

23 December 2008

Committee Secretary,
Senate Economics Committee,
Department of the Senate,
PO Box 6100,
Parliament House, Canberra ACT 2600

Email: economics.sen@aph.gov.au.

Dear Senate Economics Committee,

Re: Tax Agent Services Bill 2008 ("Bill") Tax Agent Services Regulations ("Regulations") and Explanatory Material ("EM")

Thank you for the opportunity to provide a written submission on behalf of the bookkeeping industry and to introduce our organisation.

The Australian Association of Professional Bookkeepers Limited (AAPB) is a national not-for-profit, independent organisation that performs and provides; research, education, standards, governance and support specifically to bookkeepers in public practice, commerce, and the business community.

AAPB works closely with Government at Federal and State level to build appropriate infrastructure for the bookkeeping industry and has been heavily involved in the proposed Tax Agent Services Bill (2008), Regulations and Explanatory Material.

AAPB's primary objective is to establish world's best bookkeeping practice within the Australian bookkeeping industry for the purpose of reducing BAS/IAS errors, reducing risk to the consumer and restoring bookkeepers' valuable contribution back to a recognised profession.

Over the past six years, AAPB has performed a cause and effect analysis of the bookkeeping industry, identified an end-to-end solution and achieved pinnacle milestones in building the solution including AAPB establishing and maintaining ISO9001:2000 certification for the past three years with 100% clearance.

Extensive research and investigations performed by AAPB has identified the following key points that have permitted a cottage industry that is unregulated and uneducated to form within the foundation of the financial sector that directly effects the collection of Government Revenue at Federal and State level.

- The introduction of A New Tax System (introduction of GST in 2000) created a demand for bookkeeping services from SME market.
- Lack of governance from the Finance Industry, Government and the Community has allowed hobbyists and franchise opportunists to enter the profession.
- No recognised National Code of Practice permits adhoc policies and procedures that currently provide zero Quality Assurance protection to consumers.
- No compelling need for education exposes the Government to errors and loss of revenue as well as consumers to fines and penalties.

- Inappropriate education infrastructure and governance has paved the way for software training to be accepted as the norm for training platform for bookkeepers as opposed to the critical information in GST technical knowledge and accounting and business principles.
- The misled concept that bookkeepers only perform data entry as the accounting software has the capability of coding the correct GST without assistance from the bookkeeper.

The impact from this currently unregulated cottage industry and lack of appropriate BAS/IAS education and governance within the Finance Industry and Business Community is a loss of revenue estimated in the range of billions of dollars to the Government.

Since 2005, AAPB has presented research findings, provided Bookkeepers Skills Assessment Evidence Packs and letters from Business Owners concerning problems with bookkeepers to Ministers and Government Departments at Federal and State level, all of which supports the need for regulation and appropriate education infrastructure for the bookkeeping industry. AAPB findings were also confirmed by NSW Office of State Revenue and Australian Tax Office Audit Reports.

In 2007, AAPB research, design, development, commitment and drive led to the Minister of Education's endorsement of the new Certificate IV in Financial Services (Bookkeeping) qualification (refer to IBSA Attachment). The endorsement of the new qualification provided for the first time, an appropriate framework for the education sector, a recognised qualification for bookkeepers to meet the proposed BAS Agents requirements and a career path for future bookkeepers.

AAPB believes the proposed Tax Agent Services Bill 2008, the Regulations and Explanatory Material will resolve many of the issues affecting the bookkeeping industry however there are still areas of concern, particularly regarding existing knowledge. A few of these areas are:

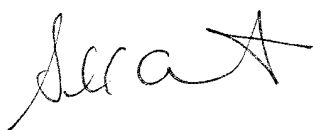
- Education Mindset – Changing the perspective from software education to appropriate information that provides the foundation knowledge for reasonable care.
- Course Materials – TAFE and Private Registered Training Organisations developing course materials that focus on GST Legislation, Accounting/Business Principles and accuracy, instead of accounting software manuals and packages that can produce inaccurate reports
- Educators/Trainers – People who have expertise in GST Legislation rather than software

We would be appreciative of an audience with the committee to explain in more detail of our concerns and provide solutions to these issues which include the need for a national skills assessment.

Please find attached the AAPB Submission in regard to the Bill, Regulations and EM. AAPB comments are based on our investigations, findings and supporting evidence.

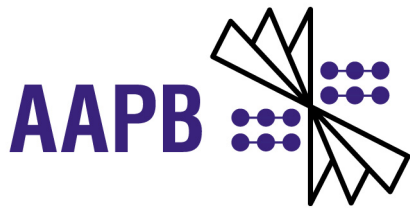
Please do not hesitate to contact us for further information. We look forward to hearing from you soon.

Yours faithfully



Sharyn Grant
Chief Executive Officer

Encl: AAPB Submission & IBSA Report



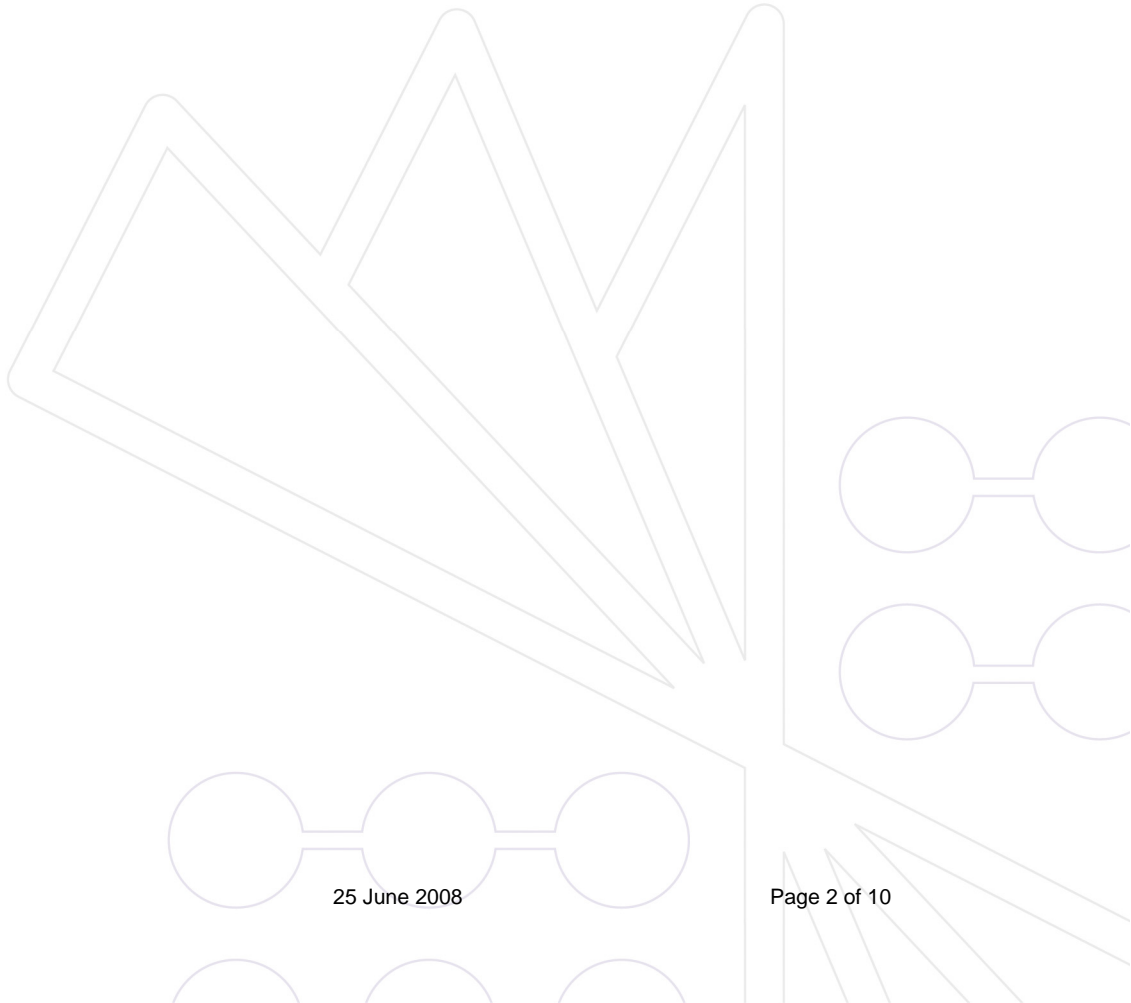
**Australian Association of
Professional Bookkeepers Limited**

Submission regarding

**Tax Agent Services Bill 2008 (“Bill”) Tax Agent Services
Regulations (“Regulations”) and Explanatory Material (“EM”)**

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AAPB Background

The Australian Association of Professional Bookkeepers Limited (AAPB) welcomes the opportunity to comment on the Bill, Regulations, and EM particularly in so far as they apply to the bookkeeping industry.

AAPB is the pre-eminent not-for-profit professional bookkeeping organisation in Australia, representing members in public practice, commerce, and the business community. AAPB's members work with businesses at all levels, from small and medium sized businesses to the largest global corporations.

Over the past six years, AAPB is the **only** bookkeeping association to achieve ISO9001:2000 and performed extensive investigations into the bookkeeping industry which has included international markets.

All relevant stakeholders directly affecting the bookkeeping industry have been sourced to investigate the following:

- Nationally recognised bookkeepers qualifications and non accredited BAS and software education programs
- Skills Assessments of university graduates, accredited software consultants, contracting bookkeepers, members of other bookkeeping/accounting associations
- Quality Management Standards and Code of Professional Conduct for the bookkeeping industry
- Professional Indemnity and Public Liability Insurance Policies
- Third party arrangements and working under the direction of a tax agent

AAPB's primary objective is to establish world's best bookkeeping practice within the Australian bookkeeping industry for the purpose of reducing BAS/IAS errors and reducing risk to the consumer.

AAPB findings have already led to the endorsement of a new recognised Certificate IV in Financial Services Bookkeeping qualification. This qualification has been endorsed by the Department of Education, Science and Training (DEST) as the recognised qualification for Bookkeepers performing BAS related Services, the first of its kind in the world.

Based on these investigations and findings AAPB has identified key areas of concern that need to be addressed in order to achieve appropriate governance for the bookkeeping industry.

General Comments

Overall, AAPB strongly supports the content within the Bill and Regulations however, there are areas of concern:

1. The proposed approach of opening the “flood gate” to allow all bookkeepers to enter the tax practitioner system without proper vetting or skills evaluation continues to leave the level of competency within the bookkeeping industry under question.
2. The recognition of the Certificate IV Financial Services Accounting and other courses in basic GST/BAS taxation principles is inconsistent with the Department of Education, Science and Technology (DEST) recent research and endorsement of the new Certificate IV in Financial Services Bookkeeping. The inclusion contradicts the DEST National Project Reference Group with representation from National Institute of Accountants (NIA), Association of Accounting Technicians (AAT) and Australian Association of Professional Bookkeepers Ltd (AAPB) unanimous agreement to develop a new qualification specifically for contracting and employed bookkeepers performing BAS related services. The group unanimously agreed the existing qualifications including the Certificate IV in Financial Services Accounting did not meet the needs of the bookkeeping industry.
3. The amendments to the scope of what a BAS Service has created a grey area and what we perceive to be an unintended loop hole.

The above points have been addressed within the following Specific Comments. All comments have been validated through AAPB investigations and findings.

Specific Comments

1. The Code of Professional Conduct

AAPB supports the code of professional conduct outlined in section 30-10 and it is consistent with AAPB's current code of professional conduct.

In regard to *“(7) unless you have a legal duty to do so, you must not disclose any information relating to a client's affairs to a third party without your client's permission”*.

We commend Government on taking up our recommendation to include an example on this particular issue (i.e. example 3.10 in the EM) however we still have some concerns that we believe need to be addressed.

At a recent tax agent board conference held on 6 March 2008, the Tax Agents' Board of Queensland, on behalf of the Chairs of each of the six Tax Agents Boards, issued some guidance on the issue of outsourcing tax agent work. The guidelines outline that to determine whether outsourcing contravenes the law will depend on individual circumstances, and other relevant factors.

The factors outlined in the document include whether there was any breach by the agent engaging the outsourcing service of the agent's privacy and secrecy obligations and whether the outsourcing arrangement comply with the Tax File Number Guidelines.

AAPB recommends the EM needs to alert attention to the fact that tax agents and BAS agents need to be mindful of any arrangements they enter into are not in breach of these Laws and other related Laws. We also believe that the National Board should have the authority to look into such arrangements that are brought to their attention and to refer them to the Commissioner of Taxation for prosecution.

2. Regulations – Part 2 BAS Agents & Qualifications

We observe that the qualifications section permits either a Certificate IV Financial Services Bookkeeping or a Certificate IV Financial Services Accounting. This requirement also appears in other areas of the Draft Regulations.

The prescribed qualifications identified for BAS Providers are not congruent with the government's nationally endorsed recognised qualification from the Department of Education, Science and Training (DEST) and the unanimous agreement by industry and the professional associations represented on the National Project Reference Group. (Professional associations were NIA, AAT and AAPB).

On the 29 May 2007 Ministerial Delegates approved the public release of FNS04 Financial Services Training Package V2.0 following endorsement by the National Quality Council. The endorsement included the new Certificate IV in Financial Services Bookkeeping.

The new Certificate IV in Financial Services Bookkeeping was endorsed by DEST on the basis that the Certificate IV in Financial Services Accounting does not address the educational requirements for BAS service providers. The Certificate IV in Financial Services Accounting was found to be extremely inadequate regarding

GST. In order to resolve the inadequacies of the existing qualifications, a new Certificate IV in Financial Services Bookkeeping qualification was developed with five new units that specifically address BAS/IAS.

The Innovation and Business Skills Australia (IBSA) discussion paper released in November 2006, titled *FNS04 Financial Services Training Package Version 2, Addendum to Frequently Asked Questions (FAQ's)* validates the contention that Certificate IV in Financial Services Accounting is inadequate as a bookkeeping qualification:

"IBSA's analysis and consultation with industry stakeholders identified the need for a bookkeeping specialised qualification at certificate IV. Five bookkeeping units of competency were developed as part of the new specialization.....the qualification is designed to reflect the role of contract bookkeepers and employees performing in the role of bookkeeper organizations and who perform duties such as:

- *establishing and maintaining accounting systems*
- *assisting with BAS and other office taxes*
- *payroll*
- *developing management systems for organizations"*

The endorsement of the new Certificate IV in Financial Services Bookkeeping has now created two very distinct pathways in education reflecting the differing roles of the bookkeeper and the accountant.

The Certificate IV in Financial Services Bookkeeping is the new career path for bookkeepers who wish to become BAS service providers (BAS Tax Agents). The Certificate IV in Financial Services Accounting is the career path of Accountants providing Income Tax services. This qualification specifically deals with income tax which is clearly beyond the bookkeeper's responsibility. Therefore the Draft Bill and Draft Regulations should only cross reference to the new endorsed Certificate IV Financial Services Bookkeeping and not the Certificate IV in Financial Services Accounting.

AAPB investigations and findings have also established that many who have undergone formal training are not competent. An AAPB skills assessment trial that included university graduates in Accounting, accredited software providers, members of accounting bodies and other bookkeepers associations identified GST knowledge gaps that are critical to performing BAS related services accurately. In light of AAPB findings and the high error rates in BAS's as has been outlined in ANAO reports AAPB believes it would be appropriate for Government to adopt a higher level of responsibility and accountability to ensure people who are BAS service providers have a satisfactory level of GST knowledge in order to reduce this high error rate.

AAPB urges Treasury to align the qualification recommendation to the policies of the Department of Education, Science and Training and the recognised qualification.

AAPB also recommends the skills assessment be mapped to the new Certificate IV in Financial Services Bookkeeping and be endorsed by the National Quality Council. The proposal for the skills assessment is not dissimilar to other industries that have undergone regulatory reform.

Our concerns and recommendations have become more relevant with the new amendments that have been made to Division 1, at 201 of the Regulations. The Division now outlines that in addition to a Certificate IV Financial Services (Accounting) or Certificate IV Financial Services (Bookkeeping) there is also a requirements to complete a course in basic GST/BAS taxation principles. It would appear that this requirement has being added as an acknowledgment by Government that the Certificate IV Financial Services (Accounting) does not address any GST content in its course and other areas that we have alerted to in earlier our submission.

We do however question what is meant by the terms “*basic GST/BAS principles*”. There are currently courses out in the market place that bookkeepers are attending that only cover a small percentage of the GST legislation and some PAYG provisions aspects. Often other relevant Provisions required for the successful completion of a BAS such as LCT, FBT, and Fuel Tax Credits are not included in the course. In many cases the GST content deals with very limited Provisions of the GST Act. Bookkeepers completing these courses would not be able to satisfactorily complete an accurate BAS let alone have the ability to account for GST correctly. It would appear that Government has set a very low benchmark and standard. Furthermore there are no guidelines of how these courses will be assessed for appropriateness and whether the content meets the requirements of the Regulations. In addition who will have the role of taking on this responsibility?

This again demonstrates the inappropriateness of the inclusion of Certificate IV Financial Services (Accounting) and the Governments attempts to find band-aid solution to make it work appears to have failed and created ambiguity and complexity.

3. Regulations – Part 2, Division 1 & 2

There is a requirement outlined in this Division that a person needs to have undertaken at least 1400 hours of relevant experience in the preceding 3 years.

We are pleased to see the changes in Regulation 203 however AAPB continues to be concerned with the approach of opening the “flood gate” to all bookkeepers and to deal with the consequences later. There appears to be **no skills assessment** to ensure that bookkeepers who have these qualifications are competent to perform the work to a satisfactory standard i.e. bookkeepers who have a Certificate IV Financial Services Accounting and the completion of a course in basic GST/BAS taxation principles.

There are many bookkeepers who hold a formal qualification but have never performed any professional development since commencing as a consulting bookkeeper. This was identified and validated in the ATO research conducted by TNS Research.

Again, AAPB strongly recommends that a skills assessment mapped to the Certificate IV in Financial Services Bookkeeping and approved by the National Quality Council be administered to a person before recognition as a bookkeeper is granted. This assessment should be undertaken by all bookkeepers even if they hold a Certificate IV Financial Services Accounting and have completed a course in basic GST/BAS taxation principles. In addition all comments made in 1.2 above, equally apply here.

4. Meaning and Scope of a BAS Service

Section 90-10 of the Draft Bill defines a BAS Service to be:

“90-10 Meaning of BAS service

(1) A BAS service is a ^{*}tax agent service:

(a) that relates to:

- (i) **ascertaining** the liabilities, obligations or entitlements of an entity that arise, or could arise, under a ^{*}BAS provision; or
- (ii) **advising** an entity about the **liabilities, obligations or entitlements** of the entity or another entity that arise, or could arise, under a BAS provision; or
- (iii) **representing** an entity in their dealings with the Commissioner in **relation to a BAS provision**; and

(b) **that is provided in circumstances where the entity can reasonably be expected to rely on the service.**

(2) A service specified in the regulations for the purposes of this subsection is not a BAS service.

Note: For specification by class, see subsection 13(3) of the Legislative Instruments Act 2003.”

We question what is meant by “where an entity can reasonably be expected to rely on the service”? It is general business understanding and business practice that when a client contracts a bookkeeper to code their invoices and to print the relevant reports for the BAS they are generally relying on this work to be correct and that it will be used to for the purposes of lodging their BAS. It is unclear what the Government is trying to achieve here. Clarity is required.

In relation to the scope of BAS Services the EM outlines:

“2.35 A BAS service therefore includes:

- *preparing or lodging an approved form about a taxpayer’s liabilities, obligations or entitlements under a BAS provision;*
- *giving advice about a BAS provision; or*
- *transacting any business with the Commissioner on behalf of a taxpayer in relation to a BAS provision.*

*2.36 Not all items of work from the recording of a transaction to the preparation of an approved form (eg, a BAS) are BAS services. Only those tasks that involve the application of a BAS provision in ascertaining the liabilities of a taxpayer are a BAS service. A BAS service can be distinguished from services which, for example, simply require an individual to follow instructions or transfer data onto a computer programme. **As such, bookkeepers who merely enter data, code transactions based on instructions provided, process payments or prepare bank reconciliations are not providing BAS services and therefore need not register.***

We are extremely concerned with the comments made in the last sentence at 2.36 of the EM. Bookkeepers who are currently entering data also need a degree of GST knowledge to be able to complete their work. It is general knowledge in the bookkeeping industry that a bookkeeper does not perform data entry but rather data processing that requires a level of skill and some knowledge.

The GST is a **transaction based tax**. One transaction can have multiple supplies with each supply having a different GST outcome. They simply cannot be coded to one GST account code in a software package. Furthermore the transactions cannot be blindly coded but rather a cognitive process is required to ensure they are treated correctly.

For example a bookkeeper coding a tax invoice needs to be aware of Division 29 of the GST Act requirements and corresponding Regulations to ensure the tax invoice is a valid tax invoice. A bookkeeper who has to code and process a tax invoice for some items of goods that were exported overseas also needs to be aware of GST Act requirements. The goods exported may not be GST-free even though the tax invoice and paperwork clearly states they are. Perhaps the goods were exported after 60 days and there is a need to write to the Commissioner of Taxation to exercise his discretion to permit them to be GST-free. This requires a general knowledge of the act and for a cognitive process to occur for a decision to be made. It would appear that 2.36 somewhat contradicts example 2.3 in the EM.

We recommend that this sentence be amended to read:

As such, bookkeepers who merely enter data, code transactions (including the GST codes), and process payments, based on instructions provided by the client, tax agent or a BAS Agent, or prepare bank reconciliations are not providing BAS services and therefore need not register.

This amendment will avoid and misconceptions and provide clarity.

Similarly, we do not support the statement made in Example 2.4 of the EM where the following is outlined:

“While coding transactions and generating reports from computer software are not generally considered to be BAS services, setting up an accounting software programme constitutes the interpretation or application of a BAS provision, and interpreting and advising on the use of the reports generated from these software programmes constitutes ascertaining liabilities, obligations or entitlements under a BAS provision”.

Again in order for a bookkeeper to code a transaction there must be as per section 90-10 some sort of ascertaining of a liability to the ATO etc. For example: Is the tax invoice a valid tax invoice? Has the transaction being treated correctly for GST Purposes? There must be some understanding and knowledge of the GST provisions.

We recommend that Government delete the sentence we have underlined in Example 2.4 above. It appears to contradict the definition of a BAS Service and is opening a loop hole in the Legislation. Furthermore it is creating a grey area and providing bookkeepers with an opportunity to relinquish their responsibilities and legal obligations by arguing “I am only doing data entry and not GST”.

This is an argument AAPB hears often as an excuse for individuals to argue they fall outside the scope of the current section 251L of the ITAA 1936. It would appear that Government is reintroducing this problem into the new Bill.

5. Schedule 2, Section 4 of the Transitional Provisions - BAS Services

At schedule 2, 4 (3) (c) it outlines the special rules for certain individuals *“providing BAS services to a competent standard for a reasonable period”*.

Clarity is sought as to what the words *“competent standard”* actually means and how this will be ascertained. This is unclear.

AAPB believes the adoption of a skills assessment mapped to the Certificate IV in Financial Services Bookkeeping and approved by the National Quality Council would provide a measurable competency.

It would also ensure a level playing field and a standard base is used in terms of measurement.

6. Regulations 9 Application for registration –fees

Items 3 and 4 outline the fees for registering as a *“BAS Agent who carries on a business”* and a *“BAS Agent and not carrying on a business as a BAS Agent”*.

We are puzzled as to why there is a distinction. An entity regardless of whether they are a BAS Agent is either in business or not in business. A bookkeeper would refer to the MT dealing with the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number or refer to the long-standing Taxation Ruling 97/11 which provides a summary of the main indicators of carrying on a business to establish whether they are carrying on a business.

We believe that the draft Bill would only be relevant to BAS Agents carrying on a business and charging a fee.

Conclusion

In summary of AAPB's submission for the Tax Agent Services Bill 2008 (“Bill”) and associated Regulations and explanatory materials, AAPB believes the initiative is a positive move towards consumer protection.

The key areas AAPB has identified within the report will ensure consumer protection, raising the level of competency within bookkeeping industry which will ultimately achieve world's best bookkeeping practice within Australia and reducing BAS/IAS errors.

AAPB looks forward to the Bill and Regulations becoming law and supports them subject to the above comments.