



Eight years of the TASA & the Code

Australasian Tax Teachers Association Conference 2018

Presented by Ian Taylor, Chair, Tax Practitioners Board, January 2018

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- Almost eight years since the commencement of the *Tax Agent Services Act 2009* (or TASA for short), I'm pleased to have this opportunity to discuss how the TASA and the Code of Professional Conduct are maintaining the ethical and professional standards of the tax profession.
- As Chair of the Tax Practitioners Board (TPB) I believe it has been a progressive new era in tax practitioner regulation, as I will outline in my presentation today.
- But first, I'll give you a brief background on the establishment of the TPB.

The Tax Practitioners Board commenced operations in March 2010



Back row: George Fox, Russell Smith, Yvonne Sneddon, Gordon Cooper, Cynthia Coleman, Roger Cotton, Dale Pinto, Chris Doogan, Michael Evans, Miriam Holmes

Front row: Dale Boucher (Chair), Mark Maskell (Secretary)

Absent: Matthew Addison

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

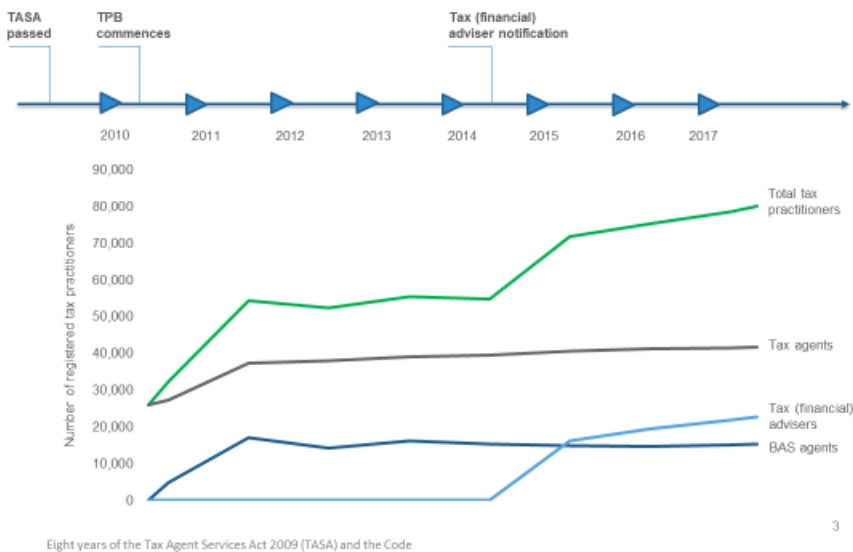
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- On 26 March 2009, the Parliament of Australia passed the TASA into law to establish a national regulatory regime for tax practitioners.
- The TPB commenced operations in March 2010 as an independent statutory body created to register and regulate entities providing tax agent services in Australia.
- The new regime which, according to Walpole and Salter in their 2014 article for ATAX UNSW, has '*fundamentally changed the ground rules*¹' for regulating tax practitioners, was designed to increase community confidence in tax practitioner services.

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

Registered tax practitioners



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

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- The TPB was established with 26,000 registered tax practitioners, comprised solely of tax agents who were previously registered with the six state tax agent boards. It was the first task for the TPB to register these tax agents.
- In addition, at that time there were still many specialist tax agents operating outside this regulatory framework. Another of our priorities was to identify, contact and bring these unregistered tax practitioners into the TPB's regulatory domain.
- The TPB also had the considerable challenge of bringing the previously unregulated bookkeeper profession into the regime as registered BAS agents. This involved ensuring bookkeepers providing tax agent services were registered with the TPB, meeting all the relevant educational and compliance requirements.
- Four years down the track, in July 2014, the TASA was extended to financial advisers who included tax advice as part of their financial advice.
- Tax (financial) advisers are now regulated by ASIC for the financial advice they provide, and regulated by TPB for the tax element of their advice.
- Nearly eight years on from the start of the TASA, at 30 December 2017, approximately 80,000 tax practitioners are now registered with the TPB. This includes 42,000 tax agents, 15,000 BAS agents and 23,000 tax (financial) advisers.

Compliance with the TASA and the Code



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- Let's look now at our compliance approach. The TPB aims to educate practitioners about their obligations under the Code of Professional Conduct and the TASA. Our approach combines targeted compliance activities and a complaints/referrals process to protect consumers of tax agent services.
- We are now able to look back and see trends with compliance to the TASA and the Code.

Fitness and propriety

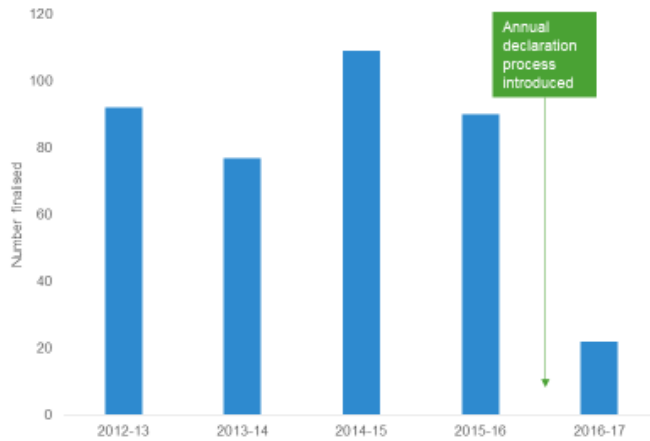
- Section 20 of the TASA covers the eligibility requirements for registration, including whether an individual is a fit and proper person.
- Compliance matters around fitness and propriety dropped significantly when an annual declaration process was introduced in January 2016.
- The declaration requires tax and BAS agents to notify us annually that they continue to meet certain ongoing registration requirements.

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- Section 20 of the TASA covers the eligibility requirements for registration, as well as the criteria for determining whether an individual is a fit and proper person to be registered.
- There has been a particularly significant drop in compliance matters regarding fitness and propriety over the past year. Fit and proper matters reduced from 109 cases in 2014-15 to 22 in 2016-17.
- To explain this result, we can point to the establishment of the annual declaration process which commenced in January 2016 and has now entered its third year.

Fitness and propriety cases

2012-2017



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

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- Other than in their year of registration renewal, tax and BAS agents are required to notify the TPB annually that they continue to meet certain ongoing registration requirements.
- Since January 2016, all registered tax and BAS agents have now completed at least one annual declaration.
- Interestingly, as a result of the annual declaration process, the TPB saw a significant increase in the number of surrenders of registration in 2016-17. Anecdotal evidence suggests the increased surrenders relate to the decline in fit and proper matters, with practitioners surrendering their registration because they no longer meet the fit and proper requirement as set out in the declaration.
- I will cover the annual declaration process in more detail shortly under Code item 14.

Code of Professional Conduct

The Code covers 14 principles under five separate categories:

- Honesty and integrity
- Independence
- Confidentiality
- Competence
- Other responsibilities

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- Let's move on now to talk about the Code of Professional Conduct. Contained in section 30-10 of the TASA, the Code establishes a set of ethical and professional standards to be observed by tax practitioners.
- The Code covers 14 principles under five separate categories:
 - Honesty and integrity
 - Independence
 - Confidentiality
 - Competence
 - Other responsibilities
- To assist tax practitioners to understand their obligations, from its inception the TPB worked in consultation with the tax profession – including professional associations – to increase the availability of information and guidance for tax practitioners on the Code.
- Since 2010, we have produced a wide range of guidance material, including a comprehensive explanatory paper and ten information sheets on specific Code items.

- Today I am going to talk to you about compliance trends relating to several Code items. Unfortunately, we don't have time to cover compliance trends regarding all items of the Code, but I would like to share a case study with you now. This case deals with a number of Code items, most notably item 1 - acting with honesty and integrity.

Acting with honesty and integrity

Case study

- The Federal Court ordered Mr Tsu Chien Su to pay a \$70,000 penalty for committing 50 breaches of the TASA by recklessly making false statements to the Commissioner of Taxation, and causing loss of revenue to the Commonwealth and personal gain to the agent.
- This was the first time the Federal Court imposed a pecuniary penalty on a registered agent for contraventions of the TASA.

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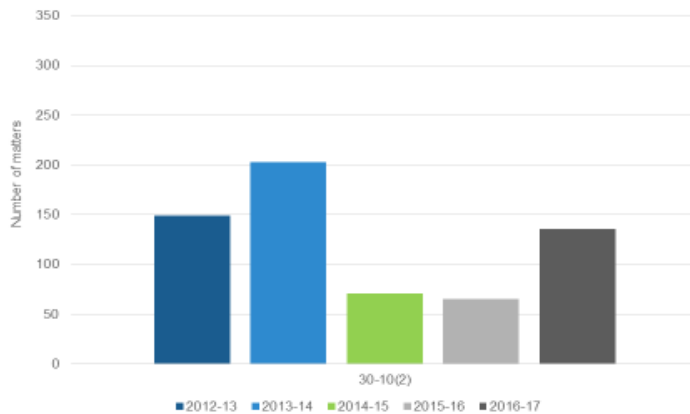
Case study: Misconduct results in \$70,000 penalty and termination of registration for Mr Tsu Chien Su

- The Federal Court ordered Mr Tsu Chien Su (a previously registered tax agent) to pay a \$70,000 penalty for committing 50 breaches of the TASA by recklessly making false statements to the Commissioner of Taxation, and causing loss of revenue to the Commonwealth and personal gain to the agent.
- Mr Su admitted to 50 contraventions of the TASA, with 25 of the 50 relating to false information in returns derived from false payment summaries, and the other 25 contraventions relating to the false tax agent certificate contained in each return.
- This was the first time the Federal Court imposed a pecuniary penalty on a registered agent for contraventions of the TASA.
- Among other considerations, in imposing the \$70,000 penalty the Federal Court made allowances for the fact that Mr Su had admitted to the contraventions early in the process and had shown contrition.
- Following a finding by the TPB that Mr Su had knowingly breached the Code, the TPB terminated his registration as a tax agent in August 2013, imposing a period of three

years before he could re-apply for registration. Mr Su appealed this decision to the AAT. The AAT affirmed the TPB's decision.

Code item 2

Comply with taxation laws in the conduct of your personal affairs



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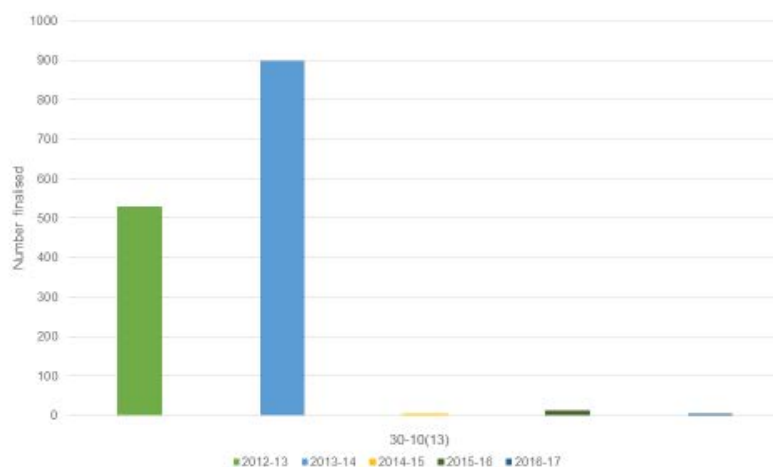
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- In 2013-14 there was a spike in Code item 2 matters (You must comply with taxation laws in the conduct of your personal affairs) when our personal tax obligations project was implemented.
- This project saw tax practitioners with outstanding lodgments, debt or those subject to prosecution being referred to the TPB from the ATO.
- In most cases, a phone call to the practitioner addressed these issues. For example, while a practitioner may indicate in their annual declaration they had overdue personal tax obligations, arrangements may be in place to manage this with the ATO.
- Since January 2016, of over 70,000 annual declarations lodged, the TPB has resolved 305 cases through this method.
- That being said, the personal tax obligations project resulted in sanctions ranging from orders to suspensions and termination of registration where Code breaches were found.
- It also resulted in several civil penalty matters going to the Federal Court as a result of joint investigations by the TPB and the ATO.

Code item 13

Maintain professional indemnity insurance



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

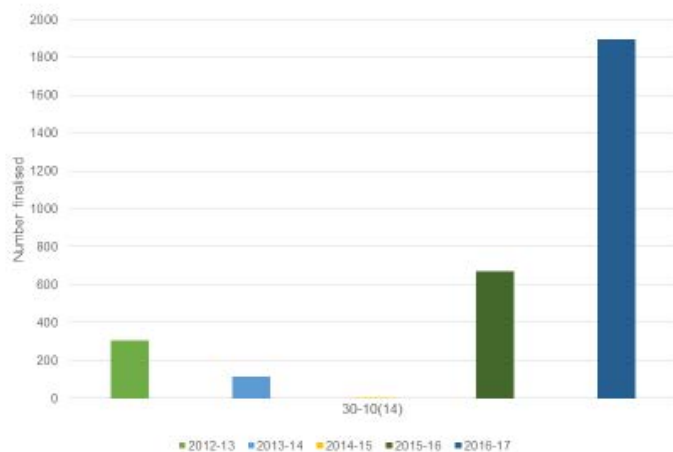
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- Code item 13 (You must maintain professional indemnity insurance that meets the Board's requirements) reduced from 899 cases in 2013-14 to five in 2016-17.
- From 1 July 2011, registered tax and BAS agents had to maintain PI insurance cover, and notify the TPB of the details of their arrangements. Practitioners can do this at any time by updating their details on the TPB system. Confirmation of PI insurance is part of the annual declaration process
- At 1 July 2012, around 10 per cent of registered tax and BAS agents had failed to notify us. By 30 June 2013, this figure had fallen to less than three per cent.
- The TPB took a number of steps to achieve this improvement in the notification rate.
- The TPB commenced a compliance project targeting those agents who had not told us about their PI insurance, completing 813 investigations during 2012–13 into possible breaches of the Code.
- As a result, the Board made decisions to suspend the registration of 50 agents and ordered them to obtain PI insurance cover that met the TPB's requirements.
- The TPB is confident now that all practitioners are reporting on their PI insurance status on an annual basis.

Code item 14

Respond to requests from the Board



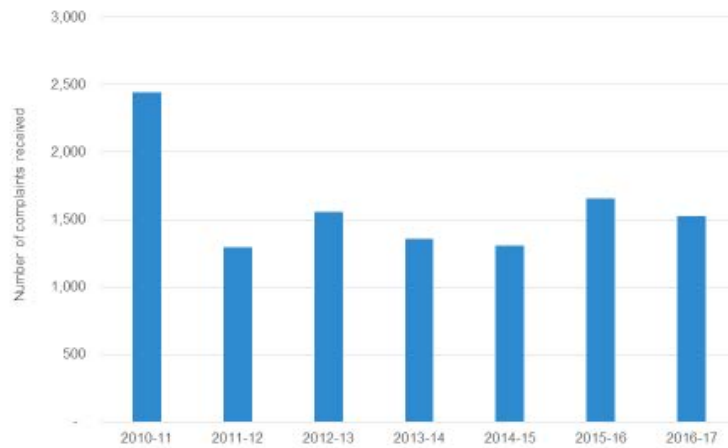
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- The next code item I want to talk to you about is item 14 – responding to requests from the Board. (You must respond to requests and directions from the Board in a timely, responsible and reasonable manner).
- Requests made by the Board may be regarding complaints or referrals, however this code item is also triggered where practitioners have not responded to the annual declaration requirement.
- While supporting our compliance objectives, the annual declaration has resulted in an increase in cases for Code item 14 matters
- Of the 2,244 matters relating to a possible breach of the Code investigated in 2016-17, 1,895 (84 per cent) related to Code item 14. Most of these matters relate to failure to respond to requests from the Board to complete the annual declaration by the due date.
- As discussed earlier, to date around 95 per cent of tax and BAS agents lodge their annual declaration by the due date.
- Where practitioners fail to complete their annual declaration on time, we contact them and provide a final opportunity for them to complete it before an investigation commences. This generally results in lodgement without the need for an investigation. However continued failure by the practitioner to respond has led to termination of registration in 18 cases.

Complaints received 2010-2017



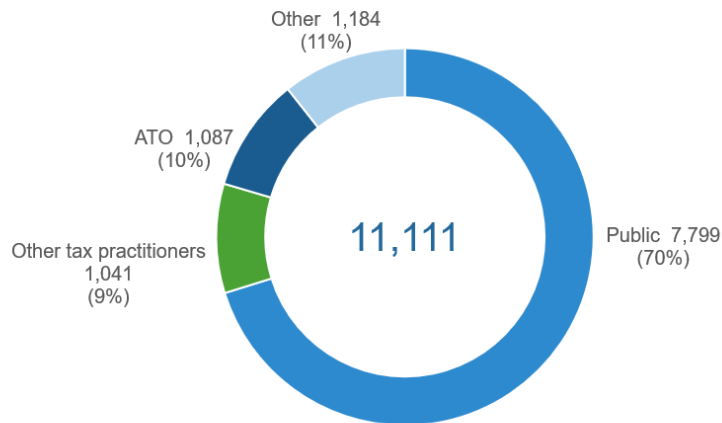
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- As I mentioned earlier, the TPB's compliance approach combines targeted compliance activities with a complaints/referrals process.
- Between 1 July 2010 and 30 June 2017, the TPB received more than 11,000 complaints and referrals regarding tax practitioners.
- In its first year of operation, the TPB handled more than 2,400 complaints, with more than 1,580 (65 per cent) coming from the public.
- This reflected growing awareness of the time of the new national regime and the need for tax and BAS agents to be registered with the TPB.
- The sources of complaints to the TPB have been consistent over the past eight years.

Sources of complaints 2010-2017



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- On average, around 70 per cent of complaints come from the public each year, followed by an even split of complaints from other registered tax practitioners, referrals from the ATO as well as other sources (which includes the TPB's surveillance and monitoring of media and practices within the tax profession).

Civil penalties

Pecuniary penalties imposed by courts

- Imposition of civil penalties by the Federal Court of Australia
- Penalties can apply to registered and unregistered tax practitioners
- Alternative strategies to civil penalty action

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- I'd like to talk now about civil penalties. Civil penalties are pecuniary penalties imposed by courts exercising a civil rather than criminal jurisdiction.
- The civil penalty provisions in the TASA apply to:
 - unregistered entities providing or advertising tax agent services while unregistered, or representing themselves as registered when they are not respectively
 - registered entities making false or misleading statements, employing or using unregistered entities or signing declarations or statements they have not prepared.
- Ensuring appropriate action against unregistered entities is a major focus for the TPB, as both a consumer protection measure and to ensure a level playing field for registered practitioners.
- There has been a significant reduction in the number of matters related to unregistered entities providing tax agent services for a fee or other reward, from 168 cases in 2013-14 to 41 in 2016-17. We can attribute this at least partly to the proactive educational activities our compliance team has undertaken.
- The TPB has taken a more educative approach regarding civil penalty cases with 'cease and desist' letters also being used in the first instance.

- Where egregious behaviour occurs, the TPB has taken action in the Federal Court, with some significant outcomes. Let's take a look at two more case studies involving Federal Court action.

Civil penalties

Case study 1

- In May 2014 in a landmark case for the TPB, the Federal Court ordered Peter Kolya to pay \$150,000 and his company, HP Kolya Pty Ltd, to pay \$750,000, the largest penalty imposed for breaches of the TASA.
- Mr Kolya and his company were not registered tax or BAS agents.
- The Federal Court ordered the unregistered Peter Kolya to pay a penalty of \$150,000 and his company, HP Kolya Pty Ltd, to pay \$750,000 for breaches of the TASA.
- This is the largest penalty imposed for breaches of the TASA.

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Case study 1: \$900,000 penalty for unregistered tax agents

- In May 2015 in a landmark case for the TPB, the Federal Court ordered the unregistered Peter Kolya to pay \$150,000 and his company, HP Kolya Pty Ltd, to pay \$750,000, the largest penalty imposed for breaches of the TASA.
- Mr Kolya and his company were not registered tax or BAS agents.
- However, from August 2011 until August 2013, Mr Kolya and his company prepared and lodged numerous income tax returns and business activity statements, made amendments to tax returns and charged fees for these services.
- Mr Kolya and the company also contravened the TASA by advertising the provision of tax agent services.
- The Court imposed a 10-year injunction on Mr Kolya and his company, in which they are not allowed to provide or advertise tax agent or BAS services.
- In deciding the appropriate penalty, the court took into account the TPB's submitted evidence, which showed Mr Kolya:
 - 'knew that the pleaded conduct was in breach of the TASA'
 - 'knew that he was engaging in conduct which he had been prohibited from undertaking by various decisions of courts and tribunals'
 - 'was well aware of the likely harm his continued conduct of his business was likely to cause'

- 'has never shown any contrition whatsoever for the pleaded conduct and appears to have no appreciation of its seriousness'.
- The Court noted that Mr Kolya's conduct 'displayed a flagrant disregard for the relevant registration requirements under the TASA'.

Civil penalties

Case study 2

- In February 2016, the Federal Court ordered Lorraine Amede, and her company, Lamede Group Pty Ltd, to pay \$81,500 in penalties for unlawfully providing and advertising tax agent services.
- Ms Amede was registered with the TPB as a BAS agent, but neither Ms Amede nor the company was registered as a tax agent to provide and advertise tax agent services.

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- **Case study 2: \$81,500 penalty for providing and advertising tax agent services**
- In February 2016, the Federal Court ordered Lorraine Amede, and her company, Lamede Group Pty Ltd, to pay \$81,500 in penalties for unlawfully providing and advertising tax agent services.
- Ms Amede was registered with the TPB as a BAS agent, but neither Ms Amede nor the company was registered as a tax agent to provide and advertise tax agent services.
- In determining the appropriate penalty, the court stated that 'these offences occurred over an extended period of time'.
- The court noted that the ATO audited the affairs of many the taxpayers who received tax agent services from Ms Amede and the company.
- The court also considered that some of the website advertisements for tax agent services were online for approximately one year and that the duration of the advertising was 'a seriously aggravating feature'.
- Advertising tax agent services when unregistered cases increased from a low of 17 cases in 2014-15 to 173 cases in 2016-17, but although it is an increase, this is a direct result of unregistered service provider project, one of several compliance projects the TPB undertake in addition to our regular compliance activities.

Compliance projects



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- The TPB's compliance strategy is risk-based: compliance work and resources are focused on issues where there is the greatest risk of harm to taxpayers and the community.
- The risk-based approach is the best use of TPB resources and has the least impact on responsible tax practitioners who seek to comply with the Code and other obligations.
- I'll talk through some of the TPB compliance projects with you now, starting with the Unregistered service provider project.

Unregistered service provider project

Targeting unregistered tax and BAS agents

- During 2016–17, the TPB worked with recognised associations on a targeted compliance activity to address the issue of unregistered service providers.
- The project team reviewed and identified entities that were advertising BAS services without appearing to be registered.
- Through our intervention, a large number of advertisements were removed or amended to meet the requirements of the TASA.

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- During 2016–17, the TPB worked with recognised associations on a targeted compliance activity to address the issue of unregistered service providers.
- The project team reviewed and identified entities that were advertising BAS services without appearing to be registered.
- A review of many online advertisements for BAS services identified several entities for further compliance action.
- Through our intervention, a large number of advertisements were removed or amended to meet the requirements of the TASA.
- Many previously non-compliant entities have now registered with the TPB and others are the subject of ongoing investigation which may lead to Federal Court action.
- As part of our consumer protection responsibility, the TPB in recent years has invested in awareness activities to encourage consumers of tax practitioner services to only engage registered practitioners.

Registered tax practitioner symbol

- The TPB released the registered tax practitioner symbol for tax and BAS agents in September 2014.
- In 2015 we ran a public awareness campaign encouraging consumers to look for the registered agent symbol when seeking an agent.
- In 2016, we ran a campaign targeting small businesses to check their tax or BAS agent is registered with the TPB.



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- The TPB released the registered tax practitioner symbol for tax and BAS agents in September 2014. The symbol provides registered tax practitioners with public recognition that they have met the eligibility requirements and maintain the standards of professional and ethical conduct necessary to provide tax agent services.
- Over 20,000 registered practitioners have requested the symbol to date. This accounts for 40 per cent of tax agents in business and 61 per cent of BAS agents in business.
- Six per cent of tax (financial) advisers in business have requested the symbol, reflecting the fact that most tax (financial) advisers are yet to meet the standard registration requirements.
- We have run two targeted advertising campaigns to raise awareness of using the symbol.

Tax time advertising campaign

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

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

Small business advertising campaign

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

Compliance outcomes

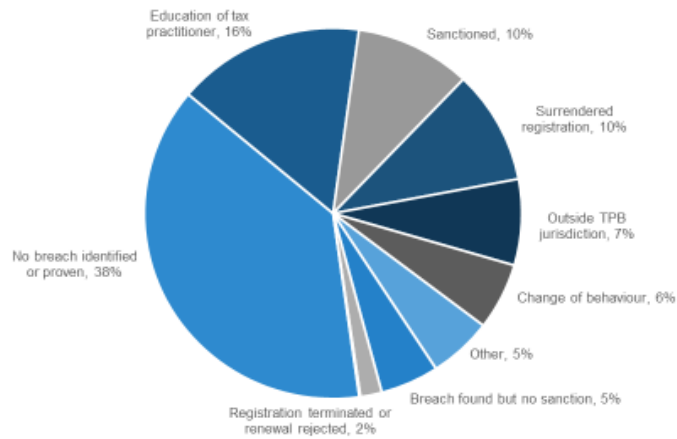


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- Between 1 July 2012 and 30 June 2017, the TPB completed 10,660 compliance cases.
- The largest number of cases was in 2016-17, where we completed 3,267 cases - this reflects the higher amount of compliance matters arising as a result of the annual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

Compliance cases 2012-2017

Case outcomes

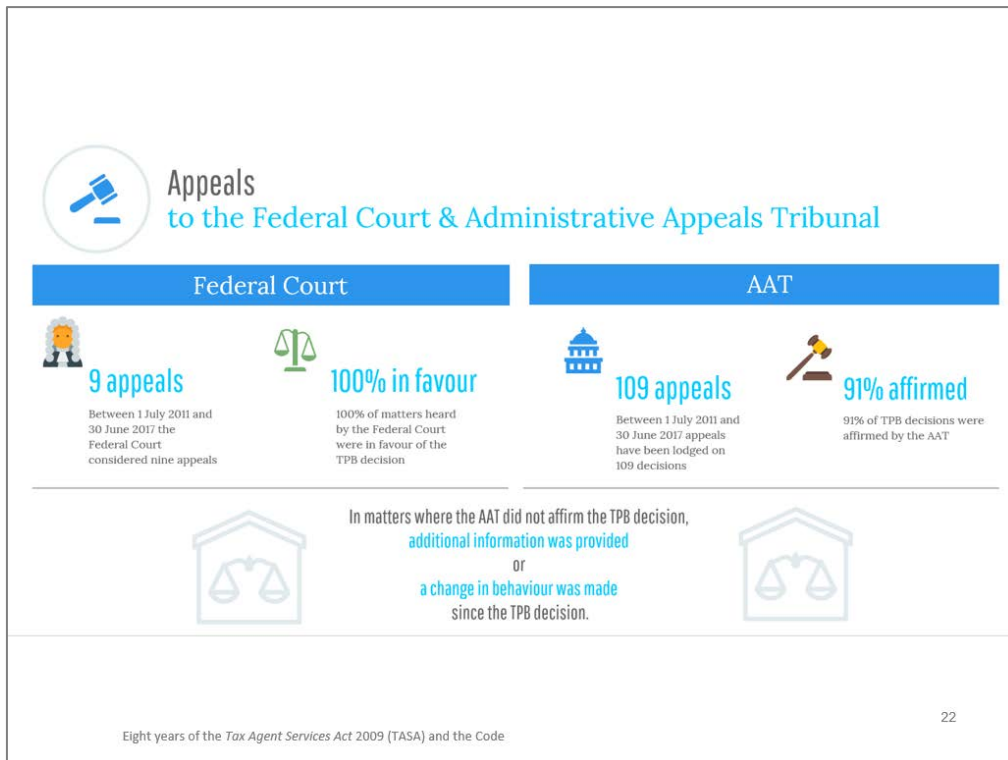


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- Looking at case outcomes between 2012 and 2017, the most common outcome is no breach is identified or proven.
- This is because some complaints that are received do not result in any breach of the Code being identified or proven. They may be resolved through discussion with the complainant, or by facilitating discussion between the complainant and the practitioner.
- In some instances, there is insufficient evidence available to pursue the matter further.
- Education of the tax practitioner is the second most common outcome. In 2016-17, a significantly higher number of cases outcomes were education of the tax practitioner and surrender of registration. This may be attributed to the introduction of the annual declaration process.



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- From time to time, tax practitioners may lodge an appeal over a TPB decision with the Federal Court or Administrative Appeals Tribunal.
- With the vast majority of the appeals on compliance outcomes that are referred to the AAT, the TPB's decision is upheld.
- The Federal Court has considered nine appeals related to TPB decisions between 1 July 2011 and 30 June 2017. Of these, four matters were resolved prior to a hearing. All five matters that went to hearing resulted in a decision in favour of the TPB.
- The only instances where TPB's decision has been overturned in the AAT are where the practitioner provided additional information at the AAT hearing that was not available for the Board's consideration.
- In two of the matters where the AAT decided in favour of the appellant, additional information had been provided or a change in behaviour had occurred since the time of the TPB's decision.

The next eight years



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- As I conclude the review of what we have done to this point in time, I want to emphasise that the TPB faces another challenging year, with a significantly increased workload and extensive IT upgrades within the context of ongoing budgetary constraints.
- We are continually looking for ways to improve our processes to achieve greater efficiency.
- However, despite the number of tax practitioners we regulate tripling from 26,000 to 80,000, our current budget is only marginally more than it was when we commenced operations in 2010.
- Ultimately, the integrity of the tax profession will depend on adequate resourcing of the TPB to enable the Board to further expand its compliance activities.

Future challenges

- Budgetary constraints
- Changing nature of business
- Regulatory landscape
 - Black Economy Taskforce led by Treasury
 - IGOT review into the future of the tax profession

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- The changing environment and resourcing constraints are expected to place further challenges on the TPB from a policy, communications and compliance perspective.
- Business models of tax practitioners are also expected to continue to evolve – for example, we are working with new stakeholders whose work touches on tax, such as conveyancers and payroll providers.
- The way tax practitioners do business is also changing:
 - The use of cloud computing has become almost commonplace and we are seeing more instances of outsourcing, offshoring, and developments in artificial intelligence and robotics.
 - There is also the emerging threat of cyber-attacks and the importance of tax practitioners proactively protecting themselves, their practice and their clients.
- Externally-speaking we foresee a closer working relationship with other government agencies, including ASIC.
- There is already a great deal of activity on this front with several government reviews or initiatives currently underway or planned, including the:
 - Black Economy Taskforce led by Treasury
 - Inspector General of Taxation (IGOT) review into the future of the tax profession.

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



Current Tax Practitioners Board members from left to right:

Jim Hawson, Julie Berry, Greg Lewis, Ria Sotiropoulos, Peter de Cure,
Ian Taylor (Chair), Julianne Jaques, Ian Klug, Rosemary Holloway (Secretary).

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- I would like to conclude today with a reference to the TPB's first annual report, which covered the period from 1 March to 30 June 2010, when the inaugural Chair, Dale Boucher, said:
Our aim is to bring all registered tax practitioners together under a single regulatory framework for the benefit of the Australian community.
- I believe the TPB has achieved that objective in working in close partnership with tax practitioners and associations, the ATO and other government stakeholders.
- The majority of tax practitioners respond to the challenge of rapidly evolving business practices while meeting their Code and TASA obligations, while promoting high professional and ethical standards that protect consumers of tax agent services.
- The TPB welcomes the challenges of the coming eight years and will continue to support and engage with all registered tax practitioners and those seeking registration with the TPB.