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## Focus on accounting rules for professional development in the public interest for services

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### ABSTRACT

The newly enacted Tax Agents Services Act 2009 Code of Professional Conduct (Part 30) contains the concept “reasonable care” when referring to the accounting profession’s discharge of its accountability for taxation services. The Professional Accounting bodies are bound by a separate Code of Professional Conduct (as articulated in the Accounting and Ethical Standards Board Pronouncements 110 and 220) use the concept “due care” in respect of the same professional service delivery. These two keys terms (reasonable care and due care), are explored within the context of a public interest and accountability theory framework with a focus on performance and policy accountability. This research is a descriptive study based on semi structured interviews and a literature review on the ethics and public interest mandate associated with codes of professional conduct and the accountability theoretical framework. This theoretical framework is then linked to the key elements of professional judgment and performance and policy accountability theory. Through data collected from semi structured interviews of the key stakeholder organizations linked to the provision of taxation services, insight is gained on the perceptions of the two terms “due care” and “reasonable care”. These two terms may be deemed to assist in the understanding of self-interest and not a public interest focus by the accounting profession.

**Keywords:** accounting rules, professional development, public, interest

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## **1. Introduction**

The origins of a profession is said to occur when a group of people are bound together with a common set of interests, skills, education and roles within society, Johnston (1972). Further as suggested by Collins, (1975), Johnston (1972) and Saks (1983), society has felt more at ease when such a group of people can point to a set of rules of behaviour with which all members must comply. This concept of a set of rules that will regulate behaviour Fisher, Gunz and McCutcheon (2001), would argue places the profession in a special trust relationship (p191) with the community that permits this special relationship to exist. The authors would also suggest this behaviour (of an acceptable standard benchmarked by the community), would need to be controlled by the profession, and that it may be best achieved through the application of a code of ethics. Authors such as Caplow, (1954), Barber, (1963) and Bayles, (1981) would further suggest that the need to be “professional” has its roots in the requirement to serve both the public interest (the benefit of the community as a whole), and the private interest, (the self-interest of the group forming the profession).

It is this balance of private and public interest in an ethical context that will be explored by this research through the medium of two separate Codes of Professional Conduct. The Code of Professional Conduct (Section 30-10 (9)), enacted by the Australian Government as part of the Tax Agents Services Act (2009) (herein referred to as TASA 2009), which became effective in Australia in March 2010. The Section 30-10 (9) specifically deals with the need of professional accountants to use “reasonable care” when in ascertaining a tax clients state of affairs in the process of assisting in the preparation of the client’s income tax return. The accounting profession must abide by its own Code of Professional Conduct when engaging in the delivery of taxation services. This is articulated in the Accountants Professional Ethics Standards Board (APESB) pronouncement APES 220 (Delivery of Taxation Services). This section of the professional accountants Code of Professional Conduct requires the professional accountant to use “due care”, in the delivery of such taxation services to private clients.

It is this distinction of the terms “reasonable care” (public interest focus) and “due care” (profession’s self-interest), that link to the concepts referred to by Caplow, (1954), Barber, (1963) and Bayles, (1981) regarding the need to be professional. The need to clarify the differing ethical issues that occur in the public and private environment is well described by Parker (1994). Parker acknowledges the importance of the application ethical behaviour in both the public interest and private interest. Parker (1994) then goes on to explain through the development of a private interest model that conceptualises five interrelated roles that ethics fulfils in serving the private interests of the accounting profession. Parker (1994, p514), describes these five roles as: professional insulation, interference minimization, self-control (in a monopoly situation), professional authority, and social-economic status preservation. It is roles minimal interference and self-control that are relevant to this research in the area of taxation service delivery by the accounting profession to private clients.

Parker (1994) would suggest that that a code of ethics has as much to do about the need to defend the private interests of the accounting profession as it has as the desire to protect the public.

Preston (1995), continues with the developments of Parker (1994), and suggests that for ethical codes of conduct to work effectively the codes now appear to be defined and limited to rules and their increasingly precise interpretation. The role of professional codes is further assessed by Hayry and Hayry (1994, p. 139), “In general terms, the function of professional codes is to justify legitimate professional actions by pointing out their relationship with the needs, desires, preferences, values and interests they are supposed to serve, and by defining and rejecting those professional actions which are overly harmful or otherwise immoral”.

This research explores how the ethics of self-interest (the accounting profession) may not be in alignment with the Australian Government's perception of public interest in respect to the delivery of taxation services. The accounting profession's self-interest concern may be viewed in terms of accounting profession's ability to discharge their accountability to the Australian Government as taxation service delivery occurs. This accountability relationship is directed by the operation of the two codes of professional conduct mentioned earlier, the public interest served by the Code as it appears in TASA 2009 and the self-interest of the accounting profession as set out in APES 220 (Delivery of Taxation Services).

## **2. Literature Review**

### **The Development of the Accountability Relationship**

Professional accountants have always been accountable for the delivery of their professional services to a high standard. Given this underlying accountability by the accounting profession to its clients, it is appropriate to utilise the accountability theoretical framework (Gray 1996) to evaluate if the accountability requirements have increased by the interaction of "reasonable care" and its counterpart "due care". This research will focus on the accountability of professional accountants and the delivery of taxation services by linkage to the concepts of performance accountability (high level of skill and judgement required in performance), and policy accountability (where the discharge of accountability is viewed as needing to meet the public interest), (Guthrie 1997) and Stewart (1984) that underpins the accountability theoretical framework.

This research aims to explore if the new requirements of TASA (2009) could expose professional tax accountants to a higher level of professional ethical conduct and thus accountability in the delivery of taxation services, through the application of the "Code of Professional Conduct" contained in section 30-10 (9) of TASA (2009). This research will explore the historical application of ethical judgement by tax accountants (described in terms of "due care" APES 220), and contrast the ethical use of the term "reasonable care" as articulated in the Code of Professional Conduct in TASA (2009). The semi structured interviews conducted with all the major stakeholders linked to the delivery of taxation services to private clients provide valuable insight into the differing perceptions of the terms "due care" and "reasonable care".

Prior to the introduction of this legislation, the provision of taxation services by tax accountants were guided by the application of Accountants Professional Ethics Standards Board (APESB) pronouncements APES 220 (Taxation Services) and APES 110 (the Code of Ethics for Professional Accountants) (APESB 9 November 2009). The APESB pronouncements provided guidance to the accounting professional in the careful use of professional judgment by the tax professional as to the level of enquiry they (the tax professional), should undertake in the validation of information provided to them by a private taxation client.

Consistently the term "due care" is used throughout the APES guidance statements. While the guidance statements promote the use of professional ethical behavior and objectivity and a requirement to act in the public interest, the APES statement (220) on taxation services states that "members of the profession are not responsible for the veracity of information provided by clients". APES 220 states that the professional accountant may accept information provided by a private client as "honest" unless there is strong evidence to conclude otherwise. While tax accountants are required to obtain sufficient information in order to form a view as to the application of tax law to the client's business affairs it may be debatable as to what depth of inquiry may be required by the tax professional on the information provided by the private client to discharge their "due care" obligations. Thus the discharge of the tax accountants' accountability in the verification of the information supplied by a private client may be interpreted as limited.

In accordance with TASA (2009) a registered tax accountant is required to exercise “reasonable care” in the acceptance of information provided by a private client. This may be interpreted as a need for the tax professional to challenge the information provided by their private client. This may now necessitate the tax accountant exercising professional judgement as to whether sufficient challenge of the information supplied was made. The ethical issue may arise as to whether sufficient inquiry has been made as required to satisfy the public interest mandate. An issue that may now arise from the adoption of the term “reasonable care” in TASA (2009) is the inference that the tax professional may need to question the validity of client provided information and to be able to evidence that appropriate validation of the information took place. Unless such enquiry is undertaken and documented by the tax professional, the discharge of his/her performance and policy accountability in providing professional taxation services may be questioned by the Australian Taxation Office (ATO) and hence referred to the independent statutory authority the National Tax Practitioners Board (NTPB) for investigation and determination. This leads us to the key focus of this research as to the professional tax accountants’ ethical dilemma as to whether the “due care” as exercised under APES 220 and APES 110 is sufficient to satisfy the “reasonable care” criteria articulated under TASA (2009).

The Research Questions, Methodology and Accountability Theoretical Framework Reflecting on the potential judgment dilemma referred to above provides an opportunity to address the following two research questions:

Question 1:

Given that the Australian Government has an “in the public interest” mandate, (the appropriate collection of taxation revenue by the government for the benefit of the community as a whole), does this public interest mandate filter down to the registered tax professional as the delivery of taxation services occur?

Question 2:

How might the theoretical framework of performance and policy accountability be used to explain if tax professionals are discharging his/her public interest obligations under the TASA (2009) regulations regardless of whether the term “reasonable care” or “due care” is adopted?

This research seeks to assess if performance and policy accountability Guthrie (1997) and Stewart (1984), two of five elements that underpin the generalized theoretical framework of accountability Gray and Jenkins (1993), might provide valuable insight into the stewardship relationship that exists between the professional accounting bodies and the ATO and NTPB. The basis of this stewardship centers on the ability of the tax accountant to appropriately discharge their accountability and public interest mandate in the exercise of “due care” or “reasonable care” as they, the tax accountant, make enquiries of their private client during the delivery of taxation services. Should the evidence reveal that differing expectations exist in the application of a “due care” or “reasonable care” approach to taxation professional services work, and then it may logically follow that the ability to discharge this performance and policy accountability may be equally problematic. By the use of the term discharge in this context, we refer to the application of judgment by both the tax professional and the NTPB and ATO. It is critical to determine if the tax accountant has exercised “reasonable care” in the validation of client supplied tax information as an income tax return is prepared from the NTPB’s perspective.

To assist in the analysis of this complex topic this research will call upon the depth of understanding by leading researchers in the area of performance and policy accountability Broadbent & Guthrie. (2008), Gray Owen & Adams, (1996), O’Loughlin. (1990), Stewart (1984), Sinclair (1995), Robinson, (1971) and Mulgan (2000). There is also a need to analysis the various judgement expectations as described in a theoretical context by Lerner & Tetlock (1999). The research will also call upon the work of Stuebs & Wilkinson (2010), who would suggest that there may be an ethical crisis within the tax

profession. This ethical crisis their research would suggest links to the self-interest of the accounting profession as a higher priority than the public interest concept of the community benefiting from the collection of taxation revenue, that by law should be the professions focus. Stuebs & Wilkinson (2010) conclude that unless the focus of the accounting profession is more appropriately aligned to serving the public interest, a crisis in trust of the conduct of the accounting profession by the community and government may occur.

### **3. Methodology**

As stated the aim of this research is investigate if there are any differences in the perceptions in the adoption of the terms “due care” and now “reasonable care”. The research questions were open ended and were derived from the research objectives. The discussion in the literature review section that follows later provides possible explanation as to why differences in perceptions might exist. Appendix 1 provides the list of the relevant open ended questions asked of all stakeholder representatives for accomplishing this stage research objective.

There are five stakeholder organizations that are key to the area of provision of taxation services to clients. While only a small number the organizations represent the total population of stakeholders that are engaged in this service delivery area. The stakeholders are CPA Australia (CPA), Institute of Chartered Accountants in Australia (ICAA), The Institute of Public Accountants (IPA) (prior to 30 April 2011 was known as the Nation Institute of Accountants), The Australian Taxation Office (ATO) and the National Tax Practitioners Board (NTPB).

The semi structured interviews were carried out over the period September 2010 to April 2011. Each organization was sent an email invitation to participate in this research and provided each organization with a background document explaining the purpose of the research and the reason for their organization’s selection in the interview process. The interviews were undertaken at the head office of the stakeholder organization and all interviews were audio tape with the consent of the representations attending the interview. The audio tapes were then professionally transcribed, and the results of the five semi structured interviews where analysis to provide the qualitative data for this research.

To enhance the quality of the response data direct quotes where appropriate are used to guard against the author’s potentially biased perceptive of what the interviewees were saying. This methodology is supported by the work of Deegan and Blomquist (2006, p355).

### **4. Finding**

#### **Accountability Theoretical Framework**

As performance and policy accountability and the more general accountability theoretical framework underpins the research focus in this research it is appropriate to define these key terms and draw the linkage to the topic outlined in the introduction relating to the usage of the terms “due care” and “reasonable care”.

discharge the accountability the Accountee expects from the Accountor. The Accountee is in turn exercising judgement about the tasks and actions of the Accountor by the use of instructions to the Accountee and the exercise of power over the Accountee.

The use of judgement by both the Accountee (has the benchmark been reached) and the Accountor (have I reached the benchmark), links in a critical way the importance of the discharge of the accountability. It is here that the theories of performance and policy accountability assist in analysing if discharge of accountability has occurred and if not why not.

Sinclair (1995) provides a useful definition of this style of performance accountability where “in the context of a relationship with an institution or person which or who is in a position to enforce their responsibility by calling them to account for what they have or have not done.... subject to an institutions



It would be reasonable to suggest that the compliance referred to in the research of Dubnick (2003), would focus on the communication and information stream existing between the tax client and the tax professional. It is this information, disclosed through the lodgement of an income tax return that will be vetted by the ATO. Performance accountability may only then be formally discharged should the ATO accept without further enquiry this transmitted information. Further the presence and influence of the NTPB under the powers provided to it under TASA (2009), link well to this concept of accountability-as-liability as the participation and any actions taken by the NTPB will be legally structured and executed.

The process of a client interview by the tax professional and the translation of that information gained into an income tax return is a complex activity. This relationship requires the client to understand the questions and the purpose for which the information is sought. To some extent there is a valid reason to suggest that the tax professional (accountor), will make a determination of what information should be disclosed, in order to fully explain a transaction or to avoid a future enquiry from the ATO (accountee).

Stewart (1984) also highlights the role of Policy accountability as a focused framework to understand both the requirements to undertake what is expected by an Accountee (ATO) from the Accountor (the tax profession) and the ability to discharge these expectations. The relevance of policy accountability to this research is that policy accountability integrates the issues of “public needs” and “public interest” (Guthrie 1997, p64) and the linkage to a requirement for a higher level of judgement to be exercised in determining if the discharge of accountability has been discharged to an acceptable level.

What is helpful in Stewart’s (1984) analysis is his reference to the ladder of accountability. This ladder seeks to describe the increasing accountability issues and responsibilities that arise as an accountor progresses from a highly restrictive and task orientated environment to one that requires complex skills and judgement. The ladder has five levels as follows:

(1) accountability for probity and legality, (2) process accountability, (3) performance accountability, (4) programme accountability, and (5) policy accountability.

This ladder of accountability and the concepts of increasing complexity are illustrated as follows:

Level 5 Policy accountability, highly complex tasks and actions requiring expert judgement and professional skill, the Accountee may influence the policy decisions of the Accountor (through a change of law) and the discharge of which may be difficult to determine.

Level 4 Program accountability, a complex accountability relationship seeking to understand the activities that occur as a number of differing objectives are to be satisfied, and the judgement of them by different people.

Level 3 Performance accountability, complex tasks and actions requiring expert judgement and professional skill, discharge of which may be difficult to determine due to the application of social norms and application of laws.

Level 2 Process accountability the actions of one party are assessed by the application of documents or controls to evidence that the required actions have taken place.

Level 1 (lowest level) - Accountability for probity and legality, simple tasks and actions requiring limited judgement and professional skill, discharge of which easier to determine and more transparent

Stewart (1984), as supported by Guthrie (1997), would see performance accountability and policy accountability as the ability to discharge these two accountabilities where combined in a general accountability relationship becomes a more onerous task.

We may now observe how the application of the accountability framework and the more focused elements of performance and policy accountability integrate with a revised adaptation of the Gray (1996) model as illustrated in Figure 2 below.

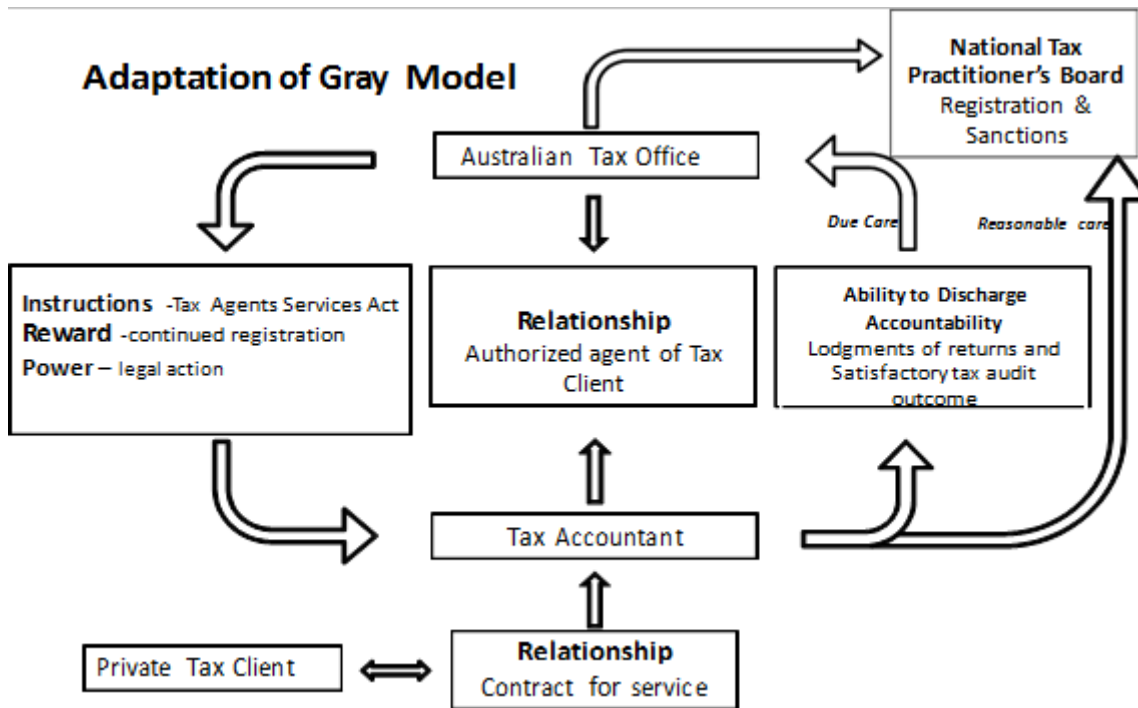


Figure 2: Public Interest” Focus Using the Gray Model

As illustrated in Figure 3 the generic Gray (1996) model has undergone a number of basic modifications to reflect the focused relationship of this research.

We observe the movement from the ATO to the tax accountant; the “instructions about actions” translate into the operational aspects of TASA (2009). The Code of Professional Conduct in TASA (2009) may be seen to require the tax accountant to undertake a due diligence of the information supplied by the private tax client. The Code of Professional Conduct through the adoption of the term “reasonable care” has a number of similarities with the concept of due diligence used by other Australian Government agencies by example the Auditor General of South Australia (2001). As we continue to trace the accountability process back from the tax accountant to the ATO, the tax accountant may be expected to transmit information to the ATO that has been reviewed and vetted, and thus the tax accountant would have discharged its performance and policy accountability. The discharge of the performance and policy accountability to the expected standard would be expressed in the protection of the tax professional from further inquiry by the ATO or by reference by the ATO of a contentious matter to the NTPB for investigation and the possibility of the application of sanctions against the tax accountant.

TASA (2009) does not infer or limit the position that the private client has a legal requirement to comply with the taxation laws of Australia, and to correctly disclose their assessable income so that a correct assessment of taxation liability can be determined by the ATO. As articulated by CPA “in terms of the tax payer’s responsibilities, I’d say that they had a responsibility to disclose correctly in the past and that’ll be continued going forward. Although maybe in a more expressed form given the requirements in the code than what we had in the past and of course it aligns with APES 220” (CPA interview 2010), and endorsed by ICAA “I don’t see that the new Act changes the underlying responsibility and obligation to disclose correct information to the Tax Office.” (ICAA Interview 2011).



Figure 2 does highlight that it is common practice for the private client to seek the advice and the practical assistance of the tax accountant to achieve this expected legal compliance by the reference to the contract for service link depicted in the diagram.

What is helpful in Figure 3 is the potential change that may now occur under TASA (2009) in respect to the operation of “due care” versus “reasonable care”. It is noted in figure 3 that there are now two linkage arrows leading from the tax accountant to the NTPB and the ATO. The arrows that connect the tax accountant to the ATO are classified as “due care” presents the historical position. The tax accountant would adopt the guidance articulated in APES 200 (taxation services), and apply a “due care” approach to income tax return preparation. The inference is that the tax accountant could accept private client information as honest and potentially with minimal challenge.

The arrow linking the tax accountant to the NTPB and labelled “reasonable care” illustrates a new professional and reporting relationship. The tax accountant continues to maintain a lodgement and legal relationship with the ATO in the lodgement of income tax returns for private clients. TASA (2009) now introduces the NTPB which is both the registration body for tax accountants and a review body to determine (where the NTPB sees fit), if sanctions might be applied to a tax accountant if the requirements of “reasonable care” are not correctly discharged by the tax accountant in vetting the information supplied by a private client.

The introduction of TASA (2009) has added a new dimension to the accountability relationships with the establishment of the NTPB. The NTPB is an independent statutory authority that is charged by the Department of Treasury to administer the registration and compliance of tax accountants engaging in the provision of taxation services as required by TASA (2009). The NTPB will be required under the legislation to determine if a tax professional has discharged the “reasonable care” requirements expected under TASA (2009).

It is on this aspect of engagement with a private taxation client by the tax accountant that the judgment dilemma concerning the perceptions of the terms “due care” and “reasonable care” begins to surface. As illustrated in Appendix 1 (the questions forming the core to the semi structured interview process), questions 1, 2, 3 and 5 have a focused reference to this the differing perception of the terms “due care” and “reasonable care” and these terms clear linkage to accountability characteristics (performance accountability) and question 4 assists in linkage of this research to policy accountability as a subset of the generalised accountability framework. Questions 1 and 2 specifically seek to understand the perceptions of the two terms “due care” and “reasonable care” from both the professional accounting bodies and the relevant Australian government agencies. The ability for the accounting profession to meet the bench mark or due or “reasonable care” equates to the accounting profession’s ability to discharge their accountability. In respect of Question 5, familiarisation with the provisions of TASA (2009)’s Code of Conduct and the term “reasonable care”, all interviewees expressed clarity of understanding of the topic. The professional accounting bodies (CPA, ICAA and IPA) did express some concern that the term “reasonable care” links more to a legal interpretation which may not necessarily parallel the normal business usage of meaning of “due care” as expressed in

interview Question 1. The professional accounting bodies' made reference to legal interpretation of reasonable care. This interpretation links with the community sense of what is reasonable. Public interest is often classed in the same context as to what is reasonable.

Again as articulated by CPA "I think a lot of practitioners will see that meaning as being highly similar if not identical." ICAA identified a greater professional concern with the term "reasonable care" by expressing the following thoughts: "lack of reasonable care – as opposed to exercising reasonable care – does bring with it some legal challenges that we've been very careful about. Not associating necessarily the two concepts because a lack of "reasonable care" is actually a separate distinct concept to exercising "reasonable care". So for us, it's an important dynamic between the two and it has been important to keep the two concepts fairly pristine and separate" (ICAA interview 2011). The IPA continued to express the same concern in the application of "reasonable care" in regard to the complexity of the type types of tax assignments that might be undertaken by the tax professional. This was expressed in the following manner: "It's a difficult one because it is relative to the assignment. So what one would expect given the assignment, so obviously every assignment has different levels of complexity. So what would be reasonable in one instance may be not reasonable in another instance." (IPA interview April 2011). This perception of the implication of a wider accountability through a legal process was explored in the research by Lerner & Tetlock (1999) in terms of judgement and accountability and its linkage to social norms. Lerner & Tetlock (1999) would suggest that the confirmation of social norms is often reflected in the laws accepted by a community which direct and control the people in that community. Lerner & Tetlock (1999) would further suggest that if the interpretation of the discharge of a legal responsibility was judgement based, this would not only impact on the accountability (to increase it), but also fully grasp the reason behind a position that the legal requirements had not been appropriately discharged. This situation is brought about the authors suggest by the complexity of legal norms verses social norms.

The NTPB and the ATO acknowledged the linkage of "reasonable care" to a court based definition (Question 1). Both stakeholders expressed the view that compliance with taxation law and other appropriate regulation had historically been based and judged in legal terms and that the usage of the term "reasonable care" continued the status quo of compliance. They did not perceive the private tax client or the tax accountant was now being held to any greater account (accountability) then was the perceived position in the past prior to the enactment of the this Act.

The data collected through Question 2 (perception of the term due case as articulated in APES 220), provides additional insight into the perceived differences between the two terms. The professional bodies CPA and ICAA confirmed an in- depth understanding of the term due as it is used in the guidance given by APES

110 Code of Professional Conduct and APES 220 Delivery of Taxation Services as this guidance statement applies to the accounting profession with the latter having particular relevance to registered tax accountants. The reason for alerting the reader to this distinction relates to the fact

that not all members (accountants) of the accounting professional bodies are registered members of the NTPB. It is only registered accountants of the NTPB that are permitted to charge professional fees to private clients for the preparation and lodgement of income tax returns. As such it is only registered tax accountants that would be affected by any perceived differences between APES 220 and TASA (2009), as the NTPB only has jurisdiction over registered tax accountants.

It is however acceptable of a professional accountant to provide taxation advice and not be registered as a tax accountant for the purposes of TASA (2009). This situation may arise where a professional accountant is providing advice on a business transaction or event, and also advises their business client of some tax benefits that may accrue to the private client if the transaction was undertaken in a particular manner. APES 220 does require the professional accountant to be professional skilled in the taxation law area prior to advising their private client, and equally not to suggest the construction of a transaction that would or could be inferred as promoting or assisting in a tax avoidance process.

Thus Question 2 reflects on the position of a registered tax accountant with the NTPB and not the general population accountants registered with the professional accounting bodies in Australia. The professional bodies confirmed their perception that the term “due care” reflects an appropriate balance between business practice and professional conduct. They were of the opinion that the majority of tax accounts (to which this research relates), embrace to spirit of professional conduct as articulated in APES 110 and this would logical flow to compliance to the professional conduct expected in APES 220. There continues to be debate as to what level of investigation of client provided information the tax accountant might need to undertake to discharge their accountability when the term “due care” is replaced with “reasonable care”.

Stewart (2009) which similar to Gray (1996) would suggest “Accountability implies an obligation to explain to someone else, who has the authority to assess the account and allocate praise or blame for what was done or not done”, (p59). Accepting that the information stream will have a material impact on the performance and policy accountability of the tax professional under TASA (2009), consideration as to how the tax profession might discharge the performance and policy accountability requires further analysis.

Here we may also draw on the work of Behn (2001) who would suggest that accountability could be directed towards: Accountability of finances; Accountability for fairness and Accountability for performance. The relevance of this sub division of accountability to this research is the notion of accountability for performance. As Behn (2001) would suggest the accountability that one holds to another may increase in its intensity when the accountability is to measure the performance of a government to its citizens.

These distinguishing features were also the basis of the research of Robinson (1971) where notwithstanding a change in descriptive, a similar approach was suggested. The author uses the concepts of programmed accountability, process accountability and fiscal accountability. In Robinsons (1971) research performance accountability is most closely aligned to programmed accountability.

Stewart (1984) develops the work of Robinson (1971) and suggests that the bases of accountability may also be described in terms of: Accountability for probity; Accountability for legality; Accountability for efficiency; Accountability for good administration and Accountability for maladministration leading to injustice. For Stewart (1984) performance accountability used in this research is most closely aligned to the concepts of good administration and maladministration leading to injustice. The administrative function is a complex one and the use of judgement is core to achieving the desired result. Administration may apply to information quality and here the linkage to the research may be drawn. It is the quality of the information provided by the tax client and vetted by the tax professional that leads to a potential risk in managing the performance accountability attaching to that information under TASA (2009).

To clarify this concept it is useful to consider the arguments proposed by Mulgan (2000) where the standard of accountability and expectations may alter between an internal and external environment. Mulgan (2000) would suggest that external accountability is more demanding due to a public profile, where internal (within an organisation), the test of compliance and thus accountability may be less demanding.

The relationship of the tax profession to the government represented by the ATO and to an independent NTPB is an example of such external connections. As the ATO is contracting out to the tax profession some aspects of the ATO's role in income tax collections via the lodgement of income tax returns, the tax profession may be deemed to have absorbed the nature and style of accountability the government would ordinarily have to the community as a government agency. Government's accountability to the community is of a high standard, as Mulgan (2000) would conclude that part of the service contracted to the tax profession would equally be held to the same high standard. It is perceived that the NTPB as an independent body charged with the registration, education and compliance tax accountants providing taxation services will operate with a public needs and a public interest perspective. Thus as suggested earlier in this paper the test as to whether a tax professional has used "reasonable care" judgement criteria may well be benchmarked to a high standard.

This public interest issue was raised with the professional bodies (Question 5), and it is here that we gain some insight into the differing views on public interest and self-interest and the ethical considerations that might be raised. As articulated by the ICAA (2011) "Look on this point, I would say that clearly the ATO has a public interest obligation and mandate as you've said there. On the question though, do you perceive that this filters down to the tax professional, I don't believe it does. The reason why I say that is that the tax professional's obligations are approached from a different viewpoint. They are approached from the viewpoint of providing firstly, a service to their client that complies with all relevant laws that maybe relevant to the completion of a tax return or whatever it happens to be. That's the first requirement. The other requirements might be that the advisor is bound by their accreditation and their qualification to comply with the standards set by someone like the Institute, if they are a chartered accountant.

I think the Tax Agent Services Act brings with it some further obligations; clearly around the exercise of reasonable care. But ultimately, in the public interest mandate, is confined in my view, to the Tax Office's work. Because it is a statutory arm of the government that is provided with tax payer funds in order to discharge a role on behalf of the wider community using those funds to then deliver to the government, the revenues required to fund their activities. That is a unique role that does not extend to a tax advisor who is not engaged by the government who does not work for the revenue and nor do they deliver to the community directly revenues to help fund the government's activities. Their role is to advise tax payers to comply with the laws that then deliver that revenue".

### **Conclusion**

While the research methodology adopted in this paper is qualitative in this approach, (as stage one of a two part research project), the analysis and insight provided by the research undertaken has explored an important area of academic research. Ethical research has paved the way to better understand the development and application of Codes of Professional Conduct to the accounting profession. While this research has a focus on the ethics and accountability of the profession in the delivery of taxation services, there is a wider application to ethical considerations for the professional accounting bodies. That is the influence on professional behaviour in terms of public interest and self –interest. The views expressed by the professional bodies would suggest that there is a high reliance on the codes of professional conduct to ensure technical compliance with the law underpinning their service delivery. There is less clarity as to the role of such a code when consideration is given to the public interest.

There is a consensus between the key stakeholders that clarity on the adoption of a “reasonable care” benchmark is desirable and that such clarity would be welcomed in the short term. As TASA (2009) only became operational in March 2010, the issue central to this paper's research the “reasonable care” benchmark, is yet to be tested. Thus the question as to whether there are any ethical issues to be addressed when the accounting profession is held to account other than for “due care” is also to be tested.

Testing will come in the form of evidence placed before the NTPB by the tax professional that “reasonable care” was exercised, and a determination by the NTPB that a lack of “reasonable care” did not occur on the part of the tax professional. Stage 2 of this research will engaged individual members of the accounting professional bodies in a survey to obtain data on the perception of tax accountants as to what “due care” and reason able care mean to them. If we are able to clarify the perceptions of these terms in the minds of the tax profession, then there may be the opportunity to provide clarity on how the professional accountants' ethical judgement may be exercised to ensure performance and policy accountability compliance under TASA (2009).

The contribution that this research makes to the interrelationship of the tax profession and taxation law is in the use of two Codes of Professional Conduct and the theoretical framework of accountability. TASA (2009) which appears to have sparked a debate between the key

stakeholders' broadens this relationship and thus the opportunity to critically evaluate this environment in a different theoretical context. The linkage of performance and policy accountability to the area of professional ethical judgement and the provision of taxation services is this different theoretical context.

**Appendix 1** – Questions forming part of the semi structured interviews with the key stakeholder organisations referred to in this research:

**Question 1**

The new tax legislation contains a section dealing with the “Code of Conduct” of registered tax agents, are you familiar with its reference to “reasonable care”, and what is your understanding of this term as used in the context of this Act?

**Question 2**

The accounting professional bodies require their members in commercial or public practice to adhere to a professional Code of Conduct as they perform their professional duties. For accountants in public practice there exists a section of the code that applies to members that provide taxation services to the public (APES220). This section uses the term “due care” as an appropriate standard to maintain while providing such taxation services. What is your perception of the term “due care” when used in this context?

**Question 3**

A tax payer has traditionally borne the responsibility to correctly disclose all information to allow the ATO to correctly assess the client’s income tax liability in each tax year. Do you perceive that the new Act has had any influence on this historic position of the tax client?

**Question 4**

Given that the ATO has an “in the public interest” mandate, the appropriate collection of revenue by the government for the benefit of the community as a whole, do you perceive that this public interest mandate filters down to the registered tax professional as the delivery of taxation services occur? If yes, could this public interest mandate make the discharge of the tax professionals

”reasonable care” or “due care” in the supply of such services more difficult?

If no, could you articulate your reasons?

**5. Discussion & Conclusion**

The accounting professional bodies appear to have expressed some concern that in some circumstances the registered tax professional might be expected to conduct a “due diligence” or even an audit of a tax client’s submitted information in order to meet the expectations of the ATO in the discharge of their services to the tax client and the professional standards required in the code of conduct in the new Act. How do you perceive these concerns?

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