

23rd April 2019



Email: TPBreview@treasury.gov.au

Mr Nick Westerink
Individuals and Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Mr Westerink

Re: Review of the Tax Practitioners Board

The Australian Institute of Conveyancers NSW Division Ltd (AICNSW) welcomes the opportunity to provide a submission for the review by the Australian Government Treasury of the Tax Practitioners Board (TPB).

AICNSW is the representative professional body for NSW Licensed conveyancers. In that regard, AICNSW as a stakeholder did not receive notification of this important review and would request that we be included in any future matters regarding Australian Taxation or Treasury Reviews.

We consider our feedback to be of value in this process as your review is into the effectiveness of the TPB and the operation of the Tax Agent Services Act 2009 (the Act) (TASA) and the Tax Agent Services Regulations 2009. Our comments and observation relate specifically to our view of the effectiveness of the TPB.

Our views are informed by recent meetings, dialogue and correspondence with the TPB since January 2018. This dialogue related specifically to the limitations imposed on NSW Licensed Conveyancers in the preparation of certain Australian Taxation Office (ATO) documents (FRCGWT Clearance Certificate application and Variation application) based on the TPB's incorrect understanding of the extensive scope of works provided by legislation, regulations and judicial interpretation to NSW Licensed Conveyancers.

Unfortunately, this incorrect interpretation is reflected in the information on the TPB's website including instructions to conveyancers in dealing with the clients.

The TPB explanatory guidelines on its website warns all Conveyancers that unless they were a Tax Agent registered under the TASA or an Australian Legal Practitioner (ALP), for which an exemption applied under the Act, they would be breaching the TASA. The TPB guidelines were clear and unambiguous stating that a Conveyancer would need to be registered with the TPB as a Tax Agent:

- To apply for a Clearance Certificate
- To make a Variation Application

The TPB considered that these services would involve the provision of a tax agent service, stating “if you complete and submit these forms to the ATO on behalf of a client for a fee or other reward, you may need to be registered with the TPB.”

The website states that An Australian Legal Practitioner (ALP) who completes and/or lodges the Clearance Certificate application and Variation application or the Purchaser payment notification as part of a legal service does not need to be registered with the TPB to undertake that work.” Further “If your client asks you to complete and submit these forms to the ATO and you are not a registered tax agent or ALP, you need to make it clear to your client that you are the transmitter of data to the ATO and not the provider of a tax agent service.”

Relative to NSW conveyancers the TPB website information about the work of conveyancers provides no distinction between conveyancers in different jurisdictions.

Unfortunately, this is also a significant negative professional message that;

- Betrays a serious misunderstanding of the nature of the NSW conveyancing profession, and, specifically, of the nature of the work performed and services provided by a NSW Licensed conveyancer;
- Denigrate the profession by purporting to deny its professional character and to reduce it to the level of a clerical, secretarial or administrative service;

Accordingly, the TPB statements are in our view, and the view of our legal counsel, materially false and misleading and require correction.

Our TPB interactions commenced with a meeting with TPB in January 2018 at which we provided a detailed briefing of the scope of works of NSW Licensed conveyancers. The ATO also attended this meeting. It was apparent at that stage that the TPB and ATO understanding of the scope of works of NSW Licensed conveyancers was incorrect. The scope of works of licensed conveyancer varies across each state in Australia due to different state-based legislation, which establishes the regulatory regime for conveyancers in Australia.

We had clearly advised the TPB that the scope of work in NSW was equivalent to an ALP. Therefore the information on the TPB website was manifestly incorrect and we would need to consider what advice we provided to our members.

In June 2018 we were advised that the TPB had incorrectly advised that an exemption may be possible for NSW conveyancers but the TPB and ATO would work towards changing the various forms to allow NSW Licensed conveyancer to complete such documents.

At this stage we deemed the matter to be of such a serious nature that we sought legal opinion as to the scope of works of NSW Licensed conveyancers as we believed we were able to complete these documents under the NSW scope of works. We undertook the significant investment in legal analysis and advise’ and to ensure independence, sought Senior Counsel opinion as to the legal advice. Each strongly confirmed our view.

We arranged a further meeting with the TPB and ATO in December 2018 to advise of the confirmation of the legal advice and the senior counsel opinion. Importantly, the unequivocal advice and analysis to the AICNSW is that the Conveyancing Licencing Act (CLA) and the judicial decisions regarding the legal nature of the legal services provided by a NSW Licensed conveyancer, not only permits a conveyancer to provide “tax agent services” (which are within the scope of a NSW Licensed conveyancers work) they are expected to do so.

This opinion is that a NSW Licensed conveyancer is not required to be registered as a tax agent under TASA for the provision of these tax/legal services. For a NSW Licensed conveyancer to provide anything less would be not to provide the appropriate legal advice and service as a part of the legal work of a NSW Licensed conveyancer, and they would be negligent not to do so.

These advices were subsequently requested and provided to the TPB in January 2019.

We understand that a new President was appointed in early 2019. However, we still await a response to our correspondence.

Whilst NSW Licensed conveyancers are perhaps not considered a natural “stakeholder” for the TPB our members perform important functions on behalf of their clients in their interaction with the ATO (and NSW Revenue offices). Our members are a significant element in the conveyancing transaction and with the significant amount of change (electronic conveyancing, new foreign resident taxation and revenue legislation and processes etc.) that has been imposed in the past few years any streamlining of process assist our members in ensuring clients receive the best possible consumer experience.

The incursion of Federal Taxation Laws into the legal practice of conveyancing has, as with other legal practitioners, meant that taxation law, in particular the GST and the FRCGWT, have become a core part of the legal process of conveyancing and consequently part of a NSW Licensed conveyancers work.

We would welcome any further opportunity to elaborate on our experience and thank you for the opportunity of providing our feedback.

Yours Sincerely



Chris Tyler
CEO
AICNSW