



Australian Government



TAX
PRACTITIONERS
BOARD

False or misleading statements

Presented by
Peter de Cure, TPB Chair

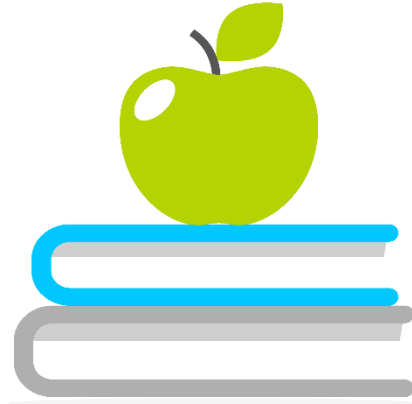
Welcome

'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

- ✓ Overview of the requirements
- ✓ Application date
- ✓ Case studies
- ✓ Panel
- ✓ Q&A



New legislation

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Government reform



- A 2019 independent review recommended a legislative instrument power to supplement the Code.
- In 2023, the government announced a package of reforms.
- Eight additional Code obligations have been built on existing principles of the Code to strengthen integrity and accountability.
- You are likely already complying with these new obligations.
- We'll implement these changes in a pragmatic and practical fashion.

New Code obligations



1. Upholding and promoting the ethical standards of the tax profession (s10)
2. False or misleading statements (s15)
3. Conflicts of interest in activities undertaken for government (s20)
4. Maintaining confidentiality in dealings with government (s25)
5. Keeping of proper client records (s30)
6. Ensuring tax agent services provided on your behalf are provided competently (s35)
7. Quality management systems (s40)
8. Keeping your clients informed (s45)



The obligations align with the existing 5 key principles of the Code and leverage material of other existing bodies, such as the APES Board.

Application date

- For **larger tax practitioner firms**, with more than 100 employees, the new obligations commenced from **1 January 2025**.
- For all other **smaller tax practitioners**, with 100 or less employees, the new obligations commence from **1 July 2025**.

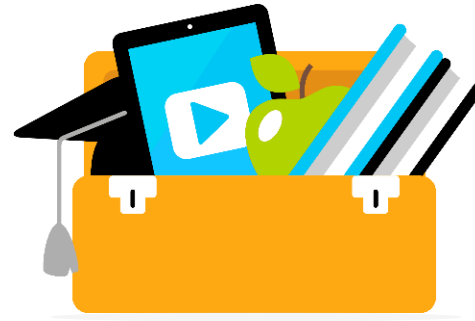


Guidance



Guidance products

- We engaged in extensive consultation to develop practical guidance.
- Our final Information sheets were released in December 2024.
- We want to support tax practitioners genuinely trying to do the right thing.
- We'll provide time for you to understand your obligations, assess your practices and implement changes, if required.



False or misleading statements – section 15



False or misleading statements (s15)

Where a tax practitioner knows, or ought reasonably to know, a *statement is false or misleading in a material particular*, or omits something that makes the statement misleading, they **must not**:

(1)
Make the statement to
the TPB or Commissioner

(2)
Prepare the statement
that is likely to be made
to the TPB or
Commissioner

(3)
Permit or direct someone
else to make or prepare
such a statement

False or misleading statements (s15)

Where the obligation has been breached and the tax practitioner has reasonable grounds to believe the false or misleading nature of the statement resulted from a failure to take reasonable care, recklessness or intentional disregard of a tax law, (within a reasonable period) they must take certain reasonable steps

(1)

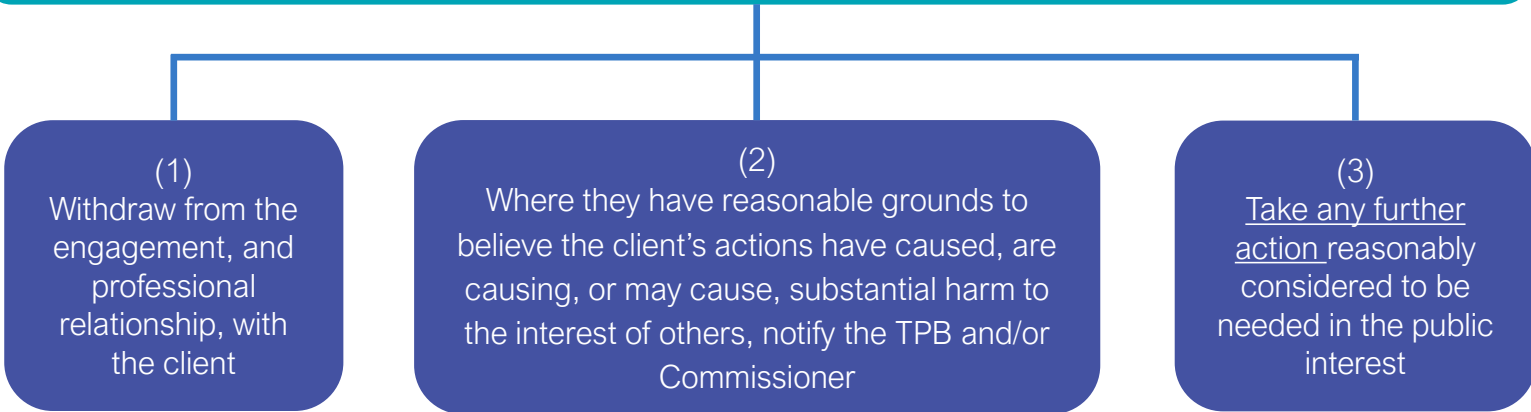
Where the statement relates to the tax practitioner's own affairs, correct the statement

(2)

Where the statement relates to a client, the tax practitioner must advise the client the statement should be corrected and the possible consequences for not correcting it

False or misleading statements (s15)

If after a reasonable period after the client has been advised and the tax practitioner is not reasonably satisfied the client has corrected the statement or explained the basis for the statement, the tax practitioner must:



Unless doing so would pose an unreasonable safety risk (personal, family or staff member) or be unlawful.

Case studies

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Case study 1



- Ella, a registered BAS agent, advised she was covered by her employer, ABC Pty Ltd's, professional indemnity (PI) insurance.
- It became apparent Ella was not covered by the policy – as such, statements made by ABC and Ella regarding their PI insurance were false.
- ABC promptly updated its policy, and ABC and Ella advised the TPB of the false statements and the new and correct policy details.
- ABC and Ella breached the Determination and Code item 13. However, met their Determination obligations by taking all reasonable steps to correct the statement within a reasonable period of time.
- The TPB took no further action against Ella and issued ABC with a written caution.

Case study 2

- Don, a registered tax agent noticed statements he'd prepared and provided to the ATO on behalf of his client Phil's company, DFE Constructions were materially false or misleading.
- The statements resulted in underpayment of GST and superannuation entitlements.
- Don suspected Phil had intentionally provided incorrect information.
- Don identified he had made false or misleading statements in material particulars to the ATO.
- Given the seriousness Don contacted Phil immediately.
- Phil told Don he was not concerned and should the issue come up, he intended to liquidate the company to avoid the debts or penalties.

Case study 2 cont.



- Don was not reasonably satisfied Phil would correct the statements and believed he had reasonable grounds to believe:
 - the false or misleading statements made to the ATO intentionally disregarded a tax law
 - Phil and/or the company's actions caused and may still cause substantial harm.
- Don withdrew from the engagement and notified the ATO about the false or misleading statements.
- Don would not breach the Determination as he did not know, or ought reasonably to know the statements were false or misleading in a material particular.
- He also took appropriate steps to address the breach once identified.

POLL



- Jake, a registered BAS agent, noticed some bank feed transactions hadn't been included in a BAS he'd prepared and lodged for his client Sam.
- This resulted in false or misleading statements being made to the ATO.
- While the omission of this information meant the statements in the BAS were false or misleading, Jake considered the statements made were immaterial.
- Jake did not take further action.
- **Has Jake complied with his obligations under section 15 of the Determination?**

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