



24 April 2019

Mr Keith James

c/- TPBReview@treasury.gov.au

Submission – Review of the TPB & the operation of the TASA2009

Background

The Institute of Certified Bookkeepers Ltd (ICB) is a member based professional association for the Bookkeeper community, comprising 4200+ members of which over 2800 are registered BAS Agents. ICB is a Recognised Professional Association with the TPB under the provisions of the TASA.

ICB has been a member of the TPB Consultative Forum since its inception. We also are highly engaged with the ATO Client Engagement Group in particular the “Intermediaries” business line including as co-chair of the TPSG (Tax Practitioner Stewardship Group), the BASAAG (BAS Agents Association Group and related consultation advisory forums all connected to the role and services provides by Tax Professionals in the tax ecosystem, including as a member of the ATO Tax Profession Future State Group.

ICB is a member of ICB Global, a worldwide network of professional associations for Bookkeepers.

The author, Matthew Addison, was appointed to the TPB in his personal capacity as a Board member in 2009 and served for over 6 years as a Board member.

We will refer to Tax Profession(s) /Tax Practitioners/Registered Agents as “TP”

Context - The Tax Ecosphere

The ATO role is revenue collector and administrator of the Tax system.

The TP (Tax Practitioner) interprets the ATO requirements and applies them to individual taxpayer circumstances on behalf of the taxpayer.

The Taxpayer needs to comply with the tax requirements and pay due taxes.

The TPB acts as an independent registrar and behaviour regulator over the role of the TP. The TPB does not have a role in relation to tax collection and therefore has a different perspective on

the competence and requirements of the TP who may at times be working for a taxpayer with a different interpretation of the Tax requirements than applied by the ATO.

Concept - Independence

The role of the TP would be conflicted if they were solely regulated and administered by the ATO whose primary role could be described as the collection of Revenue for the Government.

To whom does the TP first answer, the ATO or the taxpayer? By ensuring that the TP first answers to the TPB they have a truly independent arbitrator of their behaviour.

The TPB as an independent regulator of the TP should have a different perspective from the ATO. The TPB should be ensuring that the Intermediaries (including the TP) are independently, competently and professionally assisting taxpayers to apply the law to the taxpayer's circumstances. This perspective of competence and professionalism may be in line with but act with independence from the ATO.

If the ATO were to be the regulator of the Intermediaries, it could be perceived that they only registered and empowered those TPs who suited the ATO and achieved the ATO main purposes.

Context

We believe the recent IGOT review of "The Future of the Tax Profession" should be extremely relevant to this review.

We attach our submission to the IGOT and specifically refer to the following extract:

The Regulation of the TP

A tax professional (TP) of the future will still need to be registered and therefore regulated by a strong TPB. There must be regulation over who the ATO is willing to collaborate with in the ATO's administration of the tax ecosphere. There must be regulation and oversight over who a taxpayer is able to rely on in their application of the tax law to their circumstances.

The TPB, as protector of the tax community, through the regulation framework must enhance its role in prescribing the skills and expertise required in order to maintain registration as a TP. The TP of the future must upskill!

It should not be acceptable to have been educated once (in some cases many years previously) and permitted to retain registered Agent status based on just maintaining Insurance, doing what you do (relevant experience) and attending CPE. These factors alone do not ensure that the TP is applying current law competently to a business's circumstances.

A regime of periodic re-accreditation should be adopted. It may be appropriate that such re-accreditation would leverage off existing software skill training and assessments. Re-accreditation of tax knowledge would also bring certainty to the ability to rely on the TP. A concept similar to that embraced by the legal profession in acknowledging specific skill certification. It is not reasonable to expect any TP to be an expert in all areas of tax nor the application of tax to all business. It is reasonable to expect a taxpayer to be able to observe how recently a TP has been certified in respective skills.

Review of the TPB & TASA2009

The following provides our input to the review and the development of the discussion paper that has been proposed.

Many of the concepts below require detailed development.

Objectives

The Current operations behind the TPB and therefore the TASA do not provide a totally appropriate framework to achieve the objectives of the TASA.

We agree with the objectives as stated in the terms of reference for the review:

- Ensure tax agent service are provided to the public in accordance with appropriate standards of professional and ethical conduct.
- To maintain, protect and enhance the integrity of the registered tax practitioner profession
- To promote the Tax Practitioners board as an independent efficient and effective regulator, and
- To protect all consumers of tax practitioner services

However, we note that the “Object” of the Act is not as wide as indicated above

Sn 2-5 Extracts

- Ensure tax agent service are provided to the public in accordance with appropriate standards of professional and ethical conduct. - SAME
- “introducing” a Code of professional Conduct for registered..... –
- Sanctions to discipline registered agents

Recommend the Objects of the TASA and the TPB be broadened within the Act.

To achieve these objectives, we believe the future regime must consider or enhance the TPB ability

- To regulate and register all persons and entities who provide tax services. Specifically including providers of automated solutions. “all tax service providers”
- To register an Agent to perform services in the areas of tax to which they have been appropriately educated and experienced. “Specialisation”.
- To renew the registration of an agent only when the agent can prove current knowledge and expertise in the respective areas of tax. “Currency”.
- To require an Agent to undergo training and updating in current ATO online systems and how to use them and engage with the ATO. “ATO Practice”.
- To require an Agent to undergo training and updating in contemporary business compliance solutions. “Digitisation”.
- To provide requirements and enforce professional and ethical conduct in a relevant, timely and contemporaneous manner. “Conduct”.

- To openly and actively take action against unregistered tax service providers. “Unregistered”.
- To work more collaboratively and openly with the ATO, specifically in relation to matters of agent inappropriate behaviour. “ATO Interaction”.
- To be independent of the ATO. “Independence”
- To be relevant to the profession. “Relevance”

All tax service providers

Sn 20-1 “You must be registered to provide tax agent services for a fee or to engage in other conduct connected with providing such services. You will be eligible for registration if you are a fit and proper person and have appropriate qualifications and experience.”

The TPB has specifically stated and continues to interpret that their regime and remit only applies to those who provide services “for a fee” and they do not apply the regime to the “or to engage in other conduct connected with providing such services” from the perspective of those who may not be charging a fee.

We do not understand the TPB interpretation of the TASA that limits the TPB regime and therefore the population that it deems it regulates to be only in relation to the services that are provided for a fee. If one entity is providing tax services to another entity then it should be a regulated tax service and only those regulated or specifically exempted should be permitted to provide such services.

Recommend that TASA Sn 20-1 be clarified to apply to all persons or entities that provide tax services to another person or entity. Consider removing the “for a fee”.

Recommend that the TASA & associated regulations be specifically amended to allow an appropriate registration to apply to “all” service providers. Specifically that the TPB be enabled to apply the appropriate specialist knowledge & skill requirements to specialist registrations. (Refer below)

Example: The recently government established program to fund tax clinics within the education sector. While the concept maybe appropriate as providers of tax services they MUST be subject to the same requirements as all others providing tax services.

Example: Where the tax service may be ancillary to the main service being provided it cannot be left open to interpret the Act that a fee can be charged for the main service and the tax service was for no fee and therefore it is unnecessary for the provider to be registered and have to meet the appropriate requirements.

Automated solutions

Software suppliers are increasingly providing automated or streamlined techniques that aid in the provision of tax services. Their marketing material makes comment about how the software provides what would otherwise be known as tax services. The Act and the regime MUST also be applied to the providers of automated (digital, artificial intelligence, machine learning) solution providers. Both TPs and taxpayers acquire such solutions and then are relying on the solution provider to correctly provide the solution and the related tax service it seeks to automate.

“the software just does it”

While the ATO has within its ambit the “Operational Framework” requirements upon software solution providers, that is within the context of interacting with ATO digital services with a focus on security and proof of identity.

A process of “Assurance” that the Software does in fact provide its solution correctly and appropriately, including that the marketing about that solution is correct (as opposed to misleading) in relation to the provision of tax services is required.

The Solution providers are providing an interpretation of the Tax laws in their systems and they are applying those tax laws to their processes and solutions. They are providing tax services to their consumers and accordingly must be subject to the same requirements as those who provide the interpretation and application of tax laws in other means.

Recommend The Act specifically include such (software) solution providers into the regime. That the TPB be funded to apply the regime (having the appropriate knowledge and expertise to do so) to the solution providers.

Specialisation

Tax is too broad and too complex for a single registration to enable adherence to the “appropriate standards” etc. ie the description of tax services which the TASA allows a registered Tax Agent to provide based on a generic formal qualification that may or may not include education on the specific areas of law that the TP then provides services.

Concept

While a foundation “qualification” or “course” may be appropriate,

if a TP then seeks to provide Income Tax related services they must include sufficient education in the area of Income Tax

if a TP then seeks to provide GST related services then education in GST

if a TP seeks to provide services in relation to Activity Statement preparation then education in how to correctly prepare Activity Statements and the related taxes (noting overlap potentially with GST etc)

Recommendation that the TASA be amended to enable the TPB to consider what the appropriate education should be for each area of Tax Services.

- Identify the tax service areas that require specialist learning outcomes
- prescribe the skills required in order for an agent to provide services for the specific areas of “tax”.
- Facilitate the description of the learning outcomes and approve the provision of the education
- Register those persons in the specialty areas, who have achieved the required specialist training, where required
- To prescribe more specifically the CPE requirements for each area in which an Agent provides services

- To register appropriately skilled individuals (the current formal education “only” route of generic courses is not working)
- To register an agent for the areas to which they are appropriately educated (possibly specialisations but potentially the areas of tax to be identified requiring appropriate education and experience for each area)

Recommendation that the regime enable registration according to specialisation.

Recommendation that the regime change its reliance on only the formal education system but enable the TPB to more widely approve, allow or specify other education options for registration and ongoing renewal purposes.

Recommendation that the regime allow experience to be proven by task based practical assessment or mentoring programs and remove the reliance on “substantial experience” being proven by Statements of Relevant Experience.

Currency

The regime currently allows a TP to be registered based on initial qualification and experience. It then imposes ongoing “experience” and CPE.

Recommendation We believe more work should be undertaken to establish an appropriate means of ensuring the updating of a TP knowledge. The TASA should empower the TPB to extend beyond the current limited requirements.

Consider re-accreditation: not formal education but education of the areas of tax services that the TP provides. Consider that this should be more than simply attending CPE events but the utilisation of contemporary potentially online adult learning techniques to allow a TP to update their knowledge and indicate application of that knowledge to case study based “assessments”

Many Agents seek to downsize their practice and accordingly reduce their “experience” over a period of time. The current requirements do in some instances prohibit the renewal of that agent. With appropriate CPE or accreditation techniques that Agent could retain their expertise, their currency of knowledge and still appropriately apply tax services but in a reduced capacity. This reduction in service is NOT facilitated in the current environment

There is a discrepancy in the “years” concept applied to Tax agents as opposed to “hours” applied to BAS Agents.

ATO Practice

Recommendation that all TP be required to undertake a professional practice course which specifically includes how to interact with the ATO.

This would have alternative learning streams for those who use the ATO provided Online Services for Agents (Portals) as compared to those who can be accredited by their Practice Management Software Solution provider for correct method of use of the solution for interaction with the ATO.

The Course could include fundamentals of how to interact with the ATO: proof of identity, appointment of a client, access manager, RAM, Auskey/Digital Identity requirements, complex

issues resolution unit, etc. Options to tailor the course to specifically relate to the tax services provided by the TP especially those that are only registered for specialist areas.

Noting a more general TP, such as the current registered Tax Agent or BAS Agent, should have a comprehensive “ATO Practice” education program.

Digitisation

Otherwise titled contemporary business practice.

Recommendation that the TP be required to include in their CPE requirements upskilling in the adoption of contemporary digital business solutions.

Such solutions include business systems and also government interaction.

Investigation of Agents conduct

The TPB appears to have been bound up in process under the heading of “Natural Justice” but also significantly restricted by the legal process imposed by the TASA2009.

A concept observed to have been adopted by the TPB was that no case should be lost. Also a statement often made by the TPB was that it was too expensive to prosecute an Agent (or unregistered person) unless the case was ironclad. Accordingly a compliance and investigation approach appears to have been adopted that require full scale legal case files to be established for any matter raised with the TPB.

The TPB seemed to be restricted in what legal action to take based on its budget.

Recommendation A scale of penalties be made available to the TPB (through its conduct committee) that can be applied to an Agent for breaches of the TASA2009 and the associated Code of conduct, specifically including but not limited to behaviour outlined in any additional guidance material and requirements published by the TPB.

Recommendation A review of the legislative framework applied to the TPB to enable a pro-active, enhanced transparent and contemporary approach to responding to complaints or other matters of concern. A full scale investigation should not be required for every matter.

Investigation of unregistered entities

The TPB appears to have also been restricted in its ability to respond to matters of unregistered agents. It appears the TASA2009 framework has only permitted the TPB to take full Federal Court action to apply any penalty or injunction upon an unregistered Agent. While other actions have been taken where the TPB indicates a persons requirement to be registered or desist in their provision of services. The regime has not enabled wider scale programs of enabling the TPB to protect the registered agents by having appropriate mechanisms to penalise and impact unregistered service providers.

We believe that the legislation must enable a scale of penalties to be applied following a due process of natural justice etc. This scale may commence with legal notices (cease and desist), but must include penalty regimes before needing to advance to court action to impose civil penalties. The current legislation requiring Federal Court action against any such unregistered person has been constantly reported as costly and process prohibitive. There needs to be a

motivation for people to register and more to the point a motivation to prevent them acting while unregistered.

Recommendation The framework enable the TPB to take appropriate action for any unregistered entity that is providing tax services. A greater set of remedies or actions or penalties available to the TPB.

ATO Interactions

We believe that the ATO & the TPB must positively interact with each other as both regulators have significant influence and engagement with the TPs, with different perspectives.

The ATO should continue to have a significant reliance on a strong and regulated TP regime in its role as regulator of the Tax system. The ATO should enable and equip regulated TPs.

If the ATO has an issue with an Agent it should be raised with the TPB for the TPB to independently determine the appropriateness or other of the Agents behaviour and ability to continue acting as an Agent.

Recommendation The ATO & TPB have greater appropriate information sharing capacity without the restrictions currently being applied to them.

Recommendation The TPB must be able to respond to ATO matters of concerns in a more timely manner where the Agent may have access to ATO services that are being misused. Consideration must be given to the ATO being able to restrict access to ATO services during a TPB review.

Independence

We do not believe that the TPB is independent from the ATO.

We observe:

- Board members are administered by the ATO in every facet of their term in office including payment. We acknowledge they are appointed by the Minister (see “relevance” below) and subject to provisions of the TASA however operationally and in terms of enabling capacity to perform their duties they are limited by ATO imposed budget and operational matters.
- The entire staff of the TPB are ATO employees first and foremost. They are ATO staff, paid by the ATO, accountable to the ATO systems and on ATO premises. Their career progression is within the ATO.
- The Budget of the TPB is substantially provided through the ATO. The ATO has power to alter the amount of funding available to the TPB
- Previously the Secretary of the TPB was an ATO executive. While the Chair to the TPB had some involvement in the appointment it remained evident that the Secretary was an ATO employee and had accountability into the ATO.
- The recent appointment of the CEO to the Board was NOT made known to external stakeholders. While it was advertised within Public Service jobs website, unless you were specifically looking for a position, that we did not know was vacant or being reconsidered, you would not be looking for such information. The CEO appointed is a senior executive of the ATO.

2019 changes to the TPB Board, Chair and CEO(Secretary): We are significantly disappointed at the recent changes to the TPB as it indicates a significant detrimental change to the TPBs ability to achieve its purpose and a significant loss of its independence from the ATO.

All Board members, now including the Chair, have been and are severely restricted in their role. They are not provided with the capacity to adequately consider matters and not provided with an ability to represent, provide governance or contribute to the role and performance of the TPB.

The new chair is appointed for 1 day per week.

The full operations of the TPB including the public presence are now provided by the CEO, an ATO executive public servant. This is not a comment about the individual. It is a comment about the process of appointment and the lack of independence of the TPB in its role as allegedly an independent Governance body. The Board members have not been, and in the current form are even further restricted, in having adequate influence and guidance on the TPB.

We also observe that at times in the past it appears the Chair has taken the sole position as the only eligible influence or representative of the TPB, which is also inappropriate.

Recommendation that a review of the terms, conditions, expectations and role of the Chair, the Board members, the CEO/Secretary should be undertaken. That such role descriptions, expectations and requirements be prescribed as part of the appointment processes.

Recommendation that a costing of the activities of the TPB be undertaken and a direct allocation of the agreed, required funding be assigned to the TPB in the federal budget.

Recommendation that the staff be employed by the TPB, be accountable to the TPB and independent from the ATO. Clearly they remain Public Servants.

Relevance

Appointment to the Board

For the regime to achieve its objectives we believe a due merit and relevance process must be undertaken for candidates/applicants to the Board positions, including the Chair, which cannot be disregarded by Government.

We, as ICB, and I personally, have observed each of the periods in which the Board member positions have been (or pointedly we state “should have been”) subject to review and consideration of appointment or re-appointment. We specifically also include the “process” of appointment of the “Chair” of the Board. We do not believe the current framework ensures that the process for appointment of Board members considers the reasons for appointment of appropriate persons. We also do not believe the framework ensures that due consideration is given in the appointment of the Chair.

Capacity to perform

We also seek increased capacity for Board members to ensure that they have enough of the relevant information to provide an appropriate perspective in considering and making decisions concerning the regime. The limited budget and the allocation of limited time has not permitted due consideration.

Stakeholder engagement / consultation

The TPB must enhance its engagement and consultation activities. The TPB take actions and make decisions without adequate consultation with the Associations that are recognised by it in accordance with the Act and with other stakeholders effected by TPB activities.

The Consultations forums exist and have been appropriate however they are infrequent and have been dominated by one way communication of what the TPB has done.

The TPB Board and Staff would benefit from a further understanding of the TP they regulate with enhanced programs of engagement and consultation.

Summary & Conclusion

ICB supports the objects, the purpose, the concepts behind the TASA2009 and the role of the TPB. While expressing concern over a number of facets of the 9 years of its operation we believe the regime has improved the tax ecosystem and the recognition and professionalism of Agents.

We are seeking for the review to result in a legislative governance and operation framework that enables contemporary professional and competent services to be provided only by registered Agents.

We are seeking for an education and skills based system to support registration of appropriate persons and competent service delivery.

Please contact us to discuss any aspect of the concepts presented herein.

Yours faithfully



Matthew Addison

Executive Chair (ICB) & Government Liaison

Included below

- Specific response to terms of reference
- Matters raised for member feedback (selected)
- TASA2009 (section by section comment)

Attached – Submission to IGOT – Future of the Tax Profession (Nov 18)

Specific response to terms of reference

In particular, the review should:

1. Examine if the legislative framework is operating as intended and continues to be fit for purpose and meet the objectives of the Act.

No it is not.

There are many good things that have been achieved by the regime since the inception of the TASA2009 and the TPB. The registration of TP under a federal regime (previously state based) is positive, the ongoing development of guidance material from the TPB directing TP behaviour and prescribing the interpretation of the Code of Conduct etc are to be encouraged.

2. Examine if the governance framework is operating as intended and continues to be fit for purpose.

Above comments.

The position descriptions and purpose of the TPB Board members, Chair, Secretary and Staff require further development ensuring that suitable persons are appointed and performing according to the agreed set of principles.

The ability of the TPB Board to adequately perform its Governance role is severely restricted by the current funding available to the TPB and the provision of those funds through the ATO.

The restricted time made available to the previous Board members and now being utilised or made available to the current Chair further limits the ability for appropriate execution of the TPB functions.

3. Consider the appropriateness of the Tax Practitioners Board's governance arrangements.

Above comments indicate improvements

4. Consider whether the tax agent services legislation supports the Tax Practitioners Board in responding to known and emerging issues.

The current interpretations being applied to the TASA and the limited resources have restricted the TPB from being able to respond to known and emerging issues.

Inadequate time, resource and capacity (legal included) have attributed to lack of ability to respond or pro-actively address such matters.

5. Examine whether the powers and the functions of the Tax Practitioners Board are sufficient to enable the objects of the legislative framework to be met.

We understood that the current provisions of the TASA did enable the TPB to meet the objects, however the practical implementation by the TPB since inception have not realised the full potential of the TASA. Noting specific problems with the construct of the TASA have become evident.

6. Consider any other matters that may enhance the regulatory environment that tax practitioners operate under, including the interaction with the regulation of relevant related professional activities.

As described above:

Some focusing questions for submissions could be:

1. Are the governance arrangements for the Tax Practitioners Board working effectively and could they be improved?

As Above

2. Are the qualification and experience requirements for individuals seeking to become a registered tax practitioner, or to renew their registration, appropriate?

No. They are no longer suitable for the tax environment in Australia.

We specifically note and acknowledge the improvements in the specification of the Cert IV Accounting and Bookkeeping qualification which is now substantially more relevant for the BAS Agent required outcomes.

Specifically, we restate

- A base generic qualification may be appropriate however the current formal qualifications are subject to so many other requirements of the approved education system that the learning outcomes required to be an appropriately educated TP are not achieved by the formal qualifications alone
- TP should be specifically trained in the application of the areas of Tax Services that they are providing
- TP should be required to ensure currency in their areas of practice
- TP should be required to undertake a specific accreditation in how to “Interact with the ATO”

Education and Accreditation should NOT be restricted to ASQA approved courses. Contemporary adult learning techniques including online and task based assessments should be adopted.

3. Are the Tax Practitioners Board’s compliance and investigation powers and functions appropriate?

No. The application of the TASA to the TPB processes have results in complex and costly processes. The TP community is both disengaged and discouraged by the process.

There is a lack of transparency in the outcomes of complaints to the complainant and a lack of timely response.

We note the recent program advised to the TP community about the 72 hour resolution obligation which we envisage was an attempt to address some of the issues. This program was poorly communicated, it was made public without ANY consultation and based on the known information it was poorly designed.

4. What other legislative measures could be implemented to further protect consumers of tax services?

As discussed above we believe that the TASA must enable the TPB to regulate all Tax Service Providers including software solutions.

5. Is the 'safe harbour' provision in subsection 284-75(6) of Schedule 1 to the *Taxation Administration Act 1953* effective?

Yes.

6. Are there any other suggestions to strengthen the operation of the *Tax Agent Services Act 2009* or the *Tax Agent Services Regulations 2009*?

Above

Specific matters raised with ICB members

Topic # - Renewal of Agent Registration

Our Concept Questions:

What should be checked at renewal of a BAS Agent registration?

In order for the professionalism and the competence of BAS Agents to be maintained or enhanced, what should the TPB ensure is happening to make sure that a Registered BAS Agent should keep their registration?

What about that previously registered BAS Agent who is reducing hours, workloads and probably the number of clients? At what point are they NOT doing enough work to justify that they have enough experience of what is currently required? Is it a question of how much work or how much CPE?

Does an Agent who only has one business they work with really have enough exposure to different circumstances to be eligible to state that they are a Registered BAS Agent. Should there be a different category that restricts such people from advertising BAS Agent services to others but allows them to work in the one business. They would have to do further training to be able to offer services to others.

Things checked at the moment are

- Holds professional indemnity insurance
- continues providing services of 1400 (1000) hours each 4 years
- 45 hours CPE each 3 years (see separate post on CPE)
- fit and proper
- be compliant with your own tax obligations

What else should be checked for an Agent to be able to renew?

What about some external assessment of current competence? like the ICB Annual Skill Review?

Consolidated Response Summary

Relevant Experience is not an indicator of an ability to provide tax services in accordance with the TASA. "Working is just doing things the way you did and not adequately learning the new law or new approach"

"CPE is more relevant than just having worked the hours"

"We all I think, agree that at we need a basic standard. Beyond that we want to be recognised for our skills in a simple way."

An appropriate method of checking that our knowledge is current would be good

Topic # - TAX AGENTS qualifications & experience

What are your thoughts on the Experience requirements for a new TAX Agent? or at renewal?

The existing requirement is outlined at

<https://www.tpb.gov.au/qualifications-and-experience-tax-ag...>

It can be 12 months within the past 5 years.

Consolidated Responses

The current formal qualification with the current prescribed experience is not being seen to be adequate requirements to register a person as a Tax Agent.

The breadth of service is too wide for the generic courses to achieve the learning outcomes required for a person to be prepared to provide competent professional tax services.

A Quote "This is where I get annoyed. Spent 14 years working in public practice. Have worked in commerce and now been a BAS Agent for 9 years. I can't get tax agent registration without doing a heap of study or a lot of hours over a long period of time under supervision. Yet someone with a couple of years experience and a new degree can walk into getting registration. Then I end up fixing their mess. Experience needs to carry more weight. I'd be happy to do a test to prove I know something."

Topic # – BAS Agent Qualifications and Experience

What are your thoughts on the Qualification / Education requirements for BAS Agents?

One thought is that the (new) Cert IV for Bookkeeping and Accounting is correct: Especially if delivered appropriately ie with real practical teaching of outcomes that relate to being a BAS Agent and not just with a view of doing the hours required by the education system, is sufficient.

Another thought is that the Cert IV followed up with practical profession based additional "units" of the reality of how to provide BAS Agent services, also how to interact with the ATO and how to apply the Code of Conduct. In some senses a BAS Agent "professional year" of training.

We ran a facebook poll within our member only group

Cert IV but also additional BAS Agent training – 180 votes

Diploma of Accounting – 11 votes

Existing Cert IV is Enough – 9 votes

Cert IV with min 5 years experience – 1 vote

Just restructure the Cert IV – 0 responses

Quote "We can't all be all things to all people and registrations might need be designed to reflect that."

The TASA 2009

20-1 refer to registrations “may be subject to conditions” which we believe has not adequately established a regime to enable specialist registrations.

The regime should not be All in and then restrictions.

The regime should be Base qualification with general licence (potentially) and then accredited specialisations.

20-5 etc creates a Registered Tax Agent, a Registered BAS Agent or tax (Financial) adviser.

We challenge whether the education requirements and the experience that is applied to registered tax agents adequately prepare that Tax Agent to perform BAS Agent Services. We seek the review to consider whether Tax Services as currently described should be separated from BAS Services or alternatively whether Tax Services (general) would not allow a general Tax Agent to perform BAS Services without the appropriate BAS education.

20-5(1)(b) requires the “requirements” to be prescribed in the Regulations. We challenge whether this is the appropriate framework to enable the TPB to adequately consider, review and apply alternative education options. Should Legislative Instruments be considered.

20-5(4) pre 1988 agents should be removed and every concept of grandfathering registration should be removed. All Agents should be re-accredited.

20-10 to our knowledge has not been applied by the TPB at all. This concept should be incorporated into the concept discussed above of allowing specialty learning and accreditation including task based assessment in lieu of experience.

20-20(3) application fee to the Commissioner – lack of independence. Also neither the TPB nor the ATO should have a focus on the revenue received as a result of the application fee. The recent increase in application fees was unnecessary.

20-20(4) why is the Commissioner administering Agent registrations.

20-25(3) If the Board doesn’t make a decision within 6 months it is rejected – surely the burden must be on the board to make a decision within 6 months.

20-25(5)-(7) should be repositioned or supplemented to enable the concept of specialty registrations.

20-30(3) re PII was brought in as an administrative item of when PII would be required. This is not appropriate. An Agent must have PII before there registration is granted. Refer 20-35

20-40 also to be amended to allow the Specialty registrations

20-50(1)(a) has been a matter of unnecessary concern. The Board has taken an administrative hard line approach to applying (a) and not considering (b). They continue to advise expiry dates but inadequately communicate that the renewal will not be considered if lodged within the 30 day period. This should be reviewed.

Division 30 – Code of Professional Conduct. In general we believe this part of the TASA works and provides a high level set of requirements. We believe more should be done by the TPB to provide guidance and then ensure compliance.

30-10(6) may require updating subject to the development of the Whistleblower legislation.

30-10(13) The Insurance requirements that a registered Agent should have in place may extend beyond the normal definition of “Professional Indemnity Insurance” ie cyber insurance and we believe this section should be broadened to allow the TPB to consider other areas of Insurance ie Public Indemnity or Cyber.

30-15(2) should enable the TPB to have a process to apply other penalties to Registered Agents.

Division 50 – civil penalties: This part of the TASA is seen to be very restrictive in that the TPB can only apply civil penalties to unregistered Agents. Also that the TPB must apply to the Federal Court. This is far too restrictive and does not support a compliance regime.

The TASA must enable the TPB to apply other penalties to those that have provided tax service while unregistered.

The TASA must enable the TPB to apply other penalties to registered agents who breach the requirements.

60-15 We still read this section as enabling the Board to do far more than it has exhibited an ability to provide. We encourage a review of this section to enable a more active and enabling TPB to further meet the objectives of the Act.

Subdivision 60-B Appointment etc of members of the Board: as discussed above we believe the TASA or the associated regulations should prescribe further requirements in relation to the appointment, the relevance, the role and also enable the Board members to perform their task.

60-45 Outside employment. These provisions should be consistent but also must be reviewed to acknowledge and allow the appointment of relevant individuals who may have conflicts that are to be managed not simply avoided “must not engage....”

60-80 APS employeesmade available by the Commissioner. Noting all comments about lack of independence. We understand the logic intended by this provision whereby a separate employment function did not have to be established by the TPB as they would utilise the services of the ATO. However we believe that the method of application of this “made available” provision has not met the purposes of the TASA.

Subdivision 60-E Investigations

The TASA should be enhanced to allow the TPB to undertake compliance enquiries or address matters and complaints of which it becomes aware without the need to instigate a full investigation.

It appears the TPB have interpreted this part of the Act as the only provisions enabling it to make enquiries upon Agents. This must be clarified.

60-135 The public register has been a matter of significant issue. The TPB ability to provide the register in a manner which provides the specified outcomes while also enabling and protecting agents has been a journey. This should be reviewed.

70A Injunctions

The Federal Court requirement has imposed enormous process and cost on the TPB.

70-30(2) appears to have placed an unnecessary burden on the ability of the TPB in its compliance activity. However we note that if the TPB took an approach to compliance activity and was empowered to have alternative strategies other than full TASA Federal Court actions and full Investigation processes including an ability to have alternative penalty regimes in addition to those currently outlined by TASA would enable a different approach whereby this provision may still be relevant for the most significant breaches or outcomes.

We note that we would be uncomfortable with the committee functions to be allocated to the Public Service without oversight etc from the Board.

Regulations

Part 1A – Recognition of Professional Associations

The TPB appear to have recognised associations for the outcome of attendance at the Consultative and also for the “experience” requirements. We are unaware of any association that has been recognised in relation to “qualifications”.

The concept implied by this provision aligns with our proposal above for the TPB to recognise specialty “other” education however the other “qualifications” provisions discussed below would need to be amended.

11 Administrative assistance to the Board: This should be reviewed entirely.

11 (1) places the entire administration of the Secretary and the persons and the number of persons and the funding effectively as determined by the Commissioner “after consulting with the Board”.

12 Register of ...agents

12 (1) (b) requires the contact details to be made known. The TPB have in the past interpreted this to require an address. Due to requests they allow PO Boxes. We request that the term “contact details” be specifically considered for contemporary digitally enabled world and allow email addresses or similar.

We note the TPB should have further contact details available to it that may not otherwise be displayed on the public register.

Schedule 1 – Recognised BAS agent association

109 is inappropriate. Within each of the professional association in the agent space it is possible that voting member may not have the specified formal qualification. In the bookkeeper/BAS Agent space (probably also the tax agent space) the aspiring agent who may still be undertaking their studies, seeks to become a member of the Association with full voting rights and therefore engagement. We believe this is an appropriate manner of engagement of people as they seek to enter the profession. This item would benefit from allowing the association to administer a “similar” qualification requirement.

210 we believe requires review as well for the tax agents

Schedule 2 – Eligibility for registration

101 refer comments above about allowing Tax Service area knowledge and skill education; specialisation. 101(a) should be amended to allow other education.

101 (c) must be amended to allow skills to be proven by task based assessment and not limited to this type of experience requirement.

103 to be updated to allow contemporary skill assessment as proposed above

201 – 206 to be reviewed to consider appropriate knowledge and skill education possibly in addition to the current formal qualification and general experience regime.