CODE OF PROFESSIONAL CONDUCT

Under the Tax Practitioners Act and membership of the Institute of Public Accountants all persons acting on behalf of Pelican Business Services must abide by the following code of conduct listed below.

WHAT IS THE CODE OF PROFESSIONAL CONDUCT?

The Code of Professional Conduct (Code) is a legislated code that sets out the professional and ethical standards required of registered tax agents and Business Activity Statement (BAS) agents. It outlines the duties that agents owe to their clients, the Tax Practitioners Board (Board) and other agents.

The Code includes a number of core principles organised into five categories:

- Honesty and integrity
- Independence
- Confidentiality
- Competence
- Other responsibilities

WHAT ARE THE CODE’S PRINCIPLES?

The Code has 14 principles:

Honesty and integrity
(1) Pelican Business Services must act honestly and with integrity.
(2) Pelican Business Services must comply with the taxation laws in the conduct of Pelican Business Services’ personal affairs.
(3) If:
   (a) Pelican Business Services receive money or other property from or on behalf of a client, and
   (b) Pelican Business Services hold the money or other property on trust
Pelican Business Services must account to Pelican Business Services’ client for the money or other property.

Independence
(4) Pelican Business Services must act lawfully in the best interests of Pelican Business Services’ client.
(5) Pelican Business Services must have in place adequate arrangements to manage conflicts of interest that may arise in relation to the activities that Pelican Business Services undertake in the capacity of a registered tax agent or BAS agent.
Confidentiality
(6) Unless Pelican Business Services have a legal duty to do so, Pelican Business Services must not disclose any information relating to a client’s affairs to a third party without Pelican Business Services’ client’s permission.

Competence
(7) Pelican Business Services must ensure that a tax agent service Pelican Business Services provide, or that is provided on Pelican Business Services’ behalf, is provided competently.
(8) Pelican Business Services must maintain knowledge and skills relevant to the tax agent services that Pelican Business Services provide.
(9) Pelican Business Services must take reasonable care in ascertaining a client’s state of affairs, to the extent that ascertaining the state of those affairs is relevant to a statement Pelican Business Services are making or an activity Pelican Business Services are undertaking on behalf of the client.
(10) Pelican Business Services must take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which Pelican Business Services are providing advice to a client.

Other responsibilities
(11) Pelican Business Services must not knowingly obstruct the proper administration of the taxation laws.
(12) Pelican Business Services must advise Pelican Business Services’ client of their rights and obligations under the taxation laws that are materially related to the tax agent services Pelican Business Services provide.
(13) Pelican Business Services must maintain the professional indemnity insurance that the Board requires Pelican Business Services to maintain.
(14) Pelican Business Services must respond to requests and directions from the Board in a timely, responsible and reasonable manner.

(1) Pelican Business Services must act honestly and with integrity

What does this mean?
The words ‘honesty’ and ‘integrity’ are used in their ordinary meanings.
Acting honestly and with integrity includes, but is not limited to:
- straightforwardness and honesty in professional and business relationships;
- fair dealing;
- a commitment not to mislead or deceive;
- being truthful.
(2) Pelican Business Services must comply with the taxation laws in the conduct of Pelican Business services’ personal affairs

What does this mean?
Under the Code, the term ‘taxation law’ means:
(a) any Act for which the Commissioner of Taxation has general administration (including any part of an Act for which the Commissioner has the general administration)
(b) any regulations under the Acts in paragraph (a)
(c) the Tax Agent Services Act 2009 and the regulations under it.

What does it mean to comply with the taxation laws in the conduct of Pelican Business services’ personal affairs?
Complying with the taxation laws when conducting Pelican Business services’ personal affairs includes, but is not limited to:
- lodging Pelican Business Services’ personal income tax returns and activity statements on time
- lodging Pelican Business Services’ tax agent practice income tax returns and activity statements on time
- performing Pelican Business Services’ duties and obligations under the taxation laws on time
- performing Pelican Business Services’ duties and obligations as a registered tax agent or BAS agent under the Tax Agent Services Act 2009 on time.

See the Board’s website at www.tpb.gov.au for more information on Pelican Business Services’ duties and obligations as a registered tax agent or BAS agent under the Tax Agent Services Act 2009.

(3) Pelican Business Services must account for money or other property Pelican Business Services receive on trust from or on behalf of Pelican Business Services’ clients

What does this mean?
Tax agents and BAS agents may receive money for services that they are yet to perform. Such amounts are held on trust for the client.

What are Pelican Business Services’ obligations in relation to money or other property received and held on trust?
Where money or other property has been received and is held on trust, Pelican Business Services must account for it to Pelican Business Services’ client. This means Pelican Business Services can only disburse the money or property in accordance with Pelican Business Services’ client’s instructions or as required by law.
In complying with this principle, it is considered best practice to establish and maintain a trust account separate from Pelican Business services’ general business operating account to receive money on trust.
(4) Pelican Business Services must act lawfully in the best interests of Pelican Business Services’ client

What does this mean?
It means that Pelican Business Services must act in the best interests of Pelican Business Services’ client, but only to the extent that Pelican Business services’ actions are lawful.

(5) Pelican Business Services must have in place adequate arrangements to manage conflicts of interest that may arise in relation to the activities that Pelican Business Services undertake in the capacity of a registered tax agent or BAS agent

What does this mean?
Generally, a conflict of interest arises when Pelican Business Services are unable to remain objective when performing services for Pelican Business Services’ client. The conflict may be an actual or potential conflict of interest.

What are ‘adequate arrangements to manage conflicts of interest’?
The adequacy of conflict management arrangements will depend upon a range of factors including:

- the nature, scale and complexity of Pelican Business Services’ business;
- the nature of the services Pelican Business Services are providing; and
- any information Pelican Business Services obtain that is relevant to an actual or potential conflict of interest. Examples of adequate and effective conflict management arrangements may, depending on the circumstances include, but are not limited to:
  - ‘ethical walls’ – a form of physical and intellectual separation between managing the affairs of clients involved in an actual or potential conflict of interest;
  - disclosing any conflicts of interest;
  - receiving informed consent from the client or clients involved in the conflict of interest. This means authorising disclosure of the conflict to the other parties involved, perhaps in the form of a signed waiver or other authorisation;
  - not undertaking the work.
(6) Unless Pelican Business Services have a legal duty to do so, Pelican Business Services must not disclose any information relating to a client’s affairs to a third party without Pelican Business Services’ client’s permission

What does this mean?
‘Information relating to a client’s affairs’ means information relating to a current, previous or prospective client.

What does ‘third party’ mean?
A third party is an entity or person other than the client to whom the information relates. For clients that are part of a service trust structure, a third party would include an entity within the same service trust structure as the client, unless the client is defined (for example, in the engagement letter) as the whole structure.

Under what circumstances can Pelican Business Services disclose information relating to a client’s affairs?
Pelican Business Services can only disclose information relating to a client’s affairs if:
- disclosure is authorised by Pelican Business services’ client; or
- disclosure is required or permitted by law.

(7) Pelican Business Services must ensure that a tax agent service that Pelican Business Services provide, or that is provided on Pelican Business Services’ behalf, is provided competently

What does this mean?
‘Competent’ means being fully capable, fitting, suitable or sufficient to provide a service or to complete a task.
What must I do to ensure that services I provide are provided competently?
To ensure the services Pelican Business Services provide are provided competently, Pelican Business Services must maintain adequate knowledge, skill and resources in relation to those services. So, if Pelican Business Services hold a narrow, specialised area of expertise, this requirement would prevent Pelican Business Services from providing a tax agent service that is outside of that area of expertise. Pelican Business Services may be permitted to provide services within Pelican Business services' area of expertise if Pelican Business services’ registration is subject to a condition to that effect.

To ensure the services Pelican Business Services provide are provided competently, Pelican Business Services may also:

- obtain expert advice and assistance;
- obtain knowledge and skill through private study and research;
- inform Pelican Business services' client of the likely delay and cost to acquire the necessary knowledge and skill to provide the service competently, and obtain the client's voluntary consent to Pelican Business Services providing the service;
- set out and agree in a letter of engagement with the client the scope and cost of the services to be provided.

What measures can Pelican Business Services adopt to ensure that services provided on Pelican Business services' behalf are provided competently?
As a registered tax agent or BAS agent, Pelican Business Services are also accountable for tax agent services that are provided on Pelican Business services' behalf. Entities that may provide services on Pelican Business services’ behalf include, but are not limited to, those who Pelican Business Services employ or who Pelican Business Services supervise and control.

To ensure that services provided on Pelican Business services’ behalf are provided competently, Pelican Business Services must ensure the providers have appropriate skills and experience, and that their work is adequately supervised or reviewed.

The level of supervision required will depend on a range of factors, including:
- the educational qualifications and extent of experience of the entity providing the service;
- the nature of the service being provided; and
- any structures or processes in place within Pelican Business services’ organisation that facilitate the competent provision of tax agent services.
(8) Pelican Business Services must maintain knowledge and skills relevant to the tax agent services that Pelican Business Services provide

What does this mean?
It means Pelican Business Services have to maintain and improve Pelican Business services’ knowledge and skills in the areas of the taxation laws and tax administration relating to the tax agent services Pelican Business Services provide. This includes keeping up-to-date with developments in relevant taxation laws and tax administration. To comply with this requirement, Pelican Business Services may be required to undergo a certain minimum number of hours of tax-related continuing professional education. Continuing professional education is not restricted to courses offered by recognised professional associations, recognised BAS agent associations or registered tax agents or BAS agents. It could include face-to-face training courses, distance learning and online courses. Continuing professional education is also not limited to physical proximity. The Board may from time to time provide guidance on acceptable courses to assist Pelican Business Services in complying with this requirement.

(9) Pelican Business Services must take reasonable care in ascertaining a client’s state of affairs, to the extent that ascertaining the state of those affairs is relevant to a statement Pelican Business Services are making or an activity Pelican Business Services are undertaking on behalf of the client

What does this mean?
‘Reasonable care’ means care that is reasonable in the circumstances. This will depend on a range of factors, including the scope of the tax agent services being provided and the client’s level of professional knowledge and experience. The standard of ‘reasonable care’ generally required of a tax agent or BAS agent is that of a competent and reasonable person, possessing the skills, qualifications and experience that are required to become a registered tax agent or BAS agent.
What is ‘reasonable care in ascertaining a client’s state of affairs’?
In most cases, this means asking Pelican Business services’ client appropriate questions, based on Pelican Business services’ professional knowledge and experience, to seek the relevant information. Where there are grounds to doubt the information provided by a client, Pelican Business Services must make reasonable enquiries as to the completeness, correctness and accuracy of that information. Where a statement provided by a client seems plausible, is consistent with previously established statements and Pelican Business Services have no basis to doubt our client’s reliability or the veracity of the information supplied, Pelican Business Services can discharge Pelican Business services’ responsibility by accepting the statement provided by the client without further checking. However, if the information supplied seems implausible or inconsistent with a previous pattern of claim or statement, further enquiries would be required. While Pelican Business Services are not required to audit, examine or review books and records or other source documents supplied by Pelican Business services’ clients, Pelican Business Services should not discharge Pelican Business services’ responsibility in such a case by simply accepting what Pelican Business Services have been told.

(10) Pelican Business Services must take reasonable care to ensure that taxation laws are applied correctly to the circumstances in relation to which Pelican Business Services are providing advice to a Client.

What does this mean?
It means Pelican Business Services are required to take reasonable care to ensure the correct interpretation and application of the taxation laws to the circumstances on which Pelican Business services’ client seeks advice. These circumstances may be actual circumstances of Pelican Business services’ client, or hypothetical circumstances provided by Pelican Business services' client.
What is ‘reasonable care’ for the purposes of this principle?

‘Reasonable care’ means taking logical and practical steps to ensure the correct interpretation and application of the law. Where Pelican Business Services are uncertain about how a taxation law applies to a particular set of circumstances, taking reasonable care may include seeking clarification from relevant authorities and sources such as:

- legislation and related extrinsic material (for example, explanatory memoranda) case law
- rulings and determinations issued by the Commissioner the Commissioner’s instructions in documents such as income tax return form instructions, BAS instructions, fact sheets and practice statements
- information published or provided by a recognised professional association or other regulatory agency
- information or relevant commentaries published by other experts, registered agents or specialists.

If after consulting relevant authorities and sources, Pelican Business Services are still uncertain about the application of a taxation law, Pelican Business Services may seek assistance from another party who has the ability and resources to provide advice on taxation laws, such as another agent, a legally qualified professional, a recognised professional association, or the Tax Office.

(11) Pelican Business Services must not knowingly obstruct the proper administration of the taxation Laws

What does this mean?

It means that Pelican Business Services must not knowingly do anything that would obstruct the proper administration of the taxation laws. ‘Knowingly’ requires that the tax agent or BAS agent had actual knowledge, as opposed to constructive knowledge, of obstruction. Relying on Pelican Business services’ own, or Pelican Business services’ client’s, lawful rights to withhold documents or not provide information will not amount to obstruction of the taxation laws. Examples of such lawful rights may include legal professional privilege or the accountants’ concession.
(12) Pelican Business Services must advise Pelican Business services’ client of their rights and obligations under the taxation laws that are materially related to the tax agent services Pelican Business Services provide.

What does this mean?

Pelican Business Services must advise Pelican Business services’ client of their rights and obligations under the taxation laws that are related to the tax agent services Pelican Business Services provide, but Pelican Business services’ obligations under this principle only extend to services within the scope of engagement between Pelican Business Services and Pelican Business services’ client.

Depending on the scope of Pelican Business services’ engagement, the advice may include:

- an explanation of the nature of self-assessment, including the Commissioner’s ability to amend an assessment within a certain time of the original assessment
- Pelican Business services’ client’s obligations to keep proper records and the consequences of not doing so
- Pelican Business services’ client’s responsibility to provide accurate and complete particulars and information to comply with the taxation laws
- where necessary, advice on the rights or options available to Pelican Business services’ clients including how to seek a private ruling and how to object or appeal against adverse decisions made by the Commissioner.

(13) Pelican Business Services must maintain the professional indemnity insurance that the Board requires Pelican Business Services to maintain.

What does this mean?

It means that Pelican Business Services are required to maintain appropriate professional indemnity insurance, as required by the Board. If Pelican Business Services do not have professional indemnity insurance, or if Pelican Business Services do not have appropriate professional indemnity insurance, the Board may, under subsection 20-01) of the Tax Agent Services Act 2009, direct Pelican Business Services to maintain professional indemnity insurance, including the level and essential terms of the insurance. In determining the appropriate type or level of insurance for registered tax agents and BAS agents, the board may refer to the insurance level standards currently imposed by recognised professional associations, and the Commonwealth legislative framework regarding the capping of liabilities for damages. If Pelican Business Services do not maintain the professional indemnity insurance that the Board requires Pelican Business Services to maintain, Pelican Business Services will breach the Code.

(14) Pelican Business Services must respond to requests and directions from the Board in a timely, responsible and reasonable manner.
What does this mean?
If Pelican Business Services receive a request or direction from the Board, Pelican Business Services must respond in a timely, responsible and reasonable manner. Claiming legal professional privilege or other legal rights on behalf of Pelican Business services’ client may not be an unreasonable response to a direction of the Board if the claim can properly be made.

WHAT ARE THE CONSEQUENCES IF PELICAN BUSINESS SERVICES FAIL TO COMPLY WITH THE CODE?
Pelican Business Services are required to comply with all the obligations set out in the Code. If, following an investigation, the Board is satisfied that Pelican Business Services failed to comply with the code, it may impose one or more of the following administrative sanctions:
(a) a written caution;
(b) an order requiring Pelican Business Services to take one or more actions including, but not limited to:
   - completing a course of education or training specified by the Board
   - providing services (for which the tax agent or BAS agent is registered) only under the supervision of another tax agent or BAS agent that has been specified in the order
   - providing only those services that are specified in the order
(c) suspending Pelican Business services’ registration;
(d) terminating Pelican Business services’ registration.
The severity of a sanction will depend on the Board’s consideration of the nature and extent of the breach and the circumstances of each case.