



TPB HAPPENINGS

Julie Berry, TPB Board Member,
Tax Practitioners Board



#NC2020



Julie Berry


TPB Board Member, Tax Practitioners Board




Julie Berry is a registered tax (financial) adviser and a Certified Financial Planner professional who has practised as a financial planner for more than 30 years. Julie is a Director of Xplore Wealth Limited (ASX:XPL) and Deputy Chair of the Future2 Foundation. Julie has previously served as both Chair and a board member of the FPA and Chair of the Institute of Financial Advisers in NZ. She is a life member of the FPA and recipient of the Money Management Lifetime Achievement Award. She is a Graduate of the Australian Institute of Company Directors.

Julie was appointed to the Board in December 2015 and reappointed in July 2017.








What we are covering today




Focus areas
for 2020





Working
together




Compliance
outcomes



Question
time



TPB's 2020 focus areas



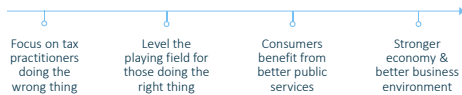
Shifting our strategic objectives



- We are currently responsible for regulating approx. 80,000 registered tax practitioners.
- Registrations is our central function, but we are shifting into the regulatory space.
- While many practitioners provide excellent service, we are shifting our strategic focus to those who don't.



Our way forward



Easing the regulatory burden

- Information sharing between agencies should be formalised through legislation to make it mandatory rather than discretionary.
- Too many regulatory bodies place a huge amount of regulatory and compliance burden on tax practitioners, and multiple points of entry for consumers of tax services.



Working together



Working together

- We are working closely with other agencies such as ASIC and professional associations to address tax practitioner compliance.
- We are identifying and acting on entities providing tax practitioner services while not registered.
- Importantly, we will continue to connect directly with tax practitioners.



Working together: FASEA



- The TPB's Code is set out in the *Tax Agent Services Act 2009* and applies to all registered tax practitioners, including tax (financial) advisers.
- All relevant providers must also comply with the FASEA Code of Ethics from 1 January 2020.
- TPB and FASEA are working together to minimise the regulatory burden.
- Many of the obligations under FASEA's Code of Ethics are similar to the obligations under the TPB's Code.



Comparing the codes

Behaviour and complying with the law



TPB Code of Professional Conduct	FASEA Code of Ethics
Code item 1 You must act honestly and with integrity.	Standard 1 You must act in accordance the law.
Code item 2 You must comply with the taxation laws in the conduct of your personal affairs.	Standard 2 You must act with integrity and in your client's best interest.
Code item 4 You must act lawfully in the best interests of your client.	Standard 5 You must communicate effectively to ensure your client understands the advice and any products you recommend.
Code item 10 You must take reasonable care to ensure taxation laws are applied correctly.	



Comparing the codes

Conflicts and consent



TPB Code of Professional Conduct	FASEA Code of Ethics
Code item 5 You must have in place adequate arrangements to manage conflicts of interest.	Standard 2 You must act with integrity and in your client's best interest.
Code item 4 You must act in the best interests of your client.	Standard 3 You must not act, advise or refer with a conflict of interest or duty.
Code item 9 You must take reasonable care to ascertain your client's state of affairs.	Standard 4 You must have your client's informed consent to implement any strategies recommended in your advice.
	Standard 7 You must have your client's informed consent before deducting any fees from funds managed on their behalf.



Comparing the codes

Knowledge and expertise

TPB Code of Professional Conduct	FASEA Code of Ethics
Code item 7 You must ensure tax agent services are provided competently.	Standard 5 You must communicate effectively to ensure your client understands the advice and any products you recommend.
Code item 8 You must maintain knowledge and skills relevant to the services you provide.	Standard 6 You must consider the long term effects of your advice.
	Standard 9 You must ensure your advice is not based on misleading information.
	Standard 10 You must develop, maintain and apply a high level of relevant knowledge and skills.



Comparing the codes

Advice for your client's situation

TPB Code of Professional Conduct	FASEA Code of Ethics
Code item 4 You must act lawfully in the best interests of your client.	Standard 9 You must ensure your advice is not based on misleading information.
Code item 10 You must take reasonable care to ensure taxation laws are applied correctly.	Standard 5 You must communicate effectively to ensure your client understands the advice and any products you recommend.
Code item 12 You must advise your client of their rights and obligations.	Standard 6 You must consider the long term effects of your advice.



Comparing the codes

Facilitating adherence to the Codes

TPB Code of Professional Conduct	FASEA Code of Ethics
Code item 11 You must not obstruct the proper administration of the taxation laws.	Standard 11 You must cooperate with ASIC and monitoring bodies.
Code item 14 You must respond to requests and directions from the Board.	Standard 12 You must uphold and promote the ethical standards of the profession.



Online improvements



Online improvements



- Updating and improving our online forms.
- Recent initiatives include:
 - qualifications advice service tool
 - two-factor authentication
 - modernised IT systems.



Expanding the TPB Register



- More information on our TPB Register ensures consumers are better informed when choosing a tax practitioner.
- It will include further details about:
 - sanctions
 - terminations
 - reasons for rejections of renewal
 - a list of known unregistered providers.



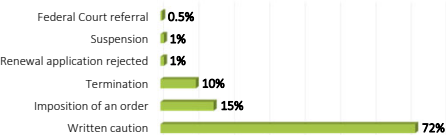
Compliance and investigations



Investigations 2018-19



Investigation outcomes 2018-19



Increasing TPB’s investigative & sanction powers



- To strengthen our role as a regulator, we need to deal with tax misconduct in a timely, efficient and effective manner.
- We need a broader range of sanctions that we can impose, including:
 - infringement notices
 - enforceable undertakings
 - interim and immediate suspensions
 - lifetime bans.



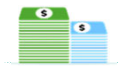
Black economy



Black economy



- The black economy refers to people who operate entirely outside the tax and regulatory system or who do not correctly report their tax obligations.
- The Black Economy Taskforce has been established by the government to develop a policy to combat the black economy in Australia.
- We have established a black economy investigations team, working closely with the ATO to investigate and take action against tax practitioners found to be involved in the black economy.



Case study

Black economy behaviour

- A tax agent was alleged to be participating in the black economy.
- He declared his income was less than \$150,000, but the ATO had assessed his reportable income to be over \$500,000.
- The tax agent was not only undeclaring income and overclaiming work related expenses to reduce his own taxable and assessable incomes, but he did it to reduce his clients' incomes too.
- We determined that the agent was not fit and proper and ceased to meet a registration requirement, breaching multiple code items. The board terminated the tax practitioner, with a 5 year exclusion period.



Debt and lodgement



Debt and lodgement

- Our debt and lodgement strategy addresses the outstanding tax obligations of tax practitioners. Last year we identified:
 - 5,000 tax practitioners had a collective ATO debt of over \$300, representing a total debt of over \$114 million
 - 2,700 tax practitioners had outstanding SMSF annual returns
 - 2,500 tax practitioners had not lodged one or more personal income tax return (ITR) or for those of their associated entities
 - 1,000 had more than one outstanding activity statement or business activity statement for their associated entities
 - 500 tax practitioners had an outstanding ITR or activity statement.



Debt and lodgement



- 12 months since implementation, with support from the ATO and professional associations, we reduced outstanding debt by around \$50 million and secured over 6,600 lodgements.
- The majority of tax practitioners responded well.
- There were some that failed to respond, resulting in investigations.
- Based on the successful outcomes, we'll continue to target tax practitioners who fail their legal and ethical responsibilities and the ATO is separately pursuing agent cases.



Recent compliance outcomes



Case study

Outstanding personal tax obligations



- A registered tax (financial) adviser failed to meet their personal tax obligations as required under the Code. These failures included:
 - outstanding taxation debts of over \$500,000 with no payment arrangement in place
 - outstanding BAS for four quarterly periods.
- They also failed to disclose their outstanding personal tax obligations in their registration application, did not meet our professional indemnity insurance requirements and failed to respond to our correspondence.
- The board terminated the tax practitioner, with a 5 year exclusion period.



Case study

Fit and proper

- A tax agent failed to be a fit and proper person. The TPB terminated their registration and prohibited them from reapplying for five years after they:
 - submitted unauthorised lodgements and amendments
 - altered bank account details for taxpayer refunds
 - failed to forward notices of assessment to clients
 - diverted refunds to their personal account
 - obtained payments from clients for fictitious debts
 - opened false bank accounts
 - impersonated clients and submitted fraudulent lodgements.



Case study

Misuse of clients' funds

- A partnership tax agent had committed various Code breaches:
 - Code item 1 – failure to act honestly and with integrity
 - Code item 2 – failure to comply with personal tax affairs
 - Code item 5 – failure to manage conflicts of interest
 - Code item 7 – failure to provide competent service
 - Code item 14 – failure to respond to Board's requests in a timely, responsible and reasonable manner.
- The board terminated the tax practitioner, with a 5 year exclusion period.



Case study

Unregistered provider

- Using an unregistered provider can cost clients thousands of dollars in tax bills and penalties.
- On 1 March 2019 Mr Kent Hacker stood before the Federal Court and accepted that he would not provide tax agent services illegally because of an application we made to the Court.
- Litigation against Mr Hacker continues, and his undertaking will remain in place until our application for penalties and final injunction is heard.
- Penalties for breaching tax agent services laws can be reach \$52,500 for each offence by an individual, and \$262,500 for a company.



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