



7<sup>th</sup> August 2024

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

Email: [PwCResponse@treasury.gov.au](mailto:PwCResponse@treasury.gov.au)

Dear Director

**SMSF ASSOCIATION SUBMISSION: RESPONSE TO PWC – REVIEW OF THE ELIGIBILITY REQUIREMENTS FOR TAX PRACTITIONER REGISTRATON WITH THE TAX PRACITITONERS BOARD**

The SMSF Association welcomes the opportunity to provide this submission in response to the *Review of eligibility requirements for registration with the Tax Practitioners Board* consultation paper.

The SMSF Association supports the objective of ensuring a robust and fit-for-purpose registration regime that will support and reinforce the long-term sustainability of the profession and enhance community confidence in tax practitioners and the services they provide.

Many of the proposals, as presented, could have a significant regulatory and cost impact on both current and prospective tax practitioners. They do not clearly demonstrate the public policy problem that necessitates reform. They also fail to clearly articulate their objectives and lack consideration for other interrelated issues and measures. This has made it difficult to respond meaningfully to all proposed questions in the consultation paper.

We are also unsure why regulation appears to be the default option, without considering what other non-regulatory options may also be effective, such as new or updated guidance from the regulator, being the Tax Practitioners Board (TPB).

Most concerning is the truncated timeline for this consultation. We note that the *Australian Government Guide to Policy Impact Analysis* states that depending on the complexity of the proposal, the consultation period could be as much as 60 days but should not be less than 30. Yet in this instance, we have only been provided 22 days to consider an extensive range of complex policy reforms.



We therefore urge Treasury to further engage and consult with stakeholders on the matters raised in the consultation paper before Government considers any regulatory reform. This will be essential in ensuring that any changes considered are effective in addressing identified problems and avoid the risk of unintended consequences.

We also request that Treasury work with the TPB Governance Standards Forum to set the focus and direction of future potential areas of reform.

Further, we are deeply concerned about the impact these proposals will have on the future pipeline of the tax profession. Particularly so given the current pace of regulatory change affecting tax practitioners. This includes not only the TPB program of reforms but also other measures such as tranche 2 of the AML/CTF regime.

Any implementation must be orderly and staged. The current environment of multiple, cascading, and significant regulatory changes places the regulator in an untenable position, sees measures operative well in advance of essential guidance materials, and practitioners feeling overwhelmed. We would therefore strongly caution against change for change sake.

Another concerning trend is the introduction of prescriptive requirements, such as the quality management system requirement, the disqualified entity provisions and keeping proper client records as ethical obligations under the Code. These requirements are not ethical principles or obligations, but rather practice management requirements that can help support compliance with ethical obligations.

Consequently, we believe they should form part of the ongoing registration requirements such as maintaining professional indemnity insurance or meeting the continuing professional education requirements, rather than being specifically prescribed in the Code.

Introducing detailed prescriptive registration requirements in the Code also risks diminishing the focus on the fundamental principles of the Code, which should be the driver of ethical and professional behaviour.

Regarding the proposals in the consultation paper, we make the following recommendations:

- The current 'fit and proper' test should be retained, with the TPB to update its guidance in *TPB(EP) 02/2010 Fit and proper person* to state that it may consider factors such as the management of conflicts of interest or governance arrangements, relative to the applicant, as part of its assessment of whether an applicant meets the fit and proper requirements for registration as a tax practitioner.
- Noting the above recommendation, the governance requirements should not be explicitly added to the registration criteria for companies and partnerships.
- The current policy settings should be retained for the purposes of a partnership or company demonstrating it meets the 'sufficient number' requirement.
- The recognised professional association framework should be retained unamended, including the professional association accreditation and voting member registration pathway.



- To address the limited flexibility to meet the relevant experience requirements, a combination of both Option 1 and Option 2 should be adopted, with the TPB, in consultation with stakeholders, to develop the alternative thresholds under Option 2 for all registration pathways.

Our detailed responses to the consultation paper are contained in the Attachment.

If you have any questions regarding our submission, please contact Tracey Scotchbrook, Head of Policy and Advocacy via email [traceyscotchbrook@smsfassociation.com](mailto:traceyscotchbrook@smsfassociation.com)

Yours sincerely,

Peter Burgess  
Chief Executive Officer

#### **ABOUT THE SMSF ASSOCIATION**

The SMSF Association is the peak body representing the self-managed superannuation fund (SMSF) sector which is comprised of over 1.1 million SMSF members and a diverse range of financial professionals. The SMSF Association continues to build integrity through professional and education standards for practitioners who service the SMSF sector. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial advisers, tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them with access to independent education materials to assist them in the running of their SMSF.



## Review of eligibility requirements for registration with the Tax Practitioners Board

### Strengthening registration requirements for companies and partnerships

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

The SMSF Association does not support the proposal to introduce governance requirements as an additional registration requirement for partnerships and companies applying to register as a tax agent.

As stated in the consultation paper, *Tax Agent Services (Code of Professional Conduct) Determination 2024* has introduced new obligations under the Code of Professional Conduct (Code), including that all tax practitioners, including partnerships and companies, must establish and maintain a system of quality management to maintain registration status as a tax agent. This effectively means that once a partnership or company's tax agent registration is approved, the entity must have in operation a documented system of quality management, including policies and procedures relating to its governance and leadership.

Failure to comply will be a breach of the Code, resulting in the entity ceasing to meet its tax practitioner registration requirements, and under section 30-35 of the *Tax Agents Services Act 2009* (TASA) the entity must notify the TPB. Sanctions can be applied, including terminating the registration. Following the introduction of breach reporting, this may also constitute a 'significant breach' of the Code and require the entity to also self-report to the TPB.

Given the current regulatory framework, we do not see the purpose or benefit of inserting an existing Code obligation as an eligibility requirement for registration. To do so simply adds unnecessary complexity and duplication.

Of relevance, we note a key driver for this proposal appears to be the need for large multidisciplinary firms to have strong governance frameworks in place, as they are generally at higher risk of encountering complex practice issues and ethical dilemmas. Arguably these 'higher risk' firms should already have such frameworks in place, as many will already be required to comply with APES 320 *Quality Management for Firms that provide Non-Assurance Services*.

We are also concerned by the growing trend to introduce requirements, such as the quality management system, the disqualified entity provisions and keeping proper client records as ethical obligations under the Code. These requirements are not ethical principles or obligations, but rather practice management requirements that can help support compliance with ethical obligations. Consequently, they should form part of the ongoing registration requirements such as maintaining professional indemnity insurance or meeting the continuing professional education requirements, not specifically prescribed in the Code.



Introducing detailed prescriptive registration requirements in the Code also risks diminishing the focus on the fundamental principles of the Code, that should be the driver of ethical, professional behaviour.

We also believe that the TPB already has broad discretion when determining if an applicant meets the fit and proper person requirements, which could be applied to considering governance arrangements. Please refer to our response to question 16 for further details.

**The SMSF Association does not support the proposal to include governance requirements in the registration criteria for companies and partnerships. This proposal unnecessary duplicates what will be an existing obligation once the partnership or company is approved as a registered tax agent.**

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 number expanded to include all partners or directors within the entity who provide tax services?

We believe the current policy setting requiring entities to demonstrate they have a 'sufficient number' of individually registered tax practitioners is appropriate and should be retained unamended.

Each partnership or company will vary in terms of size, nature and complexity. It is therefore important that there is flexibility within this requirement to allow an entity to determine its appropriate balance to ensure compliance with their responsibility as a registered tax practitioner, either providing or supervising the provision of tax services.

Further, prescribing that all partners or directors within the entity who provide tax services must register as a tax agent will likely have an inequitable impact on SME tax agents, but with no clear rationale or benefit detailed in the consultation paper about why the current policy settings should be amended.

**The SMSF Association recommends the current policy settings are retained for the purposes of a partnership or company demonstrating they meet the 'sufficient number' requirement.**

## Reviewing the professional association accreditation and registration pathways

3. Is the current RPA framework (initial eligibility, ongoing eligibility and compliance framework) appropriate?

The SMSF Association strongly supports the recognised professional association (RPA) framework, including the current eligibility criteria and compliance framework. Importantly, this framework continues to deliver on its intended purpose of providing a pathway for experienced individuals who are a voting member of an RPA to register as a BAS or tax agent.



We acknowledge that this proposal was a recommendation from the 2019 TPB Review. However, we do not believe the 2019 TPB Review or the consultation paper clearly articulate the problem that necessitates removing the professional association accreditation and registration pathway.

For example, there remains broad confusion within the community about who can legally provide tax agent services as evidenced by the TPB's public campaign 'Find a tax agent you can trust' 2024 campaign<sup>1</sup>. Given this confusion, we believe you could therefore conclude that the broader public would not be aware of the RPA framework. To therefore rationalise that 'the TPB could be viewed by the public as regulating professional associations via the recognition process' we believe is an embellished statement at best with no factual basis.

Further, we do not believe it is just to remove the RPA registration pathway when there remain unresolved issues with the secondary qualification requirements to be eligible to register as a tax agent. This is discussed further in our response to question 5.

Importantly while the RPA framework exists primarily for registration purposes, RPAs themselves play a key role in maintaining and promoting the integrity of the tax profession. They are an important and effective conduit for the TPB to tax practitioners, providing timely sector engagement, intelligence and feedback, with an important example being key representatives on the TPB Governance Standards Forum.

**The SMSF Association strongly supports the recognised professional association framework and recommends that the professional association accreditation and registration pathway are retained.**

4. If not, what should that framework look like? For example, replaced with an enhanced PDB regime?

We believe the current framework remains appropriate and does not require change.

We do not believe proposals should be considered to replace the current framework with a new regime that may technically be operative but is yet to establish the specific criteria, application process or ongoing obligations to become a prescribed disciplinary body (PDB).

Key issues with the PDB framework are also still unresolved, including how PDBs will ensure compliance with its privacy obligations or if they will be covered by whistleblower protections.

Of note, current RPAs may also be prevented from applying to become a PDB as it may not be an activity permitted by its constitution or it may be unable to meet all the set criteria.

Given this, and the existing issues around secondary qualifications, we do not support any amendments to the current RPA framework.

---

<sup>1</sup> [TPB warns taxpayers of unregistered agents in awareness campaign | Accountants Daily](#)



5. How should tax practitioners who are currently registered under the voting member pathway be treated if RPA pathway was to be removed?

We do not support the removal of the voting member pathway while the challenges with the current secondary qualification requirements to register as a tax agent are unresolved.

To register as a tax agent, an individual must complete an approved primary qualification and TPB approved courses, including a Board approved course in commercial law.

*TPB(PG) 02/2010 Course in commercial law that is approved by the Board*<sup>2</sup> states a course in commercial law should comprise of the equivalent of three tertiary level units and cover specific topic areas outlined in the guideline. However, it also acknowledges that currently not all the topics outlined are in fact covered in commercial law units offered at universities and by other course providers. Consequently, many applicants will have to undertake study outside their primary course to ensure the content requirements are met. It also notes that given the challenges around available courses, it will take a progressive approach, which has now been in place for more than a decade.

Given this ongoing issue, it is our understanding that the voting member pathway is being increasingly relied upon by individuals to successfully register as a tax agent.

Further, consideration should also be given to the breadth of individuals who also rely on this pathway to register to provide tax agent services, who sit outside the traditional tax profession. For example, financial advisers who are providing wholesale financial product advice and must still register as a tax agent to provide tax (financial) advice services to continue servicing their clients.

**The SMSF Association does not support the removal of the RPA voting member pathway.**

The consultation paper remarks that should RPA tax agents be grandfathered, these practitioners would be subject to 'other non-qualification requirements being met'. Yet there is no commentary or justification as to why they should be subject to new requirements if they have already been approved as registered tax practitioners. It should be noted that during their period of registration with the TPB, tax and BAS agents have had to comply with the continuing professional education relevant to their registration and the services they provide.<sup>3</sup> TPB Guidance on this obligation is also available in *TPB(EP) 07/2021 Continuing professional education requirements for tax and BAS agents from 1 July 2022*.<sup>4</sup>

Imposing additional education requirements to maintain an existing registration risks destabilising the tax and BAS agent sector. The financial advice profession provides a very relevant and current case study. The profession has seen an unsustainable decline in adviser numbers following the introduction of an education framework which attached further obligations on existing advisors.

Notwithstanding our recommendation to retain the voting member pathway, should it be removed, it must be on a prospective basis with all existing tax practitioners who gained registration under this

---

<sup>2</sup> [TPB\(PG\) 02/2010 Course in commercial law that is approved by the Board | Tax Practitioners Board](#)

<sup>3</sup> *Tax Agent Services Act 2009* (Cth) s 30-10(8).

<sup>4</sup> Previous guidance was set out in *TPB(EP) 04/2012 Continuing professional education policy requirements for registered tax and BAS agents from 30 June 2013*.



pathway grandfathered into the registration regime and subject only to the standard renewal requirements.

### Broadening the TPB's ability to accept alternative forms of 'relevant experience'

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 believe that the current relevant experience thresholds are set an appropriate level for both tax agents and BAS agents. However, amendments are needed to address the limited flexibility the TPB has when considering if an individual has met the relevant experience requirements for registration following a career break, or if the applicant has experience that does not meet the current definition of relevant experience.

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 alternative options which provide a more balanced method of providing additional flexibility?

The SMSF Association supports amendments to the current 'relevant experience' settings to address the challenge of limited flexibility when considering an individual's circumstances to assess if they have met the relevant experience requirement for registration.

However, we believe that Option 1 does not address the issue of considering an individual's circumstances such as parental leave or career breaks and Option 2 does not address extending the 'work of another kind' category to allow the TPB to consider international experience as meeting the 'relevant experience' criteria.

Therefore, we believe both Option 1 and Option 2 are required to address all the limitations identified in the consultation paper.

However, the proposal for Option 2 will need to be amended to ensure it appropriately supports an individual who gains the requisite amount of relevant experience. For example, setting the threshold at four years of full-time experience in the preceding eight years may be harder to achieve than demonstrating two years of full-time experience in the preceding five years.

It is also not clear in the consultation paper if the proposed alternative of four in eight years is proposed for all pathways, noting that currently an individual needs to demonstrate between 12 months and eight years of relevant experience depending on their primary qualification.

Consideration should also be given to ensuring currency of experience, however this is not addressed in either of the proposed options.

#### The SMSF Association recommends:

- a combination of both Option 1 and Option 2 is adopted to address the current issues of limited flexibility to demonstrate the relevant experience requirement, and





- **the TPB, in consultation with stakeholders, develop the alternative thresholds under Option 2 for all registration pathways.**

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)?

Whilst we support broadening the criteria for relevant experience, doing so on a case-by-case basis may require additional resource allocation to review each respective application outside of the current standard application process.

Additional guidance and an alternative form to the current *Statement of Relevant Experience* will also be required to provide certainty to prospective applicants what exceptions to the standard 'relevant experience' criteria will be considered, such as international tax experience.

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?

We do not believe that the consultation paper articulates what problem it is seeking to address by increasing the current threshold from 15% to 20%. Any change in the current threshold should be subject to further consultation to identify if a problem currently exists, and if so, potential changes to the current threshold to effectively address that problem.

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?

Further to our earlier comments, Option 2 alone does not address the identified issue of limited flexibility to demonstrate relevant experience and raising the threshold may in fact make it harder for some prospective applicants to demonstrate they meet the relevant experience requirements.

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

We are not aware of any relevant regimes that have embedded similar flexibility in an effective manner.

However, it is important to consider that globally the number of accounting graduates continue to fall and there are serious concerns on the future of the talent pipeline<sup>5</sup>. This will have a future negative impact on the tax profession.

It is therefore vitally important that the right balance is struck between ensuring a modern, flexible tax registration regime with the need to ensure appropriate consumer protection.

---

<sup>5</sup> [Addressing the Decline in the Accounting Talent Pipeline | IFAC](#)



Consideration should also be given to how ongoing significant regulatory reform will not only impact current tax professionals, but also attract future generations of talent.

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

If the current definition of 'relevant experience' does not permit the TPB to consider 'work of another kind' to include experience such as international tax experience, then we believe that it should be reviewed to permit a broader range of experience as proposed under Option 1 above.

### Primary qualifications settings

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 SMSF Association believes that the current primary qualifications requirements remain fit for purpose and provide accessible, alternative pathways for those considering a career in the tax profession.

However, we do not believe it is appropriate to only consider as part of this consultation the primary qualification settings for the purposes of registration given the ongoing issues of secondary qualifications for tax agents, as previously raised in our submission.

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

We do not believe that short-form credentials currently have a role to play in meeting the primary qualification requirements for tax or BAS agents.

The framework for micro-credentials is still evolving, with a national framework only being released late 2021, and still being adopted by stakeholders. Of relevance, the definition of a micro-credential under this framework is:

*a certification of assessed learning or competency, with a minimum volume of learning of one hour and less than an AQF award qualification, that is additional, alternate, complementary to or a component part of an AQF award qualification<sup>6</sup>.*

Therefore, in the future, micro-credentials may form a component of an eligible AQF award qualification, but only provided that the AQF award qualification meets the respective definitions in the *Tax Agents Services Regulations 2022* for registration purposes.

---

<sup>6</sup> [National Microcredentials Framework - Department of Education, Australian Government](#)



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

Further to our above comments, we do not support short-form credentials alone being accepted for the purposes of the meeting the primary qualification requirements.

### 'Fit and proper person' in the TASA context

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

The SMSF Association believes that the 'fit and proper person' test is currently fit for purpose and does not require amending.

We acknowledge that the 2019 TPB review recommended the test should be aligned with similar tests applied by other government regulators. However, we believe that the existing statutory criteria in section 20-15(a) of the TASA already provides the TPB with the discretion to consider a broad range of factors it deems relevant when exercising its discretion to assess whether a person is a 'fit and proper' person, noting the Explanatory Memorandum to the *Tax Agents Services Bill 2009* states:

*The Board, in deciding whether an individual is a fit and proper person, **must have regard to whether the individual is of good fame, integrity and character and, in particular, but without limiting those characteristics**, whether an event affecting the individual's continued registration happened to the individual in the past five years, whether the individual had the status of an undischarged bankrupt at any time during the previous five years, and whether the individual had served any part of a term of imprisonment during the previous five years.*

TPB(EP) 02/2010 *Fit and proper person* provides a detailed explanation of the TPB's interpretation of the fitness and propriety requirements, and states under 'Scope of what may be considered'<sup>7</sup>:

*While the TPB must consider the matters contained in section 20-15 of the TASA in determining whether an individual is a fit and proper person, these matters do not limit the generality of the expression or restrict the matters that the TPB may consider in determining fitness and propriety*

The EP also states that the TPB will consider the 'Management of personal income tax obligations'<sup>8</sup>:

*On the basis of the above, a tax practitioner who fails to comply with the practitioner's own taxation obligations will not be considered a person of sufficient competence, good fame, integrity and character or sufficiently fit and proper to be registered as a tax practitioner*

Once registered as a tax practitioner, an individual must also comply with the Code including:

- adequate arrangements for the management of conflicts of interest that may arise in relation to the activities that you undertake in the capacity of a registered tax agent
- compliance with taxation law in the conduct of your personal affairs, and

---

<sup>7</sup> [TPB\(EP\) 02/2010 Fit and proper person | Tax Practitioners Board](#) Paragraph 69

<sup>8</sup> *Ibid* Paragraph 84



- establish and maintain a system of quality management, including policies and procedures relating to governance and leadership.

Failure to do so would mean the individual ceases to meet one of the requirements for tax practitioner registration requirements, requiring them to notify the TPB under section 30-35 of the TASA, noting the TPB can terminate the registration of a tax practitioner if they no longer meet the 'fit and proper' requirements.

Given this, we do not believe amendments are required to the current 'fit and proper' test.

Importantly, neither the 2019 TPB review or the consultation paper identify the public policy problem that requires legislative reform, noting that we do not believe that aligning to other regulatory regimes is itself reasonable justification to amend the current policy settings.

However, to address the proposals in the consultation paper we recommend the TPB amend its guidance in *TPB(EP) 02/2010 Fit and proper person* to make it clear that in addition to considering the management of personal tax affairs, it may consider factors such as the management of conflicts of interest or governance arrangements, relative to the applicant's circumstances, under 'Standards and functions of the profession'.

This approach would also help ensure applicants understand their prospective Code obligations and have in place adequate policies and procedures, relative to their business, to comply with their pending registration obligations.

**The SMSF Association recommends that the:**

- **current 'fit and proper' test is retained, and**
- **TPB update its guidance in *TPB(EP) 02/2010 Fit and proper person* to state it may consider factors such as the management of conflicts of interest or governance arrangements, relative to the applicant, as part of its assessment of whether an applicant meets the fit and proper requirements for registration as a tax practitioner.**

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

Further to our comments in response to question 16, we do not believe that the matter of conflicts of interest needs to be explicitly incorporated into the fit and proper person requirements. Rather it should be incorporated into existing TPB guidance to be transparent that it may be a factor the TPB considers when assessing the fit and proper requirements.



18. What considerations or requirements should be included in the TPB's conflict of interest test? Are APRA's and ASIC's conflict of interest considerations appropriate for the TPB to model their conflict-of-interest requirements?

We note that the consultation paper refers to APRA's *Prudential Standard CPS 250* which requires a person to have no conflict of interest in performing their role or that if they have a conflict, it is appropriately managed.

The consultation paper also refers to ASIC assessing fit and proper people when granting an Australian Financial Services (AFS) licence. ASIC INFO 240<sup>9</sup> states that the applicant must have arrangements for managing conflicts of interest and has issued Regulatory Guide 181: *Licensing: Managing conflicts of interest*<sup>10</sup> which states:

*RG 181.21 The conflicts management obligation is more than simply a disclosure obligation: the obligation is to have adequate arrangements in place to manage conflicts of interest. We expect that licensees will generally use the three mechanisms of controlling, avoiding and disclosing conflicts. Disclosure alone will often not be enough to manage a conflict of interest.*

Importantly, the Code already requires that tax practitioners to comply with conflicts of interest obligations in the same manner expected by APRA and ASIC. To support this, *TPB(I) 19/2014 Code of Professional Conduct – Managing conflicts of interest*<sup>11</sup> states:

*Registered agents are required to ensure their objectivity is not impaired by a conflict of interest. In some cases, regardless of arrangements put in place, conflicts of interest will be unmanageable and the only way to adequately manage the conflict will be to avoid it altogether. This will generally require the registered agent to decline to act for the client.*

We reiterate our earlier comments that specific references to the management of conflicts of interest do not need to be incorporated into the fit and proper requirements, rather they should be incorporated into *TPB(EP) 02/2010 Fit and proper person*.

19. Should the management of an individual's personal income tax affairs, and that of their associated entities, be a relevant statutory consideration under the fit and proper person requirement?

The SMSF Association does not support amendments to explicitly prescribe the criteria that the TPB should consider when assessing the fit and proper person requirement. We believe the current broad obligation provides the TPB with the discretion needed to consider the factors relative to each applicant.

Further, we note that *TPB(EP) 02/2010 Fit and proper person* already states that the TPB will take into consideration the management of personal income tax obligations and a practitioner who fails to comply with its own taxation obligations will not be considered a person of sufficient

---

<sup>9</sup> [AFS licence applications: Providing information for fit and proper people and certain authorisations | ASIC](#)

<sup>10</sup> [RG 181 Licensing: Managing conflicts of interest | ASIC](#)

<sup>11</sup> [TPB\(I\) 19/2014 Code of Professional Conduct – Managing conflicts of interest | Tax Practitioners Board](#)

Paragraph 23



competence, good fame, integrity and character or sufficiently fit and proper to be registered as a tax practitioner.

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

The SMSF Association provides general support for this proposal.

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?

As stated in the consultation paper, section 20-15(a) of the TASA already provides the TPB with the discretion to consider any event that may have occurred beyond the previous five years. Therefore, we do not believe amendments are required to address the five-year mandatory consideration element.

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 TPB's fit and proper test?

We believe the current fitness and propriety requirements are fit for purpose and do not require amendments. However, as previously stated, we recommend that the TPB update its guidance in *TPB(EP) 02/2010 Fit and proper person* to make it clear that the TPB may consider matters such as the management of conflicts of interest as part of its assessment.

### Other proposals for consideration

As a general comment, we are concerned that this section contains several broad and complex policy proposals that if implemented could have a significant regulatory and cost impact on affected stakeholders. Yet the consultation paper fails to identify the problems to be solved, evidence to support the potential need for reform, or other options that have been considered before proposing regulatory reform.

We do not believe this aligns with the principles for Australian Government policy makers<sup>12</sup>, noting importantly that regulation should not be the default option.

23. Should the Code be amended to require individual tax practitioners to establish and maintain a contingency/succession plans to ensure there is continuity of services to clients in the event of a significant disruptive event?

The Code should be reserved for the core ethical principles that drive expected conduct and behaviour. Given this, we do not support as a general principle including prescriptive obligations that relate to registration or practice management issues in the Code.

---

<sup>12</sup> [Australian Government Guide to Policy Impact Analysis \(pmc.gov.au\)](https://www.pmc.gov.au) Page 6



We believe that the TPB, in consultation with relevant stakeholders such as RPAs, should develop best practice guidance for tax professionals on why and how to develop a succession plan for their practice, including planning for unplanned succession events.

24. Should the TASA be amended to give the TPB greater flexibility to accept other qualifications outside the traditional tax practitioner course of study?

The SMSF Association supports the objective to ensure that the tax practitioner registration regime is flexible to consider qualifications outside the traditional tax practitioner course of study, providing the qualifications are commensurate with the tax agent services that will be provided.

Section 202 of the *Tax Agents Services Regulations 2022* currently applies if the individual has completed a degree, award or post graduate award in an area other than accounting from an Australian tertiary education institution or equivalent, relevant to the tax agents service the individual is applying for.

Whilst we understand that the TPB does not apply the 202 pathway to applicants applying for an 'unconditional' registration<sup>13</sup>, we are unclear if this is the solely the view of the TPB or a limitation of the regulations that needs to be addressed.

25. Should the TASA be amended to capture existing and emerging tax intermediaries?

The SMSF Association does not support amending the TASA to capture existing and emerging tax intermediaries based solely on the job or sector of that intermediary.

Rather the threshold for registration should be, is the intermediary providing a tax agent service. If yes, then consideration should be given to what existing regulatory oversight is in place, like lawyers, before considering the case for extending the regulation.

26. Should the TASA be amended to capture in-house tax advisers such as employees or secondees? If so, which classes of in-house advisers should be required to register with the TPB?

We note that the Explanatory Memorandum to the *Tax Agents Services Bill 2008* states that:

*The requirement that tax agent services or BAS services be provided 'for a fee or other reward' allows employees (who are unregistered) to provide tax agent services or BAS services to their employer/s for a salary, wage or other benefit (such as a fringe benefit as defined under the Fringe Benefits Tax Assessment Act 1986) without contravening the civil penalty provision.<sup>14</sup>*

We believe these policy settings remain appropriate and as such, do not support this proposal.

---

<sup>13</sup> [TPB\(l\) 14/2012 Tertiary qualifications in a discipline other than accounting for tax agents | Tax Practitioners Board](#)

<sup>14</sup> [Tax Agents Services Bill 2008 Explanatory Memorandum](#) 4.29



27. Should the TASA be amended to require legal practitioners who provide tax agent services, as defined in section 90-10 of the TASA, for a fee or reward, to be registered with the TPB?

The SMSF Association believes the current general exemption should be retained to avoid unnecessary regulatory overlap and costs, which would ultimately be passed on to consumers.