

18 January 2021

Ms Narrelle Kelly
National Tax Clinic Program
Review and Dispute Resolution
ATO

By email: NationalTaxClinics@ato.gov.au

Dear Narrelle,

National Tax Clinic open competitive grant program consultation paper

CPA Australia represents the diverse interests of more than 166,000 members working in over a 100 countries and regions around the world. We make this submission on behalf of our members and in the broader public interest.

The National Tax Clinic program is a policy initiative which met with mixed reception from the profession when it was formally **launched** by the Hon. Stuart Robert MP in January 2019. Through the efforts of the trial participants and thoughtful implementation, there has been recognition of the value these clinics can provide to vulnerable Australians. This has led to increased acceptance of the tax clinics.

The transition to an open competitive grant program (**the program**) provides the opportunity to evaluate the outcomes and lessons from the trial phase, and to create an adaptable framework through which to deliver tailored services that are appropriate for each group or region.

We recommend that the program:

- Retain its dual purpose to support vulnerable taxpayers and provide practical experience for students
- Consider establishing criteria to better define and identify appropriate clients while allowing discretion to assist taxpayers in need
- Adopt a merit-based process to award grant funds
- Consider opening eligibility to providers offering relevant courses approved by the Tax Practitioners Board
- Assess the benefits of shifting from a fixed to a variable funding model, and
- Continue to ensure that the tax clinics do not unduly or unintentionally negatively disrupt the market for tax services.

We also recommend that the ATO considers the articles contained in the tax clinic-focused special edition of the *Journal of Australian Taxation* Volume 22(2). These chronicle the experiences, learnings and recommendations of participants in the trial which can further inform the design of the program.

Responses to the consultation paper questions are contained in the Attachment.

If you have any queries about this submission, contact Elinor Kasapidis, Senior Manager Tax Policy, CPA Australia, on 0466 675 194 or elinor.kasapidis@cpaustralia.com.au.

Yours sincerely,

Dr Gary Pflugrath
Executive General Manager,
Policy and Advocacy

1.1 In an open competitive process, should weighting be given to these two attributes¹ in regard to their importance in administering a Tax Clinic? If so, what weighting should be given to each intent, for example 50% to support taxpayers and 50% for students?

Our view is that the dominant purpose of the tax clinics is to support taxpayers needing pro bono advice, where there are no alternative free services available or accessible to them. The secondary purpose of providing practical experience to students seeking to enter the tax profession is also important and enables students to enhance their expertise and improve their job readiness.

We therefore suggest that a greater weighting be placed on the ability of the Tax Clinic to provide support to taxpayers (e.g. 66%) while retaining the requirement to provide opportunities to students to gain practical experience (e.g. 34%).

We also note that there are additional beneficial attributes that can be associated with the tax clinics which can generate positive indirect effects. These include general taxpayer education (e.g. public seminars) and advocacy (e.g. identifying specific and systemic issues in the system). The ATO may wish to consider incorporating such attributes in the assessment process with a smaller weighting (e.g. 10%; and adjusting the other two weightings proportionately).

2.1 What is your understanding of the type of taxpayers who may 'otherwise fall through the cracks'? Please provide as much detail as possible when responding.

Examples of taxpayer groups who may "fall through the cracks" include taxpayers who:

1. have no or low tax literacy and are therefore less likely to engage with the tax system or understand their tax obligations
2. are struggling financially and cannot afford professional advice
3. are from marginalised or vulnerable communities where barriers to accessing government services are higher, or
4. require legal aid in disputes with the ATO but due to the high cost of legal representation cannot generally afford it.

2.2 In an open competitive grant process, should more weighting be given to the types of clients a tax clinic could serve? Explain why or why not.

Yes. Applicants should be able to clearly identify the target groups they intend to support. Applications should include selection criteria for clients and the tax clinic's ability to identify, engage and service them.

The ATO should accommodate a broad range of client types when assessing applications, given that different geographic and socio-economic factors will give rise to different potential target groups.

For example, a Northern Territory-based tax clinic may focus on indigenous Australians while an inner-city based clinic may focus on recently arrived refugees and students.

The focus should be on ensuring that tax clinics seek to provide services to more vulnerable taxpayers rather than simply anyone who attends their clinic.

2.3 If the National Tax Clinic program was to be made available only to certain vulnerable groups, what should be the key criteria for eligibility and how best could tax clinics engage with these groups?

Our response to question 2.1 provides examples of key criteria that could be considered. Criteria should be sufficiently broad and flexible for tax clinics to accept those that they assess as being vulnerable or "falling through the cracks".

Governance and evaluation processes can ensure that tax clinics are not expending public funds on those who can otherwise access professional advice, rather than imposing strict, bright line eligibility criteria which may result in tax clinics being unable to assist certain taxpayers in need.

We suggest that the ATO review the criteria used by the tax clinics who participated in the trial to identify appropriate criteria for the open competitive process. For example, the Melbourne Law School Tax Clinic criteria were:

- a low-income individual (annual income less than \$60,000, in line with Tax Help qualification criteria)
- an individual with low financial literacy
- an individual from a non-English speaking background, or
- in the case of businesses, assistance was limited to disputes with the ATO or general establishment information and did not include tax planning.²

¹ These are to:

1. resolve issues, provide advice and education services as well as represent and advocate for taxpayers, and
2. build practical experience for students who are the future of the tax profession.

² Jogarajan, S., Fischer-Doherty, K. & Panetta, J. (2020). 2019 National Tax Clinic Project: Melbourne Law School Tax Clinic, *Journal of Australian Taxation*, 22(2), pp.31-32

3.1 When assessing grant applications, what percentage weighting should be given to the following activities? Provide an explanation for your weighting. Responses should add up to 100%.

	Suggested weighting	Explanation
Providing advice to clients to better understand the tax system	45%	Taxpayer education and engagement should be the dominant purpose given that voluntary compliance is the foundation of the tax system. Ensuring taxpayers are engaged in the system and understand their obligations have ongoing benefits and spill-over effects which can reduce long-term costs to government.
Representing taxpayers and small businesses when they need to interact with the ATO	25%	Due to the complexity of tax law and administration, the power imbalance between parties, high cost of legal representation and absence of legal aid, tax clinics can provide access to justice that would otherwise be unavailable.
Undertaking educational activities to better inform students, taxpayers and the broader community	15%	Educational activities bolster voluntary compliance and complement the messaging from the ATO, professional associations and tax practitioners. Tax clinics and the institutions in which they sit have access to diverse groups who may not be otherwise accessible.
Advocating on behalf of clients when systemic issues are identified in their dealings with regulatory or government agencies	15%	Tax clinics can provide valuable intelligence to government and agencies including: <ul style="list-style-type: none"> • how the system may be failing our most vulnerable • the barriers to tax system participation, and • improvements needed to ensure equitable access to government services.

4.1 In regard to awarding grant funds in the upcoming round of National Tax Clinic program funding, which one of the following selection processes should be used and why?

Our view is that a merit-based process is the most appropriate choice. This ensures that public funds are provided to applicants who can demonstrate the ability to deliver on the program's intended outcomes, operate within the regulatory environment, have high standards of governance, are able to manage the program efficiently and will undertake regular evaluations of performance and outcomes. New applicants will not be disadvantaged and there will be greater certainty over the funding amount.

Demand-driven selection may bias the process in favour of established tax clinics as they are familiar with the requirements and process, enabling them to apply more quickly. While administratively easier for the ATO, it also limits the ability of the ATO to select applicants who may be more suitable.

Proportionate selection can result in many applicants receiving only small amounts, creating inefficiencies and potentially under-funding each individual tax clinic. Each tax clinic will have administrative and fixed costs which cannot be scaled in line with funding and there is a risk that service to taxpayers will be compromised if the requested level of funding is not received. Such a funding model introduces uncertainty for applicants as the final funding amount is unclear.

4.2 Are there any other issues in regard to the type of selection process that should be considered? Provide as much detail as possible.

The selection process should be timely and transparent with clear selection criteria. The time and cost to apply should be proportionate to the amount of funds to be disbursed, and applicants should be held accountable as per the [Commonwealth Grants Rules and Guidelines](#) for using the funds in the manner described in their application.

5.1 What factors should be taken into account when deciding the geographical spread of tax clinics? Provide as much detail as possible.

We note that with the significant uptake of services being provided remotely due to COVID-19, geography may no longer be a critical factor with certain activities such as completing a simple tax return able to be more easily undertaken remotely. However, given the vulnerable status of groups and the existing barriers to engagement, the ATO should continue to consider geography as part of its decision making.

The geographical spread should therefore broadly link the demand for tax clinic services with the physical presence of a suitable provider in the area. There may also be applicants who can demonstrate the ability and willingness to travel to remote or regional areas as part of their tax clinic activities to address geographic imbalances (e.g. the activities undertaken by the Northern Territory Charles Darwin University Tax Clinic³).

³ Abeysekera, I. (2020). National Tax Clinic Program in the Northern Territory, Australia: A Project Model Innovation, *Journal of Australian Taxation*, 22(2), pp.179-180

6.1 Should the program be limited to institutions offering relevant studies? If so, what studies do you consider relevant?

Given that one of the key program attributes is to build practical experience for students who are the future of the tax profession, there needs to be some connection to institutions offering relevant studies.

Arguably, institutions offering such studies are best placed to run the tax clinics due to their direct connection to students. However, there are potential operating models such as Legal Aid where legal students can volunteer. Therefore, the ATO should consider applicants who can build the skills of students studying the relevant courses, regardless of whether they are an educational institution. This is particularly so if there is insufficient interest from educational institutions, where students at non-participating institutions have fewer or no opportunities to participate or an innovative alternative model is proposed.

Relevant studies should be defined as courses that incorporate the subjects required for tax agent registration as per s.202(b) of the *Tax Agent Services Regulations 2009* and that are **approved** by the Tax Practitioners Board (TPB).

6.2 Should the ongoing program be limited to universities who offer relevant studies, or should the program be extended to other tertiary education providers? If so, which other tertiary education providers should be considered, for example TAFEs, independent private institutions?

Further to the response to question 6.1, limiting the program's funding only to universities may result in the exclusion of potentially more dynamic and efficient providers. The scale and capabilities of universities provide them with a natural advantage in a merit-based selection process, but the ATO should not preclude the potential benefits that alternative providers could achieve.

If the ATO was to consider extending eligibility beyond universities, we suggest that this could be opened to providers offering relevant courses approved by the TPB.

6.3 In an open competitive process, what weighting should be given to the issue of relevant study areas to the ongoing program? Why?

In our response to question 1.1, we suggested that one-third of the weighting should be given to the attribute of providing practical experience to students. This reflects our view that the issue of relevant study areas is critical to the program for the student, the tax clinic and their clients.

The tax clinics operate both as a pipeline of skilled and job-ready graduates into the tax profession, as well as a source of professional advice for vulnerable groups. To ensure the provision of quality advice and the effective contribution of volunteer students, it is essential that they are undertaking or have completed relevant study. If students do not have the necessary technical competency, there is an increased risk of poor advice, an unreasonable impost on the supervisors and the diversion of opportunity away from students interested in entering the profession.

For those with an interest in tax, the learning outcomes are likely to be greater and with longer-term benefits to the profession and community. For example, Curtin University identified that their students experienced "*an improved sense of community, belonging and inclusivity, a sense of pride and purpose, an appreciation and understanding of the link between theory and practice and soft and technical skills development*"⁴.

7.1 As the National Tax Clinic program continues, do you think program participants should be able to develop different operating models, or should there be a standard Tax Clinic model that all participants must follow? Provide as much detail as possible.

Given the diversity of clients, geographic spread and tailored nature of the service provided, it is highly unlikely that a standardised operating model could be developed that efficiently and effectively services clients in every location. This is particularly so given the early stage of the program and short implementation timeframe.

The nature of tax advice and the experience of vulnerable groups means that it will be difficult to identify generic and repetitive activities that are more suited to a standardised operating model. Tax clinics should have the flexibility to evolve their operations to suit their clients and have the opportunity to test new ideas.

The focus should be on delivering quality advice, positive client and student experience and creating public value. We suggest that this can be supported by requiring the same clearly defined outcomes for all tax clinics, as well as standardised service standards, reporting, assurance and evaluation measures to ensure that tax clinic performance can be assessed and compared. The ATO could also facilitate engagement between tax clinic operators to identify innovative practices and opportunities to improve.

⁴ Castelyn, D. Bruce, S. & Morgan, A. (2020). 2019 National Tax Clinic Project: Curtin University - Curtin Tax Clinic, *Journal of Australian Taxation*, 22(2), pp.14-16

8.1 On a scale of 1–5, with 1 being not at all important to 5 being extremely important, how would you rate the following factors regarding their importance in selecting a successful tax clinic provider?

All of these factors are very important to the success of a tax clinic, and so we assign a rating of 4 for all except "accessibility to vulnerable clients", which we rate as a 5. We provide the following reasoning as to why they should all be considered in the selection process.

Factor	Reasoning
Presence of multiple Tax Clinics in the same geographical area	Ensures there is no over-supply in some areas and under-supply in others
Geographical coverage of Tax Clinics around Australia	Provides access across Australia and reduces geographical bias
Amount of time a proposed Tax Clinic will be operational and available to clients	As tax clinics provide a service, they need to be accessible to their clients
Number of students who will gain experience working in a Tax Clinic	Provides practical experience to as many students as possible which supports employment prospects
Number of student hours a proposed Tax Clinic will fulfil	Exposure and experience improve learning outcomes with expertise developed over multiple contact hours
Studies or courses that students who will work in a tax clinic are undertaking	Relevant knowledge is critical to ensure clients receive quality advice and that public funds are invested in students who are seeking a career in tax
Type of activities a proposed Tax Clinic will undertake	Activities should clearly align with the intended outcomes
Volume of activities forecasted that a Tax Clinic will undertake	Ensures access for as many vulnerable clients as possible
Type of professional supervision for the proposed Tax Clinic	Operates within a regulated environment with appropriate supervision thereby ensuring quality advice
Ability to provide outreach services	Clients may not be able to attend a tax clinic for valid reasons and alternatives should be made available where possible
Extent of outreach services	Some tax clinics may need to provide extensive outreach services depending on their client base, geography or complexity
Accessibility to vulnerable clients	This is the dominant purpose of the program
QS World University Ranking	Capacity to invest in the tax clinic and the expected quality of advice are, to some extent, reflected in university rankings
The requested grant funds to operate a tax clinic	Tax clinics should be run efficiently, and an applicant should not receive a disproportionate share of funding unless there are exceptional reasons
Joint applications across various academic institutions	Joint initiatives can unlock economies of scale, enable cross-pollination of ideas and develop best practice operating models
Presence of an existing Tax Clinic, including past output.	Participation in the pilot phase creates know-how and goodwill which can be used to improve and build on the model developed during the trial

8.2 In addition to the factors listed above, in Question 8.1, are there any other factors that are not listed that should be considered when selecting applicants for the tax clinic program? Why?

The following additional factors, including those related to education and advocacy, could be considered:

- Established connections to vulnerable groups, other support services (e.g. Legal Aid, charities) and the tax profession - this enables rapid access to clients in need and expert support
- Extent of community education and awareness activities - improving the reach of tax communications into the community and improving tax literacy provides long-term benefits
- Contribution to tax policy and advocacy - a commitment to improving the tax system and representation of vulnerable groups improves the design and administration of Australian taxes
- Supervision by registered tax agents and legal representation by qualified tax lawyers.

9.1 Should grant funding continue on a fixed funding model, or should institutions be able to tailor their funding requests to the services and output they wish to provide? Provide as much detail as possible.

Fixed funding models can create dead-weight losses and inefficiencies where there is a mismatch between supply and demand for tax clinic services. It may encourage superfluous or ineffective activities or restrict the ability for tax clinics to undertake highly beneficial initiatives. It is, however, more administratively efficient and operates akin to a partial subsidy or incentive

payment rather than an outsourcing of government services. This means that the costs are partially absorbed by the tax clinic provider rather than fully absorbed by the government.

Tax clinics were created to address the identified gap in access to tax services for Australians in order to increase tax literacy, improve voluntary compliance and provide access to justice for vulnerable groups. To the extent that these are services that would otherwise have to be provided directly by government, funding should be broadly commensurate to the level of approved services and outputs, with a clear link between the funds and the expenditures; that is, a variable funding approach. This level of funding could be reduced to the extent that additional benefits accrue directly to the provider such as improved student learning outcomes, development of intellectual property or increased brand value.

A variable funding model also allows for greater diversity of tax clinics and may enable greater coverage in areas of demand (e.g. smaller tax clinics across low-density regions or multiple tax clinics in areas of high demand that are tailored to different groups).

Applicants should also be provided with the opportunity to modify or re-negotiate funding if the full amount of grant funding requested is not approved by the ATO.

9.2 If funding was offered as a variable amount, what factors should be taken into account and how would you weight those factors?

The selection process factors, especially the proposed type and volume of activities, should influence funding decisions. The ATO should also consider the overall impact of the various tax clinics and consider seeking adjustments where there may be over- or under-investment in certain activities, geographic areas or vulnerable groups.

We note that the universities and volunteers who participated in the trial made significant in-kind contributions to support the tax clinics. Quantified estimates include:

1. The total cost (including in-kind contributions) of setting up and running the Griffith Tax Clinic in 2019 was in the vicinity of \$230,000⁵
2. In addition to government funding of AUD 100,000 per year, the UTAS Tax Clinic contributed on a notional basis, value of AUD 182,720 based on an in-kind cost calculation of staff hours at hourly rates⁶.

Therefore, it may be beneficial to determine the level of in-kind or additional funding that will be provided when assessing variable grant funding.

10.1 Is there anything you would like to bring to our attention regarding the development of the National Tax Clinic program grant opportunity guidelines?

As a professional association, we are committed to encouraging our members to give back to their communities and we often **showcase** our members' philanthropic activities in our INTHEBLACK magazine. Many of our practitioners perform pro bono work or reduce their fees for vulnerable clients. This was particularly evident throughout the COVID-19 pandemic in 2020 where many provided JobKeeper-related services for free and significantly discounted their fees for other tax services.

We support initiatives that create opportunities to link our members and the profession to vulnerable groups and recognise the value of the tax clinic program.

When the tax clinics were initially announced, we observed some consternation across the tax profession with the main concerns centred around competition, quality of advice and regulatory oversight. The rapid implementation of the program limited the opportunities for consultation and collaboration with the profession, so there was uncertainty as to the intent and potential impacts of the tax clinics on the market for tax services.

As the anticipated negative effects did not eventuate, there is now a growing level of acceptance of tax clinics and a recognition of the support they provide to vulnerable Australians. We are also pleased to see the tax clinic institutions engaging partner firms, registered tax agents and tax lawyers to supervise and support their activities. We recommend that the grant process ensure that the focus of the tax clinics remains on vulnerable groups, and that the funding does not crowd-out practitioners or reduce their market.

We retain some reservations about tax clinic support for small businesses given the complexity of tax laws and the value to business of ongoing professional advice. Greater clarity should be provided by tax clinics about their small business eligibility criteria and we consider that part of the tax clinic's role should be to encourage small businesses to seek professional advice.

⁵ Freudenberg, B. et al. (2020). The Griffith Tax Clinic, *Journal of Australian Taxation*, 22(2), p.75

⁶ McClaren, J. (2020). 2019 National Tax Clinic Project: The University of Tasmania Tax Clinic, *Journal of Australian Taxation*, 22(2), p.110