



Australian Government



TAX
PRACTITIONERS
BOARD

New Code obligations

Presented by
Peter de Cure, TPB Chair

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

- ✓ The new legislation
- ✓ When the requirements take effect
- ✓ Transitional arrangements
- ✓ What do these changes mean for me?
- ✓ The consultation process
- ✓ False or misleading statements
- ✓ Conflicts of interest and maintaining confidentiality in dealings with government
- ✓ Q&A

New legislation – what it means for you



Background

- In March 2019, the Government announced an Independent Review into the effectiveness of the TPB and the TASA.
- The review recommended a legislative instrument power to be able to supplement the Code.
- Following public consultation a new Determination was finalised.

Transitional approach

- 8 additional Code obligations introduced.
- They are consistent with the existing key principles and broader objectives of the Code.
- The Minister announced a transitional period to provide certainty for industry.
- We will take a pragmatic approach to implementation.
- Before implementing new policies, we will consult.

New Code obligations



- Upholding and promoting the ethical standards of the tax profession.
- False or misleading statements.
- Conflicts of interest in dealings with government.
- Maintaining confidentiality in dealings with government.
- Keeping of proper client records.
- Ensuring tax agent services provided on your behalf are provided competently.
- Quality management systems.
- Keeping your clients informed of all relevant matters.

Keeping proper client records

- The determination requires you to keep records that correctly record all services you provide, or are provided on your behalf, to each of your clients, including former clients.
- Records must be retained for at least 5 years after the service was provided.
- This is particularly important when disputes or queries arise.



Tax agent services provided on your behalf are competent

- An employee, is not required to have detailed knowledge and skills in relation to all services provided by the tax practitioner, but must have knowledge and skills appropriate to the services provided on the tax practitioner's behalf.
- The level of supervision that is appropriate will differ from entity to entity.



Quality management systems

- The determination requires you to establish, maintain, document and enforce a quality management system to provide confidence that you are compliant with the Code.
- The extent of internal controls in place will differ significantly based on the size of practices, the level of engagement by a tax practitioner on the tax agent services being provided, and the complexity of the services being provided.



Keeping clients informed of relevant matters

The Determination requires you to advise all current and prospective clients of:

- any matter that could significantly influence their decision to engage you, or to continue to engage you
- that the TPB maintains a register of tax practitioners and how to access and search the register; and
- how to make a complaint about a tax agent service you have provided.



Upholding and promoting ethical standards



- The determination requires you to **not** engage in conduct that may undermine:
 - public trust and confidence in the integrity of the tax profession or tax system.
 - the collective work of the tax profession to uphold and promote the Code, public trust and confidence in the integrity of the tax profession and tax system, or individual accountability within the profession.
- This applies to tax practitioners in any professional role.
- In practice, this obligation will depend on the individual circumstances.

Draft guidance



Consultation

Guidance	Expected public consultation	Expected finalised guidance
Tranche 1		
<ul style="list-style-type: none">• False or misleading statements• Conflicts of interest• Maintaining confidentiality	Early August (4-week consultation)	Late September
Tranche 2		
<ul style="list-style-type: none">• Record keeping• Competence• Quality management systems• Informing clients of relevant matters	Late August (6-week consultation)	Early November
Tranche 3		
Upholding standards and promoting ethical standards	September (4-week consultation)	November

Public consultation

- We've released draft guidance to help tax practitioners understand the additional obligations.
- This guidance is currently open for public consultation, and we welcome submissions on our 2 products by **3 September 2024** at tpbsubmissions@tpb.gov.au.
- Submissions will be considered prior to the guidance being finalised.



False or misleading statements

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 or a modern design element.

Requirements of the Determination

Making false, incorrect or misleading statements



- Must not make, prepare, permit or direct someone to make or prepare a statement.
- To the TPB, Commissioner or another Australian government agency.
- That is false, incorrect or misleading in a material particular (including by omission).

Correcting false, incorrect or misleading statements



- As soon as possible after becoming aware of a false, incorrect or misleading statement to the TPB or Commissioner.
- Take all reasonable steps to correct the statement, otherwise notify the TPB or Commissioner.

Statements to the Commissioner



A statement for the purposes of the TASA is anything that is disclosed for a purpose connected with a taxation law orally or in writing, including:

- statements prepared for, or made in:
 - correspondence
 - a registration and/or application form
 - any taxation document
 - an activity statement
 - an amendment request or any other communication; and
- statements made by omission.

Statements to the TPB



In addition to statements prepared for or made to the Commissioner, the Determination also captures statements prepared for or made to the TPB, including:

- under the notification requirements contained in the TASA
- in response to formal and informal information requests made by us
- by tax practitioners through MyProfile; and
- in any other communication.

Know or ought reasonably to know

The phrase 'know or ought reasonably to know' has 2 elements.

- First, the term 'know' refers to actual knowledge.
- And second, the phrase 'ought reasonably to know' extends to where the existence of that matter could be discovered by a reasonable person in the same position as the person, making reasonable enquiries.



Correcting a false or misleading statement

You must take all reasonable steps to:

- correct a statement you made yourself, or permitted or directed someone to make
- advise the maker of a statement that the statement should be corrected; and
- notify the TPB or Commissioner where the maker of the statement does not correct the statement within a reasonable time.



Example 1



- Lottie is the sole director of a BAS agent company.
- One of the employees, Skye, is the only BAS agent making up the sufficient number.
- Skye advises Lottie and the TPB that she is resigning to start her own business.
- Lottie falsely provides the TPB with the name and registration number of another BAS agent in order to meet the sufficient number requirement.
- The provision of the false statement is material, as it relates to the company's ongoing eligibility as a BAS agent.

Example 2

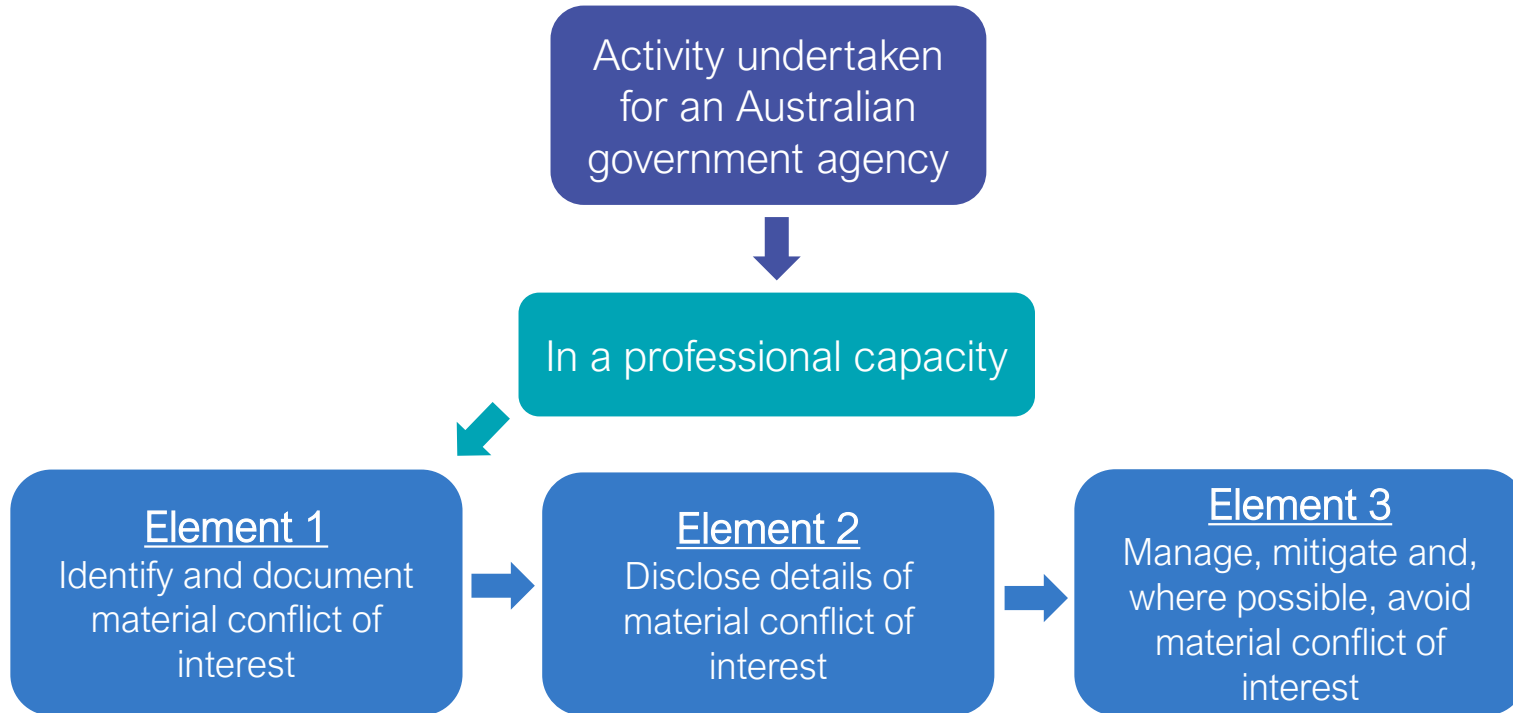


- Archie was approached by Carter to provide tax agent services to 10 individuals.
- Archie did not ask for any proof of identity documentation to verify the identities of the individuals, nor did he take any steps to verify Carter's identity and authority to represent the individuals.
- Archie noticed there were discrepancies.
- Archie ought to reasonably have known that statements he made to the ATO on behalf of the individuals were false in a material particular.
- It was found that the claims made on behalf of the individuals were fraudulent.

**Managing conflicts of interest and
maintaining confidentiality in dealings
with Government**



Obligations under section 20 of the determination



Conflicts of interest



A conflict of interest may be direct or indirect, and real or apparent (or perceived):

- A real conflict of interest arises where you have multiple competing interests and cannot objectively and impartially act in one of the interests.
- An apparent conflict of interest arises you have multiple interests, and the nature of those interests are such that they give rise to a reasonable perception by the public that one interest could possibly impact the motivation to act for another interest.

Material conflict of interest

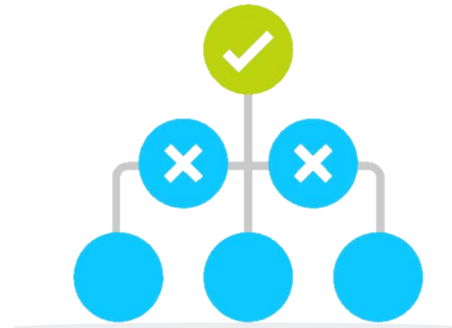


A material conflict of interest may arise in circumstances that include, but are not limited to – where you:

- are engaged by a government agency to consult on proposed Government law reform
- may benefit or gain financially from the engagement with the government agency directly or indirectly
- misuse confidential information obtained in dealings with Government
- interfere in Government decision making.

Identifying a conflict of interest

- Keep adequate records of any conflict of interest identified in connection with an Australian government agency.
- Record the conflict of interest as soon as possible and practicable after it's identified.
- The record should contain sufficient details of the conflict of interest, including details of the materiality of it.



Disclosure of a conflict of interest



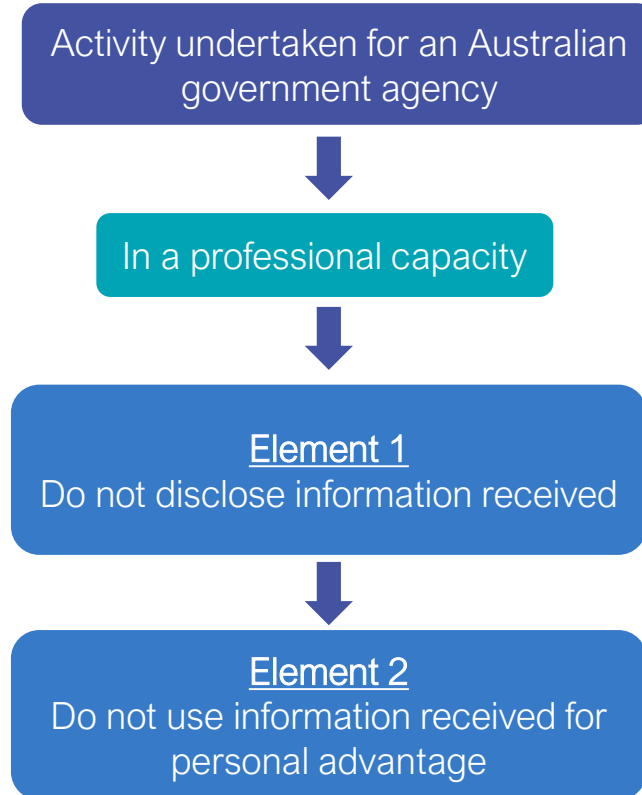
- You must disclose the details of any material conflict of interest that arises in connection with an activity undertaken for the agency as soon as you become aware of it.
- It extends to any material conflict of interest you are aware of that arises in connection with any activity undertaken for the agency or in relation to any activity undertaken for another government agency.
- Includes any conflict of interest of any employee, associate, contractor or other relevant entity.

Example 3



- Ann a registered tax agent and a tax partner at a large tax consulting firm is asked to participate in a confidential consultation led by an Australian government agency.
- The draft legislation would apply to clients of large consulting firms.
- Ann identified that her duty to her clients could be perceived as a material conflict of interest.
- She does not document this conflict of interest, nor disclose it to the government agency. She also takes no steps to manage, mitigate or avoid the conflict of interest.
- In this situation, Ann has breached her obligation under the Determination.

Obligations under section 25 of the determination



Disclosing information to a third party



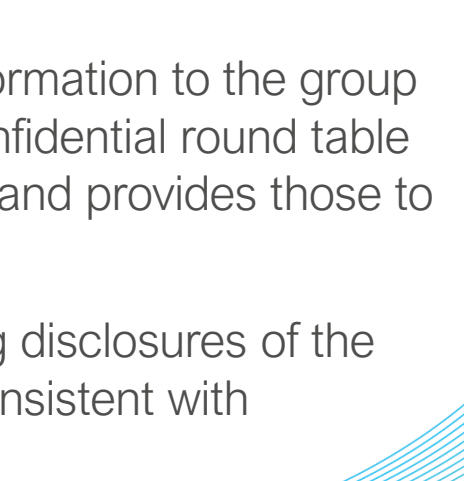
- Where you intend to disclose information to a third party we recommend, prior to any disclosure, you clearly inform the government agency that there will be a disclosure and obtain their permission.
- This may be by way of a signed letter outlining the information that is to be disclosed and to whom the information is to be disclosed to.
- In all cases, you should outline the disclosures to be made, as well as information about the entities that will have access to the information.
- Ultimately, you should use your professional judgment to assess if the further disclosure was authorised, having regard to the circumstances.

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 TASA, including section 25 of the Determination, does not affect the law relating to legal professional privilege.
- You may consider seeking independent legal advice, including as to the application of legal professional privilege.

Example 4

- Thomas is authorised to disclose certain information in relation to activities he is undertaking for Treasury to a core group within his firm.
 - It is stipulated how information is to be communicated, what information can be disseminated, what information is to remain confidential, and for what purpose information is to be used.
 - Throughout the engagement, Thomas discloses information to the group and prints emails from Treasury in relation to the confidential round table discussions, including confidential meeting papers, and provides those to the group.
 - Thomas has breached the Determination for making disclosures of the confidential information in a manner that was not consistent with Treasury's authorisation.
- 



Questions

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