INSTITUTE OF FINANCIAL PROFESSIONALS AUSTRALIA

7 August 2024

Director, Tax Agent Regulation Unit
Personal, Indirect Tax and Charities Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam,

Submission on the Review of Eligibility Requirements for Registration with the Tax Practitioners Board

The Institute of Financial Professionals Australia ("IFPA") welcomes the opportunity to provide our response to the Consultation Paper released by Treasury, on its review of the eligibility requirements for registration with the Tax Practitioners Board (TPB).

Our answers to the questions raised in this Paper are frequently not as comprehensive or developed as we would wish. This is due to the short consultation period to issues which cover systemic change, and which require substantial development and further consultation. We are of the view that this submission should be considered a starting point for ongoing consultation and request that in-depth workshops be held to develop these proposals.

We wish to emphasise the importance of being wary of over-regulating the industry and the cost of the regulatory regime. Proposed changes could significantly increase compliance costs without any offsetting benefit to the public.

Response to Consultation Questions

Question 1: ***Will the inclusion of governance requirements in registration criteria for companies and partnerships help to meet the objectives of the TASA of maintaining the integrity of the tax system and providing adequate professional and ethical safeguards to consumers?***

The separately implemented amendments to the TPB Code (via the Tax Agent Services (Code of Professional Conduct) Determination 2024) require tax practitioners to establish and maintain a system of quality management in the provision of tax agent services. These changes ensure that tax practitioners maintain appropriate governance standards on an ongoing basis. It is unnecessary to include governance requirements in the registration process, as it duplicates self-reporting breach requirements under the Code.

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Question 2: ***Is the current policy setting requiring entities to only demonstrate that they have a 'sufficient number' of individually registered tax practitioners appropriate? Should the number or ratio of individually registered tax practitioners be prescribed, or the requirement be expanded to include all partners or directors within the entity who supervise (or sign off on) tax services?***

Any additional requirement is unnecessary and adds an additional burden on practitioners. There is no evidence or empirical studies indicating that specifying a number or ratio of individually registered tax agents benefits the public or a firm's clients. Additionally, SMEs or sole operators could be adversely affected where they may have multiple clients who do not have complex tax matters. We do not believe there should be a prescriptive approach to what is a 'sufficient number' of individually registered practitioners. Rather, the number should depend on the nature of the practice.

Question 3: ***Is the current recognised professional association framework (initial eligibility, ongoing eligibility, and compliance framework) appropriate?***

IFPA's view is that the current recognised professional association ("RPA") framework is appropriate and reduces compliance costs to the community. We do not support removing the professional association accreditation and registration pathway.

It is important to recognise that the registration requirements are separate from the Code of Professional Conduct rules. Breaches of the Code are now required to be disclosed to the TPB on an ongoing basis. Therefore, any breaches that may have occurred will already have been disclosed to the TPB.

IFPA (via its recognised professional association, TAI Practitioners and Advisers Ltd ("TAI PAL")), undertakes a yearly CPE audit of its voting members and has a disciplinary process for those who do not comply. We take all our RPA obligations seriously and believe our procedures to be adequate in regulating our members. By removing the professional association and accreditation and registration pathway, the TPB will incur substantially greater costs in regulating tax practitioners; these costs could then be passed through to practitioners via higher registration fees. By closing off the professional association pathway, the regulator is suggesting that the bodies are not taking their CPE audit and/or governance requirements seriously, which is not true.

Question 4: ***If not, what should that framework look like? For example, replaced with an enhanced prescribed disciplinary body regime?***

This is a complex question that cannot be appropriately considered within the time constraints provided by this current consultation process. IFPA would welcome a transparent regulatory regime that allows the public and the TPB to pursue complaints against individual tax practitioners, following basic administrative law procedures.

Question 5: ***How should tax practitioners who are currently registered under the voting member pathway be treated if recognised professional association pathway was to be removed?***

Practitioners registered under registration pathway 206 should continue to be able to practise without needing to undertake qualifications as set out in registration pathway 205. If the RPA pathway was removed, any

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grandfathering of current 206 practitioners also needs the requirement to continue to be a voting member of an RPA – this is not made clear in the consultation paper where it is stated "*assuming* they maintain their voting membership status with the RPA".

Clarity is also required around the statement "These tax practitioners would be subject to other non-qualification requirements being met, as well as the TPB's standard renewal requirements". What are these 'non-qualification requirements', and why are they required?

We do not agree with Treasury's view that removal of this pathway will not be a significant barrier to entry or remaining registered. Many of our members who have been in practice for decades do not have formal qualifications, which is why they have relied on this pathway. If new non-qualification requirements are being proposed, we cannot support this pathway's removal without further information and consultation with Treasury and TPB.

Question 6: *Do you agree that the current 'relevant experience' settings are set at an appropriate level for both tax agents and BAS agents? If not, what changes to these settings should be made and why?*

We agree that the current relevant experience settings for both tax agents and BAS agents are appropriate and provide a reasonable standard for ensuring that practitioners have the necessary practical experience.

Question 7: *Do any of the proposed options, or combination of proposed options, provide a balanced and equitable method of embedding flexibility in the registration regime? Are there any other alternatives which provide a more balanced method of providing additional flexibility?*

The proposed options offer a balanced approach to embedding flexibility in the registration regime. Allowing the TPB to consider exceptions on a case-by-case basis (Option 1) as well as introducing longer time periods to obtain relevant experience (Option 2) provide necessary flexibility without compromising standards. We support a combination of both options subject to further detail being provided and consultation sought. An alternative could be implementing a points-based system where various types of experience and qualifications contribute to the overall eligibility, ensuring a holistic assessment of a practitioner's competence.

Question 8: *Do you perceive any problems or have any concerns with providing the TPB the ability to consider exceptions to the 'relevant experience' criteria on a case-by-case basis (Option 1)?*

Allowing the TPB to consider exceptions on a case-by-case basis is a practical approach that provides flexibility. However, clear guidelines and transparency in the decision-making process are essential to ensure fairness and consistency. Potential concerns include the risk of inconsistent application of criteria and the need for robust oversight to prevent any undue bias.

Question 9: *In relation to simulated work experience programs under Option 1, do you believe the cap of 20 per cent provides sufficient flexibility without compromising the quality of tax practitioner services that would be provided? If not, what would be a more appropriate percentage and why?*

IFPA would be open to reviewing an increase to a 20 per cent cap relating to simulated work experience programs, but this requires further detail and consultation with stakeholders.

Question 10: ***Do you believe that the introduction of an alternative, longer time period to obtain 'relevant experience' (Option 2) would provide sufficient flexibility to account for special circumstances? What levels of relevant experience are appropriate alternatives for each registration pathway?***

Option 2 should be considered together with Option 1. In principle we support the expansion of consideration of relevant experience by the TPB especially for individuals facing special circumstances such as part-time work or career breaks, but more detail is required to make a considered response. Appropriate levels of relevant experience for each registration pathway should be aligned with industry standards, ensuring that extended periods still maintain the quality and depth of experience required.

Question 11: ***Have any other regimes embedded similar flexibility in an effective manner? If so, how?***

Several professional bodies and regulatory regimes, such as those in the legal and medical fields, have embedded flexibility through mechanisms like extended training periods, part-time work accommodations, and case-by-case exemptions. These approaches ensure that practitioners can meet professional standards while accommodating diverse career paths and personal circumstances.

Question 12: ***Should the definition of 'relevant experience' for registration purposes be broadened (or, contracted)? If so, why?***

The definition of 'relevant experience' for registration purposes should be broadened. Expanding the criteria to include a wider range of relevant experiences would better reflect the diverse ways in which tax practitioners gain their expertise. This approach would accommodate contemporary industry practices and allow for a more comprehensive assessment of a practitioner's capabilities. A broader definition ensures that qualified individuals with varied backgrounds can meet the requirements, fostering a more inclusive and flexible registration regime that aligns with the evolving needs of the profession.

Question 13: ***Do you agree that the current primary qualification requirements are struck at a level that remains fit for purpose? If not, why not, and what changes do you believe are required?***

The current primary qualification requirements are generally fit for purpose, ensuring that practitioners possess the necessary foundational knowledge. However, periodic reviews and updates are essential to keep these qualifications aligned with evolving industry practices and technological advancements. Consideration should also be given to incorporating more practical components into curricula.

Since legislation, determinations, court decisions and rulings are updated so frequently it could be argued that ongoing CPD should be seen to be more valuable than particular units or courses within the traditional educational space.

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Question 14: ***Do you agree that short-form credentials should not be included within the primary qualification settings? If not, how should they be included?***

Short-form credentials should not be included as primary qualifications but can play a valuable role as supplementary qualifications. These credentials can address specific skill gaps and provide ongoing professional development opportunities. Inclusion of short-form credentials should be managed through a structured system that recognises their relevance and ensures they complement primary qualifications. Further industry consultation is required.

Question 15: ***Are there any unintended consequences, benefits, or issues that should be considered in granting the TPB additional flexibility to accept short-form credentials?***

Granting the TPB additional flexibility to accept short-form credentials can encourage continuous learning and adaptability within the profession. However, careful consideration is needed to avoid dilution of standards and ensure that these credentials maintain rigorous assessment criteria. Regular monitoring and evaluation will help identify and address any unintended consequences. As stated in our response to Question 14, further industry consultation is required on this topic.

Question 16: ***Is the fit and proper test currently fit for purpose? If not, what needs to be included in this test?***

The fit and proper test is generally fit for purpose, ensuring that practitioners meet ethical and professional standards.

Question 17: ***Should the matter of conflicts of interest be incorporated into the fit and proper person requirement? (Option 1)***

Incorporating conflicts of interest into the fit and proper person requirement is essential to ensure transparency and trust in the profession. This aligns with best practices in other regulatory frameworks and provides clear guidelines for practitioners to manage and disclose potential conflicts, enhancing the integrity of tax services.

Question 18: ***What considerations or requirements should be included in the conflicts of interest test? Are conflicts of interest considerations administered by APRA and ASIC appropriate models for the TASA?***

The models administered by APRA and ASIC provide a framework that can be adapted to the TASA, incorporating similar standards for transparency, disclosure, and management of conflicts. This should be subject to further consultation. Tax (financial) advisors who provide both tax and financial advice are subject to overlapping regulation by both the TPB and ASIC, which creates additional compliance issues for those practitioners. Ideally, there should be a single regulator for such practitioners.

Question 19: ***Should the management of an individual's personal income tax affairs, and that of their associated entities, be a relevant consideration under the proposed conflicts of interest addition to the fit and proper person test?***

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Practitioners need to demonstrate consistent ethical standards in both their personal and professional dealings, reinforcing the trust placed in them by their clients. However, we are unclear as to what "bolster the management of personal and close associates' tax obligations" entails and how this can be incorporated in a registration process. The suggestion that personal and close associates' tax obligations (as opposed to controlled entities) be included in this conflict-of-interest requirement is an overreach, will be extremely difficult to regulate, and is not supported.

Question 20: ***Should disclosure of spent convictions in applications for registration be mandatory? (Option 2)***

Mandatory disclosure of spent convictions in registration applications is not supported, as it is fundamentally unfair to penalise individuals who have served their punishment. The focus should be on current conduct and behaviour. Instead, considerations should be given to more recent and relevant conduct, with spent convictions being reviewed only in exceptional circumstances.

Question 21: ***Do you believe the TPB should be required to consider the events listed in subsection 20-15(b) from within a different period of time? Should this be a longer or shorter period, or regardless of when the events occurred?***

The period for considering events listed in subsection 20-15(b) should balance fairness and relevance. The current period of 5 years is appropriate, allowing for rehabilitation while ensuring recent conduct is taken into account. This period should be consistent with similar professional regulatory bodies to maintain uniform standards.

Question 22: ***What other matters should be considered in assessing fitness and propriety? Are there any considerations used by other Government regulators that should be included in the TASA's fit and proper test?***

IFPA has no additional comments to make in relation to the fit and proper person test.

Other Proposals for Consideration

Contingency and Succession Plans: There is no evidence of market failure in this area. If a practitioner retires, they usually sell their practice or advise their clients to find another advisor. Why should a regulatory body interfere with a tax practitioner's retirement and succession planning? No other profession is monitored by their controlling body in their retirement and succession planning, so why should this be the case for tax practitioners?

Allowing the TPB to Consider Other Qualifications: We believe industry consultation is required on this matter.

In-House Tax Advisors: We do not support the idea of registering in-house tax advisors - this is an overreach and introduces unnecessary complexity without clear benefits to the public.

Further Considerations

The current regulatory regime is expensive and lacks any supporting cost-benefit analysis for the $20 million spent annually on registering tax agents. Australia is the only country with this regulatory structure and our concern is that by increasing its scope, practitioners will be faced with ever increasing registration fees and compliance costs.

Also, tax advice often intersects with superannuation and SMSFs, which are legitimate ways to manage one's tax affairs. The current financial advice system is not fit for purpose and overlooks how well integrated financial tax practices dovetail with superannuation advice practices.

The original review of the Tax Practitioners Board (TPB) raised the issue of the accountants' exemption, which remains ignored. Although the government's Quality of Advice Review is a step in the right direction to reduce the red tape involved in providing financial advice to Australians, it failed to address the role accountants could play in helping provide financial advice to a greater number of Australians and the issues with the current limited Australian financial services licencing (AFSL) regime. There is a significant demand for integrated taxation and financial advice, but the regulatory burden restricts the supply of financial planners, leaving only 15,000 practitioners to serve the entire country. Many superannuation fund members and SMSF trustees are not able to access good affordable financial advice when they need it.

IFPA agrees with the sentiment expressed on page 9 of the Consultation Paper about unregistered and underqualified tax preparers putting at risk public trust in the tax system. The Government should do everything in its power to urge taxpayers to use registered tax agents to assist them in meeting their tax obligations.

Finally, increasing tax practitioner regulation and costs, as noted by former Treasury head Dr Ken Henry, doesn't address the fundamental flaws of the tax system, which he deemed unfit for purpose. Higher costs for advisors won't solve systemic issues. There is an urgent need for a holistic review of the architecture and ad hoc detail of the tax system which tax practitioners and their clients must navigate.

If you have any questions in relation to this submission, please contact Pippa McKee on (03) 8851 4555 or p.mckee@ifpa.com.au , or Frank Drenth on (03) 8851 4555 or f.drenth@ifpa.com.au .

Yours faithfully,

Pippa McKee
Chief Executive Officer

About the Institute of Financial Professionals Australia

INSTITUTE OF FINANCIAL PROFESSIONALS AUSTRALIA

The Institute of Financial Professionals Australia ("IFPA") is a not-for-profit membership association (originally known as Taxpayers Australia, then more recently Tax & Super Australia) and has been serving members for over 100 years. With a membership and subscriber base of over 15,000 practitioners, our association is at the forefront of educating and advocating on behalf of independent tax, superannuation and financial services professionals.

This submission is made by us on behalf of our members' interests.

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