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Director, Tax Agent Regulation Unit
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By Email: pwcresponse@treasury.gov.au

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

As one of the largest professional accounting bodies in the world, CPA Australia represents the diverse interests of more than 173,000 members working in over 100 jurisdictions and regions around the world. CPA Australia has over 20,000 members in public practice in Australia, serving our communities as trusted advisers who provide business advisory, tax, financial planning, reporting, auditing/assurance and insolvency-related services. Our members primarily support the small and medium sized market, and their firm structures and regulatory requirements are generally similar to those of the larger firms.

CPA Australia welcomes targeted and effective enhancements to the regulation of the tax system and tax professionals. However, we are concerned that proposals put forward in Treasury's *Review of eligibility requirements for registration with the Tax Practitioners Board – Consultation paper* (the Consultation paper) will create significant barriers to entry into the tax profession that disproportionately impact small and medium practitioners. Additionally, we are concerned that proposed changes to the *Tax Agent Services Act 2009* (TASA), in particular proposals concerning registration as a tax practitioner, duplicate several extant and newly introduced TASA Code of Professional Conduct (Code of Professional Conduct) obligations, increasing the likelihood of inconsistency, confusion, and error. We are also concerned that there has been insufficient consideration given to the way changes proposed by this consultation would interact with the recently introduced breach reporting obligations included in TASA.

CPA Australia does not support the proposal to remove the tax agent registration pathway for voting members of Recognised Professional Associations (RPA) pursuant to Reg. 206 of the *Tax Agents Services Regulations 2022* (TASR) (Reg. 206). In particular, we disagree with the assertions made in the Consultation paper in relation to TPB independence and regulatory capture, and do not accept this as a premise to remove the RPA pathway.

A substantial number of registered tax agents currently utilise the RPA registration pathway and this has increased in recent years. To date, no evidence has been presented to CPA Australia that there is a particular concern or concentrated risk with tax practitioners registered under Reg. 206. To remove this pathway may impede migrating tax professionals from registration as a tax agent and disregards the high education standards and the level of scrutiny and defined standards required by RPAs such as CPA Australia from their current and prospective members, beyond any statutory requirements.

Given the complex nature of the issues raised by the paper, we request that consultation with CPA Australia and the profession continue beyond this submission.

Attachment A sets out CPA Australia's response to the consultation questions. If you have any queries please contact Neville Birthisel, Advisor - Regulation and Standards, at neville.birthisel@cpaaustralia.com.au.

Yours sincerely

Ram Subramanian FCPA
Interim Head of Policy and Advocacy

Attachment A: 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?***

   We submit that codification of governance requirements will not add value to or enhance the checks and balances already in place to regulate this issue.

   It is important that the principles-based approach contained within the current Code of Professional Conduct be retained to enable the TPB flexibility to administer the TASA in a way that best meets the facts and circumstances of each case.

   As noted in the consultation paper, "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".

   Accounting Professional & Ethical Standard APES 320 *Quality Management for Firms that provide Non-Assurance Services* (APES 320) requires firms that provide non-assurance service to establish and maintain policies and procedures in respect of the firm's quality management processes. The Standard specifies that the elements of quality management are governance and leadership, professional standards, acceptance and continuance of client relationships and specific engagements, resources, engagement performance, information and communication, and monitoring and remediation. APES 320 applies to members of relevant professional bodies (and their membership) that have adopted it.

   The recently released Tax Agent Services (Code of Professional Conduct) Determination 2024 requires for tax practitioners to establish and maintain a quality management system (section 40). For members of CPA Australia, this obligation should be satisfied where they have a system of quality management in accordance with APES 320 or Auditing Standard ASQM 1 (where required). Accordingly, there is already a significant risk of duplication of compliance obligations, additional obligations could further increase the likelihood of inconsistency, confusion, and error.

   Therefore, it would be expected that the codification of governance requirements in registration criteria for companies and partnerships could largely impact company and partnership practitioners at the small or micro end of the market if the codified requirement goes beyond the requirements of APES 320. This would remove the TPB's discretion to administer these practitioners fairly and appropriately and place an undue burden on entities that are not the intended targets of these changes.

2. ***Is the current policy setting requiring entities to only demonstrate that they have a 'sufficient number' of individually registered tax practitioners appropriate?***

   Yes, for the reasons stated below, the current policy setting requiring entities to only demonstrate that they have a 'sufficient number' of individually registered tax practitioners is appropriate.

   Should the number or ratio of individually registered tax practitioners be prescribed, or the number expanded to include all partners or directors within the entity who provide tax services?

   We do not support this proposal. It is important that the principles-based approach contained within the current Professional Code of Conduct be retained to enable the TPB flexibility to administer the TASA in a way that best meets the facts and circumstances of each case.

   Introducing a prescriptive element into the requirement does not consider the range of firm size and structures and the variety of professional accounting services offered by each firm. Nor does it take into account the quality and experience of the individually registered tax practitioners, which may lead to company or partnership practitioners failing to meet this requirement when in reality the arrangements in place in a given entity may be more than sufficient to ensure compliance with their obligations as a registered tax practitioner.

Conversely, and of far more concern, a tick-a-box approach with a prescriptive number or ratio many enable a company or partnership practitioner to quantitively meet this requirement when, in reality, the skills and experience of the individually registered tax practitioners may be insufficient to ensure compliance with their obligations as a registered tax practitioner.

If the perceived mischief is around large multi-disciplinary firms, then alternative arrangements should be introduced for that cohort of practitioners. Making the requirement prescriptive rather than principles-based and applying it to the entire tax practitioner community will negatively impact smaller firms who do not have the scale to maintain a prescribed ratio.

Reviewing the professional association accreditation and registration pathways

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

We disagree with the assertions made in the Consultation paper in relation to TPB independence and regulatory capture, and do not accept this as a premise to remove the RPA pathway. As key stakeholders in the tax and superannuation systems, CPA Australia engages in a transparent and consultative manner with the TPB to provide insights and experiences from the community and practitioners, as well as to support education and policy implementation. We have mutual interest in ensuring that Australian consumers receive high-quality tax services, and both undertake review and compliance activities to uphold standards in the profession.

It is also incorrect to suggest that the RPA pathway has lower education requirements, as significant effort and investment has been made to ensure that members utilising the RPA pathway are of the same or higher competency when compared with alternative pathways. For professional associations with a substantial educational component to their membership requirements, the current RPA framework is appropriate. The difference between the Reg. 206 pathway and the other tax agent registration pathways is the primary qualification and Board Approved course requirements, which are substituted for substantially longer practical experience requirements. RPAs inherently require comparable education standards from their members and prospective members to achieve voting membership status. This higher bar for RPA educational requirements that makes the Reg. 206 a suitable alternative pathway, is not given due consideration in the Consultation Paper.

CPA Australia's voting members hold the CPA or FCPA designation. Accordingly, no member of CPA Australia is eligible to become a registered tax agent or BAS agent without meeting the substantial education requirements in place to become a CPA. These requirements include holding a degree and the successful completion of the CPA Program, an accredited equivalent course of study, or being granted exemptions for completing another program or being able to demonstrate proficiency in skills or capabilities that we deem meet the requirements. Eligibility to enter into the CPA Program also has substantial education requirements.

The eligibility requirements for an association to be an RPA include education requirements consistent with the primary qualification requirement of other pathways (Reg. 210(a) and (b), TASR, Schedule 1, Part 2). However, the ongoing eligibility and compliance requirements (annual declarations) do not require reporting on any changes or statistics in this requirement. There is scope for regular reviews and reporting on the education requirements and programs for such professional associations which can demonstrate the education requirements in pathways other than Reg. 206 are inherently met as part of voting membership.

All members of CPA Australia are bound by CPA Australia's Constitution and By-laws and the Accounting Professional and Ethical Standards (APES), set/adopted by the Accounting Professional and Ethical Standards Board (APESB), in addition to all other regulations and standards that underpin the regulated services in the broader accounting profession. Further, to maintain standards in the profession, CPA Australia has an ongoing practice review program 'CPA Australia Best Practice Program', and a complaints and disciplinary process to address reported instances of member misconduct.

The TPB has advised that currently:

- 18% or 2,400 individual BAS agents rely on being a voting member of a RBAA or RTAA to be registered;
- 21% or 6,600 individual tax agents rely on being a voting member of a RTAA to be registered; and
- 40% or 5,200 BAS agents and 45% or 14,200 indicate that they are member of an RPA.

The substantial number of registrants utilising the RPA pathway demonstrates the strong connection between holders of professional designations and the tax profession. There are currently only 14 RPAs and, to date, no evidence has been presented to CPA Australia that there is a particular concern or concentrated risk with tax practitioners registered under Reg 206.

As repeatedly evidenced in our responses to recent government inquiries and Treasury consultations, CPA Australia's commitment to and investment in upholding the professional standards provides assurance to regulators and the community that our members are subject to additional levels of scrutiny and defined standards beyond statutory requirements. Therefore, tax practitioners registered under Reg 206 are more likely to be compliant due to their ongoing professional obligations, and the professional training required to obtain the designation lowers the risk of poor consumer outcomes.

We therefore maintain that the RPA pathway is an efficient and trusted pathway to tax practitioner registration and should be maintained. If there are concerns about the behaviours of members of an RPA or the compliance of an RPA with the Regulations, then this should be resolved through discussion between the TPB and the RPA, not by removing the pathway altogether. Any removal or replacement of the RPA pathway must ensure that those currently registered under Reg 206 retain their registration through grandfathering clauses.

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

The *Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023* now enables the disclosure of member information between Prescribed Disciplinary Bodies (PDBs) and the TPB and/or ATO. We are awaiting Treasury consultation on the application process and requirements as signalled in the Treasury factsheet, Disclosure of information to prescribed disciplinary bodies.

A comparison (set out below) of the existing RPA and proposed PDB regime suggests that the existing RPA requirements are more comprehensive with the main difference for proposed PDBs being the requirement to share and securely manage certain member information with the TPB and ATO.

Proposed PDBs	**Existing RPAs (Schedule 1, TASR)**
A copy of the association's code of conduct or professional standards.	s103 & 203
Information regarding the association's disciplinary process for breaches of the code of conduct, including its scope and available sanctions.	s104 & 204 s105 & 205
Information regarding how the association will ensure the appropriate treatment of any information disclosed by the ATO or the TPB, including the management of privacy concerns.	*No equivalent*
Commitment to providing relevant information to the ATO or the TPB in relation to circumstances where relevant practitioners may have been involved in significant breaches of Commonwealth laws or other ethics standards.	*No equivalent*
No equivalent	s101 & 201 Non-profit requirement s102 & 202 Corporate governance and operational procedures requirements s106 & 206 Debt payment requirement s107 & 207 Management requirement s109 & 209 Membership size requirements s110 & 210 Education requirement

The RPA registration pathway could be consolidated with the PDB regime by:

- replacing professional association recognition with disciplinary body recognition for registration pathway purposes
- transferring existing governance, size and education requirements into the PDB regime, and
- adding the new information sharing obligations.

The Regulations should also provide existing RPAs and their members with a transitional period.

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

We do not support the proposal to remove the RPA pathway (Reg. 206) for the reasons stated below and in our responses to Q3 and Q4 above. However, as noted in our response to Q4 above, we would be amenable to considering an alternative pathway for PDBs in place of the current RPA pathway.

Were the professional association accreditation and registration pathway to be removed, tax practitioners who are currently registered under the RPA pathway should be wholly grandfathered into the registration regime, including the arrangements for pre-1988 tax agents in subsection 20-5(4) of the TASA.

CPA Australia is concerned that the removal of the current RPA pathway may impede migrating accountants who have studied overseas and bring with them to Australia vital international tax skills and experience from participating in the tax practitioner community. CPA Australia has a variety of pathways to voting membership including the recognition of membership of overseas professional accounting bodies with comparable stringent education requirements. CPA Australia is concerned the removal of the RPA pathway would preclude such members from the opportunity to become registered tax professionals in Australia because their circumstances may not fit within any other pathway. As set out at 3. above, the Reg. 206 pathway inherently requires education standards comparable to those of the other pathways as part of achieving voting membership.

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

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

We submit that the current 'relevant experience' settings are set at an appropriate level for both tax agents and BAS agents.

We note the proposal at Question 24 to allow the TPB greater flexibility to accept other qualifications outside the traditional tax practitioner course of study. Should the TPB be given that flexibility it is vital that the non-traditional courses of study be thoroughly assessed to determine the relevant experience appropriate to each.

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?***

CPA Australia welcomes proposals to provide the TPB with additional flexibility in the registration regime. Flexibility within the TPB decision making process is the key to achieving balanced and equitable outcomes. Therefore, we submit that:

- The TPB should have the flexibility to consider 'relevant experience' on a case-by-case basis;
- Option 2 should be merged with Option 1 to further enhance the TPB's flexibility when considering exceptions to the relevant experience criteria.

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)?***

We welcome the provision of additional flexibility for the TPB provided that the TPB is appropriately resourced to be able to consider the 'relevant experience' criteria on a case-by-case basis.

The TPB registration processes should not only cater for practitioners who are traditional tax intermediaries but also highly specialist subject matter experts. There should be built in flexibility for the TPB to exercise its discretion to treat not only 'new tax intermediaries' as having sufficient experience, but rather existing specialists (e.g. transfer pricing, US tax law). If a practitioner's field of technical specialisation is narrow, then logically, the relevant experience required to be able to develop a competent knowledge base in that area may be of shorter duration than for traditional tax intermediaries who advise across the full breadth of tax services.

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

   We submit that the current 15% cap on simulated work experience is appropriate. A higher cap puts at risk the importance of on-the-job relevant experience. A reduction in on-the-job experience cannot be justified unless what it is replaced with is of equal or greater value. Without simulated programs being regulated or accredited, this cannot be determined.

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?***

    As above, we believe that Option 1 and Option 2 should be merged to give the TPB as much flexibility as possible in making their determinations.

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

    No comment.

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

    No, the current definition is sufficient, particularly as it gives the TPB discretion to approve 'another kind' of relevant experience.

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?***

    CPA Australia agrees that the current primary qualification settings are broadly appropriate and adapted to serve the TASA's key object without setting disproportionate and inappropriate barriers to industry entry for prospective registrants.

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

    While individual short-form (micro) credentials "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", contemporary approaches to tertiary qualification are leading to a more diverse range of education products that ultimately result in the same learning outcomes. For example, university subjects are being designed as stackable micro-credentials which combine over time to create a tertiary qualification.

    Short-form credentials are governed by the National Micro-Credential Framework and have been adopted by a wide range of institutions including universities and CPA Australia. Depending on the provider, short-form credentials will be designed according to the Australian Qualifications Framework (AQF) and compliant with any other requirements such as the Tertiary Education Quality and Standards Agency and AACSB.

    Given the government and education sector's investment in short-form credentials to improve learning outcomes in Australia, we recommend that the TPB is provided with the flexibility to approve new forms of verified learning that leverages existing statutory and industry quality frameworks to maintain quality.

    Examples include stacked short-form credentials set at AQF7 and above, that are equivalent to the current requirements for Board-approved course. Short-form credentials may play an important role as an advanced component of the qualification

and experience requirements for tax and BAS agents and may be suitable to provide additional pathways for registration. For example, a diploma qualification or higher (203 pathway), with supplemental short-form credentials may reduce the relevant experience requirement.

The providers of short-form credentials, and the credentials themselves, should be subject to the current requirements for Board-approved courses to maintain education standards and the quality of tax practitioners.

Recognition of short-form credentials should be at the discretion of the TPB.

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

With a continuously changing education landscape, a principles or outcomes-based approach to course and subject approval by the Board will enable greater ability to adopt innovations. Providing the TPB with additional flexibility to recognise new forms of learning will improve access to the profession by enabling more attractive learning offers to attract students and encourage adult learners who demand more flexible study options. This is particularly important given the current shortage of tax practitioners and challenges with the advisor pipeline in Australia.

As the diversity of learning products grows, we expect the TPB will require increased capability and capacity to evaluate applications, supported by investment in enabling technology. CPA Australia constantly reviews and updates our approach to membership assessment to recognise contemporary education and learning approaches. We are available to share our experience and to consult on a potential framework that recognises short-form credentials while maintaining current standards.

'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?

Yes, the fit and proper test is currently fit for purpose.

Whilst not specifically called out in section 20-15 of the TASA, subsection 20-15(a) does require the individual to be of good integrity, which inherently includes the appropriate management of conflicts of interest.

Additionally, subsection 30-10(5) of the TASA requires that "you must have in place adequate arrangements for the management of conflicts of interest that may arise in relation to the activities that you undertake in the capacity of a registered tax agent or BAS agent".

Including "conflict of interest" at section 20-15 then creates a duplication in the TASA which may lead to inconsistency and confusion.

It should be noted section 210 of APES 110 *Code of Ethics for Professional Accountants* (APES 110) sets out specific requirements regarding managing conflicts of interest. APES 110 requires the members of all professional bodies that have adopted the Standard to take reasonable care to identify circumstances that could pose a conflict of interest and the member must evaluate the significance of any threat and apply safeguards where necessary to eliminate or reduce the threat to an acceptable level.

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

As noted in Question 16, the requirement to adequately manage conflicts of interest is contained within the Code of Professional Conduct at subsection 30-10(5). As such, this requirement applies from the point of registration of the practitioner and continues until that registration ceases. Whereas the criteria for determining whether an individual is a fit and proper person is a requirement for registration purposes at section 20-15.

To incorporate the matter of conflicts of interest into the fit and proper person requirement would require:

a. Moving the matter from subsection 30-10(5) to subdivision 20-A, thereby diminishing the Code of Professional Conduct and the criteria for maintaining registration; or

b. Duplicating subsection 30-10(5) at subdivision 20-A, thereby creating an opportunity for inconsistency, misunderstanding and confusion.

We submit that the inclusion of the requirement to adequately manage of conflicts of interest within the Code of Professional Conduct is appropriate to ensure that tax agent services are provided to the public in accordance with appropriate professional and ethical standards.

Should any enhancements to the fit and proper person requirement be considered necessary this should be done by way of amendments to the TPB's Explanatory Paper *TPB(EP) 02/2010 Fit and proper person*.

18. What considerations or requirements should be included in the TPB's conflict of interest test?

The considerations and requirements for the TPB's conflict of interest test are appropriately set out in *TPB(I) 19/2014 Code of Professional Conduct – Managing conflicts of interest*.

This is reinforced by section 210 of APES 110.

Are APRA's and ASIC's conflict of interest considerations appropriate for the TPB to model their conflict-of-interest requirements?

APRA's and ASIC's conflict of interest considerations are generally not appropriate for the TPB to model as they are specific to the market participants those regulators are looking to regulate and, at least in relation to ASIC's regulatory guides, may relate to very specific transaction types (e.g. *RG 248 Litigation schemes and proof of debt schemes: Managing conflicts of interest*). Therefore, any adoption of other agencies' conflict of interest considerations would need to be carefully considered to ensure they are appropriate and critical to the integrity of the tax practitioner profession.

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?

CPA Australia supports the retention and application of the requirement of a tax or BAS agent to comply with the taxation laws in the conduct of their personal affairs (s. 30-10 TASA). This requirement is one of the 'honesty and integrity' ongoing requirements in the Code of Professional Conduct. A complementary requirement as part of the 'fit and proper' requirement upon application for registration would not create any confusion or undue obligation. However, CPA Australia does not support the inclusion of 'associated entities' as a relevant statutory consideration in this requirement. It is inappropriate to extend this obligation to include the actions of individuals and entities over whom the tax or BAS agent has limited to no control.

The consultation paper has not defined 'associated entities', however, the definition of 'associate entities' in the *Income Tax Assessment Act 1997* is broad and can include entities over which the registrant has no effective control. For example, the spouse of a registrant or a partner in the same accounting practice has outstanding returns. Not only may the registrant be unaware of the outstanding obligations due to privacy, but they may also have no authority or influence to direct their associate to lodge. Their outstanding obligations do not necessarily impact the agent's ability to provide professional tax practitioner services and should not prevent registration.

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

CPA Australia does not support this proposal. The purpose of removing a person's conviction from their police record is to allow people who have 'paid their debt' and are working to turn their life around are not punished in perpetuity. A police record indicating even a minor criminal conviction can preclude people try to legitimately improve their opportunities from access to study and career opportunities.

The effect of 'spent convictions' is that unless an exemption or exception applies, historical convictions determined to be 'spent' do not appear on a police check and they are not required to be disclosed, nor may they be enquired about (unless another law permits). Minor convictions (other than those to which an exemption applies) which have no bearing on a person's ability to provide tax agent services, within the scope of the TASA, do not warrant an exception from the purpose of spent conviction regimes.

We recommend the TPB informs the applicant that a police check will be undertaken and that this will assist in informing whether the individual is of good fame, integrity and character, because only convictions which fall within the exemption provisions will be included.

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?***

    We support efforts to ensure bad actors are kept out of the profession, however we are concerned that this proposal does not facilitate changed behaviours, nor the impact of education.

    A period longer or shorter than the five-years may be appropriate in some cases, but not in others. Caution should be taken to avoid imposing a permanent professional life sentence with no second chances. A comparison against regimes in other jurisdictions or under other legislation should be undertaken.

    Our preference is to have permanent banning orders available to the TPB rather than placing barriers to entry at the registration process.

    While there may be scope to increase the time period there should not be an unlimited timeframe. The legislation should not be determinate as people should be able to show they can and have changed their ways.

    Further consideration should be given to the proposal and its implications, especially for bankruptcy or insolvency.

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?***

    Guidance on the TPB website and contained within *TPB(EP) 02/2010 Fit and proper person* is appropriately descriptive and detailed. We submit that introducing requirements used by other Government regulators will not add to the robustness of this requirement or enhance the guidance for tax practitioners. Requirements used by other Government regulators are specific to the market participants those regulators are looking to regulate. The requirements in *TPB(EP) 02/2010 Fit and proper person* are appropriate and tailored for the tax practitioner community.

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?***

    We do not support this proposal. Contingency and succession planning is for the practitioner/firm to determine. It is not appropriate to codify such requirements which are business decisions more suitably embedded into good governance and business practices. Such plans need to be bespoke to suit the practitioner's own practice. Education of practitioners is a more appropriate mode to communicate the need for such plans, and the need to tailor plans to meet the requirements of the myriad of firm sizes, structures and services offered. CPA Australia already supports our membership with a range of education products in this space.

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

    CPA Australia supports the amendment of the TASA to give the TPB greater flexibility to accept other qualifications outside the traditional practitioner course of study, but we caution that the providers of such other qualifications and the courses themselves, would need to be subject to rigorous TPB review so as not to erode the standard of qualifications required.

    Additionally, the introduction of other qualifications would necessitate consideration of the need for completion of the TPB approved courses in Australian taxation law, commercial law or basic accounting principles together with a review of the appropriate amount of relevant experience.

    It is unlikely that other qualifications will be sufficient to obtain full, or 'unconditional', registration as a tax practitioner (e.g., pathway 201), therefore the appropriate combination of qualifications, TPB approved courses, and relevant experience would need to be considered.

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

CPA Australia welcomes the proposal to bring existing and emerging tax intermediaries within the scope of the TASA.

However, in doing so the TPB registration processes should not only cater for practitioners who are traditional tax intermediaries, but also highly specialist subject matter experts. There should be built-in flexibility for the TPB to exercise its discretion when considering the registration eligibility of both 'new tax intermediaries' and existing specialists (e.g., transfer pricing, US tax law).

Regulations for this purpose should be developed through consultation and should be sufficiently flexible to take account of the 21st century landscape of the tax profession.

Additionally, the use of limited licences or conditional registration is a practical option for new types of tax intermediaries. Alternatively, a series of specialisation registrations for unique areas of tax and BAS agent services is another option.

The exclusion of new tax intermediaries for the TASA is not in the interests of consumers and does not achieve competitive neutrality.

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?

For the following reasons, CPA Australia rejects the proposition that the TASA be amended to capture in-house tax advisers such as employees or secondees.

In-house advisers

The purpose of the TASA is consumer protection. A business undertakes their process to hire someone and therefore accepts their qualifications and assumes a level of risk.

There is no need to ensure 'consistency of regulation' because the engagement of in-house tax managers is not comparable to tax practitioners providing tax agent services to the public for a fee.

Accordingly, in-house tax managers should not be caught within the TASA regime because they are providing only internal advice. There are generally no consumer protection issues involved.

Secondees

It is considered that requiring a secondee to have a separate registration is an overreach. The secondee likely comes from a firm that is registered and meets the 'sufficient number test'. That firm is still, in effect, providing a service. Registration of the secondee, in addition to the firm from which they are seconded, adds no greater surety to the provision of services but would add significant administrative burden to the process which may ultimately make the secondment overly prohibitive.

If there is a concern that advisers may engage in 'riskier' behaviour via secondment arrangements, such concerns would be better addressed through other avenues such as the promoter penalty regime.

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?

CPA Australia welcomes the proposal to bring legal practitioners who provide tax agent services into the tax practitioner regime.

The differences in the regulatory environment for lawyers providing tax-related advice is not lost on our members., There are concerns about the lack of a level playing field.

An assessment of the regulation of the legal protection and the protections afforded to consumers who receive bad or incorrect legal advice (as it relates to tax) should be undertaken. The regulatory regime should ensure that there is consistent oversight of all participants in the tax profession.

We are not aware of a tax issue that has gone to the legal profession boards in their respective States or Territories, and we are not aware of instances where the ATO has shared information with legal profession boards.

Members have put to us that lawyers may be just as, if not more, likely to be giving complex or possibly aggressive tax advice.

While the policy presumption is that lawyers are already regulated and shouldn't be over-regulated, we question how effective this is in practice.

We also hold concerns that if a registered tax agent and a lawyer work on the same matter which may give rise to a contravention of the TASA, there may be asymmetry between the respective penalties imposed on the lawyer and the agent.