

An Assessment of Australian Tax Practitioners' Commitment to and Compliance with the Code of Professional Conduct under the TASA 2009.

Abstract

A number of studies have examined tax practitioners' ethical behaviour and the implications for tax compliance (Marshall et al, 1998, Marshall et al, 2010, Erard, 1993, Bobeck et al, 2010, Tan 2011 and Molero and Pujol, 2012). However, these and other studies have failed to conduct systematic empirical research in Australia into the Code of Professional Conduct under the *Tax Agents Services Act 2009* (TASA), since its operation from March 2010.

Consequently, this research study is timely and warranted as it examines ethical issues which have impacted upon the compliance of Australian tax practitioners with the Code of Professional Conduct under the *TASA 2009*. The research is significant in that failure to investigate the discrepancies between tax practitioner ethics/practices and that stipulated in the Code of Professional Conduct, could potentially result in professional malpractice and excessive revenue leakage for the government. The research findings could have implications for potential legislative amendments to the TASA and changes to tax practitioner professional standards and educational requirements.

As tax practitioners' represent approximately 75 per cent of Australian individual taxpayers there is a great potential for them to influence the compliance landscape. Consequently, this research offers economic benefits to the Australian community in that the professional service tax practitioners provide maybe enhanced. Tax practitioners will be better equipped to deal with the ethical dilemmas they face in their work through improved compliance with the code of conduct and in obtaining relevant professional training. This should in turn provide better value for money for the taxpaying community and improve the revenue collection of the Australian government.

This working paper presents the preliminary results of an empirical investigation into tax practitioner's commitment to and compliance with the Code of Professional Conduct. Research funding was secured which enabled both a quantitative and qualitative analysis, of data obtained directly from Australian tax practitioners to be conducted. It is suggested that the findings will provide useful information for the Tax Practitioners Board, professional tax and accounting organisations and the Australian taxation authority.

Key words: Tax Practitioner, Compliance, Code of Professional Conduct, Ethics, TASA 2009.

1 Introduction

An examination of the tax compliance literature reveals there is a lack of recent empirical research in Australia into the factors which influence the ethics of tax practitioners, who act as intermediaries between the Australian Taxation Office (ATO) and the majority of Australian individual taxpayers.¹

The tax practitioner also represents a significant third category of actor together with the taxpayers and the ATO in a tax system of voluntary compliance.² This is particularly so in situations where the tax law is ambiguous and the tax owed depends on the interpretation of complex provisions of the law.³ As tax practitioners carry the responsibility for accurate tax filing for the majority of Australian individual taxpayers⁴ they are also in a position to exert a strong and direct influence on the compliance and tax administration process.⁵

The importance of tax practitioner ethics, with respect to tax administration, enforcement policies and the distribution of equity in the tax system was initially recognised in the early 1990s. A draft project relating to tax agents professional standards and regulatory arrangements was submitted to the Commissioner of Taxation's National Tax Liaison Group in 1992. An agreement between the ATO and the professional bodies consequently endorsed a National Review of Standards for the Tax Profession. In particular, the then Commissioner Boucher emphasised the ethical component of tax advice:⁶

"Ethics is an intrinsic aspect of providing tax advice. Tax advisers play a role in shaping our tax morality. Whether in-house or external they become involved in the decision-making processes of the enterprises they advise."

At an international level, the influence of tax advisers on the ethical standards of their clients' has also been identified by Gordon:⁷

"Their advice communicates by implication many political judgements about the legitimacy of legal norms and regulations and about the normative value of complying with them, whether they want it to or not. They can't choose not to be influential; they can only decide not to care or think about their influence and whether they should exercise it differently."

¹ R. Tomasic and B. Pentony, "Taxation Law Compliance and the Role of Professional Tax Advisers," (1991), 24, *Australian and New Zealand Journal of Criminology*, 241 as cited in K. Devos "An Investigation into the Ethical Views and Opinions of Australian Tax Practitioners of Different Affiliations" (2014), *New Zealand Journal of Taxation Law and Policy*, 20,169.

² R L Marshall, R W Armstrong and M Smith, "The Ethical Environment of Tax Practitioners: Western Australian Evidence," (1998), 12, *Journal of Business Ethics*, 1265.

³ F L Ayres, B R Jackson, P S. Hite, "The Economic Benefits of Regulation: Evidence from Professional Tax Preparers," (1989), LXIV (2), *The Accounting Review*, 300.

⁴ J Baldry and K. McKinstry, "Explaining the Growth in Usage of Tax Agents by Australian Personal Income Taxpayers," (1995), ATO Compliance Research Conference, Canberra 7-8, December, 1995. Approximately 75% of Australian individual taxpayers lodge through a tax agent or accountant.

⁵ B. Erard, "Taxation with Representation- An Analysis of the Role of Tax Practitioners in Tax Compliance," (1993), 52, *Journal of Public Economics*, 163.

⁶ T. P., Boucher "Paying Tax – Simply the Right Thing to Do," (1993), *The CCH Journal of Australian Taxation*, 50, 52.

⁷ R W Gordon, "The Independence of Lawyers," (1988), 68, *Boston University Law Review*, 1.

Since the early 1990s major developments in the regulation of tax practitioners and their accountability with respect to the advice they provide was evidenced in the release of exposure draft legislation in 2007. Further draft transitional provisions and consequential amendments resulted in the introduction of the *Tax Agents Services Bill 2008 (Cth)*. Finally, after nearly fifteen years in the making the Tax Practitioners Board (TPB) was established and the *Tax Agents Services Regulations (2009)(Cth)* and the *Tax Agents Services Act (2009)(Cth)* (TASA) was introduced, including a Code of Professional Conduct which became operational from 1 March 2010.

However, despite the increased attention directed towards tax practitioner ethical standards and professional conduct and the impact it might have on tax compliance, there has been little empirical research in Australia into the factors that influence the ethical views and behaviour of tax practitioners. It is submitted that this study will provide some needed empirical evidence comprising tax practitioners' views regarding the effectiveness of recent measures introduced in Australia, to monitor tax practitioner standards and ethics. In particular, this research study will investigate tax practitioners' commitment to and compliance with the Code of Professional Conduct and reveal the likely implications stemming from such an assessment.

The remainder of this paper is organised as follows. The next section reviews key literature regarding tax practitioner ethics and particular TPB cases which specifically impact upon the code of conduct. The third section describes the research design including the questions posed and the empirical methodology adopted. The fourth section presents a discussion and analysis of the statistical results and the interview findings. Finally, a summary of the main findings, tax policy implications, the limitations and suggestions for future research, are given in the conclusion.

2 Literature Review and Theoretical Setting

2.1 Background

Taxpayers employ professional tax practitioners to represent them for a number of reasons. The main reasons include, a desire to lodge accurate returns mainly due to their lack of tax knowledge based on the complexity of the current tax law, a desire to minimize the tax they are required to pay, their fear of making a mistake and being penalised, or just having a lack of time to complete their own return.⁸ Regardless of the reason or reasons, tax practitioners currently represent 75 per cent of Australian individual taxpayers and potentially have a large influence upon the compliance landscape.⁹

The concept of a single "tax practitioner" is difficult to comprehend. In practice the term "tax practitioner" covers a diverse group of individuals, business structures and professional groups who provide a range of tax services for their clients. Self-employed and in-house accountants, tax advisers and registered tax agents, tax agent franchises and legal practitioners in the tax area are all embraced by the term "tax practitioner."¹⁰ For the purposes of this study a broad definition is adopted of

⁸ Baldry and McKinstry above n 4, 3.

⁹ Ibid 136.

¹⁰ R. Marshall, M Smith, and R Armstrong, "The Impact of Audit Risk, Materiality and Severity on Ethical Decision Making, An Analysis of the perceptions of Tax Agents in Australia," (2006), 21, (5), *Managerial Auditing Journal*, 497.

the term “tax practitioner” to include, tax professionals, tax preparers, tax agents,¹¹ tax accountants and tax lawyers.

Similarly, there is no general consensus on how business ethics should be defined. However after reviewing the literature Lewis¹² framed his definition of ethics as, “rules, standards, codes or principles which provide guidelines for morally right behaviour and truthfulness in specific situations.” Morally right behaviour includes, “individual actions that conform to justice, law or another standard...”¹³ Applying this definition to tax practice, ethical conduct will be taken to refer to standards, which include professional competence, objectivity/independence, integrity/reasonable care, public interest and confidentiality.¹⁴ It incorporates those attitudes of truthfulness and integrity in an accountants practice, including tax work which is highlighted in the codes of practice set out by the Accounting bodies and the Code of Professional Conduct under the *Tax Agents Services Act 2009*. For the purpose of this study Lewis’s definition of ethics is adopted.

2.2 Professional Standards for Tax Practitioners under the Code of Conduct

So having a formal code of conduct for tax practitioners as introduced in Australia, should presumably have an influence on ethics and behaviour. However, there has been opposition and resistance to these standards and codes, and some believe that moral intensity is issue specific and is not dependent on the characteristics of the individual or the context, such as, an organisation’s culture or code of conduct.¹⁵ Where the tax practitioners’ loyalty lies, is also disputed. The IRS maintains that the tax practitioners loyalty should be to the Federal tax system but the American Institute of CPA’s (AICPA) recognises that CPA’s have responsibility to both the client and the IRS.

Professional commitment has been defined as the intensity of an individual’s identification and level of involvement in a profession.¹⁶ This identification requires some level of agreement with the goals and values of a profession including the moral and ethical values. Commitment as defined in the accounting literature is (a) a belief in and acceptance of the goals and values of the profession (b) a willingness to exert considerable effort on behalf of the profession and (c) a desire to maintain membership in the profession.¹⁷ It has been discovered that research in accounting

¹¹ To register as a tax agent in Australia, requires basically completion of three components. First a primary qualification in accounting/law or a related discipline, second, completion of an approved Tax Practitioners Board course and third, relevant minimum experience, of one year with qualifications and up to eight years without. See http://www.tpb.gov.au/TPB/Qualifications_and_experience

¹² P. V. Lewis, “Defining Business Ethics: Like Nailing Jello to a Wall,” (1985), 4, *Journal of Business Ethics*, 377.

¹³ Ibid 381.

¹⁴ Marshall et al, above n 2, 1266.

¹⁵ T, M, Jones, “Ethical Decision making by Individuals in Organisations: An Issue Contingent Model,” (1991), 16, *Academy of Management Journal*, 366.

¹⁶ R T Mowday L W Porter, R M Steers, “*Employee-Organisation Linkages*,” *The Psychology of Commitment absenteeism and Turnover*, (Academic Press, New York 1982).

¹⁷ N Aranya, J Pollock, and J Amernic, “An Examination of Professional Commitment in Public Accounting,” (1981), 6, *Accounting Organisations and Society*, 271, N Aranya, and K R Ferris, “A Re-examination of Accountants Organisational-Professional Conflict,” (1984), Vol. LIX No 1, *The Accounting Review*, 1, A, Harrell, E Chewing, and M, Taylor, “Organisational –Professional Conflict and the Job Satisfaction and Turnover Intentions of Internal Auditors,” (1986), 5, *Auditing: A Journal*

situations support a positive relationship between ethical behaviour and professional commitment.¹⁸

Taking the definition of professional commitment and applying it strictly to the standards stipulated in the Code of Professional Conduct a number of integrity issues emerge. High on the list is the honesty and independence of tax practitioners. Support can be found in Tan's¹⁹ study who investigated the practitioners' and business taxpayers' roles and relationship. Tan found that the qualities of good practitioners as perceived by taxpayers are competency, honesty, trustworthiness, good communication skills and acting in the interest of the client.²⁰ Sakurai and Braithwaite²¹ also found that taxpayers' ideal tax advisors were people who were honest and who could be trusted. An example of failing to meet the professional standard of honesty and independence was also published in a recent TPB report²² where it was found that a BAS agent had lodged false activity statements and used another person's tax agent portal. Clearly this was a case of where the agent had failed in their duty of complying with the code.

Professional standards also require that tax practitioners are competent in carrying out their work. Past research²³ has indicated that the key reasons for seeking tax assistance are: the perception of audit risk, reduction in tax liability or overall accuracy and absence of errors. Consequently, it is important that tax practitioners provide a quality service that caters for all these technical areas. In this regard the tax practitioners must meet the qualifications and experience requirement under the code. This can include work as a registered tax agent, under the supervision and control of a registered agent, an Australian legal practitioner or another kind approved by the TPB.²⁴ An example of a breach of these requirements was also found in a TBP publication²⁵ where there was insufficient evidence brought by the agent to prove his experience and therefore his competence in carrying out his duties.

of Practice and Theory, 109, C McGregor, L Killough, and R Brown, "An Investigation of Organisational – Professional Conflict in Management Accounting, (1989), 1, *Journal of Management Accounting Research*, 104 and W Meixner, and D Blin, "Professional and Job-Related Attitudes and the Behaviours They Influence Among Government Accountants," (1989), 2, *Accounting Auditing and Accountability Journal*, 8.

¹⁸ Ibid.

¹⁹ L M Tan Towards an understanding of tax practitioner –client role relationship: A role analysis Doctoral thesis, Australian National University, 2009, 215.

²⁰ Tan (2009) as cited in Gupta, R, *Taxpayers' Perceptions of the Tax Adviser Services: Evidence from New Zealand*, 11th International Conference on Tax Administration, April 14-15, 2014.

²¹ Y Sakurai and V Braithwaite, "Tax Payers Perceptions of Practitioners: Finding one who is effective and does the right thing?" (2003), 46; 3, *Journal of Business Ethics*, 375 as cited in Gupta (2014).

²² Tax Practitioners Board *Summary of Penalties, Sanctions and Terminations*, Edition 2, Cth of Australia, Canberra, 2013, 6.

²³ K W Smith and K A Kinsey, "Tax Preparer Compliance : Some Empirical Evidence (Paper presented at the 12th Annual Convention of the Eastern Economic Association, Philadelphia, 10 April 1986), J H Collins, V C Milliron and DR Toy, "Factors Associated with Household Demand for Preparers" (1990) 12 (Fall) *Journal of the American taxation Association* 9; K A Kinsey, "Advocacy and Perception: The Structure of Tax Practice (1987), August , Working paper American Bar Association , Chicago II, S Kepper, M Azur and D Nagin, "Expert Intermediaries and legal compliance: The case of Tax preparers" (1991) 34 (April) *Journal of Law and Economics*.

²⁴ See above n 11.

²⁵ Tax Practitioners Board *Summary of Penalties, Sanctions and Terminations*, Edition 2, Cwlth of Australia, Canberra, 2013, 9.

Client confidentiality although not evident to a large degree in the literature is also held in high regard as part of the Code of Conduct. Generally this is understood as part of the requirements of legal professional privilege between a client and his advisor. The confidentiality of client information is paramount as is the case in any client/adviser relationship.

The proper administration of the tax laws is also vital. A recent TPB investigation revealed that a registered BAS agent had breached the code by failing to lodge income tax returns over a period of ten years. The TPB were of the view that this demonstrated a serious lack of appreciation and regard for the tax laws. Based on the agents conduct the TPB indicated that this behaviour displayed a lack of integrity and character and that the tax practitioner was not a fit and proper person to be registered as a BAS agent.²⁶

2.3 Penalties for Tax Practitioners under the Code of Conduct

Issues surrounding the likelihood of receiving an audit and the imposition of penalties can also impact upon and influence tax practitioner ethics. An Australian study by Marshall et al,²⁷ investigated the role of tax agents as preparers of tax returns and providers of professional advice. A mail survey of some 2000 tax agents in Western Australia was undertaken presenting respondents with realistic tax return scenarios in which demands of clients varied according to audit risk, the severity of tax law and the materiality of dollar amounts involved. The findings indicated that only the severity of tax law violations was an important factor in the tax professionals' ethical decision making. That is, perceptions of tax laws and the penalties were stronger than perceptions of enforcement activities and the probability of detection as directed by the Australian Taxation Office (ATO).

Roberts²⁸ also found that amongst other factors, tax accountants' personal factors, economic and environmental risk of audit and penalties and client risk preference were all significant. These results confirmed that tax accountants were subject to both internal and external factors which affected their compliance attitudes, with audit and penalties being particularly highlighted. Other studies have also shown that there is lower compliance in returns prepared by practitioners if preparer penalty fines are low.²⁹ The deterrent of having a substantive penalty in order to maintain tax practitioner ethics and behaviour is also in line with any professional code of conduct.

The level of aggressiveness or conservativeness of a practitioner and the willingness to take risks may also be influenced by the effectiveness of audit or penalties. LaRue and Reckers³⁰ and Duncan et al,³¹ determined that the perceived likelihood of an

²⁶ Ibid 16.

²⁷ R. Marshall et al above n 10.

²⁸ M L, Roberts, "Tax Accountants' Judgement Decision Making Research: A Review and Synthesis," (1998), *The Journal of the American Taxation Association*, Vol.20, No 1, 78.

²⁹ S. G., Nienaber, "Factors that could influence the ethical behaviour of tax professionals," (2010), Vol. 18, No. 1, *Meditari Accounting Research*, 33.

³⁰ D. La Rue & P. M. J. Reckers, "An empirical examination of the influence of selected factors on professional tax preparers' decision process," (1989), *7 Advances in Accounting*, 37.

³¹ W A Duncan, D La Rue and PMJ Reckers, "An Empirical Examination of the Influence of Selected Economic and Non-Economic Variables in Decision Making by Tax Professionals in Sally M Jones

IRS audit had no effect on CPAs willingness to encourage aggressive reporting but that the perceived likelihood of success in the actual event of an audit and penalty, did affect their aggressiveness.

In this regard, it is important that penalties be clear and enforced. This was found to be the case in a study by Reckers et al,³² where CPAs were more conservative when the threat of preparer penalties was explicit. By contrast, Cuccia³³ found that increased penalties for paid preparers had little effect on how aggressively they interpreted ambiguous issues. Erard's³⁴ study found that a group of CPAs and tax lawyers were given very wide latitude in their interpretation of ambiguous features of the tax code. For example a CPA member would take any tax position as long as there was a realistic possibility of it being sustained either administratively or judicially, if challenged.³⁵

However, in addition to the literature general support for the application of penalties in curbing tax practitioner behaviour and ethics can be found in the imposition of both administrative sanctions and civil penalties under the code of conduct. The severity of the sanction depends on the nature and extent of the breach and the individual circumstances of each case. The actual sanction for the breach of the code can include; a written caution, an order, injunction, suspension or termination of registration. The civil penalties for individuals engaging in prohibited conduct can range from 50 to 250 penalty units (\$27,500) while corporates are up to five times this amount 1,250 penalty units (\$137,500).³⁶ Criminal penalties can result in a term of 2 years imprisonment.

An application of the harshness of the penalties can best be illustrated with a recent TPB case where a registered tax agent was convicted of four offences of dishonestly obtaining a financial advantage from the ATO and was sentenced to 20 months imprisonment. As stipulated under s 20-45 of the TASA a tax agent who is convicted of a serious taxation offence involving fraud or dishonesty and has been sentenced to a term of imprisonment, as in this case, may affect an agent's continued registration.³⁷

In another case, an unregistered BAS agent had prepared and lodged 49 income tax and BAS's for a fee while he was not registered. In considering the penalty the Court found that the contraventions were deliberate as the agent consciously misused a registered tax agent's portal without the agent's knowledge. The convicted agent was fined \$30,000 for breaches of the TASA.³⁸ In relation to the latter case Ian Taylor, Chair of the TPB indicated that;

(ed) *Advances in Taxation*, (JAI Press, Greenwich, 1989) 2, 94 and J F Reinganum and L L Wilde, "Equilibrium Enforcement and Compliance in the Presence of Tax Practitioners," (1991), 7, *Journal of Law Economics and Organisation*, 163.

³² P.M.J., Reckers P.M.L Sanders & R. W. Wyndelts, "An empirical investigation of factors influencing tax practitioner compliance," (1991), 13: *The Journal of the American Taxation Association*, 30.

³³ A, D, Cuccia, "The Effects of Increased Sanctions on Paid Tax Preparers: Integrating Economic and Psychological Factors," (1994), 16: *The Journal of the American Taxation Association*, 41.

³⁴ Erard above n 5.

³⁵ Ibid 168.

³⁶ Exposure Draft; *Tax Agents Services Bill 2008*, Chapter 4 Civil penalties and injunctions, 56.

³⁷ Tax Practitioners Board *Summary of Penalties, Sanctions and Terminations*, Edition 2, (Cth) of Australia, Canberra, 2013, 15.

³⁸ Ibid 8.

“One of our key priorities is to protect the community from the actions of unregistered agents. We encourage consumers to use services provided by registered tax and BAS agents. Registered agents are bound by a Code of Professional Conduct and must meet standards of ethical and professional behaviour....

If consumers are going to engage a BAS or Tax Agent, including preparing and lodging tax returns, they should check first that their agent is registered. The TPB maintains a register on our website for the purpose of checking the registration status of an agent.”³⁹

2.4 Other Ethical Issues facing Tax Practitioners under the Code of Conduct

Tax practitioners are faced with a number of ethical dilemmas and issues purely as a result of the nature of the work they do. Invariably, they are asked to advise clients or prepare tax returns which compromise their situation. A number of studies which have focused on tax practitioner ethics have produced mixed results on a number of ethical issues. In particular, according to Magill & Perevits⁴⁰ there is a gap in society’s views and expectations of practitioners and the views of those in the profession which is a major concern for public accounting. Likewise Christensen’s⁴¹ study aptly pointed out that tax advisers’ perceptions of what clients’ expect from a quality service differ significantly from client’s expectations. The high expectations of the public may not be met by those who are practising and as a result there is a discrepancy in the views of each.

Duncan et al⁴² found that the client’s risk orientation was significantly related to the position adopted by the tax consultant but in a surprisingly counterintuitive fashion. That is, the more timid the taxpayer the more aggressive the consultant and the more aggressive the taxpayer, the less strong the position recommended by the consultant. If this result is confirmed, it suggests that taxpayers may serve to moderate tax practitioners’ ethical views and behaviour.

Roberts⁴³ also revealed important findings with regard to client risk preference in a number of studies. For example, three other studies of tax accountants’ decisions, Cloyd,⁴⁴ Cuccia et al,⁴⁵ and Schisler⁴⁶ all indicated a tendency to recommend more aggressive positions when taxpayers are described as more aggressive (risk seeking). This contention was also supported by Fin et al,⁴⁷ who found amongst American CPA’s that the major ethical problem they faced was a client’s proposal of tax alteration and /or tax fraud.

³⁹ TPB above n 37.

⁴⁰ H.T., Magill, and G J., Previts, *Professional Responsibilities: An Introduction*, (South Western –Pub-Cincinnati, 1991).

⁴¹ AL Christensen, “Evaluation of Tax Services: A Client and Preparer Perspective” (1992) 14:2 *Journal of the American Taxation Association*, 60 as cited in Gupta 2014.

⁴² Duncan et al above n 31.

⁴³ Roberts above n 28.

⁴⁴ C. B., Cloyd, “The effects of financial accounting conformity on recommendations of tax preparers,” (1995), 17(2): *The Journal of the American Taxation Association*, 50.

⁴⁵ A D Cuccia, K, Hackenbrack, and M, W Nelson, “The Ability of Professional Standards to Mitigate Aggressive Reporting,” (1995), 70, (2), *The Accounting Review*, 227.

⁴⁶ D. L., Schisler, “An Experimental Examination of Factors Affecting Tax Preparers’ Aggressiveness - A Prospect Theory Approach,” (1994), 16(2), *The Journal of the American Taxation Association*, 124.

⁴⁷ D W, Finn, L.B. Chonko, & S. D., Hunt, “Ethical problems in public accounting: the view from the top,” (1988), 7: *Journal of Business Ethics*, 605.

In contrast Duncan et al,⁴⁸ indicated that tax accountants encourage aggressive positions more for clients who have a tax minimization goal but are described as conservative (risk averse/neutral) for clients that do not need persuading. Further, Burns and Kiecker⁴⁹ found that if client's pressure increased it had a definite effect on tax practitioners' ethics. Accordingly, the results suggest that the risk attitudes of taxpayers themselves will be critical in determining what type of advice is ultimately provided by tax practitioners.

A recent study by Tan⁵⁰ found that the tax profession in New Zealand were perceived as having high ethical standards. In particular there was diversity in tax practitioners' characteristics and their perceptions of clients' sanctions risk and risk propensity. However, Tan found that tax practitioners with higher personal risk propensity are more willing to stretch the boundaries of the tax law towards the extreme end of the aggressiveness continuum for aggressive clients.

Bobek et al⁵¹ examined how the role of client advocacy influenced tax practitioners' decision processes and outcomes. The empirical results revealed that client characteristics influence tax professionals' advocacy attitudes. In particular, tax professionals may be unintentionally influenced by client attributes when making judgements and may have difficulty in separating their advocacy and evidence evaluation roles. Consequently, there appears to be strong evidence to suggest that client pressure and expectations influence tax practitioners' ethics and behaviour.

However, there have also been a number of related issues which have impacted upon tax practitioners' morals and ethical standards. One of these issues has been identified as the relatively growing trend of outsourcing taxation services overseas under minimal supervision. This has resulted in a reduction in fees for those practitioners who engage overseas suppliers as the cost is greatly diminished. The question has been the quality of the service provided and whether this has damaged the profession and is acceptable under the code of conduct. An American study by Chang and Bird⁵² found that actual tax and time saving, the accuracy of returns and quick accessibility of services were more important than the professional image. Consequently, where and by whom the services were performed was not critical and therefore outsourcing would not be perceived as a problem.

Another issue is the privacy of taxpayer information which has been paramount in all tax practitioner- client dealings. Similar to confidentiality discussed previously, privacy is protected by the *Privacy Act (1988)* and related legislation. Nevertheless, with the expansion of sophisticated software and recording keeping devices it is important that high standards are maintained. One example has been the

⁴⁸ Duncan et al above n 31.

⁴⁹ J. O., Burns, and P., Kiecker, "Tax Practitioner Ethics: An Empirical Investigation of Organizational Consequences," (1995), Vol.47, No. 2, *The Journal of American Taxation Association*, 20.

⁵⁰ L M Tan, "Giving advice under ambiguity in a tax setting," (2011), 26, *Australian Tax Forum*, 73.

⁵¹ D Bobek and R Radtke, "An Experimental Investigation of Tax Professionals,' Ethical Environments," (2007), 29 (2), *The Journal of the American Taxation Association*, 63 and D. Bobek A M Hageman, and R C, Hatfield, "The Role of Client Advocacy in the Development of Tax Professionals Advice," (2010), 32 (1), *The Journal of the American Accounting Association*, 25.

⁵² O H Change and C J Bird, "What clients really want from their tax preparers," (1993) 52:4 *The Ohio CPA Journal*, 21 as cited in Gupta (2014).

emergence of Cloud computing and how this effects tax practitioners in meeting their obligations under the code.⁵³ There had been some antidotel evidence that the Cloud was jeopardising client privacy but as this has been fairly recent it is still too early to verify.

The issue of making declarations and false statements has been an on-going one for the tax profession and also needs to be investigated. For example in a recent Media Release,⁵⁴ a tax practitioner who had lodged 90 individual tax returns based on information received from two people representing themselves as being from a recruitment agency, failed to seek any declarations from them to confirm that the information was true and correct. This resulted in the TBP terminating the agent's registration and banning him from reapplying for 3 years. The court took into consideration the fact that the tax agent had lost his livelihood and did not impose a pecuniary penalty. The chair of the TPB Mr Taylor, also indicated in this regard;

*"It is the responsibility of all registered tax practitioners to take reasonable care to ensure the information provided by their client is accurate. They need to ask questions, consider the answers, and form a professional judgement. There are serious consequences for registered agents who breach the Tax Agents Services Act 2009 and the Code of Professional Conduct."*⁵⁵

The other issue worth considering which has also been evident for some time is the transfer of client information between tax practitioners. Despite the fact that there is no longer a requirement for an engagement letter tax practitioners still expect that relevant documents (i.e. the client's tax return, financial records, depreciation schedules etc.) would be passed on with a change of accountant as a matter of protocol. Along with the passing of client information comes the passing of relevant tax practitioner information to the TPB. Failure to do so can also result in a breach of the Code as found in the case of an agent who was an undischarged bankrupt. Under s 20-45 of the TASA becoming an undischarged bankrupt and failing to notify the TPB resulted in the termination of the agent's registration.⁵⁶

2.5 Demographics and Personal Characteristics of Tax Practitioners

In conjunction with professional standards, penalties and other ethical issues, the tax practitioners' own personal characteristics and attributes may also influence their compliance and commitment with the code of conduct.

In interacting with human beings, tax practitioners also have a number of personal characteristics which according to Hunt and Vitell⁵⁷ is one of the major factors influencing ethics. However, the impact of demographic factors has been qualified according to some previous studies. For example, Cuccia,⁵⁸ Schisler,⁵⁹ and Duncan,

⁵³ Tax Institute, Tax Vine Newsletter 4 December 2015.

⁵⁴ TPB- Media Release 19 March 2015- "Misconduct results in termination of tax agent registration."

See http://www.tpb.gov.au/TPB/Publications_and_legislation/summary

⁵⁵ Ibid.

⁵⁶ Tax Practitioners Board *Summary of Penalties, Sanctions and Terminations*, Edition 2, (Clth) of Australia, Canberra, 2013, 19.

⁵⁷ S. D. Hunt and S. J. Vitell, "A General Theory of Marketing Ethics," (1986), 6, *Journal of Macromarketing*, 5.

⁵⁸ Cuccia above n 33.

LaRue and Reckers⁶⁰ generally found minimal or no effects of demographic characteristics on CPA aggressiveness. Gilligan⁶¹ initially correlated ethics with gender but subsequent research has challenged this result and now suggests that while different types of moral reasoning exist they are not gender dependent.⁶² Mixed results have also been found between age and moral reasoning where Elm and Nichols⁶³ found a negative correlation while Weber and Wasieleski⁶⁴ and Glover et al⁶⁵ found that no correlation existed.

In addition to the more common demographics of age and gender, in analysing Australian tax practitioner ethics, it is suggested that location would be a useful variable given the large number of tax practitioners in Australia.⁶⁶ The legal structure (type of entity- i.e. partnership, trust, company or sole trader) under which tax practitioners operate could also be important. In particular, the tax practitioners need for limited liability, asset protection and the division of duties. Although there is scarce literature in support of these variables impacting upon tax preparers as evidenced by Jackson and Milliron⁶⁷ in 1986 and Richardson and Sawyer⁶⁸ in 2001 reviews, they are nevertheless included as part of the wider scope of this study.

Another demographic which could impact upon tax practitioner ethical commitment is that of designation and affiliation. There have been a number of studies which have focused on the factors which cause tax practitioners of separate affiliation or designation to act or advise clients differently. For example, in an examination of tax partners and non-partner tax practitioners, Bobek et al⁶⁹ indicated that tax partners rated their ethical environment as stronger than non-tax partner practitioners. The evidence also indicated that non-partner tax practitioners perceived certain ethical dilemmas at a higher rate. The results confirmed a divide between practitioner types and importantly the potential impact of designation upon tax practitioner ethics.

Tax practitioner type or affiliation has also been found to be significantly associated with ethical recognition. Specifically, it was found by Yetmar and Eastman,⁷⁰ that

⁵⁹ Schisler above n 46.

⁶⁰ Duncan, above n 31.

⁶¹ C. Gilligan, *"In a different voice: Psychological theory and women's development,"* (1982) Cambridge, MA: Harvard University Press.

⁶² See R. Derry, "An empirical study of moral reasoning among managers," (1989), 8 (11), *Journal of Business Ethics*, 855 M L Ambrose, & M Schminke, "Sex differences in business ethics: The importance of perceptions," (1999), 11(4), *Journal of Managerial Issues*, 54 and J Weber, & D Wasieleski, "Investigating influences on managers' moral reasoning: The impact of context and personal organisation factors," (2001), 40(1), *Business and Society*, 79.

⁶³ D R Elm and M L Nichols, "An investigation of the moral reasoning of managers," (1993), 13, *Journal of Business Ethics*, 817.

⁶⁴ Weber, & Wasieleski, above n 62.

⁶⁵ S H Glover, , M A, Bumpus, J, E Logan, & J. R, Ciesla, "Re-examining the influence of individual values on ethical decision making," (1997), 16, *Journal of Business Ethics*, 1319.

⁶⁶ C. Clotfelter, "Tax Evasion and Tax Rates: An Analysis of Individual Tax Returns," (1983), *The Review of Economics and Statistics*, 363.

⁶⁷ B. R., Jackson, and V. C., Milliron, "Tax Compliance Research: Findings, Problems and Prospects," (1986), Vol. 5, *Journal of Accounting Literature*, 125.

⁶⁸ M., Richardson, and A. J., Sawyer, "A Taxonomy of the Tax Compliance Literature: Further Findings, Problems and Prospects," (2001), Vol. 16, *Australian Tax Forum*, 37.

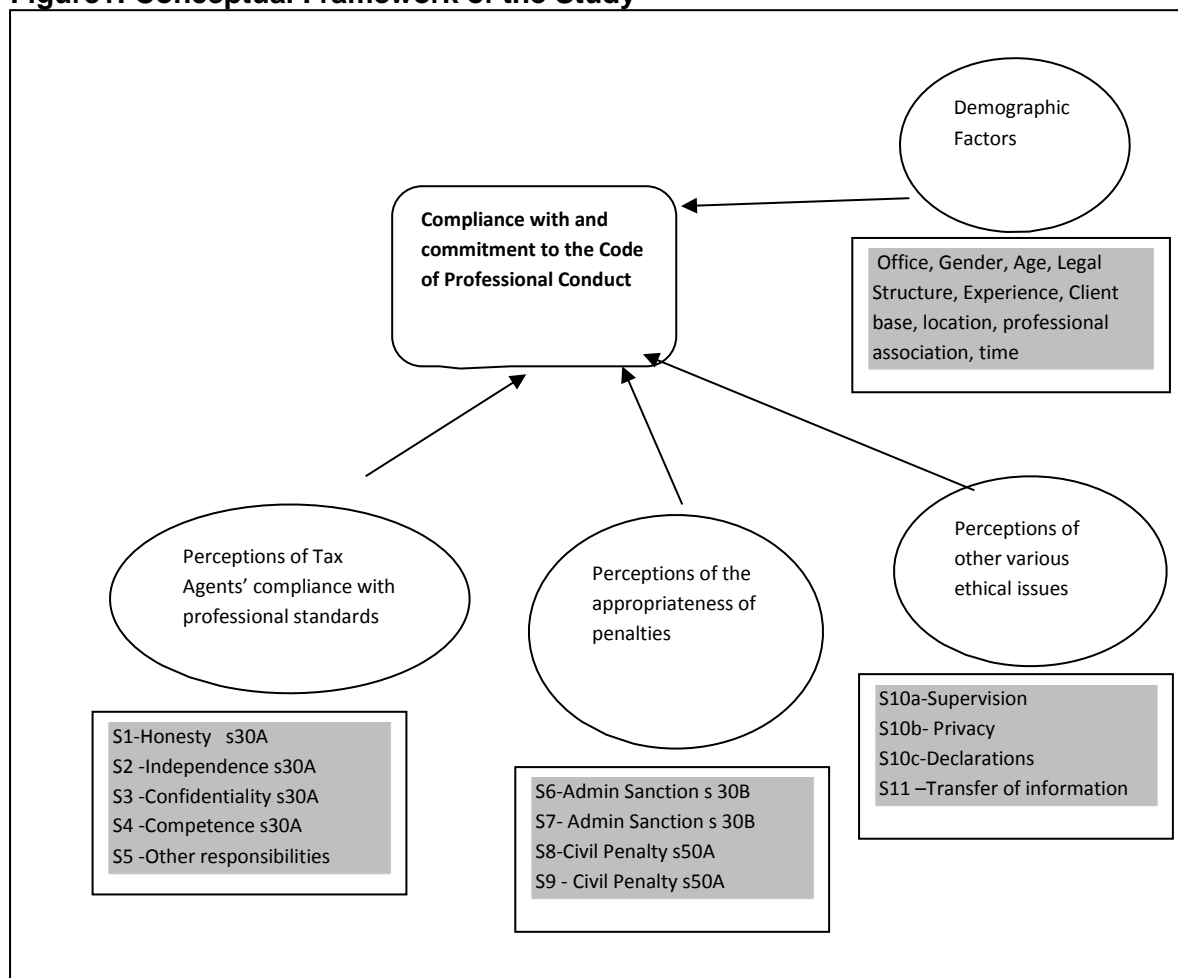
⁶⁹ D Bobek and R Radtke above n 51.

⁷⁰ S A Yetmar and K K Eastman, "Tax Practitioners' Ethical Sensitivity: A Model and Empirical Examination," (2000), 26, 4, *Journal of Business Ethics*, 271.

there were significant ethical recognition differences between tax practitioners from the Big 6 verses non-Big 6 firms. Burns and Kiecker⁷¹ investigation of CPA's attitudes towards unethical actions taken by tax practitioner's, shows that unethical behaviour was viewed more leniently if the behaviour had favourable consequences for the CPA's firm. The results suggested that tax supervisor's ethical judgements are dependent upon both deontological and teleological considerations. A related affiliation issue has been the type of client engaged. Mixed findings have been reported with regards to the importance and size of the client. Reckers et al.⁷² found that less important taxpayers were more likely to receive conservative advice from CPA's whereas Bandy et al⁷³ found that the economic importance of the taxpayer had little or no effect on CPA advice.

3. Research Design

Figure1: Conceptual Framework of the Study



⁷¹ J. O., Burns, and P., Kiecker, "Tax Practitioner Ethics: An Empirical Investigation of Organizational Consequences," (1995), Vol.47, No. 2, *The Journal of American Taxation Association*, 20.

⁷² Reckers et al above n 31.

⁷³ D Bandy L Betancourt, & C Kelliher, "An empirical study of the objectivity of CPAs' tax work," (1994), 6: *Advances in Taxation*, 1.

3.1 Conceptual Framework

The underlying purpose of this study was to ascertain tax practitioners' commitment to and compliance with the Code of Professional Conduct under the TASA (2009). In particular the study aimed to reveal whether there was any association between tax practitioners' commitment/compliance to the code and their perceptions of; professional standards, the appropriateness of penalties, other specific ethical issues and demographic factors. The study extends previous research and contributes to the existing literature by providing some specific empirical evidence regarding the operation and effectiveness of the Code approximately 5 years since its introduction.

Based on a review of the tax practitioner theory and literature and the Code of Conduct the above conceptual framework was developed. Four specific groupings were identified as influencing tax practitioners' commitment and compliance with the Code of Conduct. The four groups come under the general headings of; professional standards, penalties, other ethical issues and demographics. Under the first two groups are sets of scenarios depicted on key elements of the Code. The third group has a set of scenarios based on specific ethical issues while the fourth group includes an expanded list of demographic factors relevant to tax practitioners.

3.2 Research Questions

Based on the developed conceptual framework the study endeavour's to answer the following four research questions (RQ):

- RQ1 Does tax practitioners' perceptions of the professional standards under the Code of Professional Conduct effect/influence their own commitment/compliance with the code?
- RQ2 Does tax practitioners' perceptions of the appropriateness of particular penalties under the Code of Professional Conduct effect/influence their own commitment/compliance with the code?
- RQ3 Does tax practitioners' perceptions of particular ethical issues they may encounter in their work effect/influence their own commitment/compliance with the code?
- RQ4 Does Australian tax practitioners' demographic characteristics effect/influence their own commitment/compliance with the code?

3.3 Research Methodology

A mixed method design was employed incorporating both an electronic survey and telephone interviews.

3.3.1 The Survey Instrument

In order to address the research questions posed above, an electronic survey instrument was developed and distributed to selected Australian tax practitioners via

a web link.⁷⁴ The entire survey instrument comprised 22 questions with an opportunity to provide comments both during and at the end of the survey. The survey contained three main parts including Part 1: Perceptions of tax agents' compliance with professional standards, Part 2: Perceptions of the appropriateness of penalties and Part 3: Perceptions of other ethical issues. Demographic details were gathered at the end. A five point Likert scale ranging from strongly agree to strongly disagree for scenarios 1-11 was implemented. Some of the questions were adapted from the *Exposure Draft Tax Agents Services Bill 2008 (Cth)*.

3.3.2 Survey Sample

The survey was distributed to Australian tax practitioners via four separate avenues and remained open for a period of 8 weeks during September to November 2015.⁷⁵ The first avenue was through a market research company who employed a panel provider. The survey instrument was given a soft launch to test initial response and then an extended distribution of around 10 days including one reminder yielded a response rate of 13.66% (i.e. 150 of 1,098 possible panel participants) was received by mid- September, 2015. This was followed by the distribution of the survey link and attached explanatory statement to the web address of 50 publically listed tax practitioners in the Yellow Pages directory. This second avenue produced a response rate of 12% (6/50) by early October 2015. The third avenue involved the researcher distributing the survey link via their own LinkedIn professional network of tax practitioners. This produced an effective response rate of 46% (23/50) by mid October 2015.

Finally in late October, 2015, a reference to the survey link was made in the Tax Practitioners Board's (TPB) October e-newsletter. This newsletter went out to 45,000 recipients of which 18,000 had opened the TPB e-news which had a further 248 recipients click on the link.⁷⁶ 48/248 actually completed the survey resulting in a response rate of 19% by early November 2015. Of the total 227 responses received 13 were found to be invalid leaving 214 usable surveys. This resulted in an overall response rate from all four avenues of 14.80% (214/1446) n= 214 by the 12 November 2015, when it was closed off. Every attempt was made to increase the potential sample size and effective response rate given the limited resources and time of the researcher. Having obtained an overall response rate of 14.8% and despite being slightly lower than previous studies,⁷⁷ it was still considered satisfactory and acceptable for tax practitioner surveys which is a notoriously difficult cohort.

A limitation of self-reports is the possibility of non-response bias and in this case the issue of socially desirable response bias⁷⁸ of the tax practitioners. Inaccurate and incomplete responses can also be an issue. However, while additional follow-ups

⁷⁴ The software version used was Qualtrics.

⁷⁵ Human Ethics clearance was obtained from the University's Human Research Ethics Committee – Project Number CF12/0965-2012000443

⁷⁶ Email notification received from Peter Lechlein the Communications Director at the Tax Practitioners Board on 6/11/15.

⁷⁷ Tan (2011) 32%, Attwell and Sawyer (2001) 31% Marshall et al (2010) 23% Gupta (2014) 14% Oxley (1993) 29% and Hasseldine et al (1994) 22%.

⁷⁸ Practitioners basically answering questions based on what they think they should answer according to professional and socially acceptable attitudes.

were instigated the non-response bias, if any, of those who chose not to participate was negated somewhat by the additional responses received over the eight week period. These and other concerns were also addressed by combining this quantitative approach with a qualitative approach. In addition to the survey responses, 10 tax practitioners were happy to express their views in a telephone interview after voluntarily providing their contact details and completing the required consent forms. While the interviews were few in number, combined with the surveys, the validity and reliability of the overall findings improved.

3.3.3 Interview Protocol

As indicated previously, 10 of the 214 survey respondents also agreed to further share their views in a telephone interview having provided their contact details as part of the additional comments on the survey. A semi-structured interview of approximately 30 to 40 minutes duration was conducted covering the three main themes investigated in the survey instrument. These comprised; Part 1: Perceptions of tax agents' compliance with professional standards, Part 2: Perceptions of the appropriateness of penalties and Part 3: Perceptions of other ethical issues.

The demographics of participants were not considered in qualitative analysis. Interviewees were encouraged to elaborate and expand upon their responses including, providing any further comments they had in relation to the open ended questions on the survey instrument. Interviewer notes were cross-checked with the transcripts with no discrepancies discovered. A thematic analysis⁷⁹ was employed in evaluating the interview transcripts. Overall the objective of the interviews was to support prior research on the issues raised and allow room for new issues to emerge⁸⁰ but also to cross check with the survey results to complement and enhance cross-validation. Interviewees were coded as an "I" followed by a number.

The preceding analysis in section four initially comprises some descriptive statistics in terms of frequencies, and percentages of respondent demographics. This is followed by a combined discussion and analysis of the statistical results and the interview findings.

⁷⁹ See R E Boyatzis, "*Transforming qualitative information: Thematic analysis and code Development*," (1998), Thousand Oaks, CA Sage.

⁸⁰ D R Elim, and T J Radin, "Ethical Decision Making: Special or No Different?" (2012), 107: *Journal of Business Ethics*, 313.

4. Discussion and Analysis of Statistical Results and Interview Findings

4.1 Descriptive Statistics

Table 1: Respondents Profile - Demographics

Demographic variable examined	Frequency	%	Mean	St Dev
Q13 Which of the following best describes the office you work in?				
1. Sole practitioner	76	36%		
2. 2-5 partners	39	18%		
3. 6 or more partners	12	6%		
4. Directors, if a company	14	7%		
5 Management role	25	12%		
6. Tax Consultant/Agent	19	9%		
7 Other (please state)	29	14%		
Total	214	100%	N/A	N/A
Q14 What is your gender?				
1. Male	143	67%		
2. Female	70	33%		
Total	213	100%		
Q15 What is your age in full years?				
20-29 years	18	8%		
30-39 years	42	20%		
40-49 years	53	25%		
50-59 years	59	28%		
60-69 years	35	16%		
70-79 years	6	3%		
Total	213	100%	46 yrs	N/A
Q16 What legal structure does your entity operate under?				
1.Limited Liability Company	108	51%		
2. Partnership	34	16%		
3. Sole Trader	49	23%		
4. Other (please specify)	22	10%		
Total	213	100%	N/A	N/A
Q20 Where are you located?				
1. NSW	74	35%		
2.VIC	74	35%		
3.QLD	37	17%		
4.SA	6	3%		
5.WA	16	7%		
6.TAS	4	2%		
7.NT	0	0%		
8.ACT	3	1%		
Total	214	100%	N/A	N/A
Q21 Please indicate your professional association/s. If more	Frequency	%	Mean	St Dev

than one please indicate all				
1. CPA Australia (CPA)	67	34%		
2. Chartered Accountants Australia and New Zealand (CAANZ)	37	19%		
3. Taxation Institute (TI)	22	11%		
4. Other (please state)	24	12%		
5 Not a member of a professional association	47	24%		
Total	197	100%	N/A	N/A
Q22 What is your nationality?				
1. Australian	185	87%		
2. European	7	3%		
3. Asian	11	5%		
4. Asia/Pacific	2	1%		
5 British	3	1%		
6. Other (please state)	4	2%		
Total	212	100%	N/A	N/A

The breakdown of the demographic data indicates that the majority were males (67%), of Australian origin (87%) and located in either NSW or Victoria (70%) as expected. These figures are also fairly representative of the Australian tax practitioner population.⁸¹ The preferred legal structure was a limited liability company (51%) while the office of sole practitioner (36%) and a small partnership (18%) were the most popular of the options provided. It is noted that other option in Q13 comprising (14%) indicated that were also a large number of retirees.

The figures also reveal that the majority of tax practitioners were between the age of 30 and 60 years (73%) with an average age of 46 years. This is not surprising given that very few younger graduates are taking up tax practices illustrated by only (8%) in the 20-29, age-bracket. It also suggests that the number of accountants that will be practising tax in the future will continue to decline⁸² with potentially only larger firms being left to service clients. The most common designation was CPA Australia with (34%) of the sample as expected given its large membership. An interesting statistic was that a further 24% were not a member of a professional association at all. This result may have implications for the level of training and the maintenance of professional standards. Other results indicated that (32%) of respondents had less than 5 years' experience in providing tax advice, and that (35%) of respondents spent less than 24% of their work time on tax related matters servicing clients who were mainly either self-employed (31%) or Small Medium Enterprises (SMEs) 36%.

⁸¹ Tax Practitioners Board Annual Report 2015.

⁸² See CPA Australia *Annual Report 2012* (Southbank 2013) which indicates a decline in the number of tax practitioners under 40 years of age.

4.2 Professional Standards under the Code of Conduct

Table 2: Perceptions of Commitment/Compliance with the Professional standards

Survey Question	1	2	3	4	5	Mean	SD
Scenario 1: Honesty and Integrity- Subdivision 30 A Section 30-10(1)-(3) of the Code	67%	25%	5%	2%	1%	1.44	0.75
Scenario 2: Independence Subdivision 30 A Section 30-10(4)-(5) of the Code	25%	47%	21%	6%	1%	2.08	0.84
Scenario 3: Confidentiality Subdivision 30 A Section 30-10(6) of the Code	44%	40%	11%	4%	1%	1.76	0.84
Scenario 4: Competence Subdivision 30 A Section 30-10(7)-(10) of the Code	10%	24%	28%	23%	15%	3.07	1.21
Scenario 5: Other responsibilities -proper administration of the taxation laws Section 30-10(11)-(14) of the Code	38%	41%	15%	5%	1%	1.93	0.97

Legend: (1 =strongly agree to 5= strongly disagree)

In section one of the survey instrument five specific scenarios were provided to participants to gauge their commitment to and compliance with professional standards depicted in the Code of Professional Conduct under the TASA 2009. About (153, 92%) of tax practitioners perceived the client's actions in scenario one to have violated the principle of honesty and integrity (mean =1.44; SD=0.75). A further (163, 72%) of respondents indicated that the actions of the registered tax partnership in scenario two displayed a lack of independence and a breach of the tax laws (mean =2.08; SD=0.84). The failure to disclose arrangements to a client or seek their permission in scenario three was also perceived by (189, 84%) as a breach of confidentiality (mean =1.76; SD=0.84).

However, mixed results where (63, 28%) neither agreed nor disagreed that the scope of a tax practitioner's engagement in scenario four indicated a lack of competence on their part. With a further 24% and 23% agreeing and disagreeing respectively respondents were generally divided as to the tax practitioner's professional obligation to go beyond their engagement (mean =3.07; SD=1.21). It was clear from scenario five that (104, 79%) perceived that the failure of the tax agent to provide timely information was an obstruction of the tax laws (mean =1.93; SD=0.97).

Insights gathered from the respondents' comments indicated the agent's behaviour in scenario one was fraudulent and illegal behaviour and "*dishonesty of the highest order*". Whereas in regards to the compliance issue in scenario two comments

indicated that while the majority disagreed with the practice there were some reservations regarding other factors that may have influenced this outcome.

To support the statistical findings, six further questions testing commitment to and compliance with professional standards were put to the ten interviewees. In particular firstly, the factors that impacted upon the honesty and integrity of tax practitioners were found to be generally client pressure and to a lesser degree the ATO and the administration of the practice. However, all interviewees did believe that the majority of tax practitioners were honest:

“Yeah well look, no, I think most agents are honest, and you know - because they've got a lot to lose. If they do the wrong thing there's a lot to lose, and you know if you lose your license in most cases you've lost your livelihood”. 15

Secondly, the segregation of personal financial affairs and that of the business was not found to be a problem. The majority of interviewees indicated that there was no conflict of interest and that it was not worth the risk. The comments surrounding independence were consistent with the statistical results in that regard.

Thirdly, concerning the confidentiality of client information the majority of interviewees were quite adamant that this was held in high regard and that in no circumstances were risks to be taken. There was generally a strong display of ethical duty to the client –practitioner relationship. The following were typical of the comments:

“No, I think pretty much the accountants that I know all adhere to that. I don't know anyone that has breached that or you know yeah I don't think that's an issue that's - not that I'm aware of anyway, and not in my circles.” 14

“No I'm very big on confidentiality you know. Because you can be caught out very easily on confidentiality, you know and people say well you know I found out some information - where did you get that? Oh the accountant told me, you know. That could get around. So you know I'm big on that. I'm very careful.” 15

Fourth, in testing the issue of tax practitioner competence, mixed findings from the interviews were consistent with the mixed statistical results. It was clear that while most practitioners recognised their capacity and expertise was limited there were a few who were prepared to venture beyond those boundaries. One practitioner indicated that this was driven by the Partners and Principles of the firms in order to generate larger fees. However, there was evidence of those who were happy to refer the work and declare that it was outside of their scope. This was not surprising in that those accountants were generally sole practitioners who operated small ventures:

“I have set the limits on what I can do. I was nearly going to toss super over until I got the arrangements with the auditor, because I didn't have the experience. But now we've got all that sorted out. I've actually set the limits for the size of the firm I will take, and I won't go any further. You've got to do it that way. Otherwise you get yourself too embroiled in somebody too big for a small practitioner and you get overwhelmed by say one or two and the practice suffers. So you've got to be able to

limit yourself to what you can cope with. If they don't fit within my guidelines, I've got to say no, because that's where I'm going to". 18

Fifth the issue of handling difficult clients was raised with the majority of tax practitioners indicating that they would discharge the client after an initial warning or educate the client over time. Difficult clients were found to be more the exception than the rule in most cases and some had been proactive in researching a new client before taking them on. A few practitioners had indicated that they get the difficult client to sign a declaration or agreement that the client take the liability for a particular course of action so as to cover themselves against any future claim:

So I mean sometimes you can't argue too much with them if they don't listen to you but in a sense you just put your professional advice to them to say, "For me this will not really achieve your purpose." That's why I have a concern, that unless they sign some sort of declaration of acknowledgement, I wouldn't go ahead, yeah". 19

The sixth question posed to interviewees concerning the professional responsibility of tax practitioners was whether the financial worth of their clients influenced their advice in any way. Overall the majority overwhelmingly indicated that they had treated their clients consistently regardless of the client status. Although there was an acknowledgement that larger clients demanded more time and energy and consequently higher fees they were weary of maintaining high ethical standards in their dealings. It is noted that some small practitioners did not have a great disparity amongst their clients anyway:

"No, no I try and treat them all the same. Yeah, no. No, I've got two really large clients and I treat them the same as all my other clients." 14

4.3 Appropriateness of Penalties under the Code of Conduct

Table 3: Perceptions of the appropriateness of penalties

Survey Question	1	2	3	4	5	Mean	SD
Scenario 6: Administrative Sanctions- Subdivision 30 B Section 30-15 of the Code	21%	55%	13%	8%	3%	2.16	0.93
Scenario 7: Administrative Sanctions- Subdivision 30 B Section 30-15 of the Code	43%	45%	10%	1%	1%	1.73	0.77
Scenario 8: Civil Penalties-Subdivision 50A Section 50-5 of the Code	46%	42%	7%	5%	0%	1.71	0.80
Scenario 9: Civil Penalties Subdivision 50 A Section 50-10 of the Code	39%	41%	13%	6%	1%	1.89	0.91

Legend: (1 =strongly agree to 5= strongly disagree)

In section two of the survey instrument four specific scenarios were presented to participants to gauge their perceptions of the appropriateness of penalties as stipulated under the Code of Professional Conduct. In scenario six where the tax agent was acting outside her area of expertise and given a written caution (167, 76%) agreed that the sanction was appropriate (mean =2.16; SD=0.93). The suspension of a tax agent's registration who had failed to follow TPB directions in scenario seven was also viewed by the majority (191, 88%) as being an appropriate sanction (mean =1.73; SD=0.77). Likewise in Scenario eight the application to the Federal Court for a civil penalty order and injunction against a tax agent who had provided services while unregistered was also viewed by the majority (190, 88%) as being totally appropriate (mean =1.71; SD=0.80). Finally, in scenario nine a civil penalty of \$27 500 for employing a deregistered tax agent was also viewed by the majority (174, 80%) as being appropriate (mean =1.89; SD=0.91). Clearly there was strong support amongst the majority of participants that the sanctions imposed in the various circumstances were combatable with the offence.

The comments of the participants tend to reflect the statistics in the majority of cases where tax agents believed in maintaining high standards and that sanctions were appropriate to enforce those standards.

"This goes to the heart of the integrity of the Tax Agent system. Such unregistered activities must be dealt with quickly and appropriately."

There were only a few exceptions where the penalties were viewed as being too harsh.

A further four questions were put to the interviewees regarding their compliance and the appropriateness of penalties imposed under the Code of Conduct. Firstly, interviewees were asked to comment on the likely penalty for an agent who had breached their conditions of registration. Initially, it was clear that there was generally a poor knowledge of the penalties per se. The following comments were typical:

"Only quite vaguely, yes. I know people get caught." I3

"Yeah no I'm not actually even aware of those no." I4

Practitioners put this lack of awareness down to mainly lack of advertising and publicity. One practitioner was vaguely familiar with the safe harbour provisions for the clients but not the agent penalties. This evidence indicates that there is a need for further training and education of tax practitioners and a need for greater publicity through appropriate channels.

Secondly, interviewees were asked as to whether deregistration of a tax agent for failing to follow TPB directions was a just penalty. The main response centred on the issue of the agent's intention and the circumstances surrounding the breach. While interviewees were invited to expand upon their answers it became clear that there was a lack of knowledge about deregistration and that many were unconvinced as to whether it was actually enforced:

"Well, that was - he would say that but was - he said that quite freely and most of his clients were in the Police Force. I just - but as far as I know, he was never, ever cautioned or - not by CPA or by - this would've been pre-Tax Practitioners Board."

This would've been when it was but he probably got into the beginning of the Tax Practitioners Board, but he has retired. As far as I know, nothing was ever said to him or done to him.” I3

“So they came in, they had some documents, I had like a statement I had to sign, and I've got no idea. Like there was no ever any follow up as to advise as to what happened to this tax agent. Yeah, really poor, like really, really poor like to not let you know - I don't know if the client got any outcome, or whether - yeah we didn't even know whether they followed through. To me it just seems like its all talk and you know is there really any action?” I4

Thirdly, interviewees were asked more broadly as to whether the disciplinary measures available under the code were adequate. The findings were mixed, with four interviewees indicating that they were totally unaware of the disciplinary measures available while another two were unsure as to whether they were effective and had any deterrent impact. The other interviewees believed the sanctions were adequate but could not elaborate.

Fourthly, there was also a poor awareness of the level of monetary fines under the code. Most of the interviewees could not recall the monetary amount and indicated that it was not published adequately. Lack of reference in TPB and CPA newsletters was noted:

“That’s why I think that these cases that come before the CPA Tribunal should be publicised, I think. Yeah, I think it should be reinstated and say, “Look, these people did the wrong thing, some are being reprimanded, some have been told to pay a penalty and some have been deregistered.”I7

An interesting comment indicated that reputational damage was more important than a monetary fine. They indicated that damage to one’s business is far more effective, but where this was not evident monetary fines needed to be harsh. This is evidence of the need to have adequate sanctions which fill the void when damage to name is not enough:

“No not aware -See the issue you have is anyone that holds a CPA or a chartered qualification, their concern is going to be how are they - if they do something wrong, you know if their peers find out. That's enough punishment for professional members. But if you're not, you don't really give a rat's arse about anything, and that's when the penalties really need to be of value and put in place.”I4

4.4 Other Ethical Issues

Table4: Perceptions of other ethical issues

Survey Question	1	2	3	4	5	Mean	SD
Scenario 10a: Outsourcing	7%	27%	35%	22%	9%	3.00	1.07
Scenario 10b: Privacy	31%	47%	17%	5%	0%	1.96	0.82
Scenario 10c:	25%	48%	15%	7%	5%	2.18	1.03

Declarations							
Scenario 11: Transfer of Information	4%	20%	37%	24%	15%	3.27	1.07

Legend: (1 =strongly agree to 5= strongly disagree)

In section three of the survey instrument four scenarios were presented to participants to gauge their perceptions of other particular ethical issues they could encounter in their work. In scenario 10a regarding the outsourcing of work overseas with minimum supervisory arrangements in place, mixed results were reported. About (75, 35%) neither agreed nor disagreed with the arrangement with a further 27% either agreeing or 22% disagreeing (mean =3.00; SD=1.07). However, in scenario 10b regarding a breach of privacy being a concern the majority of participants agreed (167, 78%) this was the case (mean =1.96; SD=0.82). Likewise in scenario 10c regarding the signing of false statements, the majority (156, 73%) agreed that the \$5,500 penalty was appropriate (mean =2.18; SD=1.03). With regards to scenario 11 where the ethical nature of the refusal to transfer client information was raised, mixed results were reported. About (79, 37%) neither agreed nor disagreed with the arrangement with a further 20% either agreeing or 24% disagreeing (mean =3.27; SD=1.07). Overall although issues of privacy and declarations were viewed fairly strictly, there appears to be some variance of opinion when it came to supervisory arrangements of outsourced work and the transfer of information between accountants.

The comments of participants tend to indicate that the transfer of information was conditional upon a number of factors including the legal right of a liquidator to access this information and the legal obligations of the tax agent to release it. The outsourcing of work was a contentious issue but participants' believed that it was becoming more common and that it was inevitable due to market pressures.

“Provided appropriate systems and procedures are in place to deliver a reasonable level of QA, I do not have a particular problem with this level of supervision”

Four specific questions were put to interviewees regarding their own compliance and awareness of typical ethical issues that they could come across in their practice. Firstly the outsourcing of professional services and the impact upon the quality of advice was raised. There was a strong majority who were against this practice who found it both risky and problematic. They also indicated that selling a professional service such as tax advice was not the same as selling a product:

“I don't like it- I don't like it, no. It just doesn't sit well with me. You sign off on a tax return, you want to know what's going on. It's your total responsibility after all. So, if somebody else is involved, then you open yourself to greater risk.” 16

However, there was also the realisation amongst the practitioners that if clients demanded cheaper fees and were prepared to sign off on the work being outsourced they were happy to oblige:

“That's their risk but they've got to sign up for it. They can't do it without being signed up for it.”18

“Well it's not only that, it's just that you know that the data is being accessed in another country. Who knows what the security systems are like over there, so you're really putting your client's information at risk, and you know as long as the clients are fully aware where the information is going to, and who'll be attending to it, well then fine, so be it. But I can tell you, I don't think I'd have one of my clients that would be willingly happy for me to send my work over to Malaysia or you know.”¹⁴

The second question was concerned with the maintenance of client privacy. Interviewees generally agreed that this was highly regarded and paramount in the business, similar to client confidentiality. The requirement to maintain strict ethical regulations and standards involved observing client privacy:

“I think generally it is. I haven't - I'm not aware of generally information going wrong. Just a story on that, which is sort of involved. The financial planner that I do work for, that I do these accounts, I was - their person who did their scanning and did the mail-outs and stuffed envelopes and did all that, sent a pile of papers for signing to the wrong client one day. She was sacked for that.”¹³

However, it was noted that one interviewee mentioned that the new “cloud accounting” could be a potential risk to client privacy.

“I think there's some real risks, but at the same time, those people in the IT industry tell you that nowadays if you communicate with them, if you set up properly, say you have a VPN or I don't know, I'm not an IT guy, like VPN or private network, probably is very safe, that data. But because they access your servers for the information and after they finish the work they could put it back in your server, I don't know, but of course it's something never happened in Australia before in the old days, but I think now days because of technology, I suppose if you put in proper internal control systems or proper control, I think probably should be alright. I may be more optimistic.”¹⁹

The third question posed was concerned with the transfer of information from a previous accountant or liquidator. Some practitioners reported that they had experienced problems while a few others indicated it was a smooth transition. While it was no longer a CPA requirement that an engagement letter⁸³ was received by the new accountant a copy of the return and the financial statements did prove to be difficult for some:

“Yes. Generally when you pick up a client you have big problems in getting the original information, particularly the depreciation and assets and this sort of thing. It's very hard to work out what sort of figures are and that's why you're very careful in picking up new clients. You just don't get a lot of that information. If they've got that information.”¹⁸

“The accountant's just being really difficult. That's a massive problem. They don't provide copies because they don't want to give you any information, to make it harder for you to leave, and I find that really, really poor, and I don't believe that is acceptable.”¹⁴

⁸³ TPB (I) 01/2011 para 19 suggests that the engagement letter can limit the range of work an agent can perform and thus the potential liability.

The fourth question enquired as to whether interviewees had maintained any formal in-house ethical guidelines with regards to completing tax work. There was evidence of both informal and formal guidelines kept by some either as part of their quality assurance or risk management requirements. However, it was evident that some practitioners had only token reference and familiarity with their manuals and were not aware of the contents. It is noted that some sole practitioners' felt they may have been too small to have formal guidelines:

*"Yeah it is. But you know for a small practice, it's really a bit of an overkill. No you don't, yeah no. But I know it is required, part of our quality review to have it. When I had my last quality review, the guy that did it helped me, gave me a copy of his to implement. But I mean really, and it's why you go to a lot of the professional development, because that's where it gets instilled in you."*¹⁴

Finally it should be noted that this small group of Interviewees comprised 4 females and 6 males aged between 45 -65 years, with approximately 20-30 years' experience in tax practice. The also comprised mainly sole practitioners or partners in small firms with predominately CPA affiliation.

5. Conclusion

5.1 Summary of the main findings

This preliminary study aimed to assess the level of commitment and compliance of Australian tax practitioners with key elements of the Code of Professional Conduct. The main findings with regards to the four research questions posed, based on both the quantitative and qualitative components of the study are as follows.

First, with regards to the influence of tax practitioners' perceptions of professional standards under the code upon their own compliance, it was evident that it was generally fairly positive. Both the statistical results and interview findings indicated that four of the five elements were strongly endorsed. These included, the elements of honesty and integrity, independence, confidentiality and the proper administration of the tax laws. These findings were consistent with those of Tan⁸⁴ and Sakuria and Brathwaite⁸⁵.

However, there were some mixed results reported in both the survey and interviews when it came to the issue of competence. In this regard respondents were divided as to whether one should go beyond their client engagement or scope. This issue could be addressed through the formalisation of client engagement letters to clarify the range of client work and the agents' potential liability. Given that past research⁸⁶ indicates that overall accuracy of returns and the absence of errors are highly regarded by clients, engagement letters would appear to be one option worth pursuing. Generally practitioners were supportive of the professional standards stipulated in the code and indicated that it did improve compliance. So overall the answer to RQ 1 was yes.

⁸⁴ Tan above n 19.

⁸⁵ Sakuria and Brathwaite above n 21.

⁸⁶ See the studies mentioned above n 23.

Second, with regards to the influence of tax practitioners' perceptions of the appropriateness of penalties under the code upon their own compliance, results varied between both the quantitative and qualitative components. The survey results clearly indicated that both the administration and civil penalties imposed were totally appropriate in the scenarios presented. This finding was consistent with that of Marshall et al,⁸⁷ LaRue and Reckers,⁸⁸ and Duncan et al.⁸⁹

However, this was not the case in the interviews where there was evidence that either a part penalty or no penalty at all was appropriate in the circumstances. This finding is consistent with an earlier study by Cuccia.⁹⁰ It is also acknowledged that there was generally a poor awareness of the penalties per se amongst most of the interviewees which suggests that it could be an educational issue. In particular, there was a lack of awareness of the disciplinary measures and the level of monetary fines available for the breaches. An interesting point was raised by a couple of interviewees with regards to tax practitioner reputational damage as opposed to monetary fines being a stronger deterrent. There has been a lot of previous research⁹¹ undertaken on both the positives and negatives of naming and shaming taxpayers for their breaches, whether this can be extended to tax practitioners is also a possibility worth exploring. Overall, in view of the mixed findings regarding practitioners' perceptions of the penalties under the code and the impact upon their own compliance, the answer to RQ2 was a qualified yes.

Third, regarding the influence of tax practitioners' perceptions of particular ethical issues they could encounter upon their own compliance, results varied within both the quantitative and qualitative components. There was consistency in both the survey results and interview findings regarding the issues of privacy and declarations. Privacy like confidentiality in particular was held in very high regard.

This was not the case with regard to the issue of outsourcing of tax work where there was a strong negative influence amongst most interviewees but the statistical results were mixed. While recognising that outsourcing of work was becoming more popular interviewees also indicated that provided clients were happy to sign off on the risk, they would accommodate them.

Likewise with respect to the transfer of information mixed results were reported in both the statistics and interviews. Some tax practitioners reported that they had experienced problems while others reported a smooth transition. However, due to the lack of guidelines and regulation in place to monitor this activity it is not

⁸⁷ Marshall et al above n 2.

⁸⁸ D. La Rue & P. M. J. Reckers, above n 30.

⁸⁹ W. A., Duncan, D LaRue, and P. M. J Reckers, above n 31.

⁹⁰ Cuccia above n 33.

⁹¹ The reintegration shaming literature, see for example, J, Braithwaite, "Crime, Shame and Reintegration; Braithwaite, J and Drahos, P, "Zero Tolerance, Naming and Shaming: Is There a Case for it in Crimes of the Powerful?" (2002), 35, 3 *Australian and New Zealand Journal of Criminology*, 269-288, 275, where it was concluded that naming and shaming was a bad policy for the powerless but could be a strategic policy with regards to corporate or organizational crime. See also Van Erp, J, "Naming without Shaming: The Publication of Sanctions in the Dutch Financial Market," <<http://onlinelibrary.wiley.com/doi/10.1111/j.1748-5991.2011.01115.x/full>, 1-9, 7>, where it was found that exposing the offender raises the expectation of a moral message about the inappropriateness of certain behaviour. The Study showed that regulatory enforcement provides an opportunity to express what is morally right and to change perceptions as to what is meant by appropriate behaviour

surprising that tax practitioners are left to negotiate the vagaries of past practitioners. It is also noted that results were mixed when it came to the related issue of maintaining in-house ethical guidelines. A few interviews had kept them as part of their quality assurance and risk management requirements, but some didn't, indicating it was overkill for a sole practitioner. Overall, in view of the mixed findings regarding practitioners' perceptions of specific ethical issues impacting upon their own compliance, the answer to RQ3 was a qualified yes.

Finally, the statistical results regarding the influence of selected tax practitioner demographics upon practitioners own compliance produced some interesting findings. In particular, being of Australian nationality, middle aged, male, located in NSW or Victoria, operating as a sole practitioner and being of CPA affiliation, were common characteristics of this sample. Without subjecting the data to further statistical testing, overall the results are similar to that of Hunt and Vitell⁹² and Gilligan⁹³ regarding the influence of personal characteristics upon ethics to a certain degree. As such, the answer to RQ4 was yes.

5.2 Tax Policy Implications

Clearly tax professional representation is high in Australia and is accepted largely due to issues of tax complexity and the strong desire to minimize tax payable. However, this heavy reliance on tax practitioners can be unhealthy and puts pressure on the tax profession. As tax practitioners' ethics are constantly challenged the current measures put in place to deal with this, such as the code of professional conduct may need to be strengthened and enhanced to ensure continued compliance. The integrity of overarching principles which aim to bring about compliance with the spirit of the law as opposed to the letter of the law needs to be defended⁹⁴ so as to not compromise tax practitioners' ethics.

It is also apparent according to the views of tax practitioners that while the code of professional conduct is endorsed by the majority, further steps could be taken to enhance and extend the code. For example, this study supports the requirement of compulsory engagement letters to be installed in all client/practitioner relations to assist in defining the scope of the services rendered. In addition clear guidelines and or legislation could be passed regarding the compulsory maintenance of in-house ethical guidelines. In particular the level of guidelines required by all types of practices. Further, guidelines could be developed around the outsourcing of client services. Although predominately an in-house decision, some working rules around protocol and data security would be welcomed. As this study revealed that the transfer of client information between accountants was still an issue, the passing of guidelines or legislation to ensure fairness in business is also highly recommended.

Finally, although the study indicated that the level of penalties imposed under the code appear to be adequate, there was a glaring deficiency in the general

⁹² S. D. Hunt and S. J. Vitell, "A General Theory of Marketing Ethics," (1986), 6, *Journal of Macromarketing*, 5.

⁹³ C. Gilligan, "*In a different voice: Psychological theory and women's development*," (1982) Cambridge, MA: Harvard University Press.

⁹⁴ P. A., Hite and G A, McGill, "An Examination of Taxpayer Preference for Aggressive Tax Advice," (1992), *National Tax Journal*, 389 and K, Murphy, Aggressive Tax Planning: Differentiating those playing the game from those who don't," (2004), 25, *Journal of Economic Psychology*, 307.

knowledge of tax practitioners with regards to the penalties per se. Based on this finding it is highly recommended that educational requirements be amended and that the training of tax practitioners in this area be increased.⁹⁵ Further to penalties themselves acting as a deterrent it is suggested that the potential “black listing” of agents who commit serious offences also be considered given the impact upon reputational damaged raised by some interviewees.

Overall it is evident that tax practitioners’ ethics will continue to be challenged and constantly need to be monitored. When compared to the results of Attwell and Sawyer’s⁹⁶ study of New Zealand tax agents’ ethics barely passing at 60%, clearly there is no room for complacency. Based on the results of this study there is further action that needs to be taken in order to maintain desired professional standards.

5.3 Limitations

As with most behavioural studies, this sample of tax practitioners was not totally representative of the wider Australian tax practitioner population which makes it difficult to extrapolate the results. Also as this study was only exploratory in nature and focused on selected ethical, compliance and demographic variables, it limited overall results. Problems of honesty and misinterpretation in surveys are always present and hard to erase⁹⁷ particularly in the case of sensitive ethical issues. To address the presence of any socially desirable response bias the fact that there was a reasonable number (n=214) in the survey sample along with ten interviews, allowed for meaningful analysis and maintained the validity of the results obtained.

5.4 Further Research

This study has answered a call from previous tax compliance literature reviews of Richardson and Sawyer⁹⁸ and Jackson and Milliron,⁹⁹ to conduct much needed empirical research into the ethical issues confronting Australian tax practitioners. However, as this study gauged the views of particular tax professionals’ the ethical views of others in the tax system, such as, taxpayers and tax officials could also be investigated. The study could also be expanded to incorporate other methodologies, such as, field experiments, or manipulations in lab settings¹⁰⁰ and by conducting further statistical testing and increasing the size and representation of the sample. It is envisaged that as further data is gathered and analysed, hopefully the factors which influence the ethical views of Australian tax practitioners’ can be more closely explored.

Appendix:

Survey Instrument not included.

⁹⁵ S A Yetmar and K K Eastman, “Tax Practitioners’ Ethical Sensitivity: A Model and Empirical Examination,” (2000), 26, 4, *Journal of Business Ethics* 271.

⁹⁶ R Attwell, and A J, Sawyer, “The Ethical Attitudes of New Zealand Tax Practitioners- Still ‘Barely Passing,” (2001), Vol.7, *New Zealand Journal of Taxation Law and Policy*, 11.

⁹⁷ M L, Roberts above n 28.

⁹⁸ M., Richardson, and A. J., Sawyer, above n 68.

⁹⁹ B. R., Jackson, and V. C., Milliron above n 67.

¹⁰⁰ Yetmar and Eastman above n 70.