



Australian Government



TAX  
PRACTITIONERS  
BOARD

# Breach reporting

**Presented by:**

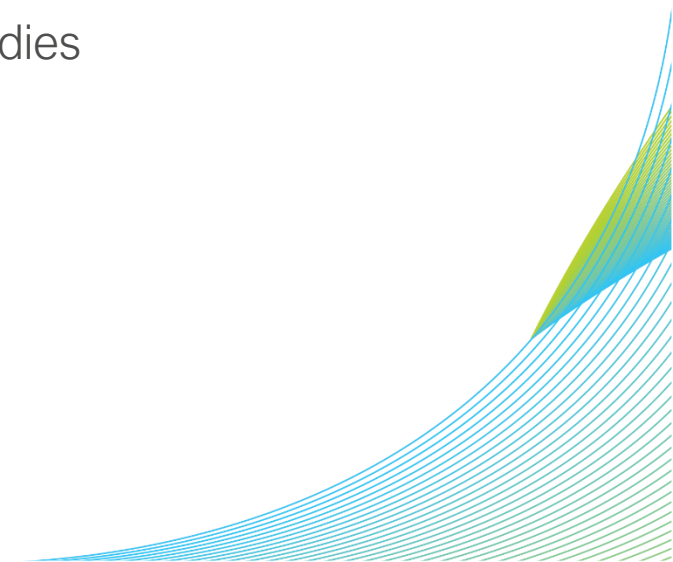
Peter de Cure, TPB Chair

# Welcome

*'In the spirit of reconciliation, we respectfully acknowledge the Traditional Owners and Custodians of country throughout Australia and their connections to land, sea and community. We pay our respect to their cultures, and Elders past, present and emerging.'*

Access the presentation slides: [tpb.gov.au/webinar-hub](https://tpb.gov.au/webinar-hub)

## What we will cover today

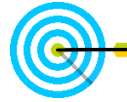
- ✓ The objective of breach reporting
  - ✓ Self-reporting
  - ✓ Reporting another tax practitioner
  - ✓ Breaches you must report
  - ✓ Factors to consider
  - ✓ Who to notify
  - ✓ Case studies
  - ✓ Q&A
- 
- A decorative graphic in the bottom right corner consisting of numerous thin, curved lines that sweep upwards and to the right, transitioning in color from light blue to a darker teal.

## Breach reporting guidance

- Our guidance is now finalised.
- It explains the requirements, the meaning of key terms used in the law, when and how to report, our compliance approach and the consequences of failing to comply.
- The guidance includes, an Information sheet, factsheet and high-level flowchart.



## Objective of breach reporting



- Breach reporting was introduced to improve the conduct of tax practitioners in providing tax agent and BAS services.
- The focus of the reporting regime is on identifying, managing and targeting risk of non-compliance to:
  - improve the conduct of tax practitioners in providing services
  - enhance the protection of clients; and
  - increase community confidence in the integrity of the system that regulates those services and the tax industry.
- The expanded regime seeks to uphold and enhance professional and ethical standards across the sector.

# What is breach reporting?

- Breach reporting obligations apply from **1 July 2024**.
- There are 2 types of breach reporting:
  - self-reporting
  - reporting another tax practitioner.



The registered tax practitioner must have reasonable grounds for the belief that they, or another tax practitioner, have breached the Code and that the breach is significant.

# Reasonable grounds to believe

## Consider relevant factors

Solid foundation or basis for the belief  
(conclusive proof not required)

Supported by facts and evidence

Verified or corroborated (as required)

Would a reasonable person in the same position and circumstances form the belief?  
(objective test)

## What is a 'significant breach'?



A 'significant breach of the Code' is a breach that:

- ✓ constitutes an indictable offence, or an offence involving dishonesty under an Australian law
- ✓ results, or is likely to result, in material loss or damage to another entity (including the Commonwealth)
- ✓ is otherwise significant
- ✓ is of a kind prescribed by the Tax Agent Services Regulations 2022.



## Making an assessment



- Tax practitioners should be aware of the standards of professional and ethical conduct expected of them under the TASA, including the Code.
- You should be well-positioned to make an assessment about whether a breach is ‘significant’ in relation to your own conduct, and you need to report it.
- We recognise that establishing if a breach is ‘significant’ in relation to the conduct of another tax practitioner may be more difficult.

## Breach reporting notifications

- Tax practitioners **must notify us** of a change in circumstances in writing **within 30 days**.
- From 1 July 2024, tax practitioners **must also notify us** (and the professional association if applicable) **within 30 days** of the day they first have, or ought to have had, reasonable grounds to believe that they, or another registered tax practitioner, has **breached the Code** and the breach is significant.



The breach must have occurred on or after 1 July 2024.

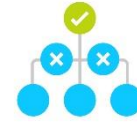
# Professional accountants



Accounting Professional & Ethical Standards Board (APESB) standards:

- APES 110 Code of Ethics for Professional Accountants:
  - S210 and 310: Conflicts of interest
  - s260 and s360: Responding to non-compliance with laws and regulations.
- APES 220 Taxation Services.
- APES 305 Terms of Engagement.
- APES 310 Dealing with Client Monies.
- APES 320 Quality Control for firms.

# Our approach to investigating notifications



We'll take a risk-based approach to investigations and will consider:

- ✓ the nature of the breach and risk involved
- ✓ the number and frequency of breaches
- ✓ if there is sufficient evidence
- ✓ the relationship between parties
- ✓ the compliance history of the tax practitioner
- ✓ if the breach has been rectified
- ✓ the nature and scale of the business
- ✓ the number of clients involved and impact or harm to clients and the tax system
- ✓ if the notification is vexatious
- ✓ the reasons for any delay in reporting.



Frivolous, vexatious or malicious claims will not be accepted

## Consequences for failing to comply

- Our initial focus is on consultation, education and improving voluntary compliance, supervisory and regulatory systems.
- We'll be alert and responsive to high-risk misconduct and breaches.



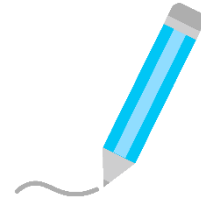
Termination



Suspension



Order



Caution

## How to notify us

Notifications must be made using the following methods:

### Reporting another tax practitioner

Use our *online complaints form*

### Self-reporting

Use the *notify a change in circumstances form*

**i**

We will acknowledge receipt of a report. This does not mean we are confirming a tax practitioner has met their obligations, or that we will be commencing a formal investigation.

## How to notify recognised professional associations

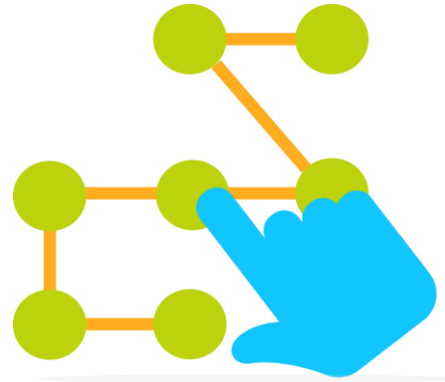
- The obligation to notify the recognised professional association (RPA) only applies if you are 'aware' of the other tax practitioner's membership.
- You must take reasonable steps and make reasonable enquiries to establish if another tax practitioner is a member of a RPA.



- You can go to our website to find a list of RPAs and to check our Register (it may include RPA membership).
- Check the RPA's website to see if they provide a list of members or make direct enquires with the RPA.

## Breach reporting and section 15 of the Determination

- Breach reporting requirements may also be relevant to section 15 of the Determination.
- Where this is the case, you'll need to provide a report to the TPB under the breach reporting requirements.
- While the obligation to notify under the Determination is separate to breach reporting, in most cases, a single notification will satisfy both obligations.





## Example 1



- Sam is a tax agent employed by ABC Pty Ltd.
- ABC receive a complaint about the tax agent services provided by Sam.
- This was a once off and it appears no other clients are impacted.
- ABC don't think there are reasonable grounds to believe the conduct is a significant breach of the Code and decide not to report.
- Three months later, they receive more complaints, identifying similar issues.
- ABC considers there are now reasonable grounds to conclude there has been an 'otherwise significant' breach of the Code.
- They err on the side of caution and report the conduct.

## Example 2

- Brittany is a BAS agent who attends monthly BAS discussion group sessions and is a member of an online forum that discusses new and emerging issues for BAS agents.
- Brittany overhears attendees gossiping about a mutual acquaintance, Chris, saying he has been falsifying CPE certificates.
- She also overhears that Chris made false statements to the TPB.
- Brittany made no further enquiries regarding what she had overheard.
- She doesn't have any independent evidence and recalls seeing Chris at several discussion groups, and 2 recent workshops.
- In these circumstances, she wouldn't be under an obligation to notify.

## Example 3



- Tamara is a tax agent who loses a client to Max, a tax practitioner at another firm.
- Tamara is unhappy about this and overhears colleagues discussing rumours that Max had been involved in fraudulent tax claims.
- Tamara doesn't make enquiries but reports a significant breach to the TPB.
- Tamara doesn't consider the consequences of lodging such a report and focusses instead on her personal motives.
- Given the circumstances surrounding the breach notifications, and concerns Tamara may not be acting honestly and with integrity by making vexatious claims, the TPB is likely to investigate her conduct.



# Questions

# Stay in touch with the TPB



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