



**Australian Association of
Professional Bookkeepers Limited**

Submission regarding

**Tax Agents Services (Transitional Provisions and
Consequential Amendments) Bill 2009 (“The
Transitional Provisions”) and Explanatory Material
(“EM”)**

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AAPB Background

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

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

AAPB is dedicated to Research, Education and Quality Management and is the **only** bookkeeping association to achieve ISO9001:2000.

Over the past six years AAPB has performed extensive investigations into the bookkeeping industry which has included international markets in education, quality management and ethical behaviour.

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

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

AAPB's primary objective is to establish best bookkeeping practice within the Australian bookkeeping industry for the purpose of reducing risk to the customer, reducing BAS/IAS errors and restoring the reputation and professionalism to the bookkeeping industry.

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

Based on these investigations and findings AAPB has identified critical areas of concern that need to be addressed in order to provide appropriate governance for the bookkeeping industry and protect the integrity of the financial sector.

We strongly urge that AAPB submission be considered very seriously as the impact of the current proposed transitional provisions is potentially damaging to the government and the financial sector.

General Comments

Overall, AAPB supports the need for Transitional Provision however **rejects** the proposed transitional provisions process.

The purpose of the Tax Agents Services Bill 2009 is to resolve the issues that already plague the current legislation section 251L(6) of the ITAA 1936. The intent of the new legislation was never to carry the problem forward into the new system.

The proposed transitional provisions do not provide adequate consumer protection, reasonable care or the ability for bookkeepers to comply. Government is forcing Tax and BAS Agents to take reasonable care with tax payer's affairs and yet government is not displaying reasonable care towards the consumers for the transitional period of change within the bookkeeping industry.

There are a number of areas AAPB would like to draw to the attention of government.

1. The proposed Transition Provision for BAS Agents is based on the principal that bookkeepers are able to meet the existing legislation section 251L(6) of the ITAA 1936
2. Time frames have been provided on the bases bookkeepers would be able to comply with section 251L(6) of the ITAA 1936 while they transition into the new system.
3. If the bookkeeping industry was able to comply with section 251L(6) of the ITAA 1936, why would the bookkeeping industry lobby and support the new legislation?
4. If section 251L(6) of the ITAA 1936 is providing reasonable care to consumers, then why are all stakeholders complaining?
5. If section 251L(6) of the ITAA 1936 is effective, then why hasn't the ATO audited the bookkeeping industry for the past nine (9) years?
6. If section 251L(6) of the ITAA 1936 is effective, then why haven't the bookkeepers comply?
7. If section 251L(6) of the ITAA 1936 is effective, then why wouldn't government and the accounting bodies support a bookkeeping standard?
8. If section 251L(6) of the ITAA 1936 is effective, then why is there angst between Tax Professionals and Bookkeepers?
9. If section 251L(6) of the ITAA 1936 is effective, then why are bookkeepers using third party tax agents to validate their work instead of the client's accountant?
10. If section 251L(6) of the ITAA 1936 already provides consumer protection, then why are there mistakes being made and the need for the safe harbour for bookkeepers?

The transitional provisions do not provide an adequate or achievable process for the bookkeeping industry to transition across or protect the consumer in the process. The government is well aware of these issues.

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

Specific Comments

AAPB **rejects** the recommended government transitional arrangements approach for registration for BAS Agents as the proposed transitional arrangements do not provide appropriate consumer protection to the client or the bookkeeper within the transitional period nor does it meet the reasoning behind, why the Tax Agents Services Bill 2009 was introduced.

1.1 The Transitional arrangements for registration for BAS Agents

The EM outlines that under the current law, only registered tax agents and certain persons listed in section 251L(6) of the ITAA 1936 and exempted from registration can provide BAS services for a fee.

An individual who is providing BAS services for a fee, within the meaning of section 251L(7) of the ITAA 1936, immediately before commencement; but is currently exempt from the requirement to register because they are a person referred to in section 251L(6) of the ITAA 1936; will be taken to be a registered BAS agent within the meaning of the main Bill for a period of two years beginning immediately after commencement, in certain circumstances.

The individual however must notify the Tax Board in writing within the six month period beginning immediately after commencement that they are a person referred to in section 251L(6) of the ITAA 1936 who has been providing a BAS service within the meaning of section 251L(7) of the ITAA 1936.

In particularly the draft legislation outlines:

“5 Special rules relating to the provision of BAS services by certain individuals

(1) *If:*

- (a) *immediately before commencement, an individual:*
 - (i) *was a person referred to in subsection 251L(6) of the old law; and*
 - (ii) *was providing a BAS service within the meaning of subsection 251L(7) of the old law; and*
- (b) *during the 6 month period beginning immediately after commencement, the individual notifies the Board, in writing, that he or she satisfies paragraph (a);*

*the individual is taken to be a registered BAS agent within the meaning of the **new law for the 2 year period beginning immediately after commencement.***

(2) *If:*

- (a) *an individual is not a person mentioned in subitem (1); and*
- (b) *immediately before commencement, the individual was providing a BAS service within the meaning of the new law (other than a BAS service **within the meaning of subsection 251L(7) of the old law**); and*
- (c) *during the 6 month period beginning immediately after commencement, the individual **notifies the Board, in writing, that he or she satisfies paragraphs (a) and (b);***

the individual is taken to be a registered BAS agent within the meaning of the new law for the 2 year period beginning immediately after commencement.

(3) *If an individual is taken to be a registered BAS agent under subitem (1) or (2), **the Board may**, in accordance with the new law, do either or both of the following:*

- (a) **impose conditions to which the individual's registration is subject;***
- (b) **require the individual to maintain professional indemnity insurance;***

as if the individual had applied for registration and the Board had decided to grant the application."

1.2 Current Issues

The inclusion of section 251L(6) of the ITAA 1936 into the Transitional Provisions process does not resolve the current issues but in fact exasperates the problem and pushes it on to the National Tax Board.

Investigations into section 251L(6) of the ITAA 1936 has revealed several areas of legal concern that seem to have been deliberately ignored in the Transitional Provisions.

The current legislation section 251L(6) of the ITAA 1936 governing over the bookkeeping industry, provides an exemption for bookkeepers. Under the exemption, Bookkeepers may charge for the provision of a BAS service if they are able to comply with one of the following exemptions:

- a.** member of a recognised professional association
(as defined under section 251LA)
 - 1. Association of Taxation & Management Accountants
 - 2. CPA Australia
 - 3. Institute of Chartered Accountants in Australia
 - 4. National Institute of Accountants
 - 5. 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.

Exemption a

The majority of bookkeepers are not members of the Accounting Associations. Education requirements for the Accounting Associations relate to Income Tax qualifications which go beyond the scope or authority of BAS Agents.

A new Certificate IV in Financial Services Bookkeeping qualification was established by Department of Education, Employment and Workplace Relations (DEEWR) to meet the educational needs of bookkeepers.

The new Certificate IV in Financial Services Bookkeeping qualification does not meet the Accounting Bodies educational requirements and therefore Bookkeepers are unable to meet the membership requirements of these organisations.

Exemption b

Exemption b permits bookkeepers to work under the direction of a registered Tax Agent provided the Tax Agent has appropriate quality assurance procedures in place to ensure they are satisfied with the accuracy and completeness of the Bookkeeper's work.

Although exemption b seems on the surface to be the most appropriate path to take, it is impossible to achieve. Bookkeepers have tried to comply with the current legislation by **paying a fee** to a third party Tax Agent Services, for the purposes of quality assurance. Bookkeepers have been led to believe they are complying.

However investigations performed by AAPB and validated by the Accounting Bodies, Australian Accounting Standards Board and Standards Australia have identified there are no standards that provide the framework or the ability to measure the performance, accuracy or completeness of a bookkeeper's work.

Furthermore the ATO has never, in the past nine (9) years, audited or validated bookkeepers to establish they meet the requirements of Exemption b.

Therefore we ask why the transitional provisions are misleading bookkeepers to believe this is possible, when quite clearly it isn't. We also would like to know why section 251L(6) of the ITAA 1936 is being carried forward into the future when it is already a legal concern for government and the financial sector.

There are a number of points AAPB would like to highlight.

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 Tax Agents who are offering quality assurance products to bookkeepers for a fee. The question we ask is “how is this achievable when there are no standards to support the quality assurance?” CPA Australia has confirmed there are no standards for the bookkeeping industry.
3. Tax Agents offering quality assurance products are also exposing the bookkeeper to other issues. 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.
4. 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.
5. AAPB has tried in the past to establish a national quality standard under the supervision of Standards Australia to support section 251L(6) of the ITAA 1936 in order for bookkeepers to comply. The NIA, AAT and ABN objected to Standards Australia which stopped the process. When AAPB approached Government and the Accounting Bodies for support, AAPB was advised that the new Tax Agents Services Bill and the Code of Professional Conduct would resolve these issues and therefore no standard was necessary.

AAPB is puzzled why section 251L(6) of the ITAA 1936 is being used as part of the process for registration into the new legislative framework, when AAPB has clearly, on numerous occasions informed all stakeholders of the issues.

Exemption c

This is only applicable for Bookkeepers who perform payroll functions.

2.1 Registration as a BAS agent

Under the Transitional Provisions individuals seeking registration as a BAS agent will benefit from a three-year period during which they can apply for registration without meeting the educational qualifications and relevant work experience requirements to be prescribed by regulations provided certain conditions are met.

In particularly in relation to new registrations the new legislation states:

“14 Special rule for applications for registration as a registered BAS agent

If:

- (a) an individual applies for registration as a registered BAS agent under section 20-20 of the new law **before the end of the 3 year period** beginning immediately after commencement; and*
- (b) the individual **would be eligible for registration** but for the operation of paragraph 20-5(1)(b) of the new law (**which requires the Board to be satisfied that the individual meets requirements prescribed by regulations, including requirements in relation to qualifications and experience in respect of registration as a registered BAS agent**); and*
- (c) the Board is satisfied that the individual had been providing BAS services to a **competent standard for a reasonable period** before making the application;*

then, despite paragraph 20-5(1)(b) of the new law, the individual is eligible for registration.”

2.2 Future Issues

AAPB is confused why government would permit the bookkeeping industry to continue operating in the future for a period of up to three years without education, quality assurance or insurance.

The transitional provisions are based on the assumption that bookkeepers are able to meet the requirements of section 251L(6) of the ITAA 1936, when AAPB has already demonstrated it does not work.

Again, this is why the bookkeeping industry has lobbied for the Tax Agent Services Bill 2009 as the current legislation is unachievable for bookkeepers.

The proposed Transitional Provisions do not provide an appropriate framework for the industry or the National Tax Board to build quality management or education process to support the new legislation.

In regard to education, AAPB would like to again to state that the Certificate IV Financial Services Accounting qualification should be removed as it is inappropriate.

The prescribed qualifications identified for BAS Providers are not congruent with the government's nationally endorsed recognised qualification from the Department of Education, Employment and Workplace Relations (DEEWR).

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

The new Certificate IV in Financial Services Bookkeeping was endorsed by DEST on the basis that the Certificate IV in Financial Services Accounting does not address the educational requirements for BAS service providers. The Certificate IV in Financial Services Accounting was found to be extremely inadequate regarding GST. In order to resolve the inadequacies of the existing qualifications, a new Certificate IV in Financial Services Bookkeeping qualification was developed with five new units that specifically address BAS/IAS.

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

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

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

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

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

AAPB investigations and findings have also established that many who have undergone formal training are not competent. An AAPB skills assessment trial that included university graduates in Accounting, accredited software providers, members of accounting bodies and other bookkeepers associations identified GST knowledge gaps that are critical to performing BAS related services accurately. In light of AAPB findings and the high error rates in BAS's as has been outlined in

ANAO reports AAPB believes it would be appropriate for Government to adopt a higher level of responsibility and accountability to ensure people who are BAS service providers have a satisfactory level of GST knowledge in order to reduce this high error rate.

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

AAPB therefore recommends the skills assessment be mapped to the new Certificate IV in Financial Services Bookkeeping and be endorsed by the National Quality Council and the National Tax Board. This is an important step to ensure the skills assessment is set an appropriate standard. There are organisations currently offering skills assessments that fail to cover for example basic GST concepts that we believe is unsatisfactory.

The proposal for the skills assessment is not dissimilar to other industries that have undergone regulatory reform. This will ensure that the requirements under the transitional provisions *that “a competent standard for a reasonable period before making the application”* are able to be measured equitably, fairly and to an appropriate standard.

Recommendation

AAPB therefore recommends the following points be considered as part of the Bookkeepers Transitional Provision.

- 1.1 Within the first six months of commencement, all contracting Bookkeepers have the ability to register with the National Tax Board and to provide evidence of their Professional Indemnity Insurance.
- 2.1 Bookkeepers who do not meet the new legislation requirements will be able to operate under new guidelines set by the National Tax Board. They will also need to provide evidence they have taken steps towards meeting the new requirements.
- 3.1 The National Tax Board should vet the recognised qualification course materials (eg course content for Certificate IV in Financial Services Bookkeeping) to ensure they are of a high standard and fit for purpose. The National Tax Board should establish a register of recognised education providers so that bookkeepers have a level of confidence that they are completing courses that meet the National Tax Board requirements.
- 4.1 Bookkeepers who have completed qualifications with education providers that are not listed on the recognised education provider register by the National Tax Board, should undergo a skills assessment recognised by the National Tax Board.
- 5.1 All registration requirements should be met within two years of the commencement date.

Conclusion

AAPB strongly objects to the Transitional Provisions process and will not support a system that clearly ignores the current issues with section 251L(6) of the ITAA 1936. AAPB welcomes the opportunity to discuss this matter further with government and work on a more viable Transitional Provision process for the bookkeeping industry.