

14 August 2024

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

By email: PwCResponse@treasury.gov.au

Dear Director,

Review of eligibility requirements for registration with the Tax Practitioners Board

The Tax Institute welcomes the opportunity to make a submission to the Treasury regarding the Review of eligibility requirements for registration with the Tax Practitioners Board (TPB) consultation paper (**Consultation Paper**).

The origins of this consultation are recommendations 4.1 to 4.5, and 4.9(a) from the [Final Report](#) of the 2019 [Review of the Tax Practitioners Board \(the James Review\)](#). Over the past five years, the professional associations have made numerous attempts to engage with the Treasury on the Government's response to the James Review. Implementation of the remaining recommendations from the James Review was one area of consultation proposed in the Government's [announcement](#) on 6 August 2023.

Concerningly, when this consultation was initially opened, only three weeks were allocated for feedback from the tax profession on the critical and systemic changes proposed in the Consultation Paper. After numerous extension requests were made by stakeholders, a one-week extension was provided by the Treasury. We acknowledge and appreciate this additional time to provide feedback. However, we are of the view that it remains insufficient to adequately consider the numerous and complex issues contained in the Consultation Paper, some of which are only mentioned in passing, and risks creating perceptions among stakeholders that the consultation process has not been inclusive and collaborative.

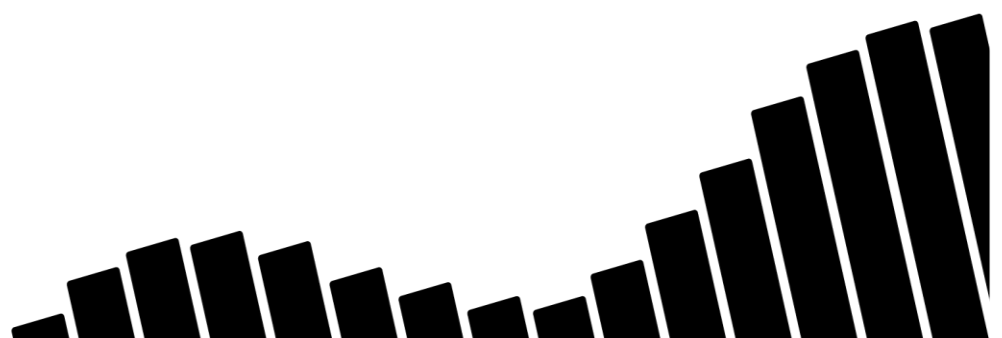
Stakeholders of the tax profession require sufficient time to gather information and understand the practical implications before they can finalise their position and provide recommendations on the questions raised in the Consultation Paper. Rushed consultation reduces effectiveness, increasing the risk of poor policy outcomes and unintended consequences, potentially compromising the integrity of the tax system and adversely affecting the tax profession and broader community.

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Further, the Consultation Paper's lack of clarity on the policy intent or direction of certain proposals hinders our ability to provide meaningful feedback on related questions. In addition to the lack of clarity on the policy intent, the presence of errors in interpretation and references throughout the Consultation Paper raises concerns about the thoroughness of the consultation process.

For the reasons stated above, our comments in this submission are confined to broader proposals and do not attempt to address each question raised in the Consultation Paper.

Our detailed responses to the proposals are contained in **Appendix A**.

Our submission is intended to be a starting point for further conversation and consultation. We consider it essential to ensure an ongoing dialogue between the Treasury, the TPB, and the tax profession on the matters contained in the Consultation Paper and ways in which it may be improved. Such an open and collaborative process will help to ensure the eligibility requirements are appropriate in the current environment and fit for future use.

To this end, we would be pleased to continue to work with the Treasury and the TPB on the proposed reforms. Please contact our Senior Advocate, Robyn Jacobson, on (03) 9603 2008 to arrange a time to workshop the issues further or discuss any aspect of our submission.

The Tax Institute is the leading forum for the tax community in Australia. We are committed to shaping the future of the tax profession and the continuous improvement of the tax system for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all.

Yours faithfully,



Scott Treatt

Chief Executive Officer



Todd Want

President

APPENDIX A

We have set out below our detailed comments and observations on the proposals for your consideration.

Reviewing the professional association accreditation and registration pathways

The Tax Institute questions the merit and rationale of the proposal to remove the recognised professional association (**RPA**) accreditation and registration pathway for tax practitioners who are voting members of an RPA.

In order for a professional association to be an RPA, the TPB must be satisfied of certain criteria contained in Schedule 1 to the Tax Agent Services Regulations 2022 (Cth) (**TASR**). These criteria broadly require the professional association to hold and maintain professional and ethical standards for its voting members; adequate corporate governance and operational procedures; and satisfactory arrangements in relation to certain complaints processes. There are also other ongoing requirements for RPAs including in relation to continuing professional development (**CPD**), and education and qualification criteria. If the RPA does not satisfy its ongoing obligations, the TPB is empowered to revoke the accreditation.

The current RPA pathway involves the registration of a voting member of an RPA as a tax practitioner without the need for that member to hold a degree or diploma primary qualification or to complete TPB-approved courses.

The accreditation and ongoing regulation of an RPA by the TPB is a separate regime from the registration (or re-registration) and ongoing regulation of tax practitioners. The TPB monitors and regulates the conduct of a practitioner registered via the RPA pathway in the same way as practitioners registered via other means.

The Consultation Paper recognises that 'professional associations play an integral role in the tax professional landscape' and acknowledges the role that professional associations play in upholding high ethical and professional standards, promoting community confidence in the industry.¹ It also recognises in various parts, the TPB's limited resources and capacity to undertake certain tasks.

In our view, the issues raised as indicators that the current regime needs strengthening do not appear to be resolved by the proposal to remove the RPA pathway and could be addressed by other means. Some of these issues may benefit from further targeted consultation with RPAs and other stakeholders.

¹ The Treasury, Review of eligibility requirements for registration with the Tax Practitioners Board Consultation paper (**Consultation Paper**) (July 2024), p 17.

The Tax Institute is of the view that if the TPB has concerns regarding any non-compliance by an RPA with its obligations under the regime, including in respect of shortcomings in the educational requirements of an RPA, these issues should be addressed directly with that RPA, rather than removing the pathway in its entirety. It would be unfair to practitioners who could register via this pathway to remove it on the basis of potentially isolated and solvable concerns with a particular RPA.

Ensuring that those practitioners applying to be registered meet an acceptable standard of education is a key principle underpinning the registration eligibility requirements. While at a minimum, the education requirements for RPAs must satisfy the criteria set out in the TASR, for many RPAs, the education requirements to become a voting member in fact exceed the TASR minimum education requirements.

The role of evaluating the education and/or qualifications of practitioners who rely on the RPA pathway for their TPB registration currently falls to the relevant RPA. This alleviates the TPB's involvement in assessing the eligibility requirements of such practitioners. However, there is integrity and transparency in this approach as the TPB has awareness of the requirements of RPAs not only through information that is published transparently by the RPAs, but also through that which is shared with the TPB by the RPA during the accreditation process. We further note that the RPA pathway is robust in that it does not relieve tax practitioners relying on this registration pathway of the requirement to meet their CPD and other professional obligations.

If the TPB has concerns about the adequacy of the education and/or qualifications of a practitioner, it would need to undertake further assessment to ascertain whether the minimum requirements have been met by the practitioner. This can be a resource-intensive activity, but we understand that under the current regime this is generally undertaken by the TPB on an exceptional basis and is not the norm.

The removal of the RPA pathway would mean that the TPB would be responsible for evaluating the education and/or qualifications of all tax practitioners, a task currently supported by the RPAs in respect of practitioners using the RPA pathway. This would exacerbate the TPB's workload and strain its already limited resources. Given that the Consultation Paper recognises that the TPB already has limited capacity to manage RPA compliance (and there is a relatively limited number of RPAs), it seems counterproductive to require the TPB to take on the responsibility of assessing the eligibility of the many individual practitioners who otherwise may be registered via the RPA pathway. This approach also undermines the comments in the Consultation Paper regarding the role and contributions of professional associations to the industry and its perception by the broader community.

Further, those practitioners who rely on the RPA pathway for registration will lose a valuable avenue to register based on proven experience and voting membership of an RPA that assesses their qualifications and relevant experience. A practitioner may have completed a commerce, economics, or law degree that may not have covered the necessary tax and accounting subjects specified in the other TPB registration pathways, or the qualification may have been completed so many years ago that this aspect may be difficult to prove due to changes in subject names or curriculum. The current RPA pathway supports practitioners in this regard, and is an important means for ensuring the profession is accessible, diverse and sustainable. The Consultation Paper suggests that the proposed reforms will remove inequitable barriers to registration and ensure that practitioners with diverse life experiences are able to register.² In our view, removing the RPA pathway would be inconsistent with and counterproductive to this objective.

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

The Tax Institute supports expanding the TPB's capability to recognise alternative forms of 'relevant experience', in particular, to facilitate alternative forms of restricted registrations in emerging specialist tax areas where a broad knowledge of corporate or individual tax is not required. The current criteria for 'relevant experience' do not adequately address the increasing trend towards higher levels of specialisation among tax practitioners, such as the growing specialisation in Employment Taxes and International Tax. In the case of Employment Taxes, professionals must be registered as tax agents to lodge FBT returns on behalf of clients. However, the expertise required to excel in Employment Taxes does not align neatly with the current general 'relevant experience' requirements in a registration application, which mandate exposure to a wide array of corporate and individual tax compliance practices. This poses a challenge for specialists, such as those who have dedicated their careers to practice in Employment Taxes, as they may have limited experience in preparing corporate or individual tax returns.

A potential solution may be to introduce a more specific restricted category of tax agent registration, tailored for specialists in a certain area. Continuing the above example, in the case of Employment Taxes specialists, such a restricted category would enable them to submit FBT returns and superannuation guarantee statements for clients. Adjusting the 'relevant experience' criteria to reflect the number of years spent preparing and reviewing these specific returns and statements relevant to their specialisation could address this issue effectively.

We also note and agree with the following point on page 13 of the Consultation Paper drawn from various observations made in the James Review³:

... the TPB registration framework is arguably too rigid to account for tax practitioners with special circumstances (e.g. parental leave) and contemporary forms of 'relevant experience' (noting that many practitioners are moving away from traditional 'return-based' work to 'tax advice' work, often with the aid of digital tools).

² Consultation Paper, p 7.

³ Paragraphs 4.21 and 4.22 of the Final Report.

Increasingly, tax practitioners gain relevant and valuable experience in providing advice to clients that may not involve the preparation of returns and statements to assist clients in meeting their lodgment obligations. A tax practitioner should not be regarded as having insufficient experience merely because they do not lodge a sufficient number or type of returns or statements in the preceding 10 years. Accordingly, consideration should be given to the TPB's ability to recognise 'tax advice' work as an acceptable form of relevant experience beyond the traditional 'return-based' work in determining whether to register or re-register a practitioner.

Enhancing the TPB's capacity to recognise and incorporate a wider range of 'relevant experience' would improve representations of diverse backgrounds, perspectives and values, leading to a more inclusive and skilled tax practitioner community. This, together with the recognition that there are fewer entrants to the profession via the traditional pathways, could also help to reduce the significant shortage of qualified professionals in tax-related fields such as accounting, bookkeeping and law.

Option 2 in the Consultation Paper proposes to extend the period for gaining relevant experience from two years within a five-year period, to four years within an eight-year period to allow TPB the flexibility to consider individual circumstances such as parental leave and career breaks. While we support the rationale, we note that there may still be limitations in recognising the relevant experience of individuals who took extended parental leave, for example for multiple children within the specified eight-year period. Further, while the suggested alternative period of four years of full-time experience in the preceding eight years increases the qualifying period, the proportion of relevant time would increase to 50% compared to the current proportion of 40% under the five-year period within which an individual must demonstrate two years of full-time relevant experience.

Greater flexibility should be afforded to tax practitioners who may not work full-time and may be suitable candidates for the RPA pathway yet are expected to meet the current requirements (such as CPD) for full-time work. Such individuals may even struggle to meet the requirement of four years of full-time experience proposed by Option 2 above. The TPB should be able to review individual cases where the requisite timeframes are otherwise not met by an individual, to recognise the contemporary ways in which people now work.

Enabling the TPB to consider exceptions to the 'relevant experience' criteria on a case-by-case basis in Option 1 should be accompanied by safeguards to ensure any exceptions are appropriate and consistent with the policy intent. We suggest that criteria for any exceptions be enshrined in the *Tax Agents Services Act 2009* (Cth) (**TASA**) to provide a legislative framework to the TPB in considering exceptions on a case-by-case basis.

Primary qualifications settings

The Tax Institute is of the view that the current standards for primary qualifications, which involve supervised examinations in undergraduate and postgraduate courses, are appropriate. We consider that micro-credentials should be used to help individuals with primary qualifications improve their skills rather than replacing them altogether.

The increasing prevalence of micro-credentials as a contemporary form of learning requires vigilance to ensure the integrity of short-form credentials. A robust regulatory framework is needed to ensure consistency across providers, agreed minimum standards and secure invigilated assessments so the identity of those who undertake and attain the credentials can be accurately verified.

We acknowledge that the educational landscape is constantly evolving and are of the view that there is a need to continue to evaluate and reassess the situation to ensure that the recommendations from the James Review remain relevant and can be implemented in a future-proof manner.

‘Fit and proper person’ in the TASA context

We are of the view that the current ‘fit and proper person’ test is suitable for its intended purposes, and no adjustments to its operation are necessary at this time. We regard the inclusion of conflict of interest considerations in the test as unnecessary, as this issue is already covered in the Code of Professional Conduct (in section 30-10 of the TASA) by section 20 of the Tax Agent Services (Code of Professional Conduct) Determination 2024.

Further, the proposal to disclose spent convictions appears to be based on the assumption that individuals with prior convictions will always pose a risk. This bias may hinder their reintegration into society. Individuals with spent convictions should be given the chance to rehabilitate and make positive contributions to the community, including where appropriate, the tax practitioner field.

In some cases, the seriousness of the offence may warrant disclosure, and may justify the non-registration or non-renewal of the registration of an agent. However, a less serious offence for which a person has served their sentence, should not necessarily result in an agent being tarnished for life from a TASA perspective and the application may need to be considered on its merits. The Tax Institute is of the view that further consultation is required to ensure that any changes to the ‘fit and proper person’ test are appropriately designed and tested in a practical sense before a final decision is made to require those applying for registration or re-registration to mandatorily disclose all spent convictions.

Other proposals for consideration

We note that there are several highly complex and convoluted matters listed as other proposals for consideration. The issues are framed merely as questions with no context or rationale provided and no data indicating why the current approach may be deficient so as to merit consideration of a different model. It is not clear to us whether any policy has been determined in respect of any of these matters. The Tax Institute considers that stakeholders will be best placed to provide meaningful responses to assist the Treasury where they are provided with all the relevant information for consideration and adequate time to respond. We would be pleased to consider these issues once further consideration has been given to the issues and what may be proposed.

We note that the issue of whether the TASA should be amended to capture existing and emerging tax intermediaries has been the subject of other consultations and public discussions in which we have been involved. For this reason, we have set out some brief comments below though our remarks above stand in relation to this issue as well as the others.

We consider that the regulation of emerging tax intermediaries, such as tax advisers of cryptocurrency dealings, and particularly digital service providers (**DSPs**) is essential, as they play a vital role in the tax return and activity statement preparation process. The reliance on algorithms in designing tax returns and activity statement software, which are underpinned by technical specifications prescribed by the ATO, necessitates a robust regulatory framework. The existing regulatory framework does not adequately address the activities of DSPs and tax advisers of cryptocurrency dealings, indicating a need for a review of the tax agent service and BAS service definitions or the establishment of a new classification. This is crucial to ensure appropriate oversight, as taxpayers and tax practitioners often lack control over potential software errors made by DSPs, including validation errors, which can significantly impact the integrity of tax services, and the accuracy of returns and statements lodged.