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Director, Tax Agent Regulation Unit

Personal, Indirect Tax and Charities
Division

The Treasury

Langton Crescent

PARKES ACT 2600

Submitted via email: pwresponse@treasury.gov.au

Dear Director,

Re: Review of eligibility requirements for registration with the Tax Practitioners Board

The Australian Institute of Conveyancers (Vic Div) (AICVIC) welcomes the opportunity to provide feedback on the Treasury's consultation on reviewing eligibility requirements for registration with the Tax Practitioners Board (TPB).

AICVIC represents over 600 licensed conveyancers in Victoria, a group of highly educated, trained, and experienced professionals who play a unique and vital role in property transactions. They compete on an equal footing with lawyers in undertaking conveyancing work, and it is essential to note that most of our members operate small businesses or as sole traders and will personally carry the burden of implementing any proposed changes.

Our submission focuses only on Question 25 of the consultation paper, which asks whether the Government should amend the Tax Agent Services Act 2009 (TASA) to capture existing and emerging tax intermediaries. This question presents a crucial and urgent opportunity to recognise the role of conveyancers in the tax system, particularly concerning property transactions. The proposed changes are of significant importance and should be addressed urgently.

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Conveyancers play a vital role in the real estate transaction process, managing the transfer of property ownership and ensuring compliance with various legal and tax obligations. A conveyancer's role includes handling matters related to GST on property transactions (and related services) and Foreign Resident Capital Gains Withholding (FRCGW). Given this significant responsibility, we strongly support amending the TASA to appropriately recognise and regulate conveyancers as tax intermediaries, with a specific tax agent category designed specifically for conveyancers.

Recognition of Conveyancing

Given the Government's acknowledged focus on the significant issues that the property sector faces, improving the professional recognition and consumer understanding of the role of conveyancers will ultimately benefit Australians and the property sector and protect the Australian tax system. It is widely recognised that conveyancers play a critical role in property transactions and are increasingly relied upon to fulfil this role. Due to their specialised focus, conveyancers provide significant efficiencies over other tax agents in obtaining ATO clearances, ensuring that the correct entity for the property transaction obtains the clearance certificate, accurately completing forms, calculating GST on commercial property transactions, preparing GST withholding notices and GST tax invoices, using the margin scheme correctly, and navigating the complexities of trust acquisitions including State Revenue Office lodgements (which are used by the ATO). For this reason, we highlight the following benefits of formal recognition of conveyancers as a specific type of tax agent under TASA.

Professional Recognition

As noted, conveyancers play a crucial role in property transactions, handling significant responsibilities related to tax matters. Conveyancers support their clients in managing GST obligations, dealing with FRCGW, and ensuring compliance with various tax-related aspects of property transfers. Recognition under TASA would affirm the profession's importance in both the tax and property transaction ecosystems. It would acknowledge the specialised knowledge and skills conveyancers possess in navigating the complex intersection of property law and taxation. Given the increasing complexity of tax obligations in property transactions and conveyancers' vital role in ensuring compliance and facilitating smooth property transfers, this recognition is essential.

Distinct Professional Identity

While conveyancers and legal practitioners may perform similar functions in property transactions, conveyancing is a distinct profession with its own specialised knowledge and skills. Conveyancers possess deep expertise in property-related tax matters, often dealing with these issues daily. A specific category under TASA would highlight this unique professional identity and recognise the specialised nature of conveyancing work. It would differentiate conveyancers from other tax practitioners, acknowledging their focused expertise in property-related taxation matters. This distinction is crucial for maintaining the integrity and recognition of the conveyancing profession while ensuring that their specific skills in property tax matters are appropriately acknowledged within the broader tax practitioner framework.

Limited Scope

Maintaining this distinction is crucial to avoid any perception that conveyancers seek to encroach on the roles of tax or BAS agents. Our focus remains on property-specific tax matters directly related to conveyancing transactions. Unlike tax and BAS agents, conveyancers do not require broad access to ATO portals or systems. This limited scope ensures that conveyancers stay within their expertise while still being recognised for the critical tax-related functions they perform in property transactions.

Consumer Protection

Including conveyancers under TASA would provide an additional layer of consumer protection, complementing existing state-based regulations. This federal recognition would enhance public confidence in conveyancing services by ensuring that conveyancers are held to high standards in handling tax-related matters in property transactions. It would assure consumers that their conveyancer is recognised at a federal level for their competence in property-related tax matters. The added protection recognition as a tax agent is essential given the significant financial implications of property transactions and the complex tax considerations often involved.

Standardisation of Practice

TASA recognition would help standardise tax-related practices across the conveyancing profession nationally. While conveyancers are regulated at the state level, there can be variations in how tax-related matters are handled across different jurisdictions. A national framework under TASA would ensure consistency in service delivery and professional standards related to tax matters in property transactions. This standardisation would benefit consumers and the broader property industry by creating a more uniform approach to handling tax aspects of conveyancing across Australia. It would also facilitate easier interstate transactions and improve overall efficiency in the property market.

Enhanced Regulatory Oversight

While conveyancers are regulated at the state level, inclusion in TASA would provide valuable federal oversight related explicitly to property tax matters. This additional layer of regulation would ensure that conveyancers are held to the highest standards in handling tax-related aspects of property transactions. It would also facilitate better coordination between state-based regulatory bodies and federal tax authorities, creating a more comprehensive regulatory framework. This enhanced oversight would contribute to maintaining the integrity of the tax system in property transactions and provide a mechanism for addressing systemic issues that may arise across state borders.

Professional Development

Recognition under TASA could drive further professional development in property-related tax areas, enhancing the overall competency of the conveyancing profession. It would create a framework for ongoing education and training tailored to tax aspects of conveyancing work. Professional development obligations would also lead to developing specialised courses and certifications focused on property taxation, ensuring that conveyancers remain current with the latest developments. Enhanced professional development opportunities would not only benefit individual conveyancers but also raise the overall standard of the profession, ultimately leading to better outcomes for consumers and the property market as a whole.

Addressing these key points, amending TASA to include conveyancers would recognise the profession's vital role in the property transaction process, enhance consumer protection, improve standardisation and regulatory oversight, and promote ongoing professional development. This change would not only benefit the conveyancing profession but also bring about positive changes for consumers, the property industry, and the broader tax system, paving the way for a more efficient and secure property market.

AICVIC Recommendations

1. It is imperative to create a specific category for conveyancers within the TASA framework that recognises the unique nature of conveyancing services, focusing on property-related tax matters.
2. Develop registration requirements that acknowledge existing state-based qualifications and regulations.
3. Ensure that the scope of practice recognised under TASA aligns with the tax-related aspects of conveyancing work, such as GST and FRCGW, without extending to broader tax agent services.
4. Establish clear guidelines for conveyancers regarding their responsibilities under TASA, focusing on property tax-related aspects of transactions.
5. Implement a transitional arrangement that efficiently allows practising conveyancers to obtain recognition under the new framework.

These changes would significantly benefit the conveyancing profession, consumers, and the broader property and tax ecosystems while maintaining appropriate distinctions between conveyancers and other tax practitioners.



AICVIC would welcome the opportunity to discuss the issues raised in our submission with the Treasury. Please get in touch with me at office@aicvic.com.au or (03) 9328 8175 if you have any questions.

Yours faithfully,

Shakila Maclean

President

Australian Institute of Conveyancers (Victorian Division)