



Australian Government

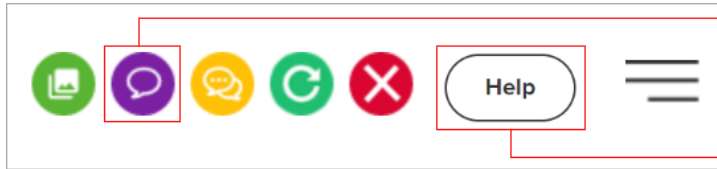


TAX  
PRACTITIONERS  
BOARD

# Cracking the Code

**Presented by** Debra Anderson, Board Member, Tax Practitioners Board

## Technical guidance



Click this icon on the top right of your screen to join the chat

Click this icon for technical support

- Call Redback Support for technical problems: 1800 733 416.
- Find the **presentation slides** and **resources document** at [tpb.gov.au/webinar-hub](https://tpb.gov.au/webinar-hub)
- You can claim CPE/CPD for attending this webinar. We don't issue attendance certificates.

## What we will cover today

- Each item under the Code of Professional Conduct (Code)
- Complying with your obligations under the Code
- Consequences for failing to comply
- Case studies
- Tax Practitioners Board Review outcomes
- Questions

# Meet your presenter

Debra Anderson

- > Board Member
- > Tax Practitioners Board



# Code of Professional Conduct



## Five key principles



Honesty & integrity



Independence



Confidentiality



Competence



Other  
responsibilities

**Honesty and integrity**

A decorative graphic in the bottom right corner consisting of numerous thin, light blue curved lines that sweep upwards and to the right, creating a sense of motion and depth.

# Code item 1

## You must act honestly and with integrity.

The principles of honesty and integrity require you to ensure:

- straightforwardness
- fair dealing
- a commitment not to mislead or deceive
- truthfulness.



## Code item 2

**You must comply with the tax laws in the conduct of your personal affairs.**

This includes timely lodgment and payment of personal:

- income tax returns
- activity statements
- superannuation guarantee contributions
- PAYG withholding and instalment payments
- debt due to the ATO (or payment arrangements in place).

## Code item 3

**If you receive money or other property from or on behalf of a client, you must account to your client for it.**

Money or property held on trust includes:

- money held or received in advance for settling or meeting liabilities
- client tax refunds
- money paid for specialist advice.

You must keep money or other property held on trust for a client separate from personal money or other property.

**Independence**



## Code item 4

**You must act lawfully in the best interests of your client.**

- You must act in your client's best interest as long as it is lawful.
- Do not follow instructions from a client that contravene the law.
- It is unacceptable to turn a blind eye to a client's illegal tax affairs.

## Example: Code item 4

- Michael works in the hospitality industry.
- He engages Rahul, a registered tax agent, to prepare and lodge his income tax return.
- He asks Rahul to claim a deduction for the black trousers he's required to wear at work. Michael believes it is in his best interest to reduce his taxable income.
- However, Rahul is aware that Michael cannot claim the cost of his work clothing as an allowable deduction under the tax law because the trousers are not protective or specific to his occupation.
- Rahul advises Michael accordingly and must not act in accordance with Michael's instruction.

## Code item 5

**You must have in place adequate arrangements for the management of conflicts of interest.**

- A conflict of interest arises where you have a personal interest or duty to another person, which conflicts with the duty owed to your client.
- There are a number of mechanisms to manage conflicts of interest:



Disclose



Control



Avoid

# Confidentiality



## Code item 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.**

When disclosing a client's information to a third party you should:

- clearly inform the client about the information you are disclosing
- advise them to whom and where the disclosure will be made
- obtain their written permission.



**Competence**



## Code item 7

**You must ensure services that you provide, or that are provided on your behalf, are provided competently.**

- Ultimately, you are accountable for tax practitioner services provided on your behalf, and you need to ensure they are provided competently.
- You need to ensure:
  - adequate supervision
  - competent standards
  - appropriate disclosures.

## Code item 8

**You must maintain knowledge and skills relevant to the tax agent services that you provide.**

- You must complete continuing professional education (CPE) that meets our requirements.
- CPE completed must be relevant to the services you provide.
- CPE activities should be provided by someone with suitable qualifications and/or practical experience.

## Example: CPE

- Nick is a registered tax (financial) adviser.
- He attends a two hour seminar about a financial product that he intends to sell as part of the services he provides.
- The seminar includes a 15 minute discussion on the various tax implications concerning the financial product. As the product is relevant to the services that Nick provides, he can claim the full two hours as relevant CPE.
- Nick also uses web applications in providing services to his clients and completes a cyber-security awareness course. This training is relevant CPE too.

## CPE Review

- We recently released two exposure drafts on our CPE policy requirements.
- We've consulted with the profession, the professional associations and the broader community at various stages throughout the process.
- One of the key changes that the initial feedback supported was the increase in the minimum number of CPE hours to 120 over three years for all registered tax practitioners – this equates to less than an hour per week.
- Ongoing education enhances the integrity of the tax profession, better supports client needs, and builds community confidence in the tax system.
- We received 95 submissions in total. We will consider all feedback carefully and consult further, if required, before finalising our position.
- The current CPE policy requirements will apply until we release our revised policy.

## Code item 9

**You must take reasonable care in ascertaining a client's state of affairs.**

- Consider how a competent and reasonable person would act.
- Take into account relevant factors:
  - new or substantial changes in the law
  - nature and circumstances of the client
  - unusual transactions
  - consistency with previous statements from the client.

## Code item 10

**You must take reasonable care to ensure that taxation laws are applied correctly.**

- Exercise your own professional skills and judgment.
- Mistakes may not mean a failure to take reasonable care.
- Refer to:
  - legislation or case law
  - ATO rulings, determinations, guidance or website content
  - information from a recognised professional association
  - a tax practitioner with expertise in that area of taxation law.

# Poll

- Poppy's Designs engages Stefan, a registered tax agent, to prepare its income tax return.
- Poppy's Designs is a new client. It gives Stefan all of its tax information, including accounts which have been prepared by Fiona, a registered BAS agent.
- Stefan has previously examined work prepared by Fiona and has not had any concerns.
- What should Stefan do in this situation to ensure he complies with his obligations under Code Item 9?
  - Accept Fiona's BAS and GST work at face value.
  - Undertake relevant checks of the additional tax information provided.
  - Perform identity checks.
  - All of the above.





# Other responsibilities



## Code item 11

**You must not knowingly obstruct the proper administration of the taxation laws.**

- You must perform duties and functions as required by taxation laws.
- You will breach the Code if you knowingly obstruct the Commissioner of Taxation or the TPB as required by the taxation laws.

## Code item 12

**You must advise your client of their rights and obligations under the taxation laws.**

We recommend using an engagement letter to advise your clients of their obligations, such as:

- keeping proper records
- providing accurate and complete information
- rights or options available to clients.

## Code item 13

**You must maintain professional indemnity (PI) insurance.**

- You must:
  - maintain PI insurance that meets our requirements
  - notify us of how you meet our PI insurance requirements.
- PI insurance protects your clients in the event you cause them to suffer loss due to an act, error or omission.
- We recommend you assess the risk of a cyber-attack and consider if you should take out additional cover to assist with first party losses arising from a cyber-attack

## Code item 14

### **You must respond to Board requests.**

- You must respond to all requests and directions from the Board in a timely, responsible and reasonable manner.
- We may contact you to request information, including completing your annual declaration, information relating to your PI insurance or in response to a compliance issue.

# Consequences for failing to comply

## Penalties and sanctions



- If we find a tax practitioner has failed to comply with the Code we may impose one or more administrative sanctions:
  - a written caution
  - an order
  - suspension of registration for a certain period
  - termination of registration.
- The severity of a sanction depends on the circumstances of each case.

# Case studies





# Case study 1



## Dishonesty and multiple Code breaches

- The BCC found that a tax agent had breached multiple provisions of the Code. The agent breached Code items 1 and 2 as they:
  - Made false and misleading statements to us in three annual declarations and in an application to renew his registration.
  - Did not comply with the tax laws in the conduct of his own tax affairs as well as the affairs of four company and partnership entities for which he was responsible.
- The agent also breached Code item 3 as he did not have processes in place to promptly pass on tax refunds to clients. He breached Code item 14 by failing to adequately address, or respond at all, to our multiple requests for information.
- The BCC concluded he was no longer a fit and proper person and terminated his registration.

## Case study 2



### TPB bans agent for making false Cash Flow Boost claim

- TLL Tax Pty Ltd (TLL) breached the Code relating to competency, honesty and integrity.
- TLL changed its clients' bank account details to those of the agents Company director.
- TLL lodged income tax returns and BAS on behalf of one client who was no longer trading, without their knowledge or authorisation, which included false amounts.
- When confronted, TLL lodged unauthorised amendments to the client's tax returns and BAS.
- TLL lodged a further BAS for the second client, reporting an amount that the client was not aware of and which could not be substantiated.
- TLL also attempted to report the COVID-19 stimulus Cash Flow Boost for over \$20,000.
- The BCC terminated the company registration and banned them for two years.

# Review of the Tax Practitioners Board

## Recommendation 5.1

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.

Government response: Supported ✓



# Questions

# Stay in touch



[tpb.gov.au](https://tpb.gov.au)



[tpb.gov.au/contact](https://tpb.gov.au/contact)



1300 362 829  
(Mon-Fri 9am-5pm AEST)



[facebook.com/TPB.gov](https://facebook.com/TPB.gov)



[linkedin.com/tax-practitioners-board](https://linkedin.com/tax-practitioners-board)



[twitter.com/TPB\\_gov\\_au](https://twitter.com/TPB_gov_au)



[youtube.com/TPBgov](https://youtube.com/TPBgov)