 2012 to 31 January 2013.

5.35 Of the matters finalised, only two have resulted in decisions against the Board. Both related to decisions taken by the New South Wales Tax Agents' Board, responsibility for which was transferred to the Board.

Targeted compliance initiatives

5.36 The TPB has three targeted compliance initiatives that align with the major areas of risk identified in its Compliance Strategy; civil penalties, agents' personal obligations, and professional indemnity insurance. Table 5.7 reports the date the initiative started and describes its focus area.

Table 5.7**Regulatory assurance initiatives and focus area**

Initiative (date started)	Focus area
Civil penalty (March 2011)	<ul style="list-style-type: none"> Initial focus was on unregistered practitioners Current focus also includes registered practitioners who breach the civil penalty provisions
Agents' personal obligations (May 2012)	<ul style="list-style-type: none"> Tax practitioners in serious breach of their personal tax obligations
Professional indemnity insurance (August 2012)	<ul style="list-style-type: none"> Initially any tax practitioner who did not notify the Board of their professional indemnity insurance arrangements Currently individual registered practitioners who are not members of a recognised professional association⁽¹⁾

Source: Information provided by the TPB.

Note 1: These practitioners are considered to be a higher risk as most professional associations require members to have professional indemnity insurance.

5.37 Through its targeted compliance activities the Board is seeking to: exercise its disciplinary and civil powers; send a clear message to registered and unregistered practitioners that the Board is actively enforcing the new regulatory regime; and identify patterns of behaviour to inform the TPB's emerging compliance intelligence capability.

5.38 In November 2012, the TPB introduced a 'fast track process' for the professional indemnity insurance and personal obligations initiatives.¹⁵⁹ The TPB has advised that, by streamlining these processes, more cases have been completed in faster timeframes.

5.39 Apart from some particular civil penalty related matters, the targeted initiatives are funded from within the regulatory assurance budget and the TPB does not separately cost or track expenditure against them. In October 2012, new iMIS system functionality was introduced that allowed for the separate recording of those cases actioned against the three compliance initiatives.¹⁶⁰ Without this data it would have been difficult to determine any benefits from these initiatives, or use the results to inform future compliance

¹⁵⁹ The professional indemnity insurance fast track process, for example, eliminated and streamlined steps including: contacting practitioners prior to issuing a notice of investigation; and allowing an internal email authority from a Board member to authorise an investigation in lieu of a hand-written authorisation.

¹⁶⁰ Although the TPB previously recorded the total number of cases where the primary Code breach was professional indemnity insurance or personal obligations, it was not able to separately differentiate the number of cases actioned under these initiatives from cases finalised under its business-as-usual processes.

strategies. It is too early at this stage to assess the impact of these initiatives on the regulatory assurance outcomes but it will be important that the outcomes of these initiatives are analysed and incorporated into process improvements and future compliance activities.

Analysis of compliance outcomes and compliance intelligence capability

5.40 The TPB has been developing its approaches to monitoring and reporting compliance outcomes over time and enhancing the capability of iMIS to provide better quality performance data. The iMIS capability to provide internal reporting of results against service standards has only been in place from July 2012 and for the targeted compliance initiatives since October 2012.

5.41 The 2011–12 and 2012–13 Regulatory Assurance Business Plans identified the development of a compliance intelligence capability as a priority action. The TPB advised the ANAO that it is starting to consider more systematic approaches for collecting compliance intelligence from potential sources, such as professional associations, and to more effectively analyse TPB, ATO and other data. The targeted compliance initiatives are an example of this approach and provide a good basis for building the TPB's compliance intelligence capability.

5.42 As a compliance intelligence capability is an important element of a regulatory regime, there would be benefit in the TPB giving priority to this initiative. To gain the maximum effect, the TPB will need to develop evaluation strategies and to collect and analyse compliance data to monitor the trends, identify potential risk areas and target practitioners. This information should also feed into future compliance strategies and identify areas where processes could be improved. For example, the majority (81 per cent) of cases in 2011–12 and up to 31 January 2013 did not result in any action being taken against the agent, suggesting there could be benefit in better communicating to taxpayers the type of complaints that come within the Board's regulatory mandate.

Conduct of regulatory assurance cases

Service standard and internal cycle times

5.43 The TPB has one service standard for its regulatory assurance function—resolve on average 50 per cent of complaints about tax and BAS agents within 30 days—and this work is undertaken by the Risk and Issues Management Team. The Risk and Issues Management service standard is one of

three ‘cycle times’ for finalising a compliance matter, from risk assessment through to investigation. The cycle times and the performance against them for the period 2011–12 and up to January 2013 is summarised in Table 5.8.

Table 5.8

Performance against regulatory assurance cycle times for 2011–12 and up to January 2013

Cycle time (days are cumulative)	Cases finalised within cycle time	
	2011–12 %	2012–13 ⁽¹⁾ %
Risk and Issues Management (30 days)	10	16
Preliminary enquiry (150 days)	29	55
Investigation (240 days)	29	92

Source: Information provided by the TPB.

Note 1: Data for 2012–13 is for 1 July 2012 to 31 January 2013.

5.44 Cycle times are documented in the Regulatory Assurance National Case Plan, first developed in December 2011. This case plan also estimates the expected number of complaints and referrals to be received and finalised in a financial year. The mid-term review of the 2012–13 National Case Plan in December 2012, found that there were 280 cases finalised from 1 July 2011 to 31 December 2011, and 572 for the corresponding period in 2012, an increase of 104 per cent. Streamlining processes, ICT and capability improvements, staff mentoring and training, and increased delegation to Team Leaders were the reasons for the improved cycle times and the greater number of cases being finalised.

Regulatory assurance case management systems

5.45 Since 1 March 2010, the TPB has used three case management systems for its regulatory assurance function: TABecat¹⁶¹; Client Contact-Work Management-Case Management (CWC)¹⁶²; and iMIS. iMIS was first rolled out to Regulatory Assurance staff in March 2011, but the TPB still has access to the other two systems, as cases closed before March 2011 remain on the old systems. As previously discussed, the difficulties associated with document

¹⁶¹ The TABecat system was developed by the ATO in 2006 to replace the state boards’ paper-based case management processes. All legacy cases from the state boards remain on TABecat.

¹⁶² CWC is an ATO enterprise system for the recording of all contact with clients, as well as for managing work conducted by case officers. The TPB started using CWC to manage all new compliance cases in late March 2010.

management in iMIS has meant that Regulatory Assurance staff have stored documents across the three case management systems, the TPB computer shared drive, and paper-based files.¹⁶³ As with registrations, the recording, monitoring and reporting capability has also been improved. A second rollout of iMIS to regulatory assurance occurred in September 2012, and a post implementation review of this release was scheduled to commence in late January 2013 but was not completed at the time of conducting this audit.

Quality assurance

5.46 The TPB has implemented process controls to provide quality assurance of individual compliance cases but has not developed or implemented a quality assurance framework. For example, the Single Delegates are involved in all aspects of the compliance process, and the TPB Legal Services reviews and clears draft submissions and other material, before submission to a Single Delegate, the Joint Delegates Committee, or the Board Conduct Committee for decision. The TPB's 2012–13 Regulatory Assurance Business Plan states that a quality assurance framework will be developed. The TPB advised that it is developing a proposal based on the registrations quality assurance model (discussed in Chapter 4) for Board consideration.

ANAO review of compliance cases

5.47 The ANAO examined a sample of 296 finalised preliminary enquiry cases¹⁶⁴, and focused on adherence to procedures for five key areas of case conduct, involving the documentation of: preliminary case profiling; preliminary risk assessment; contact with registered and unregistered tax practitioners; contact with the complainant; and reasons for decisions (a finalisation submission).¹⁶⁵ The ANAO also assessed whether the finalisation letter for these cases clearly communicated the outcomes to the practitioner and/or complainant.¹⁶⁶ In addition, the ANAO did not view paper-based case files for cases commenced after 20 August 2010, the date the TPB advised that

¹⁶³ A document management system is included in the TPB's new ICT environment, scheduled for 2013.

¹⁶⁴ These cases covered the period 1 March 2010 to 15 October 2012 and examined 37 TABecat cases, 51 CWC cases, and 208 iMIS cases of the 1357 total cases finalised during this period.

¹⁶⁵ The ANAO did not assess the legality of decision-making, as such assessments take considerable training and experience to conduct.

¹⁶⁶ For 16 cases a finalisation letter was not required because the TPB was unable to contact the complainant, or cases were escalated to investigation.

electronic filing was required by TPB procedures. Table 5.9 summarises the results of the ANAO's analysis.

Table 5.9

Results of the ANAO's examination of preliminary enquiry cases

Procedural element assessed	Sample size ⁽¹⁾	Number of compliant cases	Compliant cases %
A completed profiling document is saved	258	219	85
The profiling document has a completed risk assessment	219	177	81
Contact with registered/unregistered practitioner is documented	281	139	50
Contact with complainant is documented	274	186	68
The finalisation submission is saved	257	220	86
Finalisation letters clearly communicate the outcome to the tax practitioner and/or complainant.	280	162	58

Source: ANAO analysis of TPB preliminary enquiry compliance cases.

Note 1: The sample size refers to the number of cases reviewed for each criteria. Some cases could not be assessed for a variety of reasons, such as the process not being required for the period in which that case was conducted, or the case being finalised prior to that step being required.

5.48 The analysis identified that there was not always sufficient documentation saved electronically to support each case. Notably, 15 per cent of cases did not have a profiling document, 19 per cent did not have a completed risk assessment and 14 per cent of cases did not have a finalisation submission. Although TPB procedures required electronic filing (on the computer share drive) for preliminary enquiry cases from 20 August 2010, the procedural documents after this date also mention paper-based case files, as well as saving documents in iMIS (which staff were instructed not to use for document management on 9 December 2011), and the computer share drive. For more effective case management, there would be benefit in the TPB implementing a consistent policy for the electronic storage of case documentation.

5.49 Contact with the complainant was documented in 68 per cent of cases, and in 50 per cent of cases for the tax practitioner. While procedural documents require the case officer to contact the complainant and the tax practitioner and to document this contact, the TPB has advised that there are circumstances where those parties would not be contacted. For example, the

practitioner may not be contacted if the complaint is not in the Board's jurisdiction. These instructions are not included in the procedures.

5.50 The ANAO's assessment of finalisation letters to complainants and tax practitioners found that the TPB clearly communicated the case outcome in only 58 per cent of cases. The TPB reviewed its finalisation letters following feedback from the Commonwealth Ombudsman in 2011–12.¹⁶⁷ Improved letters have been in use since August 2012.

Investigations

5.51 The Board may determine its own procedures for conducting investigations and is not bound by the rules of evidence (sub-section 60–95(4) of the TAS Act).¹⁶⁸ One of the priority actions in the 2012–13 Regulatory Assurance Business Plan is that TPB staff comply with the Australian Government Investigation Standards (AGIS) in the conduct of their work.¹⁶⁹

5.52 The ANAO's assessment of the TPB's investigations procedures¹⁷⁰ found that most procedural steps aligned with the AGIS, except there were no documented procedures for intelligence gathering or quality assurance. As previously noted, the TPB advised that it intends developing an intelligence gathering capability and implementing a quality assurance framework.

5.53 The ANAO also examined the 33 finalised investigations conducted by the TPB between March 2010 and August 2012¹⁷¹, and focused on whether four key activities required by the TPB's draft investigations procedures were appropriately documented: a case finalisation submission; the Board Conduct Committee decision; the finalisation letter to the tax practitioner having been reviewed by the Team Leader and Legal Services; and the finalisation letter clearly communicating the outcome to the tax practitioner.¹⁷² Table 5.10

¹⁶⁷ The Commonwealth Ombudsman's 2010–11 Annual Report records 33 complaints against the TPB related to dissatisfaction with the explanation provided in response to the issue raised by the complainant.

¹⁶⁸ The rules of evidence govern what information is able to be placed before a court for determination of an issue. These rules influence how a party goes about proving its case, and are mainly concerned with how information is presented to a court and whether the evidence can be admitted to the proceeding.

¹⁶⁹ The AGIS establish the minimum standards for Australian Government agencies conducting investigations. Where the AGIS conflict with the law, the legislative requirement prevails.

¹⁷⁰ Procedures for investigating practitioners are unfinalised, but in use.

¹⁷¹ These cases are held in the TABecat, CWC and iMIS systems. Six of these investigations were legacy cases from the state boards. Cases initially located on TABecat were also located on CWC, and later cases were only located on iMIS.

¹⁷² The ANAO did not assess the legality of decision-making, as these assessments take considerable training and experience to conduct.

summarises the results of ANAO analysis against the four key administrative activities.

5.54 Proper record-keeping is an essential element of effective case management, and particularly for the Board as its cases can be subject to Administrative Appeals Tribunal review. In the ANAO's sample, two cases did not record case finalisation submissions, and six cases did not record the Board Conduct Committee's decision regarding the case.¹⁷³ Additionally, the recording of Legal Services or Team Leader review of finalisation letters did not occur in over 30 per cent of cases.¹⁷⁴

Table 5.10

Results of the ANAO's review of investigation cases

Evidence present	n/a ⁽¹⁾	No ⁽²⁾	Yes	Compliant cases %
Case finalisation submission	4	2	27	93
Board Conduct Committee decision is recorded	5	6	22	79
Finalisation letters are reviewed by:				
Legal Services	7	8	18	69
Team Leader	7	7	19	73
Finalisation letter clearly communicates the outcome of the investigation to the tax practitioner	5	2	26	93

Source: ANAO analysis of TPB investigation cases.

Note 1: Not applicable applies if this step did not have to be undertaken for reasons such as the practitioner surrendering their registration before the investigation proceeded, or the practitioner failing to re-register.

Note 2: Cases were recorded as 'no' if evidence was not recorded on the ICT system, in the computer share drive, or on paper-case files.

5.55 Some challenges to the quality and completeness of the regulatory assurance record-keeping arise from the functionality of the ICT support systems. The ANAO found that record-keeping for regulatory assurance cases has improved over time, particularly in 2012, reflecting improvements to the

¹⁷³ The minutes of the Board Conduct Committee record these decisions, but these decisions were not recorded on individual case files.

¹⁷⁴ For one case, the evidence of Legal Services and Team Leader review of letters was on the case officer's personal email drive. This evidence was provided to the ANAO after the examination was completed, and the ANAO adjusted the results accordingly.

ICT environment, the documenting of procedures and more emphasis being given to staff training.

Conclusion

5.56 A key objective of the new regime is to provide assurance that tax practitioners meet appropriate standards of professional and ethical conduct. The new principles-based statutory Code and other provisions of the TAS Act establish the standards tax practitioners are to meet. The inaugural Board advised the ANAO that the regulatory assurance function is still being refined and key elements developed.

5.57 In the period to June 2011, the Board worked with industry to develop policies relating to the new regulatory regime, including publishing detailed information on the application of the Code to tax practitioners. The Board also began to provide training and disseminate compliance framework documents for Regulatory Assurance staff. In December 2011, an internal audit requested by the Board concluded that the regulatory assurance function was not working well as staff were unfamiliar with the new legislation and needed skills development, a compliance framework and consistent procedural documents.

5.58 In response, the TPB progressively developed additional compliance framework documents (the Compliance Model, Compliance Strategy and Compliance Roadmap) to provide the policy framework for compliance activities, including a Risk Assessment Guide (that provides instruction on allocating a low, medium or high risk rating to complaints received). Many of the objectives, risks, activities and service standards do not align between the framework documents, or the Regulatory Assurance Business Plan. Additionally, the risks identified in the Risk Assessment Guide do not align with the relevant compliance risks in the TPB's corporate-level risk register. There would be benefit in simplifying and better coordinating these documents.

Recommendation No.2

5.59 To provide a consistent compliance framework, the ANAO recommends that the Tax Practitioners Board:

- (a) aligns compliance risks outlined in the compliance framework documents with those in the corporate risk register; and
- (b) reviews compliance framework documents with a view to consolidating and streamlining their content.

TPB response: *Agreed*

ATO response: *Noted*

5.60 In March 2012, an internal audit found that procedural documentation was in place for all key regulatory assurance activities but that none of the procedures had been reviewed and approved by the Board. In late 2012, key procedural documents were approved for activities such as conducting initial complaints assessment, preliminary enquiries, and procedures for referring cases to the Board Conduct Committee. However, as at 31 January 2013, important procedures for conducting investigations still had not been finalised and approved.

5.61 The Board receives complaints against registered and unregistered tax practitioners from members of the public and registered tax practitioners, and referrals from other entities. The TPB actions all complaints, and there were in excess of 5090 complaints against tax practitioners and other work items actioned by the TPB between March 2010 and January 2013. In:

- 2011–12, there were 1293 complaints received, resulting in 781 cases being created, and 725 cases finalised; and
- 2012–13 (up to January 2013), there were 1356 complaints received, resulting in 997 cases being created and 825 cases finalised.

5.62 Prior to 2012–13, externally generated complaints formed the majority (93 per cent) of compliance cases that the TPB conducted. In 2012–13, the TPB began generating more cases using its own internal processes, with 30 per cent of cases coming from internal sources. Many of these cases have been generated from targeted compliance initiatives that align with three major areas of risk in its Compliance Strategy: civil penalties; professional indemnity insurance; and agent's personal tax obligations.

5.63 The TPB's targeted compliance initiatives are seen as an important aspect of developing its compliance intelligence capability. The development

of external data sources and analysing the results of compliance activities and recent initiatives will be important early steps in this process.

Recommendation No.3

5.64 To improve the regulatory assurance function of the Tax Practitioners Board (TPB), the ANAO recommends that the TPB:

- (a) develops a compliance intelligence capability that considers information collected from appropriate external data sources; and
- (b) analyses the results of compliance activities and initiatives, and incorporates this analysis into the planning of future compliance activities.

TPB response: *Agreed.*

5.65 *The TPB redeveloped the iMIS compliance case management system last year to capture the information it needs to better analyse compliance activities. The TPB has also commenced identifying and obtaining the appropriate external data needed to support its compliance intelligence capability. The availability of this information will allow for better risk identification and differentiation, and assist planning of future compliance activities.*

ATO response: *Noted*

5.66 The TPB has process controls for the individual phases of compliance cases, but no quality assurance framework. Three case management ICT systems have been progressively used by the TPB, the current being iMIS. The ANAO examined a sample of 296 (22 per cent) of finalised preliminary enquiry cases. There are significant difficulties in saving documents in iMIS, and consequently documents have been stored on a combination of paper files, in legacy case systems, in iMIS and in TPB computer share drives. The ANAO found that 15 per cent of cases did not have a completed profiling document, 19 per cent of cases did not have a completed risk assessment, and 14 per cent of cases did not have a finalisation submission. The ANAO's assessment of finalisation letters to complainants and tax practitioners found that case outcomes were clearly communicated in only 58 per cent of cases. The TPB reviewed its finalisation letters following feedback from the Commonwealth Ombudsman in 2011–12, and improved letters have been in use since August 2012.

5.67 The ANAO also examined the 33 investigations conducted between March 2010 and August 2012. Of these, two cases did not have a case finalisation submission, and six cases did not record the Board Conduct Committee's decision regarding the case. Record keeping for regulatory assurance cases has improved over time, particularly in 2012, mirroring improvements to the ICT environment and staff training. The TPB has advised that a document storage solution will be part of the new ICT environment being delivered in 2013.



Ian McPhee

Auditor-General

Canberra ACT

8 May 2013

Appendices

Appendix 1: Agency Responses



Australian Government



TAX PRACTITIONERS BOARD

Ms Barbara Cass
Group Executive Director
Performance Audit Services Group
Australian National Audit Office
GPO Box 707
CANBERRA ACT 2601

11 April 2013

Dear Ms Cass

Re: The Regulation of Tax Practitioners by the Tax Practitioners Board

Thank you for your letter dated 14 March 2013 and for the opportunity to provide comments on the proposed report on the Regulation of Tax Practitioners by the Tax Practitioners Board.

The Tax Practitioners Board agrees with the three recommendations as presented in the Section 19 report.

I would like to thank the Australian National Audit Office audit team for the cooperative and professional manner they have adopted in working with us on this matter. I look forward to continuing the good working relationship developed in this performance audit.

Attached is the Tax Practitioners Board response to recommendations (Annexure 1) and summary of our comments to be used in the report brochure (Annexure 2).

If you require further information on this matter, please contact Graeme Wilkinson, Acting Secretary, Tax Practitioners Board.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian R Taylor'.

Ian R Taylor
Chair
Tax Practitioners Board

Annexure 2

Summary of Tax Practitioners Board response

The Tax Practitioners Board (TPB) welcomes this, its inaugural ANAO review and considers the report generally supportive of the effectiveness of the TPB's implementation and administration to date of the regulatory arrangements for tax practitioners under the *Tax Agent Services Act 2009*.

The TPB also appreciates the recognition by the ANAO of the evolving nature of the TPB as a government regulatory authority.

Since commencement on 1 March 2010, the TPB has established a national regulatory framework and registration system and achieved a strong awareness in the tax profession of the new regime.

The TPB agrees with the three recommendations contained in the review.

The TPB recognises that the TPB's Portfolio Budget Statements key performance indicators are currently without associated performance targets and hence do not readily enable the measurement of effectiveness of its programs. The TPB has begun to address this matter and expects to include performance targets in the TPB's Portfolio Budget Statements for the 2013/14 financial year.

It is acknowledged that the TPB's current compliance framework documents need revision with a view to consolidating and streamlining content contained therein. The TPB expects these documents will be reviewed in May 2013 and updated in readiness for the commencement of the 2013/14 financial year..

The TPB also recognises that to improve the TPB's regulatory assurance capability, a compliance intelligence capability which collects external data and analyses results of compliance activities undertaken would benefit planning for future activities. In the last 12 months the TPB has redeveloped its compliance system to better capture the outcomes of compliance cases and also commenced gathering relevant external data. The TPB expects its compliance intelligence capability to be fully functional in the 2013/14 financial year.

The TPB is committed to continuous improvement and recognises the review highlights several opportunities to strengthen and further improve the management of the program and enhance our decision making processes.



Ms Barbara Cass
Group Executive Director
Performance Audit Services Group
Australian National Audit Office
GPO Box 707
CANBERRA ACT 2601

Dear Ms Cass

**Re: Australian National Audit Office Proposed Report on the Regulation of
Tax Practitioners by the Tax Practitioners Board**

Thank you for your letter of 14 March 2013 and for the opportunity to provide comments on the Australian National Audit Office's proposed report on the regulation of tax practitioners by the Tax Practitioners Board.

The ATO notes the 3 recommendations as presented in the section 19 report are directed to the Tax Practitioners Board.

I would like to thank the Australian National Audit Office audit team for the co-operative and professional manner they have adopted in working with us on this matter.

Attached is the ATO response to recommendations (Annexure 1) and summary of our comments to be used in the report brochure (Annexure 2).

If you require further information, please contact Cameron Sorensen, Assistant Commissioner, TPALS.

Yours sincerely

Bruce Quigley
Second Commissioner of Taxation
11 April 2013

Annexure 2

ANAO Performance Audit: The Regulation of Tax Practitioners by the Tax Practitioners Board

Summary of Tax Office's response

We note the three recommendations directed to the Tax Practitioners Board.

Appendix 2: Responses from other parties with a special interest in the report

Mr Dale Boucher PSM—Chair, Tax Practitioners Board, November 2009 to January 2013

'Between early November 2009 and 21 January 2013, the inaugural Tax Practitioners Board established a single national regulatory system for tax practitioners. This included setting up a national registration system for tax agents and BAS agents and others, the numbers of registrants being about double those directly registered under the old system. The new Board was also given expanded jurisdiction and powers over the conduct of registered agents and others, including those who should register with the Board but who do not so.

To establish this new regime, the Board had to set new education standards for agents. It had to give life to a new Code of Professional Conduct for agents and articulate other professional practice standards, as well as building an expanded regulatory assurance capability. This was done while enhancing the capabilities of the Board across the full range of its activities, and while arranging for the procurement of new IT systems, the design of a new web site and securing strong compliance results. At the same time, positive and effective links with the professional associations and the tax practitioner profession generally were created by the Board. Although still works in progress, in some minor respects, these were major undertakings and achievements. The ANAO recommendations for fine tuning Key Result Areas and aligning documentation should be seen in this light.

I pay tribute to the work of Board members and of all of the staff made available by the Australian Taxation Office for what has been a great effort by everyone.

*Dale Boucher
Chair, TPB
2 November 2009 – 21 January 2013'*

Professor Gordon Cooper AM—Member, Tax Practitioners Board, October 2009 to February 2012

I appreciate the opportunity to review and comment upon the draft report and to discuss my earlier formal response of 8 April with those involved in drafting the report.

On the whole I consider the report to be fair and the recommendations are reasonable.

However in three crucial respects I consider the report to be deficient.

First, the report appears to fail to appreciate or to acknowledge adequately the bifurcated role of the Tax Practitioners Board ("TPB"). The TPB is not like most statutory boards because its role is not confined to the traditional duties of strategic planning, oversight and governance. The TPB has an equally significant operational role. I have used the term operational because that is the description given to several of the TPB committees. By operational role I mean performing functional or routine tasks which are part of the day to day activities of the TPB. This operational role has not been adopted by the TPB as a matter of choice. Rather it is imposed upon it by the Tax Agent Services Act 2009 ("TASA"). This is because the reviewable decisions in Section 70-10 must

be made by the whole TPB or a committee of at least three members, and only members, of the Board.

This bifurcation is clear from the fact that the committees established by the TPB have throughout the period under review been approximately evenly split between strategic (policy and consultative) and operational: see for example Tables 4.1 and 4.2 on page 57 of the 2011-12 Annual Report of the TPB.

Significant matters flow from this bifurcation. These include:

- Having an executive Chair with the Secretary acting as a Chief Operating Officer rather than as a Chief Executive Officer.
- The necessity for the members of the TPB collectively and individually to be involved actively in the core activities, particularly reviewing applications for registrations and making decisions on applications.
- The additional demands upon the time of the part time members of the TPB required to make reviewable decision on issues such as registration, imposition of conditions and termination.
- Having to review and rule upon disciplinary matters and where relevant impose the sanctions set out under Section 30-15 of TASA.

In the first year Board members reviewed every application for registration. After the first year I and at least one other Board member regularly reviewed doubtful cases to determine whether they could be accepted for registration or should be referred to the Registrations committee for formal review and decision. I was told that the ANAO had no evidence of such activity. I would have anticipated that my statement to that effect would have been supported by similar statements by one or more of my colleagues involved with registrations. Moreover I would have expected that the time sheets lodged by Board members involved with registrations would have revealed that individual Board members spent significant time outside formal committee meetings. In addition time was spent on disciplinary matters although this was relatively limited during the period under review but was expected to increase. Again I would have expected this to be clear from Board member time sheets.

ANAO comment: *The evidence obtained by the ANAO confirms extensive Board member involvement in the assessment of registration applications in the formative year of the TPB. This finding is reflected in various parts of the audit report. For example, the delegation of non-reviewable registration powers to individual Board members and the Secretary to the TPB is documented in paragraph 2.39 of the audit report. The reliance on Board members and the potential resource impact of such an approach is acknowledged in paragraph 2.43.*

Second, the report fails to recognise the situation which confronted the newly appointed TPB with respect to the immediate issue it faced regarding registration applications. Paragraph 27 refers to "A national registration system began functioning on 1 March 2010 albeit still requiring further development". I consider that on that date the national registration system existed in little more than name alone. The registration units supporting the former State Tax Agent Boards largely were continuing to function autonomously.

Table 4.4 sets out numbers of the tax and BAS agents registered and applications received, finalised and rejected as at 30 June 2010, 2011 and 2012. However the report does not set out what faced the TPB during the lead up to 1 March 2010. That was:

- 11,500 triennial re-registrations.
- 12,000 deemed tax agent registrations for former nominees under Section 3 of Schedule 2 of the Tax Agent Services (Transitional Provisions and Consequential Amendments) Act 2009 ("Transitional Act").
- An unknown number of tax agent notifications within 3 months of 1 March 2010 under Section 4 of Schedule 2 of the Transitional Act.
- An unknown number of BAS agent notifications within six months of 1 March 2010 under Section 5 of Schedule 2 of the Transitional Act.
- An unknown number of tax agent transitional registrations within 6 months of 1 March 2010 under Section 13 of Schedule 2 of the Transitional Act.
- An unknown number of BAS agent transitional registrations within three years of 1 March 2010 under Section 14 of Schedule 2 of the Transitional Act.
- An unknown number of tax agent specialist registrations under Regulation 202 of the Tax Agent Services Regulations 2009 ("Regulations").

- An unknown number of BAS agent registrations under Regulation 101 or 102 of the Regulations.
- Business as usual registrations and renewals.

As noted in paragraph 4.22 the ATO estimated that there were *"between 12,000 and 18,000 bookkeepers lodging BAS returns for clients"*.

This work had to be done by the TPB and support staff whilst grappling with new registration requirements and the need to develop a fully functioning national registration system.

ANAO comment: *The audit report acknowledges the substantial peaks and the unpredictable workload in registration processing in paragraphs 4.21 to 4.23 and Table 4.2. In addition, the audit report documents the key challenges facing the TPB during this period in paragraphs 2.27 to 2.29.*

Third, in paragraph 18 the report appears to be critical that the TPB failed to address strategic issues. I consider that to be an unfortunate impression to be conveyed. As stated above, the committees which were established by the TPB were split from the start fairly evenly between strategic and operational aspects. Moreover a great deal of time was spent on producing policy documents and guidelines which is acknowledged in the report.

I have been advised that it is not the intention of the report to imply that there was a failure of the Board to address strategic issues. My attention has been drawn to the conclusion in paragraph 2.33 and the preamble in paragraphs 2.25 to 2.32. I accept paragraph 2.33 as a reasonable statement.

In addition I wish to comment on some specific parts of the report.

Paragraph Comment

24 The report refers to *"The ATO prepared a number of proposed strategies and procedures for the new Board"*. I have been advised that much of the material was provided to the TPB as an induction package. Also that there was considerable expenditure on systems and processes. However apart from this, as far as I am aware specific documents regarding proposed strategies and procedures were not made available to the TPB. Requests I made for copies of such work produced no results.

2.29 The report refers to *"implementing the Code"*. Initially rather than implement the Code, in the sense of considering breaches of the Code, generally the TPB considered it to be crucial as an

educational function to raise awareness of the Code and to provide guidance with respect to its application. Moreover the TPB was aware that because the Code applied only to behaviour on or after 1 March 2010 it would be some time before it was confronted with possible breaches of the Code by tax or BAS agents. An exception was the application of the civil penalty regime to unregistered agents.

3.63 Whilst I was a member of the Strategic Budget Committee work was being undertaken to quantify its current and future budgetary requirements. Moreover there were regular expenditure reviews based on the information made available. In response to requests for additional and more detailed information, improvements were made to the quality of the information provided. At the time of my resignation this was a work in progress. I accept that such discussions may not have been reflected in the minutes.

Moreover I note that there were difficulties in determining future budgetary requirements because:

- At least up to the time that I resigned from the TPB we had not reached a business-as-usual state for registrations.
- Quality assurance work was likely to increase once more aberrant behaviour by tax and BAS agents post 1 March 2010 fell for consideration under the code.

Appendix 3: Committee Structure of the Tax Practitioners Board as at January 2013

Committee Name	Function
Policy/Consultative Committees	
Consultative Forum	Primary consultative mechanism with key stakeholder groups
Implementation/Coverage Issues	Considers whether certain groups or bodies have to be registered under the TAS Act and to identify the nature of the registration
Entry, Registration, Experience and Qualifications Issues	Advises on eligibility requirements to register, including education, relevant experience and qualifications
Professional Practice	Considers matters, including fit and proper person requirement and Code of Professional Conduct
Compliance/Investigations	Considers how the Board's compliance and investigations function should be exercised
Professional Indemnity Insurance	Advises on the minimum essential requirements for professional indemnity insurance and when this would be required
Continuing Professional Education Working Group	Advises on the minimum requirement for tax practitioners
Operational Committees	
Audit and Risk	Advises on risk model and quality assurance of Board operational decision-making
Strategic Budget	Advises on strategic budget issues
Recognising Professional Associations	Makes decisions on the recognition of professional associations
Secretary's	Makes decisions on standard applications for registration and renewal
Registration Exceptions	Makes decisions to approve or reject registration and renewal applications, and to impose conditions
Board Conduct	Makes decisions on the outcomes of investigations, including whether to impose sanctions
Course Approval Process	Decides the process for handling applications for approval of courses by private providers

Source: TPB, *Annual Report 2011–12*, Canberra, 2012, p. 57 and information provided by the TPB.

Appendix 4: ICT Support Arrangements for iMIS

Issue	Relevance	Assessment and comment
Business specifications and system configuration are documented	To ensure that the system has been appropriately designed and configured	✓ Business specifications have been documented, but were not clearly defined during the initial implementation, requiring further work. Not all TPB specific iMIS table configurations are fully documented.
Business Continuity processes are in place	Essential for ongoing reliability and performance	✗ Full Business Continuity and Disaster Recovery arrangements are due to be in place in 2013.
Responsibilities for systems functions and work by third parties is documented and approved	Provides clarity around the expectations for deliverables	✓✓ The responsibilities between the ATO, TPB and third party provider are clearly defined. Requests for changes to be made by the third party provider are documented.
Change management controls are consistently and correctly applied	Essential for ongoing reliability and performance of ICT systems and to ensure that systems operate as intended	✓ Formal processes for change management were implemented during 2012. Prior to this change management processes were still evolving and testing was not always fully documented.
ICT governance framework, including security documentation	In accordance with Australian Government protective security requirements	✗ The TPB does not have a comprehensive governance framework for iMIS that includes System Security Plans or Risk Management Plans for iMIS. This will be implemented as part of the new TPB ICT environment.
Third party security	Prevents unauthorised access, safeguards data	✓ There is an agreement with the third party provider on the provision of iMIS infrastructure. User access, system and data changes are logged. Formal monitoring arrangements are under development.
Logical access controls and user access management ⁽¹⁾	Prevents unauthorised access, safeguards data integrity	✓ User access controls are in place. Password and identity security is in place for users and staff. Password configuration for iMIS does not meet the Information Security Manual requirements.
Management of data exchange outside the organisation	Safeguards data confidentiality, integrity and availability	✓✓ Information transfer is adequately secure.

Legend: ✗: not adequate; ✓: generally satisfactory, with scope to improve; ✓✓: satisfactory

Source: ANAO analysis of TPB data.

Note 1: The Australian Government's Protective Security Policy Framework (INFOSEC 5) requires that agencies have control measures based on the business owner requirements and assessed and accepted risks for controlling access to information, ICT systems, networks and applications.

Index

A

Administrative Appeals Tribunal, 86, 108, 113, 121

Administrative sanctions, 18, 34, 111

ANAO case testing

compliance cases, 25, 118, 124

registrations cases, 97

Australian Government Investigations Standards, 120

Australian Taxation Office

relationship with tax practitioners, 37, 44

support provided to the Board, 14, 36, 58, 68

B

BAS agents

number of registered, 13, 31

Budget, 21, 66, 76

Business planning, 17, 20, 76

C

Civil penalties, 12, 31, 33, 34, 62

number of Federal Court of Australia orders, 15, 36, 112

Client service charter, 21, 64, 77

Code of Professional Conduct, 12, 16, 31, 33, 34, 62, 136

number of breaches, 101, 112, 113

principles and obligations, 101

Complaints

against tax practitioners, 18, 25, 75, 109, 110, 123

against tax practitioners referred to the TPB, 24, 106

against the Board, 22, 76, 77, 120

registration process, 20, 53, 56

Compliance framework, 24, 26, 102, 104, 105, 122, 123

compliance model, 104, 105

D

Delegations, 19, 35, 50, 55

Department of the Treasury, 13, 22, 33, 39, 47, 54, 82, 86, 99

F

Financial management (TPB), 66

Financial Management and Accountability Act 1997, 14, 36, 50

H

Human resource management, 68

I

Information and communication technology

development and support arrangements, 70

infrastructure, 21, 45, 70, 77

K

Key performance indicators, 17, 20, 60, 62, 76

P

Performance management and reporting, 60

registrations, 90

Portfolio Budget Statement, 60

Post-implementation review, 15, 37

Q

Quality Assurance

- Registrations, 95

- Regulatory assurance, 118

R

Registrations

- business process, 83, 84

- education requirements, 82

- numbers of applications, 14, 36, 91

- types of applications, 88

Regulatory assurance

- business process, 107

- number of cases, 110

Risk management

- Committee, 51, 59

- risk register, 20, 24, 60, 76, 106, 122, 123

- strategic risks, 18, 60, 106

S

Service standards, 20, 63, 76

Stakeholders

- engagement, 73

- feedback, 21, 73, 77, 98

State Tax Agents' Boards

- functions and responsibilities, 32

T*Tax Agent Services (Transitional*

Provisions and Consequential

Amendments) Act 2009, 13, 16, 33, 88, 133

Tax Agent Services Act 2009

- purpose, 12, 30

- Tax Agent Services Regulations, 13, 33, 82, 133, 134

- Tax agents, 32, 88

- number of registered, 13, 31

- Tax Practitioner Legislative Framework, 33

Tax Practitioners

- definition, 12, 16, 31

- membership of a professional association, 31

- numbers of registered entities, 13, 16, 31

Tax Practitioners Board

- appointment, 16, 39

- committees established by the Board, 17, 19, 50, 51, 54, 55, 57

- composition, 39

- organisational structure, 58, 136

- statutory functions, 13, 14, 34, 35, 57

- written guidance, 14, 35, 74

W

- Website, 21, 46, 73, 75, 77, 89

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