PS LA 1998/1 - Law administration practice statements

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Australian Government
Australian Taxation Office

PS LA 1998/1
Law administration practice statements

This Practice Statement explains the law administration practice statement system.

This Practice Statement is an internal ATO document and an instruction to ATO staff.

Taxpayers can rely on this Practice Statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty, nor will they have to pay interest on the underpayment provided they reasonably relied on this Practice Statement in good faith. However, even if they do not have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.

1. Why we have law administration practice statements

The ATO Policy Framework (Framework)[1] supports the Commissioner of Taxation in executing their duties, powers and functions conferred as:

- administrator of the tax and superannuation systems
- Agency Head under the *Public Service Act 1999*, which confers powers and functions on the Agency Head including those relating to Australian Public Service employees and employer responsibilities
- accountable authority under the *Public Governance, Performance and Accountability Act 2013*, which confers powers and functions on the accountable authority relating to the governance, reporting and use of public resources, and
- Registrar of the Australian Business Registry Services (Registrar) under the *Commonwealth Registers Act 2020*.

The Framework comprises various policy products.

Law administration practice statements (practice statements) are Tier 1 corporate policy documents under the Framework. They provide lawful and reasonable directions to ATO staff when administering the tax and superannuation systems administered by the Commissioner and business registry laws administered by the Registrar.

2. What practice statements are

There are 2 series of practice statements – the standard series (such as this one) and the general administration series. General administration practice statements are identified by the suffix of (GA) after their number.[2] We no longer prepare general administration practice statements.[3]

Practice statements are policy documents, providing you with mandatory instructions and guidance on how you should undertake technical work[4] and assisting you to perform your duties and make decisions about the laws we administer.

While they may discuss technical issues[5], practice statements do so in a way to give sense to the instructions they are providing. They are not intended to provide interpretative advice and do not express precedential ATO views.[6]

Even though ATO staff are the primary audience for a practice statement, they are published externally in the interest of open tax administration.

If a taxpayer relies on a particular practice statement that is incorrect or misleading and makes a mistake as a

[1] ATO Policy Framework (link available internally only).
[2] These practice statements are an aspect of the Commissioner's general administration of the taxation and superannuation laws (which are set out in the various Acts administered by the Commissioner) and provide guidance on compliance issues arising from such laws.
[3] For new public advice or guidance on compliance issues, consider an alternative product (such as a practical compliance guideline).
[4] 'Technical work' in this context means the performance of duties involving the application of the taxation and superannuation laws administered by the Commissioner (such as interpretative decision-making) and business registry laws administered by the Registrar.
[5] For example, Law Administration Practice Statement PS LA 2005/24 *Application of General Anti-Avoidance Rules* contains extensive discussion of technical issues in the context of providing instruction and practical guidance to staff.
[6] Precedential ATO views are set out in public rulings (including draft public rulings), ATO interpretative decisions, decision impact statements and documents listed in Schedule of Documents containing Precedential ATO views, available on ATO Law (link available internally only) or the Legal database. See Law Administration Practice Statement PS LA 2003/3 *Precedential ATO View.*

result, they will remain liable for any resulting tax shortfall, but will be protected against:

- any shortfall penalty that would otherwise arise[7], and
- interest charges on the shortfall, if the particular practice statement was reasonably relied on in good faith.[8]

3. Your responsibilities in relation to practice statements

Responsibilities as an author

Policy instructions and guidance that direct and assist ATO staff in applying the laws administered by the Commissioner should be issued in the form of a practice statement. Other communications (for example, office minutes or practice notes) should not be used for this purpose, except as an interim measure while a practice statement is being developed.

Additional practice notes, guidelines, work instructions or other tools can be issued to support the implementation of the policy outlined in a practice statement and may provide further detailed guidance and procedures to assist ATO staff. When developing such subordinate products, you should ensure that the underlying intent of the practice statement is maintained and include a link and a reference to the practice statement.

Responsibilities as a user

When performing your duties, it is your responsibility to check whether there are any relevant practice statements to consider and follow.

If you think that the application of a particular practice statement has an unintended consequence or that it is incorrect, you must escalate the matter using your business line escalation process.

4. When practice statements should be developed

The following factors may assist in determining whether a practice statement is the appropriate product to develop:

- **The primary audience is ATO staff**

  Is your principal purpose to provide direction and assistance to ATO staff? The primary audience for the practice statement should be ATO staff, even if the content may also be of interest to taxpayers or tax practitioners.

- **The proposed content is predominantly policy**

  Does the content provide directions and guidance to assist ATO staff perform duties and make decisions about the practical application of the laws we administer? If so, it is policy and a practice statement is appropriate.

  The policy outlined in practice statements may provide the framework for establishing other detailed guidance and procedures to assist ATO staff undertake specific tasks (for example, in the form of practice notes and other internal procedures).

  Where the proposed content intends to establish a precedential ATO view or provide new or detailed interpretative guidance on an issue, a practice statement would not be appropriate. You should consult with your business line Public advice and guidance (PAG) Unit or the PAG Governance team (links available internally only) in the Office of the Chief Tax Counsel to determine the most appropriate product.[9]

- **Policy needs to be formalised, made consistent or centralised**

  To what extent is information already available on the proposed content? Practice statements are authoritative sources of policy content to assist interpretive decision-making. Consider how the potential practice statement will fit into any existing hierarchy of advice and guidance and if the current content is in an appropriate form or, more correctly, belongs in a practice statement format. Ensure consistency between multiple documents is maintained.

- **Development of a practice statement has been agreed between the business line PAG Unit and other ATO stakeholders**

  Have you consulted within the ATO on the content and has it been agreed that a practice statement is appropriate? New practice statements will need to be notified to and considered by the PAG Steering Committee (link available internally only), in accordance with the procedures referred to in Section 5 of this Practice Statement.

[7] See section 284-224 of Schedule 1 to the *Taxation Administration Act 1953.*

[8] See section 361-5 of Schedule 1 to the *Taxation Administration Act 1953.*

[9] See PS LA 2003/3.

5. How practice statements are developed

You must follow the procedures in PAG development procedures – end to end (link available internally only) when developing a new practice statement.

This ensures:

- the corporate processes applying to the development of PAG are undertaken consistently
- any practice statements developed are subject to the appropriate approvals and governance processes and involve the relevant ATO stakeholders, including
  - business line risk owners, authors and relevant PAG Units
  - the Office of the Chief Tax Counsel (including PAG Governance, Law Publishing and the Tax Counsel Network), and
  - the PAG Steering Committee.

6. Maintaining practice statements

Practice statements are 'owned' by a business line (practice statement owner) that must maintain the currency of that practice statement. Maintenance of law administration practice statements (link available internally only) sets out requirements for practice statement owners.

A date for scheduled maintenance (maintenance review date) should:

- be recorded when a practice statement is published or updated
- reflect the particular circumstances and subject matter of the practice statement, and
- be set for up to 3 years into the future.

This date will be recorded on the practice statement's metadata by Law Publishing and reported on by PAG Governance, to ensure practice statement owners satisfy the maintenance obligations for practice statements.

However, sometimes an event triggers the need for a practice statement to be revised, regardless of the maintenance review date. For example, when:

- new primary legislation is passed or existing legislation is amended
- a decision is handed down by a court or tribunal
- new PAG is published that affects the content of the practice statement
- existing policy or procedures are updated as a result of a project, internal name changes or other changes.

If a practice statement is reviewed prior to its maintenance review date (for example, in response to a court decision), the whole document should be reviewed and a new maintenance review date set.

In undertaking a review, the practice statement owner will decide whether it requires significant changes, care and maintenance updates, withdrawal or no change.

Significant changes to or withdrawal of an existing practice statement should be notified to and considered by the PAG Steering Committee, in accordance with the procedures referred to in Section 5 of this Practice Statement.

The practice statement owner must also ensure consistency with any related:

- policies and procedures, including practice notes, office minutes, work instructions or other tools
- guidance, including content on ato.gov.au, public rulings or practical compliance guidelines, where applicable.

Practice statement owners are also required to consider whether ATO staff are conforming appropriately and effectively with the policies outlined in their practice statement. At a minimum, this should be undertaken on the maintenance review date but may be conducted more frequently.

7. More information

For more information:

- view the Law administration practice statements page (link available internally only)
- view practice statements on ATOlaw (link available internally only) or the Legal database
- view Chief Executive Instruction *Conformance with obligations* (link available internally only)
- contact PAG Governance in the Office of the Chief Tax Counsel.

Date issued: 17 December 1998

Date of effect: 17 December 1998

Business line: OCTC

Amendment history

20 February 2025

Part	Comment
Throughout	Updated in line with current ATO style and accessibility requirements, including correcting several broken internal hyperlinks.
Section 6	Updated to include reference to procedure for maintaining practice statements and requirement for conformance monitoring.

14 August 2024

Part	Comment
Section 1	Updated to explain how practice statements support the overall ATO policy framework.
Section 2	Updated 'What are practice statements' to remove duplication and incorporate information about the types of practice statements.
Section 3	Updated to explain the responsibilities of ATO staff as both authors and users of practice statements.
Section 4	New section added to provide clearer guidance and instructions to staff about the factors to consider when deciding to prepare a practice statement.
Section 5	Updated to provide the reference to new internal PAG development procedures and reasons why we follow these procedures.
Section 6	Added further detail to assist staff determine who should maintain a practice statement and when it should be reviewed.
Throughout	Updated in line with current ATO style and accessibility requirements.
More information	Links updated.

17 April 2018

Part	Comment
All	Revised for currency and advising the discontinuance of GA LAPS.

19 February 2015

Part	Comment
Throughout	Rewritten Practice Statement published.

19 December 2013

Part	Comment
Throughout	Removed Law and Practice and replaced with Tax Counsel Network. Removed Law (from Practice Management) and replaced with TCN. Minor changes to formatting.
Paragraph 24	Removed 'staff' and replaced with 'ATO personnel'.
Paragraph 37	Updated Sub-plan Executive with Group Executive.
Paragraphs 36, 39 and 41	Replaced Taxpayers' Charter team with Charter Review team.
Paragraph 42	Replaced Second Commissioner (Law) with Second Commissioner (Law Design and Practice).

2 May 2013

Part	Comment
Paragraph 7	Insert requirement to ensure underlying intent of the LAPS is maintained when ATO personnel are developing guidelines or similar products to support the LAPS.
Footnote 6	Insert instruction to consider packaging GA LAPS documents for Commissioner's approval where the GA LAPS will need to issue in a short timeframe and will be issued for external consultation.
Throughout	Minor changes to wording to reflect updates to Branch name, other references.

18 October 2012

Part	Comment
Throughout	Updated processes to reflect withdrawal of the priority technical issue system. Removed requirement to undergo official extension of time process if due dates pass. Updated names of relevant areas of responsibility. Updated citations and style in accordance with corporate requirements.
Paragraph 2	Allowed for interim policy to be distributed via office minute, subject to conditions.
Paragraph 39	Removed the active role of the Assistant Commissioner, Law Practice Management Unit in the registration and approval processes of process LAPS.

29 November 2011

Part	Comment
Various	Unified format of headings.
Various	Formatting of LAPS citations updated as per ATO Standards for Citations and References.
Paragraph 12	Maintenance & Support team's role in LAPS currency review.
Paragraph 30	Removed reference to former Commissioner Carmody's speech as this link is no longer available.
Paragraph 42	DCTC approval of topics being added to the LAPS Program.
Paragraph 39	Assistant Commissioner's details updated to Law Practice Management Unit.
Various	PTI & Public Rulings Branch updated to PTI & Public Rulings Unit (PTI & PRU).
Various	Tax Office updated to ATO as per the ATO Style Guide.
Contact details	Updated.

27 August 2009

Part	Comment
Paragraph 14	Sentences included to allow for the introduction of point in time functionality.
Paragraph 37	Inserted to mandate the use of Siebel in the development of LAPS. All consequent paragraphs renumbered.
Paragraphs 39, 42 and 45	Amended to allow for minor changes to the process due to the introduction of Siebel.
Related practice statements	Hyperlink to PS LA 2009/4 added.
Other references	Hyperlink to PS LA 2009/4 added.

21 May 2009

Part	Comment
Paragraphs 45 and 46	Amended to incorporate the process outlined in PS LA 2009/4 in relation to obtaining approval for the exercise of the Commissioner's power of general administration.

23 September 2008

Part	Comment
Contact details	Contact details updated.

29 June 2007

Part	Comment
Various	Amended to: • update paragraph relating to citation of LAPS • change classification types of LAPS to process, technical and GA • change procedures for the development of LAPS • make adherence to Information Kit for Authors and Sponsors mandatory.

31 July 2006

Part	Comment
Various	Amended to: • allow for changes in procedures regarding the drafting and approval of all LAPS • formalise TechNet role in regard to consultation • include requirement to register significant technical LAPS as a priority technical issue • include clarification of the CMPS/LAPS boundary • improve wording for clarification • update procedure for approval of LAPS (GA) • include new paragraphs 4 and 22 concerning precedential ATO view and level of protection.

Also previously amended on 20 December 2002, 4 May 2003 and 9 June 2005

References

Legislative references	TAA 1953 Sch 1 284-224 TAA 1953 Sch 1 361-5 Public Service Act 1999 Public Governance, Performance and Accountability Act 2013 Commonwealth Registers Act 2020
Other references	ATO Policy Framework (link available internally only) Conformance with obligations CEI (link available internally only) Law administration practice statements (link available internally only) Maintenance of law administration practice statements (link available internally only) PAG development procedures – end to end (link available internally only) Schedule of Documents containing Precedential ATO Views
Related practice statements	PS LA 2003/3 PS LA 2005/24 PS LA 2008/3

ATO references

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