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Consultation paper – Response to PwC – Review of the eligibility requirements for tax practitioners registration with the Tax Practitioners Board (Consultation Paper)

The Institute of Public Accountants (IPA) welcomes the opportunity to make a submission in relation to the Consultation paper - *Response to PwC – Tax Practitioners Board registration review*.

The IPA is one of the three professional accounting bodies in Australia, representing over 50,000 members and students in Australia and in over 100 countries. Approximately three-quarters of the IPA's members work in or are advisers to small business and small to medium enterprises.

We would like to make some general observations before we respond to some of the proposals contained in the Consultation Paper.

We question the rushed nature of consultation on the extensive number of matters included in the Consultation Paper. The profession has yet to adapt to Breach reporting and at the time of writing, guidance from the regulator (TPB) was still under development. More recently the Assistant Treasurer used his Ministerial power to issue a legislative Instrument(LI) introducing eight new code obligations. At the time of writing, the Joint Professional Bodies have been requested and held urgent discussions with the Minister's office and Treasury regarding this LI. So far, the outcome of these discussions has not addressed or alleviated our concerns, despite the [announcement](#) by the Minister on 1 August 2024 to



insert a transitional rule into the Determination that will provide firms with more time to bring themselves into compliance with these new obligations, provided they continue to take genuine steps towards compliance during the transitional period. The Federal Government's Best Practice Consultation guidance note states that, consultations by Government should not be rushed, and agencies should provide realistic timeframes for participants to contribute. The timeframe for this consultation is well below the minimum timeframe considered acceptable. This TPB registration review in particular raises significance issues. Limiting the time for organisations to contribute, reduces the effectiveness of consultation increasing the risk of poor policy outcomes, and unintended consequences. This is one of the reasons why we have not addressed all of the questions contained in the Consultation Paper.

The consultation paper makes reference to regulatory gaps been exposed as a result of the PwC incident. [The direct linkage of these measures to the progress of 'Government's comprehensive response to the PwC tax leaks scandal'](#) is also inappropriate as there has not been any systemic failures of standards in the broader tax practitioner community. We should not be bundled with revelations of professional misconduct by a small number of large firms which is tainting perceptions that these issues are widespread.

Whilst some of the reform proposals in the Consultation paper emanate from the 2019 James Review¹, they have been given extra weight to address perceived short comings in the regulatory framework. The PwC incident did expose some regulatory gaps which will be specifically addressed by a separate review, examining the regulation of consulting, accounting and audit firms. The James review¹ is now over 5 years old and some of the recommendations need to be re-assessed given the changing regulatory environment since the review. Some of the proposals need to be risk adjusted to substantiate a problem that exists and that needs solving. For example, removal of the professional association and registration pathways. There is no evidence in the consultation paper that this pathway diminishes the consumer protection afforded under TASA, nor results in inferior access to quality services provided in an ethical manner. This pathway has been increasingly used by prospective entrants as a way of gaining registration. Its removal will create barriers to entry for new entrants and its potential removal needs to be backed by evidence that indicates that the objectives of TASA are not met for its continuation. The only reason included in the Consultation Paper is that the TPB has limited regulatory rules available in respect of an RPA that is non complaint and has limited capability to assess and monitor whether a professional association meets RPA obligations. Detailed below are reasons why reliance on the self-regulation model by the TPB would alleviate such concerns. In addition, many of the new code obligations (*Tax Agent Services (Code of Professional Conduct) Determination 2024*) are in part already embodied in Accounting Professional & Ethical Standards (APES) standards which members of Professional Associations have been required to uphold. As such professional associations play an integral role in the tax professional landscape and their co-regulation function enhances the role of the TPB in maintaining high ethical and professional standards. Potential new entrants using the professional association pathway in a lot of cases have formal Degrees, but the TPB has a policy of excluding any tertiary studies that are over 10 years old.



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These candidates that have the necessary 'relevant experience' as a tax practitioner would be denied access to registration if this pathway were to be removed.

¹ Treasury, Australian Government, Review of the Tax Practitioners Board – Final Report, 2019



Our main points we wish to make are as follows:

Reviewing the professional association accreditation and registration pathways

To the question of whether the current recognised professional association framework (initial eligibility, ongoing eligibility and compliance framework) is still appropriate?

IPA acknowledges the TPB currently has limited regulatory tools available in respect of an TPB Recognised Professional Associations (RPA) that is non-compliant with its obligations under the regime. However, it is noted that IPA already operates in a co-regulatory environment with multiple regulators and standard setters. IPA's compliance framework is consistent with the provisions set out by the Professional Standards Councils (PSC) and Professional Standards legislation. As an association with a professional standards scheme, IPA has yearly mandatory reporting requirements to the PSC to meet legislative obligations and improve IPA's members' professional standards which includes consumer protection.

Additionally, IPA's professional and ethical requirements also stem from its obligation as a member of the International Federation of Accountants (IFAC), which requires its members to comply with IFAC's Statement of Membership Obligations (SMOs). The SMOs are designed to ensure the core competencies of capable and successful professional accounting organisations in serving the public interest. The SMOs also require its members to adopt and implement the international accounting, auditing ethical and education standards, and establish quality assurance and investigation and disciplinary systems.

The recognition and registration pathways are a valid and inclusive registration pathway and is supported by:

- **Legislative requirements** – IPA members already have an obligation to comply by all relevant standards, guidance notes and authoritative interpretations issued by the Auditing and Assurance Standards Board (AUASB) and Australian Accounting Standards Board (AASB).
- **Continuing Professional Development** - Members must maintain their knowledge and skills in technical competence, management, and professional and ethical standards. IPA mandates three competency areas of CPD which includes, Technical and Product Knowledge, Management and Professional Skills and Professional and Ethical Standards.
- **Quality Review Program** - mandated by the International Federation of Accountants (IFAC). IPA members are recognised as Qualified Accountants pursuant to section 88B of the *Corporations Act 2001* (Cth) and the Australian



- Securities and Investments Commission (ASIC) legislative instrument '*ASIC Corporations (Qualified Accountant) Instrument 2016/786*'.
- **Complaints and disciplinary** – IPA has effective mechanisms for addressing complaints and member misconduct. The findings and orders of the IPA Disciplinary Tribunal and investigation statistics are published on IPA's website. For members subject to an order of censure, suspension or forfeiture of membership, the notification will set out the member's name, the breach, and findings of the IPA Disciplinary Tribunal which are published on IPA's website in a publicly accessible section.

IPA amended the special consideration admission requirement for voting Members. The special consideration work experience requirements were changed to require all applicants to have a minimum of eight years' work experience over the last 10 years if an applicant does not meet the IPA education admission requirements.

Further, the IPA did an analysis of members who enter the IPA through the special consideration pathway and whether these members had any complaints or disciplinary action against them. The evidence concluded that special consideration members who had complaints or disciplinary action against them were minor and low risk and most members who enter the IPA through the special consideration pathway were exemplary members. IPA has effective mechanisms in place to monitor and take appropriate disciplinary action against all members regardless of entry requirements.

Reporting obligations

With respect to there being no requirement for RPAs to report member wrongdoing to the TPB, it is noted that Members have a personal obligation to self-report matters of professional conduct to the TPB. All IPA members are required to advise in writing if they become bankrupt, if they are charged with a criminal offence, or if they are subject to an adverse finding from another professional or regulatory body. Self-reporting obligations apply during member admission, renewal, completion of the Professional Standards Scheme declaration, and at all times.

IPA By-law 7.3.4 may facilitate some information sharing between IPA and appropriate authorities, it is inherently limited by the fact that disclosure is only permitted where there has been an actual breach of the law. IPA is not permitted under By-law 7.3.4 to notify the appropriate authority where it suspects that a member may have breached a law. This means IPA has no obligation to share information with regulators unless it is required to do so by law. However, IPA believes that information sharing between the relevant accounting bodies and regulators is important in protecting the public and is therefore of public interest.

IPA is mindful of our privacy obligations to our members. It would be improper for IPA to notify organisations such as the TPB or other professional accounting bodies, of disciplinary proceedings that are on foot or current investigations into the conduct of a member. IPA is of the view disclosure should only relate to any adverse findings against the member and it should be done at the end of the disciplinary process after the member has exhausted any



appeal rights. Best options for sharing the outcome of a member's disciplinary outcome is currently under review.

All RPA's must satisfy ongoing requirements to remain an RPA and lodge an annual declaration to confirm it has adequate corporate governance structures in place and that they are in fact undertaking an industry 'co-regulation' function.

Conflict of interest

Under the RPA framework, the TPB is reliant on the RPA to adequately regulate their members. The Consultation paper makes reference to a perceived conflict that arises where professional associations may be perceived to balance the expectations to act in the interests of their members, while adequately regulating (and disciplining where required) those members. It goes on to say that it may not be possible to appropriately or adequately manage this perceived conflict in some circumstances.

In response to this concern, the IPA commenced a review of its investigation and disciplinary processes which predated the PwC matter to improve the effectiveness and efficiency of its complaint management system by benchmarking its framework to other professional accounting bodies and TPB. IPA has identified areas for ongoing improvement, including but not limited to the importance of maintaining independence during the investigation and disciplinary process. Subject to Board approval, the recommendations will be implemented so there is no perceived conflict of interest in that investigations and member compliance decisions going forward will be independent of IPA's management and Board. This means there will no longer be a perceived conflict that IPA is acting in the interests of its members while disciplining members.

IPA believes that the existing framework could be enhanced to strengthen and improve the co-regulatory function by providing RPA's the power to compel information and have better information sharing between RPA's. (see our Submission to the Parliamentary Joint Committee on Corporations and Financial Services on Ethics and Professional Accountability: Structural Challenges in Audit, Assurance and Consultancy Industry)

Strengthening registration requirements for companies and partnership

Currently an entity need only demonstrate that they have a 'sufficient number' of individually registered tax practitioners to provide the respective tax practitioner services and supervision



on behalf of the entity to be eligible for registration. The appropriate sufficient number will vary depending on the particular registration scenario at play. For example, the company or partnership must consider the size and scale of tax agent or BAS services provided within the business, the type and complexity of the services being provided, and the number of qualified and experienced staff. The TPB provides guidance (TPB (1) 36/2021) on the supervisory arrangements and the determination of the 'sufficient number' of registered individual tax agents in a partnership or company.

In addition, the proposed new code obligation to maintain a quality management system will further enhance the importance of supervision of staff as part of the entities governance arrangements. We see no reason to prescribe a ratio given the need to be flexible to cover different situations.

Lastly, trust structure which are commonly used have been omitted and so should be included for completeness.

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

We in principle agree with amending the 'relevant experience' requirement to provide extra flexibility. Reform is needed as the TPB has limited flexibility in considering individual circumstances (for instance, parental leave and career breaks) when determining whether the 'relevant experience' requirement has been met. The Consultation Paper sets out two options that seek to address the current limitations namely:

Option 1 - allow the TPB to consider exceptions to the 'relevant experience' criteria on a case-by-case basis

Option 2 - increase the period in which an individual can obtain 'relevant experience'.

Our preferred option is to have a combination of the two options as the most appropriate way to address current limitations.

We also support improving the ability for potential tax and BAS agents to obtain relevant experience. Under the existing 'work of another kind' category, the TPB may also consider the completion of simulated programs designed to be a substitute for work experience. The TPB currently considers applications with simulated work experience up to 15 per cent of the overall relevant experience hours requirement. The existing 15 per cent threshold was determined by the Board of the TPB as the proportion of relevant experience that the TPB would accept from simulated programs under the existing registration framework. We support an increase of the 15% cap, to allow an appropriate proportion of additional flexibility, but not undermine the importance of on-the-job relevant experience particularly for business models in the profession which are predominantly made up of sole traders or businesses that employ very few staff.

Micro credentials

The current primary qualification requirements have been struck at a reasonable level for Australia. However short-form credentials should be included as alternatives where these



short-form credentials provide up-to-date knowledge and skill base that are contemporary and directly relevant to the complexity of some areas where judgements are required. Micro credentials complying with the Australian National Micro credential Framework require suitable assessments that can prove the attainment of specific competencies. Unlike an academic degree, they directly address the performance of a competency related to the area, such as in taxation. In fact, some micro credentials are more relevant for the tax practitioners than a tax law subject taught in universities, which tends to be more theoretical. We would like to propose the inclusion of short-term credentials of certain size, or certain topics, in accordance with the Australian Micro credential Framework, without discarding their relevance.

Digital Software Providers

TASA should start to regulate some existing and emerging tax intermediaries particularly digital software providers. In the cryptocurrency space, there is heavy reliance on the output of such digital software providers. The sheer volume and variety of transactions necessitates tax practitioners having to solely rely on the accuracy of the program to generate the necessary tax outputs.

For other software digital providers, it will be a case-by-case analysis to determine whether reliance is placed on the programming to determine tax outcomes.

Other matters

Adding extra criteria for fit and proper (F&P) for registration or renewal can be onerous for new entrants and smaller practitioners. We caution the use of adding new declarations at time of registration or renewal. In addition, some of the Code of Professional Conduct obligations only apply to tax practitioners in business. There is no distinction between those that work within an entity that are registered practitioners as individuals and not in business versus the entity that is primarily responsible for the quality of the services it provides.

It is difficult to understand how the conflict of interest declaration process and governance arrangements tied in with F&P, will work in practice. It is difficult to see how a regulator could blanket ban an accountant from becoming registered due to a conflict of interest. We believe conflicts are more effectively assessed and addressed at the engagement level and that appropriate ethical frameworks such as APES 110 and/or the TASA Code should regulate tax/BAS agent conduct to appropriately manage conflicts. We don't really understand why conflicts are being considered as part of a F&P construct (noting it seems to be based on APRA requirements - however we can, to an extent, understand the reasons for the APRA requirements). Having tax obligations kept up-to-date should remain a Code 2 obligation and only in egregious cases should it be seen to impact on being F&P.



If you have any queries or require further information, please don't hesitate to contact Tony Greco, General Manager, Technical Policy, either at tony.greco@publicaccountants.org.au or mobile: 0419 369 038

Yours sincerely

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