



Australian Government



TAX
PRACTITIONERS
BOARD

Whistleblowing and confidentiality

Presented by

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Welcome


'In the spirit of reconciliation, I respectfully acknowledge the Traditional Owners and Custodians of Country throughout Australia and their continuing connection to land, waters and community. I would like to pay my respect to them and their cultures, and Elders past and present'.

Access the presentation slides : tpb.gov.au/webinar-hub

What we will cover today

- ✓ New whistleblower laws
- ✓ Who can be eligible whistleblower
- ✓ Who can you make a whistleblower disclosure to
- ✓ What protection is offered
- ✓ How to make a disclosure
- ✓ How whistleblowing impacts confidentiality
- ✓ Examples
- ✓ Q&A

New legislation – what it means for you



TASA changes affecting you

Amendment	Start date
1. Expanding whistleblower protections	1 July 2024
2. Public register changes	
3. Extending TPB investigation powers	
4. Information sharing with Treasury	1 June 2024
5. Information sharing with prescribed disciplinary bodies	

New whistleblower laws

- New whistleblower laws commenced on 1 July 2024.
- They extend protections to individuals who ‘blow the whistle’ about a related entity to us, where they believe the information may assist in performing our functions or duties under the TASA.
- Whistleblowers play a critical role in the early detection and regulation of tax practitioner misbehaviour.



Whistleblower protection

To qualify for whistleblower protection, you must:

- be an eligible whistleblower
- make the disclosure of information to us or to the Commissioner of Taxation
- consider that the information you provide may assist us to perform our functions or duties under the TASA.




Eligible whistleblowers



To be eligible for protection, you must be an individual who is, or has been, in a relationship with the entity you're disclosing information about. This includes:

- an officer
- an employee of the entity
- an individual who supplies services or goods to the entity
- an employee of a person that supplies services or goods to the entity
- an associate of the entity
- a spouse, child or dependent of an individual referred to above, or a dependent of an individual's spouse
- an individual prescribed by the Taxation Administration Regulations 2017 in relation to the entity.

**Who can you make a
whistleblower disclosure to**



Disclosures by eligible whistleblowers that qualify for protection



- The TPB or the Commissioner if the information may assist in performing functions or duties under the TASA.
- The Commissioner if the information may assist in performing functions or duties under a tax law.
- An eligible recipient (tax agent or BAS agent) if you:
 - have reasonable grounds to suspect the information indicates misconduct, or an improper state of affairs or circumstances, in relation to tax affairs, and
 - consider the information may assist the eligible recipient to perform their functions or duties in relation to the tax affairs of the entity or an associate of the entity.

What if you are not an eligible whistleblower?

You can still qualify for protection as an individual if you make a disclosure to:

- a legal practitioner
- a medical practitioner or psychologist
- an entity prescribed by the regulations.



Protection for eligible whistleblowers

Identity protection



If you are an eligible whistleblower, it is illegal for us to disclose your identity, or information that may identify you, unless the disclosure is:

- made to an authorised body
- made with your consent; or
- not of your identity and is reasonably necessary for the purposes of investigating misconduct, or an improper state of affairs or circumstances, to which your whistleblower disclosure relates and we have taken all reasonable steps to reduce the risk.

Civil, criminal and administrative liability protection



- You won't be subject to civil, criminal or administrative liability for making a disclosure to us if you are an eligible whistleblower.
- The information you provide is not admissible in evidence against you in criminal proceedings and you cannot be penalised unless the information you provide is false.
- You will receive immunity from disciplinary action and cannot be sanctioned if you disclose information about your client.

Poll 1



- Angela is a tax agent and an employee of Tax Management Professionals.
- Jason is Angela's manager and senior tax agent in the practice.
- Angela observes Jason promoting special tax structures to clients which do not appear to meet the tax laws.
- If Angela discloses her observations about Jason to the ATO and TPB, will she qualify for protection under the whistleblower legislation?

Poll 2



- Andrew, a registered BAS agent is asked by his client, Claire to lodge an amended BAS for her business to report false amounts of salary and wages and PAYG withholding.
- When Andrew queries the amounts, Claire advises if he is not willing to lodge an amended BAS, she'll find another BAS agent who will.
- Andrew declines Claire's engagement and discloses this information to the Commissioner.
- Is Andrew protected under the whistleblower laws and has he complied with his TASA obligations?

Making a disclosure



How to make a disclosure to us

- You can only qualify for whistleblower protection if your disclosure is made to us on or after 1 July 2024.
- To make a disclosure to us, complete our complaints form.
- Provide as much detail as possible, including any relevant documentation.



What happens after you make a disclosure?

- You'll receive an acknowledgement with a reference number.
- If we determine that your complaint is a complaint we can act on, we will undertake further enquiries.
- We may contact you for further information.



How does whistleblowing impact confidentiality

Confidentiality of client information

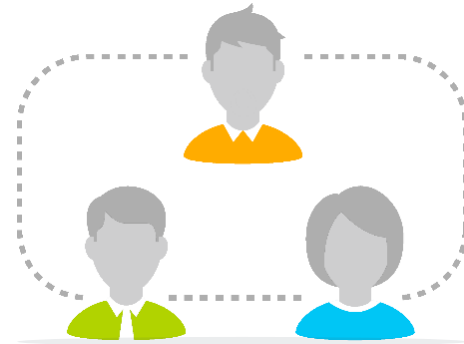


- Under Code item 6, you must not disclose any information relating to a client's affairs to a third party unless you have:
 - obtained the client's permission; or
 - there is a legal duty to do so.
- It's only necessary the information relates to the affairs of a client. It doesn't have to belong to the client or have been directly provided to you by the client.

Who is a third party?

A third party means any entity other than the client and the registered tax practitioner. A third party includes:

- a related entity of the client and/or tax practitioner
- any entity that is engaged to outsource work
- entities that maintain offsite data storage systems.



Disclosing client information



- Before disclosing information relating to your client's affairs to a third party you should:
 - clearly inform your client about the information you are disclosing
 - advise your client to whom and where the disclosure will be made
 - obtain your client's permission.
- You may also disclose information relating to your client's affairs to a third party without your client's permission if you have a legal duty to do so or under the whistleblower legislation.

Legal duty to disclose



- A legal duty to disclose can include providing information to:
 - the TPB under a notice issued under the TASA
 - a court or tribunal pursuant to a direction, order, or other court process
 - the ATO concerning taxation laws (subject to legal professional privilege).
- If you're concerned whether there is a legal duty to disclose client information, you should consider seeking independent legal advice.

Examples



Example 1

Tax agent misconduct

- Tom is a tax agent and partner in a tax and accounting firm.
- He becomes aware that another tax agent, Kate, has been disclosing details relating to her client's affairs to a third party without the client's permission.
- Tom discloses his observations to us. Tom is eligible for whistleblower protection because:
 - he is an eligible whistleblower (being an associate of Kate); and
 - the disclosure to us will assist us to perform our functions or duties in relation to Kate.

Example 2

Tax agent as an eligible recipient

- Mary is an employee at a car wash business.
- She discovers some of her colleagues have been advised to request cash payment so the business can understate sales and avoid income tax.
- Mary makes a disclosure to Noah, the registered tax agent for the business, as she believes this will assist Noah in performing his functions or duties in relation to the tax affairs of the business.
- Mary is eligible for whistleblower protection.

Poll 3



- Caroline is a registered tax agent and becomes aware that one of her clients, Montana Pty Ltd, is pursuing a special tax structure which does not meet the tax laws.
- She is unsure whether the whistleblower laws apply to protect her, so she seeks legal advice from a legal practitioner.
- In doing so, Caroline discloses information relating to the affairs of Montana Pty Ltd and their involvement in a tax avoidance scheme to her legal practitioner without her client's permission.

Poll 4



- Sharon is a registered tax agent and an APESB member subject to the NoCLAR framework.
- She identifies a client's non-compliance with a taxation law and applies the NoCLAR framework and made a disclosure to the Commissioner of Taxation.
- NoCLAR does not create a legal duty to disclose this information to the Commissioner of Taxation and Sharon has not received her client's permission to disclose the information.

Consequences for failing to comply



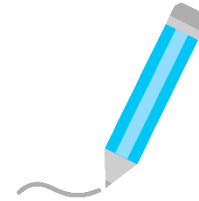
Termination



Suspension



Order



Written
caution



Questions

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