

20 March 2020

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Dear Michael

### TPB Discussion Paper TPB(DP) D1/2020

#### Tax Practitioners Board: Continuing professional education requirements for tax practitioners under the Tax Agent Services Act 2009

CPA Australia represents the diverse interests of more than 164,000 members working in 150 countries and regions around the world. We make this submission on the Tax Practitioners Board (**TPB**) discussion paper *TPB(DP) D1/2020 (the Discussion Paper)*, on behalf of our members and in the broader public interest.

At its core, the TPB's continuing professional education (**CPE**) requirements are intended to enable the TPB Board (**the Board**) to assess whether a tax practitioner's registration should be renewed under the *Tax Agent Services Act 2009 (TASA)*.

We support the proposal to increase the number of CPE hours but recommend that it remain aligned to the registration renewal period of three years, rather than an annual requirement. We recommend further assessment of the requirements imposed on conditional tax practitioners and part-time workers to ensure that they are appropriately tailored while allowing those practitioners and workers to maintain requisite knowledge and skills.

It is our view that there is limited value in introducing minimum hours for required areas given the breadth of tax agent services. We recommend that the TPB issue further interpretive guidance on the concepts of 'sufficient nexus' and 'relevant knowledge and skills' to support tax practitioners in self-assessing their compliance with TPB requirements. We also suggest that the record-keeping period be reduced to four years from the date of registration or renewal, given that Board decisions on renewal are required to be made within six months of the date of application.

We have referred to guidance from the International Accounting Education Standards Board (**IAESB**) which reflects both input- and output-based approaches for continuing professional development (**CPD**) which we believe should be considered by the TPB in its CPE policy.

Our members who hold both a tax agent registration and Australian Financial Services (**AFS**) licence, or are authorised under an AFS licence, have raised concerns about the impact on their time and finances of aggregated CPD requirements imposed by various regulators. We request that regulators consider the compounding effects on professionals providing these services. However, while we support the harmonisation of CPD obligations across

different disciplines to address this issue, we do not agree that the TPB should adopt the Financial Adviser Standards and Ethics Authority (**FASEA**) CPD requirements.

Responses to the questions in the Discussion Paper are contained in the Attachment. We have also included member views submitted to us during consultation in quotation boxes.

If you have any queries, contact Elinor Kasapidis, Tax Policy Adviser, at [elinor.kasapidis@cpaaustralia.com.au](mailto:elinor.kasapidis@cpaaustralia.com.au) or 03 9606 9666.

Yours sincerely



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Encl.

**1. Do you have any comment regarding continuation of the TPB's current approach to the purpose of CPE (see paragraphs 16 and 18 in this discussion paper)? If you do not agree, please provide reasons.**

The stated purpose of the TPB's CPE requirements remains relevant, however we observe that CPE is viewed as a burden by some practitioners. We suggest that the TPB consider how to better promote the business and professional benefits of CPE so that tax agents consider CPE as a value driver and business asset.

For clarity, we suggest that the TPB consider refining the following statement:

*The current policy provides that CPE is...imperative in assisting tax practitioners' knowledge and skills (relevant to the services they provide) to adapt and improve as the law, society and their individual practice changes*

to:

*The current policy provides that CPE...assists tax practitioners to adapt and improve as the law, society and their practice changes.*

*'As an accountant in public practice dealing with the various taxation and other regulatory requirements, the need for CPE is even more important.*

*The tax laws have increased in complexity and constantly change. There has been a significant drop in CPE in a time when it has become more important.'*

**2. Is the proposed minimum CPE hours requirement appropriate (40 hours per annum for all tax practitioners), or should it be changed to something else (and if so, how much and why)?**

We suggest that compliance with CPA Australia's CPD requirements should automatically satisfy the requirements of the TPB.

CPA Australia currently requires its members to undertake 120 hours of CPD over three years, with a minimum of 20 hours per year. This means there may be some divergence with the strict 40 hours per year requirement proposed in the Discussion Paper. However, the requirement is satisfied, on average, over a three-year period.

We recommend the retention of the current three-year total CPE hours policy, rather than an annual requirement. We support a flexible regime that enables practitioners to modify their CPE according to their operating and personal environment. The CPE policy should enable practitioners to accommodate unforeseen circumstances such as natural disasters, personal difficulties or health issues, without having to depend on the 'extenuating circumstances' clause which increases uncertainty.

The constraints of an annual requirement are immediately evidenced by the current COVID-19 impacts which have resulted in the cancellation of conferences, discussion groups and forums. The pandemic has placed significant strain on practitioners who are seeking to support their clients while simultaneously modifying their business practices and CPE may not be appropriate or of priority at this time.

We do not agree that the TPB should adopt the FASEA CPD policy requirements. Rather, the regulatory case for an increase in annual requirements should be based on evidence provided by the TPB to demonstrate that the current approach is deficient in particular aspects, or that shows 'improved guidance and professionalism' (paragraph 23 of Discussion Paper) is directly linked to a higher number of annual CPE hours.

We also observe the evolution of professional education to recognise learning outcomes and learning units, in addition to allotments of time. This can be beneficial when recording courses and micro-credentials whose value may not necessarily be best reflected by learning hours.

*'I think the current structure for the number of hours for CPD is satisfactory and the number of total hours for the three years is also adequate.*

*Being able to spread the hours over the three years is helpful to allow a member to take account of issues that may arise in any one year.'*

For example, the IAESB standard on CPD<sup>1</sup> covers output and input-based approaches. The output-based approaches measure CPD by determining whether professional accountants can demonstrate the achievement of learning outcomes and is evidenced by examination results, specialist or other qualifications, records of work performed that have been verified against a competency map, or published material. The standard also allows for equivalent units to be provided as an alternative to learning hours for input-based approaches.

CPA Australia seeks to align its CPD offerings to global and local standards, and to reflect recommended practice in the delivery and measurement of education offerings. The TPB should also consider doing the same so that its policy is contemporary and future-proofed.

*'I think the recommended increased hours are an excellent idea. At least an increased minimum per year.'*

We also believe that, given the dependence of the TPB and professional association members on the CPD policies of professional associations to ensure standards are maintained, a process should be developed to enable the TPB and professional associations to modify and adapt their CPD policies in a co-ordinated, streamlined and timely manner when required.

### **3. Do you have any comment regarding continuation of the TPB's current approach to maintaining the lower CPE requirement for certain conditional tax practitioners (see paragraphs 19 and 25 in this discussion paper)?**

The regulation of conditional tax practitioners poses challenges, including in setting CPE requirements. The restrictions linked to conditional registration and the lower CPE requirements presume that the specialised tax fields and the agents' practices are not subject to major change.

While paragraph 20 of the Discussion Paper observes that the CPE requirements are a minimum and may be exceeded during periods of law or practice changes, the TPB should review and determine an appropriate level of CPE for each class of conditional registration to ensure that it remains appropriate and tailored to the specialised field.

The TPB should also seek the advice of the Australian Taxation Office (**ATO**) on issues and risks identified through client engagement activities in order to better understand the quality and contemporaneity of the specialised advice being provided to consumers and tailor CPE requirements accordingly.

The TPB should also acknowledge that the availability of CPE for certain tax areas may be limited, especially for more static specialisations, and should be reflected in CPE requirements. CPA Australia members have suggested that the TPB provide, or approve, CPE courses that will satisfy their requirements – this may be of particular value where limited third-party CPE is available.

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<sup>1</sup> International Accounting Education Standards Board, [International Education Standard – International Education Standard 7, Continuing Professional Development \(Revised\)](#), December 2018

4. **Should the TPB incorporate any specific comment or requirement in relation to subject areas/categories – in particular, should the TPB:**
- (i) **recommend areas/types to be completed by tax practitioners (without being prescriptive as to minimum hours in specific subject areas), or**
  - (ii) **mandate a minimum number of hours in CPE subject areas/categories similar to FASEA’s approach, or**
  - (iii) **make no further changes/comment (do neither of the above)?**

We support the TPB’s current approach of depending on practitioners’ professional judgment to determine the appropriate composition of CPE. The breadth of the tax and superannuation systems, compounded by the pace of legislative and administrative change, means that tax agents should be empowered to design flexible CPE that is appropriately aligned with their professional needs.

We suggest that if the TPB were to prescribe subject areas or minimum hours, the subjects would be so broadly defined or the time thresholds so low that the requirements would be no more effective than the current approach.

If the TPB is actively seeking to set minimum requirements, we recommend that this is evidence-based and reflective of the needs of the tax agent profession. While regard should be had to the risks observed from ATO or TPB compliance activities, CPE requirements should be designed to accommodate the broad range of expertise and roles encompassed by the profession. We recommend further consultation and engagement with the profession and tax educators to co-design a flexible and tailored system that can evolve to address contemporary issues.

*‘I don’t believe there is a need for more CPD hours. If the TPB thinks so, can it provide a list of the types of subjects it wants covered annually or over a five-year period, so that these can be incorporated into existing CPD arrangements.’*

5. **Do you have any suggestions about how the TPB should implement any changes to its CPE requirements in relation to the minimum number of hours and/or subject areas required, noting that the TPB would allow for sufficient lead-in time for any changes?**

**For example, should the TPB employ a calendar-year model starting from 1 January, or commence application of any changes from a practitioner’s next registration renewal?**

As stated, we do not support the introduction of required subject areas with minimum hours. If the TPB proceeds with the increase to a mandatory 40 hours per year, there should be a transitional period to enable tax agents and CPE providers to review and tailor their CPE in accordance with the changed policy.

We suggest that any policy changes become effective from the practitioners’ next registration renewal with a start date no earlier than 1 January 2021. This enables practices to build increased CPE into their operations, identify suitable CPE offerings and enhance record-keeping practices.

For clarity, we recommend the requirements remain aligned to registration renewal periods and not be based on calendar-year dates.

*‘Does the TPB think we only do professional development to meet their requirements? When will we do some chargeable work? There is so much to read, and webinars, seminars and conferences. No wonder we are getting nowhere.’*

**6. Should the TPB's requirements be reduced for tax practitioners who work part-time? If so, on what basis and to what extent should the TPB's requirements be reduced?**

CPA Australia allows members to apply for a reduction of hours for CPD obligations in instances of reduced working hours or leave from professional duties. This policy recognises that part-time workers may have differing work profiles or professional requirements that should be taken into consideration. Reductions are considered on a case-by-case basis and required hours may be determined on an apportionment basis.

*'I think the TPB CPE policy should align with CPA and CA's CPE Policies.'*

A reduction in the TPB's CPE requirements should also consider other contemporary forms of work such as contractors, job-sharing, leave of absence or secondments as such arrangements may result in the tax agent working the equivalent of part-time employee hours.

Any changes to CPE requirements should also ensure that professional knowledge is maintained to the requisite standard while being tailored to the needs of the individual and the practice.

**7. Do you have any feedback in relation to the TPB's proposed view regarding CPE activities (see paragraphs 26 to 28, and paragraphs 31 to 33 in this discussion paper)?**

We support the TPB's current position on relevant CPE as presented in paragraphs 26 to 28 of the Discussion Paper, particularly the principles of relevance, appropriate judgment and pragmatic compliance.

Given the breadth and varying levels of complexity of tax practice, it is unclear how the TPB could provide recommendations on the areas/types of CPE to be completed that would be sufficiently flexible to encompass the profession's broader requirements.

For example, a tax agent specialising in international tax advice or trust taxation will have significantly different requirements to a tax agent with multiple offices specialising in high-volume individual income tax returns.

*'I have no query regarding the benefits of CPD and that it is required in our profession. The problem is the FASEA and TASA requirements for merely SMSF advice and the TPB / CPA requirements, which have blown out and have left Public Practitioners questioning where we are going as a profession.'*

**8. Do you agree with the TPB maintaining the 25% reading allowance (see paragraph 21 in this discussion paper)?**

As a general proposition, we support the maintenance of the 25 per cent reading allowance. For many members, there is significant value in consuming newsletters, reviewing new legislation, absorbing technical papers, and reading communications from the ATO, TPB and other bodies.

However, it is our view that the concept of a 'reading allowance' embodies knowledge consumed in private and without oversight by a third-party to verify the relevance and quality of the content. In the modern environment, this type of information can be delivered outside the written form including through podcasts, videos, livestreams and audio presentations.

The TPB should therefore consider whether such activities fall within the concept of the 'reading allowance', and whether the term should be changed accordingly.

**9. Do you have any suggestions on how tax practitioners should be required to demonstrate that the CPE completed reflects their service offerings (for example, what evidence should be required, and how frequently)?**

**Should the TPB require CPE logs to contain sufficient detail to explain how a tax practitioner's professional or technical reading is relevant to the tax services provided?**

We suggest that the TPB provide additional guidance on their interpretation and application of the concepts of 'sufficient nexus' and 'relevant knowledge and skills' in the context of CPE. This will then provide insight into the type, frequency and detail of evidence required to be kept by tax practitioners for the purposes of renewal of registration.

The current TPB CPE log<sup>2</sup> could include an additional column titled 'nexus to services provided' or similar with an example of an appropriate description.

A checklist for tax practitioners would also be beneficial so that they can self-assess their CPE activities against the TPB requirements.

**10. Do you have any feedback in relation to the TPB's proposed approach to recognising CPD/CPE undertaken to satisfy requirements of other bodies, including TPB Recognised professional associations and FASEA (see paragraphs 34 to 37, and paragraphs 40 to 41 in this discussion paper)?**

We agree with the TPB's current position on recognising other CPE including the requirements that CPE must be relevant and provided by those with suitable qualifications or experience.

Our members who are registered as tax agents with the TPB and who hold an AFS or other licences are reporting a significant CPE burden when the various requirements are aggregated. CPA Australia's [Regulatory Burden report](#) showed 'a strong call from professional accountants for the alignment of CPD requirements and codes of ethics' and found that 'extra layers of regulation and additional complexity are a contributing factor to the creation of conflicting regulatory frameworks'.

This is reflective of the broader issue of regulatory burden and the misalignment of legislation and regulations between bodies overseeing accounting professionals. The practical impacts are significant time and cost burdens, as well as frustrations with what is perceived to be inconsistent, ineffective or inefficient regulation.

We therefore support the TPB's efforts to streamline compliance and minimise regulatory burden by identifying areas where CPD undertaken to satisfy other bodies may also satisfy TPB requirements. However, it should remain clear that the onus remains on the tax practitioner to demonstrate sufficient nexus between the CPE undertaken and the tax agent services provided.

We also suggest that the TPB should exercise caution before concluding that FASEA CPD requirements are likely to meet the requirements imposed on tax (financial) advisers by the TPB. For example, FASEA's regulatory compliance and consumer protection CPD requirements may not necessarily sufficiently align to the TASA Code of Conduct provisions such as the concepts of acting in the client's best interests, or to ATO and TPB regulatory requirements. That said, we support the TPB's

*'There needs to be one lot of CPD reporting for tax agents, tax advisers, SMSF auditors and authorised representatives, and this in turn should count for CPA CPD. I do nearly 100 hours per year to satisfy the different requirements and Kaplan Education doesn't recognise many of my SMSF and tax courses for my Financial Planning CPD, then add studying the Ethics and Professionalism Module and doing the FASEA test.'*

*'The profession does not need more CPD hours. 30 hours is more than enough otherwise you impact on people's work day. There is training on the job through your business/clients but a majority of this is not recorded as filling in a training schedule is impractical.'*

*Finally, in practice I must be an authorised representative to advise on superannuation. In addition to CPA Australia requirements, I spend 40 hours on structured financial planning PD and now there is the FASEA requirements of a further 40 hours. That makes 120 hrs each year.'*

<sup>2</sup> Tax Practitioners Board, [Continuing professional education log](#)

position which recognises that there may be synergies between tax (financial) adviser CPD offerings for FASEA and TPB purposes.

We anticipate that there will be further demand from practitioners for practical guidance that assists them to determine whether CPE offerings can satisfy multiple regulatory and professional association requirements.

**11. Do you have any comment regarding continuation of the TPB's current approach to approval of CPE activities/providers (see paragraph 42 in this discussion paper)?**

We support the current approach.

**12. What evidence/level of detail should the TPB require from tax practitioners to assure compliance with the TPB's CPE requirements, and how and when should tax practitioners be required to provide evidence about their CPE?**

**For example, should the TPB continue to be pragmatic and apply a risk-based compliance approach, or require practitioners to provide detail/evidence annually or upon renewal?**

The TPB's CPE policy is required to be satisfied for the purposes of renewing a tax practitioner's registration (paragraph 20-5(1)(d) of the *TASA*). As such, tax practitioners should expect and be able to provide evidence of CPE as part of the renewal process.

There are a range of tools provided to tax practitioners to support record keeping including the TPB CPE log and CPA Australia's online CPD diary. The TPB should provide assurance that the level of detail required by these tools is sufficient to satisfy renewal requirements if utilised properly.

We also suggest, by way of example, that the TPB consider the IAESB standard on CPD<sup>3</sup> which:

- provides examples of evidence, while recognising that some learning activities may not be easily verified
- suggests professional accountants could submit a declaration as to whether they meet their professional responsibility to maintain the necessary professional competence to perform their role, or
- declare compliance with any specific CPD requirements imposed by regulators or other licensing authorities.

To streamline the renewal process, the TPB could consider including a CPE declaration as part of the registration renewal application without requiring submission of detailed documentation. This approach can then be supported by a review process to undertake more detailed assessment of higher risk practitioners as well as a smaller random sample to monitor baseline risk across the profession.

Any CPE assurance activities the TPB may wish to undertake throughout the duration of a tax practitioner's registration should be designed to ensure that the renewal process becomes more streamlined and efficient than it would be otherwise.

**13. Do you agree with the TPB's proposal in relation to record keeping requirements (see paragraphs 49 to 50 in this discussion paper)?**

Tax practitioners are required to demonstrate their compliance with the TPB's CPE policy as part of their application for renewal of registration. The renewal application must be submitted at least 30 days before the day on which the registration expires (section 20-50 of the *TASA*), and the Board must make a decision within six months and communicate its decision within 30 days.

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<sup>3</sup> International Accounting Education Standards Board, [International Education Standard – International Education Standard 7, Continuing Professional Development \(Revised\)](#), December 2018

CPA Australia's CPD record keeping policy is for members to keep CPD evidence for 12 months after the end of the three-year period. Our approach is based on aligning requirements with the legislative basis of the TPB CPE requirements.

Therefore, it is our view that the existing six-year TPB CPE requirement is excessive and the most appropriate time period is four years from the date of registration or renewal. This enables the TPB to properly assess the renewal application and to ensure that the tax practitioner has maintained their skills and knowledge.

Arguably, a secondary purpose of CPE documentation may be its use by the Board as part of an investigation. However, we suggest that any decision by the Board to impose orders or sanctions on a tax practitioner as a result of an investigation would not be based on the existence (or lack thereof) of CPE documentation.

Record keeping requirements should be pragmatic and realistically reflect the likelihood of the TPB undertaking a review of CPE obligations over such a significant period. It is incongruous that there are lower record-keeping requirements and shorter periods of review for tax returns and activity statements than for tax practitioners' CPE. We also do not consider the legislated FASEA requirements to be a relevant consideration.

We therefore recommend that TPB record keeping requirements are reduced to four years from the date of registration or renewal to align with the legislation.

#### **14. Do you have any comment regarding the TPB's approach to extenuating circumstances (see paragraph 53 in this discussion paper)?**

We agree that exceptions to the TPB CPE policy due to extenuating circumstances should continue to be applied on a case-by-case basis.

While the TPB does not wish to be prescriptive as to what extenuating circumstances may entail, there may be benefit in providing examples of exceptional and unforeseeable events, as well as what mitigating factors might be considered by the Board in its deliberations. This may be similar to the ATO's information on serious hardship<sup>4</sup> or requests for penalty remission<sup>5</sup>.

Recent events such as the bushfires and COVID-19 also highlight that tax practitioners can be seriously impacted by circumstances outside their control. For practices with planned CPE, significant disruptions to their operations including cancellations by providers or loss of records, can impact their ability to satisfy requirements.

General guidance as to the TPB's approach in such circumstances, including a transparent process to apply for exceptions, can support affected tax practitioners.

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<sup>4</sup> ATO, [Individuals with serious hardship](#), viewed 18 March 2020

<sup>5</sup> ATO, [How we assess a request for remission](#), viewed 18 March 2020