



**Stockbrokers and Investment
Advisers Association**

Serving the interests of investors

7 August 2024

Email: pwcreponse@treasury.gov.au

Attention: Carlie Beach

Director, Tax Agent Regulation Unit
Personal, Indirect Tax and Charities Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Ms Beach

Review of eligibility requirements for registration with the Tax Practitioners Board: Consultation Paper

The Stockbrokers and Investment Advisers Association (SIAA) is the professional body for the stockbroking and investment advice industry. Our members are Market Participants and Advisory firms that provide securities and investment advice, execution services and equity capital-raising for Australian investors, both retail and wholesale, and for businesses. Practitioner Members are suitably qualified professionals who are employed in the securities and derivatives industry.

SIAA members represent the full range of advice providers from full-service and online brokers to execution-only participants and they provide wealth advice and portfolio management services.

The history of the stockbroking profession in Australia can be found [here](#).

The list of SIAA's principal members is [here](#).

SIAA is a recognised professional association for the purposes of TPB registration. Membership of our association provides a pathway for investment advisers and stockbrokers to register with the TPB. We welcome the opportunity to provide feedback on the consultation paper.

SIAA attended the Treasury roundtable on 1 August 2024 at which we highlighted the short consultation period that has been allowed for this review. This is particularly concerning because the proposals in this consultation paper have the potential to seriously impact the ability of SIAA members to continue in their occupation, and as such deserve to be given the appropriate amount of consideration. While the consultation paper covers a broad range of issues and contains 27

questions, due to the lack of time afforded by the short consultation period, we have limited our feedback to the review of the professional association accreditation and registration pathways, as this is the area of most concern to our members. Our submission should not be taken as an indication that we are not interested in the other areas outlined in the paper. We simply have not had sufficient time in which to respond to those matters.

Executive summary

- The government's response to recent events involving PWC impacts the entire TPB ecosystem, which is much broader than tax partners at large firms.
- SIAA's members who are required to be registered with the TPB because they provide incidental tax advice on capital gains tax on sale of shares and franking credits are also impacted by these changes.
- When legislation was introduced grandfathering tax (financial) advisers providing advice to retail clients from the TPB onto ASIC's Financial Adviser Register (FAR), no consideration had been given in the regulatory reform to tax (financial) advisers who provide incidental tax advice solely to wholesale clients. These advisers therefore were not grandfathered onto the FAR. Treasury decided to include these advisers as tax agents registered with the TPB, even though they clearly do not provide the suite of services that tax agents provide.
- SIAA's members are a unique category of TPB registrants and rely on the professional association pathway as they play a fundamentally different role in the TPB ecosystem. They typically do not have the education and qualifications that other TPB registrants have. Our members are not tax practitioners in the technical sense – they don't prepare or lodge tax returns or BAS statements – yet they are caught up in the same regulatory regime.
- Removing the professional association pathway will leave our members without a pathway to registration with the TPB as there is no other pathway that they could use. Grandfathering current TPB registrants is only a band-aid measure that does not address the underlying issue.
- While ever stockbrokers and investment advisers who provide incidental tax advice to wholesale clients are required to be registered with the TPB, the recognised professional association pathway must be retained.
- Flexibility must be provided for in the recognised professional association pathway to take into account SIAA's members who form a unique category of tax (financial) adviser and who are not tax agents in terms of the services they provide, even though included in this category.
- Recent regulatory intervention has imposed inflexible education and qualification standards on members of the financial advice industry. This intervention is slowly being unwound as government realises the detrimental and significant impact it has had on SIAA's members and on Australians' access to financial advice.

- If the government removes the recognised professional association pathway, it must provide a flexible and commonsense way for SIAA's members who provide tax (financial) advice to wholesale clients only to continue to provide that advice in a way that complies with the law. If no alternative pathway is provided, then the recognised professional association pathway must be retained.

Reviewing the professional association accreditation and registration pathways

Background to the recommendation

The proposed changes to the professional association accreditation and registration pathways are not a consequence of recent events involving PWC. They arise from the James Review which provided its recommendations in November 2020. The recommendation to remove the recognised professional association pathway was opposed by many stakeholders at the time. Since then, the negative impact on the financial advice profession of changes to education standards has highlighted the pitfalls of imposing inflexible qualification and education requirements on the profession.

The role of SIAA and its members

SIAA provides a pathway for individual tax (financial) agents who are authorised representatives of Australian Financial Services Licensees to register with the TPB via pathway 210. SIAA also represents member firms that register as companies and meet the 'sufficient number' requirements.

SIAA's members are a unique and specific category of TPB registrant. Stockbrokers and investment advisers evaluate securities offered for listing or trading and identify the investment opportunities they present for investors. They conduct research and analysis on companies listed on the stock exchange, so that they can determine in which companies clients should invest and which they should avoid. They also advise on a range of other investment options. This represents a particular form of advice which is very different from the advice offered by, for example, financial planners or accountants. As such, our individual members have different qualifications to those of accountants or tax practitioners. They have qualifications in finance, economics, commerce and business rather than accountancy and tax. Typically, they are not chartered accountants nor members of the CPA. SIAA is the representative of this industry. Indeed, there is no other association that could serve as a 'home' for our members.

Our members provide incidental tax advice such as advice on capital gains tax on the sale of shares and the effect of franking credits on dividends. They do not provide advice on a client's tax return and general tax affairs. They are not 'tax practitioners' in that sense. They neither prepare nor lodge tax returns or BAS statements.

They were originally included in the TPB regime because it was decided that incidental tax advice should be regulated by the TPB, and the tax (financial) adviser category was created for them and other financial advisers offering incidental tax advice. Importantly, because of the differences between tax (financial) advisers and tax practitioners more generally, different registration pathways were created for them, including the pathway via voting membership of a recognised professional

association. This was in recognition of the fact that stockbrokers and investment advisers did not traditionally hold qualifications related to the provision of tax agent services or BAS services.

SIAA applied for accreditation as a recognised professional association in 2016 to provide an appropriate association pathway to enable individual stockbroker and investment adviser members to register with the TPB. SIAA has renewed its accreditation each year ever since.

Impact of the Better Advice Act

The *Financial Sector Reform (Hayne Royal Commission response – better advice) Act 2021* (Better Advice Act) had a significant impact on SIAA's members who were tax (financial) advisers.

The purpose of the Better Advice Act was to reduce regulatory duplication and red tape and to ensure that Financial Advisers were no longer subject to supervision by both ASIC and the TPB. Financial Advisers who provided tax (financial) advice were no longer required to be registered with the TPB. Those Financial Advisers who were registered with the TPB as tax (financial) advisers were automatically registered with ASIC on the Financial Adviser Register (FAR) as at 1 January 2022. Unfortunately, the original version of the bill overlooked tax (financial) advisers who do not provide advice to retail clients, ie tax (financial) advisers who because they only provided advice to wholesale clients were not required to be registered on the FAR and were not subject to the provisions of the Corporations Act regarding retail clients. Amendments subsequently provided that tax (financial) advisers who were not registered Financial Advisers would remain subject to the regulatory regime of the TPB.

The majority of SIAA's individual members who had been registered with the TPB were no longer subject to TPB regulation, as they provided advice to retail clients and were registered on the FAR. These members became Qualified Tax Relevant Providers and were subject only to regulatory supervision by ASIC.

It was very much a minority of SIAA's members who continued to be registered with the TPB as tax agents providing tax (financial) advice as the overwhelming majority of SIAA's individual members were on the FAR. These advisers were in effect 'left behind' with the TPB, while still being subject to regulation by ASIC under the Corporations Act. Ironically, those advisers who provided advice to wholesale clients only – a more regulatory 'light touch' environment – were subject to two regulators while Financial Advisers who were subject to the more rigorous regulatory requirements regarding retail clients were only subject to one.

This regulatory change impacted SIAA's membership numbers and has made it challenging to maintain accreditation, as the TPB requires recognised professional associations:

- to have a minimum of 1000 voting members, 500 of which must be registered tax agents; and
- to have voting members who meet certain qualifications/experience requirements.

Fortunately, the TPB has discretion that provides it with greater flexibility to allow accreditation in circumstances where a well governed and representative professional association which imposes high ethical and professional obligations on its members should be recognised notwithstanding that it lacks the required number of voting members or seeks to represent those with qualifications not

traditionally related to the provision of tax agent services or tax (financial) advice services. SIAA fits within this category of professional associations and has been reliant on the TPB exercising its discretion to re-accredit SIAA under the professional associations pathway as it satisfies neither of these additional conditions.

However, the TPB does not consider it to be appropriate to exercise its discretion indefinitely and SIAA is concerned that at some stage this discretion will not be exercised in its favour, notwithstanding that it satisfies the other requirements, namely:

- SIAA is a well-governed and representative professional association which imposes and enforces high ethical and professional obligations on its members.
- SIAA is representative of the stockbroking and investment advice industry notwithstanding that it lacks the ability to meet the minimum number of voting members requirement.
- There are certain limitations beyond SIAA's control that prevent it from having the requisite numbers. The change in the regulatory framework which arose from a lack of recognition that not all tax (financial) advisers provide personal advice to retail clients should not penalise those members who provide advice to wholesale clients only. The limitations of a change in law that was tailored to tax (financial) advisers providing advice to retail clients was beyond SIAA's control. The change in legislation prevents SIAA from having the requisite number of voting members.
- There are registered tax financial advisers relying on voting membership of SIAA to meet the eligibility requirements of registration who have no practical alternatives if the association is not recognised by the TPB. To originally apply to be a tax (financial) adviser under the membership option, SIAA's voting members met the experience requirement. Many also hold a relevant diploma, degree or higher. These individual members would have no alternative but to complete further education should SIAA not be recognised by the TPB, which is not relevant to the provision of tax (financial) advice to their clients. This would disadvantage them in a manner that would not apply to other tax agents who meet the experience and education requirements.
- There is a potential risk to consumers if SIAA is no longer recognised by the TPB. If advisers are unable to provide tax (financial) advice pending completion of additional education, this would disadvantage their clients who could no longer receive this advice from their adviser. As noted above, this would disadvantage these advisers in a way that would not apply to other tax agents who meet the experience and education requirements. And this would be taking place at a time when the government recognises that Australians need access to financial advice, which in the case of our members is investment advice.

Is the current recognised professional association framework (initial eligibility ongoing eligibility and compliance framework) appropriate?

If not, what should that framework look like?

While ever stockbrokers and investment advisers who provide incidental tax advice to wholesale clients are required to be registered with the TPB, the recognised professional association pathway must be retained.

Stockbrokers and investment advisers typically do not have an accountancy background.

Our members are very clear: if the recognised professional association pathway is removed there is no alternative pathway to TPB registration available for SIAA's members who provide tax (financial) advice to wholesale only clients.

However, there is a need for additional flexibility in the framework to take into account the unique position of stockbrokers and investment advisers who provide tax (financial) advice and the challenges that SIAA faces in renewing its accreditation.

SIAA recommends that if the recognised professional association pathway is to be retained, the 1000/500 membership and qualification/experience requirements be removed so as to provide greater flexibility for professional associations such as SIAA to be accredited without the exercise by the TPB of its discretion. This will provide confidence to SIAA and other recognised professional associations of their accreditation as long as they satisfy the other accreditation requirements. It will also provide increased confidence to SIAA's members who rely on the pathway.

How should tax practitioners who are currently registered under the voting member pathway be treated if the recognised professional association pathway was to be removed?

Our members are also clear that removing the pathway would create a significant barrier to stockbrokers and investment advisers entering or remaining registered with the TPB.

An investment adviser with an economics degree who has been in the industry for 25 years needs to be able to continue to give good quality investment advice that takes into account issues such as capital gains tax on share sales and franking credits. Our members often hire investment bankers who are highly educated and make great investment advisers. But they are not accountants and have not studied the subjects required under the other pathways. They do not prepare and submit tax returns. Our members are clear that they cannot require these investment advisers to go back to university and retrain for a role they already perform. Furthermore, the retraining would involve study unrelated to their profession. This is not proportionate to the risk the government is trying to manage.

We note that Treasury has proposed grandfathering tax practitioners who are currently registered under the recognised professional pathway as part of an effective transition. We disagree that this is a long-term solution to the issue at hand. Removing the recognised professional association pathway will remove the pathway to TPB registration for stockbrokers and investment advisers who provide tax (financial) advice and grandfathering will not change that. All it will do is allow existing tax agents to remain registered. It will not provide a pathway for future applicants for registration. And the retirement of 'grandfathered' advisers will create issues for our principal members who are registered as company tax agents and rely on individual tax agents who provide tax (financial) advice

to satisfy their requirements to have a sufficient number of registered tax practitioners to supervise and ensure competent services.

SIAA recommends that if the recognised professional association pathway is removed the government must remove tax (financial) advisers (that is, those providing incidental tax advice to wholesale only clients) from the TPB regime, like it did for Qualified Tax Relevant Providers under the Better Advice Act.

The need for flexibility

The financial advice profession has been significantly impacted by inflexible and highly prescriptive regulation that has applied a 'one size fits approach' to qualifications and education. This is compounding the existing problem of Australians having limited access to financial advice.

The FASEA education standards for retail client advisers overlooked the fact that there are many different streams of financial advice. Stockbrokers and investment advisers were required to 'go back to university' in order to satisfy overly prescriptive educational requirements relating to only one stream of advice (financial planning), notwithstanding that they had been providing advice to their clients for decades. In response to calls for flexibility from the industry, the government introduced the 'experienced adviser' pathway that allowed advisers with 10 years of experience and an unblemished record to continue to provide personal advice to retail clients.

Work is continuing to introduce greater flexibility to the new entrant pathway. Current new entrant numbers are very low and the future pipeline for advice looks even lower. Due to the restrictive and inflexible nature of the retail adviser education standard, at the end of 2023, the number of new entrants to the personal advice profession was 308 – not a sufficient number to replace those advisers who have left. As of **1 August 2024, there are 15,492 financial advisers** able to provide advice to retail clients. In comparison, in 2018 there were 28,353.

SIAA would be very concerned if the inflexible and prescriptive approach to education that was applied to advisers who provide advice to retail clients was also applied to advisers who provide advice to wholesale clients.

SIAA recommends that if advisers who provide tax (financial) advice to wholesale clients are removed from the TPB regime, they must be able to continue to provide tax (financial) advice to their wholesale clients. They would continue to be regulated by ASIC. In addition, further thought must be given to requirements placed on the ability of new entrants to provide tax (financial) advice to wholesale only clients to ensure there is sufficient flexibility to allow them to do so. We do not want a repeat of the FASEA debacle to impact the provision of advice to wholesale clients. Any consultation must take into account the current work that is being undertaken by Treasury and advice associations on a more flexible education pathway for providers of advice to retail clients.

Conclusion

If you require additional information or wish to discuss this submission in greater detail please do not hesitate to contact SIAA's policy manager, Michelle Huckel, using the contact details in the covering email.

Yours faithfully

A handwritten signature in black ink, appearing to be 'JF' with a stylized flourish and a small 'x' at the end.

Judith Fox
Chief Executive Officer