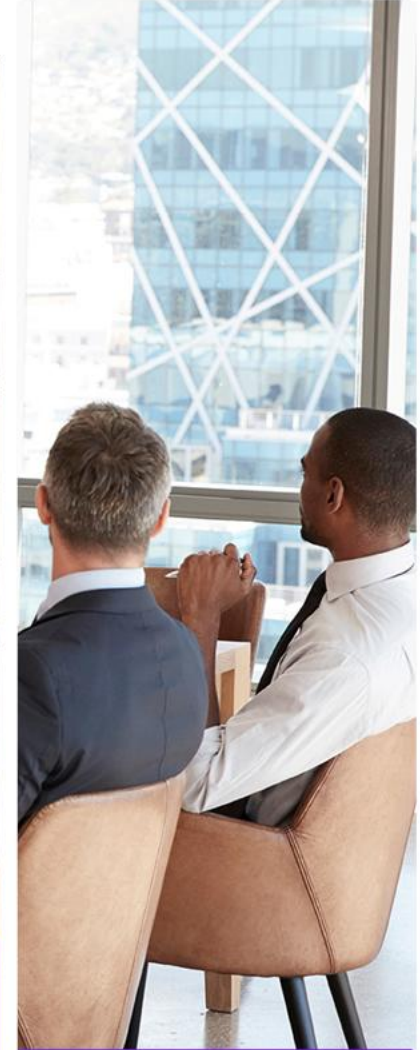


Local Tax Club Geelong

Wednesday, 16 April 2025
Novotel Geelong



April Tax Update

Presenter:

Kaitilin Lowdon, ATI, Sladen Legal

April 2025

Tax Practitioner Board and TASA changes

Presenter:

Arthur Athanasiou , CTA (Life), Thomson Geer

Robyn Jacobson, CTA FCA FCPA, The Tax Institute

Content

Session outline

Overview of TASA changes

Breach reporting rules

Obligations under Code Determination

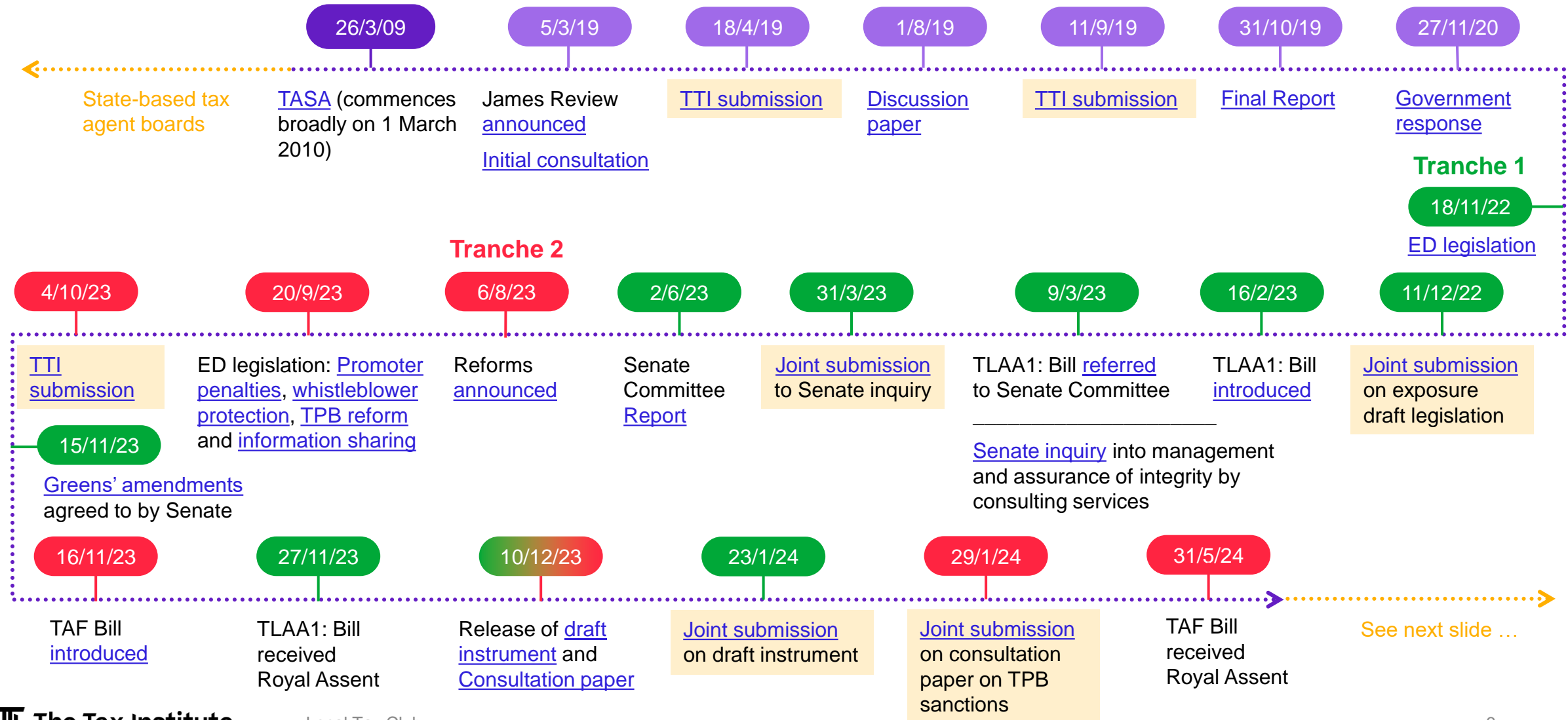
Analysis of Code obligations — TPB draft guidance and observations

Appendix

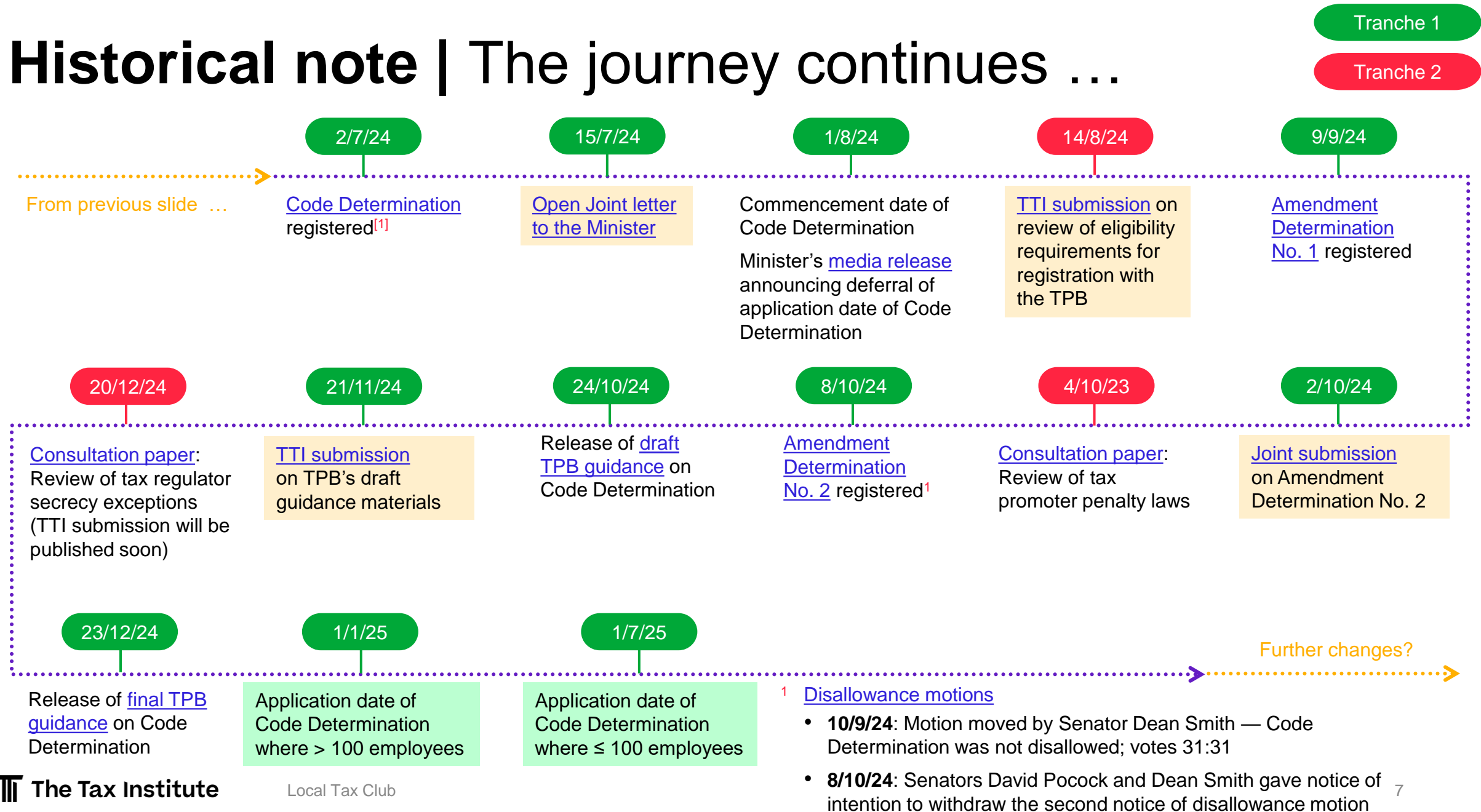
Code of Professional Conduct | James Review recommendations | Abbreviations

Overview of TASA changes

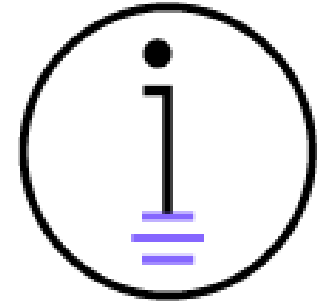
Historical note | The TASA journey ...



Historical note | The journey continues ...

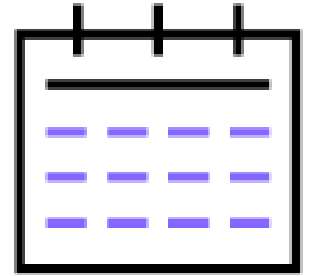


TPB and TASA landscape



- [Code of Professional Conduct](#)
- [Review of TPB](#) (Final Report) and [Government Response](#)
- Schedule 3 to the [Treasury Laws Amendment \(2023 Measures No. 1\) Act 2023](#) (TLAA1) — 1st tranche of TASA amendments
- [Announcement](#) by the Government and [TTI media release](#)^[2]
- [Treasury Laws Amendment \(Tax Accountability and Fairness\) Act 2023](#) (TAF)
— 2nd tranche of amendments

Start date of legislative changes



1 January 2024

- Use of disqualified entities
- Power of Minister to determine additional Code obligations
- Object of TASA

1 July 2024

- Annual registration
- Breach reporting rules
- TPB Special Account

1 August 2024

Commencement date of
[Tax Agent Services \(Code of Professional Conduct\) Determination 2024](#)

1 January 2025

Application date of
Code Determination
where > 100 employees

1 July 2025

Application date of
Code Determination
where ≤ 100 employees

31 May 2024

Information sharing —
disclosures made on or
after 31 May 2024
irrespective of when
information was received

1 July 2024

- Promoter penalties
- Whistleblower protection
- Information on TPB Register
- Conclude TPB investigations within 24 months

1 October 2024

Appointments to TPB

TTI advocacy

Date	Activity
18 April 2019	TTI submission on initial consultation on Review of the TPB
11 September 2019	TTI submission on consultation paper relating to Review of the TPB
11 December 2022	Joint submission on the exposure draft legislation giving effect to the Tranche 1 changes
31 March 2023	Joint submission to Senate inquiry
4 October 2023	TTI submission on ED legislation on promoter penalties, whistleblower protection, TPB reform and information sharing, giving effect to the Tranche 2 changes
23 January 2024	Joint submission on draft legislative instrument (Code Determination)
29 January 2024	Joint submission on consultation paper on TPB sanctions

TTI advocacy

Date	Activity
31 May 2024	Joint submission on the TPB's draft guidance on the breach reporting rules
15 July 2024	Open letter to the Assistant Treasurer on the Code Determination
14 August 2024	TTI submission on the review of eligibility requirements for registration with the TPB
July to September 2024	Extensive engagement with the Minister/Minister's office, Treasury, TPB and the Joint Bodies, including several roundtables and targeted consultation
2 October 2024	Joint submission on Amendment No. 2
21 November 2024	TTI submission on TPB's draft guidance products

Breach reporting rules

Breach reporting rules



**Breaches
arising on or
after 1 July 2024**

- Where an order is made by the TPB to take action, the registered agent must notify all their current clients about the findings of the TPB's investigation specified in the order^[3]
- Registered agents must notify the TPB if they have reasonable grounds to believe:^[4]
 - They have breached the Code and the breach is a 'significant breach' (**self-reporting**)^[5]
 - Another agent has breached the Code and the breach is a 'significant breach' (**reporting another agent**)^[6]
- Registered agents must also **notify the accredited professional association** if they are aware of that other agent's membership^[7]

³ New paragraph 30-20(1)(d)

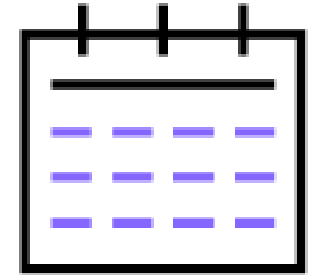
⁴ Gives effect to [amendments](#) tabled in the Senate by the Greens: Part 4 of Schedule 3 to the [TLAA1](#)

⁵ New paragraphs 30-35(1)(ba), 30-35(2)(ba) and 30-35(3)(ba)

⁶ New subsection 30-40(1)

⁷ New subsection 30-40(2)

Breach reporting rules



- Must notify the TPB or the association **within 30 days** of the day on which:
 - in the case of themselves — they became, or ought to have become, aware that the breach occurred and that the breach is a ‘significant breach’^[8]
 - in the case of another registered agent — they first have, or ought to have, reasonable grounds to believe that the other agent breached the Code and that the breach is a ‘significant breach’^[9]
- If you are:
 - **Self-reporting** because you have breached the Code, lodge a [notify a change in circumstances](#) form
 - **Reporting another tax practitioner** because they have breached the Code, lodge a [complaints](#) form

Intent is not relevant

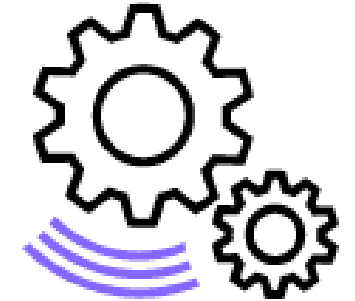
⁸ New subsection 30-35(4) as amended

⁹ New subsection 30-40(3)

Meaning of ‘significant breach’^[10]

Significant breach of the Code means a breach of the Code by a registered agent if the breach:

- (a) constitutes an **indictable offence**, or an **offence involving dishonesty**, under an Australian law;
- (b) results, or is likely to result, in **material loss or damage** to another entity (including the Commonwealth);
- (c) is **otherwise significant**, including taking into account any one or more of the following:
 - (i) the number or frequency of similar breaches by the agent;
 - (ii) the impact of the breach on the agent’s ability to provide TAS;
 - (iii) the extent to which the breach indicates that the agent’s arrangements to ensure compliance with the Code are inadequate; or
- (d) is a breach of a kind prescribed by the TASR



**Breaches
arising on or
after 1 July 2024**

TPB guidance | Key issues



- Repercussions of frivolous, vexatious or malicious complaints^[11]
- If you're unsure whether you have reasonable grounds, TPB advises practitioners should err on the side of caution and report the matter to the TPB^[12]
- Repercussions of failing to comply with reporting obligations by the due date (30-day period)^[13]
- Cannot report anonymously but report can be made confidentially^[14]
- Must report, even if breach has been rectified or remedied^[15]
- Disclosure required by law — will not contravene Code item 6 (about client confidentiality)^[16]
- Lack of whistleblower protection for unrelated^[17] practitioners
- Consequences, appeal rights and resolution of cases where a practitioner disagrees with the TPB's position on being required to report a breach

¹¹ See paras 133–137 of TPB(I) 43/2024

¹² See paras 138–139 of TPB(I) 43/2024

¹³ See paras 149–153 of TPB(I) 43/2024

¹⁴ See para 159 of TPB(I) 43/2024

¹⁵ See para 184 of TPB(I) 43/2024

¹⁶ See para 189 of TPB(I) 43/2024

¹⁷ Where not 'associates' within the meaning of section 318 of the ITAA 1936. See para 189 of TPB(I) 43/2024

TPB guidance | Debunking myths

Myth

Fact

- 1 It is necessary to report unregistered preparers providing tax agent or BAS services under this obligation
- 2 Practitioners can report based on hearsay or others' opinions and do not need to substantiate the claim
- 3 Practitioners must be on the lookout and report all Code breaches
- 4 Practitioners can remain anonymous and do not need to disclose their personal details when reporting
- 5 Practitioners must report historic breaches that have not been notified before
- 6 This obligation arises under the Tax Agent Services (Code of Professional Conduct) Determination 2024 (Determination)
- 7 Breach reporting includes reporting about clients who fail to correct a false or misleading statement made to the TPB or ATO

No — practitioners are required to report significant Code breaches resulting only from the **practitioner's own conduct or that of another registered tax practitioner**. To report about unregistered preparers, use the TPB's [complaints form](#).

No — practitioners must have 'reasonable' grounds to believe a significant breach has occurred. This means practitioners must have a **solid foundation or factual basis** for the belief, and **not make frivolous, vexatious or malicious claims**. Practitioners do not need to have conclusive proof but should be able to appropriately substantiate the claim.

No — only significant breaches need to be reported, and practitioners do not need to go looking for potential Code breaches by other practitioners

No — practitioners **cannot remain anonymous** when reporting a breach. However, they can let the TPB know if they have any concerns around confidentiality, including in relation to their personal details.

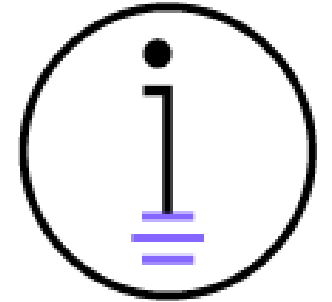
No — breaches that occurred before 1 July 2024 do not need to be reported. Also, based on date of breach of the Code, not the date of the underlying transaction. So, a **2023–24 transaction reported in the 2024 tax return lodged in 2024–25** is subject to the new rules.

No — this obligation arises under **sections 30-35 and 30-40 of the TASA** and is separate to the 8 new obligations under the [Determination](#).

No — breach reporting **applies only to the conduct of practitioners**. (Reporting clients who fail to correct a false or misleading statement made to the TPB or ATO is dealt with by section 15 of the Determination — see from **slide 32**.)

Obligations under Code Determination

Minister can determine Code obligations^[18]



- [Code](#) sets out professional and ethical standards that registered agents are required to comply with

- **New Code item 17:**^[19]

You must comply with any obligations determined under section 30-12

- Minister can determine, in a legislative instrument, additional Code obligations^[20]
 - Power cannot be used to reduce any existing obligations under the Code
 - Obligations must relate to the professional and ethical conduct of registered agents
 - Obligations may elaborate or supplement any aspect of the Code but must not be inconsistent with the Code^[21]

**Power from
1 Jan 2024**

¹⁸ See recommendation 5.1 of the James Review and Part 1 of Schedule 3 to the [TLAA1](#)

¹⁹ New subsection 30-10(17) of the TASA

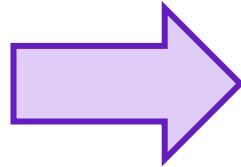
²⁰ New section 30-12 of the TASA

²¹ To the extent a Ministerial determination conflicts with the Code, the conflicting provisions have no effect

Legislative framework

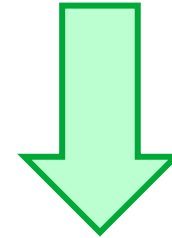
Subsection 30-10(17)

Practitioners must comply with any obligations determined under section 30-12 of TASA



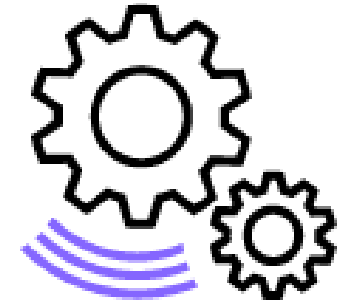
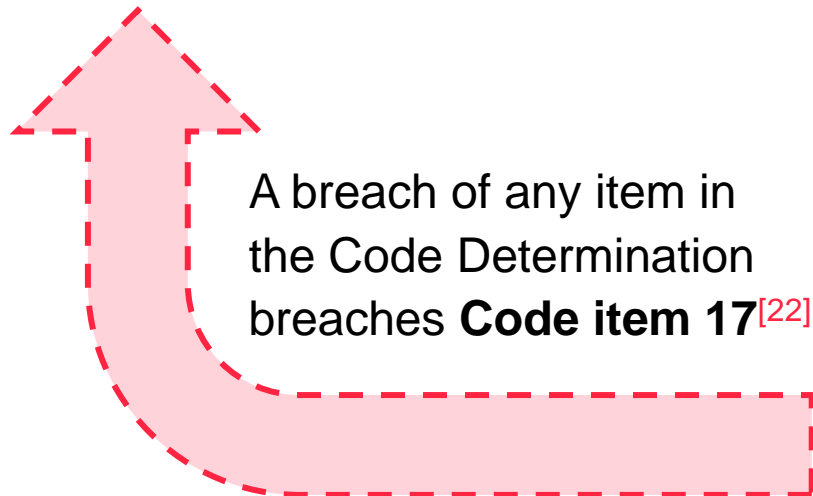
Section 30-12

Minister may determine Code obligations by legislative instrument



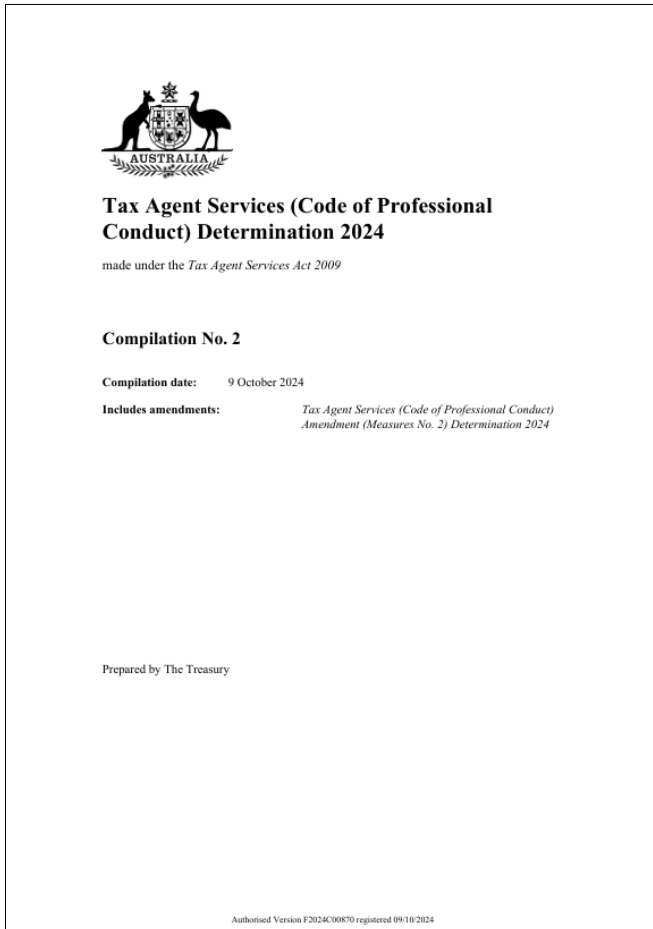
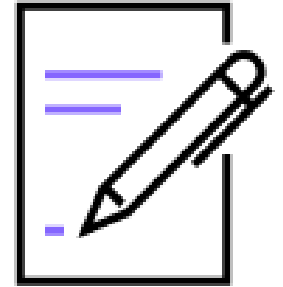
Code Determination

Sets out **8 new Code obligations** — in addition to the 16 other obligations in section 30-10



²² May also breach another Code item or another provision of the TASA

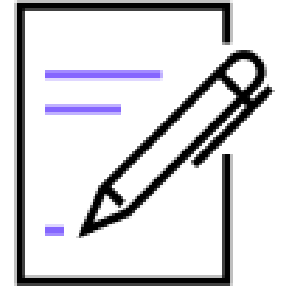
Code Determination



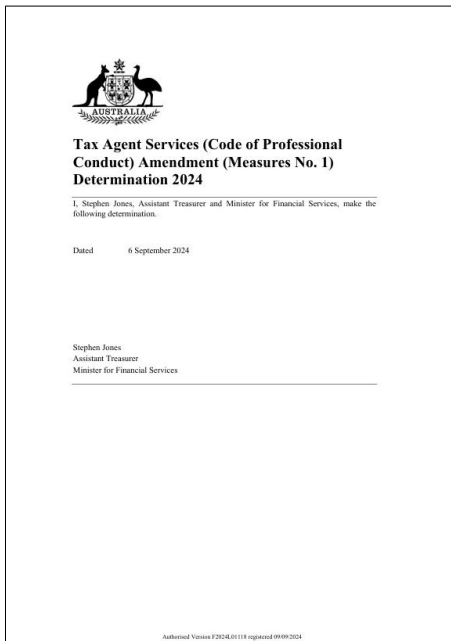
Tax Agent Services (Code of Professional Conduct) Determination 2024 (Code Determination) F2024C00870 (C02)

- 8 additional Code obligations
- Made on 1 July 2024
- Registered on 2 July 2024
- Commenced on 1 August 2024

Code Determination | Amendments

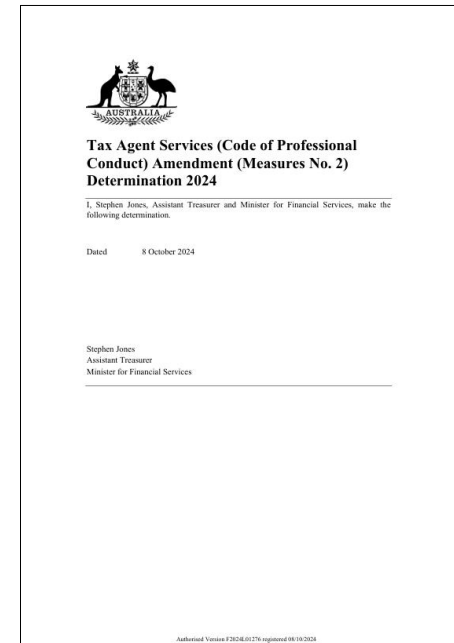


Minister's [media release](#) on 1 August 2024



Tax Agent Services (Code of Professional Conduct) Amendment (Measures No. 1) Determination 2024
(Amendment No. 1)
F2024L01118

- Registered on 9 September 2024
- Defers the application date of the Code Determination from 1 August 2024 to 2025



Tax Agent Services (Code of Professional Conduct) Amendment (Measures No. 2) Determination 2024
(Amendment No. 2)
F2024L01276

- Registered on 8 October 2024
- Makes substantial changes to the Code Determination

Determination | 8 additional Code obligations

Item	Section	Description	TPB guidance
1	Section 10	Upholding and promoting the ethical standards of the tax profession	TPB(I) 44/2024
2	Section 15	False or misleading statements (notification provision)	TPB(I) 45/2024
3	Section 20	Conflicts of interest in activities undertaken for government	TPB(I) 46/2024
4	Section 25	Maintaining confidentiality in dealings with government	
5	Section 30	Keeping of proper client records	TPB(I) 47/2024
6	Section 35	Ensuring TAS provided on your behalf are provided competently	TPB(I) 48/2024
7	Section 40	Quality management systems	
8	Section 45	Keeping your clients informed (disclosure provision)	TPB(I) 49/2024

TPB guidance

Guidance

[TPB\(I\) 41/2024](#) Code of Professional Conduct – employing or using a disqualified entity in the provision of tax agent services without approval ([FAQs](#))^[23]

[TPB\(I\) 42/2024](#) Code of Professional Conduct – prohibition on providing tax agent services in connection with an arrangement with a disqualified entity^[23]

[TPB\(I\) 43/2024](#) Breach reporting under the TASA^[25] (issued as draft [TPB\(I\) D53/2024](#) on 30 April 2024)

[Summary documents](#)

[TPB\(I\) 44/2024](#) Upholding and promoting the ethical standards of the tax profession (section 10 of the Determination)^[25] (issued as draft [TPB\(I\) D56/2024](#))^[24]

[TPB\(I\) 45/2024](#) False or misleading statements (section 15 of the Determination)^[25] (issued as draft [TPB\(I\) D57/2024](#))^[24]

²³ Issued on 12 June 2024

²⁴ Issued on 24 October 2024

²⁵ Issued on 23 December 2024

TPB guidance

Guidance

[TPB\(I\) 46/2024](#) Managing conflicts of interest when undertaking activities for government and maintaining confidentiality in dealings with government (sections 20 and 25 of the Determination)^[25] (issued as draft [TPB\(I\) D58/2024](#))^[24]

[TPB\(I\) 47/2024](#) Obligation to keep proper client records of tax agent services provided (section 30 of the Determination)^[25] (issued as draft [TPB\(I\) D59/2024](#))^[24]

[TPB\(I\) 48/2024](#) Supervision, competency and quality management under the TASA (sections 35 and 40 of the Determination)^[25] (issued as draft [TPB\(I\) D60/2024](#))^[24]

[TPB\(I\) 49/2024](#) Keeping your clients informed (section 45 of the Determination)^[25]
(issued as draft [TPB\(I\) D61/2024](#))^[24]

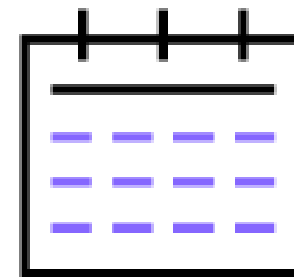
[FAQs: Code Determination](#) [TPB Register enhancements](#)

²³ Issued on 12 June 2024

²⁴ Issued on 24 October 2024

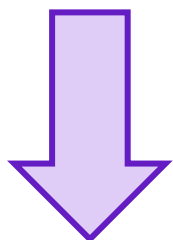
²⁵ Issued on 23 December 2024

Application rules | section 100^[26]



Larger firms

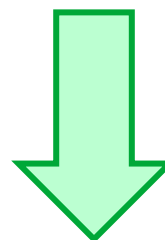
Agent had more than
100 employees
on 31 July 2024



1 January 2025

Smaller firms

Agent had up to
100 employees
on 31 July 2024



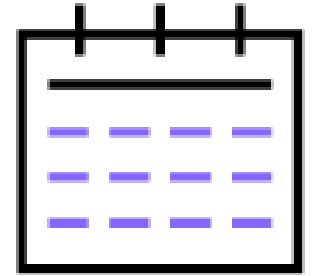
1 July 2025

Compliance with the Code
Determination is required from:

Breach reporting rules
are separate, and
apply to breaches of
the Code arising on or
after 1 July 2024

²⁶ For more information, see
the [Explanatory Statement](#)

Application rules | section 100^[26]



- Employee headcount where a partnership or company agent:
 - Include employees of the partnership or company, as well as employees of any entity that is connected with, or is an affiliate of, the partnership or company
 - Change firms from 1 January 2025 to 30 June 2025 — apply the above rules at a particular time based on the size of the firm they were in at that time
- These provisions apply from the day the rules apply to the agent:
 - Section 15 (about false or misleading statements)
 - Section 30 (about keeping proper client records)

Analysis of Code obligations

Uphold and promote ethical standards | section 10

Requirements

Independently and with each other, you must:

- Uphold and promote the Code
- Not engage in any conduct you know, or ought reasonably to know, may undermine:
 - public trust and confidence in the integrity of the tax profession and the tax system; and
 - the collective work of registered tax practitioners, as a tax profession, to uphold and promote:
 - the Code
 - public trust and confidence in the integrity of the tax profession and tax system; and
 - each member of the profession being held accountable for their individual conduct

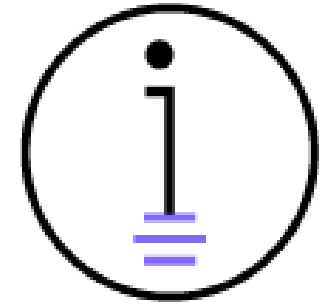


Uphold and promote ethical standards | section 10

TPB guidance

Firms should institute measures such as:^[27]

- Provide training and resources on complying with the Code
- Introduce and actively undertake processes to manage underperformance^[28]
- Institute mechanisms for staff to report and address concerns about conduct^[28]
- Provide appropriate and adequate protection for staff who report conduct (such as having a whistleblower policy in place)^{[28][29]}
- Provide directions to staff not to engage in specific conduct^[28]
- Maintain appropriate records relating to potential breaches^[28]
- Processes for amending or correcting false or misleading statements
- Have recruitment processes that include police checks, checks of the TPB's register and whether someone is a disqualified entity
- Encourage compliance with the Code when considering remuneration
- Develop a culture of transparency, accountability, ethical conduct, and compliance with the Code and the tax laws



²⁷ Paragraph 20 of TPB(I) 44/2024

²⁸ In relation to or that may breach the Code

²⁹ Such as having a whistleblower policy in place

Uphold and promote ethical standards | section 10

Observations



- Seems to duplicate Code item 1 about acting honestly and with integrity
- Considered feedback or submissions, which may include criticism, on public consultation documents that is done professionally is not considered conduct in breach of section 10^[30]
- The following are similarly not considered a breach of section 10:^[31]
 - Making a formal complaint with the ATO or the IGTO
 - Seeking a private ruling
 - Objecting to a decision of the Commissioner
 - Seeking a review of a decision of the Commissioner by the ART
 - Appealing a decision of the Commissioner to the courts

³⁰ Paragraph 24 of TPB(I) 44/2024

³¹ Paragraph 25 of TPB(I) 44/2024

Uphold and promote ethical standards | section 10

Observations

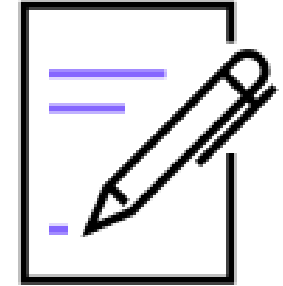


- **Case study 1** (about divorced clients)
 - Isn't this already covered by **Code item 5** (about conflicts of interest)?
Section 20 (about conflicts of interest in activities undertaken for government) is not relevant
 - TPB considers the agent's actions a breach of **section 10** and **Code item 5**
 - Agent failed to make any record relating to the potential conflict
 - Agent deleted the email from his staff which evidences that they raised the issue
 - Could this instead be managed by making a full disclosure to clients?
- **Case study 2** (about company not holding its supervising agent to account)
 - Highlights that the actions of an individual agent (who is found to have breached any part of the Code) associated with a company agent may mean the company is in breach of section 10

False or misleading statements | section 15

Requirements

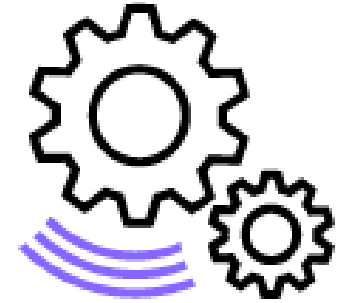
- You must not make or prepare a statement (or permit or direct someone else to make or prepare such a statement) to the TPB or the Commissioner that you know, or ought reasonably to know is false or misleading in a material particular
- If, after a statement has been made, you have reasonable grounds to believe the statement was **false or misleading in a material particular** and you also have reasonable grounds to believe this resulted from:
 - a failure to take reasonable care;
 - recklessness; or
 - intentional disregard,you **must take one or more prescribed actions** within a reasonable period of time



See table on slide 37

4 elements before further action is required

- 1 A statement is given to the TPB or ATO
- 2 You prepared the statement:^[32]
 - other than for a client (i.e. for yourself)
 - for an entity that was your client when the statement was given to the TPB/ATO
- 3 After the statement was made, you have reasonable grounds to believe the statement was **false or misleading (FMS)** in a **material particular** when it was made^[33]
- 4 You have reasonable grounds to believe that the FMS^[34] resulted from:
 - a failure to take reasonable care in preparing or making the statement
 - recklessness as to the operation of a tax law; or
 - intentional disregard of a tax law



³² Or permitted or directed someone else to make the statement

³³ Or omitted something when the statement was made, without which the statement is misleading in a material respect

³⁴ By you (or someone permitted or directed by you) or the client

Meaning of key terms | section 15



False or misleading statement (FMS)^[35]

- A statement is:
 - **False** if it is contrary to fact or wrong
 - **Misleading** if it creates a false impression, even if it is literally true
- Includes where a statement is lodged but something is omitted from the statement — but **does not include an omission to make a statement**
- Not FMS if it was correct at the time it was made but is subsequently made incorrect because of a retrospective amendment to the law

³⁵ Paragraph 35 of TPB(I) 45/2024

Meaning of key terms | section 15



Material particular^[35]

- Relevant to the purpose for which it is made, e.g. taken into account by a decision-maker when making a decision to which the statement or particular relates
- False or misleading particulars that are minor, insignificant, immaterial or trivial in the circumstances will not constitute a breach of section 15
- Materiality is determined at the time the statement is made — a statement cannot be made material because of subsequent events

Meaning of key terms | section 15



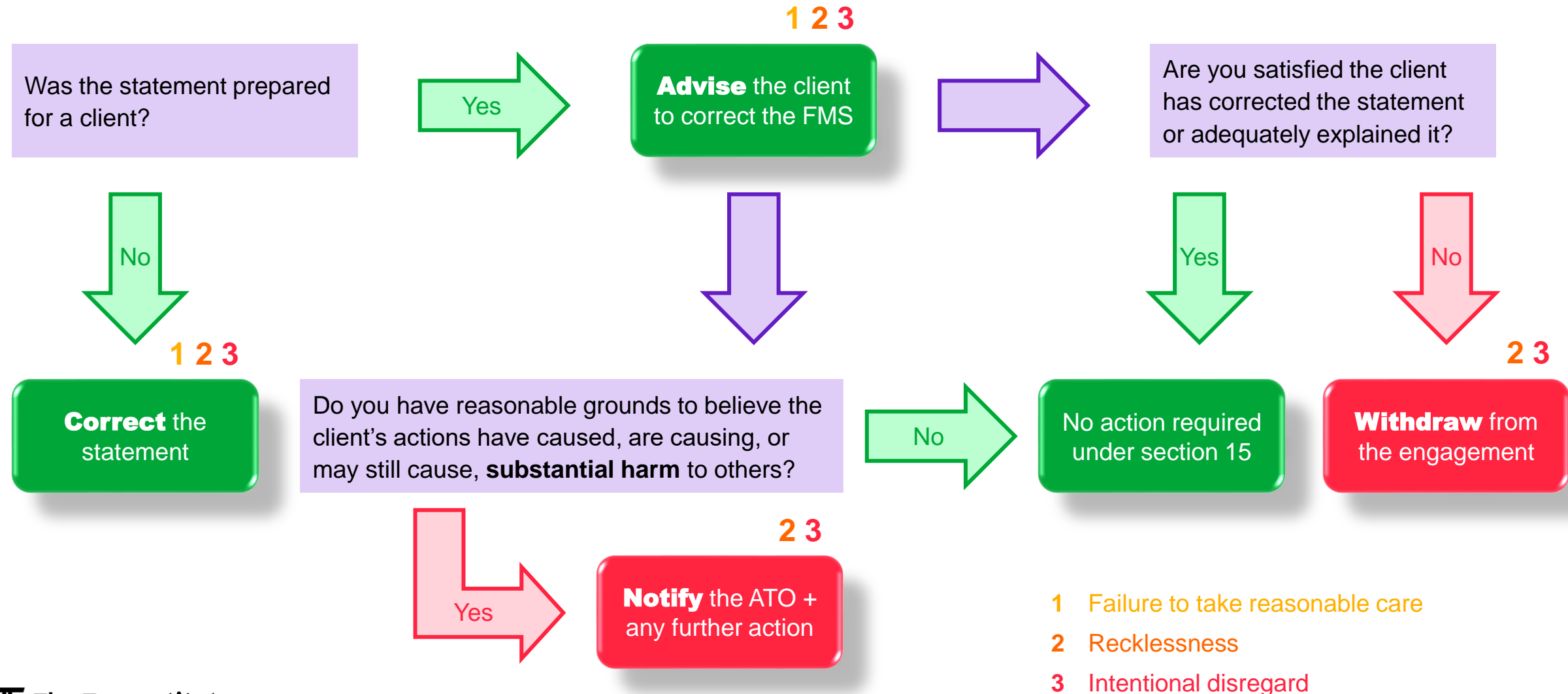
Culpability

- **Failure to take reasonable care** (objective test)
 - Fail to act in a way that is consistent with how a reasonable person, possessing the required knowledge, skill and experience of a registered tax practitioner, objectively determined, would act in connection with making, preparing or directing or permitting someone else to make or prepare the statement
- **Recklessness** (objective test)
 - Behaviour that demonstrates a disregard of the risk or indifference to the consequences that are foreseeable by a reasonable person.
- **Intentional disregard** (subjective test)
 - An intent and purposeful decision to leave something out of consideration
 - Must be actual knowledge that the statement made is false

Required actions | paragraph 15(2)(d)

Situation	Not reasonable care	Recklessness	Intentional disregard
1 You prepared a statement other than for a client ^[36]	Correct the statement	Correct the statement	Correct the statement
2 You prepared a statement for a client ^[36]	Advise the client: <ul style="list-style-type: none"> that the statement should be corrected; and the possible consequences of not taking action to correct the statement This does not apply to the extent that doing so would be unlawful under another Australian law (unlawful)		
3 You took the action at 2 and are not reasonably satisfied that the client has corrected the statement or otherwise adequately explained the basis for the statement	N/A	Withdraw ¹⁶ from the engagement, and professional relationship, with the client, unless doing so would: <ul style="list-style-type: none"> be unlawful; or pose an unreasonable risk to your personal safety, or the safety of a member of your family or an at-risk staff member (unsafe) 	
4 You took the action at 2 and have reasonable grounds to believe the client's actions have caused, are causing, or may still cause, substantial harm to the interests of others (including investors, creditors, employees, or the public)	N/A	Notify ¹⁶ the ATO (or the TPB) that the client has been advised that a statement made to the ATO (or TPB) should be corrected and you are not reasonably satisfied that your advice was acted upon, unless doing so would: <ul style="list-style-type: none"> be unlawful; or be unsafe 	
5 Same as for 4	N/A	Take any further action as you reasonably consider is needed in the public interest (subject to the 2 exceptions above)	

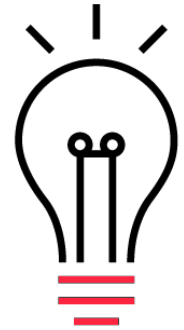
Notification rules | paragraph 15(2)(d)



Required elements and actions | section 15

Observations

- Consider elements to trigger section 15 — and the required actions, but only if the 4 elements are satisfied
- ‘Material particular’ or ‘material respect’ — isn’t this subjective?
- Notifying the ATO of your concerns about your client will not contravene Code item 6 (client confidentiality requirements)
- Section 15 does not apply to you if the previous agent made the FMS — but the **breach reporting rules** may apply



Required elements and actions | section 15

Observations

- ‘Know, or ought reasonably to know’:^[37]
 - Includes actual and **constructive knowledge**
 - Constructive knowledge will be assumed if otherwise adhering to the Code (Code items 9 and 10 are relevant here)

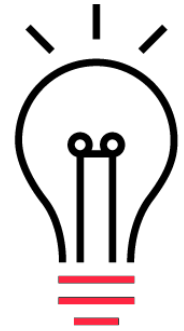


³⁷ Paragraphs 25–27 of TPB(I) 45/2024

‘Material particular’ | section 15

Observations

- ‘Material particular’ or ‘material respect’ — material to whom?
- What disclosure items on a tax return would be considered ‘material’ — is it only those labels that directly relate to calculating the taxable income^[38] of an entity or does it include others, such as:
 - Disclosing the wrong business industry code (ANZSIC)
 - Failing to disclose UPEs owed by a trust to a private company at label 46 of the trust tax return
 - Failing to disclose loans to shareholders of a private company at label 8 of the company tax return
 - Failing to indicate the level of transfer pricing documentation



³⁸ Paragraph 7J of [PS LA 2012/5](#)

Withdrawing from engagement | section 15

Observations

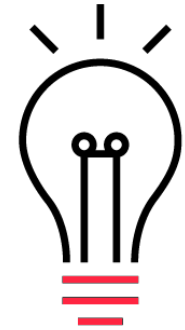
- Withdrawing from a client engagement requires you to withdraw from all engagements with that client, not just tax engagements
 - Not required to withdraw from engagements with related entities of the client
 - Important to know who your client is — e.g. how broad is the group of entities covered by your engagement letter?
- Where different services are provided by other partners in the firm, will need good communication (however, if a client is intentionally disregarding the law, the firm probably doesn't want them as a client on any engagement anyway)
- Must withdraw only if you're not satisfied your client has corrected the FMS and you have reasonable grounds to believe the FMS is the result of recklessness or intentional disregard
- Withdrawing from the client engagement doesn't correct the FMS



Notifying the ATO (or TPB) | section 15

Observations

- Notification required only when you have reasonable grounds to believe your clients' actions have caused, are causing or will cause **substantial harm** to the interests of others
- Whistleblower protection available^[39]
- FMS may be material but not cause 'substantial harm'
- What does 'substantial harm' mean?
 - Includes both financial and non-financial interests of investors, creditors, employees and the public
 - 'The public' includes other agents, clients, as well as the general public



³⁹ See paragraph 14ZZU(c) of the TAA

Notifying the ATO (or TPB) | section 15

Observations

- Additional matters that suggest there could be ‘substantial harm’:
 - Likely to give rise to a fine, penalty, sanction or other liability (criminal, civil or admin)
 - Likely to impact the standing and reputation of a third party, including the TPB and/or ATO
 - Likely to adversely impact public trust and confidence in the tax profession and tax system
 - Impacts on the entitlements of others, e.g. through phoenix activity
 - Impact on public revenue collection — creates a loss of revenue that could have contributed to community services
- **Case study 6** (about substantial harm)
 - Client refuses to correct FMS after being advised to do so
 - Client indicates potential phoenix activity



Notifying the ATO (or TPB) | section 15

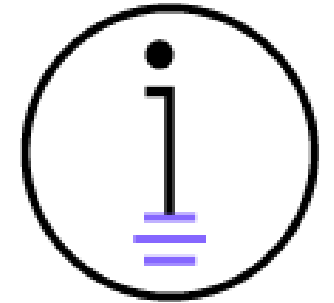
Observations



- Response to ethical letters:
 - TPB considers that notifying the new agent of ethical considerations will not contravene **Code item 6** (client confidentiality requirements)^[40]
 - Consider the guidance in paragraph R360.22 of [APES 110](#) — does sharing information with the ATO or the new agent breach client confidentiality?
- Does causing ‘substantial harm’ amount to [NOCLAR](#)?
- Carefully consider what you can and cannot say
- Seek legal advice if required
 - [TPB advises](#): If you are concerned as to whether there is a legal duty to disclose client information to a third party, you should seek independent legal advice

⁴⁰ Paragraph 82 of TPB(I) 45/2024

Further guidance on meaning of key terms



- **TPB guidance**

- [TPB\(I\) 17/2013](#) — Code of Professional Conduct – Reasonable care to ascertain a client's state of affairs
- [TPB\(I\) 18/2013](#) — Code of Professional Conduct – Reasonable care to ensure taxation laws are applied correctly

- **ATO guidance**

- [PS LA 2012/5](#) — Administration of the false or misleading statement penalty – where there is a shortfall amount
- [MT 2008/1](#) — Penalty relating to statements: meaning of reasonable care, recklessness and intentional disregard

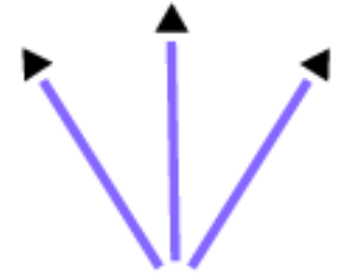
Comparison | Breach reporting v Notification obligation

Breach reporting (you or another agent)	Notification obligation (client)
Contained in section 30-35 and section 30-40 of the TASA	Contained in section 15 of the Determination
Applies to breaches of the Code on or after 1 July 2024	Applies to large agents from 1 January 2025 and smaller agents from 1 July 2025
Required to self-report or report another agent if you have reasonable grounds to believe you or the other agent has breached the Code and the breach is significant	Required to notify that your client has been advised that a FMS made to the ATO should be corrected and you are not reasonably satisfied that your advice was acted upon
Threshold: indictable offence or an offence involving dishonesty material loss or damage otherwise significant	Threshold: FM in a material particular AND FMS resulted from recklessness or intentional disregard AND client's actions have caused, are causing, or may still cause, substantial harm
Report to TPB	Report to ATO
No personal safety exception	Personal safety exception applies

Conflicts of interest | section 20

Requirements^[41]

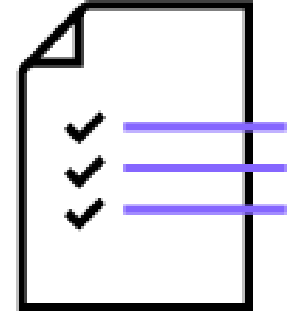
- Must take reasonable steps to identify and document any material conflicts of interest in connection with an activity undertaken for a government agency
- Must disclose details of any material conflict of interest that arises as soon as possible after becoming aware of the conflict
- Must take reasonable steps to manage, mitigate and avoid such material conflicts of interest



⁴¹ Paragraph 9 of TPB(I) 46/2024

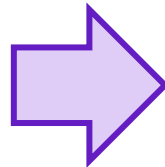
Conflicts of interest | section 20

TPB guidance



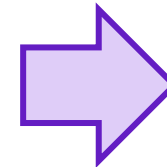
Element 1

Identify and document material conflict of interest



Element 2

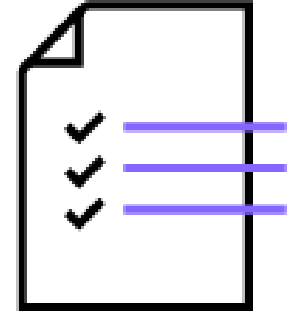
Disclose details of material conflict of interest



Element 3

Manage, mitigate, and where appropriate and possible avoid, material conflict of interest

Conflicts of interest | section 20



Observations

- Section 20 applies only to activities undertaken for government agencies (not in relation to clients)
- Ask yourself, 'Will this impact or benefit any of my clients?'
- If yes, advise the relevant government agency of any potential conflicts, particularly where clients may be impacted or benefit

Maintaining confidentiality | section 25



Requirements

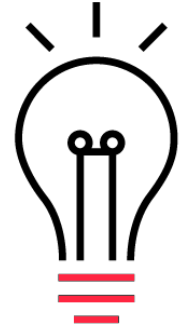
- Unless a legal duty to do so, **must not disclose** any information received from a government agency^[42] except to the extent it is reasonable to conclude that the information received was authorised by that agency for further disclosure
- **Must not use** any information received from a government agency^[42] for your personal advantage, or that of your associate, employee, employer or client except to the extent it is reasonable to conclude that the information received was authorised by that agency to be used in that way

⁴² In connection with activities you undertake with the agency in a professional capacity

Maintaining confidentiality | section 25

Observations

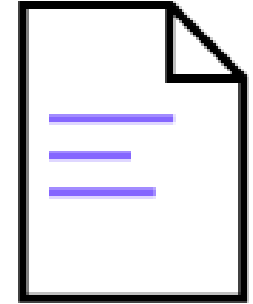
- If you have come across information, is it publicly available?
- If in doubt, check with the regulator
- If in a government consultation, ask:
 - Is anything today confidential?
 - Can I talk about it?
 - Who can I share it with?



Keeping proper client records | section 30

Requirements

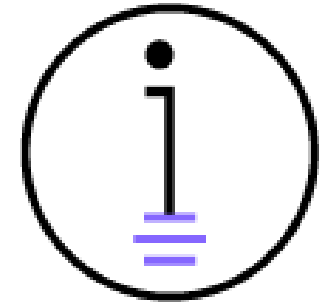
- Must keep records that correctly record the TAS provided to each of your clients, including former clients
- Records must be retained for **at least 5 years** after the service is provided:
 - Show the nature, scope and outcome of the TAS provided
 - Reference information reasonably considered in providing the TAS
 - Include all advice received from, and provided to, the client
- For more complex matters — must also include the relevant facts, assumptions and reasoning underpinning the advice provided to the client
- Records must be in English, or readily accessible and easy to translate



Keeping proper client records | section 30

TPB guidance

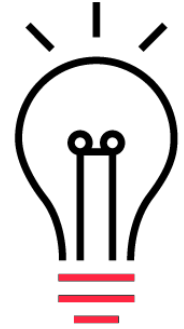
- Records provide clear evidence of your actions, including the decisions made and advice provided, and clarify any potential allegations of wrongdoing
- TAS is provided when it is completed, so the obligation applies to services completed on or after the relevant application date (irrespective of when the service commenced)
- Engagement letters evidence the scope of your services
- Evidence that proof of identity or client verification checks have been undertaken (but **do not keep copies of clients' identity documents**)
- Client communications and records of discussions



Keeping proper client records | section 30

Observations

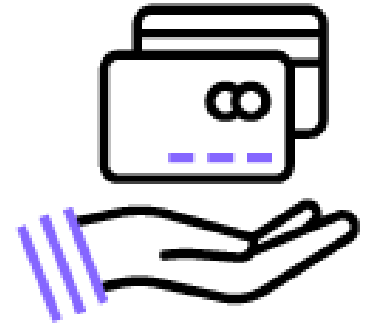
- Facts and assumptions underpinning your advice should be recorded
- Verbal advice requires a written record to be kept of the advice
- Reference information:
 - Client file should include e.g. legislation, commentary, ATO rulings and other research materials used in providing advice
 - Does not require duplication of client records and documents — sufficient to reference this information in your client files
- Good practice but likely increased compliance burden for agents



Services provided are competent | section 35

Requirements

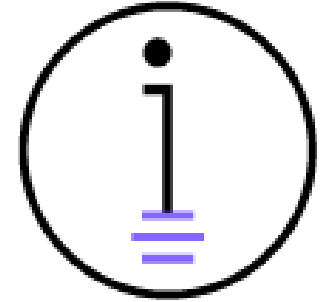
- Must ensure that each entity providing TAS on your behalf maintains **knowledge and skills** relevant to the TAS they are providing
- Must ensure those providing TAS on your behalf are appropriately **supervised**, having regard to the knowledge and skills of the entity, the TAS provided by the entity and your quality management system



Services provided are competent | section 35

TPB guidance

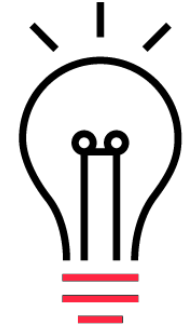
- Existing guidance in [TPB\(I\) 36/2021](#) (about supervisory arrangements under the TASA) will be replaced
- ‘Sufficient number’ requirement
- Adequate and appropriate supervisory arrangements
- Remote supervisory arrangements
- Code item 7 (about competency)



Services provided are competent | section 35

Observations

- Sufficient number of supervising agents — guidance but no strict requirements
 - Factors to be taken into account include size and scale of services provided, complexity of the TAS, number of qualified and experienced staff, supervision arrangements, risk management, technology employed
 - Company or partnership needs informed written consent of individual agents who form part of the ‘sufficient number’ — include them in registration documents (this could be in the partnership or employment agreement, or in a separate document)
- Supervision and control
 - Staff training, procedures for raising issues, review of work, oversight of staff^[43]
 - Supervisory plan — includes procedures that agent has in place to ensure services are provided to a competent standard^[44]



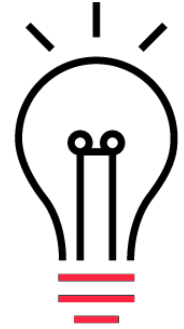
⁴³ See paragraphs 46–47 of TPB(I) 48/2024

⁴⁴ See paragraphs 48–50 of TPB(I) 48/2024

Services provided are competent | section 35

Observations

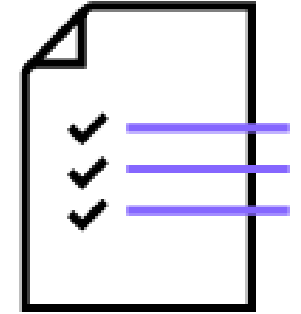
- Remote supervision
 - Staff in other locations — working from home, remote working, off-shoring
 - Recommends structured arrangements — using a supervisory plan
 - Agreed schedule for regular check-ins, training and review of work



Quality management systems | section 40

Requirements

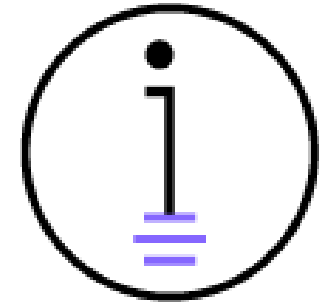
- Must establish and maintain a system of quality management designed to provide you with reasonable confidence that you are complying with the Code
- Must document and enforce the policies and procedures of your system of quality management



Quality management systems | section 40

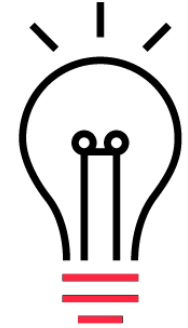
TPB guidance

- Extent of internal controls in place will differ significantly between practitioners based on:
 - size of individual practices
 - level of day-to-day engagement by a practitioner on the TAS being provided
 - complexity of the services being provided and clients' tax affairs
- Document policies and procedures relating to recruitment, training, supervision, information sharing, reporting, record-keeping, security, information technology, human resources, dealing with complaints, workplace culture



Quality management systems (QMS) | section 40

Observations



- Fit for purpose — TPB understands that the systems appropriate for a sole practitioner will differ from those expected of larger firms
- Requirements similar to those in [APES 320](#)
- If your firm already has quality procedures, compare those controls to those listed at paragraph 80 of TPB(I) 48/2024
- If your firm has never used a QMS, consider implementation of procedures
- Ensure QMS includes specific TASA references regarding Code obligations

Keeping clients informed | section 45

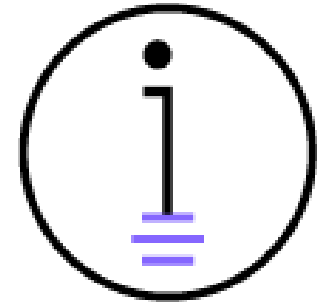


Requirements

Must advise all current and prospective clients of **all** the following:

- That the TPB maintains a **register** of tax and BAS agents and how clients can access and search the register
- How clients can make a **complaint** about a TAS you have provided
- Your **rights, responsibilities and obligations** as a tax or BAS agent, including to your client, and what obligations your clients have to you as their tax or BAS agent
- If any **prescribed events** have occurred within the **last 5 years**

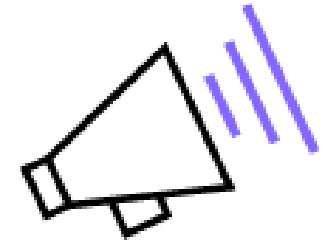
Keeping clients informed | section 45



Prescribed events that have occurred within the last 5 years

- Registration **suspended** or **terminated** by the TPB
- **Undischarged bankrupt** or went into **external administration**
- Convicted of a **serious taxation offence**
- Convicted of an offence involving **fraud or dishonesty**
- Serving, or sentenced to, **imprisonment** in Australia for 6 months or more
- Penalised, subject to an injunction, or subject to an order for breaching a voluntary undertaking, under **promoter penalty** provisions
- Federal Court has ordered a **pecuniary penalty** for contravening a civil penalty provision under the TASA
- Registration as a tax agent or BAS agent is subject to **conditions** (e.g. R&D, quantity surveyors)

Keeping clients informed | section 45



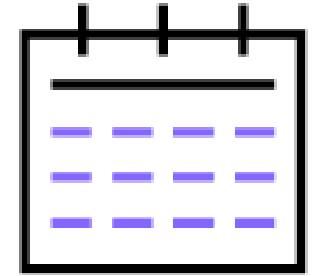
TPB guidance — means of disclosure

- Publish the information on a publicly accessible [website](#) that you use to promote the TAS you offer
- Include the information in [engagement letters](#) given to each client (TPB does not provide a template)
- Provide your clients, upon (re)engagement, with a copy of the TPB's [factsheet](#) on [General information for clients](#)
- Clarifying with the TPB who and what is disclosed — i.e. the associated entity and the individual agents who form part of the 'sufficient number' for the entity's registration

Timing of keeping clients informed

Relevant matter	When to advise clients			
	On the (re)engagement of the client	On receiving a client's relevant request for information	By 31 January 2025 or 31 July 2025 (depending on your application date)	Current or prospective client inquires to (re)engage you — at the time of the inquiry Existing client not previously advised — within 30 days of the event
1 TPB maintains a register and how clients can access and search the register	✓	✓		
2 How clients can make a complaint about a TAS they have received, including the TPB's complaints process	✓	✓		
3 General information about rights, responsibilities and obligations	✓	✓		
4 Prescribed events in paragraph 45(1)(d) which arose between 1 July 2022 and your relevant application date			✓	
5 Prescribed events in paragraph 45(1)(d) which arose on or after your relevant application date				✓
5 Prescribed events in paragraph 45(1)(e)				✓

Transitional rules | section 151



- Despite the 5-year rule, section 45 applies in relation to matters that have arisen only on or after **1 July 2022**
- For matters arising before section 45 applies to the agent, the standard notification period of ‘within 30 days of an event’ is replaced with ‘no later than 30 days after section 45 begins to apply to the agent’ (i.e. **by 31 January 2025 or 31 July 2025**)
- Typo in legislative instrument:
 - The reference in subsection 151(1) to the 5-year disclosure rule in paragraph 45(1)(c) previously referred to paragraph 45(1)(d)
 - Legislative instrument has fixed this^[45]

⁴⁵ Item 6 of Schedule 1 to the [Treasury Laws Amendment \(Miscellaneous and Technical Amendments No. 1\) Instrument 2025](#) which amends subsection 151(1) of the Determination to omit ‘paragraph 45(1)(c)’ and substitute ‘paragraph 45(1)(d)’.

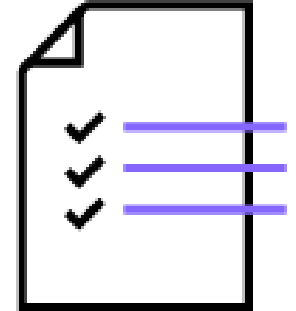
Disclosure rules | section 45

Required information

- TPB register — its existence, how to access and search
- How clients can make a complaint about you to the TPB
- Your rights, responsibilities and obligations as a tax or BAS agent, and your clients' obligations to you

Prescribed events (last 5 years^[46]) and prescribed matters

- Registration **suspended** or **terminated** by the TPB
- Undischarged **bankrupt** or went into external **administration**
- Convicted of a **serious taxation offence**
- Convicted of an offence involving **fraud or dishonesty**
- Serving, or sentenced to, **imprisonment** in Australia for 6 months or more
- Penalised, subject to an injunction, or subject to an order for breaching a voluntary undertaking, under **promoter penalty** provisions
- Federal Court has ordered a **pecuniary penalty** for contravening a civil penalty provision under the TASA
- Registration as a tax agent or BAS agent is subject to **conditions**

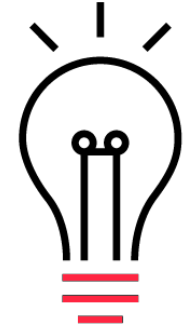


⁴⁶ But only matters that have arisen on or after **1 July 2022**

Keeping clients informed | section 45

Observations

- **Prospective clients** include individuals and entities that have directly contacted you about seeking to engage you to provide TAS, but are yet to engage you (but not general enquiries)
- TPB has provided some guidance^[47] for agents to address:
 - how to search the [TPB Public Register](#)^[48]
 - how to make a complaint^[49]
 - the Code^[50]
- Website disclosure — breaches by each individual agent within a company or the partnership or only the entity?



⁴⁷ The TPB's factsheet on general [information for clients](#) may be attached to client letters of engagement or re-engagement

⁴⁸ Paragraph 45(1)(a)

⁴⁹ Paragraph 45(1)(b)

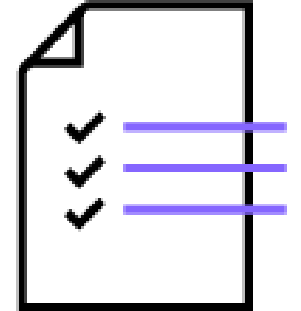
⁵⁰ Subparagraph 45(1)(c)(i)

Discussion



- How much of the Determination seemingly duplicates existing Code obligations?
- What should practitioners do to ensure you comply with the Determination by 1 January 2025 or 1 July 2025 (as relevant)
- How will the TPB administer and enforce the Determination?
- Will this ultimately change the practices and behaviours of practitioners?
- Could any of the rules change under a Coalition Government?

Checklist for practitioners



Checklist

- ✓ Uphold and promote the ethical standards of the profession — institute measures listed at paragraph 20 of TPB(I) 44/2024
- ✓ Take required action when you identify FMS — correct, advise client, withdraw, notify or take further action
- ✓ Disclose conflicts of interest when undertaking activities for government agencies and maintain confidentiality in dealings with government agencies
- ✓ Document and retain all advice to clients, including ‘verbal advice’, for at least 5 years
- ✓ Ensure your staff/contractors are appropriately trained and supervised
- ✓ Ensure your quality management policies and procedures are documented and enforced
- ✓ Ensure your websites/engagement letters contain information required to be advised to clients
- ✓ Meet your obligations under the breach reporting rules
- ✓ Meet Code obligations in section 30-10 of the TASA (see **Appendix** in this slide pack)

Other Tranche 1 changes

Use of disqualified entities^[51]

New Code items 15 and 16

- New subsection 30-10(15):

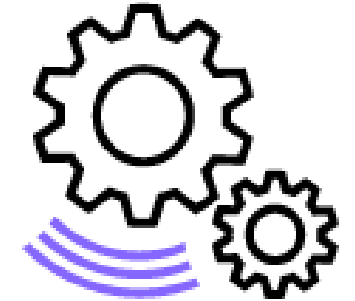
You must not employ, or use the services of, an entity to provide TAS on your behalf if:

- (a) you know, or ought reasonably to know, that the entity is a disqualified entity; and
- (b) the Board has not given you approval under section 45-5

- New subsection 30-10(16):

You must not provide TAS in connection with an arrangement with an entity that you know, or ought reasonably to know, is a disqualified entity

- Registered tax agent or BAS agent may apply to the TPB for approval to employ, or use the services of, an entity to provide TAS on their behalf^[52]



**From
1 Jan 2024**

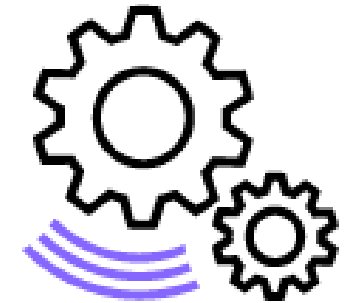
⁵¹ Gives effect to recommendation 4.6: Part 1 of Schedule 3 to the [TLAA1](#)

⁵² New subsection 45-5(1)

Use of disqualified entities

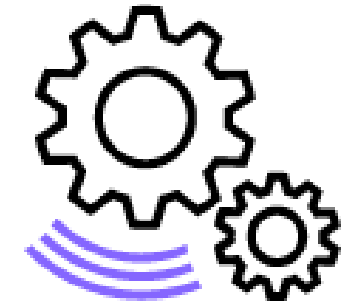
Disqualified entity (DQE)^[53]

- An entity is a DQE if it is neither a registered agent nor a qualified tax relevant provider and, within the last 5 years, has:
 - been convicted of a serious taxation offence, a serious offence or an offence involving fraud or dishonesty
 - been penalised under the promoter penalty provisions
 - been an undischarged bankrupt or has gone into external administration
 - been subject to sanctions for a breach of the Code
 - had their registration terminated
 - had their application for registration or renewal rejected
 - been found to have contravened the TASA



**From
1 Jan 2024**

Use of disqualified entities



From
1 Jan 2024

- **Obligations of DQE^[54]**
 - Seeking to provide TAS to a registered agent — required to notify the agent that they are a DQE before they are employed or engaged
 - Providing TAS to a registered agent — required to notify the agent that they have become a DQE **within 30 days** of becoming aware they are disqualified (see **transitional rule** below)^[55]
- **Penalty for failure to notify the agent^[56]**
 - Individual — 250 penalty units (\$82,500^[57])
 - Body corporate — 1,250 penalty units (\$412,500^[57])
- **Transitional rule^[58] — if:**
 - immediately before 1 January 2024, a registered agent employs or uses a DQE (that is a DQE on 1 January 2024) to provide TAS on their behalf;
 - immediately before 1 January 2025, the registered agent employs or uses the DQE to provide TAS on their behalf; and
 - the DQE has not already notified the registered agent that they are a DQE,

the DQE must notify the registered agent by **30 January 2025**

⁵⁴ New subsection 45-10(1)

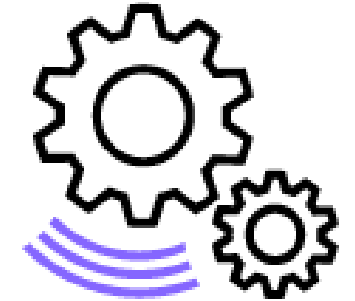
⁵⁵ New subsection 45-15(1)

⁵⁶ New subsection 45-10(3)

⁵⁷ The amount of a penalty unit is \$330 from 1 July 2024: MYEFO 2023–24 and Schedule 3 to the [Crimes Bill](#)

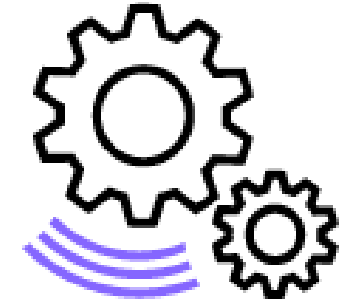
⁵⁸ New section 45-20

TPB guidance



- [TPB\(I\) 41/2024](#) **Code of Professional Conduct – Employing or using a disqualified entity in the provision of tax agent services without approval**
 - Explains the obligations of registered tax practitioners under Code item 15 (subsection 30-10(15) of the TASA) in respect of their employment, contracting with, or otherwise use of a ‘disqualified entity’ to provide tax agent services on their behalf
- [TPB\(I\) 42/2024](#) **Code of Professional Conduct – Prohibition on providing tax agent services in connection with an arrangement with a disqualified entity**
 - Explains the obligations of registered tax practitioners under Code item 16 (subsection 30-10(16) of the TASA) in respect of their arrangements with a ‘disqualified entity’
- [Web guidance](#)

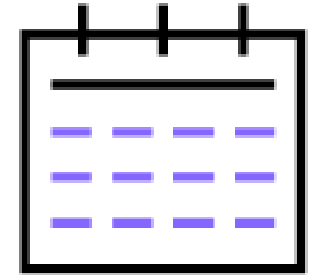
TPB guidance



How to determine if an entity is a disqualified entity

- Step 1** Check if the entity is (or was previously) registered on the [TPB Register](#) (12-month limit) and ASIC's [Financial Advisers Register](#)
- Step 2** Before employing, using or entering into an arrangement with an entity to provide TAS:
- Undertake [proof of identity checks](#)
 - Discuss the requirements of Code Items 15 and 16 with the entity
 - Obtain written confirmation from the entity that they have not had a disqualifying event occur within the last 5 years — the entity should use the TPB's [Disqualifying events declaration and consent form](#)
 - Does the written contract/employment enable you to immediately cease employing or using the entity if they become a DQE? May need to seek employment law advice
- Step 3** Existing contract/arrangement — follow Steps 1 and 2, see transitional provisions

Annual registration^{[59][60]}



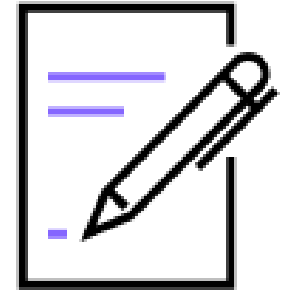
**Started on
1 July 2024**

- Registration period reduced from at least every 3 years to at least every year³
- Aligns with other regulatory obligations of tax practitioners such as maintaining professional indemnity insurance
- Removes the need for practitioners to submit an annual declaration with the TPB
- Applies from the next renewal date that occurs from 1 July 2024
- No changes have been made to the CPE requirements at this stage
- To accommodate the shorter renewal period, the maximum time permitted for the TPB to process and determine the outcome of an application has been reduced to **4 months** (previously 6 months)
- [Registration fees](#) for the period from 1 July 2024 to 30 June 2025: **\$273** for tax agents and **\$54** for BAS agents
- TPB resources: [FAQ on annual registration](#) and [Get ready for annual registration](#)

⁵⁹ Gives effect to recommendation 4.7: Part 2 of Schedule 3 to the [TLAA1](#)

⁶⁰ Section 20-25 (as amended)

Appointments to the TPB^[61]



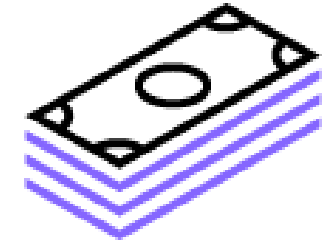
**Starts on
1 Oct 2024**

- In appointing a Board member, the Minister must be satisfied the individual is a ‘community representative’ — i.e. they are **not** any of the following:^[62]
 - a partner in a partnership or an executive officer of a company (director, secretary or senior manager within the meaning of the Corps Act) that is a **prescribed tax agent** (i.e. is a registered agent and has **more than 100 employees**)
 - a former partner in a partnership that is currently a prescribed tax agent, if the individual is receiving regular and ongoing benefits, or has within the last 6 months received a **material benefit**, from the partnership
 - a former executive officer of a company that is currently a prescribed tax agent if either of the following apply:
 - the individual is receiving regular and ongoing benefits, or has within the last 6 months received a material benefit, from the company
 - the individual holds shares in the company

⁶¹ Gives effect to [amendments](#) tabled in the Senate by the Greens: Part 4 of Schedule 3 to the [TLAA1](#)

⁶² New section 60-25

TPB Special Account^[63]



**Started on
1 July 2024**

- Establishment of a TPB Special Account^[64] — means funding for the TPB will largely be independent of the ATO
- Enables a special appropriation to be made specifically for the TPB
- Increases the TPB's independence as it is legally entitled to an established amount
 - Compared to the previous process where the ATO had the final decision regarding the portion of its annual departmental budget allocated to the TPB

⁶³ Gives effect to recommendation 3.1: Part 3 of Schedule 3 to the [TLAA1](#)

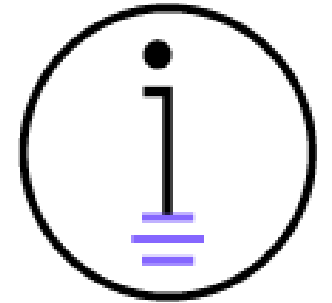
⁶⁴ New Subdivision 60-G

Objects clause^[65]

- Updates and modernises the object of the TASA:^[66]

To support public trust and confidence in the integrity of the tax profession and of the tax system by ensuring that TAS are provided to the community public in accordance with appropriate standards of professional and ethical conduct

- This is to be achieved by (among other things) providing for:
 - (a) the registration and regulation, by a national Board, of entities that provide TAS;
 - (b) a Code for registered agents;
 - (c) sanctions to discipline entities in relation to their conduct as a registered agent; and
 - (d) sanctions where TAS are provided otherwise than in accordance with the TASA



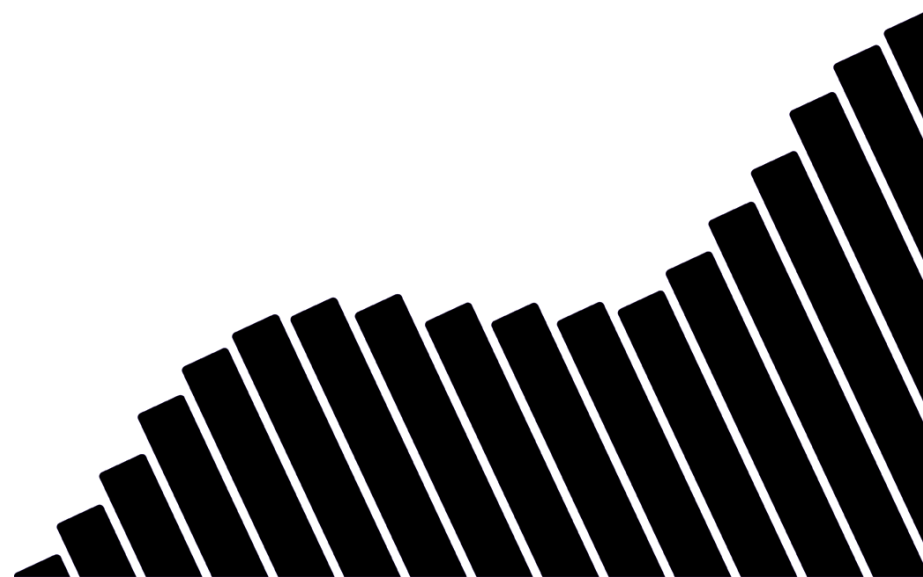
**Started on
1 Jan 2024**

⁶⁵ Gives effect to recommendation 2.1: Part 1 of Schedule 3 to the [TLAA1](#)

⁶⁶ Subsection 2-5 (as amended)

Thank you

Please complete your evaluation form



Appendix

Code of Professional Conduct (TASA)

Code of Professional Conduct

Code item (section 30-10)

Honesty and integrity

- 1 You must act honestly and with integrity.
- 2 You must comply with the taxation laws in the conduct of your personal affairs.
- 3 If:
 - (a) you receive money or other property from or on behalf of a client; and
 - (b) you hold the money or other property on trust;you must account to your client for the money or other property.

Independence

- 4 You must act lawfully in the best interests of your client.
 - 5 You must have in place adequate arrangements for the management of conflicts of interest that may arise in relation to the activities that you undertake in the capacity of a registered tax agent or BAS agent.
-

Code of Professional Conduct

Code item (section 30-10)

Confidentiality

- 6** Unless you have a legal duty to do so, you must not disclose any information relating to a client's affairs to a third party without your client's permission.

Competence

- 7** You must ensure that a tax agent service that you provide, or that is provided on your behalf, is provided competently.
 - 8** You must maintain knowledge and skills relevant to the tax agent services that you provide.
 - 9** You must take reasonable care in ascertaining a client's state of affairs, to the extent that ascertaining the state of those affairs is relevant to a statement you are making or a thing you are doing on behalf of the client.
 - 10** You must take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which you are providing advice to a client.
-

Code of Professional Conduct

Code item (section 30-10)

Other responsibilities

- 11** You must not knowingly obstruct the proper administration of the taxation laws.
- 12** You must advise your client of the client's rights and obligations under the taxation laws that are materially related to the tax agent services you provide.
- 13** You must maintain professional indemnity insurance that meets the Board's requirements.
- 14** You must respond to requests and directions from the Board in a timely, responsible and reasonable manner.

Other responsibilities — New code items

- 15** You must not employ, or use the services of, an entity to provide tax agent services on your behalf if:
 - (a) you know, or ought reasonably to know, that the entity is a disqualified entity; and
 - (b) the Board has not given you approval under section 45-5 to employ, or use the services of, the disqualified entity to provide tax agent services on your behalf.
- 16** You must not provide tax agent services in connection with an arrangement with an entity that you know, or ought reasonably to know, is a disqualified entity.
- 17** You must comply with any obligations determined under section 30-12 [Ministerial power to determine Code].

James Review of the TPB

James Review recommendations

Recommendation	Govt response
1 1.1 Retain the TPB as the statutory authority responsible for regulating tax practitioners	Supports
2 2.1 Update the object clause of the TASA	Supports and included in Tranche 1 amendments
3 3.1 TPB should become a separate agency and receive its own specific appropriation from the Govt rather than as an allocated proportion of the ATO budget	Supports and included in Tranche 1 amendments
4 3.2(a) The CEO of the TPB should be accountable to the Board and become a statutory appointment rather than an ATO employee on secondment to the TPB 3.2(b) Formal secondment arrangements should be put in place for ATO staff seconded to the TPB	Supports in part (does not support the CEO becoming a statutory appointment)
5 3.3(a) TPB and ATO should maintain and publish a plan that sets out how they will work together 3.3(b) Create a Tax Practitioner Governance and Standards Forum (TPGSF)	Supports TTI is a member of the TPGSF

James Review recommendations

Recommendation	Govt response
6 3.4 Amend law to oblige cooperation between TPB/ATO and TPB/ASIC, and to share information/notify each other when belief formed that a breach has occurred	Supports in principle
7 3.5 Amend the whistleblower laws so TPB is an ‘eligible recipient’	Noted, will consult Tranche 2 amendments
8 3.6(a) Board composition: at least 1 member should be a community member 3.6(b) Committee composition: 2 must be Board members, 3 rd at Board’s discretion	(a) Supports in principle ^[66] (b) Not supported
9 4.1(a) Education and experience requirements: undertake a review to determine if settings are at the right level 4.1(b) Determine whether an amendment to the TASR is appropriate to give the TPB greater flexibility to accept other qualifications that may not fall within traditional tax practitioner courses of study	Noted, will consult
10 4.2 TPB should no longer accredit professional associations as a ‘recognised professional association’ (remove registration entry pathway based on being a voting member of a TPB recognised professional association, with grandfathering)	Noted, will consult

James Review recommendations

Recommendation	Govt response
<p>11 4.3(a) Amend TASR to give the TPB greater flexibility to accept different types and periods of relevant experience</p> <p>4.3(b) Determine whether an amendment to the TASR is appropriate to amend the amount of relevant experience (and nature of experience) required to be registered as a BAS agent</p>	<p>(a) Supports</p> <p>(b) Will consult</p>
<p>12 4.4 Amend eligibility requirements for company and partnership tax practitioners in the TASA to include a requirement that the entity has appropriate governance arrangements in place that demonstrate who is accountable for the delivery of tax agent services</p>	<p>Supports, will consult</p>
<p>13 4.5(a) Amend the fit and proper person test in the TASA to ensure greater consistency with the requirements of other government regulators (e.g. ASIC, APRA)</p> <p>4.5(b) Current 5-year period in the TASA should be increased or removed entirely</p> <p>4.5(c) Those applying for registration with the TPB, including renewal, must disclose any spent convictions</p>	<p>All: Supports in principle</p> <p>(c) Will consult</p>

James Review recommendations

Recommendation	Govt response
14 4.6 Amend the TASA to include a requirement to declare close associates and/or employees who provide TAS and are affected by the fit and proper person test, and if they have engaged anyone listed on the proposed unregistered practitioners register	Supports in principle and included in Tranche 1 amendments
15 4.7 Convert the 3-year registration period to an annual period (with pro-rated fees)	Supports in part (fees to be determined) and included in Tranche 1 amendments
16 4.8 Following completion of the trial of tax clinics and decisions of the Government to either cease or extend the program, review the issue of tax clinics and the TPB to determine if any longer term amendments may be required	Noted, will continue with the program (too early to conduct a further review)
17 4.9(a) Only those tax intermediaries that are not regulated by any other government body should require registration with the TPB, despite otherwise being required to be registered with the TPB 4.9(b) TPB should have the power, through legislative instrument, to exclude certain other services from having to register with the TPB	Supports

James Review recommendations

Recommendation	Govt response
18 5.1 Relevant Minister should be given a legislative instrument power to be able to supplement the Code to address emerging or existing behaviours and practices	Supports and included in Tranche 1 amendments Any proposed changes to the Code will be considered first by the TPGSF
19 5.2 LPP provision (such as in section 70 of the ASICA) be enacted in the TAA, and a protocol similar to that being developed between LCA and the ATO in relation to LPP claims should be developed for tax practitioners generally	Supports in part
20 6.1 Increase TPB's sanctions powers, including introducing the following sanctions into the TASA, which could be applied to registered and unregistered practitioners: infringement notices, enforceable undertakings, quality assurance audits, interim suspensions, permanent disbarment and external intervention	Noted, will consult

James Review recommendations

Recommendation	Govt response
<p>21 6.2(a) Investigations can commence and/or continue once a registered tax practitioner either has their registration terminated, chooses not to re-register, or is seeking to surrender their registration</p> <p>6.2(b) Remove limitation on the TPB formally gathering information prior to commencing and notifying a tax practitioner of an investigation</p> <p>6.2(c) Remove 6-month timeframe to conduct an investigation</p>	<p>Supports in part</p> <p>(a) Supports and will amend the law</p> <p>(b) and (c) Will consult Tranche 2 amendments</p>
<p>22 6.3 Amend the TASR to enable the TPB to publish more detailed reasons for tax practitioner sanctions, including terminations, on the publicly available TPB Register</p>	<p>Noted, will consult Tranche 2 amendments</p>
<p>23 6.4 An administrative penalty regime, administered by the ATO, should be introduced to impose penalties on tax practitioners who demonstrate an intentional disregard of the tax laws in making, or being involved in making, a statement to the Commissioner</p>	<p>Noted</p>
<p>24 6.5 Safe harbour protection should be extended to cover instances where the tax agent or BAS agent has demonstrated recklessness or intentional disregard with respect to a taxation law</p>	<p>Noted</p>

James Review recommendations

Recommendation	Govt response
25 7.1 A new model should be developed for regulating tax (financial) advisers in consultation with ASIC, FASEA, the TPB and Treasury so tax (financial) advisers will be subject only to a single disciplinary regime	Supports in principle
26 7.2 The Government should initiate a specific review of what advice accountants can and cannot give in respect of superannuation and which accountants that might apply to — such a review could perhaps be undertaken by the Productivity Commission	Supports in principle
27 8.1(a) Expand details of tax practitioners that are currently included on the TPB Register to include publishing a wider range of information, decisions and outcomes 8.1(b) Make available a register of unregistered tax practitioners 8.1(c) Remove time limits on how long certain information appears on the Register	(a) Supports in principle (b) and (c) Not supported Tranche 2 amendments
28 8.2 Include details of tax practitioners who are included on the TPB Register on the Modernising Business Register ^[67]	Supports in principle

⁶⁷ The Government [announced](#) on 28 Aug 2023 that it will not be proceeding with the Modernising Business Registers program following independent review findings that the program could not deliver value for money, with massive budget and timeline blowouts

Abbreviations

Abbreviation	Explanation
ANZSIC	Australian and New Zealand Standard Industrial Classification
APES	Accounting Professional & Ethical Standards Board
ART	Administrative Review Tribunal
ATO	Australian Taxation Office
BAS (agent)	Business activity statement (agent)
Code	Code of Professional Conduct, section 30-10 of the <i>Tax Agent Services Act 2009</i>
ED	Exposure draft
FAQ	Frequently asked questions

Abbreviations

Abbreviation	Explanation
FMS	False or misleading statement
IGTO	Inspector-General of Taxation and Taxation Ombudsman
James Review	Review of the Tax Practitioners Board (2019)
NOCLAR	Non-Compliance with Laws and Regulations
QMS	Quality management system
TAS	Tax agent service
TPB	Tax Practitioners Board
TTI	The Tax Institute

Abbreviations

Abbreviation	Legislation
TLAA1	<i>Treasury Laws Amendment (2023 Measures No. 1) Act 2023</i>
Code Determination	<i>Tax Agent Services (Code of Professional Conduct) Determination 2024</i>
TAA	<i>Taxation Administration Act 1953</i>
TAF Bill/Act	<i>Treasury Laws Amendment (Tax Accountability and Fairness) Act 2024</i>
TASA TASR	<i>Tax Agent Services Act 2009</i> <i>Tax Agent Services Regulations 2022</i>

Upcoming Events

Local Tax Club

23 May 2025– Novotel Geelong

Topic: End of Year Review

Speaker: Karen Goodfellow, CTA, Goodfellow Tax Advisory

Women in Tax

1 May 2025 – RACV City Club Melbourne

Next Generation

29 May – Hall & Wilcox

Yarra Valley Tax Retreat

24 – 25 July 2025 - Balgownie Estate Yarra Valley



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