



Local Tax Club-Melbourne & Geelong

Tax Practitioner Board and TASA changes

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Contents

1. Disclaimer	3
2. Introduction	4
2.1 A Brief History.....	4
2.2 2025/6 Budget Measures	6
3. Breach Reporting Obligations	8
3.1 Reporting another registered agent	8
3.2 Self-reporting breaches of the Code	10
4. Additional obligations under the Code	12
5. Quality Management Systems	16

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2. Introduction

1 July 2025 will, for most tax agents, be a day of reckoning because it will herald regulatory changes to long-standing practice, which will add further layers of compliance requirements and cost.

Going forward, the landscape for many established and experienced tax agents will now be one which is considered to be foreign, with many new requirements to come to grips with.

In this paper a summary of the main changes to TASA¹ in recent times is set out, together with a discussion about key items that have emerged as "pressure points" for tax agents in attempting to comply with the changes.

As a consequence of the so-called "PwC scandal", changes have precipitated, affecting not just TASA but also other laws, including:

- Whistleblower protections
- Reform of promoter penalty laws
- Tax Practitioners Board (**TPB**) reforms

To be fair, some comprehensive amendments to TASA and the Code² had occurred with effect from 1 July 2024, but the main changes, which are arguably disproportionate to the inappropriate blame attributed to all tax agents, arise under the Determination³, and will need to be carefully considered and planned for. Now is a good time to take stock and attempt to navigate the complex terrain of TASA.

2.1 A Brief History

In October 2019, the Independent Review of the TPB, otherwise known as the James Report, after its author, Mr Keith James, was released.

The report was sent to the then Morrison government to respond to. In a media release dated 27 November 2020, more than a year later, Minister Michael Sukkar, the then Assistant Treasurer, reported that the government supported 20 of the 28 recommendations made.

Recommendation 5.1 in the report was as follows:

The Review recommends that the relevant Minister be given a legislative instrument power to be able to supplement the Code of Professional Conduct to address emerging or existing behaviours and practices. The legislative instrument process would also ensure appropriate consultation with key stakeholders and parliamentary oversight.

This recommendation was enacted in the *Treasury Laws Amendment (2023 Measures No.1) Act 2023 (TLAA23)*.

¹ Tax Agent Services Act 2009 (**TASA**)

² Code of Professional Conduct – s30-10 TASA

³ Tax Agent Services (Code of Professional Conduct) Determination 2024 F2025C00168 (C03) - 25 February 2025

An overview of the changes is set out in the table below, which is found on the TPB website⁴. When looking at the table and the breadth of the changes, one would have thought that the extent of the changes would be sufficient to deal with any and all future issues or threats that might arise and adversely affect the tax system.

It certainly gave the TPB far more issues to consider in regulating the conduct of tax agents, necessitating increased funding in recent annual Federal budgets⁵.

Law change	Start date	Explanation
1 Expanding the Code of Professional Conduct (Code) to prevent the engagement of disqualified entities	1 January 2024	The new Code items 15 and 16 prevent tax practitioners from employing or using a 'disqualified entity' without TPB approval or entering into certain arrangements with a 'disqualified entity'. The TPB has issued draft guidance and the public consultation closed recently.
2 Giving the Minister the ability to expand the Code	1 January 2024	The Minister will have the ability to expand the Code to include additional obligations that tax practitioners must comply with, to address emerging or existing behaviours and practices.
3 Move to annual registration period	1 July 2024	The registration period for tax practitioners will change from at least every 3 years to at least every year.
4 Breach reporting – self reporting	1 July 2024	A tax practitioner must notify the TPB in writing if the tax practitioner has reasonable grounds to believe that they have breached the Code and that the breach is a significant breach. The TPB will be issuing draft guidance for public consultation on the operation of these new laws.
5 Breach reporting – another tax practitioner	1 July 2024	A tax practitioner must notify the TPB and TPB recognised professional association in writing if the tax practitioner has reasonable grounds to believe that another tax practitioner has breached the Code and that the breach is a significant breach. The TPB will be issuing draft guidance for public consultation on the operation of these new laws.
6 Updating of the objects clause in the legislation	1 January 2024	The objects clause in the TASA has been updated to modernise the object of the TASA to recognise its role in supporting public trust and confidence in the integrity of the tax profession and the tax system.
7 Enhance the TPB's financial independence	1 July 2024	The TPB's financial independence from the Australian Taxation Office will be enhanced by establishing a 'special account' for the TPB, allowing separate funding for the TPB for specified purposes.
8 Board member appointments	1 October 2024	Ensure that individuals appointed to the TPB as Board members meet the definition of 'community representatives'.

The main changes brought about by the enactment of TLAA23 were:

1. Registered tax agents being prevented from:
 - employing or using a 'disqualified entity' without the approval of the TPB or;
 - entering into certain arrangements with a 'disqualified entity';
2. Breach reporting and self-reporting (the "dob-in" rules); and
3. The insertion of Code Item 17 (being the second entry in the table above).

More on Code Item 17: When it was inserted, it said that you must comply with any obligations determined under s30-12 of TASA.

⁴ <https://www.tpb.gov.au/important-changes-tax-agent-services-legislation>

⁵ See 2025 Consolidated Budget Paper 4 at p 165 - https://budget.gov.au/content/bp4/download/bp4_2024-25-consolidated.pdf

That section gives the relevant Minister the power to determine new obligations that relate to the professional and ethical conduct of registered tax agents and BAS agents and came into effect on 1 January 2024.

The Explanatory Memorandum to the Bill that introduced the amending legislation said, in part:

- 3.82 *The purpose of the power is to create a proactive regime where changes to the tax profession environment can be promptly adapted to by the Minister through regulations. The Code of Professional Conduct is to be a more dynamic instrument that can adjust to changes in a more contemporary manner than is permitted in the TAS Act.*
- 3.83 *The legislative instrument process also ensures appropriate consultation with key stakeholders and parliamentary oversight, while also creating a proactive regime where emerging changes to behaviours and practice can be promptly adapted to by the regulator.*

Following the "Response to PwC" tranches of legislation, which were released in December 2023, the Government also issued the draft *Tax Agent Services (Code of Professional Conduct) Determination 2023* for public comment. In its accompanying factsheet, it said "the Government will supplement the TPB Code of Professional Conduct to address behaviours and practices exhibited in the PwC/Collins matter."⁶

The accompanying Exposure Draft Explanatory Statement to the draft determination made the point, which seemed lost to me at the time, that the rules would commence on the day after registration or on 1 January 2024, whichever occurred later⁷.

A consultation period was announced. The joint professional bodies, whose members were affected, prepared and lodged a comprehensive [submission](#) dated 23 January 2024.

At the time, the rushed and ostensibly clandestine introduction of the Determination seemed to have been lost in the vortex of other more immediate and pressing matters dealing with changes implemented on 1 January 2024, and 1 July 2024, with the implementation of the "Breach Reporting" obligations, otherwise known as the "dob-in" rules.

2.2 2025–26 Budget Measures

The recent Federal Budget 2025–26: Budget Measures Paper No. 2 contained some interesting commentary on the short to medium term future of the TPB and the profession generally.

In the Receipt Measures section, the receipt measures entitled "*Enhancing Tax Practitioner Regulation and Compliance Receipts*" forecast \$2.1 million, \$16.2 million and \$28.7 million in the 2027, 2028 and 2029 income years respectively. Related payments to the Australian Taxation Office of \$5.6 million, \$5.7 million and \$8.0 million respectively in the 2026 to 2029 income years inclusive, were also disclosed.

In the accompanying commentary section, the following points were made. The Government will:

1. strengthen the sanctions available to the TPB; and

⁶ https://treasury.gov.au/sites/default/files/2023-09/factsheet-government-response-pwc-tax-leaks-scandal_0.pdf

⁷ <https://treasury.gov.au/sites/default/files/2023-09/c2023-444281-tpb-bill-em.docx>

2. modernise the registration framework for tax practitioners and provide funding to the TPB to undertake additional compliance targeting high-risk tax practitioners over four years from 1 July 2025.

The Government has committed to supporting the sustainability of the tax profession by increasing the ease of re-entry for tax and business activity statement agents who take career breaks. It is stated that the Government will consult on the implementation details of the measure.

This particular measure is estimated to increase receipts by \$47.0 million and increase payments by \$27.4 million over five years from 2024–25.

The Budget Measures clearly point towards two separate directions:

1. A crack-down by the TPB on tax agent misconduct, including poor and unlawful tax advice. Tax agents can now expect a greater emphasis on TPB compliance investigations, and in light of the impending requirements imposed by the Determination, this will mean that tax agents will also need to focus on maintaining community confidence in the integrity of the tax system under s10 of the Determination; and
2. A commitment to easing the re-entry of those tax agents who had taken a career-break. The Government considers that this measure will somehow increase receipts. For context, the James Report made the following recommendation:

Recommendation 4.3

The Review recommends:

- (a) *The Tax Agent Services Regulations 2009 being amended to give the TPB greater flexibility to accept different types and periods of experience as being relevant. This would allow the TPB to take into account individual circumstances such as maternity leave or other absences from the profession.*
- (b) *As part of (a), The Treasury and the TPB, with input from key stakeholders, determine whether an amendment to the Tax Agent Services Regulations 2009 is appropriate to amend the amount of relevant experience (and nature of experience) required to be registered as a BAS agent.*

This recommendation addressed a concern that registered BAS agents had lower levels of relevant experience that were inappropriate and needed to be increased. It still remains unclear how this recommendation will translate to an increased number of registered tax and BAS agents who will resume their careers and cause additional amounts to be received by government.

3. Breach Reporting Obligations

3.1 Reporting another registered agent

To date, much has been written about the effect of these standalone rules. We have an indication from the TPB about its approach to the administration of the breach reporting rules in the form of Information Sheet TPB(I) 43/2024⁸.

Breach reporting of oneself or another person's conduct is not unknown in the law or in the by-laws of professional bodies. There are examples of similar reporting frameworks that govern the conduct of financial advisors who are AFS licensees, or, for example, members of the 3 major accountancy bodies. These reporting frameworks have been around for many years and do not seem to have raised as much anxiety or concern as the current TASA's breach reporting rules which are now live.

Broadly, these new laws require a registered tax or BAS agent (**agent**) to notify the TPB within 30 days if they have 'reasonable grounds' to *believe* that either:

- They have personally breached the Code of Professional Conduct (**Code**) and that breach is a 'significant breach'⁹; or
- Another registered agent has breached the Code and that breach is a 'significant breach'¹⁰.

To add to the difficult burden of deciding if the TPB should be notified of another agent's breach, TASA also requires the reporting of the breach to the other agent's professional association, if the reporting agent is aware of that other agent's membership¹¹.

The statutory wording that supports the breach reporting rules remains open, vague and leaves the provisions open to wide interpretation, with many agents speculating on how the provisions will operate practically.

The breach reporting obligations are enlivened, firstly, when there is a "belief", as opposed to "knowledge". For all practical purposes, the two concepts are very far apart.

You can know if someone has done something wrong, because you might have witnessed the conduct, and you knew the conduct to be wrong. That's easy. But what if you heard that someone did something wrong. That's hearsay (i.e. I hear, and then I say). You don't have knowledge but you might have grounds to believe. That's why hearsay is inadmissible as evidence in court.

You can be at a social event and overhear others speaking about the conduct of another registered agent. You might have always had your doubts about the agent in question who's been known to be "dodgy". Is that now reasonable belief?

According to TASA's TPB(I) 43/2024:

⁸ <https://www.tpb.gov.au/tpbi-432024-breach-reporting-under-tax-agent-services-act-2009>

⁹ s30-35 TASA

¹⁰ s30-40 TASA

¹¹ s30-40(2) TASA

For a registered tax practitioner to have 'reasonable grounds to believe' that they, or another registered tax practitioner, have breached the Code and the breach is significant, the foundation or basis for the belief does not need to be established to a high evidentiary standard. This means there does not have to be conclusive proof. However, the belief must be supported by appropriate facts and evidence. Tax practitioners need to be able to support their claim and be in a position to verify or corroborate it as appropriate¹². (Emphasis mine)

This means that if an objective and unbiased assessment of circumstances gives rise to something more than a suspicion, then it will likely be a belief (which is not knowledge) and that will be sufficient to satisfy the statutory threshold requirement of "belief". Nothing requires the reporting agent to prove that the offending conduct actually occurred.

Now, let's say an agent has a "belief" about the conduct of another, and that belief is more than suspicion, and has been arrived at on reasonable grounds. The next step is to be satisfied that the conduct involved is a significant breach of the Code.

For a breach to be a "significant breach", regard must be had to the definition of that term in TASA.

Unfortunately, as it turns out, such a breach may not really "significant" within the generally accepted definition of that term.

TASA defines a significant breach as including:

- an offence involving dishonesty under an Australian law, which is an incredibly low threshold. It could also include a breach of civil law, criminal law, Commonwealth or state law¹³. The provisions are far reaching; but also
- is *otherwise significant*, including taking into account any one or more of the following:
 - the number or frequency of similar breaches by the tax practitioner
 - the impact of the breach on the tax practitioner's ability to provide tax agent services
 - the extent to which the breach indicates that the tax practitioner's arrangements to ensure compliance with the Code are inadequate

The *otherwise significant* circumstances are where it gets really murky. If an agent's practice shows evidence of:

- i an underlying systemic issue, or inadequate compliance arrangements to mitigate risk; or
- ii similar errors or incorrect conduct on more than one occasion;

in circumstances where:

- i. a large number of practice clients are similarly affected;
- ii. losses are incurred by those clients because of the conduct;
- iii. it is not in compliance with the tax law generally,

¹² TPB(I) 43/2024 at para 112

¹³ See definition of "significant breach of the Code" in s90-1 TASA

the breaches in question will collectively form a "significant breach".

For example, a practice that has a habit of assisting a client's tax position by taking up journal entries to reduce debtors, increase creditors or reduce closing stock, at the behest of the client (with nothing more), is conduct that is both dishonest, but also in circumstances where there is an underlying systemic issue. Either way, the conduct in question constitutes a significant breach.

Another example: a registered tax agent does not fully understand the Commissioner's position relating to UPEs¹⁴ and Division 7A and prepares incorrect calculations which are transposed into a tax return. Collectively, each breach constitutes a significant breach.

In either of the above examples, either the agent in question ought to self-report their breach to the TPB within 30 days, or if another agent becomes aware and forms the requisite belief that there is a significant breach, they also have similar reporting obligations. The TPB website provides a relevant notification disclosure form allowing breach notifications to be made online¹⁵.

A failure by an agent to report a significant breach of another agent is a contravention of:

1. TASA¹⁶;
2. s8C of the *Taxation Administration Act 1953*¹⁷; and
3. a breach of the Code – Code Item 2¹⁸. For example, the TPB says: *The breach reporting obligations in sections 30-35 and 30-40 of the TASA are therefore taxation laws that registered tax practitioners must comply with in the conduct of their personal affairs*¹⁹.

3.2 Self-reporting breaches of the Code

In most common practical situations, the breach reporting rules for self-breaches are most likely to arise when a registered agent becomes aware of an error committed by themselves and steps are taken to rectify that error.

Furthermore, it is not universally known that the by-laws of the 3 major accounting bodies in Australia require self-reporting or notification of certain events. For example, By-Law 40.8(d) of the CAANZ by-laws says:

When a Notification Event occurs in relation to a Member, or a Practice Entity of which that Member is a Principal, that Member must, in accordance with Section 5 of these By-Laws and Regulations give notice to the Professional Conduct Committee of the Notification Event within 7 days of becoming aware of the Notification Event.

¹⁴ For example, in accordance with TD 2022/11 - <https://www.ato.gov.au/law/view/document?DocID=TXD/TD202211/NAT/ATO/00001>

¹⁵ <https://myprofile.tpb.gov.au/complaints/>

¹⁶ S30-40(2) TASA

¹⁷ See Note to s30-35 TASA: There are also similar reporting requirements generally under the rules and by-laws of the major accounting bodies

¹⁸ See TPB(I) 43/2024 at para 22

¹⁹ Ibid at para 164

A Notification Event is defined in By-Law 40.8(c).

Also, APES 110 requires self-reporting of breaches, under paragraph 100.8, onward.

As discussed above, there are things that happen from time to time, where you can't undo the past. For example, dividends with franking credits may have been streamed to clients where the trustee shareholders had not made a valid family trust election, but the franking credits were claimed in the usual way.

This error might be endemic across the firm and had occurred many times before. This would satisfy the definition of "significant breach", because it is otherwise significant, taking into account the extent to which the breach indicates that the agent's arrangements to ensure compliance with the Code are inadequate. This follows from the requirements under Code Items 7-10 inclusive:

- (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.*

You would (or perhaps should) form the view that the breach is a significant breach. Accordingly, s30-35(1)(ba) is enlivened because:

you have reasonable grounds to believe that:

- (i) *you have breached the Code of Professional Conduct; and*
- (ii) *the breach is a significant breach of the Code;*

The notification must be in writing and made to the TPB within 30 days.

4. Additional obligations under the Code

As discussed above, Code Item 17 was inserted into the Code with effect from 1 January 2024, and its stated purpose was to compel the adherence to any fresh obligations determined under s30-12 of TASA.

The *Tax Agent Services (Code of Professional Conduct) Determination 2024* (**Determination**) came into effect from 1 August 2024. Its stated purpose is to:

- elaborate on and supplement the Code to outline the high professional and ethical standards expected by the community of individual tax practitioners by improving transparency and accountability the public has greater confidence and assurance in the integrity of the profession; and
- contribute to the strengthening of the regulatory framework and the regulation of the profession in the context of recent public scrutiny of misconduct in the tax practitioner profession.

Following the joint submission on the draft Determination, the professional bodies regrouped after the Determination was registered on 2 July 2024 to collectively form a single voice to advocate for certain changes to the Determination. These changes were adopted in October 2024, resulting in an amended subsequent version known as "Compilation No. 2".

For registered tax or BAS agent firms that have 100 employees or less as at 31 July 2024, the start date for the Determination is 1 July 2025. Larger firms have been subject to the Determination since 1 January 2025. While some of the professional and ethical obligations found in the Determination are general in nature, other obligations relate specifically to dealings with the Government as a client.

The relevant provisions in summary form are as follows:

Uphold ethical standards of tax profession

Section 10: Independently, and in cooperation with other registered tax agents and BAS agents (whatever that means), you must uphold and promote the Code; and not engage in any conduct that undermines public trust and confidence in the integrity of the tax system, tax profession or brings the tax profession into disrepute.

False or misleading statements

Section 15: You must not make a statement to the TPB or the Commissioner, or permit or direct someone else to make or prepare such a statement that you know is false, incorrect or misleading in a material particular.

If you permitted a statement to be made to the TPB or the Commissioner that either contained or omitted something making it false or misleading in a material particular, that you believe was made on grounds where there was either:

- i. a failure to take reasonable care in connection with the preparation or making of the statement; or
- ii. recklessness as to the operation of a taxation law; or
- iii. intentional disregard of a taxation law;

within a reasonable period of time after you come to believe that the statement given, you must take the following reasonable steps:

- a. if you made the statement – have it corrected;
- b. if the statement was for a client – tell the client that it should be corrected, and the potential consequences if the statement is not corrected.

If the client does not correct the statement in paragraph (b) within a reasonable time, and the statement was made in circumstances of recklessness or intentional disregard, you must disengage.

However, if the statement causes or continues to cause any substantial harm to investors, creditors, employees of the public, it is only then that a disclosure be made to the TPB or the Commissioner.

This requirement also extends to other Australian government agencies.

Below is an excerpt from the Determination to assist in understanding the scope of the provisions:

(2) Where:

- (a) a statement has been given to the Board or Commissioner; and
- (b) one of the following applies:
 - (i) you made the statement, or permitted or directed someone else to make the statement, other than for a client; or
 - (ii) for an entity that was your client at the time the statement was given to the Board or Commissioner, you made or prepared the statement, or permitted or directed someone else to make or prepare the statement; and
- (c) at a time after the statement was made, you have reasonable grounds to believe that the statement:
 - (i) was false or misleading in a material particular at the time it was made; or
 - (ii) omitted any matter or thing, at the time it was made, without which the statement at that time is misleading in a material respect; and
- (d) you also have reasonable grounds to believe that the false or misleading nature of the statement resulted from:
 - (i) a failure to take reasonable care in connection with the preparation or making of the statement; or
 - (ii) recklessness as to the operation of a taxation law; or
 - (iii) intentional disregard of a taxation law;

within a reasonable period of time after you come to believe that the statement given satisfies paragraph (c), you must take each of the actions set out in an item of the following table when the situation described in that item of the table applies:

Responding to a false or misleading statement		
Item	Column 1 In this situation:	Column 2 You must take all reasonable steps to:
1	where you made the statement or permitted or directed someone else to make the statement (other than a statement made for a client)	have the statement corrected.
2	where you made or prepared the statement, or permitted or directed someone else to make or prepare the statement, for a client	<p>advise your client about all of the following:</p> <ul style="list-style-type: none"> (a) that the statement should be corrected; (b) the possible consequences of not taking action to correct the statement. <p>However, this item does <i>not</i> apply to the extent that doing so would be unlawful under another Australian law.</p>
3	<p>where:</p> <ul style="list-style-type: none"> (a) you made or prepared the statement, or permitted or directed someone else to make or prepare the statement, for a client; and (b) after a reasonable period of time after taking the steps mentioned in item 2 of this table, you are <i>not</i> reasonably satisfied that your client has corrected the statement or otherwise adequately explained the basis for the statement; and (c) either subparagraphs (2)(d)(ii) or (iii) are satisfied in relation to the false or misleading nature of the statement 	<p>withdraw from the engagement, and professional relationship, with your client (including no longer providing any further tax agent services to your client).</p> <p>However, this item does <i>not</i> apply to the extent that:</p> <ul style="list-style-type: none"> (a) doing so would pose an unreasonable risk to your personal safety, or the safety of a member of your family or an at risk staff member of yours; or (b) doing so would be unlawful under another Australian law.
4	<p>where:</p> <ul style="list-style-type: none"> (a) you made or prepared the statement, or permitted or directed someone else to make or prepare the statement, for a client; and (b) after a reasonable period of time after taking the steps mentioned in item 2 of this table, you are <i>not</i> reasonably satisfied that your client has corrected the statement or otherwise adequately explained the basis for the statement; and (c) either subparagraphs (2)(d)(ii) or (iii) are satisfied in relation to the false or misleading nature of the statement; and (d) you have reasonable grounds to believe your 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) 	<p>notify the Board or Commissioner (as the case requires) that you have advised your client that a statement made to the Board or Commissioner should be corrected and you are <i>not</i> reasonably satisfied that your advice was acted upon.</p> <p>However, this item does <i>not</i> apply to the extent that:</p> <ul style="list-style-type: none"> (a) doing so would pose an unreasonable risk to your personal safety, or the safety of a member of your family or an at risk staff member of yours; or (b) doing so would be unlawful under another Australian law.
5	the same as for item 4	<p>take any further action as you reasonably consider is needed in the public interest.</p> <p>However, this item does <i>not</i> apply to the extent that:</p> <ul style="list-style-type: none"> (a) doing so would pose an unreasonable risk to your personal safety, or the safety of a member of your family or an at risk staff member of yours; or (b) doing so would be unlawful under another Australian law.

Conflicts of interest in dealing with government

Section 20: If you act for an Australian government agency in a professional capacity, you must identify and disclose any real or apparent material conflicts of interest.

Maintaining confidentiality in dealings with government

Section 25: Unless you have a legal duty to do so, you must not disclose any information you have received, directly or indirectly, from an Australian government agency, in connection with any activities you undertake with the agency in a professional capacity. This also extends to the use of any information for personal advantage. There are some limited carve-outs.

Keeping proper client records

Section 30: You must keep records that correctly record the tax agent services you have provided, or that are provided on your behalf, to each of your clients, including former clients. These records must be in English, retained for 5 years and show the nature, scope and outcome of the tax agent service provided. The records must also include all relevant information considered in any advice given to a client, including the relevant facts, assumptions and reasoning.

Ensuring competent tax agent services

Section 35: You must ensure that each entity providing tax agent services on your behalf maintains knowledge and skills that are relevant to the tax agent services the entity is providing, and is appropriately supervised.

Quality management systems

Section 40: You must establish and maintain a system of quality management, in relation to the provision of tax agent services by you, or on your behalf, which is designed to provide you with reasonable confidence that you are complying with the Code. You must document and enforce the policies and procedures of your system of quality management.

Keeping clients informed

Section 45: This section sets out the new client reporting rules. From 1 July 2025, an agent must advise all current and prospective clients:

- that the TPB maintains a register of agents and how they can access and search the register;
- how they can make a complaint about a tax agent service you have provided, including the complaints process of the TPB;
- of general information about your obligations to the client and vice-versa; and
- if, within the last 5 years any one or more of the nominated events happened to you.

Your notification must be in writing, in a prominent, clear and unambiguous way, when on-boarding a new client or even if a client enquires about retaining your services, or within 30 days of becoming aware of the matter, or upon engagement or re-engagement of a client (as the case requires), or upon receiving a relevant request.

The example to s45(2) provides a safe-harbour for agents, by prescribing the manner by which the notification requirements can be properly satisfied. It says that an agent who does all of the following, in the form and within the times mentioned in subsection (2), will have given information to all their current and prospective clients as required under this section:

- (a) the agent publishes the information on a publicly accessible website that they use to promote the tax agent services they offer, and
- (b) the agent includes the information in letters of engagement or re-engagement (as the case requires) given to each of their clients; and
- (c) the agent provides their clients, upon engagement or re-engagement (as the case requires), with a copy of the Board's factsheet on general information for clients.

Under the transitional provisions, despite the determination taking effect from 1 July 2025, the new client reporting rules retrospectively apply to matters that have arisen on or after 1 July 2022.

5. Quality Management Systems

Section 40 of the Determination is a "sleeper" in that it is likely to be one of the very first enquiries made by the TPB at the commencement of an investigation into an alleged breach of the Code or TASA.

In its entirety, s40 says:

- (1) You must establish and maintain a system of quality management, in relation to the provision of tax agent services by you, or on your behalf, which is designed to provide you with reasonable confidence that you are complying with the Code of Professional Conduct.
- (2) You must document and enforce the policies and procedures of your system of quality management.

Note 1: A system of quality management includes policies and procedures relating to governance and leadership, monitoring of performance, adherence to the Code of Professional Conduct, client engagement, proper keeping of records, protecting confidentiality of information, the management of conflicts of interest, and the recruitment, training and management of employees.

Note 2: The obligation in this section has been informed by standards issued by the Accounting Professional & Ethical Standards Board. In 2024, the standards could be viewed on the Accounting Professional & Ethical Standards Board [website](#).

Working backwards, the second note refers to standards promulgated by the Accounting Professional & Ethical Standards Board (**APESB**). The APESB is a national body that sets the code of ethics and professional standards with which accounting professionals who are members of CPA Australia, CAANZ or IPA must comply²⁰.

The primary document setting out APESB's ethical guidelines, which must be adhered to by all members of the three major accountancy bodies, is APES 110²¹, while APES 320²² deals with quality management generally.

The purpose of APES320 is for a firm to establish and document a system of quality control, and appropriate engagement file inspection protocols, the extent to which depends on the size of the firm²³.

The purpose of the documentation is to describe the allocation of responsibilities within a firm among its senior leadership personnel to establish and maintain a system of quality control, and to monitor compliance with professional standards²⁴.

Under Note 1 to the Determination, it expressly states:

A system of quality management includes policies and procedures relating to governance and leadership, monitoring of performance, adherence to the Code of Professional Conduct, client engagement, proper keeping of records, protecting confidentiality of information, the management of conflicts of interest, and the recruitment, training and management of employees.

²⁰ <https://apesb.org.au/about-apesb/>

²¹ APES 110 Code of Ethics for Professional Accountants (including Independence Standards)

²² APES 320 Quality Management for Firms that provide Non-Assurance Services

²³ APES 320 para 3.18

²⁴ APES 320 paras 3.13 & 3.14

In order to comply with s40, a firm must establish documentation, but must also have objective evidence of compliance, to ensure compliance with the Code that addresses each of the following:

1. responsibility for ensuring overall and standardised quality within the firm;
2. how ethical requirements within the meaning of APES 110 and the Code generally are addressed and actively monitored
3. how on-boarding of client relationships and specific engagements are assessed, approved and maintained
4. how internal human resource issues comply with all State and Federal laws and regulations
5. how quality work is produced for each client, where the work that is done is consistently accurate, timely and within budget

Going into more detail, s40 requires all registered tax practitioners to have sufficient internal control procedures to ensure they are compliant with the Code. For example, the obligations could require an organisation to have appropriate policies and procedures in relation to recruitment, training, supervision, information sharing, reporting, record-keeping, security, information technology, human resources, dealing with complaints and workplace culture.

Examples of the areas to be included are:

- regular training of new and existing staff on their obligations under the Act when providing tax agent services whether or not as a registered tax practitioner;
- the use of information barriers where there is a conflict of interest between current and former clients;
- quality assurance processes and systems to review the accuracy and standard of tax agent services being provided to clients;
- authorisation and risk management processes considering potential conflicts of interest prior to accepting new clients;
- file management system with access controls, limiting the users able to access confidential information;
- documented reporting lines and responsibilities to ensure staff duties are effectively segregated and prevent the incidence of fraud or non-compliance;
- independent internal control reviews;
- physical controls over filing cabinets;
- conducting a conflict of interest check prior to engaging or re-engaging a client;
- reviewing and reissuing client engagement letters; and
- regularly updating software to ensure information remains confidential.

Ultimately, tax practitioners will be required to exercise professional judgment to determine appropriate controls dependent on a range of circumstances, including the size, nature and clientele of the organisation.

There should also be an active and continuous review of the documentation to ensure that it is up-to-date, been complied with and covers any changes to any laws, regulations or rules.

In addition to complying with s40 of the Determination, this documentation would also have to be prepared and maintained in parallel with APES 320.

Despite the need to have already complied with APES 320, it is likely that a number of service providers who will produce standardised quality documentation will emerge into the market, thus saving substantial time and effort in producing such material to satisfy s40.

It would also be prudent to ensure that a firm's precedent client engagement letter discloses the possibility of the need to produce client documentation to third-party reviewers. Finally, the need to satisfy s40 will come at a cost, and be yet another driver in the fee increases that each firm will necessarily have to grapple with.

Arthur Athanasiou

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INFORMATION FOR CLIENTS

YOUR OBLIGATIONS TO THE ATO, AND YOUR TAX PRACTITIONER'S OBLIGATIONS TO YOU, THE TPB AND ATO

Overview

As a taxpayer, it is important you:

- are aware of your obligations to the Australian Taxation Office (ATO)
- understand your tax practitioner has obligations to you, the ATO and the Tax Practitioners Board (TPB).

Your obligations

- Be truthful with the information you provide your tax practitioner.
- Keep the required records and provide them to your tax practitioner on a timely basis, as required.
- Be co-operative with your tax practitioner's requests, and meet their due dates.
- Comply with the tax laws.

If you do not meet your obligations

- The ATO may impose administrative penalties (fines).
- Interest charges may be applied.
- In some cases, criminal prosecutions may be sought.
- The ATO may initiate debt recovery.

Your tax practitioner's obligations require them to:

- Act honestly and with integrity.
- Uphold and promote the ethical standards of the tax profession.
- Act lawfully in your best interests.
- Manage any conflicts of interest.
- Take reasonable care to ascertain your state of affairs and apply tax laws correctly.
- Keep your information confidential unless there is a legal duty to disclose.
- Provide services competently.

- Not knowingly obstruct the administration of the tax laws.
- Advise you of your rights and obligations under the tax laws.
- Account to you for money or other property on trust.
- Not make false or misleading statements to the TPB or ATO, and in some cases withdraw their engagement with you and notify the TPB or ATO of certain matters.
- Keep proper records.
- Keep you informed of certain matters so you can make informed decisions (see page 2).
- Address any false or misleading statements they are responsible for.
- Engage with clients to address other false or misleading statements, exploring options to correct.

If your tax practitioner fails to meet their obligations

- Their registration can be suspended or terminated, meaning they can't practice.
- They could receive a caution or orders from the TPB – for example, undertaking education or working under the supervision of another registered tax practitioner.
- Have fines imposed on them by the Federal Court.
- Your tax and superannuation matters may not be accurate.
- You may be subject to enquiries or audits.
- Any tax shortfalls may attract penalties and interest.
- You may have litigation options to review decisions and to recover debts.
- In the case of fraud or criminality, penalties may lead to prosecutions.

What you should expect from your tax practitioner



They will ask you questions to better understand your situation.



They may ask you to provide evidence of any claims you make.



They will not act illegally



They will advise you of your obligations under the tax laws.

Further information

For further information, see tpb.gov.au and ato.gov.au



Your tax practitioner must keep you informed of certain matters

1. Information about the TPB Register

To support you to make the right decisions about any tax practitioner, the TPB maintains a [public register](#). You can identify registered BAS agents and tax agents, as well as those who are in your locality. The register also provides important information about higher risk cases, where the TPB has imposed serious sanctions on a tax practitioner.

Further information about the register can be found at: tpb.gov.au/help-using-tpb-register.

2. How to make a complaint to the TPB

The TPB welcomes all feedback which helps improve our services and the regulatory system and provides critical intelligence and data. You can provide information or make a complaint about a tax practitioner to the TPB using a simple online form at: [myprofile.tpb.gov.au/complaints](https://myprofile(tpb.gov.au/complaints).

Complaints can also be made about unregistered preparers who are not complying with the law. All complaints and referrals are assessed by the TPB.

Further information about the complaints process is available at: tpb.gov.au/complaints.

3. General information about rights, responsibilities and obligations

Your tax practitioner must advise you of their rights, responsibilities and obligations as a tax practitioner, including to you, and the obligations you have to them. These rights, responsibilities and obligations may arise under the tax law or because of the particular services they provide to you.

See page 1 for a summary of key obligations relating to you and your tax practitioner. Your tax practitioner will provide you with additional information about these matters.

4. Prescribed events within the last 5 years

If certain prescribed events have occurred involving the tax practitioner within the last 5 years, they must advise you of this at the time you make enquiries to engage or re-engage them to provide tax agent services. Otherwise, the tax practitioner must notify you within 30 days of them becoming aware of the matter. Prescribed events include if the tax practitioner was:

- suspended or terminated by the TPB
- an undischarged bankrupt or went into external administration
- convicted of a serious taxation offence or an offence involving fraud or dishonesty
- serving or sentenced to a term of imprisonment in Australia for 6 months or more.

This disclosure obligation extends to prospective clients – for example, a taxpayer enquiring to engage a tax practitioner for the provision of tax agent services.

Tax practitioners are not required to disclose events that occurred before 1 July 2022.

5. Registration subject to conditions

Your tax practitioner must advise you if their registration is subject to conditions (e.g. they can only provide tax services related to research and development or tax (financial) advice services).

The tax practitioner must notify you of this at the time you are making inquiries to engage or re-engage them to provide you with tax services. Otherwise, the tax practitioner must notify you within 30 days of them becoming aware of the matter.