

An interview with the TPB

Interview with **Peter de Cure AM**, the recently appointed Chair of the TPB
by The Tax Institute's Senior Advocate, Robyn Jacobson, CTA

Current as of 22 September 2023

Introduction

The political, regulatory and media focus on events of recent years has shone a spotlight on the tax profession. The community is right to be concerned about the regulation of tax practitioners, given the high standards that we are expected to meet. The community must have confidence in the framework that appropriate compliance action is taken where professional conduct falls short of regulatory and moral standards.

Peter de Cure AM was first appointed to the Tax Practitioners Board (TPB) in July 2017 and reappointed in October 2020. He was appointed as Chair of the TPB in May 2023. Peter generously agreed to be interviewed for this preamble, so we put some questions to him. His responses are insightful.

Robyn: How does the TPB's broad approach to regulating registered tax and BAS agents compare with the approach over the last few years?

PETER: While we continue to focus on complaints from the public and other tax practitioners, the TPB's compliance program is driven by risk assessment, data analytics and strong collaboration with our co-regulatory partners. The TPB uses data and risk engines, including machine learning models and human verification to help achieve effective regulatory outcomes.

In the Federal Budget (October) 2022–23, the Government allocated \$30.4 million to the TPB to boost compliance investigations for high-risk tax practitioners and unregistered preparers. This initiative is referred to as the Expanded Compliance Program (ECP). It commenced on 1 July 2023 and will run for four years.

The ECP will focus on tax practitioners who display high-risk attributes and steer tax avoidance or evasion and provides us with better insight into how the tax system and profession are working. This shift in focus, along with our existing compliance program, means we can also target those who pose the greatest risk to the community.

New data and improved analytical tools allow us to better identify systemic risks and opportunities. The ECP also involves identifying and addressing higher-risk tax advisers, including those operating outside the system.

Examples of this include our increased focus on correct reporting, especially when dealing with cash and income alienation. We are currently investigating a few practitioners who have omitted millions of dollars in assessable income. We are also working closely with the ATO in relation to more than 2,000 registered tax practitioners with outstanding tax obligations, including outstanding lodgments and significant tax debts.

As I mentioned, strong collaboration with our co-regulators is also an important part of our compliance work. The decisions we make are informed by open and transparent communication with our stakeholders and this includes the Government and the professional associations.

The TPB's Corporate Plan for 2023-24 was released on 1 August 2023. What should practitioners understand as the key drivers of the TPB's focus over the year ahead?

The TPB has a number of areas of focus, but I'm keen to highlight three key areas: stakeholder engagement, consultation with tax practitioners and the future of reform.

The TPB is committed to ongoing improvements in our services and the regulatory framework. One of the main ways we plan to do this is by engaging with our key stakeholders. Key stakeholders include tax practitioners and professional associations, and we are committed to supporting the Government's priorities and working transparently with Parliament. We work collaboratively with partner agencies, including the ATO and the Australian Securities and Investments Commission (ASIC), especially to address shared risks and build on whole-of-government initiatives and opportunities.

We engage daily with tax practitioners to support the system, including through registration, sharing information and assisting with client issues. Formal consultation with tax practitioner associations allows a more coordinated approach, addressing reform options as well as the TPB's current operations, performance and strategy development. This also allows us to consider how we can best reduce any unnecessary regulatory burdens and enhance the user experience for tax practitioners.

Finally, when we focus on the future, we recognise that the majority of tax practitioners act professionally and ethically, supporting clients and balancing community expectations around trust and integrity. Accordingly, we look to ensure that our reform activities support the majority through effective reforms that are fit for purpose.

In October 2019, the [Review of the Tax Practitioners Board \(James Review\)](#) into the TPB and the *Tax Agent Services Act 2009 (TASA)* made recommendations to ensure the system was contemporary and fit for purpose. The TPB welcomes support from the Government including legislation currently before Parliament (Schedule 3 to the [Treasury Laws Amendment \(2023 Measures No. 1\) Bill 2023 \(the enabling bill\)](#) and the package of measures [announced](#) by the Government on 6 August 2023 to implement and progress these important changes.

The TPB recently conducted a bi-annual survey across a sample of tax practitioners and consumers. What are the learnings from this survey for the TPB and practitioners?

Yes, every six months, we conduct a survey across a sample of both tax practitioners and consumers. The survey, which first commenced in September 2019, helps us understand consumers' trust in registered tax practitioners, usage and effectiveness of our public register and awareness and effectiveness of the TPB as a regulator.

We have just completed the analysis of our [7th survey](#), conducted in April 2023. Some of our key findings are as follows:

- Trust in tax practitioners remains high among consumers, with 71% of respondents saying they trust their tax practitioner completely.
- The awareness of the TPB public register has reached its highest level across all seven surveys, with 71% of respondents indicating that they are aware of its existence.
- 65% of consumers report using the same tax practitioner for five years or more – this is the highest level across all seven surveys.
- 88% of tax practitioners access our advice and guidance more than once a year and find it useful.

We have noticed an ongoing increase in the number of registered tax and BAS agents. In the last five years, we have seen the number of registered tax agents increase by about 5% to nearly 46,000. It is slightly higher for BAS agents, where the number of BAS agents has increased by about 7% to 17,000. We saw about 3,500 new applications for registration in 2022–23. However, that number of new tax practitioners is partially offset by natural attrition in the tax practitioner population, arising mostly from surrenders and retirements.

In terms of statistics on the profile of the registered tax practitioner community, as of 30 June 2023, there were more than 62,500 registered tax practitioners in Australia. Of this:

- just over 45,500 were tax agents broken up into 69% individual tax agents and the other 31% are tax agent partnerships or companies;
- more than 17,000 are BAS agents broken up into 78% individual BAS agents and the other 22% are BAS agent partnerships or companies;
- 69% of tax agents are male and 81% of BAS agents are female; and
- when it comes to age, 57% of individual tax agents and 62% of individual BAS agents are aged more than 50 years.

Practitioners continue to face challenges ranging from labour shortages to maintaining their technical skills in the face of constant changes to our complex tax and superannuation systems. How can the TPB better support registered agents?

We continue to evolve the ways in which we support registered tax practitioners. Some of the keyways in which we do this include:

- **Streamlining how tax practitioners interact with us:** Like many other professionals, registered tax practitioners are working in an environment that requires an increasing reliance on technology, hybrid and remote work practices, and changing methods to engage with new and existing clients. We are dedicated to making it as easy as possible for tax practitioners to register, comply and practise, giving them more time to focus on supporting their clients.
- **Providing guidance and educational materials:** We draft, consult upon and publish information products to assist and support tax practitioners in understanding their professional responsibilities. This includes products in relation to proof-of-identity requirements for client verification, supervisory arrangements and continuing professional education (CPE) policy requirements for registered tax practitioners. We also provide educational materials to support registered tax practitioners and help them gain CPE. Our CPE policy is designed to encourage all registered tax practitioners to invest in their ongoing education. Last financial year, we provided 21 webinars to educate and support tax practitioners and assist their clients. More than 52,000 attended these webinars and more than 68,000 subscribed to our monthly newsletter, [TPB eNews](#). We ensure the information and guidance provided on our website is up-to-date and accurate. This information provides a wealth of information to support tax practitioners. We let tax practitioners know this information is available through our various marketing channels, and of course we also directly contact and assist registered tax practitioners where needed.
- **Taking action against misconduct:** As I mentioned earlier, we continue to take strong and targeted action against misconduct, including by the highest risk and unregistered tax practitioners. This includes targeted action in the Federal Court, seeking civil penalties and/or injunctions. When we take enforcement action, we are transparent about why we have done so.

What agent behaviour will attract the TPB's attention?

The TPB will always prioritise fraud and crime that undermines the system and trust in the majority of tax practitioners who we know are doing the right thing. Another priority will be those cases that erode confidence in the system, because of the blatant breach of legal and ethical responsibilities, the impact across the profession, abuse of clients or the undermining of trust and confidence in the system.

We have an ongoing and targeted compliance focus on suspected breaches of professional and ethical standards. These include:

- Acting honestly and with integrity, especially when dealing with clients' funds, assets and information. We will address misappropriation and misuse of clients' funds.
- Failure to act lawfully and independently, not acting in the clients' best interests and failure to manage conflicts of interest. These breaches of law and trust are prioritised.
- Client confidentiality breaches can undermine trust, identity security and economic interests. High-risk breaches include failures in client authentication, records management, systems integrity and poor protection against cyber fraud.
- Failure to maintain knowledge, skills or competence. Some examples of incompetence include claims for unlawful work-related expenses, without appropriate nexus or records.
- Failure to take reasonable care (in addressing client facts and the relevant tax law). Some tax avoidance schemes are premised on redrawn factual scenarios, including a pretext of trust or fiduciary relationships to allow loss trafficking.

While a few agents engage in poor behaviour, the vast majority of practitioners do the right thing. How can the TPB regulate all but ensure its attention is focused on those doing the wrong thing?

Despite the great work by most tax practitioners, we know there is a small proportion who are not doing the right thing. This is why we continue to invest in and improve on our data analytics capabilities – we want to improve our understanding of the system, key risks and opportunities.

These enhanced capabilities assist in the targeted investigation of those tax practitioners who choose to do the wrong thing. We are improving our data analytics capability, subject to human verification, including the utility of our risk and measurement tools. We will use the new data-driven risk engines to identify tax practitioners who are engaged in fraud, tax avoidance and tax evasion and those providing tax services while unregistered.

I should also add that, last year, we received more than 1,700 complaints and referrals relating to both registered tax and BAS agents and unregistered preparers from members of the public, registered tax practitioners and other interested parties. We welcome and value these insights into what is happening on the ground and use this information to ensure our regulation of the industry is effective.

Another important focus for us is working collaboratively with co-regulators to understand and try to limit our differing priorities. This will help to enhance the effectiveness of our compliance outcomes and the efficiency of our service delivery. We manage this by proactively engaging with co-regulators and, where appropriate, we will enter into agreements to facilitate this cooperation.

The independence of the TPB from the ATO is often questioned. Can you explain the nature of the relationship the TPB has with the ATO?

The ATO and the TPB have significant and legitimate interests in the conduct of tax practitioners. The role of the ATO is to effectively manage and shape the tax, superannuation and registry systems to support and fund services for Australians. The TPB supports public trust and confidence in the integrity of the tax profession and of the tax system by ensuring that tax practitioners provide services to the community in accordance with appropriate standards of professional and ethical conduct. Tax practitioners are key players in the tax ecosystem as they influence and shape the views of their clients.

The TPB develops its own strategy for regulating the tax profession, and the disciplinary decisions it makes are based on its own findings and investigations. As such, while the ATO and TPB operate independently of each other, we work together to deliver on shared strategic goals to influence tax practitioner behaviours and ensure community confidence in the integrity of the tax profession and system.

As a co-regulator, it is important we work closely together to support the work and interests of one another. Our relationships with the ATO and other regulators are an essential part of our ability to serve the community and tax practitioners.

While the TPB operates with statutory independence and reports directly to the Minister, all Board members are appointed by the Minister and appointments are at arm's length from the ATO. Legislation is currently before Parliament that proposes to enhance the TPB's financial independence from the ATO (see Schedule 3 to the [enabling bill](#)).

Turning to an evolving issue, would you comment on the role of AI and similar technological advancements that represent another paradigm shift in the operating environment for practitioners?

We are already seeing the significant impact of artificial intelligence and other technological advancements on our society and economy. However, while all this change occurs, one thing that does not change is practitioners' obligations under the TASA and the role of the TPB to protect consumers of tax services. Registered tax practitioners must adapt to changing business practices and client expectations while ensuring they meet their obligations under the TASA, in particular the [Code of Professional Conduct](#). These obligations are designed to ensure that consumers can be confident that the services tax practitioners provide meet the professional and ethical standards required.

One item in particular that warrants attention here is the confidentiality of client information. Code item 6 states that, unless you have a legal duty to do so, you must not disclose any information relating to a client's affairs to a third party without your client's permission. We are already seeing this in relation to technology, in terms of cloud-based software and storage. Over the last 5-10 years, cloud services have emerged as a driving force for Australian business. Cloud services are changing business models, facilitating a more innovative and dynamic way of working.

It is no surprise that cloud uptake is growing rapidly in the business sector. The COVID-19 pandemic greatly accelerated the growth of cloud usage, [where more than 40%](#) of all workers are still contributing at least some hours working from home. According to the [Australian Bureau of Statistics](#), 55% of businesses are using paid cloud services as of 2019–20, compared to 42% in 2017–18.

Registered tax and BAS agents must understand that cloud-based storage potentially exposes confidential client information to a 'third-party' service provider. There is a distinction between secured data storage that a third party can't access (for instance, due to encryption) and disclosure of information to a third party. If the third party has access to view the information they are storing, it is disclosure. It is important to note it is necessary the information relates only to the affairs of a client. Therefore, the information does not have to belong to the client or have been directly provided by the client to you.

So, if your cloud arrangements or other technology interfaces mean you will, or even might, disclose information relating to your client to a third party, you must obtain their permission.

I think it is also important to touch on cyber security. We know that tax practitioners are targeted by cybercriminals in an attempt to harvest personal information, commit identity fraud or launch malicious attacks. Tax practitioners hold high volumes of sensitive client information, and it is extremely important that they take steps to protect this information.

We recommend having sufficient IT controls in place to protect the security and confidentiality of your client records and assist you in meeting your obligations under the Code of Professional Conduct, such as:

- install and maintain anti-virus software on your workplace computers;
- deploy firewalls on your workplace computers and/or workplace networks;
- ensure that your computer operating systems and programs always have the latest security patches;
- protect client records or files using encryption where possible;
- regularly change your passwords; and
- consider using a second form of authentication (for example, SMS) to protect your online accounts.

Tax practitioners may wish to seek expert advice from an IT security provider to determine what software suits their commercial needs and meets their Code obligation to protect client confidentiality. We also highly recommend practitioners assess the risk of a cyber-attack and consider if they need to take out additional professional indemnity insurance cover to assist with first party losses arising from a cyber-attack.

We understand cyber security is a complex and evolving subject, so we recommend tax practitioners learn more about it. You can undertake cyber security awareness training. The TPB will recognise cyber security awareness training that you undertake as relevant CPE.

The redesign of the regulatory framework is currently in play, following the recommendations made by the James Review. What further insights can you provide?

We have been working closely with the Treasury and the Government to support consultation and progress recommendations arising from the [independent review](#) conducted by Keith James.

Schedule 3 to the [enabling bill](#) addresses matters relating to the TASA. The five key proposed changes include:

1. updating the objects clause to better recognise the TPB's role in ensuring not only community confidence in the tax profession, but also the tax system;
2. enhancing the TPB's financial independence from the ATO;
3. inserting new provisions into the TASA to prevent tax practitioners from engaging with disqualified entities;
4. implementing annual registration (instead of every three years); and
5. allowing for the expansion of the Code of Professional Conduct, by enabling the Minister to specify, in a legislative instrument, additional obligations that registered tax and BAS agents must comply with.

Should these proposed laws pass, we will work closely with tax practitioners and all our stakeholders to ensure that there is an understanding of what these changes mean. We will also continue to consult with tax practitioners to ensure implementation is as smooth as possible.

Further, on 6 August 2023, the Government [announced](#) a range of reforms to address tax adviser misconduct and improve our regulatory frameworks. The TPB supports the Government's priorities, including any reforms that improve public protections and professional integrity.

The announcement provided details about three priority areas to:

- strengthen the integrity of the tax system;
- increase the powers of the regulators; and
- ensure regulatory arrangements are fit for purpose.

Closing comments from the TPB

I want to reiterate that all of us at the TPB are dedicated to supporting public trust in the tax profession and the tax system. We know that integrity builds in environments of strong leadership and good governance, so we encourage you to continually reflect, review and improve your own systems and processes. If you identify issues impacting your registration, I encourage transparency and cooperation with the Board.

We know most tax practitioners act professionally and ethically, supporting clients and balancing community expectations around trust and integrity. We thank you for your dedication and for your invaluable support to your clients; you are what we aspire for in tax practitioners.

Closing comments from us

The TPB plays a crucial role in the community, along with the ATO, the professional associations and tax practitioners, as guardians of the tax and superannuation systems. We thank Peter for his time with this interview and sharing his insights with us.

Further guidance and information

Further guidance and information are available from the [TPB website](#).

If you have any specific concerns that have not been outlined above, please email taxpolicy@taxinstitute.com.au.

DISCLAIMER: The material and opinions in this article is for educational purposes only and should not be used or treated as professional advice. Readers should rely on their own enquiries in making any decisions concerning their own interests.

© 1996–2023 The Tax Institute (ABN 45 008 392 372 (PRV14016)).
All rights reserved. The Tax Institute is a Recognised Tax Agent Association (RTAA) under the *Tax Agent Services Regulations 2009*.

