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Treasury  
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Wednesday 7 August 2024

Dear Sir/Madam

**Response to PwC – Review of the eligibility requirements for tax practitioner registration with the Tax Practitioners Board**

The Financial Advice Association of Australia<sup>1</sup> (FAAA) welcomes the opportunity to provide feedback to Treasury on its review of the eligibility requirements for tax practitioner registration with the Tax Practitioners Board.

The FAAA is a professional association representing financial advisers and has been accredited by the Tax Practitioners Board as a recognised tax agent association since 2011. While the majority of financial advisers are registered as Qualified Tax Relevant Providers (QTRP) with ASIC, we continue to have voting members who are registered tax agents. The feedback provided in this submission predominantly relates to our members who provide personal financial advice that may contain incidental tax advice.

For our members who hold TPB registration, the proposed changes to the registration may present significant challenges. As registration is mandatory to practice, the short consultation period for these proposals is concerning. We would be supportive of further workshop style consultation meetings to ensure an informed and sensible outcome is achieved.

**Professional association pathway**

The consultation voices concern regarding “*perceived conflicts [arising] 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.*”

We refute this observation and do not accept that there is a fundamental problem with the conflicts of interest that are created by the recognition of professional associations. The FAAA’s professional conduct and complaints function is ‘ring-fenced’ from other association roles. Established under the FAAA conduct and integrity regulations, our disciplinary process was put in place as a formal mechanism to investigate complaints and other reports of misconduct against FAAA members. Decisions about whether an FAAA

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<sup>1</sup> The Financial Advice Association of Australia (FAAA) is the largest association representing the financial advice profession in Australia, with over 10,000 members. It was formed in 2023 following the merger of the two leading financial planning/advice bodies in Australia – the Financial Planning Association (FPA) and the Association of Financial Advisers (AFA). With this merger, a united professional association that advocates for the interests of financial advisers and their clients across the country was created.

member has breached the FAAA Code and whether they should be sanctioned, are made by an independent Conduct Review Commission (CRC).

The purpose of professional associations is to act in the public interest, uphold the reputation of the profession, and represent the interests of its members. Acting against misconduct is central to achieving this purpose. In contrast to the assertions made in the consultation paper, professional associations embraced their disciplinary responsibilities of upholding professional standards. It is not in the interest of professional associations, their members, the profession as a whole, or the public to fail to uphold the professional standards they set.

Recognition of professional associations has a range of benefits for the TASA regime that may be lost as a result of this change.

The consultation paper includes the following reference:

*“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 FAAA has established an MOU with the TPB that has resulted in referrals and information sharing between the organisations. The point above is largely incidental to the conduct of an appropriate disciplinary regime, and if this was a major stumbling block, then it could be addressed through changes to the legislation that enacts the breach reporting obligations.

#### FAAA recommends:

- TPB’s recognised professional association registration pathway be retained.
- Should the recognised professional association registration pathway be removed, then it is appropriate to include grandfathering arrangements for those currently registered under this pathway.

#### **‘Relevant experience’ flexibility**

FAAA supports the need to ensure TPB has greater flexibility in considering an individual’s circumstances when determining whether the ‘relevant experience’ requirement has been met.

There are a broad range of valid reasons an individual may have interrupted periods of work experience. The experience of FAAA members transitioning to the new education standard in the Corporations Act for providing financial advice offers insights into circumstances that have significant impacts on a person’s work experience that should be considered:

- Maternity/paternity leave, particularly when more than one leave period has been taken in close proximity

- Carers leave to look after a dependent, relative or friend
- Illness, particularly involving a long period of illness or medical treatment
- Mental health wellbeing
- Study leave while undertaking relevant full-time study.

Option 1 would respond to these individual circumstances and achieve the policy objective of the proposed change. However, consideration should be given to an appropriate application and assessment process to ensure this option can be implemented in a cost-effective manner that delivers a timely response for applicants. Some level of predictability of the outcome would be beneficial. The TPB regulates individual practitioners and has established systems for individual assessment and registration that may facilitate the timely and affordable assessments for special consideration.

While increasing the period in which an individual can obtain 'relevant experience' (as per proposed option 2) may extend the duration of time to gain the relevant experience, it is questionable whether this alone would deliver the increased flexibility for practitioners intended by this proposal – ie 4 years experience out of the last 8 years may not necessarily provide greater flexibility than 2 years experience out of the last 5 years.

The FAAA suggests option 1 would be more responsive to the circumstances commonly impacting continuity of work experience. However, consideration could be given to a combination of both option 1 and 2.

### **'Fit and proper person' test**

The FAAA supports a fit and proper person test that facilitates an assessment of an individual's character and their capacity to act professionally and lawfully as a tax practitioner.

While we support in principle "aligning standards amongst regulators to promote a more consistent approach in the application of the 'fit and proper person test' used by government" as suggested in the consultation paper, given the differences across sectors, strict standardisation may not be appropriate in all cases. This should not be the single goal in the absence of other strong reasons for change.

We provide the following feedback on changes to the 'fit and proper person' test as proposed in the consultation paper:

- Conflict of interest disclosure – The consultation paper proposes the 'fit and proper person' test require 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. This is a very broad obligation. Conflicts of interest at a business level are likely to be different to conflicts held by the individual practitioner; as would the management of these conflicts and their impact on clients. All businesses have conflicts of interest. Practitioners may not be aware of, be impacted by, or benefit from conflicts of interest that exist within the business. Requiring individual practitioners to disclosure such conflicts as a condition of registration puts them at risk of inadvertently and unknowingly breaching this obligation. This is concerning given the implications on the practitioner's registration and their personal credibility. We do not see the benefit in the inclusion of this in the registration eligibility criteria and believe that it would create unnecessary complexity for the TPB in assessing registrations and renewals. **We**

suggest conflicts of interest would be more appropriately dealt with under the Code of Professional Conduct.

- Spent convictions – This runs counter to the suggestion of aligning standards with those used by other regulators. For example, the ‘fit and proper person’ test for relevant providers (financial advisers) to register with ASIC requires consideration of whether the person has been convicted of an offence in the last 10 years<sup>2</sup>. Convictions generally become ‘spent’ when 10 years have passed since the conviction was recorded, and the person was not convicted and did not commit any other offence punishable by prison during this period. Should ‘spent convictions’ be included in the TPB ‘fit and proper person’ test, this should be limited to the more major offences that directly related to a person’s capacity to provide tax agent services with disclosure only required at the time of application for registration, and not on renewal.
- Disqualified manager – Given the important role tax practitioners play in assisting clients, consideration should be given to mirroring ASIC’s test by including in the ‘fit and proper person’ test if the person has in the last 10 years been disqualified under any law of the Commonwealth or of a state or territory, from managing a corporation. This could be included in TPB guidance rather than in the law.

## Succession planning

It is unclear if the proposed introduction of contingency and succession planning obligations impacts a tax practitioner’s registration eligibility or their Code obligations.

As stated in Part 3 of the TASA:

*The Code of Professional Conduct regulates your personal and professional conduct as a registered tax agent or BAS agent. If the Board investigates you and finds that you have failed to comply with the Code, the Board may give you a written caution, order you to take specified actions, or suspend or terminate your registration.*

While contingency and succession planning is good practice for all business types and should be encouraged, it is not related to personal or professional conduct, and we question whether this should be a mandated obligation.

A practitioner who fails to meet all the proposed contingency and succession planning obligations has the potential of being terminated from the TPB and hence would be unable to practice, leaving clients in the lurch. This seems counterproductive and contradictory to the intent of the proposal. It is also not reasonable for new entrants just commencing their career to have to consider contingency and succession planning. For tax practitioners who are working for an employer, it would be the employer’s responsibility, not theirs.

Tax (financial) advice services provided by a financial adviser are different to the tax agent services provided by an accountant. Accountants, as tax practitioners, offer different professional services to financial advisers.

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<sup>2</sup> ASIC INFO Sheet 277

As such, accountants play a different role, and interact differently with the financial system on behalf of clients, compared with financial advisers. The provision of financial advice services is heavily regulated by ASIC under the Corporations Act 2001 licensing regime. Australian Financial Services (AFS) licensees provide financial product advice to clients and deal in financial products. They do not provide accounting type services.

The FAAA does not support the inclusion of contingency and succession planning criteria in the registration or renewal requirements for tax practitioners.

Should contingency and succession planning obligations be included in the TASA Code of Conduct, the FAAA recommends registered tax practitioners who only provide tax (financial) advice services should be exempt from this obligation.

### **TASA definitions**

Since the establishment of the TASA regime, legislated professional and education standards and registration requirements have been introduced into the Corporations Act for financial advisers operating under an AFSL. This includes specific obligations for financial advisers who provide tax (financial) advice services.

The FAAA recommends any proposed changes to definitions in the TASA should give careful consideration to avoid duplication of the Corporations Act obligations for financial advisers, and require a thorough consultation process.

### **Other feedback**

The FAAA would support:

- further consultation to amend the TASA to better capture emerging tax intermediaries if they are providing a tax agent service
- further clarity on the "sufficient number" requirement, even if this does not go as far as a number or ratio
- the inclusion of businesses operating as a trust in the registration requirements for companies and partnerships.

The FAAA would welcome the opportunity to discuss our feedback in more detail. Please contact me on (02) 9220 4500 if you have any questions.

Yours sincerely,



Phil Anderson

**General Manager Policy, Advocacy & Standards**  
Financial Advice Association Australia (FAAA)