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**SENATE STANDING COMMITTEE ON
ECONOMICS**

Friday, 6 February 2009

Members: Senator Hurley (*Chair*), Senator Eggleston (*Deputy Chair*), Senators Fierravanti-Wells, Furner, Joyce and Pratt

Participating members: Senators Abetz, Adams, Arbib, Barnett, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Crossin, Farrell, Feeney, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Hanson-Young, Heffernan, Humphries, Hutchins, Johnston, Joyce, Kroger, Ludlam, Lundy, Ian Macdonald, Marshall, Mason, McEwen, McGauran, McLucas, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Ronaldson, Ryan, Scullion, Siewert, Stephens, Sterle, Troeth, Trood, Williams and Wortley

Senators in attendance: Senators Eggleston, Fierravanti-Wells, Furner, Hurley, Joyce and Pratt

Terms of reference for the inquiry:

To inquire into and report on:

Tax Agent Services Bill 2008

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Committee met at 9.05 am**BENARDIS, Ms Maria, Technical Advocacy, Australian Association of Professional Bookkeepers****GRANT, Mrs Sharyn Maree, Chief Executive Officer, Australian Association of Professional Bookkeepers**

CHAIR (Senator Hurley)—I declare open this hearing of the Senate Standing Committee on Economics Inquiry into the Tax Agent Services Bill 2008. On 26 November 2008 the Senate referred the Tax Agent Services Bill 2008 to the committee for report by 12 February 2009. The bill seeks to establish a national board to register and regulate tax agents so as to protect their customers. It would also introduce a legislated code of professional conduct.

These are public proceedings, although the committee may agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may, of course, also be made at any other time.

A witness called to answer a question for the first time should state their full name and the capacity in which they appear and witnesses should speak clearly and into the microphones to assist Hansard to record proceedings. All mobile phones should be switched off. I welcome Mrs Sharyn Grant and Ms Maria Benardis from the Australian Association of Professional Bookkeepers. Thank you for your comprehensive submission to us today. Do you have an opening statement that you would like to make?

Mrs Grant—Yes, we do.

CHAIR—Please go ahead.

Mrs Grant—Good morning and thank you for inviting us to be here today. It is a great honour for us to be here to explain what our findings have been so far. I will keep our summary quite short and brief, as you already have our submission and already understand our views. I would like to give a brief background to how we came to these conclusions in our submission.

Firstly, we formed the association because we found there were a lot of discrepancies in the bookkeeping industry. We have spent nearly six years researching in detail all stakeholders involved in the financial sector, particularly the bookkeeping industry. The purpose of our original form was to find out how bookkeepers comply. As a bookkeeper running a firm myself, we went through this process and tried to do it. When we discovered how to comply we realised that the current legislation did not actually require us to do this. There are a lot of discrepancies within the current legislation that hold the bookkeeping industry behind.

We went about looking at who is creating a lot of the issues that we have with the discrepancies in the legislation. What we found in the process is that the bookkeeping industry and the legislation have a lot of infrastructure problems. AAPB then asked, ‘We have all these infrastructure problems. How do we resolve them?’ Firstly, when we discovered some of the problems, the biggest one was mistakes. We found that a lot of bookkeepers and accountants make a lot of mistakes preparing the BAS. We did not focus on income tax. We restricted it to the BAS, because that is what we do. Our findings showed that over 55 per cent of lodgements made in the BAS had errors that went against our revenue. So, the primary thing is we were losing revenue to the government, and that is a big thing.

Secondly, we found that it actually put the business owner at risk because they were actually going out and doing reasonable care to hire professional services only to discover that these professional services were not up to speed. So, we thought that we now have to determine who is actually making these mistakes, what is the impact of these mistakes and why are they making mistakes. Our further research led to education. In general, most people do not make mistakes because they want to make mistakes; they are making them because they just do not know. So, we looked at the education sector. From that we discovered a lot of anomalies in the education sector. We researched from a certificate up to an advanced diploma in finance. We then went internationally and looked at all the other qualifications around the world, and that took us two years of research. We then prepared a paper to the education board and in that paper we provided all the issues that related to the current education.

The horrifying part is that in 2004 GST was still not in the education curriculum. That is a major issue. After the review of the financial services packages in 2004 it still was not in the curriculum. That is another issue. AAPB wrote the new qualification, which is the Certificate IV in Financial Services (Bookkeeping), as a framework. We gave it to IBSA, Innovation Business Skills Australia, to validate, and there is documentation supporting that we did this. We took our research, our findings and a framework and said, 'This is what our industry actually needs.'

This is quite a major thing, because to get a new curriculum in place you first have to go through a major process. Firstly, you have to prove that there is nothing in the market that can meet your needs, because they do not duplicate qualifications. Secondly, you have to prove that anything that is in the market cannot be modified to meet your needs. These are two major issues that took nearly three years of debating in the education sector to achieve.

When we developed the Certificate IV in Financial Services (Bookkeeping), we had to develop five brand-new units to get the qualification up to speed. That shows you what has been taught in the market, and that was a major concern for us. We then said, 'Okay. The current education in the market and what people are receiving is not up to scratch.' A critical thing that we have realised is that people cannot get the right education, and that is why we built the framework.

The second part of the education research findings covers three areas. Firstly, the mindset towards education in Australia is not there. People think of the education as a piece of paper as opposed to knowledge. That is what we are seeing in the market right now. People are getting a Certificate IV in Financial Services (Bookkeeping) in two weeks. I wrote that curriculum and I do not know how you could do it in two weeks. We wrote the curriculum with taxation law regarding GST, FBT, Wine Equalisation Tax, Fuel Tax and PAYG.

Secondly, we wrote in quality management because we knew that to be a profession we must have quality management. I know for a fact from teaching quality management that it takes at least six months to learn, so we do not know how people are coming to us with a piece of paper after two weeks. The education was released and we had someone announce that they got the education two weeks after the actual curriculum was released. We question the quality of these programs. We also found that the course materials are not up to speed. They are particularly driven around software programs as opposed to tax and quality management.

The third issue was the quality of the trainers and the lecturers. A lot of the trainers delivering at TAFE level or as private RTOs are software trainers and do not have a background in finance. That is another major issue. There are three critical issues. The course materials are not reliable, because they do not come from a solid source, the trainers are not up to speed, and everyone is taking shortcuts. That is what we see as the critical problem around education right now. We now have a framework, but we need to take it to the next step.

The third thing that we found in our research was standards. We went to Australia Standards to get standards developed for the bookkeeping industry, which was objective No. 2. We went to the Australian Accounting Standards Board, Treasury, the ATO, the Office of State Revenue and the accounting bodies to get this resolved. At the moment there are no recognised standards in our industry, and that is what we are pushing for. That is why we support the code of practice. That code of practice will give us a standard that will give us clear guidance and a clear understanding of what our role is. But most importantly, it gives assurance to the community. As a not-for-profit, our primary focus is on the community. That is what we are here for and that is why we did the research. We invested an enormous amount of revenue into finding out what the issues are relating to our community and how they impact.

The other impact we looked at was insurance. We said that another thing we must have in our industry is insurance. A lot of people will dispute that this new legislation will cost more money to the country, but we have been able to prove the opposite in our own association. We were able to reduce our insurance policy by demonstrating to the insurance company that we could reduce risk. We have already proven that that is not the case; it will not cause a cost to the community to have this come in.

The other issue that we looked at was communication. There is a major issue at the moment between accountants, bookkeepers and clients. There are a lot of issues around who did what and 'he said/she said' information. We believe that a code of practice that is written correctly will remove a lot of that and will give assurance back to the industry again. We found that accountants and bookkeepers, through no fault of their own, have no appropriate infrastructure to work with. We believe that over time this will be resolved, and our research has proven this.

All the information I am telling you now has been validated by the ATO. They have run their own private research. We told them this information back in 2006 and they have come to us just recently and confirmed that everything we have told them has been validated in their own research. We have also been to the Office of State Revenue, which has validated that their findings are the same as ours. We know there are mistakes, we know why the mistakes are there, we know what to do to resolve the mistakes and we do have a solution for it. In our submission we have stated that we believe that, if you look at the full cause and effect analysis of this industry, the last thing we need in this legislation—we believe everything else is appropriate—is a skills assessment controlled by the national tax board, a skills assessment that the associations can take as an assurance that, if this person comes to us, we know you are at a certain level. This is why the CPAs had it for many, many years in the institute; they know that the quality coming out of the universities is not there. That is why they have developed extra education programs. We believe that if you put an appropriate skills assessment in place a lot of these effects that we are receiving in the market will be resolved.

We also know that the 1,400 hours being proposed in this legislation can be resolved by a skills assessment. Just because you have done 1,400 hours does not mean you are any good; it just means you have been doing it for a long time. We have also run skills assessments all around Australia. We have evidence supporting us and we have provided this evidence to Treasury and to the ATO. They have seen our facts. This was developed with Atax and the University of New South Wales. We hired expertise to make this happen. We went around Australia and not one person out of the skills assessment has passed the taxation knowledge—not one. We put them through a comprehensive four-day skills assessment. It is practical and it is what they do in their real life. They have all said it is a very fair skills assessment, but none of them could relate it back to the GST act. When we first started they did not even know a GST act existed, and so did accountants. They did not know a GST Act existed. When we pulled out the manual they said, ‘Where did you get that from?’ We said, ‘Well, you should know this.’

The other thing that we discovered out of the skills assessment is that they do not know quality management, and the entire group nationally voted through our association that quality management and business management should be compulsory to every bookkeeper. They voted; we just provided the tools for them to see.

What we also discovered out of the skills assessment is that it actually changed the mindset. This is a very critical part in this mindset. They changed the mindset to take it from a piece of paper to suddenly realising they do not know. We were able to identify the gaps very quickly and efficiently and they have now adopted a whole new mindset of, ‘I want to learn’. We have people ringing us and begging us, saying, ‘We want to come and learn.’ That is going to be a major thing going into the future, because you are going to have a new mindset of people who want to learn—not being forced to learn, but actually wanting to learn. This was a big wake-up call to a lot of bookkeepers—and these are the top bookkeepers in Australia that we did this with—who have said, ‘I’ve been doing this for 20 years.’ I said, ‘The GST has been in for eight, so I don’t know how.’ This has started to turn the whole process around.

I wanted to provide that background to show you that we have done extensive research, we know what our problems are and we know how to fix them. We showed the ATO and government in 2006 in Melbourne when we launched our end-to-end solution what needs to be resolved. This is one of the pieces and part of this end-to-end solution. Now you know a little bit about what we have done, Maria and I would like to know what you want. We can build solutions, but we just want to know: what does the government want from us?

CHAIR—It seems to me that one of the problems you are describing is that people are called bookkeepers when they really are data entry people who use proprietary software that runs the bookkeeping, and so there needs to be a clearer understanding of what the terms are.

Mrs Grant—Yes. Firstly, I would like to say that there is no such thing as data entry in bookkeeping. That is one thing we discussed with the ATO, and they agree. We data process, we do not do data entry. It might sound like a really basic thing. The difference between data entry and data processing is cognitive thought. Because we have a transactional based tax, every receipt requires a cognitive thought. The computer does not magically put it in there. The computer does not magically set it up so that you can just do entry. You have to think about it and you have to know what is a taxable supply. We have already tested that and no-one got the answer right, so we thought that is an issue straightaway because you are not validating your receipts to make sure that this is a taxable supply. A lot of people do not understand where the ‘traffic’ is supposed to go with these software packages. What we find is that they have a screen and they understand the screen but they do not understand the mechanics behind it. We talk about people doing data entry, but it does not exist in our

world. People will try to make out that it does, but it does not. It requires knowledge, because every receipt requires you to know, 'Where do I send this traffic?'

Ms Benardis—I am basically the technical person representing the bookkeeping industry here. Another thing we found with this coding practice was that they were just tabbing on the default that came up in the packages. If an input tax credit was coming up, 'Yes, we'll just keep pressing that.' If GST-free was just coming up on the package, 'We'll just keep pressing that.' Basically, they are not thinking. They are accepting that that package is giving them the answers. We found that the majority of the things that were coded on these tax packages were coded as GST-free. In other words, there was no GST being put in any account to be paid to the ATO, and then they were just merely saying, 'That's great', lodging it with no checking, no nothing. That is where we got really concerned, because we can see an enormous revenue leakage to government occurring as a consequence of this.

Mrs Grant—The first thing that we also identified from the education we have done with our members is that when we had one of our members come to us asking Ms Benardis for technical information, he discovered quickly that there was a \$2 million loss of revenue to the government due to software being set up by a previous bookkeeper, which he had been following for the past two years, just following suit. It was not until we ran some education with them to explain, 'This is how you would manage this particular item', that he came back and said, 'I've just found after your showing us what I should be doing a \$2 million problem.' That is why we dispute that there is no such thing as data entry; you have to know what you are doing.

Senator EGGLESTON—It is very obvious from the stories you are telling that there is a need for more education of people providing BAS services. You talk about the need to broaden that in various ways, but who do you think should provide it? Should it be provided through the TAFE system so that nobody can become a BAS agent unless they have a certificate from a formally recognised educational institution? Where would you see the education services best located?

Mrs Grant—We believe that the way it should be presented is that it should be available for everyone in Australia. It should not be restricted. TAFE is obviously the best way to go. However, the quality is not there, and that is the dilemma. Yes, you can have private RTOs. A TAFE is just a registered trading organisation. RTOs are fine, but what we have to be assured of is: is the quality there in what they are providing? I will give you an instance. I was asked to come to a TAFE to see a group of graduates. They had all graduated with a diploma of accounting, and they were very excited. When we looked at their work—we had them all doing payroll—one paid one person for an entire year, another person paid one for one day, and another person paid one for a month, which was supposed to be a fortnightly pay. When I queried the results of what they had done they said, 'It doesn't matter what they produce, they just had to produce a report.' When I went into the curriculum, the curriculum itself said there was no need for accuracy or validation. The TAFE teachers said, 'They just have to produce it. Here is the report. I can tick they're competent at producing a report.' That is the system we have.

Senator EGGLESTON—So, you really need some sort of standard setting body to accredit courses?

Mrs Grant—Yes.

Senator EGGLESTON—Who would that body be?

Mrs Grant—We believe the national tax board should be responsible for that. On top of that, having a skills assessment would send a very loud message back to the universities and back to the TAFEs to lift their game. What you would have is a self-regulated and self-funded industry that will demand more from the TAFEs, because they will get frustrated with performing a whole year or two years of education only to find that the tax board said, 'Sorry, you're not up to speed.' That will send a very loud message back to not just the bookkeeping industry and not just the finance sector; you will set a standard for all industries to say, 'Sorry, TAFEs, you need to lift your game.' That is where we are coming from and that is why we did our research. We believe it should be available to everyone in Australia and it should be using our infrastructure, but our infrastructure has to be improved. This is no extra cost to the government. This is the industry and the community demanding more from their TAFEs and demanding more quality from their TAFEs.

Senator EGGLESTON—The other thing you mentioned in passing was the computer programs and the fact that they were not properly geared up necessarily for GST. I heard from some people yesterday that the GST is not written into these programs, and that is obviously is going to be an ongoing source of error unless in some way that is corrected. What would you recommend in regard to that?

Mrs Grant—There are two items there and this is where we come from in our research. Firstly, rather than relying on the software, it should be regarded as the tool, not the knowledge. The knowledge needs to remain in the person. You should be able to have tools to validate what is going in there and to be able to correct it. That is the first point. I do not believe any software tool can do everything that it is asking for. The point is changing the mindset from thinking that whatever you put into the software package will instantly be correct.

I will cite another case that we had with the Office of State Revenue in New South Wales. The Office of State Revenue has developed some amazing tools to validate your work. They are calculating tools for payroll. They went out on site on one of their audits. A person was using a software package, which had not produced the payroll correctly. The Office of State Revenue asked this person, ‘Did you use our tools to validate?’ They said, ‘Actually, we did’, because the Office of State Revenue has an education arm and they were trying to help them. They said, ‘Actually, we did. We did use your tool, but your tool didn’t calculate out to what we had in our software package so we obviously thought the government’s got it wrong.’ That is a serious conservation that we had. This person seriously believed that the government has got it wrong again and so the calculator must be wrong because ‘I know my software package is right’. When they went through the actual processing, the software could not do it.

Now, we have another example that we discovered when doing our skills assessment regarding the SAM, Simplified Accounting Method, for GST, which is encouraged for small businesses to use, especially in retail. It is a huge thing that they offer. We found that the software packages cannot deal with it. You have to, in fact, do your entire accounting practices in Excel. You cannot do it on the software packages; it cannot be reconciled back.

Senator FIERRAVANTI-WELLS—I appreciate the sorts of problems and the recognition of the problems in the industry. You are to be commended for that. I am going to take it from the other angle. It is clear that your bookkeepers go in and do work, but they have no responsibility. Surely the next step here must be some sort of professional insurance for them, because otherwise it is all care and no responsibility. I appreciate that bookkeeping is done—you have your bookkeepers and then, of course, you have in-house people that do bookkeeping—and if I am a sole trader I will probably do it myself, but then I accept the responsibility. But here you have circumstances where you clearly have a litany of problems and businesses who entrust their bookkeeping work to bookkeepers who they perceive to have a certain degree of expertise are basically letting them down, but they have no insurance. Ultimately it is the business that takes the responsibility. Surely the next step for you is to have some sort of insurance, otherwise this whole exercise might be futile.

Mrs Grant—Yes. In fact, AAPB’s policy is that all bookkeepers who join us must have insurance. We agree with you 100 per cent, but obviously that is a cost to industry because you have to now have insurance. So, we went to QBE and negotiated a deal for bookkeepers. The deal was reduced because we were able to show quality assurance processes that reduced the risk in what the bookkeeper was doing. There will be people who will say, ‘This is going to be an extra cost because we need to have insurance’, and there will be accountants who will say, ‘This is going to be an extra cost, because the insurance policies will go up.’ That is not true. The insurances are actually very affordable. If you look at how much money the bookkeepers make, it equates to only 0.5 per cent of their revenue. This is because we have negotiated this policy, and QBE has now just opened that to the market. We took a very hard stand when we first started as an association and said, ‘These are the rules. If you want to be a professional, you must take responsibility, but you also must have duty of care to your client so if something goes wrong the client can come back and say, “Okay, you made a mistake. I want to sue you”, if that is the case. Therefore you need to have that insurance.’ But we actually took it to one step even further, of course. We said, ‘You must have professional indemnity.’

However, the real risk to bookkeepers is actually public liability, because we go out on site. But it goes even further: as soon as we put a USB into your computer, because we are on site with the client’s computer, we are now actually liable for any viruses that may come off the stick. Because we use software tools we have to download and upgrade the software, especially in the new financial year when you have to upgrade all your tax. If a virus comes in we are also liable for that virus. There needs to be a lot of this written into the code of practice in terms of protection. There seems to be a lot about professional indemnity but where is the liability? This is actually a bigger risk, because we are actually on site doing the work in the client’s home. That is normally where we spend most of our time—on site—whereas it is quite different for a lot of accounting firms; they take the file on to their own premises. The reason they use bookkeepers is that we do go on site.

Talking about taking responsibility, it actually goes even further than that. A lot of times the business owner relies on the bookkeeper because we are there. This is especially the case with small businesses. They rely

more on a bookkeeper than they do on an accountant, because they might see the accountant once a year. They see us at least four times a year, because we are doing the BAS. They ask us a lot of information. They ask us to help them with their IT, mainly because they do not know how to do it, and because we work on IT they assume that we know how to do all of these things.

There are a lot more issues that go around with this. We went to QBE and showed them our quality management system that we have for our members. We showed them the extent we go to so we were able to reduce the risk not only to us but also to the client, and demonstrate reasonable care to a new level that should have been done many years ago where we were able to have this. I believe that, yes, every contracting bookkeeper should have this. If you want to know how you define a bookkeeper as a BAS agent, as soon as you are a contractor you are a BAS agent. We turned our thoughts around when Atax said to us that it is irrespective whether we do a selection of things or all of it. You choose that in your role. You choose to do that in your business. However, the consumer does not know this. With education, in particular, we say, 'I'm a BAS agent. I'm a contractor so I should therefore be a registered BAS agent. I'm operating as a business. I need to have all the business requirements, including quality management, insurance, education and keeping up-to-date through continuous professional development. I need to do that. That is my business.' It does not matter whether you are a plumber, an electrician or whoever; we all have those requirements in running a business. We are a professional trade and that is what we do. In defining it I said, 'It's quite simple. As soon as I hang a shingle on the wall and I say I can do bookkeeping, irrespective of whether I print out the BAS or fill in the form, everything I put into that software package impacts on GST', unless I am doing no coding at all. Why would you be there; they have hired you to do their BAS? We think you have to draw a fine line.

Then we said, 'It's really easy to determine what tasks relate to a bookkeeper and what tasks relate to an accountant.' You simply take a profit and loss where all the GST sits, you work up to EBIT, because that is where all the GST sits in the revenue and expenditure, and then after EBIT it then becomes an accountant's role, because now you are dealing with income tax. You take the balance sheet. Anything that relates to a current asset or a current liability relates to BAS. For anything that sits in a fixed asset you suddenly need an accountant. It is quite simple when you just break it down to basics. There are very clear dividing lines. The reason the fixed asset needs to come from the accountant is that it deals with depreciation.

These are very clear boundary lines, which have always been murky because everyone has said, 'I've done a bit of this and I've done a bit of that.' If you had this written into your code, 'This is my boundary. I can do this up,' for anything after that you must receive direction from a tax agent or accountant to say, 'Where would you like me to put that?' That is where quality management comes into play, because that is where you would have all of your policies and procedures set up to guide the industry in what they should be doing.

We believe this piece of legislation, which we have the power to bring in today, holds the answers for us. We believe that what you are doing today will set a standard for the very first time from a quality management point of view and to our industry. When I did the research behind all of the quality management within the finance industry, it is not really there. We have a lot of financial standards that we would refer to from an ISO perspective as technical standards, but we do not have good system standards. We believe this legislation will give us this. The code of practice will give us a good solid standard that we can write our policies and procedures against and where we can put our systems in place. It will also make it auditable for the ATO, because it will make very clear boundaries for the ATO; otherwise you will have issues later on, with the safe harbour particularly, when there is an audit into who made the mistake. How can you find that? Yes, you might need insurance, but you also have to know, 'What are my boundaries? What am I responsible for? What's my authority? What's my purpose? What's my scope?' That is what needs to be decided.

Senator FIERRAVANTI-WELLS—Can you break down the bookkeeping community in terms of numbers? How many bookkeepers are there in Australia? How many under your umbrella work in house and how many within your professional organisation are freelancing? If I understand you correctly, they are the ones that we are talking about.

Mrs Grant—I can give you a really easy answer: no-one knows. No-one has done any research on this. We have tried. We have asked the ATO to do this. We have asked the Office of State Revenue. We have gone through the Australian Bureau of Statistics. I have even asked the bureau to run a report on this. Nobody knows. They are all guessing. We do know one thing. The ATO has advised me that they have already collected over 40,000 bookkeepers as contracting bookkeepers out there in the market. They have physically found 40,000 and have told us that is the tip of the iceberg.

Senator FURNER—Your submissions have overwhelmingly acknowledged that there is a serious problem out there in the finance world. In your earlier submissions you touched on the quality of trainers. I take it the only qualification they need is a certificate IV in training?

Mrs Grant—That is correct.

Senator FURNER—In your opinion, what do they need to ensure that a fresh bookkeeper is coming out competent enough to be able to deliver?

Mrs Grant—AAPB believes that the education for trainers should at least give them knowledge of the taxation for GST. I do not believe that you can just say, ‘You need a qualification’, because at the moment we cannot trust the qualifications that are being produced. That is the issue that we have. We believe that, yes, you should have at least a certificate IV in financial services bookkeeping. You should have at least a diploma in accounting. The only problem is that a diploma in accounting only addresses income tax, not GST. How can you train someone else in GST if you do not have the knowledge yourself? We believe that you must have a certificate IV in workplace training, but if the National Tax Board has a skills assessment then we could say, ‘Yes, we know your knowledge is solid. Yes, we know you know your content. Yes, you should be teaching.’ That is where that should be driven from, because I cannot rely on the market.

Senator FURNER—In respect of skills assessments, you mentioned that the general rule of thumb would be around about four days to assess someone.

Mrs Grant—Yes.

Senator FURNER—Can that be done online?

Mrs Grant—No.

Senator FURNER—Why is that?

Mrs Grant—We did look at that. You can do your multiple choice and questions online. We have produced a whole shoebox of receipts and put the person in front of the computer and said, ‘Go and do it. That’s your job.’ When you do it online you still need to do filing, because filing is where your auditing comes from. You need to know that if you filed it here then it needs to go here. There are certain aspects that physically need to happen. We spent nearly two years looking at online as a skills assessment and we realised it could not be done. The other issue that you have when you do this online is authenticity: who is really doing the test?

Senator FURNER—We got to the point about the real need for compliance. In your view, what is the ideal world of compliance for BAS agents?

Mrs Grant—The ideal world of BAS compliance is to have the appropriate education in place that we can all rely on. We need to have the appropriate policies and procedures in place to help us to grow and do reasonable care. We need to have services that are appropriate to our needs, especially in the bookkeeping industry, because most of the information that we get from the industry is based on accounting bodies and not bookkeeping bodies. We have spent a lot of time investing and providing the right support appropriate to a bookkeeper and the language of a bookkeeper. In the ideal world we would have a code of practice that reduces all the arguments for us at the national tax board. Obviously we are going to have to write policies and procedures from a national tax board level. The more we have in our legislation the less we have to debate later. That is why we have asked to have the skills assessment in the legislation; there will be many who will dispute that we need this. We believe we do and we believe that if it is in the legislation that will resolve a lot of issues. We will not have to be worried about 1,400 hours. Does it meet the criteria? What is a proper person? All these sorts of things can be resolved simply. It may take four days.

Ms Benardis—Another thing that we found with these skilled assessments—in saying that, we had qualified accountants and other accounting bodies also sit for these—is that they did meet the 1,400-hour test, so they would be ready to register whenever this comes in. However, when they sat for the skills assessment they could not complete an accurate BAS based on cash accounting—not accrual accounting, but cash accounting. They had it wrong. From my perspective as a technical person, I am sitting there thinking: ‘Great! Loss of revenue.’ Even though they met the current legislation—assuming it stands this way—they still did not have the knowledge to do a BAS correctly. Once again, the consumer protection issue has not been addressed.

Mrs Grant—The other issue is that we have a lot of accountants working in the bookkeeping industry who have come out of university and set themselves up as a BAS agent or a BAS bookkeeper. We tested a group of graduates, two of whom had honours in accounting. None of them got it right. They forgot to put all of the codes in. When we asked them, ‘How could you do that?’, they said, ‘We have only ever spent in our entire

three years at university half an hour looking at BAS.' That is our issue. What we want to do is say: 'If you want to be an accountant, then become an accountant. Please don't come into our area, because all you are doing is bringing down our reputation and the quality of what we produce. If you want to be a bookkeeper, then be a bookkeeper, but don't try to be in both camps.' What we fear now is that, if we open up this area that people call data entry, they will just drop down to that level and they will say, 'We just do data entry.' That is going to be extremely hard to audit, because you are going to get into, 'He said, she said', which will be extremely difficult for the national tax board and the ATO. It will end up in a mess with court cases, which will further impact on our legal system. The more we can clean up now, the better we will be in the future.

CHAIR—How many people do you have in your association?

Mrs Grant—We have over 1,600 members.

Senator FIERRAVANTI-WELLS—You told us that the ATO has identified 40,000, and you have 1,600 under your umbrella. We have probably over 40,000 people out there running around as bookkeepers creating problems on a daily basis and we have absolutely no control over them; is that what you are saying?

Mrs Grant—Yes. It is pretty simple when you put it like that. We have been telling the government for years.

Senator FIERRAVANTI-WELLS—Thank you.

CHAIR—Thank you for coming in this morning.

[9.46 am]

ADDISON, Mr Matthew James, Executive Director, Institute of Certified Bookkeepers

CHAIR—Welcome. Do you have an opening statement?

Mr Addison—Yes. I am a chartered accountant and have been a practising tax agent. I have worked with and trained bookkeepers. I still have an interest in a bookkeeping firm and have a long-term involvement in the accounting industry and the bookkeeping industry.

The definition of ‘bookkeeping’ is wide. It is everything from who picks up an invoice or who puts a dollar in the till through to production of financial reports. The accounting industry also has a wide definition. Both of these professions have been around for a very long time. Nothing is particularly new in the world of bookkeeping or the world of accounting. Both help clients. Bookkeepers help their clients and accountants help clients, who are all of their employers. Errors are produced by both. Errors are produced by both. Errors are produced by accountants—the most highly qualified accountants. Errors are produced by bookkeepers. But to say there are tens of thousands of bookkeepers around this country out there creating errors every day is a big blast on that industry, and as a professional association of bookkeepers for bookkeepers I would take issue with that.

Good work is produced by both accountants and bookkeepers. The GST did enhance the profile of bookkeepers in Australia. There is no question about that. All of a sudden we had this new tax form that needed to be lodged four times a year. Up goes the bookkeeping requirement and up goes the compliance requirement, and bookkeepers started helping businesses with that. Bookkeeping and accounting are performed by employers. It is performed by something like 1.7 million owners of their own businesses. It is performed by accounting and bookkeeping firms. In Australia the research says that only eight per cent of businesses use an external bookkeeper to help them with their BAS compliance. This legislation will touch eight per cent of businesses, which is a very small slab of the market.

Approximately 80 per cent of businesses lodge the BAS without using anybody external to the business. The BAS and IAS errors will continue. This legislation does not address GST or the complexities of the law and reporting; they will continue. This legislation addresses the provision of external contract services.

Having said that, the bookkeeping industry welcomes the intention of this legislation. We welcome the intention to recognise good bookkeepers, their expertise and competence. This legislation will help, there is no question of that, but there are some specifics that I take issue with. It will not solve all bookkeeping issues and all accounting issues. It will not solve the fact that 60 per cent of the 24,000 tax agents allegedly out there are aged 60 years old or greater. It may reduce the number of bookkeepers prepared to help business—simple cost, time and involvement. It will cost industry. There is no question that rates will have to go up.

Accounting has a base principle of materiality. When an accountant is doing work they do not chase 10c worth of bank charges. There is a principle of materiality in the work they do and how much work they do for a client. A business has a base principle of commerciality. What am I prepared to pay for to make sure that my records are correct? We have a system that is complex. We have a compliance burden that is placed on business. It is a tough world out there. Bookkeepers are helping.

With this new regime we seek recognition of that business and commercial reality. We do not want to scare away the bookkeepers. We have a real opportunity here to grab the bookkeeping industry/profession and bring them into a regulated framework while not scaring away everybody else. There will be bookkeepers who continue in this world not as regulated BAS agents. They are okay. They do their work and are part of the financial services food chain. There are BAS agents and accountants. That should be recognised. Not all bookkeepers will become BAS agents, and nor should they be.

The improvement in the accounting to bookkeeping to client relationship is also a must and a significant part of my submission addressed that. Legislation is generally good. What bookkeepers need is more help. They need more assistance. The developments in education have been great, but over a five- to 10-year time frame it needs to continue and be even greater. The tax board must separately deal with BAS agents from tax agents. They are not accountants. There is a trend from accountants into the bookkeeping space, but typically the people who are going to register as BAS agents are not accountants and the accounting associations do not appropriately represent them, recognise them or understand them. They are a different space.

In relation to some of the other submissions that are out there, the research and development consultants are speaking to you later and many of their submissions say, 'Recognise us separately.' The legislation allows for specialty registrations and we see that applying to R&D and payroll specialists. I am happy to elaborate on that if need be. There are tax advisers out there who do not do tax returns. That is another form of specialty that this legislation envisages.

Software is not the devil. The computer accounting software out there is a calculator. They provide systems and tools that a knowledgeable person needs to use. Again, there is education both in the software, the bookkeeping needs and the compliance needs, but the software is not at fault here. I dread to think of the quality of what would be happening had the software companies not done GST training in 1999 and 2000. Nobody else was explaining the GST law. I could go on for hours, but at that point I will stop.

CHAIR—Could you explain how your institute is set up, who you represent and how many members you have?

Mr Addison—The Institute of Certified Bookkeepers in Australia is a not-for-profit professional association of members. We are closely linked to the global Institute of Certified Bookkeepers, which is the UK organisation. They supported the launch of the Australian operation, but we are an Australian member based professional association. We have just over 1,000 members on our books as of today. We are receiving about three to four applications a day. Our renewal rate of membership is at about 89 per cent. Our direct mailing base is 5,000. Our contact base through the software companies gets up to about 15,000 of this contract bookkeeping space.

CHAIR—Do you have individual members or company members?

Mr Addison—Our members are the individuals themselves. For a bookkeeper to come on we have to look at their competency. If they are contract bookkeepers they also have to have a practising certificate. They have to have professional indemnity insurance. They have to be a professional in what they are doing. Codes of conduct and PI obligations already exist for them.

Senator FIERRAVANTI-WELLS—You have taken issue with comments that were previously made about bookkeepers out there. Could you just repeat the number of members that you have?

Mr Addison—We have 1,000 members and have been in existence for two-and-a-half years in Australia.

Senator FIERRAVANTI-WELLS—The figures that were previously quoted are absolutely correct. You have thousands of bookkeepers out there that do not belong to a professional organisation and who are clearly out there doing their own thing pursuant to their own devices.

Mr Addison—Absolutely. There are so many accidental bookkeepers in existence. The school leaver started as a receptionist, sat in front of the computer and the boss said, 'You knew how to turn that on. Here's my accounting software. Please start using it.' They start entering and then print out a report. There is no training and no expertise. We have a commercial reality in Australia of millions of small businesses that do it themselves or employ somebody or an accidental bookkeeper. There is a need to improve that. Nobody gets to them. Nobody touches them. Also, ATO research proves that 70 per cent to 80 per cent of bookkeepers that are out there, whether they are employed or contracted, never talk to anybody about their job. They are doing bookkeeping in a silo and they stay there.

We have a great need to develop this profession, and that is why this legislation will help. It will not solve the woes of the world. We have legislation today to regulate who can do a BAS. As has been stated in many places, it is unenforced. The explanatory memorandum states that it is unenforced. If we bring in this legislation and do not do anything with it, nothing will change out there. The government, the tax board and the ATO should have a responsibility to do mass publicity so there is mass consumer awareness of who is allowed to do BAS statements and at what level the bookkeepers should be at.

Senator FIERRAVANTI-WELLS—Do you agree with the evidence that was previously given about the potential revenue to government that is forgone or are the figures that were previously quoted just the tip of the iceberg?

Mr Addison—I would be pulling imaginary numbers out of the air for what is lost to revenue. I believe the inaccuracies on the BAS to be enormous. But you have to remember that this contract bookkeeper that I represent is eight per cent of business. Ninety-two per cent of businesses do their own BAS. It is huge. This legislation is not going to solve the fact that GST is complex. The BAS form and the reporting obligations on

the BAS form are complex. They cause a problem to business understanding how to report. GST should be simple—‘GST or not?’

Senator PRATT—Is GST a problem in terms of qualifications and training to some extent?

Mr Addison—Even in the more well developed professional accounting industry anybody can walk down the street here and paint a sign saying ‘accountant’ and open their door. Nothing stops them. Anybody can be an accountant or a bookkeeper. We need to develop this industry.

Senator PRATT—I do not think I could do it.

Mr Addison—You would be surprised how many of you there are out there.

Senator FIERRAVANTI-WELLS—The issue then becomes the 92 per cent that do it in house. There is a responsibility there. From the consumer’s perspective the consumer does have some protection. When I worked as a consultant I did my own. I take the responsibility. We are now talking about consumers who really are not afforded protection because they bring in a bookkeeper.

Mr Addison—That is why we fully support this legislation. If that bookkeeper who is about to be a BAS agent or is required to be a BAS agent is being relied on by a consumer they have to be good at what they are doing. They have to have expertise. They have to have competence.

Senator FIERRAVANTI-WELLS—Should they also have insurance?

Mr Addison—They have to have insurance.

Senator FIERRAVANTI-WELLS—You support that concept of responsibility?

Mr Addison—Absolutely. Our professional association already demands it of anybody who wishes to become a member. This legislation supports the position we hold.

Senator EGGLESTON—I was interested in the question of insurance. As you stated, anybody can get out there and do it. One of the things we need is some sort of registration system with an accreditation for people who can perform this work. Would you not agree with that?

Mr Addison—If you are talking about the BAS services expertise, then we need this legislation and the registration system it brings along. If you are talking about all bookkeeping services, I do not believe that all bookkeeping services need to launch into the registration system of this law.

Senator EGGLESTON—Which ones would you exclude? It is really about consumer protection. As you said, somebody can just walk down the street, rent a shop and stick up a sign saying ‘accountant’. Joe Citizen can then walk in there and get his tax done, with no protection from the fact that this person does not have the degree of expertise required.

Mr Addison—The person that hung up the shingle as an accountant and did a tax return is already in breach of existing law and the new law. They are simply not allowed to do that tax work. They are not allowed to give tax advice. However, they may do management accounting. They may do particular types of accounting work that do not fall under the parameters of any of the tax acts, including the GST act. An accountant can operate outside of the tax system. Raw posting of debits and credits, coding cheques and so on is accounting. That has been around since before the Australian tax system was invented. The Australian tax system uses accounting data to then filter into the tax system, which filters into the GST system.

We have accountants who will not register under this system, and this law currently does not require anybody who wants to call themselves an accountant to be registered. I do not believe this law and the definition of ‘BAS services’ should also capture every element of bookkeeping work. I think for it to do that, with the hurdles and the extra professionalism that is required of everybody to be a registered BAS agent, the costs will go up. I do not have the statistics in front of me, but something like 70 per cent of bookkeepers are part time; they are female and not earning a lot of money. Every time we talk about the BAS agent legislation in rooms you can hear a pin drop, because they are so scared of what it is going to mean for them. Some of those should exit the industry. I have no issue with that. But these are the people helping thousands of businesses. If we scare them all out of existence, who is going to do the BAS? If it goes back to the business owner, they might be ultimately responsible but they are certainly not more competent than a lot of these part-time female bookkeepers who are out there doing it and who may not be formally qualified but have heaps of experience and varying degrees of competence. I agree there is a competence of zero and there is a competence of 100, with all of them in there somewhere. We do not want to scare away every bookkeeper, because they are not going to all register under this system, and nor do we believe they should. We believe

there is a real place for bookkeepers to exist that will not register as BAS agents. I do not want half of those bookkeepers that are out there professing that they are a registered BAS agent, because they are just not good at what they do. I have argued both sides of that.

CHAIR—How can you be a bookkeeper in an organisation without understanding BAS requirements?

Mr Addison—If you are directed by the accountant, the tax agent registered person who has the expertise says, ‘This is a milk bar. When you buy stuff it has GST on it. You are allowed to claim that GST back. Here’s what a tax invoice should look like. Process it.’ They process that tax invoice. They put it in the system. They claim the GST back. They do not need a huge amount of expertise, but neither is the business owner relying on that person. They are relying on the accountant who told them what to do and they are relying on the accountant to check what they have done.

Senator EGGLESTON—In my own business I used to have a bookkeeper who prepared my figures and sent them off to the accountant. Is that what you are talking about?

Mr Addison—Yes.

Senator EGGLESTON—In thinking of consumer protection, is there a need to have a tighter definition of who can call themselves an accountant under law so that there is less confusion in the public mind?

Mr Addison—It is a very good argument to have. I think it is warranted, as it is for any other profession. There is a financial planner now. You cannot call yourself a financial planner unless you have gone through certain hoops. Is there a need for that in the accounting regime?

Senator EGGLESTON—Is that a good precedent?

Mr Addison—There would be other bodies better than I to try to answer that question.

Senator EGGLESTON—We are interested in your opinion.

Mr Addison—It worries me that a person off the street can open a shopfront, hang out the shingle called ‘accountant’ and therefore mislead the community. The development of this legislation, in terms of the bookkeeper space, is going to clarify who can help prepare and be relied on for your BAS report. This person might be a bookkeeper but unless they can say, ‘I’m a registered BAS agent’, that business owner needs to be told by the government, ATO or whomever, ‘You cannot rely on that bookkeeper for the BAS. You can only rely on BAS agents.’ I like where this legislation goes, because it helps that definition.

Senator FURNER—The previous witness went into some depth and also an explanation of conducting assessments of not only their members but also people in the profession, people who had graduated and so on. What sorts of assessments have you conducted to draw the conclusions that you have today in your submissions of the problems that might be systemic in this bill coming through?

Mr Addison—I do not have documented research to back up my comments. I have the evidence of talking to tens of thousands of bookkeepers, being in practice and dealing with competitors. My comments would be anecdotal. There are tax agents in existence today that really scare me, because they just do not know. Those tax agents who enter the BAS agent territory do not know what colour the form is. That might not be important, but they really do not know. You have people come in from overseas from the UK and they say, ‘We have done VAT for years. We will be fine.’ We do not have VAT. We have an Australian GST, which is a different world. I concur that there is an issue with the competence of accountants and tax agents out there.

Senator FURNER—Therefore, there is a need to address competence and compliance in this particular industry to make sure those matters are addressed.

Mr Addison—Under the proposed legislation, the code of conduct and the role of the Tax Practitioners Board they will have a role initially to create a system, but I see a role over the five- to 10-year plan that will be increasing the level of accreditation required, be you a tax agent, be you a specialist R&D consultant or be you a BAS agent. I see the Tax Practitioners Board taking a more active involvement in exactly, ‘How were you educated, how were you tested and do you have the skills set?’ as a positive development. Do I see that working on day 1? No. Do I see it developing over a three- to five-year time frame? Yes.

Senator FURNER—Thank you.

CHAIR—Thank you for coming today.

Proceedings suspended from 10.09 am to 10.33 am

DRUM, Mr Paul Joseph, Director, Policy and Research, CPA Australia

CHAIR—Welcome. Do you wish to make an opening statement?

Mr Drum—Yes, thank you. CPA Australia represents the diverse interests of more than 122,000 members in finance, accounting and business in over 100 countries throughout the world. Our mission is to make CPA Australia the global professional accountancy designation for strategic business leaders. We have made a number of submissions in respect of the development of the Tax Agent Services Bill. We are here today on behalf of the members and the organisation as well as in the public interest to talk about the merits of the bill and why we think it should proceed.

We generally believe that the proposed reforms are crucial for the tax profession for a number of reasons. We think that the establishment of a national Tax Practitioners Board in lieu of the state tax boards will ensure there is more efficient utilisation of resources and consistency in the outcomes and the regulatory operation. We believe that the registration and regulation of the BAS service providers will ensure that this growing area of the accounting profession is subject to appropriate ethical, professional and qualification requirements, thereby enhancing the quality of BAS services provided to consumers.

We believe that the introduction of a legislative code of conduct ensures that all tax practitioners will be required to meet certain ethical and professional standards which are broadly congruent with the standards that CPA Australia already imposes on its members and which many of the other professional accounting bodies impose on their members under the accounting standard known as APS 220. We also think that the introduction of a graduated and flexible range of administrative sanctions will ensure more targeted and appropriate penalties are imposed for any breach of the code rather than the current limited penalties that may potentially be imposed under the Income Tax Assessment Act. They are the key reasons why we think that this bill should proceed. We think there are some risks of it not proceeding. We would welcome the opportunity to talk a little bit about that as well as part of this hearing today.

CHAIR—Indeed I would invite you to elaborate a bit on that. Why do you think there is a risk of this bill not proceeding?

Mr Drum—The issue is at the minute we have got some registered and some unregistered people working in either BAS preparation or the tax agent regime. There are rules about operating as a tax agent when you are unregistered, so there is a regime to deal with that. There are people providing BAS services largely outside the regime. There are no standards. The organisation has worked on the development of this with the relevant departments since before 1992, because 1992 is when we got to the point of making an announcement that we would look at developing a national standard. I have had personal involvement with the development of this bill since 1996 on behalf of CPA Australia. We have made many, many submissions and we have seen it evolve over quite a long period of time.

It does not look like it is a vote winner with the public but there are risks that if it stalls other events will overtake it and it might not get back on the legislative program for quite some time. We think that even though it might not be perfect it has sufficient detail to enable us to go to the next level. We also appreciate that, while we are always looking for certainty in the operation of our laws, there is quite a degree of trust that must go with the operation of this and the proposed new tax agents board. We would be looking to work with that new tax agents board. Just as tax agents must take reasonable care we would be expecting that the board would be taking reasonable care as well in its fulfilment of its duties. There is a level of trust that goes with it. As I said, the concern is that if it does not proceed and it is put on the back burner we would have a bit of a mess out there of largely unregulated services being provided with no standards or sanctions. We think that is a real issue.

CHAIR—We had the Australian Association of Professional Bookkeepers who from my interpretation echo your concerns about people in the area of bookkeeping and BAS. They echo what you said about the number of people and the lack of regulation. You have raised certain questions but clearly strongly believe that it is important to get that national supervision so that we can advance further down that track. We have also heard that there is not much regulation about who can call themselves an accountant or a bookkeeper and so on. That is a concern of yours as well.

Mr Drum—That is correct. We are not looking for a legislative definition of what an accountant is but we certainly need to tighten up the rules about those who can provide BAS services and about what are bookkeeping services and those types of things. When we started working on this many years ago the

bookkeeper issue was not an issue. It has really emanated from the introduction of the new tax system, the GST, and then it was quite evident in the development of a proposed national regime that this was something that needed to be addressed as well. Perhaps it is an older problem but it has become more evident because there are more bookkeepers than ever before and they are doing tax-like work and eroding the work of tax agents. We really need to re-fence this and get a fair grasp on it to make sure that those who are providing those services are permitted to under the law and that they are suitably qualified to do so. It is not just about patch protection for the profession, it is about protection of consumers and standards that a consumer can be prepared to receive. It is also about protection of the revenue so that we are getting the right forms lodged with the right information at the right time to the commissioner.

CHAIR—I suppose there has been a little concern expressed about additional costs. I do not think that would deter your members who have their particular requirements in any case. But do you see that as any kind of issue?

Mr Drum—We have not done econometric modelling about what the costs may be. We would expect that if you set standards and there are education requirements and other things it may cost more for certain services, but we do not see it as a show-stopper issue. We think it is something that is manageable. In fact from what I have heard, although I have not read the submission you are referring to, but I understand they are talking about an increase particularly at the bookkeeping services level and provision of those services. The feedback from our members who are registered tax agents has been that the amount of time that they spend undoing bad work done at the bookkeeping level is also passed onto the taxpayer through their fees. There might be an increase in one level but there might be a savings at the next tier because bookkeepers cannot of course lodge income tax returns and those documents are source documents that are critical to a whole lot of other tax compliance obligations for the taxpayer. As I said we have not done econometric modelling but I think it is the type of thing that we will work out.

Senator FURNER—In respect to the breaches of the code you touched on and sanctions for such breaches, could you elaborate on what your opinion of those should be? Is it a case of periods of suspension and then of removal from an entitlement to practise?

Mr Drum—I think so. I will explain what it means to me. We currently have a rather draconian penalty regime. If a tax agent is found to be in breach then their licence is suspended or it is cancelled. These are major events if your licence is suspended or indeed cancelled and you have client obligations; that is the end of your professional career. We think that is very harsh. It is very hard to manage. There is a greater range of sanctions proposed with the new proposal but some of them are from a warning to re-educate yourself and to a pecuniary fine, but not about taking away your licence altogether. That is certainly still going to be present; that is still going to be an option but at the moment there is very little flexibility for boards in dealing with tax agents who might have erred slightly. As I said, our view is that there is a greater range of sanctions but they are more flexible in their application and they are not stopping quite often the major breadwinner from pursuing their career over what might be a rather trifling misdemeanour.

Senator FURNER—We have heard evidence this morning that in some circumstances people are practising out there with very little or no qualifications. How would you see the compliance of ensuring that person who has received a sanction is not continuing in their practice?

Mr Drum—How would I see that operating?

Senator FURNER—Yes.

Mr Drum—I think it is part of the role of the board, that the board would have to be following it up. The person who is under review or has been to the board would have to be able to demonstrate compliance. The current test is of being a fit and proper person, but it is a rather low-level test. It is based on the number of types of tax returns you prepare over a certain period as well as some educational qualifications. I think it is something that the new board would have to deal with. We have our own sanctions and penalties as well which are unlimited. For our members there is effectively a double whammy here. There is a national legislative regime proposed; we have our own sanctions; however, we want to see some national consistency for those who are not members of professional associations having to live up to a certain set of standards and sanctions.

Senator EGGLESTON—I presume all CPA accountants would have professional indemnity insurance?

Mr Drum—All CPAs who are in public practice are required to have professional indemnity insurance, yes. Not all CPAs are in public practice. Perhaps I need to explain that.

Senator EGGLESTON—Yes, if you would.

Mr Drum—Of the 122,000 members about 18,000 or 19,000 will be in public practice either as public practice certificate holders or staff who work in public practice firms. Those in public practice are required to have PI.

Senator EGGLESTON—When you say ‘public practice’, you really mean private practice in the sense of privately providing services to clients?

Mr Drum—That is correct, of the type that we are talking about in relation to tax agent services in the bill.

Senator EGGLESTON—Do you think professional indemnity insurance is widely enough held throughout the whole spectrum of those providing financial services, including bookkeepers and so on?

Mr Drum—This is only a matter of opinion because we do not have statistics on it, but I would suggest that it is not. I would suggest that many small bookkeepers for example would be operating from home operations and have very low overheads and would not even have looked into it. They may not have even contemplated it in their working lives. I would say that outside the profession it is probably not widely held.

Senator EGGLESTON—Do you think that those smaller end bookkeepers are at risk? Are there many cases where a bookkeeper is sued for providing a deficient return?

Mr Drum—I am not sure of that. I have not seen cases go through the courts in that regard.

Senator EGGLESTON—No. Is professional indemnity insurance expensive for accountants?

Mr Drum—I guess it depends on a few things. It is cheaper if you are member of a professional association and it is cheaper if you have critical mass and other things, so at one end it is reasonable. CPA Australia has had problems with PI over the last few years but, touch wood, we are currently in not a bad place in that regard. That is my understanding. As I understand it, for others it becomes more expensive if you are not a member of a professional body and you cannot demonstrate that you have standards, that you are subject to ethical procedures and disciplinary proceedings and you do not have any qualifications. I think that is just typical of the cost insurance companies put on risk. If someone is unqualified and they cannot show that they keep up to date, the risk is higher and then the cost is certainly higher.

Senator EGGLESTON—So that if you did not have the appropriate qualifications but sought insurance, for instance, if you were this person who walked down the street and leased a shop and put up a sign saying ‘accountant’ and then sought insurance without having much training or qualifications, you would probably find it hard to get insurance in the first place and it would be very expensive if you did. Is that what you are saying?

Mr Drum—I would expect so. It would be more expensive than if you were qualified.

Senator EGGLESTON—What we are really seeing here is that those persons who have got professional qualifications can obtain indemnity insurance through their associations. I suppose that means that the people who are properly trained and best qualified are insured and that is one of their advantages I suppose in terms of consumer risk.

Mr Drum—It is an advantage, but I guess the object of the exercise is that we are trying to set a standard for the types of reasons that I spoke about before—some national consistency, protection of the revenue and protection of the consumer—and so there has to be a standard. The standard for bookkeepers is rather low. I expect that if the bill goes through then PI insurers and others will be looking at what deals they can put together in the market to take advantage of those that will be looking to seek registration under the bill. I expect that the market will move in anticipation of the outcome—

Senator EGGLESTON—But the professional indemnity insurance for bookkeepers would be appropriate for the level of responsibility that their training should qualify them to take, would it not? They would not be paying an insurance premium that a CPA might pay because they are not accepting a similar level of responsibility. They would have insurance which covered them for their level of responsibility.

Mr Drum—That is correct. It will depend on the level of risk and there are a lot of factors contained in the risk. Part of it is about qualifications and part of it is about the type of work which they engage to do. Some of that can be managed by the terms of the contractual arrangement and the engagement that they enter into in the first place and also the extent of the coverage that the person is actually seeking. As I said, I am expecting that the market will provide low-level cover for people who are doing pretty basic bookkeeping work.

Senator EGGLESTON—As a general principle would you support practitioners having professional indemnity insurance?

Mr Drum—Absolutely. Certainly.

Senator FIERRAVANTI-WELLS—In your submission you have said there are 122 members in finance, accounting and business in 100 countries throughout the world?

Mr Drum—That is 122,000.

Senator FIERRAVANTI-WELLS—Yes. Could you just break that down for me because of the sort of people that we are talking about in the umbrella do I understand you correctly that that is only 18,000? Could you just explain that?

Mr Drum—Certainly. There are 122,000 members worldwide. About 86,000 of them are in Australia. Of those 86,000 there are around about 18,500 or 19,000 that are currently in public practice. The remainder are in industry and commerce. I cannot give you the exact statistics. I can provide them. I will take it as a question on notice if you like. But just painting a bit of an overall picture, the remainder are in industry and commerce, the public sector—in government jobs, for example, the Taxation Office; we have got about 1,600 members in the Taxation Office—and there are not-for-profits. Not everyone is doing tax work. A lot of them are CFOs in large corporations, or CEOs. We have a much broader church than just doing what we call public practice services—

Senator FIERRAVANTI-WELLS—Like lawyers who might still hold their practising certificate but they may not necessarily be practising law.

Mr Drum—That is right.

Senator FIERRAVANTI-WELLS—In that regard I talked earlier about the members who are in public practice but we are here today not only on behalf of them but also for the aspirants who have not been able to register as a tax agent at the moment because of the current registration requirements. For example, there are cases that have been well documented over the years of people that we thought would be a shoe-in to register as a tax agent and who have failed over some minor matter. For example, there was a case of a tax manager from one of the large oil companies who failed I think because he had prepared a wide range of tax returns—individual returns, company returns and in fact he did the returns for the whole group of this particular oil company—but he had only done a couple of partnership returns. I think that was the stumbling block. They said, ‘That is not enough so we are not going to let you through.’ He was still in an in-house counsel way preparing all these tax returns for the group but he could not get a certificate. There is also an employment rule. If you work as an employee, after a couple of years of doing the right kind of work you can register as a tax agent. What if you did 10 years as a subcontractor? You cannot get the certificate yourself; you cannot register as a tax agent. These are other things that we think need to be addressed. In the context of your question we are not just talking about those that are there but the others who are members and future members—the aspirants—who want to get into that space in some way.

Senator FIERRAVANTI-WELLS—Do you have people out there who are describing themselves as tax agents but are not registered? Do we have those sorts of people in Australia?

Mr Drum—Not that we are aware of. If we are aware we would take disciplinary action. We would take our own action.

Senator FIERRAVANTI-WELLS—You do not have the same sort of situation as the bookkeepers do where you have got people out there who put up a shingle saying, ‘I am a bookkeeper’, and off they go?

Mr Drum—Not in the context you have described of holding themselves out to be a tax agent. They do say they are accountants but that is different; it does not mean you can do tax work.

Senator FIERRAVANTI-WELLS—There are a couple of aspects that you raise in your submission about supervision and control. You make reference in your submission to issues about there being a need for greater clarification in the explanatory memorandum. Do you want to expand on that?

Mr Drum—The issue here is that under the Acts Interpretation Act courts often do not get to the EM. They read the law and say, ‘The law is clear.’ If it is not actually in the black letter of the law something that has been clarified in the EM they may never get to. You end up sometimes in the courts with odd outcomes because the judge is not compelled to refer to the EM in their deliberations. They refer to the law and they only go to the EM if the law is ambiguous to them. Therefore, clarifying an EM gives comfort to the profession. However, if someone is going to have their day in court it is still not in the black letter law and you can still have an anomalous outcome. That is really the risk.

Senator FIERRAVANTI-WELLS—Taking into account you said with this piece of legislation you want the meaning of ‘supervision and control’ clarified in the actual section to the extent that it is in the EM; is that basically what you are saying?

Mr Drum—That would be our preference, yes. Yes, that is exactly the issue.

Senator FIERRAVANTI-WELLS—You say that the requirement of registered agents to exercise reasonable care in ascertaining a client’s state of affairs should be subject to the agreed scope of the agreement. Do you think that that has been made clear enough in the legislation or is that the point that you are making, that it should be a bit clearer than what it is?

Mr Drum—We think that needs to be clearer, too. We try to address that as a professional body with our own members but you have got to understand that this has a broader application than for the professional members; it is for all those who are going to be playing in the space. We think that they need some protection. There should be terms of engagement about what you are engaged to do and the reasonable care should be limited to what those terms of engagement are.

CHAIR—Thank you for coming in this morning.

[10.58 am]

STYLIANOU, Ms Vicki, Senior Policy Advisor, National Institute of Accountants

CHAIR—Welcome. Do you have an opening statement to make?

Ms Stylianou—Yes, I do. Thank you very much for the invitation to be heard today. You have already heard a whole lot of other evidence and you probably already know that the National Institute of Accountants has made joint submissions with both CPA Australia and the Institute of Chartered Accountants. We have already made two joint submissions and we have then made a further third submission.

I suppose you could say the NIA is the smallest of the three professional accounting bodies. We have got about 20,000 members. About two-thirds of those have stated that they have an interest in tax matters to varying degrees; they are either practising in tax or have some interest in tax. Along with the other two professional accounting bodies we also have an interest in the AAT, which is the Association of Accounting Technicians. I have also spoken to their CEO, Robert Comelli. He will not be here to give evidence but I believe they have already provided a supplementary submission but he has said that he is happy for me to say that they share the view that we have already put forward and that if you want to hear some further evidence from them then that is fine, too.

I would also like to say that we totally support the bill. We have put that forward in quite a few submissions. Even in its present form we would certainly support it going through. Our intention is to see the new regime instituted and established as soon as possible. There is certainly a fear amongst some of our members that if the bill does not go through now then who knows when it could go through. Given the situation with the current economic environment I think that there is certainly a feeling—if I can put it that way—that there might be some delay.

We put in our third submission some of the concerns that we have with the bill as it currently stands. However, we believe that there is enough flexibility in the legislation in the way it is drafted to allow the board once it is established through guidelines and regulations to be able to interpret some of these issues to a level where we would probably be quite satisfied. You might say our focus has shifted from not just the legislation itself but to the way it is going to be implemented and applied going forward.

That is one of the reasons we have been advocating the establishment of a permanent standing committee. You might have seen that in the joint submissions that we have made. Especially when you have got a situation with principles based drafting we think that there is a lot left to interpretation. The idea would be to have a committee—and I would call it a committee loosely but whichever model might be used—to be able to assist the board going forward in interpreting in a very practical way how some of the guidelines and other concerns can be applied and interpreted in practice. That is something that we would certainly be advocating going forward. It is something we have discussed with government, with Treasury and other stakeholders. Thank you.

CHAIR—The standing committee would operate as an advisory committee composed of practitioners who are operating day to day and who understand the issues and would just provide that advice to the board who would then deal with those issues. We have heard of requirements for skills assessments in both bookkeeping and accounting. Would you see that as part of the role of the standing committee you are talking about or more of the board itself?

Ms Stylianou—We would probably see it more of the board itself because I think it is important to have a consistent national standard but certainly in terms of working out what those skills assessment requirements, education principles, et cetera should be then I think there should be some input from industry, from the profession, from the association and from practitioners, yes.

CHAIR—Would you see the standing committee operating broadly among all groups involved? We have heard so far from bookkeepers and accountants today but there are also the R&D type people. Would you see it as a broad representation?

Ms Stylianou—Yes, I would. I think it would be important to have a broad approach because this is an industry and profession that affects a lot of different people in a lot of different ways, so I would say yes. It could certainly be a situation where it would be fairly flexible depending on the circumstances so that if it needed specialist advice or input, let us say from the R&D experts, then it would be able to seek that. There are various models. Whether we are talking about the NTLG, the National Tax Liaison Group, FSAC, the

Financial Sector Advisory Council which, as you said, acts as a sort of conduit sounding board between the board and the profession/industry which I think can be quite useful especially going forward in a transition phase.

Senator EGGLESTON—I noticed that you referred to the death of a sole practitioner as an issue. Would you like to tell us what you feel should be done to deal with that kind of situation?

Ms Stylianou—It might well be at the end of the day that if the legislation does go through as is that it is the subject of guidelines. But the idea would be especially in a sole practitioner's situation—a lot of our members are sole practitioners—it would be a situation where the practice would be allowed not so much to carry on but that it could stay in a state where it could be sold or carried on by someone else. Because registration terminates essentially upon the death of the tax agent it would basically mean that strictly speaking legally there is nothing left. I suppose there are different ways of doing it. It might mean that someone else can step in and take over; it is just to allow that mechanism to be enabled. But there are different ways of doing it; that is something we would have to look at.

Senator EGGLESTON—Somebody else is precluded from coming in and taking over at the moment? That must disadvantage the clients.

Ms Stylianou—It would. It would disadvantage the clients. There would be a lot of uncertainty. Clients just would not know where they stand. Basically their files could be left in the middle. You would have to have a situation where someone could come in and take those over. You need a period of time to allow all of that to happen.

Senator EGGLESTON—Do you have suggestions about what sort of mechanism should be set up to enable that to happen; who would authorise it and so on?

Ms Stylianou—I suppose if there is a discretion with the board to be able to say that that particular practice could continue under a nominee for example. If there was already a register of nominees available for situations like that you could have a situation where someone can go forward on behalf of the estate straight to the board and say, 'We need a nominee to step in right now.' That is one possibility.

Senator FIERRAVANTI-WELLS—You have heard some of the evidence that has been given this morning particularly about professional indemnity insurance. Do you have any comments in relation to that which you would like to add?

Ms Stylianou—No, not really. We certainly support the idea of PI insurance. Our members certainly have to have it. It would create a level playing field. From the point of view of consumer protection it would be essential, I would imagine, yes.

Senator FIERRAVANTI-WELLS—In your submission you say that members are concerned that they would have to audit the work of contractors even when the contractors are registered. Could you expand on that, in particular as to how much you see that as a problem? If I infer correctly from some of the evidence we have heard this morning a lot of the work that agents have to do is basically clean up previous messes that are often made by people who do not quite know what they are doing and have simply just processed incorrectly. Do you want to expand on that?

Ms Stylianou—Some of the feedback from tax agents and accountants we have as members has been along those lines, saying they have to re-do the work of bookkeepers and BAS agents that they have been given and that is a cost that is being passed on. The other feedback we get along with that is that a lot of clients then complain that they have to pay another lot of fees.

Senator FIERRAVANTI-WELLS—For bookkeepers that they probably engaged themselves in the first place.

Ms Stylianou—Yes, so they still have to pay the bookkeeper fees and they have to pay for the accountant or tax agent's fees. That is a common, ongoing piece of feedback that we have had, and we keep getting that. That is really what we are referring to. There was a lot of consultation with Treasury about what that means in terms of auditing work that you have been given and what level of responsibility you take for that work. That is one thing. But in practice our members are saying—and it is only anecdotal evidence—that they have to go over the work that they have been presented.

Senator FIERRAVANTI-WELLS—Of course, the chance if you did have a combination of a code and PI that would effectively, one, weed out the bad bookkeepers and, two, ensure that fewer mistakes are made. As a consequence do you see that as an effective package then of rectifying what is now from what I understand

from your evidence is probably a sizable proportion of the work that your agents do—or a portion of rather than ‘sizable’?

Ms Stylianou—It is hard to say how sizable or otherwise it might be. I would say that for our members, based on what they have told me, that it would go a very long way to fixing that situation—if I can say ‘fixing—because it just means that the whole standard is raised, which is the intention of the legislation. It might well be that a lot of tax agents then if they are going to use BAS agents, whether it is subcontracting or advising clients on who to use, that they may very well say, ‘Go to those particular BAS agents who are registered’, because that way you are assured of a certain level which might very well mean that all of those who are not registered may have a decline in work.

Senator FIERRAVANTI-WELLS—A publicly available register—

Ms Stylianou—Publicly available, yes, because the tax agents or the accountants would be able to advise their clients. About two-thirds of our members who do work in and around small business so they would be able to advise their clients to go to BAS agents who are registered, which is then easily proven with registration.

CHAIR—Often when we focus on problems or possible problems as we are now we can create the situation that there are a lot of problems. But just to follow up on what Senator Fierravanti-Wells was saying, most bookkeepers and BAS agents are presumably doing a reasonably good job. It is just that there exists a possibility that there are people who are not properly trained and who have been asked to do the job or just happen to be doing the job; would that describe the situation fairly correctly?

Ms Stylianou—Yes, I think so. We have about 600 members who are bookkeepers. Some of them aspire to be tax agents but there are about 600 who are bookkeepers. They already have to comply with certain requirements. In my travels around the country talking to people and raising awareness the message that we have been putting out there is that a lot of tax agents who are members of professional bodies, whether it is accounting bodies or bookkeeping bodies, already have to comply with certain requirements but it is those who are not members of any professional association who may not have PI insurance, or whatever, and who are not subject to codes of professional conduct who will feel the greatest impact from this legislation if and when it goes through. That is what we have been putting out there. I do not know if that answers your question.

CHAIR—It does, thank you.

Senator FIERRAVANTI-WELLS—In your submission you say that supervision and control needs clarification. Can you expand on that?

Ms Stylianou—I think what we are looking for is a certain degree of clarity as to what level of supervision and control is needed. The context we are really thinking of here is outsourcing of tax work. There are various working groups on at the moment that are trying to put some sort of clarity around that. We appreciate that in this legislation because it is more or less principles based that we cannot have too much certainty. But the EM makes it clearer as to what would be viable, or allowed, more so than what the legislation does. We were really looking for something that would more clearly allow practitioners if they wanted to outsource work, of course subject to certain conditions around supervision and control. But there has been a lot of debate about what that means.

Senator FIERRAVANTI-WELLS—In other words, a clearer correlation of what is in the EM and what is in the legislation?

Ms Stylianou—Yes, effectively.

Senator FIERRAVANTI-WELLS—You express a concern that the regulations have not been introduced at the same time as the bill. Of course, consequent upon that will be the concern, I would assume, that perhaps the regulations may contain other provisions which are not necessarily in the bill. Can you just expand on your concerns in relation to that?

Ms Stylianou—I suppose because in a normal situation we would expect the regulations to come out with the bill. That would be the usual situation because the two do interact and there is obviously a lot more detail going to be in the regulation. It is also sometimes a bit difficult to comment on legislation, as in this case, if you do not know exactly what is in the regulations because it may clarify or resolve a lot of these issues that we have already got, which would be great if it did, such as in the situation where a tax agent dies, for example. Certainly we would expect there to be not very much divergence from the version of the regulations

that we have already seen. So, once introduced, if the regulations and the transitional provisions are going to be essentially the same as those we have already seen then that is fine. We certainly would not expect any surprises at this late stage. On that basis we are happy to say that, yes, we do support the bill.

CHAIR—In your understanding, and certainly in your submission, you did not ask for significant changes to the regulations or the transition bill?

Ms Stylianou—We were fairly satisfied after the last version—the one that went into parliament—that most of our concerns had been picked up by Treasury. So, we certainly would not be expecting any substantial changes or any major differences or anything. We would think that if there were going to be substantial changes that we would be advised of that and that there might be more consultation on that.

CHAIR—Yes.

Ms Stylianou—Certainly, we do not expect that.

Senator FIERRAVANTI-WELLS—We might note that, Chair, in our report. You obviously refer to the current situation. Of course, the other side of the current economic situation is that recourse to financial advisers, bookkeepers and tax agents is probably going to increase rather than decrease, so at this point in time I infer that from your commentary clearly it is very crucial that this piece of legislation be passed on Wednesday.

Ms Stylianou—Yes, definitely. We think it is crucial that it is going to be passed because there will be, we expect, more dependence on financial advice. The other feedback we have been getting is that there is a growing reliance also on bookkeepers and BAS agents so I think that the time—especially for that sector of the industry—to be better regulated certainly is upon us.

[11.16 am]

BAGNALL, Ms Donna Jane, Senior Taxation Consultant, Institute of Chartered Accountants in Australia

DUNN, Mr Geoffrey James, External Representative on Committee Considering the Tax Agent Services Bill 2008, Institute of Chartered Accountants in Australia

CHAIR—I now call the Institute of Chartered Accountants in Australia. Welcome. Do you have an opening statement that you wish to make?

Ms Bagnall—Yes. Both myself and Mr Dunn would like to say a few opening words. Firstly, the Institute of Chartered Accountants very much appreciates this opportunity to appear before you today to give evidence on our submission to your inquiry into the Tax Agent Services Bill 2008. As we stated in our submission, the first point that we wish to reiterate to you is that the institute strongly supports the bill, subject to the points that we have raised in our submission. We do believe that it is important that a national regime for regulation of tax agents is introduced as soon as possible.

We see the new regime as offering a number of important benefits. Firstly, that it provides an updated regulatory framework which should better deal with the current business practices in the tax profession and it also includes a legislated code of conduct so that there is greater transparency as to the minimum standards of ethical and professional conduct. Secondly, it provides a board that is independent from the ATO, one with broader disciplinary powers and also extended jurisdiction in terms of its reach, so it will also extend to regulating unregistered tax agents and BAS preparers for the first time. Thirdly, it provides an Australia-wide platform through a single national board with powers to develop consistent regulations across Australia for matters such as qualifications and experience required to register as a tax agent as well as having powers to grant conditional registrations. That will better accommodate for the growing trend in specialist tax agents.

So, we see a number of benefits being delivered under the new regime and see it as important to introduce it as soon as possible. We appreciate the extensive and detailed consultation process that Treasury has undertaken with the profession on the exposure draft legislation to arrive at the bill that we have currently. However, prior to passing the bill we see that there are some areas that could be improved in order for the Senate to have before it the best possible legislation.

Our submission goes through the main issues of concern to the institute. Broadly, our main two submissions that we believe improvements could be made around, and may benefit from some further explanation from us today, are, firstly, under the banner of supervision and control, in particular the issue of reasonable steps in terms of what a tax agent needs to do to show that they have taken reasonable steps to ensure the accuracy of a document where it is being prepared by an outsourced service provider or a contractor and, secondly, registration obligations, particularly for service entity structures. Those are our main two submission points that we thought could benefit from further explanation.

We are happy to answer questions that the committee may have and I believe that Mr Dunn may well be best placed to take the committee's questions in that respect due to his considerable history with the legislation. So, at this point I will hand over to Mr Dunn to provide some opening comments in relation to our two main submission points.

Mr Dunn—The first comment was with respect to the supervision and control aspect which I know the previous speakers have also spoken about. The explanatory memorandum deals with this. In particular paragraph 2.34 of the explanatory memorandum provides example 2.5, which recognises that the use of contractors for outsourcing is permissible under the legislation. The issue that we would like to see clearly acknowledged in the EM is, where a contractor is used and there is no strict supervision and control in that context, some guidance around the issue of what reasonable steps are in terms of ensuring the accuracy of the final product of the return.

The legislation basically says at the moment that there must be supervision and control and if there is not supervision and control there is the defence that the agent took reasonable steps to ensure the accuracy of the document. The history of this supervision and control aspect is in the existing law and there have been a number of cases on this with respect to agents that have transgressed, I suppose you would call it, in the work that they have produced. It is probably unfortunate in the way that commerce has developed that supervision, when the law was first introduced, was probably that the agent stood over the shoulder of his employee and checked everything that was done and ticked every voucher. I think commerce has moved on dramatically

since then and in the current scheme of things that is just not possible in terms of compliance costs in particular.

Based on those cases it would seem that unless you go to this strict regime of standing and checking everything that is done, there is a concern that the supervision and control aspect of the legislation will be breached in many cases, which then falls back to the defence, which is what are the reasonable steps that the agent has taken to ensure the accuracy of the work. The EM does not expand upon this and our submission puts forward the thought that it would be best in our view for some guidance to be provided at the outset in the explanatory memorandum as to what type of steps would actually satisfy this particular requirement, rather than leave it to the board in due course to take their own view and then perhaps have a test case so that the court will then determine whether those steps were reasonable or not reasonable.

The difficulty on this is that the tax profession has various sizes in terms of partnerships. There is the one-man sole practitioner to the multipartner type of organisation and I think the reasonable steps in all of those cases really depend upon the organisation. In the case of a large organisation there are probably quality control aspects—check lists, training and so on—as opposed to the small practitioner where the practitioner may well stand over the shoulder of the person and actually look at what is being done. So, we were hoping that there could be some guidance in the explanatory memorandum as to exactly what reasonable steps there would be with respect to this matter. That was the first point. Would you care to ask any questions?

CHAIR—My understanding is that ‘reasonable’ is a term that is often canvassed in law and you are saying that you would like more guidance but then again you say that there are different organisations and so there is a range of levels of what would be reasonable—

Mr Dunn—Correct.

CHAIR—which make it difficult to cover in an explanatory memorandum, and also things do change. So, as to what may be required in 2009, you might find quite a different structure would apply in 10 years time. Then if a court went back to the EM they would not have the required guidance. So, it does seem to me, even after your explanation, that it might be better placed in the hands of the board who could issue continual guidance about what was expected.

Mr Dunn—Yes. If that were the case it may well be that maybe the legislation should actually ensure that the types of things are prescribed from time to time, for the board to actually prescribe or announce what those are, as opposed to, at the moment, the law just says ‘reasonable’ and it comes down to a test case. I accept your point that things change and it might be difficult to craft them but I know the existing board’s working groups have been looking at this concept of supervision and control, because the existing board has been concerned with what it really means. This current legislation was introduced in 1936 and it has moved on. So, it is an issue that they have been looking at. Perhaps the law could prescribe that they should do this so that the profession knows with some certainty from time to time what the sorts of benchmarks are that they need to be fulfilling.

CHAIR—Some submissions have talked about the need for a committee of professionals to assist the board. Would you see that as providing the sort of impetus to do that?

Mr Dunn—I think that would be of assistance to the board. The board will be drawn from various places, including the profession, so some of those members in fact will have some of this expertise to actually draw up these guidelines. I think having the ability to form committees of external parties to provide some views on the final policy would be a good thing.

CHAIR—You had another point?

Mr Dunn—Yes. The second point was some clarification around the concept of use of service entities in particular. Whilst example 2.5 in the explanatory memorandum, which does in fact deal with a service entity, indicates that those types of structures are permissible under this legislation, the confusion arises through a further example in the explanatory memorandum, which is example 4.4. In that particular case the example states that service entity itself is required to—in the circumstances described in the example—register as a tax agent, or at least one of its directors would be required to register as a tax agent. We were trying to seek some clarification as to why that view was taken with respect to example 4.4 in the case that the bill clearly recognises the use of service entities, but unfortunately the example does not describe it; it just says ‘in the circumstances’ of the example the service trust would be required to be a registered tax agent. We were trying to seek some clarity around that particular example and to debate the issue as to whether in fact the service entity in that case should be required to be registered where in fact the arrangement is that the service entity

merely provides service to the registered tax agent who is ultimately responsible for the services provided to the client, which is what example 2.5 says. So, we were trying to reconcile between the two examples and we are finding it difficult to reconcile what is stated in the end with respect to those examples.

Senator EGGLESTON—You have raised some issues about confidentiality. Would you like to expand on your views? In particular, you talk about not being able to understand the intended purpose of paragraph 3.38.

Ms Bagnall—I can comment on that. In relation to that aspect, our concern is that the legislation says that permission is required in order to release information, whereas in the EM the use of the words ‘specific authority’ and also ‘explicit permission’ are used. Our concern there was that the EM is raising the threshold too high, and higher than is required at general law, in order to establish authority or consent, that is that you can have implied or express consent. So, the issue that we raise is whether the words ‘specific’ or ‘explicit’ could perhaps be removed so that the references are really just a permission or authority so as to not raise that bar higher than the general law. We also make reference to the definition within the Privacy Act, for example, where consent is defined as meaning ‘express consent or implied consent’. That is simply the point that we are making.

Senator EGGLESTON—In earlier comments today someone said that the written law, the black letter law—I am not a lawyer—rather than the content of the EM is more likely to be what is used. In this case I suppose you would be happy if the specific wording in the act was used rather than the EM, which I presume is supposed to be a guide. I am not sure what general weight is put on EMs by judges, so perhaps one of our lawyers can comment on that.

Senator FIERRAVANTI-WELLS—Perhaps, is it better that, clearly, the EM is given a broader inference? From the evidence that we have heard today, are you saying that basically the EM in this case and that legislation should be brought into line with each other, and that there should be a correlation between what is, perhaps, a more expanded view in the EM as opposed to what is a more restricted view as you have read it into the legislation, or the draft of the bill?

Ms Bagnall—Yes, we believe that there is a risk that the more restrictive EM could narrow how the law is interpreted, where the law simply says ‘permission’, then looking to the EM to resolve any ambiguity or to provide further assistance in terms of an aid to interpretation; the EM then goes further and uses the words ‘specific authority’ and ‘explicit permission’, which could result in the interpretation or the view that explicit or express permission is required. What we would submit is either implied or express consent should be acceptable should it be able to be established in a particular client’s circumstances.

Senator FIERRAVANTI-WELLS—There is a clear difference between the two of those in law, so that is a very fair point.

Senator EGGLESTON—You say you are happy with 3.35 and 3.36 of the EM. Do you want to make comment on those two paragraphs? You say in your submission that you acknowledge and appreciate what is in them.

Mr Dunn—I think paragraph 3.36, in particular, talks about the adequacy of the arrangements depends upon the nature, scale and complexity of the nature of the service provided and the information obtained, and some effective ways of managing, maybe through use of ethical walls or also through disclosure. I think we are comfortable, as a profession, that they are the types of ways that we, in practice, would manage conflict at present, so the words in the EM support that view and we are happy with it.

Senator FIERRAVANTI-WELLS—Going back to the discussion about the outsourcing, you say in your submission that it is unclear when an entity providing an outsourced service to a registered tax agent will itself have to be registered because it is unclear when an entity can ‘reasonably be expected to rely on the service’. Is that the sort of stuff that we read about where tax agents outsource to places such as India and those sorts of things? Give us a practical example of that and the concerns that you have.

Mr Dunn—I think that if ultimately the agent is responsible for the work and takes reasonable steps to ensure the accuracy of the work then it would seem to me that the agent would not be, what you would call, reliant on the proper services being provided by the contracting organisation. The problem with example 4.4 is that it does not describe why, but it says ‘in this case’ the agent or the client would be expected to be reliant upon the service. Our concern is that it does not really explain why in that case, whereas example 2.5 says it effectively does not go into that problem. The difference with 2.5 is it basically says that the contractual arrangement between the agent and the client is that the client is aware that the services may well be outsourced to a contractor or somebody who is not necessarily the agent in question.

Senator FIERRAVANTI-WELLS—Most commonly a bookkeeper.

Mr Dunn—Yes, a bookkeeper or it could be to a person who actually is another organisation providing some expertise, but ultimately the agent is responsible. It could be the outsourcing of preparation of returns. In other words, as long as at the end of the contractual arrangement—

Senator FIERRAVANTI-WELLS—It could also be a specialist tax agent.

Mr Dunn—It could be a specialist service as well. That is correct. The contract in example 2.5 says that the client accepts that the agent may well outsource to other people parts of what he has agreed to do but at the end the responsibility is with the agent and the agent will be accountable to the client. In that case, example 2.5 says that circumstance is fine. It does not talk about that the agent is actually relying upon the service that is provided to him, yet 4.4 seems to open this potential that in fact the service entity itself should have been registered. So, we have got a bit of a conflict between the two examples that we cannot quite understand exactly what—

CHAIR—Did you identify just then that it is whether the client knows whether it might be contracted out?

Mr Dunn—Yes, that may well be the exact reason why the examples are different and we are seeking clarification as to whether that is the major difference. In other words, if the arrangement is such that the client is aware that there will be outsourcing, aware that the agent still has the obligation to the client and the agent is registered and any accountability under contract will be with the agent, then if that is the difference between the two, then in example 4.4 that that does not exist, then I think we would be reasonably comfortable.

Senator FIERRAVANTI-WELLS—So, you are actually coming at it from that perspective of the responsibility remaining with somebody, the tax agent. Now, the fact that the tax agent goes out and outsources to somebody who may be registered or non-registered, ultimately the tax agent should take the responsibility for that rather than implying that that entity that the tax agent has to go out to has to be a registered entity for the purposes of what we are discussing.

Mr Dunn—Correct.

Senator FIERRAVANTI-WELLS—Now, chances are that after this legislation that person or that entity to whom they go out and get that service will be a registered bookkeeper because of the parameters that this legislation extends, that you will have greater likelihood, I understand, that that entity to whom they go will be registered. I take your point. You are really coming at it from the point of the responsibility, that ultimately it is the tax agent who takes the responsibility and if he chooses to engage the services of a person that is not registered for the purposes of this legislation or tax legislation, then he takes that responsibility.

Mr Dunn—Yes, and if he does not take reasonable steps to ensure the accuracy, he is in breach of the code.

Senator FIERRAVANTI-WELLS—Yes.

Mr Dunn—And as to his contractual arrangements between him and his contractor, that is his problem. He is a tax agent and if he has used somebody that was not registered to provide services to him, that is his problem. The protection is to the client that the agent should, whoever he has used, be taking reasonable steps to ensure that the final product is the right product.

Senator FIERRAVANTI-WELLS—And the feasibility of that is hypothetical. I am not a tax agent. I am not in that. I used to wind up companies that did not pay their tax, but that was a separate life. For example, you take a tax agent who, for the purposes of quite a complex corporate structure, may need to go out to an expert; that is, not necessarily a bookkeeper, not another tax specialist, but it could be in a field that needs to give him a specialty. It could be in some specialist family trust area or something like that, so it is unreasonable to expect this broader group of people to come within the registered umbrella. Is that what you are saying?

Mr Dunn—Yes, that is correct.

CHAIR—We have Treasury in later this afternoon. We will certainly ask that question of them and try to get some clarification.

Mr Dunn—Thank you.

Senator FIERRAVANTI-WELLS—You have raised the issue of service trusts in your concerns. Can you just expand on that and give us the context of that?

Mr Dunn—It comes into the context of those two examples and that in a service trust arrangement then typically the service trust is providing personnel to the partnership to basically carry on its activities.

Senator FIERRAVANTI-WELLS—Yes.

Mr Dunn—The contract with the client would generally be between the partnership and the client and the contractor, probably. So, the types of things that are in example 2.5 apply, that the responsibility is with the agent but the agent may well use other people for him to deliver the services. The issue there was to ensure that that type of service trust arrangement falls into the 2.5 category example as opposed to potentially falling into example 4.4. That was the concern, as to how does a service trust arrangement fit into example 2.5 if they are the parameters that the profession has to deal with—that is, ensure their contractual arrangements with clients is that the agent remains responsible and accountable and that he has taken reasonable steps—then I think the profession can actually say, ‘Yes, that is how our model will work.’

Senator FIERRAVANTI-WELLS—And whether you use a service trust or you go out to a specialist tax agent or whoever you go out to—a bookkeeper or whatever—ultimately, the responsibility is with the tax agent.

Mr Dunn—Correct.

CHAIR—Are there any further questions? Thank you, Ms Bagnall and Mr Dunn, for coming in today.

Mr Dunn—Thank you very much.

[11.45 am]

DAVIS, Mr Peter, Private capacity

POLGAR, Mr Peter John, Private capacity

CHAIR—Welcome. Thank you for coming in. You may make an opening statement if you wish.

Mr Davis—Thank you for asking us to come and talk to you today. I am a registered tax agent. I am an accountant. I am a fellow of the National Institute of Accountants. I am a fellow of the Association of Financial Advisers. I am a licensed financial adviser. I am a specialist adviser in superannuation advice and I am a registered tax agent. In my opening statement I implore the committee to assist in having this legislation passed as a matter of urgency. We need it and it is imperative for us to run our businesses.

So, if whatever the committee recommends and it has an effect, as has been said previously, of stalling the legislation, we will have to live with the legislation as it is and fix up what little aesthetic problems exist as time goes on. It has been stated previously there will be an increase in costs for the bookkeeping fraternity as they will have to have PI insurance and they may have to have other training and increase their skills, but that is nothing that we do not have to cope with on a day-to-day basis. We have to do CPD hours and training, we have PI insurance which can cost us \$3,000 or \$4,000 a year, and we have the general overheads of running a business, so I do not see that as a problem.

I am represented here as a personal person and not from any organisation. I support some of the professional accounting bodies that are looking for a permanent standing committee. This would be a good idea and it would assist the board. I draw the committee's attention to the fact that if somebody dies, in death we would need a little, small transitional provision in there if we can possibly obtain it from the government because we need to be able to support, from a consumer's point of view, the clients of the accountant who has died so they are not sitting in limbo without any representation for their tax affairs.

With regard to professional indemnity insurance, there appears to be a conflict between the bill and the EM. The bill says you have to have insurance that the board may require you to have. When you read the explanatory memorandum it says the word 'must'. As has been stated by previous speakers here today, I believe the word 'must' should be mandatory and the board should have to insist on that as a prerequisite.

As also has been stated here today, and has been stated in the submission from myself and my colleague Mr Polgar, unfortunately we appear to be missing the transitional bill and the regulations. I have been working on this with my colleague for the last two or three years in negotiations with Treasury and in confidential discussions. Previously we have had the luxury of seeing four documents in one go. I am also concerned as to what may and may not be in the regulations or the transitional bill that we cannot link into the actual bill. Hopefully, as previous speakers have said, there will be no dramatic changes, but one just does not know.

I think the biggest problem is that this should not be looked at not from the angle of 'let's catch the bookkeepers, let's catch the accountants, let's catch this person or that person' but from the consumer's point of view and looked at it with regard to consumer protection. We need to protect the consumer. Today in the marketplace there are some tax agents out there that operate that are not members of a professional body as the two of us are. They do not have any obligation to have any PI insurance at all. They can hang a shingle out there and say, 'I am a tax agent', and it is all quite legitimate. They register with the taxation boards—legitimate tax agents—and they have no overheads like we have and they do not have PI insurance and the consumer has no protection. In that regard the bill will do a lot of good because there is nothing that forces a tax agent to be a member of a recognised professional association. So, that would be good.

The safe harbour of work and the standard of work from bookkeepers and paraprofessional people who are doing the data entry of what is going on I personally have a problem with, because if I receive work from—and I use the term very loosely—a bookkeeper or someone who is not a registered BAS agent, I will be sending a letter out to all my clients regardless of what happens when the legislation finally passes—and hopefully it is in the short term and not in the distant term—advising them that if any of their work that they do through bookkeeping people who are not registered, they will have to provide me with all their data again for me to check. I do not have any protection from being sued by the client at all if I make a mistake. The client potentially has a safe harbour if they give a bookkeeper or a registered BAS agent everything that they knowingly have to give.

Now, in most cases the clients have no idea what they have to give anybody—will not have a clue—so in most cases the clients will fail that test because they have no idea and most times the registered BAS agent or tax agents should know, but they may not know. In my particular case, I send out checklists which I get from my professional association every year to every single one of my 1,500 clients—male, female, husband, wife; I send double out. Whoever I have in my client base I send it out and say, ‘Complete it.’ Some do, some do not.

So, if we are going to get the electronic data from a registered BAS agent, we need to know that we can be protected and not get sued if we do something wrong. I had a case the other day where a client said to me, ‘You charged me \$400 more this year than last year.’ I said, ‘Yes, we had to do more work.’ The client said to me, ‘Why? We just give you an electronic file and you make it into a tax return.’ I said, ‘No, no, no. It doesn’t work. We have to check this, this, this and this. As previous speakers have said, we have to analyse the data approximately. We cannot check every entry, as has been said before; it is physically impossible, but we do our best. Now, if we are able to rely on the work from a registered BAS agent coming to us and we have protection whether they do good work or bad work or indifferent work or somewhere in between, we cannot get sued then by the client, because we have some protection.

Mr Polgar and I have put these submissions to Treasury and the government on at least three occasions and for whatever reason they think the wording is correct. I am just saying do not be surprised when people start crying about the cost going up because it will happen. Personally—and I think my colleague, but he can speak for himself—I do not think the interpretations in the explanatory memorandum are correct. I believe, as was stated by the first two speakers this morning, that everybody who is doing contract work in bookkeeping or data entry or anything else should be registered.

Now, I put to you a hypothetical suggestion that it has been stated that there may be 40,000 people out there. One of the reasons I think it has not been taken up is because nobody can cope with the people who are going to have to be registered. It is quite obvious quite regularly that the tax agent boards cannot cope with all the tax agents in some of the states. Some states do very well, some do not. We are now going to have a national board; we should have independence in the national board and hopefully the national board will be adequately resourced by way of people, finances and electronic resources. My personal opinion is that everybody should be registered and everybody should be caught, because we are going for regulations and we are going to lift the standards and we are trying to make life better. I rest on that and hand over to my colleague Mr Polgar.

Mr Polgar—We are presenting on our own behalf. We are not affiliated with any association or body as such, although we are members of many of the professional associations. I was a commercial accountant for 30-odd years prior to starting public practice. I have effectively been a public practitioner full time for about 10 years, and I am at the pointy end of the whole profession. That is what I say to the ATO, the government and the professional bodies. We see day to day what happens out there on the field.

I listened to all the previous speakers. I support the issue of education. It is very important. To become a tax agent or even to join the professional bodies—in this case I am a CPA—I had to meet certain undergraduate studies and then formally do another course to be able to become a public practitioner. I have to have PI. I have to meet quality review standards. I am reviewed every five years, which I believe will go to three years. I have to have a minimum standard of PI under the Professional Standards Council in New South Wales to protect us. The reason is that we have peer group support and reasonably good-quality premium pricing as a result of that, because of our quality reviews, standards and education. Having said that, I would be really proud to be able to say that we have a professional body that is supervised by the national board of tax agents, in this case BAS agents/tax agents. I believe that all tax agents—and I mean those tax agents out there who I know and have experienced in the industry who are not carrying PI and who are not a member of an association—should be in one form or another, and carry the PI, particularly for consumer protection, and carry the certain standards, qualifications and CPD hours that we have to carry. That is important for continuing education. Because of the changes in the law on a continuing basis we need the support and they need the support.

I have a couple of issues to discuss with respect to what has happened in the past just to bring us up to speed. We need to look at what has happened here. GST came in with the new tax system some eight years ago. I know we are looking at this bill now for a number of reasons. I am not sure whether you can do this, but the ATO needs to address this issue. They are starting to address it. They are giving support to BAS agents. They are trying to give them education. They are giving them access to their computer systems via the BAS

agent portal. They know who the BAS agents are, because they have to be registered. They have some idea of what is out there and the capabilities of those people.

I would also put to the current commissioner for GST: what sorts of auditing procedures have they been putting into place to review the BASs that have been lodged? Millions and millions of BASs are being lodged. They have been lodged every year for the last eight years. We are talking about quality review and the quality of bookkeepers, but I would like to address the issue of what has been happening over the last eight years. Maybe there has been some drastic leakage to the review. I do not have any figures to that extent. I do not want to cause hassle with anyone, but there are educational issues out there. As I said, they apply to tax agents and bookkeepers alike. I am not taking any side here, but bookkeepers in our regime of GST, and the tax system currently, have a very important position for us as tax agents. We need to be able to rely on the data that they produce. It is the same with the person in my office that I have trained for nine years. She has been trained under my regime for some time, but she still makes mistakes. We are all human. We all make mistakes. We have to accept that. That is fair enough. There is a level of error that we can all live with. It is probably harder for a medical practitioner to make a mistake because it is a matter of life and death. As I often say, medical practitioners can bury their mistakes and still get paid. We, as tax agents, cannot bury our mistakes; we get sued. We have to take a lot of care and we try to do that. But as I said, people make mistakes.

I come here basically to argue that, yes, we need the bill to get up. We need it to bring our practice and profession into the twenty-first century. The bill that we are currently running under is too draconian. It does not allow for what we need to do under a very complex regime. It was drafted under a much more simplified system of tax. I know that for a fact because I worked with it for 35 years. The tax act used to be that thick. GST alone is about that thick. I will not even talk about the rulings, determinations and everything else that go along with it. It is complex. We accept it is complex and the tax office, the government, Treasury and ourselves have to take that on board. But we have to learn to define it and deal with it. Therefore, I am a big believer in education.

I know this is out of the scope a little bit, but I thought I would just push the barrow, anyway. I think we have far too many professional bodies. I think we need one full professional body. I have sounded this out with many of the professional body executives. We will continue to look at that jointly and try to bring them together. We need one voice and one education system. We need standards and we need those standards to be right across-the-board.

The term 'accountant' has been raised today many times; that anyone can hang up a shingle as an accountant. I am embarrassed to have people out there calling themselves accountants that are not part of a professional body, do not have the PI and do not have the education and skill. One person today commented that some tax agents do not even know what a BAS looks like. I am very disappointing in that because BAS is what we live by day in and day out. Every transaction in a business has a GST component attached to it. I am also appalled by the educational standards in the universities. I have had graduates come through my office who have no skill whatsoever in GST. I am very disappointed, because the first thing I do with a graduate is sit them down and say: 'Here's a client's books. We now have to go through and process all the GST and the tax.' It is the first thing you do before you even think about a tax deduction. You look at the GST, you look at the tax invoice and you decide what is GSTable. Anyone who tells me that they can process a set of books without thinking about GST has got to be out of their mind. That is not possible. I challenge anyone to do a set of books as a bookkeeper, tax agent or accountant; you have to contend with GST. You have to understand the underlying reasons for what you are coding into that system. Even if the system is coded by an accountant I still demand from my clients that the bookkeeper internally, whether they are an employee or a contractor, understand the reasons behind what they are doing, because they can move on and will not ask me the same question four more times. I do not have time for that.

I come back to education. It would be fantastic if we could demand that with the board and if they can control it. My question is: how many bookkeepers are out there? No-one can tell me. We would know from the tax office who has registered. We would know perhaps from the bookkeeping associations who is registered, but 1,000 bookkeepers do not amount to 40,000. My question is: when this regime comes into play what will actually happen? I ask that question for one very important reason: to what will the transitional provisions apply? How will they apply in this regard? What we have seen in the past we could probably live with, but I do not know what the current transitional provisions are and what the regulations are.

Therefore, what is going to happen to the bookkeepers if they are allowed to operate as they are? Let us face it, they are out there doing their bit. They are trying to make a living and they are trying to do the best they

can. You cannot learn GST by doing a MYOB or QuickBooks course in two-and-a-half hours or two days and say that you are a BAS agent. It is just not on. We continually go to CPD hours. We continually learn about the GST rules. We continually review the GST regulations as they come out, as the commissioner continually refines them as a result of what is happening in the community.

As to the reason bookkeepers came into play, we must admit totally that the GST could not have been introduced by the previous government unless, firstly, people were conversant with computers and computerisation—manually you could not have done it; you physically could not have coped—and, secondly, we needed the volume of people. Michael Carmody, who was then commissioner, knew that was the case and that is why he opened up the floodgates for bookkeepers under sections 251L and M to allow them to operate under supervision. They could operate under our control, but they did not do it well and they let them go. They let them go for eight years. I have had two audits in eight years and I have done a lot of BASs in those eight years. Both of those audits were questionable, but that is another issue.

What I am trying to say here and trying to point out is that there is a lot happening out there. It is happening right now while we are sitting here. There are errors being made. There are issues being raised. We need to get this legislation into place. It is not going to be perfect. No legislation is ever perfect. Let us face it, you cannot get it right the first time. But we need to have an advisory board. We need to have education. We need to have support from the accounting community and the professional bodies to support bookkeepers who want to be supported. But they have to take the bit between their teeth. They have to be registered. They have to do the education and training. They have to do the experience and take on PI. If they can do all of that, demonstrate that they are professionals, want to continue in the profession and want to develop themselves then who knows, they may develop into accountants down the track. By God, we need them because we are getting older and we are not going to be around forever. The tax agent community is shrinking. With a more complex tax system you cannot tell me that you can lodge tax returns on the computer when you are doing complicated margin schemes, GST issues and complicated non-commercial losses. I can go on and on about the legislation. There are issues and complexity in the tax system that you can only develop the skill in by training, education and doing it in practice. I will leave this issue to the committee with one statement. Please look at this as an opportunity to educate the mass of bookkeepers who are out there. The ones who do not want to partake can move on and do something else. Those who want to partake in this legislation have to meet the requirements.

Senator JOYCE—Madam Chair, thank you for allowing me to speak now, because I am on another committee talking with, amongst other people, the Commissioner of Taxation. With this legislation coming forward are you picking up civil or criminal liabilities in terms of the efficacy of your work that you cannot possibly sign off on? Is there going to be an increment, with the taxation department saying, ‘Now you’re responsible for this work’? Is that part of this legislation?

Mr Polgar—It is. My concern is the safe harbour issue. I have a few questions with the legislation, which I did not touch on and I apologise for that. That is a good question. Safe harbour apparently under the bill is given to the client between the bookkeeper and the client, but if the bookkeeper gives me the work and it is defective or the client gives me the work and it is defective, there is no safe harbour for me. I am not going to renege on my responsibility. I am a professional. I put myself out to be professional. I hang my shingle up there and people come to me. The reason they come to me is that I am a tax agent, trained, registered and inducted into the profession. Therefore, I need to take some responsibility. Yes, I would. In fact, quite frankly, I am more than happy for the tax office to come and audit my work. As I said, I have had two audits and they have ended up with virtually no issue. The point is we cover the major issues. We cannot cover every single transaction. Even though we try to, we cannot. We do rely on support from people. I live on a knife edge. A person could come around and sue me. I think my liability professionally is minimal, because the worst they are going to do is get a \$500 penalty or some interest charged for late payment of tax, and if it is my error then my professional indemnity insurance covers me for that.

Senator JOYCE—I am declaring my interest; I am also an accountant and a Fellow of the CPAs who went to university and did everything I was supposed to do. This is really important. If you went through every transaction, because you did not have a safe harbour, what would be the extent of the bill that you would have to hand across to the client for you to cover the cost for your time billing?

Mr Davis—The extent of the cost that we would charge the client would be quite enormous.

Mr Polgar—It would be horrendous.

Mr Davis—It would go up astronomically. We will look at things as best we can. I think anybody game enough to say they pick up every single thing in every tax firm would be mad. I would concur with Mr Polgar;

some items will get through, and it is sort of swings and roundabouts. The client would refuse to pay and jack up enormously. The problem with a lot of this industry—and I may be in opposition to some of the previous speakers today—is that, in my opinion, we had to have bookkeepers because there were not enough tax agents out there and nobody could cope with the GST when it came in. It was a necessary evil. Businesses go to a lot of them because they do not want to pay our fees. They think, in some cases, that our fee may be too high. It is only driven because of the complexity of the regulation that we have to comply with, together with our training, insurances and overheads. Some of the people doing the work are not always correct. We were zeroing in on some of the things, but some will always get through. I was amazed that a previous speaker said there was quite a substantial shrinkage to the review base with a lot of the errors they have found. That only supports some anecdotal evidence that we have from our colleagues. The average consumer, more likely than not, will have no way in the world of complying with the safe harbour obligation and getting the safe harbour, because they will not provide the necessary documentation to us.

Senator JOYCE—It is the classic example of garbage in, God's own truth out. Just because they have MYOB they believe that it is miraculous, divine and right. But what if they have not reconciled it and have not entered it in? What if they decide that everything is a tax deduction? It is not. You have talked about self-regulation and the importance of that. You talked about wanting to have one premier body as opposed to the CPAs, the chartered accountants or the institute. Do you believe at this point in time the capacity of the accountancy bodies to self-regulate is a far more competent instrument for control than government oversight in a lot of cases? When you are part of a professional body you are being monitored by other accountants. They know whether or not you are playing up.

Mr Davis—I personally believe, yes, because I currently have a peer review on. My colleague Mr Polgar has already had one. I had to complete 45 pages of documentation for a peer review. That was much to my angst, because I wanted to do clients' work. I did non-productive work and filled in the forms. It took me three and a half hours to complete the forms to give to my accounting body, which is the National Institute of Accountants, of which I am a fellow, for someone to come in and do a peer review. I have yet to receive a person in my office. He is probably looking at my answers and trying to work out whether they are right or wrong. I feel they have a great capacity. Our peers know if we are doing wrong because we all sit there to assist each other if we do not know an answer to a problem or if we want an answer we will ring up two or three other colleagues and get counsel from our colleagues to get a more substantial answer if we are not sure on something.

Senator JOYCE—How many compulsory professional development hours do you do per year—going to courses, seminars, exams, university courses and so on?

Mr Polgar—I cannot speak for the NIA. Mr Davis a member of the NIA. I am a member of the CPAs. Currently we have to do 120 CPD hours every three-year term.

Mr Davis—We are obligated in the NIA to do 40 hours a year. With the work I do currently, attending and helping to do things, I would probably do in excess of 100 hours a year.

Senator JOYCE—How many do you have to do if you are a bookkeeper?

Mr Davis—I cannot answer that.

Mr Polgar—Do you mean the ones holding themselves out as a contractor?

Senator JOYCE—Yes.

Mr Polgar—Zero.

Senator JOYCE—When someone gets the basics right—they manage to get their bank to balance—and send it across to you as an electronic file, if they do not know what they are doing there could be a huge leakage from tax revenue for our nation because of their lack of capacity to understand what they are doing.

Mr Polgar—You have put me on the spot. That is something I really would like to tell you, but I have to be fair to everyone. There are errors in electronic files when I get them. Bank reconciliations are often not reconciled appropriately, if at all. Balance sheet entries are not verified and therefore there are inconsistencies in the system, which we have to review.

Mr Davis—There are inconsistencies. That is why we have to try to look at the data file before we process a tax return. That is what I had to explain to my client the other day, who whinged when he got a \$400 additional bill from what he had last year—apart from the fact that the wages that I pay my staff have gone up so I can keep good trained staff. That is another problem. We cannot get enough of them.

Senator JOYCE—You should try it in St George.

Mr Davis—Is that the bank?

Senator JOYCE—No.

CHAIR—Is this ‘Barnaby’s Bank’?

Senator JOYCE—I do have a concern. When people come in to see you, you will always try to do the decent thing. If someone was dodgy you would say, ‘Listen, mate, you obviously want your tax done but you are not going to get it done here. Get out.’ I have a concern—and I wonder if you do, too—as to whether we are putting accountants too much in the loop such that they are liable for things they cannot possibly know? For instance, someone comes in and you ask, ‘Is this \$50,000 for repairs and maintenance for machinery parts?’ They say, ‘Yes, they are repairs and maintenance.’ Later on you go out and find those repairs and maintenance driving around the paddock pushing up dirt.’ You say, ‘Mate, that is a capital item and you have got to depreciate that.’

Mr Davis—You are correct. The liability lies with the consumer. You will come in and bring us the data. If you are only giving us all of the integral receipts, payment advices and chequebooks, and bringing in a summary that we are allowed to work off, we will ask you, ‘Is there anything else?’ When you sign the lodgement advice for a tax return you are declaring that you have told us the truth and have the responsibility. The liability is yours. We are only allowed to work off the documents that we are given and provided with. If we have to query you or anyone else in the community and then give you a bill for \$2,000 for a \$500 tax return, if you have the cranks about it we would then say, ‘That is how much of our time you have taken to do the particular work.’

Senator JOYCE—That is where we are now. On our current path do you feel there is more of an impetus as the taxation department tries to look at where it can lumber the liability and get more efficiency in the tax flow into the Treasury for them to say, ‘We can’t chase down myriad taxpayers. Where can we lumber the liability? Where is the good old dog that we can drag out of the room to kick? The tax agent—we will make them responsible for the client’?

Mr Polgar—You are absolutely right. That is one of the questions that I have put to various commissioners in the tax office. The commissioner actually talks about tax agents on many occasions in his publications and says that he is looking for a well regulated profession. When I have questioned that comment, the comment is, it appears to me from the answers that I get, ‘well regulated’ means that obviously we need to be well educated and we need to be the voice of the government and the tax office in educating our clients and putting our clients through the hoops in making sure that they do the right thing. You are absolutely right. We are the conduit that they are going to utilise to make sure that clients do the right thing.

We could take that one step further and I suggest we take that down to bookkeepers, who are an integral part in this whole process. They will be sitting there with the original documentation, as we heard, on site with the client. We do not go on site all the time; we do not have the time. The point is that they will be there. They have a service to do. They could question the client about their documentation and the receipting of all their paperwork. If we can rely on them following set procedures, set standards and education, I think we could rely a lot more on the electronic files that we get. If you questioned the commissioner I am sure that he would answer it in this way: yes, we are using the profession to educate the community at large.

Senator JOYCE—Dr Henry at the Press Club last year said that accountants should find a better occupation, possibly in teaching. He also suggested that the complexities of the tax act are such that it is ridiculous that there are five different treatments of wage, by which I imagine he means capital, non-deductible, deductible or a 100 per cent write-off. Obviously if you just had one treatment of wage you could write it off 100 per cent straightaway. Can you suggest to the Australian people what would happen if all of a sudden the collective knowledge in accountancy were to disappear off into the teaching profession? As honourable as the teaching profession is, what would happen to the income stream for the Australian Taxation Office and its capacity to collect revenue? Do you think that the position would be manipulated in such a way as the overall effect would be an immense and immediate loss of tax revenue to the Australian Treasury?

Mr Polgar—I agree. That is an interesting point. I read Dr Henry’s report and I also watched a video that a colleague sent on the internet. I need to respond to Dr Henry, but that is another issue. I took umbrage to that comment. You put that question to the commissioner. The commissioner says it time and time again and in published documents. They are relying on tax agents to make this system work. Without tax agents this system

would collapse. You would get very little revenue. What if we were not there hounding our clients? Let us face it, we run a business. It is our job to get bills in. It is our job to get the payments made.

Senator JOYCE—To tell them to come in and do their tax.

Mr Polgar—Yes. Time and time again when the tax office says to me, ‘Peter, you’ve got a couple of clients there who have not lodged their returns for three or four years’, I say: ‘Don’t worry. We’re working on them. If I can get them in, I’ll have four years worth of fees coming in. I’m very happy with that. Leave them with me.’ ‘No. Take them off your client list. We do not want you having them on your client list because your quality of lodgement is below standard.’ I said, ‘If I let them go you’ll never find them. There’ll be no revenue and we are losing.’ I cannot do that to the community, my profession or the tax office. I want to keep those people in the loop. I want to keep them online. I want to follow them through. Do not judge my performance on the basis of my client’s performance.

Senator JOYCE—I always suggest to Dr Henry that when they go down the street, go into any shop and they say, ‘We don’t take EFTPOS, we only take cash’, ask the question: what amount of tax is this person paying?

Mr Polgar—Precisely.

Senator PRATT—I wanted to explore further the safe harbour issues in my efforts to understand them. You have spoken about how a lot of that work needs correcting at your level when it comes through, but it can only be corrected to a certain extent. To what extent, once you have regulation of people who are submitting work to you, do you expect that to be overcome? As you acknowledged, mistakes do happen anyway.

Mr Polgar—I can give you actual experiences and explain what I have come across in the past. Unfortunately as an accountant I have been trained to be suspicious. It is in our nature. I think you will find that with all accountants. The issue is simply this. I would still check as thoroughly as I can the electronic data coming to me. Firstly, because I have that responsibility to my client. If I get them to sign a tax return or a BAS I need to make sure it is right. Very quickly as an example, which I can prove beyond a shadow of a doubt, I had one client’s bookkeeper deliver a MYOB file to me and my girl processed the file. She is trained to review and then give it to me for final review. It goes through two reviews in my office. We were doing a tax return. The BASs were prepared by the bookkeeper for the year. We review those figures to make sure that the review figures tie up with the BAS returns, PAYG and so on. We came across some entries that were called ‘secretarial services’. When I investigated them further I established that these services were babysitting fees. I asked my girl to investigate a little further. Fifty per cent of the babysitting fees, at their estimate, was suggested to be private in nature and therefore there was no GST input tax credit and no tax deduction. We ignored those figures. The other 50 per cent I was told were secretarial fees and that there was GST attached to them, to which my reply was, ‘Absolute rubbish.’ We changed all those figures and deleted them out of the ledger. In other words, we put them to the owner’s equity, which was not a tax deduction, with no GST and input tax credit. We corrected the file. It was not just that. There were a number of other issues, but I will not go into those. This is what we see on a regular basis. I queried the bookkeeper and happened to say, ‘Look, do you realise there is some new legislation coming through and you are going to have to be registered?’ The comment was, ‘I was only doing this to make a few dollars and if it comes I’ll just do something else.’ To which I said, ‘You are really putting your client at risk here. Thank God she’s come to me.’ That was the end of discussion. The point is that is an example of what is out there, and I can show you many examples.

Again, this is not to be unfair to bookkeepers, I am trying to keep a balance here. We have the responsibility to do the right thing. Under the tax law we have that responsibility. But as my colleague says here—and he is right—under the current regime when the client signs the BAS or the tax return they say that they are lodging this return in good faith and that they have given us all the necessary information. They take the hit on the chin when the penalty comes.

Senator PRATT—Will you stop taking work that is prepared by someone who is not accredited?

Mr Polgar—Why should I do that? I am already taking it. I would still check it.

Mr Davis—I would take the work from someone who is not registered, but I would be asking the client to provide an awful lot more data so I can verify the work.

Senator PRATT—Frankly, I think a lot of people do not necessarily expect their bookkeeper to be making those decisions about whether something is or is not and they would consider that to be your job.

Mr Davis—You need to understand that there are two major computer programs that I am aware of, QuickBooks and MYOB. I am only commenting on MYOB. I do not like QuickBooks, which is a personal decision. When the computer programs are set up, as has been stated by a speaker earlier today, someone has to make a decision about which items have GST attracted to them and which items do not. Also, when you have a bookkeeper, data entry person, processor or whatever title you like—I call them all the same title but some people may like to distinguish them; Treasury seems to want to distinguish the people and say that some people do not have to be registered—as the first speaker said today, they are not really understanding what they are doing. You can have insurance, CTP and green slips, which we have in New South Wales. I do not know what you call them in Canberra or in the other states.

Senator PRATT—It is an issue that has arisen largely because of the BAS?

Mr Davis—That is correct.

Mr Polgar—And the GST.

Senator PRATT—Is it the lack of skills and education or is that the BAS is too complex? Ultimately you can run quite a successful small business and you want to do it all in house and do not want to employ a bookkeeper, but frankly the BAS is a little bit beyond you. Is it the system that is at fault?

Mr Polgar—I would like to put that question to the tax office, which has the responsibility of managing and administering BAS. Quite frankly, what you ask is correct. They are both complex. One is education; definitely. And, yes, the BAS is complex.

Mr Davis—It is very complex.

Mr Polgar—As I said from the outset, we need to manage that. We need to control that. It is here. We are not going to change it. It is a big revenue item, big ticket item. We need to manage it. We need to do it well. It was sold that it was simple. The new tax system was called a simplified tax system. It is not simplified by any extreme. All I am saying is that small business people cannot be brain surgeons overnight and operate on themselves with a sharp scalpel. They will cut their throats and they will make mistakes and they will bleed to death. That is my argument and I have seen it happen.

Senator PRATT—An issue that our report could possibly highlight is the fact that, yes, this legislation is a step in the right direction but it is not going to solve the problem for everybody because you are still subject to the lack of competency in these areas because of the complexity of the system, and the majority of the work, nevertheless, is going to continue to be prepared by people for whom the system is too complex?

Mr Polgar—I think that is a good summation.

Senator PRATT—Thank you.

Senator EGGLESTON—One of the things you have a concern about is R&D consultant issue. Can you enlarge upon that for us?

Mr Davis—In the legislation there is scope to have limited registration for licensees to be licensed. I only offer the suggestion that I would support limited licensing for those to which it is appropriate. R&D people have to give specific limited advice. It has been contended in some of the other submissions that perhaps actuaries have a right to give certain advice in limited things on tax and what they do in relation to superannuation. I think it is a very good thing and certainly another reason we need to get this bill passed as a matter of urgency. In today's environment and the current tax act, which goes back many years, they do not have a right to do that. I think that is a good thing and they should be supported. That is the only reason I wrote it in our submission. We are of the opinion that it is a good thing and we should not always say bad things about legislation.

Senator EGGLESTON—There is another comment that you might want to enlarge upon. You referred to the fact that the current legislation is very old and out of date. Can you make a general comment about that and the need for new legislation?

Mr Davis—Mr Polgar can answer that.

Mr Polgar—The point is that the current legislation allows tax agents to operate only in certain well defined entities. As a sole practitioner you can operate and be registered as a tax agent. As a partnership, provided all partners are registered tax agents, you can operate as a partnership. As a company you can also operate a tax agent service. Currently you cannot operate in the form of a trust. The main issue here with the tax office is that they do not know who to contend with if there is an issue of liability or negligence. Is it the

corporate trustee, is it the actual trust itself or is it the nominee working as an employee inside the trust? This has been addressed by Treasury and we thank them for that. It is actually in black letter law in the bill and it addresses the issue that you can operate as a trust either as a company or as an individual trustee. That is a good thing. I think that is bringing the standard up to speed for the twenty-first century. As tax agents and accountants, we advise our clients to operate in trusts, but we ourselves cannot operate in that environment. That is good.

Our colleague Paul Drum from CPAs—and I am a CPA—has enunciated that the sanctions are now more flexible, and the issues are that for minor transgressions there should be better education and that these be supervised appropriately either by the board or the board authorising the professional body to follow through certain things with a sign-off back to the board that, yes, that person has met the certain standards and they are now appropriately trained, if they have made errors in certain areas, whether it be income tax or GST.

The terminating of a person's registration would have to be for something very serious, fraud or otherwise, because as soon as you terminate your registration we cannot do one thing. We cannot lodge a tax return. We cannot talk to the tax office. We cannot hold ourselves out to be tax agents. Hence the reason we have raised the issue of death as one of our top priorities. The termination of your registration by the national board would have to be something very serious, and therefore scheduled sanctions on an increasing basis are well received by the profession—certainly from our comrades and friends in that position.

Senator EGGLESTON—Thank you.

Senator FIERRAVANTI-WELLS—You heard the evidence previously given in relation to the termination of registration on death. Is that sort of framework and some of the suggestions canvassed earlier the sort of thing you would go along with?

Mr Davis—Yes. I would just like to backtrack. Senator Joyce was asking us whether we have to do a lot of work for the bureaucracy. People should understand that we have a thing called the cash transactions reporting act, which talks about things that go on. As to the responsibility of our profession, if we find a suspicious person coming in to see us we have to report those people to the government. It is not just the banks if they get too much cash coming over the counter. If somebody comes in and asks us to form a company for them or to form a family trust, a discretionary trust or unit trust and we are not sure about them, we have to identify these people. We have to ask you where you have come from. We have to prove your identity. We are now doing additional work to safeguard the system. That does not have anything to do with death. The death aspects and others are a problem for us because the consumer is losing out and they are not protected. If there is an investigation going on into your affairs by the tax department and I suddenly die, your tax affairs are suddenly in limbo and you might not even know that I have died. You are just waiting for me to come back to you.

Senator FIERRAVANTI-WELLS—As I said previously, I used to wind up companies that did not pay their tax. You would have this register of insolvency practitioners that would just be on the register and they would take the next insolvency that came and was allocated to them from the court. Perhaps there could be a situation where the new board would have a register of people in each state who could effectively jump in for a period as a transitional. But the point you are making is that that needs to be included in the legislation.

Mr Davis—If possible.

Senator FIERRAVANTI-WELLS—Or at least a reference to it in the legislation and then the mechanics of it referred to in the regulations, for example?

Mr Davis—Yes.

CHAIR—Thank you for appearing this afternoon. That has been very helpful.

Proceedings suspended from 12.34 pm to 1.34 pm

DIRKIS, Dr Michael James, Senior Tax Counsel, Taxation Institute of Australia

ROBERTS, Ms Joan, President, Taxation Institute of Australia

CHAIR—Welcome. Do you wish to make an opening statement?

Ms Roberts—Yes, we would like to make an opening statement. On behalf of the Taxation Institute, I would like to thank you for the opportunity to appear before the committee today. At the outset, it is important to say that the Taxation Institute supports the general regulatory framework in the Tax Agent Services Bill 2008. Whilst we believe that there are some issues around the details of its operation and administration that need and would benefit from further clarification, we believe that the bill is a necessary response to significant changes that have occurred in the way that tax professionals operate in an increasingly complex tax environment.

The Taxation Institute endorses the general framework of the proposed regulatory regime and supports passage of the bill. We have noted that some parts of it need clarification or further expansion, but we believe that they can be dealt with in a subsequent bill and this should not hold up the passage of this bill. We would like the committee to appreciate that the Tax Agent Services Bill is an integral part of the landscape in which the majority of our members operate.

By way of background, the Taxation Institute is a professional body of over 15,000 members. It was established in 1943 for the purpose of providing tax education and information to tax professionals, bureaucrats, politicians and the community at large. The Taxation Institute has more members who are in public tax practice than any other professional body in the country. We regard ourselves as independent commentators on tax issues with respect to tax policy and its administration. We have worked closely with government and the bureaucracy over the years, especially with the ATO and Treasury, and have contributed independent and expert practical commentary that has helped in developing tax laws and improving their administration for Australia. Our membership is diverse; it includes tax agents, accountants, lawyers and other professionals with an interest in tax in all the various forms of taxation across the board. Our members work in both private and public sectors. More than 5,000 of our members are registered tax agents and over 3,500 people are employed by those tax agents, and this bill has a direct impact on our members at a very basic level.

The Taxation Institute has played a key role over the past 15 years, which has been the long gestation period of development of this new regulatory regime being considered by you at the moment with the Tax Agent Services Bill 2008. We have been at the table in the process leading up to this bill and from its inception in 1992, when the institute's then president approached the Commissioner of Taxation with a proposal to undertake a major cooperative review of professional standards and regulatory arrangements impacting on tax service providers. Over this time, we have worked closely in consultation with other professional associations in the tax arena and with the ATO and Treasury in developing the proposals for the new regime. When the exposure draft was released for public comment in 2007 and again in 2008, the Taxation Institute devoted considerable care and skill to understanding the views of institute members Australia-wide to ensure that our submissions reflected their views, and it is those views which we are representing to you today.

The bill currently before the parliament is a good example of effective consultation with the ATO, Treasury and, through their associations, the professions. It makes a number of welcome reforms, including the establishment of an independent national practitioners board with more appropriate administrative and regulatory powers than the old regime plus safe harbour proposals to protect taxpayers and penalties for those who falsely hold themselves out to be tax service providers.

In commenting on the bill, we have already made the committee aware of some of our concerns in that currently before the parliament and before us today is not the complete package. We are concerned that the anticipated Tax Agent Services (Consequential and Transitional Provisions) Bill and regulations have not been introduced. Both of these were released as part of the package for public comment in May 2008 and it is somewhat frustrating that they have not been introduced with this bill as a total package. In particular, we are missing details of the proposed safe harbour for taxpayers, which is a key element of the reform package, as well as the transitional measures, which obviously have a practical effect for members as to how this is all going to work. We are also concerned that, because of these missing elements, our comments may not cover all the potential issues and that the committee's ability to assess the bill could be hampered. However, we do consider that potential issues will be able to be dealt with in subsequent legislation and we would not regard that as a reason for stalling or holding up the bill.

We have already drawn the committee's attention to some issues that would benefit from further clarification and resolution. The list we have provided is not exhaustive; rather its intention is to give some idea of the issues that we believe need to be addressed and can be resolved to ensure the clear and effective operation of the new regulatory regime. Perhaps I could mention briefly four issues which our members have highlighted as areas of concern. The first is the need for clarification in the code of professional conduct as to when a tax agent can rely on information provided by a client and when they need to seek confirmation of or evidence regarding that information. Clarity could also be provided regarding the use of structures involving partnerships of trusts. This may be as simple as ensuring that the notes within the bill in relation to the use of trusts confirm that trusts can be used for partnerships of trusts as well as for individuals or companies.

A third area that it is worth while mentioning today relates to research and development advisers. The bill now allows the board to impose conditions on registration so that people who specialise in a specific and narrow area of tax practice can register. Some examples are provided in the explanatory memorandum, but it appears that R&D is an industry that would benefit from further examples after consultation is had with specialists working in that area. The EM does contain an example of Lorenzo, an R&D consultant, which illustrates how R&D work can fall within the definition of a tax agent service. However, it seems that there is still some confusion amongst R&D specialists because this example does not fully explore how the bill impacts on the joint administration of R&D practitioners dealing with the different roles between the ATO and Innovation Australia. Also, there is some confusion and a lack of detail about what would be required of R&D consultants or specialists to qualify for specialist registration under the bill. But these are issues that can be addressed fairly easily, I am sure.

The fourth and final point we would raise today has been raised by many of our public practice members: consideration should be given to allowing the tax practitioners board to have a discretion to permit a deceased practitioner's registration to continue for a while after death to allow the practice of a deceased practitioner, pending sale, to be conducted under the control of another registered tax agent. That is important in that it will ease the burden on families of deceased practitioners at a difficult time of their lives. Dr Dirkis and I are very happy to answer any questions that you may have.

CHAIR—Thank you. I have a point of clarification. Did you say that, out of your 14,000 membership, 5,000 are registered tax agents?

Dr Dirkis—Yes.

Ms Roberts—It is more than 5,200.

CHAIR—What is the cost of and the difficulty associated with registering as a tax agent?

Dr Dirkis—Currently or under what is proposed?

CHAIR—Currently.

Dr Dirkis—Currently the rules are a combination and are similar to the new ones in terms of qualification, but there is a much stricter level of practical experience in terms of dealing with a wide range of income tax returns over a previous 12-month period. The difficulty with that requirement is that essentially it requires you to have worked at a sort of small- or middle-tier firm dealing with the whole range of tax returns from superannuation to individuals; it does not take into account any expertise you may have in GST, fringe benefits tax or one of those sorts of taxes. So it is a very limited operation and it has been in place since about 1988. That really is probably the most significant amendment.

CHAIR—It was touched on earlier. I just did not appreciate the significance of why that reduces the number of registered agents so drastically.

Dr Dirkis—It means that somebody who is an expert in the field could never register as a tax agent.

Ms Roberts—It makes it particularly difficult for people working in larger firms or legal firms who may be doing tax all day every day; because they are not doing the actual forms, it is harder for them to qualify.

Senator FIERRAVANTI-WELLS—Various bodies have given evidence before this committee. Can you explain how you all interact? I assume that you might well have some overlap of membership. We have had evidence today from various professional bodies and you all seem to be in and around the area. Can you tell me, firstly, if there is overlap of your members and, secondly, how you all fit together? That will give us a bit of perspective.

Dr Dirkis—You can cut across a lot of the bodies. You will get CPA Australia and obviously the Institute of Chartered Accountants and the IA all operating in the area of having members who are accountants. Of those

organisations, the CPA might have—don't quote me, because I am not from their organisation—about 120,000 members. But, if you were to drill down to find out how many of those are accountants in public practice, you would probably end up at around the 6,000 mark. Similarly, the Institute of Chartered Accountants has 35,000 members and about that similar sort of figure would operate within the sort of tax practice side of things. It is probably a similar sort of percentage with the IAA.

Ms Roberts—The Taxation Institute represents the tax profession, so all of our members are people who are working in or interested in tax. Most of them would be members of one of the accounting bodies or a law institute.

Senator FIERRAVANTI-WELLS—Are you telling me, in other words, that your coverage is wider than that of the other bodies?

Dr Dirkis—No, it is different. We are multidisciplinary, so we have lawyers and accountants rather than just purely people who are accountants, lawyers or book keepers. We cover the range. We have tax office members and people who are tax managers within the large corporates who have those sorts of roles, as well as academic members. It is a broad church.

Senator EGGLESTON—You have mentioned that you are concerned that the consequential and transitional bill and regulations have not been introduced at the same time as this. Is it unusual that a transitional bill and regulations are not made known at the time of the—

Dr Dirkis—There is usually a tendency for the consequential amendment bill to be introduced in conjunction with the main bill. Even with the tax bonus that has kept people fairly busy over the last couple of days, again we saw the primary bill and the consequential bill introduced at the same time, so it does give that complete package. We certainly have asked Treasury about the timing, and sometimes these things are not easy fits with the various lists of demands on government. But it would have made it a much neater package if all that material was available because then you would have a full idea around the scope, particularly the safe harbour bit for taxpayers.

Senator EGGLESTON—By not having the regulations, you really cannot see how it is all going to work.

Ms Roberts—It is a difficulty.

Senator EGGLESTON—It makes it very difficult. Do we have any idea of when they might be coming through?

Dr Dirkis—I have a broad indication, but I do not want to be held to it. It is likely that the consequential bill will be introduced into parliament shortly. Currently it is going through approval processes within cabinet. The regulations obviously will follow, once the law comes into existence. My understanding is that the bill may not be introduced but certainly there will be public consultation on it in a very short period of time.

Senator EGGLESTON—I arrived a little late and, while I was not present, I wonder whether you commented on limited registration, which I know is another of your concerns.

Dr Dirkis—We touched on it in the context of R&D specialists. There is an issue in the sense that there is no express power for limited registration, but you can have registration with conditions. We assume that a board will enable people to be registered subject to some conditions. If you are a strong tax adviser but do not have a great deal of compliance practice work filling in tax returns and doing that sort of thing, you could be admitted as an FBT adviser and doing the tax agent service, but you would be restricted in terms of filling in income tax returns; or you could allow for a registration of a GST expert who may not have that level of expertise in tax. It reflects the fact that tax is a fairly complex area and people do specialise in particular areas. That being said, you have to recognise that some generic skills may be needed not for that person to conduct their day-to-day work but where it is important that they are able to commit to that situation.

Senator EGGLESTON—People talk about R&D service providers but quantity surveyors are also listed; what tax work do they do?

Dr Dirkis—They do a lot of the evaluation work that underpins a number of the provisions within the act. For certain of the capital allowance provisions, you need to get certain valuations to reflect—particularly with new properties—what is the rate or the value of certain things for the purposes of write-off. They tread within that definition. It then comes down to the extent to which there could be some sort of limited licensing for them to continue that part of their work.

Senator FIERRAVANTI-WELLS—Following on from Senator Eggleston's question and that point, that means you probably have the option of widening the registration net because you then have better possibilities

of bringing people under the umbrella. Is that how you envisage the registration of book keepers and those sorts of people?

Dr Dirkis—I think that is crucial because we are in an environment where we currently have a piece of consumer protection legislation—effectively, that is what we are talking about—that has its origins in Queensland of the 1920s. Basically, that was adopted in 1943, when the Commonwealth took over the whole of the taxing powers, and it has remained pretty well unchanged. Of course, our environment today is very different to that of 1920 and 1943; some may say that it is closer to that of 1930—sorry, that is just poor humour. However, from a consumer protection viewpoint, it is important that, in going to see people, consumers can feel secure that those people have a certain level of qualification.

Currently the difficulty is that you have six independent boards, each of which has three people; in New South Wales they are meant to look after 5,000, almost 6,000, tax agents. The reality is that they have two powers: they can either suspend your licence or remove you from practice. It means that, where there are issues around the quality of a particular agent, they have no scope. Either you have to be crooked in order to get removed or you are permitted to continue without any further follow-up. The advantage of this bill is that it will enable the boards to ensure that that level of community quality of advice is given. If there are complaints around someone's ability to deliver that, the board may look at their history and say, 'Obviously there are a few areas where you need to be upgrading your skill sets. We can set a series of conditions on you to continue practising, but you must meet these education requirements.' I think that just serves the community as a whole.

Senator FIERRAVANTI-WELLS—Just stepping back, we have heard some views in relation to that consumer perspective and the responsibility ultimately to the consumer who goes to a tax agent to have their tax work done. We heard evidence this morning about the agent perhaps needing to consult and/or contract out to various elements, including book keepers, to be able to do that, with the question going to their ultimate responsibility. We have also heard of the need for book keepers obviously to be themselves and have professional insurance and all those sorts of things.

Let me put a hypothetical question to you. Suppose I have the situation where a book keeper puts up a shingle, works as a book keeper, should get professional insurance and then goes off and does that work for me; therefore, there is a direct relationship between that book keeper and me, as I have come along and said, 'I want you to do my work.' Ultimately, is there a difference in responsibility for me where I am dealing with that same book keeper who is subcontracted to and does work for that tax agent? Do you see what I am getting at? Assuming that person is registered, should there be a dual responsibility—that is, by the book keeper for the work that he or she undertakes in that relationship—or should the relationship be directly between me and my tax agent who takes that responsibility, with any errors or faults along the way, if there are any, then being passed down for the tax agent to recover appropriately from the book keeper?

Dr Dirkis—I think the difficulty with the way the bill is currently structured is that the assumption is that you cannot automatically rely on the work of that other registered person. To a degree, in one sense, there are elements of that which make a lot of common sense. If I have a new client and I know they are going to a particular book keeper whose work I am familiar with, and I am confident that the nature and the quality of that work is good, my risk in my practice would be to say that I can rely on that person and will have to do fewer checks. But, if I have a new client who has had a book keeper with whom I am not familiar, I am duty bound at least in those circumstances, regardless of any separate registration, to assure myself that there is some quality within the work that I am reviewing and that it is produced at a sufficient standard. So there is a degree of prudent business practice to make sure that your client in the end is not missing out. The practical difficulty is that the client says, 'But I've already paid someone to do this. Why are you double-checking; why are you auditing?' I think what is not clear within the bill is the extent to which prudent business practices and risk management practices that exist currently in a whole range of accounting practices are taken into account in determining the level to which one must check.

Senator FIERRAVANTI-WELLS—Can I then ask about another situation? We have a framework where book keepers go through a process of registration et cetera and whereby they have PI. They effectively operate as a registered body or entity with all the standards that attach to that. Do you believe, therefore, in the situation where I as a consumer go to my tax agent and somebody else, a third party, a book keeper, has undertaken some work, that book keeper should ultimately be responsible for the work that they have done that then has been passed on to the tax agent? In other words, is the tax agent's responsibility offloaded to the book keeper and do I then take the responsibility for that when I sign off on my tax return as a taxpayer, or effectively do I vouchsafe the work that has been done by two separate entities and then sign off on that?

Dr Dirkis—I think prima facie that would be ideal and in most cases that is what will happen. But in certain circumstances, if you suspect that the quality of the work that you are getting is not up to standard, you as a professional should take that on board and assume responsibility for checking or taking it on. It is a little bit like my getting a particular piece of advice that leads to, say, a tax minimisation scheme or something for which I have seen a brochure that says, ‘Get into this tax scheme; you will save thousands of dollars.’ I can say, ‘I’ve got a QC’s opinion on it; my client can rely on that and take action on that.’ However, if I am being prudent, I would have to advise my client that it is not all wonderful, there are a few downsides, this is an area of high risk and all those sorts of things. Even if you create those separate levels of liability, no professional can blindly rely immediately on what someone else does. The situation would be similar to where your GP does a diagnosis and refers you to a specialist and the specialist relies purely on what the GP said in terms of what was wrong with you. You would expect that the specialist would review parts of what that GP did to assure themselves that that was what the problem was.

Senator FIERRAVANTI-WELLS—Inevitably, in the case of dispute you might have one against the other.

Dr Dirkis—Yes. As a prudent professional that is what people would want to do. They would not blindly rely on someone’s advice. I think even if there was that safety there you would still have to do some prudence—

Ms Roberts—Some of it might be able to be sorted out in the scoping of the work, if you sit down with the client and agree on, ‘You are giving us this information. You are not wanting us to check/verify that.’ Obviously if that information provided, on the face of it, could not be correct a professional would have to raise an issue about that. Once you have raised the question and the client still does not want you to do anything about it, you do not have instructions to do anything. It may be that you have to take the position that you cannot lodge the return, if that is what you are doing, on the basis of that information because you think it cannot be correct.

Senator FIERRAVANTI-WELLS—Do you see that as a consequence of this legislation there clearly will be fewer bookkeepers in the system because some of them probably will not be able to cope? When you tighten up any sort of regulation anybody involved will find that they will not be able to meet those requirements and as a consequence they will drop off? Do you envisage that that might be the situation?

Ms Roberts—There may have to be some sort of reinvention by the bookkeepers. They might work under different conditions and circumstances. I think there will always be a need for that work to be done.

Dr Dirkis—The reality is that maybe some of the relationships will change. Instead of someone being a contractor and an independent bookkeeper with a shingle, they might end up in an employment relationship with the person they are doing the books for. If that changes then we are not talking about a regulatory thing, because if they are an employee of the person and doing the books for the person it is no different from an accounts clerk or those sorts of people that this bill does not touch on. It may impact on the employment relationships between independent bookkeepers and how they engage with their clients. In some cases when we pick up the number of bookkeepers doing work often people are acting more in an employment relationship rather than necessarily an independent contractor role.

CHAIR—Thank you for coming in this afternoon.

[2.09 pm]

CLEARY, Miss Courtney, Policy Analyst, Business Tax Division, Department of the Treasury

DIXON, Ms Jacqueline Marie, Analyst, Business Tax Division, Department of the Treasury

McCULLOUGH, Mr Paul, General Manager, Business Tax Division, Department of the Treasury

CHAIR—Welcome. Do you have an opening statement?

Mr McCullough—We do not have an opening statement as such. I did hear a couple of things in the evidence that might be useful to clarify, if that would help. I stress that unfortunately I have not been able to hear all of the evidence today so I cannot do a point-by-point explanation at this stage.

CHAIR—Clearly those responses have been as a result of questions so perhaps we can go straight into questions and then we can follow up on the answers that we require.

Mr McCullough—There was one thing I would like to clarify straightaway.

Senator FIERRAVANTI-WELLS—Is it the exchange that I had earlier?

Mr McCullough—That and the simple question about whether there should be a discretion to allow a practice to go on after an agent dies. That is specifically addressed in proposed subdivision 40-B. Proposed section 40-20(2) allows the board to issue a notice to say that there is termination of registration. The requirement in this subsection says that that notice cannot take effect within less than 28 days. Basically, unlike the old law, where when a person died the registration was immediately revoked, under this bill, if it becomes law, the executor would have to contact the board or it would have to come to the board's knowledge in some other way and the board would issue a notice to say that the registration terminates at least 28 days from now or such other time as the executor can wind up the affairs. It is dealt with that way rather than being prescriptively chapter and verse because the law of succession is quite complicated. Our advice from the Attorney-General's Department was not to attempt to replicate that and to leave it to the executor, but make a provision that there was not an automatic revocation of the registration.

Senator FIERRAVANTI-WELLS—The point went a bit further, and that was that there is probably scope for some form of framework for the appointment of a nominee or some person to carry on, if I can put it in those terms. If you have a practice where one partner dies, clearly there is a facility there and there will be other people in the practice that can carry that on, whereas if it is a sole practitioner the question is: should the legislation make a more formal provision for some form of nominee? For example, in complicated succession situations the practice might need to go on for six months. Does that mean in your scenario that it is the executor who carries on that practice?

Mr McCullough—It is not only in my scenario. In the law as it exists at the moment it would be the executor who carries on the practice. Our advice from the Attorney-General's Department and other independent legal advice has said that if we were to try and cover all of the ground that can be covered—say, what happens with outstanding bills—we would be attempting to replicate a body of law that exists at the moment.

Let us take the simple point of appointing a nominee. Are we then going to say that the nominee takes over certain roles from the executor and therefore try to interfere with the normal law around that and carve out a piece that belongs to a nominee appointed by a board whose business is not dealing with deceased people's estates? From a distance I can understand that it would be nice to have something in this bill that would say that this bit is taken care of, but practically our advice is that it is a very difficult thing to achieve even if we wanted to go that way and that we would be much better to rely on the existing law.

Senator FIERRAVANTI-WELLS—My concern is where you have a complicated succession. For example, what happens to my files if my tax agent dies tomorrow?

Mr McCullough—Under the existing law you do not have an agent the day after tomorrow. Under this law there is still a framework under which the board can agree with the executor for the executor to either continue the practice under certain circumstances or operate in a whole range of ways. We do not want to attempt to tell the executor how to do that job.

Senator FIERRAVANTI-WELLS—I appreciate that, but I am trying to explore what those ways are.

Mr McCullough—I would have to take on notice the complicated answer of how to deal with deceased estates. I am not trying to be difficult. This is very difficult.

Senator FIERRAVANTI-WELLS—I appreciate that. I was a lawyer for 20 years and in that respect I understand that succession law is a very complicated area, although it is not an area that I have expertise in. I appreciate the effort that has been made in this legislation to give at least this 28-day period. The question that I am asking is: within the scope of this change, is it open for an executor to engage or assist? If he is going to carry on that business for a period, what is the scope for him effectively to carry on that practice if there are complicated matters that are going to take a long period?

Mr McCullough—The scope simply is that, if the board permits and the board has a power to permit, the executor can continue to conduct the practice.

Senator FIERRAVANTI-WELLS—Even though the executor is not a person who has the capacity or the understanding to complete my tax return?

Mr McCullough—They would be the person with the legal responsibility. I presume a sensible executor without the tax experience would engage another registered tax agent to do it on their behalf.

Senator FIERRAVANTI-WELLS—That is the point I am asking you.

Mr McCullough—That is all allowed under this little provision.

Senator FIERRAVANTI-WELLS—Is that the flexibility that is available? That is what I am asking. Does the actual provision explain the intricacies of that flexibility or is that to be in the regulations?

Mr McCullough—Obviously not. It does not explain the intricacy of the flexibility, but the point is that there is the flexibility.

Senator FIERRAVANTI-WELLS—I appreciate that there is flexibility. On the face of it there is flexibility. In practical terms what is available? It is clearly not in the legislation. Is it going to be in the regulations? Is it going to be in the form of guidelines? Is it going to be in some written form? This is quite an issue because we are going from a situation where there is a possibility that the tax agent could die—

Mr McCullough—I understand your question. The reason I am slightly hesitant about things beyond the legislation is that I do not want to speak on behalf of a board that does not exist and whose members have not been appointed. Frankly, if I were one of the board members I would be saying, ‘This sounds like a really important point to issue a guideline on.’ The board has a power, and indeed it probably has obligations, to issue guidelines on these sorts of things. I know there are already plans or processes in place to deal with board guidelines on issues of how they are going to use their powers.

Senator FIERRAVANTI-WELLS—Can you take on notice the question that I previously asked, that is, what are the practical parameters of the flexibility? It is clearly not in the legislation, but is it intended that the regulations will prescribe the extent of this flexibility?

Mr McCullough—I do not need to take that on notice.

Senator FIERRAVANTI-WELLS—I am asking you to take it on notice.

Mr McCullough—I do not need to. I can answer that now.

CHAIR—One of the issues here is that we do not have the transition legislation and the regulations with this bill, and that cuts through a lot of other questions as well. Can you explain why that did not occur? It is very difficult to consider a bill without looking at the transitional provisions as well.

Mr McCullough—Absolutely. I would like to answer that question simply in order to deal with it. The answer is simply that there is ultimate flexibility. There is complete flexibility. I cannot describe the limits of the flexibility, because the board can do anything within its powers in relation to a deceased registrant, the same as they could for a live one. For that reason there would not need to be anything in the regulations. I would like to come to the timing and the question of regulations. Firstly, I would make the point that the bill and the explanatory memorandum have been consulted on publicly on two separate occasions for significant periods, including virtually full regulations on both occasions and the key transitional provisions on the last occasion. The reason the government took the decision to bring this particular bill forward without yet being able to complete the drafting on the transitional provisions was simply that when you want a new system like this to get up and running there are limited windows of opportunity. For example, you cannot press the button in the middle of the tax season. The sort of thinking was that if this was brought forward and able to be dealt with in this sitting of parliament—and the transitional bill will be very shortly ready for full public consultation—then the first one could be enacted and in the period that is allowed in the bill after the royal assent before commencement, which provides for up to a nine-month period, the transitional bill and

regulations would be dealt with. That would allow the establishment of the board, with board members to be advertised for, if the government chooses to do it that way, and board members to be appointed, and then guidelines to be commissioned and issued so that when the commencement date occurs everything could be up and running together. It would have been perfect if we had been able to get the transitional bill and the main bill all done at the same time, but unfortunately it just did not work out that way.

CHAIR—You are saying that the transitional bill will go out again for public consultation?

Mr McCullough—Yes. I understand that is the government's present intent.

CHAIR—The full package of this bill, the transitional bill and the regulations went out in May 2008. Were there significant changes required to that transition bill?

Mr McCullough—The full package of bill, explanatory memorandum and regulations went out in both 2007 and 2008. We were only able to deal with the main provisions in the transitional bill and hardly any of the consequential provisions, such as the things that changed definitions.

CHAIR—What do you mean by saying that we were hardly able to deal with them? Do you mean the submissions on them or was the transitional bill incomplete when you put it out?

Mr McCullough—The transitional bill only had key provisions—things like the safe harbour. It did not have consequential provisions, the ones normally regarded as relatively technical, and it did not have some of the things that have subsequently been raised with us as being important for the transition. Now another bill has been drafted keeping the key provisions there, adding a range of other things that have been raised with us, and that will go out for consultation again.

CHAIR—Are you confident that none of those things in the new transitional bill will impact on the bill before us?

Mr McCullough—It will not impact in a negative way.

CHAIR—You are asking us to pass this bill and then you are saying that we have another bill coming that has not been finalised and has not been out for public consultation that will work in tandem with this bill.

Mr McCullough—I can explain. This bill, in a sense, is a new regime. Most of the transitional provisions will deal with the question of transitioning from the old regime to the new regime, and the practical things such as what to do if an investigation is on foot under the old regime, whether the new provisions or the old provisions work, and whether the board has the same powers. These sorts of mechanical details need to be dealt with, but they do not stop the running of the new regime.

CHAIR—I am sorry, they do. If the transitional bill is not passed by this parliament they do.

Senator FIERRAVANTI-WELLS—That is right; absolutely. And there is the fact that you do not have regulations.

Mr McCullough—I am not trying to make any fancy point. I am simply saying that because this bill will not commence until, say, nine months after it is given assent to, there is no technical reason why this bill could not be passed and then in a subsequent sitting of parliament the transitional bill could be passed and all of the things be ready to go together.

CHAIR—We are being asked to pass this bill without knowing what the transitional procedures are. It is quite conceivable that this bill might be passed in this session but that there will be significant problems with the transitional bill in a subsequent session of parliament and, therefore, we will not have a start date.

Mr McCullough—I accept that as a theoretical proposition. All I can say is that all of the key transitional provisions have been consulted on and the government fully intends to come out with another process to consult. The government is interested in getting this right.

CHAIR—If most of the key transitional provisions that you feel need to be consulted on have been consulted on why is it so important to hold that back and go out again for public consultation on it?

Mr McCullough—I am not trying to give the impression that it is being held back. It just could not physically be done at the same time. Unfortunately we are in a situation where we have to rationalise drafting resources. If we had done it all together, frankly we could not have had this bill before the parliament in this time, which would practically mean the whole thing would have to go back virtually a year because it is not practical to implement a new regime like this at most times of the year. You cannot do it in a peak lodgement season. The little window seems to be around the end of the calendar year.

CHAIR—Everyone who has appeared before us today has said that they want this bill in and we will take note of that in our report, but the fact that the transitional bill is not before us, or the regulations, makes it very difficult in terms of our producing a report that addresses the issues being raised.

Senator FIERRAVANTI-WELLS—I would like to back up the chair on that. Quite a number of submissions that have come in not only from those people who appeared today but from quite a number of people, and some serious issues have been raised. This issue of the death that we are canvassing at the moment is an example of where, I believe, clearly the regulations will have to have some clarity. We have a package that has been around for years and we are told that there has been extensive consultation. My concern is what has happened and what changes are going to be in the subsequent package that have not been canvassed in 2008? Are we going to have to go through this whole process again? If you have done the bulk of the work and put out the regulations based on 2008, why do we not have that as a package before us and then the parliament can make changes that it feels are appropriate following scrutiny by the Senate? Would that be the better course of action?

Mr McCullough—Rather than answering the theoretical question, if you have concerns about particular areas I might be able to tell you whether they are in the regulations, which of course have been exposed.

Senator FIERRAVANTI-WELLS—That is a rather ad hoc way of dealing with it. I would reiterate what the chair has said. I have to say that this is not satisfactory. If we are going to do something we have to do it properly. This is a highly technical area. A lot of people have already spent a lot of time on this. We have come here today only to be told that we will probably have to go through this all over again because Treasury could not get its act together.

Mr McCullough—With respect, that is not what I said to you. I have said time and time again that the regulations have been exposed.

Senator FIERRAVANTI-WELLS—If the regulations have been exposed and gone through a proper consultation process then why are they not here with the rest of the package?

Mr McCullough—They cannot be here until the act is passed. Regulations under a bill cannot be tabled before parliament before the act is passed.

Senator FIERRAVANTI-WELLS—Yes, I know that. You have gone through this and canvassed it. I am not satisfied as to why the whole thing is not before us. If you have all gone through it and it is all there, why are we holding off on this only to go through it all over again?

Mr McCullough—The government is not suggesting that anything has been held off on. I am sure the government would have been much happier to have the whole package, including transitional and consequential bills, before the parliament at the one time. I understand that it is the intent to release it very shortly so that it will be before the parliament when the parliament is debating the main bill, but all I can say is that unfortunately this has not been able to be achieved at this time. The choices were either to do it this way with split bills or virtually delay the whole thing 12 months. On the basis that the vast majority and the large representatives were all in favour of proceeding with the main bill, the government chose to do it this way.

Senator FIERRAVANTI-WELLS—I think you should prepare for this. When the transitional bill does come in, if there are any key areas of difference, are you going to prepare a submission that tells us where they are? Is that the intention or are you telling us today that there are no key areas of difference?

Mr McCullough—Difference between what?

Senator FIERRAVANTI-WELLS—Basically, whether there are any changes to the sort of regime that we are seeing now.

Mr McCullough—There will not be any changes to this bill that are not identified specifically as a correction or change.

Senator FIERRAVANTI-WELLS—So, nothing that could arise out of this hearing or anywhere else is going to change what is in the transitional provisions?

Mr McCullough—What would change anything in the transitional provisions is that, once they are exposed for consultation, if somebody comes up with a really good suggestion then no doubt the government would consider that and if it improves the bill they would amend the draft before it was put before parliament.

Senator FIERRAVANTI-WELLS—By that stage the bill we are talking about now would have passed the parliament.

Mr McCullough—Yes, if parliament has passed the bill.

Senator FIERRAVANTI-WELLS—The transitional bill would then have to be amended accordingly?

Mr McCullough—Under that scenario it would not be the transitional bill. It might be an amendment to this bill. I would have to say that from time to time there are amendments to tax bills.

CHAIR—I think we do know that on this committee. I wanted to follow up on where service trusts needed to be registered and where they did not. Example 2.5 in the EM outlined a case where the subcontracted agency did not need to be registered, and then there was an example in 4.4 where they did need to be registered. There was a query about why the two examples were different. Could you elaborate on that for us?

Mr McCullough—One of the problems of being closer to legislation is that I am not sure where to start. The simple answer is that they deal with different things and they deal with different assumptions of the fact. Example 2.5 is based around a conclusion that it is not reasonable to expect that Ace Accounting in that example would rely on the services, whereas in example 4.4 the opposite conclusion is the key to the example; it is reasonable to expect that Thomas and Partners or its clients would rely on the services. This is critical because the definition of ‘tax agent services’ and ‘BAS services’ all hinge on the question of whether it is reasonable to rely on the service. It actually touches on the question that you were raising before: if I go to the tax agent and there is a subcontract with another person, who is responsible? This definition has been developed with quite some degree of care and consultation in order to produce the result that, where it is reasonable to expect that a person will rely on the answer that is being given and it meets the definition of a ‘tax agent service’, that requires registration and the civil penalty would apply to a person who was not registered. Where it is not reasonable to expect, for a range of other reasons, including if my contract is with somebody else, then registration is not required.

CHAIR—It was 4.5, not 2.5. It is the difference between those two examples.

Mr McCullough—Do you mean 4.4 and 2.5?

CHAIR—4.4 and 4.5. The nature of the initial query was whether the difference was that the client is fully aware that there is subcontracting or the client has just employed someone and is not aware that they might subcontract?

Mr McCullough—That might be practical shorthand. If I go to a tax agent and the tax agent is a registered person, I am expected to deal with the tax agent. It is reasonable for me to be expected to rely on their advice. They are hanging out the shingle. Whatever they do behind the scenes, for example, they might have a contract with somebody else who is or is not registered to give them advice, under that scenario I am relying on the tax agent’s advice and the tax agent is accountable to me for whatever they do. The tax agent might have some comeback against the person they have contracted with. I heard about bookkeepers and so on. Let us say they contract with bookkeepers. If the contract is not met and if the standard of service being provided to the tax agent is not met, they would probably not pay the full amount or take some other action. That will not affect the taxpayer who is relying on the tax agent.

There is another scenario where you go to a tax agent and the tax agent says: ‘Joe Bloggs is the specialist on this. You should go to that person and however it works out still pay me.’ It is reasonable to expect in that circumstance that you are relying on the other person’s advice and that person will need to be registered. Without getting too carried away, we think it is fairly watertight.

Senator FIERRAVANTI-WELLS—In other words, at the end of this process, looking at the scale, you have a percentage of people who undertake activities in house, and in-house people who look after their affairs, lodgement of BAS and so on. Most small businesses will take the responsibility themselves for the work that is done in house. Then you have the work that is done by tax agents, and of course that is covered from that perspective. We are then talking about those people who undertake work, such as bookkeepers, and that is the percentage that we are looking at at the moment. Are you confident that at the end of this process, from a consumer perspective, the consumer is fully protected in that those people who are out there doing this sort of service are registered?

Mr McCullough—I need to make one little qualification to a satisfaction level. What we are doing here is not giving anybody an assurance about the standard of bookkeepers.

Senator FIERRAVANTI-WELLS—No, but you are giving a registration tick.

Mr McCullough—It is really confined to that area that would otherwise be legal practice, giving advice on the law, for which this has become an exception. It is not confined to lawyers; other people can do it. Within

that area there is some dispute about the precise number that might end up being registered as BAS agents other than bookkeepers. The information I have from the ATO is that it is a relatively small number. There might be in the order of 100,000 or 150,000 bookkeepers but more of the order of 10,000 or 15,000 of these people who are going to be in the position that you describe as giving advice that people could reasonably expect to rely on or representing the taxpayer with the commissioner by lodging the form. That standard of activity is covered by the code of conduct. It is the same for tax agents as for BAS agents. The differences are in the qualifications and experience.

I heard some evidence this morning that some representatives of the bookkeeping industry would like a higher standard of education, whereas others are arguing that it is probably about right. I think it is about right. We have tried to find the neatest balance for it. I can see an argument that you could regulate a little bit more, but that would be at a significant cost. I do not think you could go below the minimum regulation that we have here.

Senator FIERRAVANTI-WELLS—If I understand the evidence correctly, you have thousands of bookkeepers out there who are basically lodging on behalf of people with barely more than a two-day course on how to use a computer program. Are you seriously telling me that those people, from a consumer perspective, should be let loose out there in the community causing damage and forgone tax revenue? I had not understood the impact of this. The next question I am going to ask you is: do you actually know how much tax revenue is forgone as a consequence of failure to register and regulate this body of people?

Mr McCullough—You ask the question about consumer protection. Consumer protection is a very broad thing. One might argue it would be a very good thing in the interest of protecting consumers to regulate bookkeepers, but this bill is being brought forward under the taxation power. It deals only really with the regulation of those people doing something that connects reasonably to taxation.

Senator FIERRAVANTI-WELLS—I have also prepared BAS. At one stage I ran my own small consultancy, for a short period. I had to produce my BAS. Are you telling me that is not connected to taxation? Therefore, if I contract that out to Mrs Bloggs Bookkeeper, she is not undertaking anything to do with taxation. Is that what you are practically telling me?

Mr McCullough—I am telling you that if a businessperson prepares their own BAS it need not be regulated. If a businessperson has an employee who happens to call themselves a bookkeeper who does it for them—

Senator FIERRAVANTI-WELLS—In house?

Mr McCullough—Yes, in house.

Senator FIERRAVANTI-WELLS—They take the responsibility.

Mr McCullough—While somebody might like to regulate that, it is a bit of a stretch to do that under this—

Senator FIERRAVANTI-WELLS—No. I am not asking you—

CHAIR—Please let Mr McCullough finish.

Senator FIERRAVANTI-WELLS—I am sorry.

Mr McCullough—The question for this bill comes down to consumer protection for people who are going to somebody who is registered as a tax agent or as a BAS agent and those people are defined as people who are either representing the taxpayer with the commissioner or people to whom advice is being given and it is reasonable to expect that advice be relied upon. However, if there was a person who was filling in a form or following instructions in a manual and it was quite clear that that person is not purporting to give legal advice, and not representing the commissioner, this bill does not seek to regulate them.

Senator FIERRAVANTI-WELLS—So, it gets down to the definition of ‘BAS agent’?

Mr McCullough—I am sorry?

Senator FIERRAVANTI-WELLS—Does it not then get down to what is the definition of a ‘BAS agent’? Is that not then the question?

Mr McCullough—It is certainly a very important question. In the earlier draft the argument that was presented on consultation was that the definition was too broad and actually caught people who were not meeting that sort of test. For example, they were not satisfying the liability by drawing up a cheque. That obviously was not the intent. This definition has been modified slightly to make it really clear that it is only in those circumstances that I described that registration is required.

Senator FIERRAVANTI-WELLS—What you are saying is that the bookkeeper who is sitting there, who is slotting in and exercising his or her discretion to put into a computer package or whatever way that they do it, an assessment of what a particular item is, is not undertaking an activity that falls within the definition?

Mr McCullough—No. It is exactly the opposite. Keeping it in the BAS area, a person is making a decision on whether it is GST free or taxable. Provided the other elements are met, where it is reasonable that you are relying on it and it is for a fee and so on, that would meet the definition.

Senator FIERRAVANTI-WELLS—Is that not what bookkeepers do?

Mr McCullough—No.

Senator FIERRAVANTI-WELLS—Are you telling me that is not what they do?

Mr McCullough—There are split views in the bookkeeping community about how broad the obligations are. I heard Mrs Grant's evidence this morning and I understand that to be effectively that all bookkeepers make a decision. That may be correct and, if that is the case and they make decisions, they will need to be registered because that is the requirement here. I have had it put to me by other parts of the bookkeeping industry that there are really two distinct streams of responsibility. Some people do make those decisions, but other people are more like equivalent to employees who follow a script or follow the guidelines that they have been given either by a tax agent or an accountant and so on, and when they are told to put this type of invoice in this column they do that. If there were such a person entering the books according to a script and not actually making decisions or, when the decisions come up, taking them to the authorised qualified person, be it the business owner who might take responsibility themselves or a registered agent, those people would not be required to be registered.

Senator FIERRAVANTI-WELLS—Can you explain to me, from a consumer perspective, what is the problem with a registration process for bookkeepers so that in the end consumers can feel comfortable about it? What would be the cost of doing something like that? Is that the problem or is it that the Treasury does not want to register bookkeepers?

Mr McCullough—It is nothing to do with anything within the Treasury. I would have thought there would be a question about whether registering bookkeepers per se, as I have described them, is really a proper thing for a tax bill to do.

Senator FIERRAVANTI-WELLS—Your interpretation is that what they do does not come within the ambit. On the evidence we have received today there is at least an argument to be mounted that what they do falls within the ambit, particularly if it is a bookkeeper who is given a shoebox full of receipts, which sometimes happen. I would assume that that person is making decisions about taxation and that that does come within the interpretation.

Mr McCullough—I would think so, too, and that person will need to be registered. But you are asking me: why not register the other ones? My answer is, firstly, by my definition they are not connected to a tax decision and so it is very difficult to extend the tax bill to doing that. Secondly, we would turn the potential registration from 10,000 to 15,000 to 100,000 to 150,000, and there would be concomitant questions around the difficulty of what to do with employee bookkeepers and so on. From the consultations that I have undertaken with industry—and I know there are split views on it—I felt that the balance of view was that it would be very expensive indeed to require all of those people who are only loosely connected with the actual tax decision to become registered.

Senator FIERRAVANTI-WELLS—If I am a consultant who does my own BAS, I take that responsibility. If I am a small business and I do my own BAS, or if I employ somebody, I have a relationship with that bookkeeper or that tax agent, and so therefore I am responsible. The people we are talking about here are the people who contract themselves out to be, and described themselves as, bookkeepers who go out into the community and do work for people and have no responsibility. There cannot be too many of those. If you look at the totality of the bookkeeping work that is done in this country and the nature of the work that we are talking about on a wide spectrum, we are really only talking about 10 per cent. That is my point.

Mr McCullough—You have made the point that a person running their own business does their own BAS and so it is fair enough for them to take their own responsibility. There are two other easily obvious alternatives. The first is where I am running the business and I go to somebody and say, 'I need somebody to do the books. I am taking responsibility for the answers because I check them all. Here is the guideline. I've got this from a tax agent. I want you to fill it in like this. I want you to make sure that everything in column A goes here and everything in column B goes there and so on, and occasionally I'm going to get the tax agent to

check it to make sure you are doing the right job. I'll take the responsibility. I'll sign the BAS.' In that case that bookkeeper person would not meet the requirement to register and I would argue that there is probably very little need to regulate that person. Secondly, where the person chooses that path, rather than the alternative path of going to a registered tax agent, they are not protected from careless errors that are made. I think that is an important lever in the system. Because of the new regime with registration there is also a degree of protection for the taxpayer. If they engage a registered tax agent, they do all the right things and the agent makes a careless error, no longer is the individual liable for the penalty. I need to make it clear that the tax agent is not liable for that same penalty; the tax agent is potentially liable under the code for a range of sanctions from nothing to whatever else.

That is really the way the whole thing fits together and that is why I would say that in all things we are striving for balance. We are not looking to regulate for regulation's sake. There is a self-governing principle here that says, 'If I do commit and get the registration then I can advertise and say that I can also give you advice on this thing, and the benefit to my clients is that they will be protected if I make a careless error.'

Senator FIERRAVANTI-WELLS—Basically it gets down to your interpretation. You do not believe that the majority of people who are bookkeepers in this country are actually undertaking an activity that falls within that sort of service. I understand. That is a policy decision that you have taken.

Mr McCullough—No. That is not my position at all. It really does not matter what I believe. If all the people do meet the definition they will be registered. If they do not, they are not.

Senator FIERRAVANTI-WELLS—In other words, it is up to the person who is out there purporting to put themselves out as a bookkeeper. If they say that what they do falls within that sort of service that is covered by the legislation then it is up to them to register themselves; is that what you are saying?

Mr McCullough—Yes, just like it is up to a tax agent. If the tax agent is going to be giving advice on income tax issues, they will be required to be registered.

Senator FIERRAVANTI-WELLS—The point that I am making is that at some point a government made a decision that a person who undertakes that activity should be a registered tax agent. At some point there was a policy decision or a decision by government to embark on a framework of registration. My question to you is: why are we not embarking on a framework of registration for bookkeepers where it is increasingly obvious that they are undertaking activities that fall within the parameters of this legislation? Whereas what appears to be happening is some sort of artificial delineation. That is what I seem to be receiving from you. That is my difficulty.

Mr McCullough—I am obviously transmitting very badly. Can I just remind you that the current law exempts from registration people who are providing BAS services under the auspices of a tax agent. The current law has this concept of quasi-registration, if you like, for people who are doing this sort of thing. It allows them to do it without registration but only if they are working with a tax agent. If there are people out there at the moment who are not providing those services under the auspices of a tax agent they are actually operating illegally. What this framework does is allow those people to come into a proper registration framework on an equal basis with tax agents, adjusted for the fact that they do not have the same breadth of responsibilities. That is my historical answer as to why the shape of coverage is about where it is, because it reflects the position broadly under the previous law. We have broadened it out to include a larger category of people. We have made a special provision for that in the transition.

CHAIR—We were talking about broadening out the number of people who were covered. The research and development consultants who, I understand from your submission, will be covered under the draft regulations will provide requirements that you say are sufficiently flexible to accommodate specialist service providers. Can you elaborate further on that flexibility and what those regulations will say?

Mr McCullough—The regulations are already available. They say what they say about the requirement for education and so on. The flexibility in registration is built in by allowing the board to register people but put conditions upon their registration. Let me contrast that with the existing provision.

CHAIR—We understand that very clearly. We do understand that there will be more flexible conditions than currently, because we have heard that the current arrangement is quite rigid. You understand that the research and development consultants have written several submissions expressing concern that the proposed requirements are not flexible enough.

Mr McCullough—The answer is: we think they are. For example, in schedule 2 to the regulations that I referred to, which are still in draft—they cannot be anything else—it states about tertiary qualifications:

Section 101 (a) (ii) the individual: (A) has been awarded a degree or a post-graduate award ... in another discipline that is relevant to the tax agent services to which the application relates ...

That broadens out the former limited qualifications. As to an R&D person who wants to give advice on the tax law aspects of R&D—we are parallel with BAS services here; we would not register R&D people who have nothing to do with the tax law—or where a person is either representing something to the commissioner on behalf of the taxpayer or is giving advice that relates to the tax law, they will be able to be registered under the new law. They will have flexibility in respect of tertiary qualification, and I expect the board will say, ‘I will register you, but I only want you to practise in this area until you can satisfy me that you can practise more broadly.’ That seems to be a flexible way to solve the problem. The question of whether R&D consultants should be registered now is a vexed one. As I understand it, many of them perhaps should be but are not. There are a number of problems with the existing framework and that is what we are trying to fix.

CHAIR—The other question that arose was about how Treasury or the ATO would monitor the quality of BAS statements coming in. I presume there is some kind of audit?

Mr McCullough—Currently there would be a range of things that the ATO would do. As I understand it, a lot of information is fed through to boards currently about errors that the tax office might find during its audit process and so on. Under the new world that might be a continuing main source of issues, but because the board has much more flexible powers than the old board, which could basically just register or de-register, it would be possible for the board to issue a guideline about how BASs are being prepared. It would be possible for the board to undertake its own set of audits in order to satisfy itself that the code was being met. The code requires people to provide services that they claim they are going to provide competently. It would be quite within the board’s power in the future to say, ‘I am going to do my own exercise. The tax office can do its exercise, but I’ll do my own exercise.’

CHAIR—Sorry, the board can audit BAS statements?

Mr McCullough—The board has the power to do anything in relation to any part of the act. There is no reason I can think of why they could not satisfy themselves at any time that any aspect of the code is being met. The current arrangements tend to focus around registration. They do all of their exercises around the once in a three-year period when people front up for registration, pay their dough and they look at it then. This new model is one that is looking at it on a much more ongoing basis. If a person makes a complaint the board could investigate the complaint and could institute a training scheme.

I heard some evidence that BASs were not being prepared properly. If the board finds that, it may say to the BAS preparer either ‘Get trained’ or ‘You can only provide your services under the auspices of somebody we appoint until we are satisfied that you are good enough’ or ‘You’re suspended until such time as you are good enough.’ They could even make you pass an exam. They can do anything they like.

CHAIR—The previous submission that talked about having some sort of skills assessment is within the power of the board under this bill?

Mr McCullough—Yes. I would hesitate to suggest that they might do it on a 100 per cent basis.

CHAIR—Obviously not as an educational organisation, but they could make some assessment of what the skill level is?

Mr McCullough—I would also doubt that practically they would attempt to do it on an initial registration simply because there are a large number of things to be dealt with. But on a re-registration there is nothing to stop a board asking a question as to whether a person has satisfied the code.

CHAIR—There were also suggestions that there might be some sort of committee or advisory group of practitioners that would advise the board. Is there any impediment in the current bill to that?

Mr McCullough—There is nothing that stops this. In fact, in an earlier draft we did have a more restrictive requirement about committees. Again, in this latest draft we have tried to open it up. The board basically can appoint anybody it likes to do a range of things on its behalf, everything from conducting investigations through to giving advice. A practical thing I would have thought a board would do in the early days is approach a group of people close to practitioners to give early input as to what guidance needs to be given, official rulings of the board and so on.

I would also make the point that this board is not constituted as the current boards are by a tax office member, an accounting member and a legal member. It is basically open to a range of community

representatives, professional representatives, legal representatives or in the future BAS representatives—these sorts of things.

Senator FIERRAVANTI-WELLS—A bookkeeper maybe?

Mr McCullough—There could be a community representative as well.

Senator EGGLESTON—How many people would be on the board?

Mr McCullough—There is a minimum of a chair and six others, but the board could be as large as needs be and could be afforded at the time.

Senator EGGLESTON—Some comment was made in several places about the differences in the wording of the bill and the explanatory memorandum. I presume they will be corrected, because the view is that they might lead to different interpretations by courts.

Mr McCullough—This is rather difficult. I am not sure that everything that somebody has said leads to a misinterpretation does indeed do that. One of the reasons why this process has been so intensive in consultation is exactly that. I have been involved in tax initiatives for about 30 years and I have never come across so much effort put into an explanatory memorandum to actually explain. You would appreciate that when you do explain you deviate from the words of the bill. But there is no place that remains, of which I am aware, a deviation that is intended to mean something different. The deviations are intended to be merely explanations of what is obvious in the bill. I have taken up a number of these things with people who have felt so, and in past efforts we have made a number of changes. If there are any left I have to plead ignorance. I am not aware of them.

Senator EGGLESTON—They have been picked up by some submitters. I am just looking for examples. I would just make the point that it has been raised here a couple of times today.

Mr McCullough—I have looked at all of the ones in the submissions made to the committee. On the basis of the submissions provided, without doubting the submission that has been made, we respectfully form a different view. We think the explanatory memorandum and the bill are consistent in all the points that have been raised in the submissions. Unfortunately, if it is not, I do not know of a process to amend an explanatory memorandum. If we did find out that we got something wrong the solution would have to be an amending bill brought before the parliament with a supplementary explanatory memorandum to fix it then.

Senator FIERRAVANTI-WELLS—I was in the Senate a couple of days ago when a minister lodged an amended explanatory memorandum.

Mr McCullough—What I was meaning was once the bill was passed. If we knew it was wrong now we would do something about it.

Senator FIERRAVANTI-WELLS—I support the Chair on this, and this was not raised by only one person. It has been raised by a number of people. Clearly there is a range of people who have given evidence today, and probably in submissions, that differs with this view. In fairness to the committee, can we revisit and look at the evidence given from your perspective, because clearly people believe there is a discrepancy? In fairness to the people who appeared before us who have had a lot of experience, like yourself, if there is a difference of opinion can we clarify it?

Mr McCullough—Would it help the Chair if I went through all of the submissions and found every suggestion of the explanatory memorandum differing?

Senator FIERRAVANTI-WELLS—I think it comes down to one basic point.

CHAIR—I should say that would be very nice, if you could do it quickly. We need to report on this bill on Tuesday. If it were going to be done, it would have to be done quickly.

Senator FIERRAVANTI-WELLS—It was really only the one.

Mr McCullough—If it was one, then I might be able to handle it without notice.

CHAIR—I think it was a difference between ‘must’ and ‘may’.

Mr McCullough—I think we know about that one. Is this to do with professional indemnity insurance?

CHAIR—Yes, I think that is the one.

Mr McCullough—I can simply answer that one. The bill requires that the board may require people to hold professional indemnity insurance. It has been put to me on a number of occasions that the bill ought to require the board to do it, not empower the board to do it. The simple reason the bill does not do that is that a number

of people who are members of professional associations are already required under existing laws to hold professional indemnity insurance. The purpose of this provision is to say that, if there are people who come forward to be registered, if they are not members of those associations and they are not otherwise required to hold professional indemnity insurance, then the board can say, 'You must do it.' We do not want the board to have to say it in every case where it is already required.

Senator FIERRAVANTI-WELLS—Where will that be specified?

Mr McCullough—That is specified.

CHAIR—It was in the explanatory memorandum. It said that they must do that where there is no other requirement. I think that was the discrepancy. There being no further questions, I thank the Treasury.

Senator FIERRAVANTI-WELLS—I would like to make the point that some of the witnesses today have listened to the evidence all day. If they do have any comments in relation to the evidence that they have heard given, and assuming that they can do so quickly—by, say, Monday morning—can we leave it open? Because there has been a difference of opinion, particularly with the evidence given by Mr McCullough, would it be appropriate for people who wish to make any additional comments in relation to the evidence that has been heard to forward that to the committee by Monday morning?

CHAIR—Yes, certainly. We are always open to correspondence and that would be addressed to the secretariat. I conclude the hearing this afternoon.

Mr McCullough—Do you want a response from me to those things that have been raised?

CHAIR—No.

Committee adjourned at 3.10 pm