

10 February 2009

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

Email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au).

Dear Senate Economics Committee,

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

Thank you for the opportunity to provide a supplementary submission on behalf of the bookkeeping industry. AAPB would like to reiterate, we support the new Tax Agent Services Bill 2008 and strongly stress the need for the Bill and Regulations to receive Royal Assent as soon as possible.

However after listening to all evidence provided to the Economics Senate Committee on Friday 6 February 2009, there were numerous opinions presented on the day regarding the bookkeeping industry that are not supported by AAPB's research.

The proposed two levels of contracting bookkeepers (not employed bookkeepers) as Data Entry Bookkeepers and BAS Agents are a clear indication Treasury does not understand the current bookkeeping industry environment or the loophole that is currently being exploited. It is irresponsible to put forth a Bill supported by an organisation that has not performed any qualitative research to validate their argument and who have failed to recognise the negative financial impact the proposal has on the Community, Government, Courts and the Financial Sector. The purpose of the Bill is to resolve the data entry loophole within the bookkeeping industry, not to carry it forward into the future.

As stated in our evidence, AAPB has for the past six years performed extensive qualitative research and investigations that included a cause and effect analysis of the current issues impacting the bookkeeping industry and current issues relating to Section 251L of the Income Tax Assessment Act 1939.

AAPB findings has identified an end-to-end solution to reduce the billions of dollars of GST leakage, improve the performance, efficiency and communication of the Financial Sector, and provide quality assurance to the community as well as reducing the cost to Government through a self funded and self regulated industry that is governed by the National Tax Board.

AAPB's End-to-End Solution is based on Preventative Action Methodology as opposed to Treasury's Corrective Action approach. AAPB's end-to-end solution reduces the cost to Government through a self funded and self regulated system, improves the efficiency and effectiveness of the National Tax Board, instils a new positive mindset towards education, decreases the error rate currently associated to BAS and reduces Government and Court costs associated with disputes. The end-to-end solution includes key areas of concern:

- National Skills Assessments approved by the National Tax Board that qualifies the knowledge and experience of the individual in order to protect the integrity and accuracy of the Australian Taxation System

- National Tax Board register of recognised education providers (including Universities, TAFE & RTO's) that meet the education requirements for the Financial Sector
- A Code of Practice that clearly identifies the role, scope, responsibility and authority of a BAS Agent (Contracting Bookkeeper) as well as the relationship between a Tax Agent, BAS Agent and Client
- The Code of Practice should also address ethical standards including the reporting of unregistered agents
- A Quality Management System that meets the Code of Practice and establishes quality assurance processes to protect the community

Treasury's argument of the cost associated for the National Tax Board to perform Skills Assessments and the volume to manage is unfounded as the skills assessment would be funded by the applicant. The transitional period already proposed provides ample time to manage the volume of applications.

The purpose of the new Tax Agent Services Bill 2008 and Regulations is to "clean up" the Financial Sector by setting new standards in education, communication and quality management, resolving miscommunication and establishing clear boundaries to protect the community and the Australian Taxation System.

This Bill needs Royal Assent now, with a commencement timeframe within six month period. Excuses provided by Treasury for delays are just excuses. This is simply a resource issue that relates to a Bill that Treasury has listed as low priority. 2010 is just not good enough!


The Government is losing billions of dollars in GST revenue in a time of economic crisis, exposing the community to an unregulated bookkeeping industry processing BAS (estimated over 40,000 contracting bookkeepers currently operating in the market, supported by the Accounting Software Companies that the community believes they can trust) and allowing for a cottage industry to continue blindly with zero standards within the heart of the Financial Sector.

Contrary to Treasury's evidence that the bookkeeping industry is regulated under Section 251L Income Tax Assessment Act 1939, The Australian Tax Office has not performed any audits in relation to this legislation and therefore the bookkeeping industry continues to operate with little Government governance.

Again this validates Treasury's lack of comprehension and understanding of the bookkeeping industry and the impact the bookkeeping industry has on our economic environment.

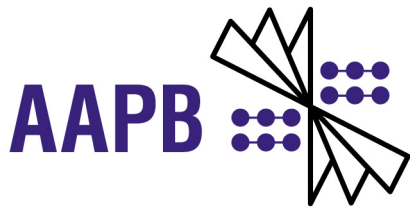
Please find attached the AAPB Supporting Evidence to provide further clarification in regard to the points we have raised. Please do not hesitate to contact us for further information. We look forward to hearing from you soon.

Yours faithfully



Sharyn Grant  
Chief Executive Officer

Attached: AAPB Supporting Evidence  
Ref: AAPB Senate Supplementary Submission10 Feb 09



**Australian Association of  
Professional Bookkeepers Limited**

**Supporting Evidence**

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

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## Setting the Framework Australia Expects and Needs

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

This supplementary submission provides further evidence to support AAPB's original submission to the Senate and to answer further questions raised at the inquiry into Tax Agent Services Bill 2008.

As stated in our evidence, AAPB has for the past six years performed extensive qualitative research and investigations that included a cause and effect analysis of the current issues impacting the bookkeeping industry and current issues relating to the Section 251L Income Tax Assessment Act 1939.

AAPB findings has identified an End-to-End Solution for the Bookkeeping Industry to reduce the billions of dollars of GST leakage, improve the performance, efficiency and communication of the Financial Sector, and provide quality assurance to the community as well as reducing the cost to Government through a self funded and self regulated industry that is governed by the National Tax Board.

The End-to-End Solution is based on Preventative Action Methodology as opposed to Treasury's Corrective Action approach. The End-to-End Solution reduces the cost to Government through a self funded and self regulated system, improves the efficiency and effectiveness of the National Tax Board, instils a new positive mindset towards education, decreases the error rate currently associated to BAS and reduces Government and Court costs associated with disputes. The key areas that need to be addressed in the Bill and Regulations are:

- National Skills Assessments approved by the National Tax Board that qualifies the knowledge and experience of the individual in order to protect the integrity and accuracy of the Australian Taxation System and changes the mindset towards further education
- National Tax Board Register of Recognised Education Providers (including Universities, TAFE & RTO's) that meet the government education requirements for the Financial Sector
- A Code of Practice that clearly identifies the role, scope, responsibility and authority of a BAS Agent (Contracting Bookkeeper) as well as the relationship between a Tax Agent, BAS Agent and Client
- The Code of Practice should also address ethical standards including the reporting of unregistered agents as well as establishing quality assurance processes to protect the community

The above recommendations will "design out" the existing and foreseeable problems from the bookkeeping industry including the continuous loss of revenue to the government.

The following information explains the key findings and supports the proposed end-to-end system.

## General Comments

It must be made very clear the Bookkeeping Industry welcomes the new Bill and Regulations and strongly views the introduction as a positive step forward to becoming a recognised profession.

The proposed Bill, Regulations, and EM will provide the appropriate framework for the Financial Sector to build upon, just as the new Certificate IV in Financial Services Bookkeeping provides a framework for the Education Sector.

However, as it has been pointed out by all parties who provided evidence, it is not the full solution but only part of the solution.

The evidence AAPB has provided is the next level of detail required to provide a robust overarching governance system for the entire Financial Sector that includes governance over education.

For Treasury to simply ignore current and foreseeable problems based on evidence provided by AAPB over three years ago that has now come to fruition is irresponsible. To state “industry will sort itself out”, when clearly it can’t, is just passing the problem onto the National Tax Board which already has limited resources and can only administered what is in the proposed legislation.

To exclude these recommendations from the legislation, only ensures further amendments will be required in the future, which Treasury alluded to in their evidence.

# Specific Comments

## 1. Current Legislation

Treasury provide evidence that there is current legislation governing over the bookkeeping industry. What was not explained were the issues regarding the legislation.

The Income Tax Assessment Act 251L (6) provides an exemption for bookkeepers. Under the exemption, Bookkeepers may charge for the provision of BAS service if they are able to comply with one of the following exemptions:

- a. *a member of a recognised professional association (as defined under section 251LA)*
  - a. *The Association of Taxation & Management Accountants*
  - b. *CPA Australia*
  - c. *Institute of Chartered Accountants in Australia*
  - d. *National Institute of Accountants*
  - e. *Taxation Institute of Australia*
- b. *working under the direction of a registered Tax Agent*

*This provision does not necessarily require the Bookkeeper to be employed by the registered Tax Agent. If the Bookkeeper is not an employee, the agent must have appropriate **quality assurance** procedures in place to ensure they are satisfied with the accuracy and completeness of the Bookkeeper's work. This does not mean that the Tax Agent must review all of the Bookkeeper's work.*
- c. *a payroll services provider preparing a BAS only for PAYG withholding obligations.*

**Reviewing each of the exemptions exposed the following:**

### Exemption A

In order to achieve membership, Bookkeepers must already hold a recognised qualification by the recognised association. In most cases, this entails successful completion of:

- § accounting degree or a diploma depending on the association
- § professional year of further study; and
- § mentoring program.

In some cases there is a requirement to have been employed in an accounting role for a specified period. Student or retired membership is not acceptable.

As the majority of Bookkeepers do not hold this qualification it would be extremely difficult to become a member. To successfully complete an accounting qualification would take a minimum of three years full time study. It would be impracticable to expect Bookkeepers to leave the industry for a lengthy period while they study as it would leave a major void in the industry.

TNS Research commissioned by the ATO also identified bookkeepers do not want to be Accountants and view their work very different to an Accountant.

Exemption A was viewed as inappropriate for Bookkeepers.

## **Exemption B**

Working under the direction of a registered Tax Agent requires that the Tax Agent to have appropriate **quality assurance procedures** in place to ensure they are satisfied with the accuracy and completeness of the Bookkeeper's work.

Exemption B seems on the surface to be the most appropriate path to take, however it is impossible to achieve. There are a number of major issues regarding this exemption:

1. In order for a Tax Agent to develop quality assurance procedures for Bookkeepers, there needs to be an industry standard that will ensure procedures address and meet quality control practices. The *Australian Professional Standards 4/5, Section 7 Elements of the Quality Control Standard*, provides clear requirements for Tax Agents relating to Personnel, Contractors and Clients but does not include third party members (Bookkeepers). As the Bookkeeper has the relationship direct with the Client and not with the Tax Agent, the Bookkeeper is deemed as a third party and falls outside the Australian Professional Standards, therefore any procedures between the Tax Agent and the Bookkeeper do not meet any recognised standard.
2. There are Franchises and Tax Agents who sell quality assurance to bookkeepers for a fee. The question we ask "how is this achievable when there are no standards to support the quality assurance?" Evidence by CPA confirmed there are no standards for the bookkeeping industry. The Australian Accounting Standards Board, Standards Australia, CPA, ICAA, TIA, ATMA, OSR, ATO and Treasury have also confirmed there are no standards for the bookkeeping industry.
3. Australian Accounting Standard Board also confirmed the Accounting Standards do not address these requirements.
4. The Franchises and Tax Agents offering a quality assurance process have also exposed the bookkeeper to another issue. The bookkeeper has been engaged by the client and the client has their own Tax Agent. The Bookkeeper does not use the Clients Tax Agent but elects to use the serviced offered by the other Tax Agent to lodge the BAS in order to comply. The Client now has two Tax Agents working on the Client file.

The Client Tax Agent has not been notified that another Tax Agent has lodged their clients BAS. This is already a breach of the existing Professional Code of Conduct as the third party Tax Agent has not notified the Clients Tax Agent. It also exposes the bookkeeper to privacy rulings.

5. The ATO has never audited the bookkeeping industry for completeness of work. AAPB has advised Treasury and the ATO on numerous occasions of these issues and no action has been taken.



6. AAPB applied to establish a national standard through Standards Australia. Objections were made by the NIA, AAT and Australian Bookkeepers Network to Standards Australia which stopped the development of the Bookkeepers Standard.

Exemption B is not only unachievable for Bookkeepers but it is unacceptable.

### **Exemption C**

This is only applicable for Bookkeepers who perform payroll functions.

### **Recommendation**

It is urgent that the proposed Tax Agent Services Bill 2008 receives Royal Assent as soon as possible. Without the legislation and Code of Practice the Bookkeeping Industry continues to operate with no appropriate framework or infrastructure. The Bookkeeping Industry wants to comply however it is difficult when obstacles are continuously set in place to prevent our industry receiving professional recognition.

## **2. Regulations – Part 2 BAS Agents & Qualifications**

AAPB has already performed extensive investigations and research into the education system, including the mindset and existing knowledge of bookkeepers, quality of the course content and expertise of educators offered through the Universities, TAFE, Registered Training Organisations and Accounting Software Firms.

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

However some education providers who are offering the Certification IV in Financial Services Bookkeeping have compromised the quality of the education and shifted the focus from Taxation to Accounting Software.

Some RTO's are now offering 17 days training to complete the Certificate IV in Financial Services Bookkeeping. This qualification is supposed to include GST, PAYG, Fuel Tax, WET and FBT, rulings, determinations, case studies as well as Business and Quality Management. AAPB knows these topics require a minimum 45 days to learn. How can this be achieved in 17 days?

Those RTO's who have adopted this approach, do not provide bookkeepers with the necessary knowledge or reasonable care skills required to operate as a Bookkeeper. The impact has now damaged the credibility and integrity of the recognised qualification. This approach towards education is currently being supported by the Institute of Certified Bookkeepers and MYOB.

[http://www.tbst.com.au/content/page.pl?page\\_id=41&qclid=CNjLwZX4zZgCFQMw pAod](http://www.tbst.com.au/content/page.pl?page_id=41&qclid=CNjLwZX4zZgCFQMw pAod)

Which means the National Tax Board can not accept the qualification at face value. To accept the qualification at face value would only expose the community and government to further costs, penalties and fines.

This approach to education also encourages the existing mindset of treating education as a piece of paper for registration purposes. It does not address the current error rate that can only be contributed to lack of or inappropriate education, nor the cost impact it has on the government.

The strain on government resources from lodgement errors is evident in the 2004 Auditor-General Audit Report titled 'The Australian Taxation Office's Collection and Management of Activity Statement Information' reporting that in 2002-03 the Australian Taxation Office collected \$120 billion and refunded \$25 billion through processing 15 million activity lodgements. Out of the 15 million activity lodgements, 9.75 million (65%) were BAS lodgements. Out of the 9.75 million BAS lodgements, 2.66 million had errors and 1.24 million were in breach of business rules.

The Auditor-General audit report stated *"The accurate capture of activity statement data is critical to the efficient and effective processing of activity statements. If data is not captured correctly initially, additional downstream work will be generated, and data capture exceptions will have to be identified and rectified*

*during activity statement processing. This additional downstream work impacts negatively on the time taken to process activity statements, as well as the amount of manual and IT resources required to rectify the exemption. There is also an increased risk that the ATO will approve an incorrect assessment of a client's liability or refund, if activity statement processing systems do not detect the data capture exception." (pg49)*

Accuracy from Bookkeepers is pinnacle to the system and therefore education must be treated with the utmost importance. There must be a check and balance for the Financial Sector to protect the Bookkeeping Industry.

### **Recommendation**

In order to resolve this problem, the National Tax Board must have a quality assurance process to validate the knowledge of the applicant and send a clear message to industry and education providers that this behaviour will not be recognised or accepted. This would also resolve the issue of 1400 hours as the skills assessment will easily identify who is competent to operate.

All education providers should apply to the National Tax Board for course materials and skills assessment approval and published on a public register controlled by the National Tax Board. This would be a self funded process by the applicant.

### 3. BAS Agent vs Bookkeeper

The argument presented by Treasury and the Institute of Certified Bookkeepers to permit data entry contracting bookkeepers to operate without the need to register defeats the purpose and intent of the Bill.

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

There are a number of reasons why AAPB does not support the proposal of unregistered contracting bookkeeper.

1. First of all there is no such thing as data entry within the Bookkeeping Industry there is only data processing. This is due to the fact the GST is a **transaction based tax and every receipt must be validated**. One transaction can have multiple supplies with each supply having a different GST outcome. They simply cannot be coded to one GST account code in a software package. Furthermore the transactions cannot be blindly coded but rather a cognitive process is required to ensure they are treated correctly.

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

In order for a Tax Agent to provide direction would require the Tax Agent to validate every receipt and advise the bookkeeper in writing. The mechanics of this process would not be feasible. Again it is treating bookkeepers as a cottage industry and as a cheap resource that can be exploited.

This has not been proposed by the bookkeepers, nowhere in AAPB research has the concept been supported. In fact it is the opposite. This is what Professional Bookkeepers in Australia are trying to get rid of. Professional Bookkeepers want to be recognised as a profession and are already committed to further education and insurance. What the Professional Bookkeepers want is for the other bookkeepers to either become a Professional Bookkeeper or be an employee. AAPB is trying to restore our reputation and set an acceptable standard that can be relied upon within the community, Financial Sector and government. Leaving this loophole will not help the bookkeeping industry nor will it provide any consumer protection.

2. The impact on the ATO to audit the process would require extra resources as well as extra cost. The ATO would need to audit the relationship between the bookkeeper and the Tax Agent as well as all the documentation to validate the Tax Agent did provide clear direction. The current legislation already permits this behaviour and the ATO has not performed any audits.
3. The impact on the client would also result in the extra fees as it now takes two people to perform the role rather than one person who has been appropriately educated. In the case of a dispute, it is the bookkeeper's reputation that is attacked not the Tax Agent.
4. The next question raised is who owns the relationship with the client. Who does the client pay? Is it the Tax Agent or the bookkeeper? If it is the Tax Agent then wouldn't the bookkeeper be an employee? If the bookkeeper is working with multiple Tax Agents, then shouldn't the bookkeeper be registered?
5. In regard to the duties that have been listed. All these duties require some form of GST knowledge. For example to perform bank reconciliations, it is typical for a bookkeeper to process all the bank charges and interest which relate to Input Tax before commencing the bank reconciliation. Processing payments requires the Tax Invoice to have an ABN, without the ABN pay as you go withholding would be required and therefore the invoice would require 46.5% of the payment to be forwarded to the ATO and the balance to the supplier. The bookkeeper would need to know the tax laws in order to process the payment correctly otherwise the full payment would go to the supplier and the government would lose the revenue. No computer coding is involved in this process. This is simply viewing the Tax Invoice and writing a cheque to the supplier.

If the legislation is suggesting that the BAS Agent performs these tasks and a junior bookkeeper simply writes the cheques and puts them in the post, then shouldn't the junior be an employee of either the Tax Agent, BAS Agent or Client?. To allow a junior bookkeeper to operate as a contractor without the need to register is irresponsible. Whether the bookkeeper is working with a Tax Agent or not, a contracting bookkeeper is still operating as a business and providing services to consumers. For government to allow junior bookkeepers to provide financial services with no consumer protection is incomprehensible and irresponsible.

6. The current legislation already permits contracting bookkeepers to operate without the need for education and insurance. The community and government are already experiencing loss of revenue, mistakes, errors and illegal behaviour.

AAPB regularly receives calls for help by consumers regarding disputes with bookkeepers who have held records as ransom for payment, falsified information and completely ruined consumers bookkeeping receipts, records and computer files.

AAPB has investigated these disputes and raised them with the ATO and the Inspector General of Taxation Office only to discover there was nothing anyone could do. No disciplinary action to the bookkeeper and no public record of the action. The bookkeeper continues to operate without consumer awareness.

## **Recommendation**

AAPB's evidence does not support 2.36 of the bill and recommends it be removed. You are either a contracting bookkeeper who must be registered or an employee who does not need to register. Having a contracting bookkeeper that does not have to comply with any requirements including education or the code of practice will only contribute to the confusion all ready in the market and provide a loophole for bookkeepers, Tax Agents, Bookkeeping Franchises and Bookkeeping Firms to exploit.

## **Conclusion**

In summary AAPB would like to thank the Economics Senate Committee the opportunity to explain in more detail the concerns with the proposed Tax Agent Services Bill 2008 ("Bill") and associated Regulations and explanatory materials.

The information provided is based on facts and not anecdotal evidence.

The key points AAPB has raised are essential to the providing appropriate consumer protection and maintaining the integrity of the Australian Taxation System.

We strongly urge the Senate to consider our recommendations and help the bookkeeping industry become a recognised profession.