



Review of eligibility requirements for registration with the Tax Practitioners Board

Consultation paper

July 2024

Consultation Paper 4

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In the spirit of reconciliation, the Treasury acknowledges the Traditional Custodians of country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all Aboriginal and Torres Strait Islander peoples.

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Consultation Process

Request for feedback and comments

The purpose of this consultation paper is to seek stakeholder feedback and views on potential reforms that will enhance the Tax Practitioners Board’s registration requirements for tax practitioners, including tax agents and Business Activity Statement agents.

Closing date for submissions: 07 August 2024

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The principles outlined in this paper have not received Government approval and are not yet law. As a consequence, this paper is merely a guide as to how the principles might operate.

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

Introduction

Recent events have exposed limitations in the current regulatory framework for tax practitioners and the broader system in which they operate. On 6 August 2023, the Albanese Government announced a significant package of reforms to crack down on misconduct and rebuild confidence in the systems and structures that keep our tax system and capital markets strong.

Of the elements of the government response that Treasury has been tasked with, the first stage of the government response included enhancements to the regulatory framework that have recently been implemented (via *Treasury Laws Amendment (2023 Measures No.1) Act 2023* (Cth)), including:


- requiring tax and BAS agents, collectively referred to as tax practitioners, not to employ, use or enter into arrangements with a disqualified entity without Tax Practitioners Board (TPB) approval
- changing the registration period for tax practitioners from three years to an annual renewal
- enabling the relevant minister to supplement the Code of Professional Conduct (the Code) for tax practitioners (consultation regarding changes to the Code closed on 21 January 2024). The changes to the Code were implemented via the Tax Agent Services (Code of Professional Conduct) Determination 2024 on 2 July 2024 and will commence on 1 August 2024.

The second stage of the government response included measures that strengthen the integrity of the tax system and increase the powers of relevant regulators. These measures were recently implemented via *Treasury Laws Amendment (Tax Accountability and Fairness) Act 2024* (Cth), which received royal assent on 31 May 2024. These measures will:

- increase the scope and penalty amount of penalty provisions that apply to promoters of tax exploitation schemes
- improve information exchange between government agencies as well as to professional representatives on potential misconduct
- extend whistleblower protection for those who wish to disclose alleged misconduct to the TPB
- enable enhanced TPB investigations and improve transparency of tax practitioner misconduct on the TPB public register.

The next phase of the government response is a suite of consultations that focuses on proposals to further strengthen and modernise the regulatory framework and the broader system that tax practitioners operate in. In this stage of the response, Treasury will be undertaking:

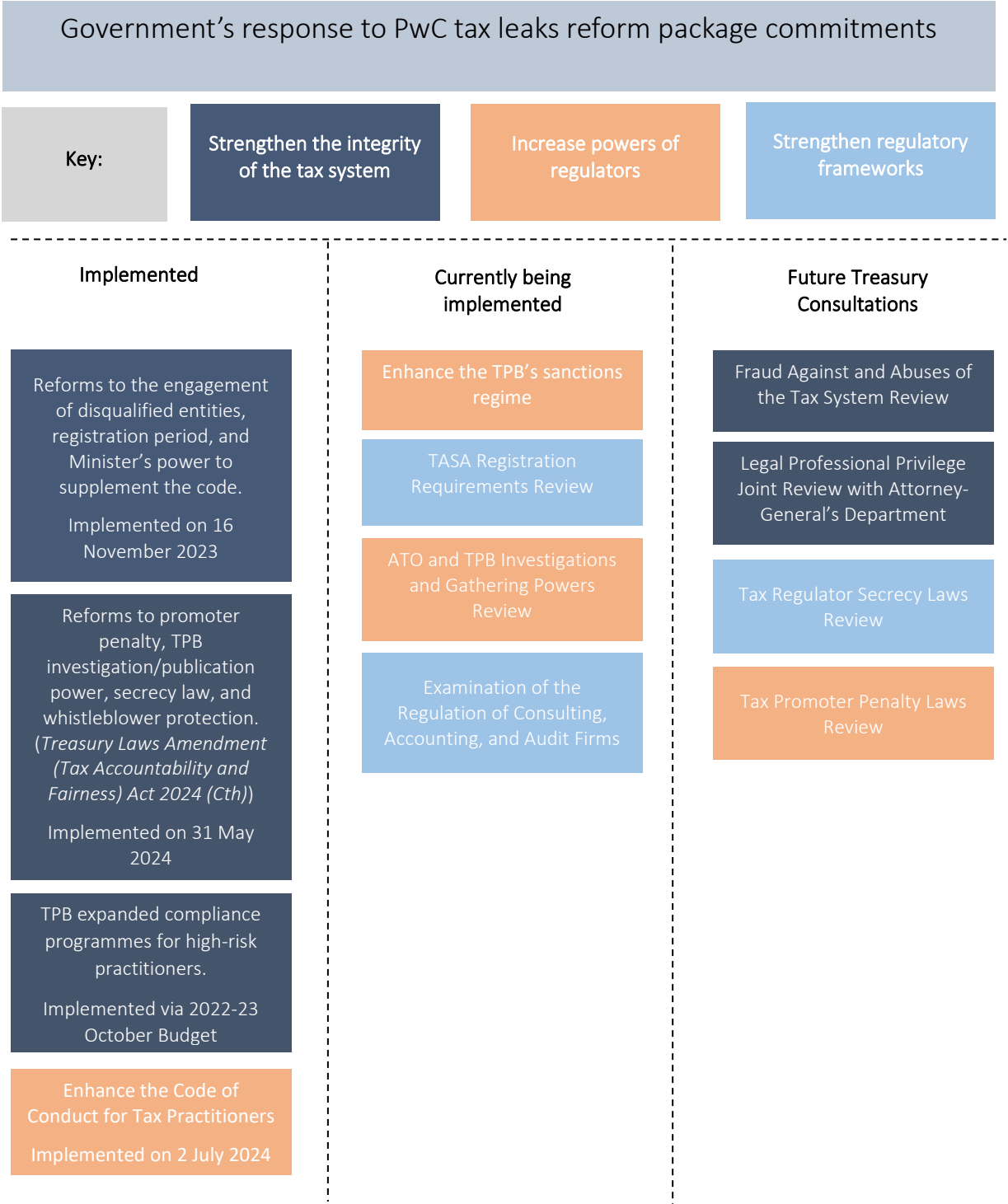
- a review of the sanctions regime that the TPB administers (public consultation on proposed enhancements concluded 21 January 2024)
- a review of the Australian Taxation Office's (ATO) and TPB's respective investigation and information gathering powers (consultation closed 31 May 2024)

- 
- an examination of the regulation of consulting, accounting and audit firms (consultation closed 28 June 2024)
 - a review of tax practitioner registration requirements ([this consultation paper](#))
 - a review of the penalty regime that applies to promoters of tax schemes
 - a review of emerging fraud and systemic abuse of the tax and superannuation systems
 - a review of the secrecy provisions that restrict information sharing by government bodies such as the ATO and the TPB
 - a joint review of the use of legal professional privilege in Commonwealth investigations with the Attorney-General's Department.

The government also provided \$30.4 million in additional funding to the TPB over the four years from 1 July 2023 in the 2022-23 October Budget to enable the roll out of an expanded compliance program, targeting higher risk tax practitioners who may be unregistered, designing schemes, driving tax avoidance, or promoting tax evasion or other criminality.

Figure 1 (on the following page) summarises past, current and future work Treasury is undertaking to strengthen the regulatory framework.

Figure 1: Work being undertaken by Treasury to strengthen the regulatory system



Objective of this consultation

This consultation paper seeks feedback and views on proposed reforms that will ensure the registration requirements for tax practitioners align with a strengthened, modernised and fit-for-purpose framework. A robust and fit-for-purpose registration regime will reinforce long-term sustainability of the profession and enhance community confidence in tax practitioners and the services they provide.

The primary objective is to reform the registration framework to realign it with the contemporary tax practitioner services landscape. Additionally, it aims to equip the TPB with the flexibility to appropriately respond to emerging industry trends and bolster and modernise existing registration criteria. This will ensure that the community is able to access high-quality tax practitioner services as desired and be provided greater assurance that tax practitioners have the right attributes and qualifications to deliver quality services in an ethical manner. The proposed reforms will also remove inequitable barriers to registration, ensuring that appropriately qualified tax practitioners with diverse life experiences are able to register and provide their services for the benefit of the community.

This paper explores the following areas of improvement for the registration pathways:

- strengthening company and partnership registration eligibility requirements
- reviewing the professional association 'recognition' and registration pathways
- broadening the TPB's ability to accept alternative forms of 'relevant experience'.

Treasury also welcomes feedback on:

- whether the Tax Agent Services Regulations 2022 (Cth) (TASR) and/or TASA should be amended to give the TPB greater flexibility to accept other qualifications outside the traditional tax practitioner course of study
- whether the current formulation of the 'fit and proper person' test within the TASA adequately protects consumers, without imposing a disproportionate barrier to entry
- other proposals to modernise the registration framework and/or address potential challenges.

Background

Purpose of the Tax Practitioners Board

The TPB regulates tax practitioners to protect consumers and assure the public that tax practitioners meet appropriate standards of professional and ethical conduct.

The TPB is an independent statutory body comprising a board appointed by the Assistant Treasurer. The Board is responsible for administering and investigating tax practitioners, making disciplinary decisions and applying sanctions in appropriate cases. The Board is supported by a staff of around 160 people in multiple sites around Australia.

The regulatory functions of the TPB are outlined in the TASA. They include administering the Code (and sanctions for breaches of the Code) and the tax practitioner registration regime, investigating conduct that may breach the TASA, resolving complaints lodged regarding practitioners and unregistered preparers, and seeking civil penalty orders and injunctions from the Federal Court of Australia (Federal Court) in response to breaches by registered tax practitioners and unregistered preparers.

These regulatory functions support public trust and confidence in the integrity of the tax profession and the tax system by ensuring that tax agent services are provided to the community in accordance with appropriate standards of professional and ethical conduct. The trust and confidence that the TPB seeks to uphold has been tested with recent events. These events have highlighted opportunities to introduce a range of sensible improvements to modernise and enhance the TPB registration regime. It is also important that the regime is refined to reflect contemporary means of obtaining expertise, and to avoid inequitable barriers to registration. Further information regarding the role of the TPB can be found on the TPB's website: www.tpb.gov.au.

Purpose of the tax practitioner registration regime

The operation of unregistered and underqualified tax preparers puts at risk the public trust in the regulatory system. The requirement to obtain and maintain TPB registration ensures that practitioners have the qualifications and experience necessary to provide professional tax practitioner services, demonstrate suitable standards of ethical behaviour, and maintain appropriate professional indemnity insurance cover to protect clients in the event of instances of negligence or breaches of duty.

Tax practitioners must comply with the TASA in order to obtain and maintain their registration with the TPB and provide tax agent and/or BAS services for a fee or another reward. Ongoing compliance includes maintaining professional indemnity insurance, meeting continuing professional education requirements, continuing to meet the fit and proper person requirements, notifying the TPB when registration details change, complying with the Code and timely renewal of registrations. By extension, any entity, including individuals, who provides tax agent or BAS services for a fee or reward without a valid TPB registration is in contravention of the TASA.

While the registration system is generally working well, it is important to ensure that the registration regime is appropriately:

- strong – to ensure that the public can be assured they are receiving tax practitioner services of a high standard
- balanced – to ensure consumers are adequately protected, without imposing disproportionate barriers to entry that unjustifiably impair industry sustainability or consumer access to services

- modern and fit-for-purpose – to reflect contemporary ways in which tax practitioners obtain their expertise and conduct their services.

Current registration framework

Different registration requirements apply for individuals, partnerships and companies. A summary of these requirements is outlined in the table below:

Table 1: Summary of registration requirements

Registration requirements as prescribed in the TASA	Individuals	Partnerships	Companies
Fit and proper requirements	●	● (all individual partners and all directors of company partners)	● (all directors)
Qualifications (education and experience)	●		
Not under external administration		● (company partners)	●
Not convicted of a serious taxation offence		● (company partners)	●
Not convicted of an offence involving fraud or dishonesty		● (company partners)	●
Sufficient number of registered tax practitioners to supervise and ensure competent services		●	●

Registration requirements for individuals

Registration requirements for individuals depend on whether the applicant is applying for registration as a tax agent or a BAS agent, the level of primary qualification and ‘relevant experience’ held, and whether they are a voting member of a ‘recognised professional association’.

The varying registration requirements for tax and BAS agents reflect the different competencies necessary for tax practitioners to deliver their services. A tax agent can provide services in relation to all areas of taxation law whereas a BAS agent can only provide services in relation to BAS provisions (a subset of tax laws) or services declared by the TPB as BAS services.

For instance, tax agents are generally required to, among other requirements, complete TPB approved courses in Australian taxation law, commercial law or basic accounting principles (which includes a mandatory ethics component). The completion of TPB approved courses forms an essential part of the

registration requirements for individuals and assists in ensuring that tax agent services are provided to the public in accordance with appropriate standards of professional and ethical conduct.

Conversely, BAS agents are required to hold at least a Certificate IV Financial Services in bookkeeping or accounting and complete a Board approved course in goods and services tax (GST)/BAS taxation principles. The prescription of this qualification standard reflects the nature and complexity of the work carried out by BAS agents, which would generally be focused upon bookkeeping, GST or core accountancy issues, as opposed to other taxation law concepts.

A summary of qualification and experience requirements for tax and BAS agents is included in the table below:

Table 2: Registration requirements for tax practitioners

TAX AGENTS					
Registration pathway	Criteria				
	Qualification level	Australian taxation law	Commercial law	Basic accounting principles	Relevant experience ¹
201	Degree or post-graduate award in the discipline of accounting	Yes	Yes	No	1 year of full-time ² , relevant experience in the preceding 5 years
202	Degree or post-graduate award in a relevant discipline other than accounting ³	May be required	May be required	May be required	1 year of full-time, relevant experience in the preceding 5 years
203	Diploma or higher award in the discipline of accounting	Yes	Yes	No	2 years of full-time, relevant experience in the preceding 5 years
204	Academic qualifications to be an Australian legal practitioner	Yes	No	Yes	1 year of full-time, relevant experience in the preceding 5 years
205	None	Yes	Yes	Yes	8 years of full-time, relevant experience in the preceding 10 years

¹ Relevant experience is defined in clause 212 of the TASR as work as a registered tax agent, under the supervision and control of a registered tax agent, as an Australian legal practitioner, or of another kind approved by the board.

² References to ‘full-time’ includes part-time equivalent.

³ TPB(I) 14/12 *Tertiary qualifications in a discipline other than accounting for tax agents* outlines the TPB’s guidance in relation to this registration pathway.

TAX AGENTS					
Registration pathway	Criteria				
	Qualification level	Australian taxation law	Commercial law	Basic accounting principles	Relevant experience ¹
206	None (Voting membership of recognised professional association required)	No	No	No	8 years of full-time, relevant experience in the preceding 10 years

TAX (FINANCIAL) AGENTS ⁴					
Registration pathway	Criteria				
	Qualification level	Australian taxation law	Commercial law	Basic accounting principles	Relevant experience ⁵
207	Degree or post-graduate award in a relevant discipline	Yes	Yes	No	Equivalent of 1 year full time experience in past 5 years
208	Diploma or higher award in a relevant discipline	Yes	Yes	No	Equivalent of 18 months full time experience in past 5 years
209	None	Yes	Yes	No	Equivalent of 3 years full time experience in past 5 years
210	None (Voting membership of recognised professional association required)	No	No	No	Equivalent of 6 years full time experience in past 8 years

⁴ To register with the TPB through pathways 207 to 210 you must be an Australian financial services (AFS) licensee or a representative of an AFS licensee at the time of your application, or have been an AFS licensee or a representative of an AFS licensee within the 90 days preceding your application.

⁵ Relevant experience is defined in clause 212 of the TASR as work as a registered tax agent, under the supervision and control of a registered tax agent, as an Australian legal practitioner, or of another kind approved by the board.

BAS AGENTS				
Registration pathway	Criteria			
	Qualification level	GST/BAS taxation principles	Voting member of recognised professional association	Relevant experience
101	At least Certificate IV Financial Services in bookkeeping or accounting	Yes	No	1400 hours in past 4 years
102	At least Certificate IV Financial Services in bookkeeping or accounting	Yes	Yes	1000 hours in past 4 years

Registration requirements for partnerships and companies

Partnerships and companies seeking to register or renew their registration with the TPB must meet, and continue to meet, the registration requirements set out in subsection 20-5(2) and (3) of the TASA. In addition to a fit and proper person requirement, as discussed above, there is also a specific 'sufficient number' requirement that applies to companies and partnerships.

The TASA requires that a partnership or company seeking registration as a tax practitioner will need to meet the 'sufficient number' requirement, which requires that they have a sufficient number of registered individual tax practitioners to provide tax agent services to a competent standard, and to carry out supervisory arrangements. There is no set formula for determining the sufficient number of registered individuals that a partnership or company is required to have in order to satisfy this requirement. However, factors that are considered by the TPB when a company or partnership submits an application for registration are:

- the size of the business
- the services being offered
- the supervisory arrangements in place
- the conditions that may be imposed on the partnership or company registration based on the qualifications and experience of its personnel.⁶

⁶ TPB information sheet TPB(I) 36/2021 *Supervisory arrangements under the Tax Agent Services Act 2009* provides the TPB's guidance regarding supervisory arrangements and the determination of the 'sufficient number' of registered individual tax agents in a partnership or company.

Gaps in the current regulatory framework

The 2019 TPB independent review undertaken by Mr Keith James (the 2019 TPB review) identified, among other elements, the following aspects of the registration framework that could be improved:

- the TPB only has limited capacity and capability to test and assess whether a professional association complies, both initially and in an ongoing sense, with the ‘recognised professional association’ eligibility criteria
- 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)
- an additional registration requirement may be added to ensure registered entities have (and maintain) appropriate governance and control structures
- the ‘fit and proper person’ test could be reworked to clarify the precise behaviours the TPB is to consider as part of the registration process.

Recent matters have highlighted the importance of addressing gaps and strengthening the integrity of the tax system. Strengthening, balancing and modernising the registration framework administered by the TPB will ensure:


- only tax practitioners with suitably rigorous expertise and demonstrably ethical behaviour are able to receive and retain their registration
- the registration framework reflects community expectations of tax practitioner behaviour
- inequitable barriers to registration are removed, such that consumers can draw upon an appropriately broad, ethical and experienced registered tax practitioner pool to satisfy their particular needs
- the registration regime equips the TPB with flexibility to respond to emerging industry trends in how tax practitioners gain their expertise.

Achieving balance in the registration framework

Tax practitioners play a key role in supporting taxpayers to navigate the complexities associated with their obligations under the tax and superannuation systems.⁷ Given the majority of Australian businesses and individuals rely on tax practitioners to lodge their returns and meet their other tax obligations, it is clear that a trusted, sustainable tax practitioner profession is integral to building compliance with, and sustaining confidence in, Australia’s tax and superannuation systems.

A fit-for-purpose registration regime strikes an appropriate balance between these competing pressures. The intention of the proposed reforms is to achieve the right balance between ensuring that there are sufficient registration requirements to ensure the professional competence of tax practitioners, without unreasonably restricting the supply of tax practitioners through inequitable barriers to entry.

⁷ The ATO reported that tax agents lodged 70 per cent of tax returns, and tax and business activity statement (BAS) agents lodged 57 per cent of BAS, in 2019–20. - [Australian Taxation ...~https://www.anao.gov.au/work/performance-audit/australian-taxation-office-engagement-tax-practitioners](https://www.anao.gov.au/work/performance-audit/australian-taxation-office-engagement-tax-practitioners)



The proposed reforms will enhance the TPB's ability to flexibly administer the registration regime, so that it may respond to contemporary industry trends in an agile manner. The TPB will also publish guidance and reconsider their internal protocols as appropriate, in consultation with Treasury and other relevant stakeholders, to provide additional clarity, accountability and transparency to tax practitioners and the public. Stakeholder feedback on potential improvements in striking this balance overall, as well as on the specific concepts outlined throughout the paper would be appreciated.

Key features of the proposed enhanced registration regime

Treasury is seeking stakeholder feedback on whether enhancements to the following areas of the registration regime are appropriate, and views on the proposed options where outlined. These areas include:

- strengthening company and partnership registration eligibility requirements
- re-evaluating the professional association accreditation and registration pathways
- broadening the TPB's ability to accept alternative forms of 'relevant experience'
- amending the primary qualification settings prescribed in the TASA
- improving the 'fit and proper person' test set out in the TASA

Feedback and ideas are also welcomed on whether gaps exist within other areas of the registration regime, and if so, how best to resolve them. Potential areas are identified towards the conclusion of the consultation paper under 'Other proposals for consideration'.

Strengthening registration requirements for companies and partnerships

How does the regime currently operate?

Under the current framework, companies and partnerships are eligible to be registered as tax practitioners in their own right where the TPB is satisfied the following requirements have been met:

- each individual partner is at least 18 years of age
- each director or individual partner is a 'fit and proper person'
- the company or partnership maintains, or is able to maintain upon registration, professional indemnity insurance that meets the Board's requirements
- the company or partnership has a sufficient number of individually registered tax agents to provide tax agent services and supervision on behalf of the company or partnership (if registered tax agent status is sought) (or individual BAS agents in relation to partnership or company BAS agent registration)
- for companies, the company is not under external administration
- for companies, the company has not been convicted of a serious taxation offence or an offence involving fraud or dishonesty in the previous 5 years.

Additionally, in the event there is a company partner in a partnership, the partnership must demonstrate that:

- each director of the company partner is a ‘fit and proper person’
- the company partner is not under external administration
- the company partner has not have been convicted of a serious taxation offence or an offence involving fraud or dishonesty in the previous 5 years.

Notably, not every individual director or individual partner working for a registered entity is required to be a registered tax practitioner in their own right. 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 staff⁸.

Is reform needed?

Recent events have highlighted the importance of the need for companies and partnerships to adopt strong governance frameworks as they deliver their services. This is particularly important for large multidisciplinary firms who are, given their broad scope of operations, generally at a higher risk of encountering complex practice issues and ethical dilemmas (e.g. conflicts of interest).

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 (i.e. internal governance and controls procedures) in relation to the provision of tax agent services in order to provide the tax practitioner with reasonable confidence that they are complying with the TPB Code. The addition to the Code will ensure that tax practitioners are required to maintain appropriate governance standards on an ongoing basis.

Treasury considers that the registration regime could be further strengthened to provide further assurance to consumers and the community that companies and partnerships operating as registered tax practitioners are delivering their services competently and ethically, from the time of registration.

What is the proposal?

The proposal is to introduce an additional registration requirement for companies and partnerships. Companies and partnerships would be required to satisfy the TPB that they have sufficient governance arrangements in place to ensure compliance with their obligations as a registered tax practitioner, at the time of registration. The requirement to have sufficient governance arrangements would be added to the existing registration eligibility criteria in section 20-5 of the TASA. The governance requirement would relate to internal controls and quality management systems specific to the provision of tax agent and BAS services.

This proposal strikes a balance between the need to:

- safeguard consumers

⁸ TPB information sheet TPB(I) 36/2021 *Supervisory arrangements under the Tax Agent Services Act 2009* provides the TPB’s guidance regarding supervisory arrangements and the determination of the ‘sufficient number’ of registered individual tax agents in a partnership or company.

- obtain greater comfort that companies and partnerships operating as registered tax practitioners are equipped with effective governance arrangements to tackle complex practice issues and ethical dilemmas that will invariably arise from time-to-time
- ensure that tax practitioners doing the right thing do not face unreasonable barriers to registration.

Treasury proposes that this new registration requirement aligns with the new TPB Code requirements relating to quality management systems that have been separately implemented by the government. Aligning the registration requirement to the recent changes to the Code will ensure tax practitioners incur no further compliance costs from this proposal. The addition of a governance requirement to the registration framework will require applicants to have these arrangements in place at the application and renewal stage for TPB registration, as well as being an ongoing eligibility requirement.

Treasury anticipates that the vast majority of companies and partnerships registered as tax practitioners would have already developed and implemented governance arrangements assisting them in carrying out their services and complying with the TASA (and are required to do so from 1 August 2024 under the additions to the Code.) Notwithstanding this, the introduction of this proposal ensures the TPB is equipped, with the ability to not register entities that are not prepared to practice good governance and uphold the high standards of ethical behaviour the community expects of tax practitioners prior to being registered to provide tax agent services. This proposal also provides companies and partnerships with an opportunity to address gaps in their governance procedures and processes, before these risks materialise into TASA breaches and trigger potential sanctions. This proposal will also give the TPB the ability to terminate a company or partnership's registration if they fail to meet an ongoing registration requirement.

In practice, similar to the existing 'sufficient number' requirement, what governance arrangements will satisfy the new requirement in each instance will be a question of fact and degree for the tax practitioner to determine, based on circumstances and subject to the skills and professional judgment of relevant tax practitioners. It is expected that the TPB would prepare guidance, in consultation with Treasury and other relevant stakeholders, to provide the profession with further clarity regarding how the TPB will assess the adequacy of governance in meeting the requirements under the Code and the registration framework.

Treasury notes that companies are subject to corporate governance requirements under the *Corporations Act 2001*. The addition of governance requirements to the TPB registration framework is not intended to assess companies' compliance with these requirements, but rather assess the adequacy of internal control procedures specific to the provision of tax agent and BAS services, such as supervision of staff, review of work, and training and education.

Consultation questions

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?
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?

Reviewing the professional association accreditation and registration pathways

How does the regime currently operate?

Professional associations can play a role in upholding high ethical and professional standards within their industry. This, in turn, secures and sustains community confidence in the sector and its professionals. Additionally, tax practitioners often rely upon professional associations to help them comply with their individual obligations under the TASA (for instance, by attending educational programs offered by professional associations to satisfy their continuing professional education obligations). As such, professional associations play an integral role in the tax professional landscape.

Recognising that these associations can, at times, play an industry 'co-regulation' function, the TASA currently provides a pathway for professional associations to be accredited as a recognised professional association (RPA), provided the TPB is satisfied certain criteria in the TASA have been met. The criteria aim to ensure that these associations operate with adequate corporate governance structures in place and that they are, in fact, undertaking an industry 'co-regulation' function.

The precise recognition criteria that must be satisfied to become an RPA are set out in Part 1 (for BAS agent associations) and Part 2 (for tax agent associations) of Schedule 1 of the TASA, and include requirements for the association to hold and maintain:

- professional and ethical standards for its voting members
- adequate corporate governance and operational procedures
- satisfactory arrangements in relation to certain complaints processes.

Once an association satisfies the TPB that these requirements set out in the TASA have been met and the association becomes an RPA, its voting members are able to apply for tax practitioner registration utilising a specialised registration pathway. Potential registrants utilising this pathway to obtain registered tax agent status do not, by virtue of the TASA and TASA (noting that each association may impose its own internal requirements on 'voting member' eligibility):

- need to hold a degree or diploma primary qualification
- need to complete Board approved courses in Australian taxation law, commercial law and basic accountancy principles.

Potential registrants seeking registered BAS agent status under this pathway receive a concession on the amount of 'relevant experience' required to be obtained in the last 4 years (1000 hours, as opposed to 1400 hours).

Once a professional association becomes a RPA, it must satisfy ongoing requirements specified in Schedule 1 to the TASR. The ongoing requirements for a RPA include (but are not limited to):

- the association has adequate corporate governance and operational procedures
- the association has professional and ethical standards for its voting members:
 - members must undertake at least 15 hours of continuing professional development each year
 - members must be of good fame, integrity and character
- the association has satisfactory arrangements for dealing with complaints, including taking disciplinary action if complaints are justified
- members are required to meet certain education or qualification criteria.

If the RPA does not satisfy these ongoing requirements, the TPB can remove the professional association's accreditation.

Distinct from the RPA framework, the amendments made in the *Treasury Laws Amendment (Tax Accountability and Fairness) Act 2024* provide a pathway for disciplinary bodies to become a 'prescribed disciplinary body' (PDB) under the TASR. Under these amendments, the TPB can share information with PDBs where there is reasonable suspicion that a PDB's member has breached the TPB Code or the PDB's professional standards. It should be noted that an entity can be both an RPA and a PDB, however the objectives of RPAs and PDBs are separate and distinct.

Is reform needed?

Treasury considers the current regime requires strengthening as:

- the TPB currently has limited regulatory tools available in respect of an RPA that is non-compliant with its obligations under the regime (noting that the TPB is currently restricted to either terminating 'recognition' or taking no further action)
- while the current regime does require RPAs to have adequate disciplinary procedures, there is no requirement for RPAs to report member wrongdoing to the TPB. This may result in a gap in the 'co-regulatory' framework.⁹ Under the RPA framework, the TPB is reliant on the RPA to adequately regulate their members. However, a perceived conflict 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 may not be possible to appropriately or adequately manage this perceived conflict in some circumstances.

⁹ Treasury notes that the new Code breach reporting requirements require registered tax practitioners to notify the TPB of suspected breaches of the Code by other registered tax practitioners, however this obligation only applies to registered tax practitioners. If the disciplinary officer of the professional association is not a registered tax practitioner, they are not required to report breaches of the Code under the existing breach reporting requirements.

- the TPB has limited capability to assess and monitor whether a professional association meets RPA requirements (noting that while the Board is charged with general administration of the TASA under section 1-15 of the same, the TPB does not charge a fee for RPA applications, unlike the general tax practitioner registration process)
- the TPB could be viewed by the public as regulating the professional associations via the ‘recognition’ process, despite the deficiencies described above in the current framework
- there is a need to ensure the TPB’s regulatory function is focussed on its primary goal of administering the TASA and regulating tax practitioners, rather than furthering the perception that the TPB regulates professional associations.

What is the proposal?

The proposal is to remove the professional association accreditation and registration pathway.

Treasury considers the removal of the professional association ‘recognition’ and registration pathways would be effective in enhancing the TPB’s independence from the industry and mitigate against actual or perceived risk of ‘regulatory capture’. It would also strengthen the existing registration regime by increasing the minimum education requirements for individuals to become tax agents. In order to transition effectively towards this outcome, tax practitioners who are currently registered under the RPA pathway would be grandfathered into the registration regime, similar to the special rule about pre-1988 tax agents in subsection 20-5(4) of the TASA. These tax practitioners would be subject to other non-qualification requirements being met, as well as the TPB’s standard renewal requirements, assuming they maintain their voting membership status with the RPA.

Professional association membership would likely remain attractive to tax practitioners despite the removal of the registration pathway, given professional associations offer continuing professional development and other membership benefits, such as support and guidance. Treasury also considers that the majority of tax practitioners who are eligible for registration under the RPA pathway would likely be eligible for registration through alternative pathways and thus removal of this pathway will not be a significant barrier to entry or remaining registered.

Under the changes introduced via the *Treasury Laws Amendment (Tax Accountability and Fairness) Act 2024*, the TPB and the ATO can share information with PDBs to enable the TPB and PDBs to perform their respective disciplinary functions.

Consultation questions

3. Is the current recognised professional association framework (initial eligibility, ongoing eligibility and compliance framework) appropriate?
4. If not, what should that framework look like? For example, replaced with an enhanced prescribed disciplinary body regime?
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?

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

How does the regime currently operate?

In order to obtain registration, tax practitioners must satisfy the TPB that they have obtained a certain amount of 'relevant experience', tailored to the type of service they are intending to provide. The precise amount of 'relevant experience' required varies based on the registration pathway relied upon and, by extension, the primary qualification relied upon, as illustrated earlier in Table 2.

'Relevant experience' for the purposes of the registration regime broadly consists of the following types of work:

- work as a registered tax practitioner
- work under the supervision and control of a registered tax practitioner
- work as a legal practitioner (for registered tax agent status)
- work of another kind approved by the Board.

To constitute 'relevant experience', the work relied upon must include substantial involvement in one or more types of tax agent services, or substantial involvement in an area of taxation law to which one or more of those types of tax agent services relate.

References to 'full-time' in relation to relevant experience criteria include part-time equivalent.

Is reform needed?

The relevant experience amounts prescribed in the legislation are intended to strike a balance between ensuring that only suitably qualified and experienced persons are able to be registered and able to obtain a fee or other reward for their services, protecting consumers from unskilled and under-skilled practitioners, and ensuring that the barriers to entry are minimised.

Bearing these competing pressures in mind, Treasury is of the view that the amount of 'relevant experience' required has been set at an appropriate level, simultaneously ensuring that tax and BAS agents are adequately qualified to provide services at a high standard while not being overly burdensome to new entrants and tax practitioners seeking a renewal of registration.

However, Treasury agrees with the findings from the 2019 TPB Review, that under the current legislation, 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.

What is the proposal?

It is proposed that the 'relevant experience' requirements in the registration regime be amended to provide the TPB with additional flexibility in accepting different types and periods of experience as being relevant. This is intended to address the current framework's prescriptive rigidity and accommodate contemporary industry shifts in the way tax practitioners work.

Treasury has set out two options below that seek to address the current limitations while also ensuring that only suitable individuals with adequate capabilities become tax practitioners. Treasury is

seeking feedback on which option, or combination of options, would result in the most appropriate outcome and strike the best balance. The options are to:

- allow the TPB to consider exceptions to the 'relevant experience' criteria on a case-by-case basis (**Option 1**)
- increase the period in which an individual can obtain 'relevant experience' (**Option 2**)

It is proposed that any changes to the relevant experience criteria would apply to existing registered tax practitioners from their next registration renewal. As both proposed options involve increasing flexibility, it is considered that any registered tax practitioner that meets the current relevant experience requirements would continue to meet any changed thresholds.


Option 1: Allow the TPB to consider 'relevant experience' on a case-by-case basis

This proposal would maintain the existing relevant experience requirements listed in Schedule 2 to the TASR for each registration pathway, but allow the TPB to consider exceptions to the relevant experience criteria on a case-by-case basis. Implementing this proposal would:

- provide the TPB with more flexibility and the ability to ensure that the registration framework remains current and able to respond to changes in professional practice and in the nature of work over time
- provide the TPB with enhanced flexibility to consider training programs or experience gained in overseas jurisdictions as forming part of an applicant's 'relevant experience'
- give the TPB flexibility to administer the 'relevant experience' requirement in a more balanced manner
- allow for the TPB to consider and address emerging issues and circumstances
- allow for consideration of planned absences from the profession (such as parental leave or career break) and remove barriers to workforce participation for potential registrants looking to enter or re-enter the industry, without inappropriately diluting the prescribed 'work experience' settings
- improve the ability for potential tax and BAS agents to obtain relevant experience, especially in some business models in the profession which are predominately made up of sole traders or businesses that employ very few staff
- enhance industry sustainability overall.

The proposal would provide the TPB with the ability to still consider applications from individuals who do not strictly meet the minimum levels of relevant experience but still have a significant level of other experience that would adequately prepare the individual to become a registered tax practitioner. Under this proposal, rights of review in respect of a decision by the TPB to reject an application for registration or renewal of registration would be maintained.

Under the existing registration framework, 'work of another kind' may be accepted as 'relevant experience' provided that the applicant can demonstrate that the experience includes substantial involvement in one or more types of tax agent services or a particular area of taxation law (e.g. work as an academic teacher in taxation law, or work as a tax manager in a large corporation). Applicants



who apply with work experience ‘of another kind’ currently have their applications and experience assessed by the TPB on a case-by-case basis, and cases are considered on their merits. The proposal is to extend the ‘work of another kind’ category to allow the TPB to consider work experience such as international experience in meeting the ‘relevant experience’ criteria.

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. Subject to TPB Board consideration, Treasury proposes that the TPB reconsider its 15% cap, with consultation with stakeholders, to determine if a higher cap might be appropriate. This will allow an appropriate proportion of additional flexibility, but not undermine the importance of on-the-job relevant experience.

Option 2: Increasing the period in which an individual can obtain ‘relevant experience’

This proposal would introduce an additional, alternative time period for which an individual must gain the requisite amount of relevant experience under the TASR. For example, under the current tax agent registration pathway 203, an individual must demonstrate two years of full-time relevant experience in the preceding five years. This proposal would introduce a longer alternative time period of four years of full-time relevant experience in the preceding eight years, to obtain the relevant experience for each pathway. Under this proposal, an individual could qualify under this pathway with either two years of full-time experience in the preceding five years, OR four years of full-time experience in the preceding eight years. The alternative pathway would always require additional experience proportionate to the total required years to place greater weight and importance on more recent experience, given the fast evolving nature of the tax profession.

Implementing this proposal would:

- provide a simple and balanced alternative for the amount of ‘relevant experience’
- provide certainty to individuals around planned absences in the profession
- remove barriers to workforce participation for potential registrants looking to enter or re-enter the industry, without inappropriately diluting the prescribed ‘work experience’ settings

Consultation questions

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?
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?
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)?
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?
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?
11. Have any other regimes embedded similar flexibility in an effective manner? If so, how?
12. Should the definition of 'relevant experience' for registration purposes be broadened (or, contracted)? If so, why?

Primary qualifications settings

How does the regime currently operate?

To be eligible for individual registration, the Board must be satisfied that a tax practitioner holds an appropriate primary qualification. The precise primary qualification required in each instance is dependent upon the registration pathway relied upon (as set out earlier in Table 2).

Is reform needed?

In 2020, the TPB conducted a review of education standards for tax and BAS agents (the 2020 review). The 2020 review was undertaken in consultation with the TPB Consultative Forum and key stakeholders in the education sector. The principal consideration of the 2020 review was whether the tax practitioner primary qualification settings were struck at a balanced level and whether they continued to meet the object of the TASA (that is, to ensure that tax practitioner services are provided to the public in accordance with high professional and ethical standards).

Ultimately, the 2020 review concluded that the primary qualification settings at Part 1 and Part 2 of Schedule 2 of the TASA should remain unchanged and that there were no inherent deficiencies in the current accreditation framework.

Notwithstanding this, the 2020 review recommended that the TPB be equipped with the flexibility to accept micro-credentials in combination with qualifications for the purposes of the primary qualification requirements set out at Part 1 and Part 2 of Schedule 2 of the TASA.

What is the proposal?

Treasury considers that the regime's current primary qualification settings are broadly appropriate and adapted to serve the TASA's key object (that is, to protect consumers), without setting disproportionate and inappropriate barriers to industry entry for prospective registrants. These settings are crucial to ensuring that services provided by registered tax practitioners meet a high overall standard that is expected by the community. However, Treasury also acknowledges the increasing prevalence of specialised education and short-form credentials that supplement traditional educational qualifications (for instance, micro-credentials). Short-form credentials are comparable to a shortened version of a degree unit or course of study aimed at developing proficiency in a particular skill, and are developed with a particular industry in mind, ensuring the qualification meets industry specific needs.

Treasury's view is that while short-form credentials provide specific experience and skills, they do not sufficiently provide individuals with the core business, accounting and legal knowledge provided as part of the traditional qualifications that satisfy the regime's primary qualification requirement. Notwithstanding this, Treasury recognises that these short-form credentials may be valuable in supplementing existing knowledge, particularly in areas of knowledge or skill in which there is recognisable room for improvement (for instance, in the areas of practice management, trust accounting, business ethics and data literacy).

Consultation questions

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?
14. Do you agree that short-form credentials should not be included within the primary qualification settings? If not, how should they be included?
15. Are there any unintended consequences, benefits or issues that should be considered in granting the TPB additional flexibility to accept short-form credentials?

'Fit and proper person' in the TASA context

How does the regime currently operate?

For an individual tax practitioner to be eligible for registration, the TPB must be satisfied they are a 'fit and proper person'. Similarly, for companies and partnerships, the TPB must be satisfied that each partner or director (including those not registered with the TPB) qualifies as a fit and proper person. The criteria for determining whether a person is a 'fit and proper' is prescribed within the TASA at section 20-15, and takes into consideration the following factors:

- whether a person is of good fame, integrity and character
- whether any of the following events have occurred during the previous 5 years:
 - the individual has been convicted of a serious taxation offence
 - the individual has been convicted of an offence involving fraud or dishonesty
 - the individual has been penalised for being a promoter of a tax exploitation scheme

- the individual has been penalised for implementing a scheme that has been promoted on the basis of conformity with a product ruling in a way that is materially different from that described in the product ruling
- the individual has had the status of an undischarged bankrupt
- the individual has been sentenced to a term of imprisonment, or served a term of imprisonment in whole or in part.

Is reform needed?

While there are prescribed considerations in the TASA, there is an element of discretion applied by the TPB in assessing whether a person is a ‘fit and proper’ person. By balancing the range of considerations outlined in the TASA, the severity of any misconduct or offences committed and the overarching risk registering the tax practitioner may have to the public, a case-by-case determination is made regarding an individual’s fitness and propriety to be registered as a tax practitioner.

The 2019 TPB review highlighted gaps within the ‘fit and proper’ test set out in the TASA. It recommended the test set out in the TASA should be aligned with similar tests applied by other government regulators and that the guidance provided by the TPB in respect of the ‘fit and proper person’ test should incorporate similar criteria used by other government regulators.

Table 3: How does the TPB’s ‘fit and proper person’ test compare with other government regulators?

‘Fit and proper person test’ comparison with Government regulators		
Australian Securities and Investments Commission (ASIC)	Victorian Legal Admission Board (VLAB)	Australian Prudential Regulation Authority (APRA)
<ul style="list-style-type: none"> - ASIC must have regard, among other things, to ‘any other matter prescribed by the regulations’ or ‘any other matters it considers relevant’ when granting an Australian Financial Services licence (AFSL).¹⁰ - The same test applies under the Financial Services Credit Panel.¹¹ - The fit and proper test must have regard to whether a person has had an AFSL licence or registration suspended, cancelled, had a banning order or disqualification order, been 	<ul style="list-style-type: none"> - In considering whether a person is fit and proper, the regulatory authority may have regard to any matter relevant to the person’s suitability however the matter comes to their attention and must have regard to any matters specified in the Admission Rules.¹³ - This includes whether a person has been found guilty of any offences in Australia or a foreign country, including spent conviction. 	<ul style="list-style-type: none"> - APRA is able to determine the standards in relation to prudential matters.¹⁴ - APRA’s criteria includes that a person must not be disqualified under the applicable Prudential Act, has no conflict of interest in performing duties of a responsible person position or if there is a conflict of interest it must be managed to ensure there is no material risk in performance of duties.¹⁵

¹⁰ *Corporations Act 2001* (Cth), sections 913BB(2)(j) and 913BB(2)(k).

¹¹ *Corporations Act 2001* (Cth), sections 921U(k) and 921U(l).

¹³ *Legal Profession Uniform Law Application Act 2014* (Vic), Part 2.2, Division 2, section 17(2).

¹⁴ *Banking Act 1959* (Cth), sections 11AF(1) and 11AF(IA).

¹⁵ *Prudent Standard CPS 520 Fit and Proper* clause 30.

<p>banned from engaging in credit activity in any state/territory, not been insolvent, or convicted of an offence in the last 10 years. Any other matters deemed relevant given to ASIC and matters prescribed in the Regulations are also considered. In determining whether a person is fit and proper.¹²</p>		<p>- Fit and proper policy must contain adequate provisions to encourage a person to disclose information that may be relevant to a fit and proper assessment to APRA.¹⁶ No time limit applies to this.</p>
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By comparing the fit and proper requirements amongst government regulators, the 2019 TPB review highlighted notable ‘fit and proper person’ requirements used by other government regulators such as ASIC and APRA which include consideration for managing conflict of interest, bolstering the management of personal income tax obligations and obligations of close associates, disqualification from managing corporations and whether the individual was involved in the business of a terminated or suspended tax practitioner. Given that the ‘fit and proper person test’ is widely used by regulators and professional associations, the 2019 TPB review recommended aligning standards amongst regulators to promote a more consistent approach in the application of the fit and proper test used by government.

2019 TPB Review Recommendations¹⁷

The 2019 TPB review suggested that modifications to the ‘fit and proper test’ should include:

- The Treasury, with input from key stakeholders (in particular the TPB) amend the fit and proper person test in the Tax Agent Services Act 2009 to ensure greater consistency with the requirements of other Government regulators, such as ASIC and APRA.
- The current 5-year period in the Tax Agent Services Act 2009 in which the TPB must consider certain conduct that may contravene the fit and proper person test should be increased or removed entirely, with guidance from other regulators.
- Those applying for registration with the TPB, including renewal, must disclose any spent convictions.

¹² *National Consumer Credit Protection Act 2009 (Cth)*, sections 37a and 37B.

¹⁶ *Prudent Standard CPS 520 Fit and Proper*, clause 46.

¹⁷ The Australian Government the Treasury, *Independent Review of the Tax Practitioners Board Final Report*, 31 October 2019.

What is the proposal?

The proposal is to amend the existing legislative framework to incorporate **any or all** of the below amendments:

- Improve the conflict-of-interest declaration process and governance arrangements (**Amendment 1**)
- Include mandatory disclosure of spent convictions (**Amendment 2**)
- Revise the five-year mandatory consideration element (**Amendment 3**)

Amendment 1: Conflict of interest considerations

Whilst the TPB Code currently requires tax practitioners to have in place adequate arrangements for the management of conflicts of interest, the fit and proper test under the TPB registration framework does not consider conflicts of interest (unlike the 'fit and proper' tests administered by other government regulators such as ASIC and APRA). The 'fit and proper' tests administered by these other regulators require that APRA and ASIC must consider the existence of conflicts of interest in determining whether a person is 'fit and proper'.

The 2019 TPB review recommended that the TASA be amended to ensure greater consistency of 'fit and proper person' tests between regulators, exploring a mechanism for the TPB to be able to:

- incorporate matters of conflict of interest as a part of its considerations for the 'fit and proper person' test, including that all tax obligations are up to date
- bolster the management of personal and close associates' tax obligations
- assess whether a company or a partnership has appropriate governance arrangements in place
- assess any other matters the Board deems relevant.

Treasury considers that the TPB's fit and proper test should be modified to consider an applicant's conflict of interests in performing their role as a tax practitioner. It is proposed that the TPB's fit and proper person test could consider conflicts of interest in a similar manner to APRA's *Prudential Standard CPS 520* which requires a person to have no conflict of interest in performing their role or that if they have a conflict of interest, it is appropriately managed. Treasury also proposes that the fit and proper test under the TASA should be amended to consider conflicts of interest including whether personal tax obligations of a tax practitioner are up to date when assessing whether an applicant is a fit and proper person.

Amendment 2: Disclosure of spent convictions

Under the Commonwealth Spent Convictions Scheme a person is not required to disclose serious offences to regulators where they were not sentenced to imprisonment, or they were imprisoned for less than 30 months, and ten years has elapsed from the date of conviction (or five years for a person under 18 years of age). However, there are a number of exclusions to the scheme. If an exclusion applies, the person does not have the right to withhold information about a conviction that would otherwise be spent.

The operation of the scheme in the TPB registration context means that an individual with a spent conviction does not have to disclose this conviction to the TPB when applying for registration. The 2019 TPB review recommended that those applying for registration with the TPB, and those renewing existing registrations, be required to disclose any spent convictions to the TPB as part of the

registration process by creating an exclusion to the Commonwealth Spent Convictions Scheme for the purpose of TPB registration.

The 2019 TPB review recommends that disclosure of spent convictions be required during TPB registration applications to have appropriate regard to the level of trust required to provide advice in the tax profession. That is, in determining whether an applicant is fit and proper, the TPB should have the ability to adequately scrutinise the applicant, including any spent convictions.

This would also align the TPB's 'fit and proper' test with the legal profession, in which the relevant State or Territory Legal Services Board or Law Society must take into consideration whether a person has been found guilty of a spent conviction in Australia or overseas. Similarly, the *Superannuation Industry (Supervision) Act 1993* (Cth) affirms that spent convictions must be disclosed when determining the suitability of an entity to be a trustee, custodian or investment manager of a superannuation entity. Similarly, ASIC must have regard to any matters prescribed in the regulations¹⁸ or any other matter ASIC considers relevant¹⁹ without conflicting with Part VIIC of the *Crimes Act 1914* (Cth) regarding the disclosure of spent convictions in certain circumstances.

Various government regulators must have regard to spent disclosures, whereas the under the TPB's current framework, the TPB must only have regard to serious taxation offences or an offence involving fraud or dishonesty. Given the level of trust required to provide advice in the tax profession, Treasury seeks views on the merits of including a requirement that applicants disclose spent convictions when applying for TPB registration, and that the TPB must consider these convictions when determining if an applicant meets the 'fit and proper' test.

Amendment 3: Revising the five-year mandatory consideration element

Section 20-15 of the TASA sets out the criteria which the TPB must consider when determining whether an individual is a fit and proper person. This includes consideration of whether the individual is of good fame, integrity and character (subsection 20-15(a)) and certain conduct if it occurred within the previous 5 years, detailed in subsection 20-15(b).

In its analysis of the fit and proper test within the TASA, the 2019 TPB Review recommended to either increase, or remove entirely, the 5-year timeframe. Treasury, however, is of the opinion that this law change is not necessary. While subsection 20-15(b) of the TASA explicitly requires the TPB to consider certain events if they occurred within the previous 5 years, it does not limit the TPB in considering these events to the 5 years. The TPB still has an obligation under subsection 20-15(a) to consider these or any other events that may have occurred beyond the previous 5 years, where those events are relevant in assessing whether an applicant is of good fame, integrity and character.

¹⁸ *Corporations Act 2001* (Cth), section 913BB(2)(j).

¹⁹ *Corporations Act 2001* (Cth), section 913BB(2)(k).

Consultation questions

16. Is the fit and proper test currently fit for purpose? If not, what needs to be included in this test?
17. Should the matter of conflicts of interest be incorporated into the fit and proper person requirement? (Option 1)
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?
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?
20. Should disclosure of spent convictions in applications for registration be mandatory? (Option 2)
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?
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?

Other proposals for consideration

Treasury is seeking stakeholder views on whether gaps exist elsewhere in the registration regime, and if so, what solutions could help strengthen and modernise the registration framework to ensure it is fit for purpose. This may include feedback on whether existing definitions within the TASA are adequate. A list of possible proposals, including some identified in the 2019 TPB review, is listed below for consideration.

- Addition to the Code to require individual tax practitioners to maintain contingency and succession plans to provide for continuity of services to clients in the event of significant or disruptive events (e.g. a sole practitioner is incapacitated, or a tax practitioner is subject to a cyber-attack).
- Noting the findings of the 2020 TPB review of education standards for tax and BAS agents, and recommendations from the 2019 TPB review, amending the TASA to allow the TPB to consider other qualifications outside the traditional tax practitioner course of study.
- Amending the TASA to appropriately capture or regulate existing and emerging tax intermediaries, including service providers such as digital software providers, tax advisers of cryptocurrency disposal, and conveyancers.
- Amending the TASA to change the definition of tax agent services, consequently changing who is required to register with the TPB. Under the current framework, individuals employed as tax managers or tax advisers within an organisation are not required to register with the TPB even where those employees are providing tax agent services to their employer. This also extends to employees from external tax firms who may be seconded within a client to manage a client's tax

affairs from within the client organisation. Consequently, these employees or secondees are not subject to TASA oversight. Options could include requiring certain classes of in-house tax advisers to be registered tax practitioners or including secondment services within the scope of the TASA, to ensure that there is consistency of regulation between in-house and external advisers.

- Legal practitioners who provide legal services, which includes tax advice, are regulated in their respective State and Territory and are generally exempt from registration with the TPB. It is only where that legal service includes preparing, or lodging, a return (or a statement in the nature of a return, such as an income tax return or a business activity statement), that the legal practitioner is required to register with the TPB. The 2019 TPB Review considered it was appropriate that the general exemption from TPB registration remain, noting the regulatory overlaps that would otherwise exist. Treasury seeks views on the appropriateness of this exemption continuing and whether legal practitioners should be required to register with the TPB to provide tax agent services for a fee, even if it does not include the preparation or lodgement of a return or a statement in the nature of a return.

Consultation questions

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?
24. Should the TASA be amended to give the TPB greater flexibility to accept other qualifications outside the traditional tax practitioner course of study?
25. Should the TASA be amended to capture existing and emerging tax intermediaries?
26. Should the TASA be amended to capture certain 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?
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?

Summary of consultation questions

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?
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?

Reviewing the professional association accreditation and registration pathways

3. Is the current RPA framework (initial eligibility, ongoing eligibility and compliance framework) appropriate?
4. If not, what should that framework look like? For example, replaced with an enhanced PDB regime?
5. How should tax practitioners who are currently registered under the voting member pathway be treated if RPA pathway was to be removed?

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?
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?
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)?
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?
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?
11. Have any other regimes embedded similar flexibility in an effective manner? If so, how?
12. Should the definition of 'relevant experience' for registration purposes be broadened (or, contracted)? If so, why?

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

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

‘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?
17. Should the matter of conflicts of interest be incorporated into the fit and proper person requirement? (Option 1)
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?
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?
20. Should disclosure of spent convictions in applications for registration be mandatory? (Option 2)
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?
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?

Other proposals for consideration

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?
24. Should the TASA be amended to give the TPB greater flexibility to accept other qualifications outside the traditional tax practitioner course of study?
25. Should the TASA be amended to capture existing and emerging tax intermediaries?
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?
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?