Chapter 2

Issues raised about the bill

2.1 None of the submissions or witnesses called for the Senate to reject the bill, or opposed its intent. Indeed, most wanted it passed as a matter of urgency:

> I implore the committee to assist in having this legislation passed as a matter of urgency.[1]
>
> Our intention is to see the new regime instituted and established as soon as possible.[2]

2.2 However, some submissions and witnesses had various comments or concerns on detailed points. There were a few repeated concerns, and a number of smaller points requiring clarification. These may be best resolved by guidelines being issued by the Tax Practitioners Board once the bill is passed.

The meaning of 'relying on the service'

2.3 Under clause 90-5 a 'tax agent service' (which requires the agent to be registered) is a relevant service which 'is provided in circumstances where the entity [recipient] can reasonably be expected to rely on the services…'.

2.4 The Institute of Chartered Accountants (ICA) had concern about the interaction between this and the registration provisions:

> We submit that it is unclear as to when an entity that is engaged to provide 'outsourced' services to a registered tax agent will themselves be required to register as a tax agent. This arises because there is uncertainty as to when an entity (ie the client whose tax obligations are the subject of the service) can 'reasonably be expected to rely on the service' that is provided by the outsourced service provider.[3]

2.5 The concern applies particularly in relation to service trusts. The ICA referred to example 4.4 in the explanatory memorandum. In the example a service trust did outsourced work for a tax agent in circumstances where it was reasonable to expect that the tax agent would rely on the work; accordingly, at least one of the trustees of the trust would have to be registered. The ICA submitted that this is an impractical outcome:

> In practice it is likely that there will be prohibitive commercial reasons for which professional services firms will not be able to obtain registrations for

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1 Mr Peter Davis, *Proof Committee Hansard* 6 February 2009, p 27.

2 Ms Vicki Stylianou, National Institute of Accountants, *Proof Committee Hansard* 6 February 2009, p 18.

3 ICA, *Submission 30*, p 2.

> the trustees of their service trusts…. we submit that Example 4.4 in the EM should be amended to reflect the 'agent' relationship between a partnership and the service trust, and accordingly should reach the conclusion that the service trust is not required to register as a tax agent. [4]

2.6 There was some discussion about whether this example contradicted example 2.5, in which a third party did not have to be registered to do outsourced work.[5] Treasury submitted that there was no contradiction, as the different examples described different situations: one in which it was reasonable to expect that the recipient would rely on the service; the other in which it was not. Whether the taxpayer knows that work is being outsourced is not directly a test of whether a third party needs to be registered, but it may be relevant to deciding whether the third party's work is done 'in circumstances where the entity can reasonably be expected to rely on the service.'[6]

2.7 Treasury submitted that the requirement to register stems from the type of services being provided and the circumstances in which they are provided, rather than the class of people providing them:

> We submit that this approach is the most logical and pragmatic way to ensure optimal regulation (and therefore consumer protection) at the minimum cost.[7]

Committee comment

2.8 The Committee acknowledges that it is logical that the requirement to register stem from the type of services being provided and the circumstances in which they are provided, rather than the class of people providing them. The committee recommends that the government's post-implementation review report on the operation of this clause.

The definition of 'BAS service'

2.9 Under clause 90-10 'BAS services' are a subset of 'tax agent services', being tax agent services that relate to Business Activity Statement (BAS) provisions.[8] The Association of Taxation and Management Accountants submitted that the definition is too wide:

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4 ICA, *Submission 30*, p 2.

5 Mr G. Dunn (ICA), *Proof Committee Hansard* 6 February 2009, p 25.

6 Mr P. McCullough, *Proof Committee Hansard* 6 February 2009, p 45. Section 90-5(1)(b). The 'entity' in this section could be the taxpayer or an outsourcing tax agent.

7 Treasury, *Submission* 17a, p 2.

8 'BAS provision' is not defined in the bill, but by clause 90-1(2) has the same meaning as in section 995-1(1) of the *Income Tax Assessment Act 1997*.

> It is not limited to the preparation of a BAS return, but also allows BAS agents to provide advice on complex indirect taxes such as GST for which they do not have the required technical expertise. Advice on any other tax law or matter can only be given [by] a registered tax agent or legal practitioner.[9]

2.10 The Australian Association of Professional Bookkeepers (AAPB) was concerned about comments in the explanatory memorandum which imply that data entry and similar tasks which 'simply require an individual to follow instructions or transfer data onto a computer program' are not BAS service (since they do not involve ascertaining the taxpayer's tax liabilities). The AAPB thought that this was too narrow, since most bookkeepers perform not 'data entry' but rather 'data processing that requires a level of skill and some knowledge' (for, example, in deciding how to code tax invoices).[10]

2.11 The AAPB argued that talking down the scope of BAS service 'is creating a grey area and providing bookkeepers with an opportunity to relinquish their responsibilities and legal obligations by arguing "I am only doing data entry not GST"'. The AAPB submitted that there needs to be more clarity on what typical bookkeeper activities would or would not be 'BAS services'.[11]

2.12 Treasury responded that there are differences of opinion among stakeholder groups as to what extent typical bookkeeping activities are making decisions or merely 'following a script'; but in any event the definition of 'BAS services' does not involve any particular opinion about this: bookkeepers will only need to be registered if their activities satisfy the definition.[12]

2.13 On the question of whether all bookkeepers should be registered (including those who are not doing 'tax agent services' as defined), Treasury commented:

> 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.[13]

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9 ATMA, *Submission 19*, p 5. A similar point is made by the Association of Accounting Technicians, *Submission 24*, p 1.

10 Australian Association of Professional Bookkeepers, *Submission 6*, p 9. Similarly Ms Sharyn Grant (AAPB), *Committee Hansard* 6 February 2009, p 3.

11 Australian Association of Professional Bookkeepers, *Submission 6*, pp 8-9.

12 Mr Paul McCullough, Treasury, *Proof Committee Hansard* 6 February 2009, p 48.

13 Mr Paul McCullough, Treasury, *Proof Committee Hansard* 6 February 2009, p 47.

Committee comment

2.14 In the committee's view clarifying what bookkeeping activities are or are not BAS services as defined is an appropriate matter for guidelines from the Board.

Requirements for registration

2.15 The requirements for a person to be registered as a tax agent or BAS agent are in the draft regulations. Several alternative tests are detailed: for example, a BAS agent may satisfy with either listed accounting or bookkeeping qualifications or work experience.[14]

2.16 Submissions on the requirements for registration included:

- allowing Certificate IV Financial Services (Accounting) as a qualification for BAS agents is inappropriate as that course is inadequate as a bookkeeping qualification - Certificate IV Financial Services (Bookkeeping) should be required;[15]
- it is unclear what a 'course in basic GST/BAS principles' means;[16]
- the BAS agent work experience test requiring 1400 hours of relevant experience in the previous three years is too onerous, particularly for part-time workers;[17]
- the work experience test, read with the provisions about recognised professional associations (RPAs), is defective. The work experience test (for both tax agents and BAS agents) requires the person to be a voting member of an RPA; but the association, to become an RPA, would not be able to admit a person unless the person was a registered tax agent in 1988.[18] The effect is that

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14 Draft Tax Agent Services Regulations 2008, schedule 2.

15 Australian Association of Professional Bookkeepers, *Submission 6*, pp 6-7. Similar views are expressed in Institute of Certified Bookkeepers, *Submission 12*, p 21.

16 Australian Association of Professional Bookkeepers, *Submission 6,* p 7.

17 Mrs Terry Warr, *Submission 4*. Furthermore, as Ms Sharyn Grant commented, 'Just because you have done 1,400 hours does not mean you are any good': *Proof Committee Hansard* 6 February 2009, p3.

18 Assuming the person does not have a degree or diploma or is a barrister or solicitor, which would presumably be the case if the person is seeking to rely on the work experience test. Draft Tax Agent Services Regulations 2008, schedule 1, item 109.

the work experience test is only available to people who were registered tax agents in 1988, which is unreasonable.[19]

2.17 In response to the first point above, Treasury submitted that the qualification level for bookkeepers is 'about right', noting that demanding higher qualifications would cost more.[20]

2.18 For companies, clause 20-5(3)(d)(i) provides that the company must have a sufficient number of registered individuals 'to provide tax agent services to a competent standard and to carry out supervisory arrangements.' H&R Block argued that the elaboration in the explanatory memorandum goes further than the bill warrants, with Paragraph 2.56 suggesting that the registered individuals need to be placed in 'supervisory or management positions'. H&R Block is concerned that 'the EM requirement will mean we cannot continue to operate as we currently do, with our management team as the majority are not Registered Tax Agents'.[21]

2.19 R&D consultants and quantity surveyors had special concerns about the registration tests which are considered below.

Committee comment

2.20 The Committee draws the Government's attention to what it regards as reasonable concerns expressed about the work experience test.

2.21 In the committee's view clarifying what arrangements would ensure that a company can 'provide tax agent services to a competent standard etc.' is an appropriate matter for guidelines from the Board.

Concerns of R&D consultants and quantity surveyors

2.22 There were many submissions from research and development (R&D) consultants, and a submission from the Australian Institute of Quantity Surveyors, arguing that the requirements for registration are inappropriate for them. For example:

> Our understanding has been that one did not need to be a registered tax agent to offer services in respect of the Tax Concession for R&D… the focus of our work is the identification and description of eligible R&D activities… We were thus surprised to discover in the Explanatory

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19 Ms Anne O'Mahony, *Submission 20*. On this point the Taxation Institute said: 'There is a possibility that the proposed work experience eligibility criterion… is rendered inoperative by the definition of a voting member of a Recognised Professional Association.' Taxation Institute of Australia, *Submission 27*, p 2.

20 Mr Paul McCullough, Treasury, *Proof Committee Hansard* 6 February 2009, p 46.

21 H & R Block, *Submission 14*, p 4.

> Memorandum… that, in part, our services were to be described as tax agents services…[22]

2.23 R&D consultants argue that the registration tests are unsuitable for them since the formal qualifications tests refers to qualifications that are irrelevant to their speciality; and there is no recognised professional association to which they could belong to satisfy the work experience test:[23]

> While the majority of us are tertiary qualified, few of us have accounting qualifications that will enable us to be readily registered as tax agents.
>
> We also cannot be registered based on our experience as our experience was not acquired under the supervision of a registered tax agent.
>
> We cannot obtain voting membership of any of the 7 recognised professional associations (RPAs) as we are not accountants or lawyers.
>
> Membership of an RPA may be achieved by the successful completion of a course of study in accounting and tax but such courses obviously take time to complete and are of little relevance to the services we provide.[24]

2.24 Similarly, the Australian Institute of Quantity Surveyors was concerned that 'members may have to return to education to study for a tax qualification which is mostly irrelevant to the knowledge they require to do their current depreciation tasks…'.[25]

2.25 The Fourth Wave (Australia) submitted that 'the situation in which R&D consultants now find themselves will be repeated as the coverage of the tax act expands…':

> A case in point are programs associated with climate change… should the concept of a carbon footprint make its way into the tax act, the environmental scientists will find themselves in the same position as R&D consultants today.[26]

2.26 Michael Johnson Associates submitted that making life harder for R&D specialists will increase the problem of poor R&D advice by tax agents with little R&D experience.[27]

2.27 R&D consultants suggested alternative registration tests:

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22 The Fourth Wave (Australia) and others, *Submission 9*, p 6.

23 The comments about the work experience test at paragraph 2.16 are also relevant: the recognised professional association provisions have the affect that a persons seeking registration under the work experience test must still have formal qualifications, if s/he was not a registered tax agent in 1988.

24 The Fourth Wave (Australia) and others, *Submission 9*, pp 6-7.

25 Australian Institute of Quantity Surveyors, *Submission 36*, p 2.

26 The Fourth Wave (Australia), *Submission 8*, p 6.

27 Michael Johnson Associates, *Submission 32*, p 5.

- for existing practitioners: a tertiary degree, diploma or certificate; and certain work experience; and certain commitments to further professional development;
- for new entrants: a tertiary degree, diploma or certificate; and approved courses in basic accounting principles, taxation law and commercial law relevant to the limited registration sought (in this case, relating to section 73A of the *Income Tax Assessment Act 1936*); and certain work experience; and certain commitments to further professional development.[28]

2.28 The main differences between these proposals and the tests in the draft regulations are that any degree, diploma or certificate would qualify: it would not be at the Board's discretion to require a degree which is relevant in the Board's judgment (as presently proposed in the 'tertiary qualifications' test); and a diploma or certificate would not have to be in accountancy (as presently proposed in the 'diploma or certificate' test).[29]

2.29 Treasury responded that 'the draft regulations will contain educational qualifications and relevant work experience requirements that are sufficiently flexible to accommodate specialist service providers such as R&D consultants'.[30] Treasury pointed out that the 'tertiary qualifications' registration test allows for a degree approved by the Board in 'another discipline [other than accountancy] that is relevant to the tax agent services to which the application relates'.[31] Treasury argued that there is flexibility in the Board's ability to make a subject-limited conditional registration on this basis (clause 20-25(6)).[32]

Committee comment

2.30 The Committee draws the government's attention to the concerns of the R&D consultants and quantity surveyors that the registration tests may be inappropriate for the circumstances of some. Reference to the Board's ability to make a conditional registration under clause 20-25(6) may not answer the concern completely, since clause 20-25(6) does not change the registration tests in the regulations. The 'tertiary qualifications' registration test does include flexibility for the Board to accept 'another relevant discipline' (other than accountancy), but this would not answer the concerns of consultants wishing to rely on the 'diploma or certificate' or 'work experience' tests. However the committee notes the evidence that the majority of R&D consultants are tertiary qualified.

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28 The Fourth Wave (Australia) & others, *Submission 9*, p 20. This submission is quoted as it was the joint submission of a number of firms. Most other submissions by R&D consultants had a similar tenor.

29 Draft regulations, schedule 2, clauses 101 and 102.

30 Treasury, *Submission 17,* p 7.

31 Draft regulations, schedule 2, clause 101(a)(ii)(B).

32 Mr Paul McCullough, Treasury, *Proof Committee Hansard,* 6 February 2009, p 49.

Meaning of 'supervision and control'

2.31 Under clause 50-30 a registered tax agent may sign off the work of an unregistered person only if the other person was 'under the supervision and control' of a registered tax agent. This condition does not apply if the agent took 'reasonable steps' to ensure the accuracy of a document (clause 50-30(5)).

2.32 Submitters argued that the meaning of 'supervision and control' and 'reasonable steps' should be clarified. For example, the National Institute of Accountants was concerned that their members might be required to audit work outsourced to third parties even when the third parties are registered. It also wanted clarification of how many registered agents a practice would need to satisfy the requirement for supervision and control of other staff.[33]

2.33 The Institute of Chartered Accountants asked for assurance that normal industry practices in auditing outsourced work (for example sampling, test checking, self-audits) would amount to 'reasonable steps'.[34]

2.34 The Law Council of Australia had concern that clause 50-30 seems inconsistent with the references to legal practitioners in clause 50-5:

> Paragraphs 50-5(1)(e) and 50-5(2)(d) continue the long established exception that tax agent and BAS services, other than preparation and lodgement of returns, can be provided by legal practitioners as legal services without the need for the practitioner to be registered as a tax agent… [on the other hand] the practical outcome of proposed subsections 50-30(1) - 50-30(4) will be that the ordinary position of a registered tax agent or BAS agent engaging an Australian legal practitioner to provide an advice, opinion or other legal services which might lead to the agent making a declaration or statement in a particular way will expose the agent to penalty if the legal practitioner is not also a registered tax agent or BAS agent. This outcome would conflict with the policy expressed in proposed paragraph 50-5(1)(e) and 50-5(2)(d).[35]

Meaning of 'reasonable care' in the code of conduct

2.35 Under clause 30-10(9), in the Code of Professional Conduct, a registered agent 'must take reasonable care in ascertaining a client's state of affairs'. Submissions were concerned that 'reasonable care' needs clarification. For example:

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33 National Institute of Accountants, *Submission 25*, pp 1-2. Similar views are put by CPA Australia, *Submission 18*, p 1.

34 Institute of Chartered Accountants in Australia, *Submission 30*, p 2.

35 Law Council of Australia, *Submission 26*, p 4.

> [there is] 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 the tax agent needs to seek confirmation of that information.[36]

Committee comment

2.36 The Committee suggests that the Board issue a guideline clarifying the meaning of 'reasonable care'.

Termination of registration on death

2.37 Under clause 40-5(2) of the bill the Board must terminate an agent's registration if the agent dies.

2.38 Submitters were concerned that there should be allowance for an orderly transfer of a sole practitioner's business. The Taxation Institute of Australia suggested that 'consideration should be given to allowing the Tax Practitioners Board to have a discretion to permit a deceased practitioner's registration... to continue to be conducted under the control of another registered tax agent pending the sale of the deceased practitioner's business.'[37]

2.39 Treasury responded that the bill allows sufficient flexibility, as registration cannot be terminated until at least 28 days after death, and this can be a longer period.[38]

2.40 Some practitioners disagreed with Treasury's interpretation of the bill, believing it does not allow the Board any discretion.[39]

Committee Comment

2.41 The Committee suggests the Board issues a guideline to clarify the arrangements applying to deceased agents.

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36 Taxation Institute of Australia, *Submission 27*, p 2. Similar points were made by CPA Australia, *Submission 18*, p 1; Mr Peter Davis and Mr Peter Polgar, *Submission 15*, p 4; and the Association of Taxation and Management Accountants, *Submission 19*, p 14.

37 Taxation Institute of Australia, *Submission 27*, p 2. See also Mr Peter Davis and Mr Peter Polgar, *Submission 15*, p 2 and National Institute of Accountants, *Submission* 25, p 2.

38 Mr Paul McCullough, Treasury, *Proof Committee Hansard* 6 February 2009, p 41. The wording of clause 40-20 is awkward in this regard, as it requires an agent to be notified when their registration is terminated but a dead person cannot be notified of anything. It is also unclear to what extent a new agent can take over, and rely upon, work half-completed by a deceased agent.

39 Mr Peter Davis and Mr Peter Polgar, *Submission 15a,* p 2.

Confidentiality of clients' information

2.42 Under clause 30-10(6) (part of the Code of Professional Conduct), a registered agent 'must not disclose any information relating to a client's affairs to a third party without [the client's] permission'.

2.43 The Institute of Chartered Accountants was concerned that the examples in the Explanatory Memorandum imply that 'explicit' permission would be required. The ICA argued that permission could be express or implied, consistent with the Privacy Act 1988 and the general law.[40]

2.44 The Australian Association of Professional Bookkeepers is concerned about the need for guidance to ensure that outsourcing arrangements do not breach this provision.[41]

Committee Comment

2.45 The Committee suggests the Board issues a guideline to clarify whether explicit permission is required to disclose information about a client to a third party.

The Tax Practitioners Board

2.46 The industry believes that the Tax Practitioners Board will need to be adequately funded and should be independent of the Australian Taxation Office (ATO).[42] The Board will comprise a chair and a minimum of six other members. The Institute of Certified Bookkeepers emphasised that its membership should include members of the BAS agent/bookkeepers community.[43]

2.47 It was also suggested that it could be advised by a consultative committee of practitioners.[44]

Committee comment

2.48 The Committee believes the Board should be adequately funded, independent of the Australian Taxation Office and have suitable arrangements to be kept informed of the views of all stakeholders.

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40 Institute of Chartered Accountants in Australia, *Submission 30*, p 4; *Explanatory Memorandum*, example 3.7.

41 Australian Association of Professional Bookkeepers, *Submission 6*, p 5.

42 Mr Peter Davis and Mr Peter Polgar, *Submissions 15*, p 6 and *15a*, p 2; Association of Taxation and Management Accountants, *Submission 19*, p 15 and Institute of Chartered Accountants in Australia, *Submission 30*, p 5.

43 Institute of Certified Bookkeepers, *Submission 12*, p 15.

44 National Institute of Accountants, *Submission 25*, p 2; Mr Peter Davis, *Proof Committee Hansard* 6 February 2009, p 27.

Investigations by the Tax Practitioners Board

2.49 Under subdivision 60-E the Board may investigate a person's conduct or other matters. The outcome may be that the Board imposes an administrative sanction for failure to comply with the Code of Professional Conduct (clause 30-15); terminates a registration; or applies to the Federal Court for an injunction or an order for payment of a pecuniary penalty (clause 60-125).

2.50 Submissions argued that:

- personnel making disciplinary investigations under subdivision 60-E should not be sourced from the ATO;[45]
- ad hoc investigatory committees are not appropriate;[46] and
- it is desirable to clarify the boundary between formal investigation and the possible preliminary inquiries envisaged in the explanatory memorandum.[47]

'Safe harbour' provisions

2.51 A 'safe harbour' provision means in effect that the taxpayer is not liable to an administrative penalty if an infringement was caused by the carelessness of the tax agent. Some submissions argued that tax agents should be protected in the same way from defective work by BAS agents working for them:

> It is essential that 'safe harbour' provision be included for registered Tax Agents who use a BAS agent to provide BAS services on their behalf… This ensures that the Tax Agent is not penalised for any errors made by a BAS agent…[48]

Committee comment

2.52 If a subcontractor is not registered, the issue is whether there was adequate supervision and control (clause 50-30). The committee has noted above that defining 'supervision and control' and 'reasonable steps' in clause 50-30 should be a matter for guidelines from the Board.

2.51 If the subcontractor is registered (whether as a tax agent or BAS agent), there is no issue in relation to clause 50-30 (as only unregistered third parties need to be supervised under this clause).

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45 Association of Taxation and Management Accountants, *Submission 19*, p 16.

46 Association of Taxation and Management Accountants, *Submission 19*, p 17.

47 *Confidential Submission 2*, p 9; *Explanatory Memorandum*, paragraphs 5.87 and 5.88.

48 Association of Taxation and Management Consultants, *Submission 19*, p 14. Similar views are put by Mr Peter Davis and Mr Peter Polgar, *Submission 15*, p 3.

2.52 In either case there is a possible breach of the Code of Conduct if there was not adequate supervision of the subcontractor (clause 30-10(7): 'You must ensure that a tax agent service that you provide, or that is provided on your behalf, is provided competently').

2.53 In the committee's view the interpretation of clause 30-10(7) is an appropriate matter for guidelines from the Board.

2.54 The committee does not think it is appropriate to give the tax agent, who is responsible to the client, general immunity from the consequences of a subcontractor's mistake. This would cut across the intention of the provisions mentioned above.

Recognition of BAS agent associations

2.53 Under the draft regulations an organisation may apply to the Board for recognition as a recognised professional association (RPA) or a recognised BAS agent association. The status 'recognised professional association' is involved in the work experience test for registration (under which a person must be a voting member of an RPA). While the status of 'recognised BAS agent association' appears to have no legal significance, the explanatory memorandum suggests various ways in which it might have practical significance.[49]

2.54 Submissions on these provisions included:

- recognition of BAS agent associations should only be of those which have enough members who are BAS agents (the present membership size test for a BAS agent association is: at least 1,000 voting members or at least 500 voting members who are registered BAS agents. This could include an organisation with at least 1,000 members and no BAS agent members);[50]
- there should be provisions to encourage agents to become members of recognised BAS agent associations (currently they are not recognised professional associations for registration purposes);[51] and
- the minister or Board should be able to allow a smaller membership size test for associations during the transition period.[52]

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49 See Chapter 1, footnote 5.

50 Institute of Certified Bookkeepers, *Submission 12*, p 20; Association of Accounting Technicians, *Submission 24*, p 2.

51 Association of Taxation and Management Consultants, *Submission 19*, p.4. Association of Accounting Technicians, *Submission 24*, p 2.

52 Association of Taxation and Management Consultants, *Submission 19*, p 9.

Role of the explanatory memorandum

2.55 The committee notes the unusual level of detail of the explanatory memorandum in elaborating on the bill with examples. Some submissions argued that some matters mentioned in the explanatory memorandum should have been clarified in the bill for greater certainty; or that in some places the explanatory memorandum is inconsistent with the bill.

2.56 A court may use the explanatory memorandum as an 'extrinsic material'.[53] The argument for including matters in the bill rather than the memorandum 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.'[54]

2.57 Treasury responded that it is satisfied that the elaborating material in the explanatory memorandum is consistent with the true meaning of the bill.[55]

Education

2.58 The Institute of Certified Bookkeepers thought that many bookkeepers may be doing BAS work to an extent not permitted by the current law without registering as a tax agent. It stressed the need for an education campaign about the use of registered agents and what activities require an entity to be registered.[56]

Professional indemnity insurance

2.59 Most bookkeepers do not hold professional indemnity insurance.[57] Under clause 20-30(3) the Board 'may' require a registered agent have professional indemnity insurance. Mr Peter Davis argued that this should be mandatory, not discretionary.[58] Treasury explained that the provision is so worded to allow for the fact that the Board may not need to require professional indemnity insurance for some agents who already have insurance required by some other law.[59]

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53 *Acts Interpretation Act 1901*, section 15AB.

54 Mr Paul Drum, CPA Australia, *Proof Committee Hansard* 6 February 2009, p 16.

55 Mr Paul McCullough, Treasury, *Proof Committee Hansard* 6 February 2009, p 50.

56 Institute of Certified Bookkeepers, *Submission 12*, pp 7, 8 and 18.

57 Mr Paul Drum, CPA Australia, *Committee Hansard* 6 February 2009, p 15.

58 Mr Peter Davis and Mr Peter Polgar, *Submissions 15*, p 3 and 15a, p 2. Mr Davis argued that the explanatory memorandum gave the impression it was mandatory: *Proof Committee Hansard* 6 February 2009, p.27. The explanatory memorandum says, 'a tax agent or BAS agent is required to maintain appropriate professional indemnity insurance.' (par. 3.65)

59 Mr Paul McCullough, Treasury, *Proof Committee Hansard* 6 February 2009, p 51.

General committee comment

2.60 The Committee notes that the bill is the outcome of a long stakeholder consultation and stakeholder groups are keen for the bill to be passed. The Committee considers that the matters of detail raised in submissions can and should be handled in guidelines by the new Tax Practitioners Board.

2.61 The Committee stresses the need for communication and education so that those who need to be registered do register. This applies particularly to BAS agents and bookkeepers who have not previously needed to be registered.

Recommendation

2.62 The Committee recommends that the Senate pass the bill.

Senator Annette Hurley

Chair