



Australian Government



# Compliance: A retrospective

**Presented by**

Peter de Cure, Board Member, Tax Practitioners Board

# Welcome

*'In the spirit of reconciliation, we acknowledge the Traditional Custodians of country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past, present and emerging. We extend that respect to all Aboriginal and Torres Strait Islander peoples today.'*

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

## What we will cover today

- ✓ Complaints and investigation process
- ✓ Compliance cases and outcomes
- ✓ Penalties and sanctions
- ✓ What happens if your registration is terminated
- ✓ Notable cases
- ✓ Questions

## Meet your presenter

Peter de Cure

- > Board Member
- > Tax Practitioners Board



## Tax practitioner compliance



- The vast majority of tax practitioners are compliant.
- 89% of consumers have a high level of trust in their tax practitioner.
- There are a small group of tax practitioners that don't comply, and we classify these tax practitioners as high-risk.
- We need to take firm action to safeguard the integrity of the tax and super systems.

# **COMPLAINTS AND INVESTIGATION PROCESS**

## Before you make a complaint

- Before you make a complaint, try to resolve any issues with the individual first.
- We will ask you to provide details about what has already been done to resolve the issue.
- You can make a complaint to us about:
  - ✓ registered tax agents or BAS agents; and
  - ✓ anyone advertising or providing tax agent, BAS or tax (financial) advice services for a fee who is unregistered.

## How to make a complaint

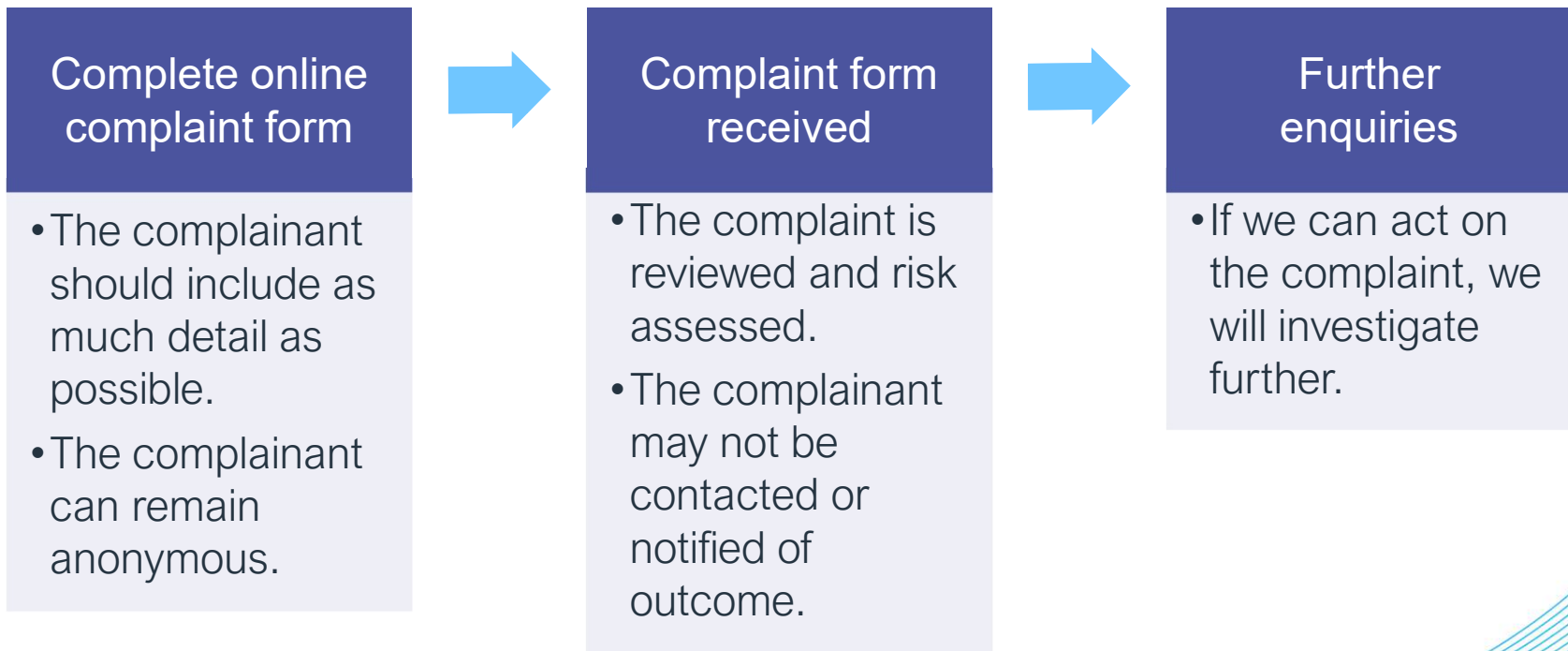
- Help us maintain the integrity of the tax profession by letting us know if you are aware of someone doing the wrong thing.
- You can report them to us by completing the online form which is available on our website at [tpb.gov.au/makeacomplaint](http://tpb.gov.au/makeacomplaint).



## Complaints we cannot investigate

- We cannot address certain complaints, including matters where:
  - the services provided by a tax practitioner are not considered a tax agent or BAS agent service;
  - the conduct of a tax practitioner does not breach the TASA; and
  - fee and commercial disputes.
- Some disputes are also best dealt with by another body, such as the police or Fair Trading.

## Complaints process



## Investigation process



**STEP 1**  
Identify potential breach



**STEP 2**  
Preliminary enquiries



**STEP 3**  
Please explain letter issued



**STEP 4**  
Notice of investigation



**STEP 5**  
The investigation begins



**STEP 6**  
Outcome of investigation



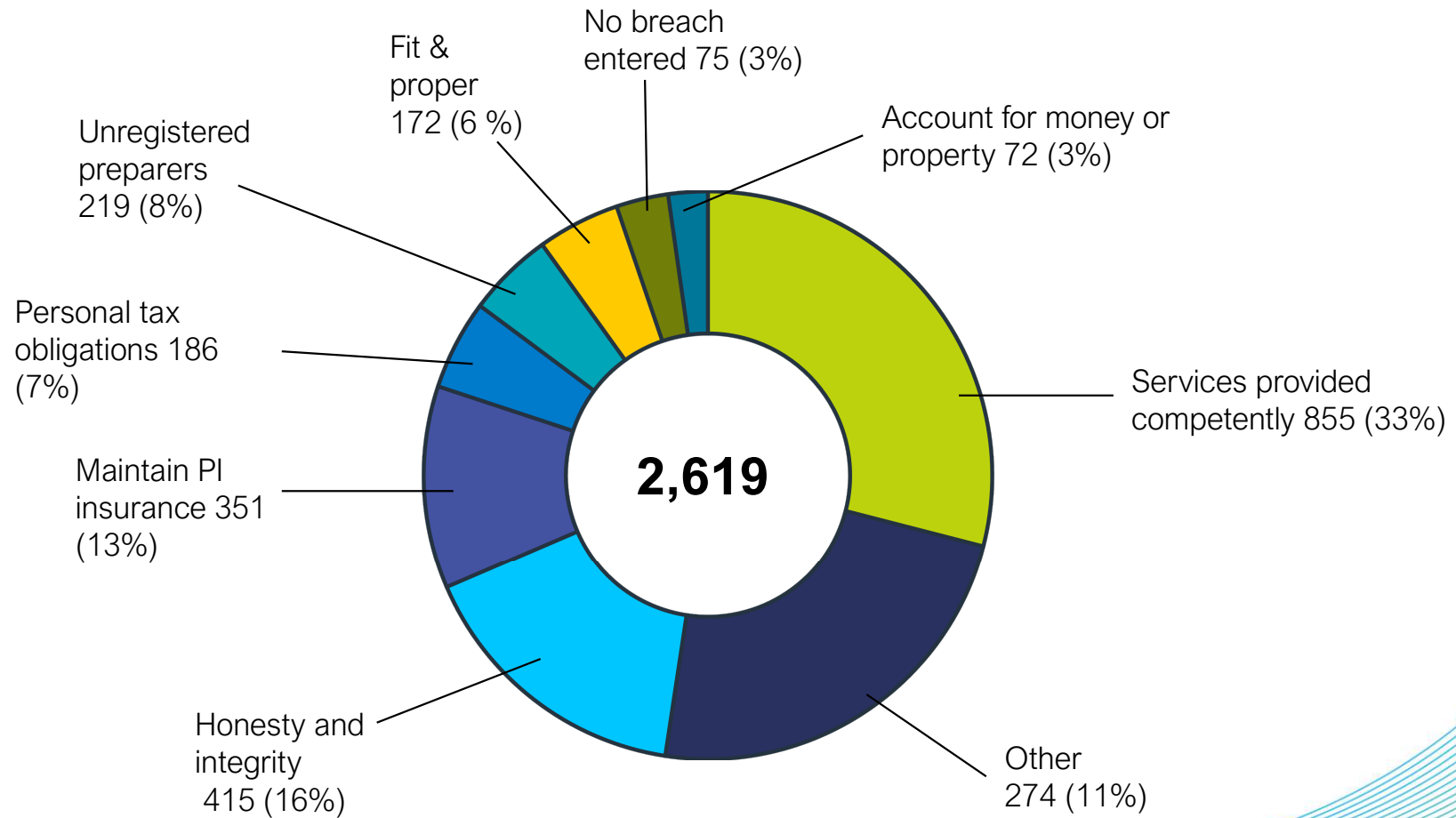
**STEP 7**  
Notification of decision



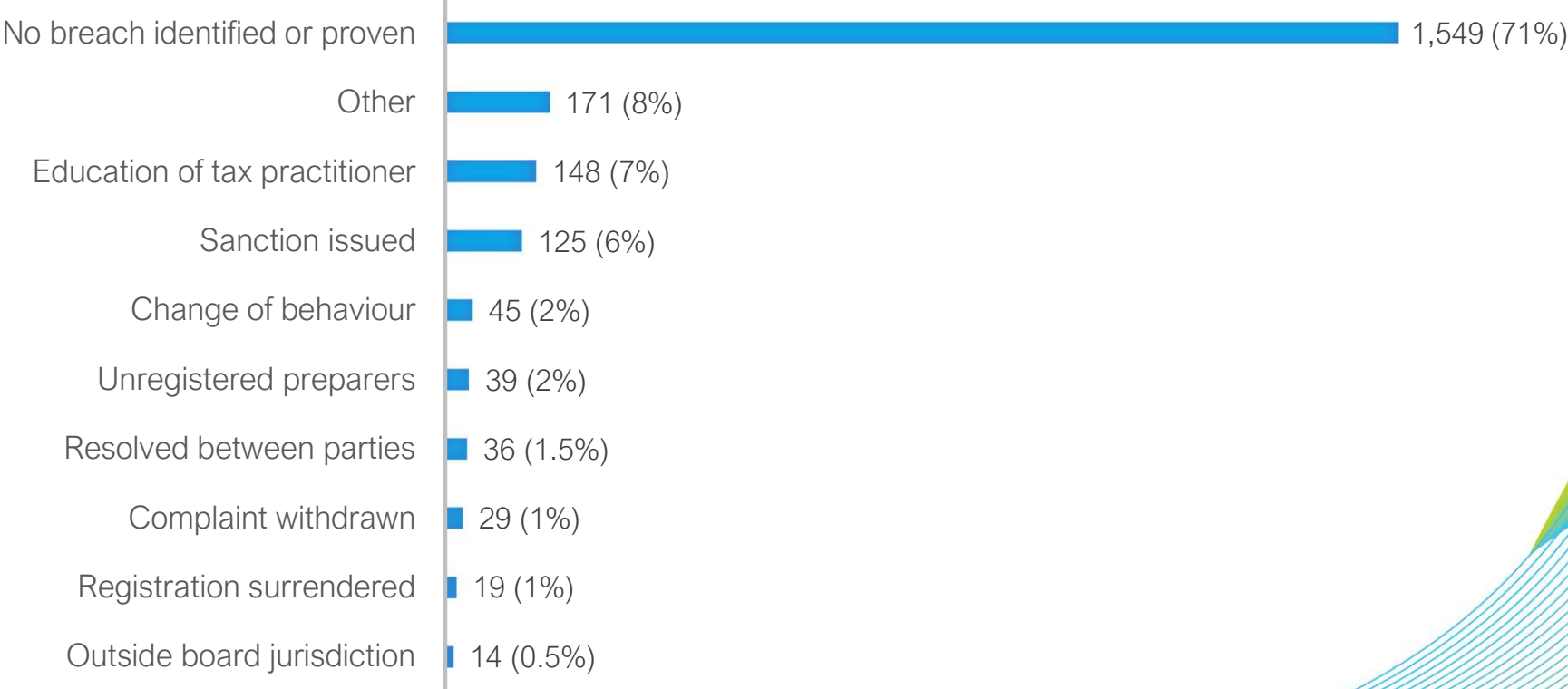
**STEP 8**  
Review and appeal

# COMPLIANCE OUTCOMES 2021-22

## Compliance cases 2021-22



# Compliance outcomes 2021-22



## Unregistered preparers

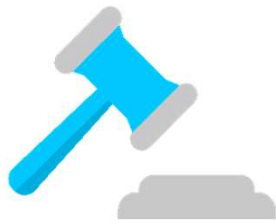
Complaints about an unregistered preparer are risk assessed. This may include:

- education of the unregistered preparer
- face-to-face interaction to influence behaviour
- cease and desist correspondence
- notification of the suspected client base
- proactive work to address compliance issues
- investigation to limit the influence over the tax system
- formal litigation, seeking civil penalties or injunctive relief
- work with partner agencies to pursue criminal prosecution.

# **PENALTIES AND SANCTIONS**



## Consequences for failing to comply



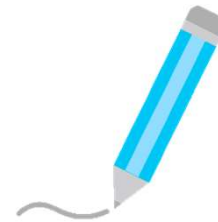
Termination



Suspension



Order



Written  
caution

## Civil penalty provisions



- Civil penalty provisions can be grouped into 2 categories:
  - conduct that is prohibited without registration
  - conduct of registered tax practitioners.
- A civil penalty is a pecuniary penalty imposed by courts exercising a civil rather than criminal jurisdiction.
- Government bodies can apply to the courts to have a civil penalty imposed, in some circumstances.
- Civil penalties do not include criminal convictions or imprisonment.
- Penalties are imposed in the form of penalty units.

## What is a civil penalty breach?

You will breach a civil penalty provision if you are unregistered and you:

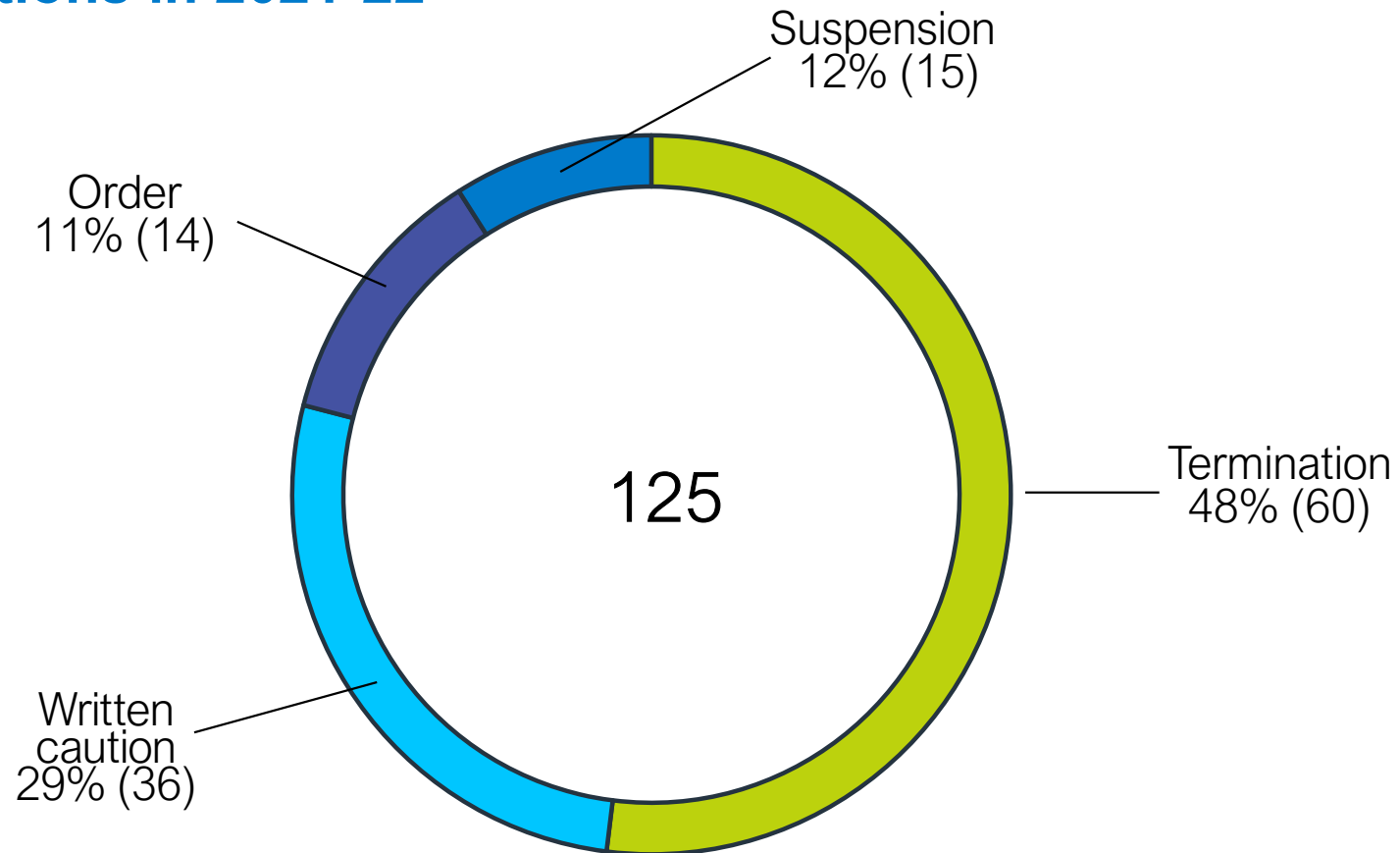
1. Charge or receive a fee or other reward for providing a tax practitioner service. This carries a maximum penalty of \$55,500 for individuals and \$277,500 for body corporates.
2. Advertise that you will provide a tax practitioner service, or you represent that you are a registered tax practitioner. This carries a maximum penalty of \$11,100 for individuals and \$55,500 for body corporates.

## What is a civil penalty breach? ⚠️

Registered tax practitioners will breach a civil penalty provision if you:

- make a false or misleading statement to the Commissioner
- prepare or permit/direct an entity to make a false or misleading statement to the Commissioner
- employ or use the services of a deregistered entity.
- sign a declaration or statement for a taxpayer under a tax law, which was prepared by someone unregistered or who is not working under the supervision and control of a registered tax practitioner.

## Sanctions in 2021-22



## Poll 1

- A tax agent prepared and lodged a BAS on behalf of their client, claiming input tax credits that the client was not entitled to.
- The TPB found that the tax agent had breached the Code.
- What administrative sanctions would you apply?
  1. written caution
  2. order
  3. suspension
  4. termination.



## Poll 2

- A tax agent company had its clients' work-related expense claims disallowed by the ATO because they were not adequately substantiated and had no connection with work-related activities.
- The TPB found the tax agent had breached the Code.
- What administrative sanctions would you apply?
  1. written caution
  2. order
  3. suspension
  4. termination.



**IF YOUR REGISTRATION IS TERMINATED**



## When a registration is terminated



- We will send you a written termination notice within 30 days.
- The maximum period of prohibition from applying for registration is 5 years.
- If you are unregistered, you must not:
  - provide tax agent services or BAS services for a fee or other reward
  - advertise that you will provide these services
  - represent that you are a registered tax practitioner.
- We will notify the Commissioner of our decision and publish it in the Government Notices Gazette and the TPB register.

## Reviewable decisions: Administrative appeals



- You can apply to the AAT for review of certain TPB decisions.
- Some reviewable decisions include:
  - rejecting an application for registration or renewal
  - specifying a condition of registration
  - refusing to vary a condition of registration
  - not allowing a renewal application to be lodged during a certain period.
- If you are seeking a review, you are generally required to lodge an application for review within 28 days.

## Appeals process



- You need to lodge an application for review within 28 days and outline the reasons.
- Generally, appeals lodged with the AAT finalise in one of the following ways the:
  - tax practitioner withdraws their application for review
  - TPB and the tax practitioner reach an agreement
  - matter proceeds to final hearing and the AAT makes a decision.
- If the matter proceeds to final hearing, the AAT will conduct a ‘merits review’ of the TPB’s decision.

# CASE STUDIES

## Case study 1



### **Cheating tax agent gets maximum ban**

- Caren Moroney, and CJM Accounting prepared and lodged tax returns containing false and unproven work-related expense deductions for 20 clients.
- Ms Moroney and her company failed to declare all reportable and assessable income in their own tax returns, resulting in hefty tax shortfalls.
- They also reported incorrect taxable supplies in the company's BAS and instalment activity statements.
- We terminated the individual and company registration and banned them from reapplying for 5 years, which is the maximum amount of time.

## Case study 2



### Tax agent banned for using an unregistered preparer & pilfering client money

- Mr Kaluka allowed an unregistered preparer, Namro Services to provide services on his behalf.
- Mr Kaluka allowed Namro Services – who he knew had already been terminated by us – to use his registered agent number and access client data via the ATO's Online services for agents.
- Mr Kaluka was found to no longer be fit to provide tax agent services.
- We terminated his registration and prohibited him from reapplying for 2 years.

## Case study 3



### Federal Court stops unregistered tax preparer

- Ms Jessa Van Stroe (also known as Jessa Layola) was preparing and lodging income tax returns even though she wasn't a registered tax agent.
- We found evidence that indicated she illegally charged clients fees to lodge returns on their behalf.
- The Federal Court ordered Ms Van Stroe to stop preparing and lodging income tax returns or she could face fines, imprisonment, and even seizure of property for contempt of court.



# Questions



# Stay in touch with the TPB



[tpb.gov.au](http://tpb.gov.au)



[tpb.gov.au/contact](http://tpb.gov.au/contact)



1300 362 829  
(Mon-Fri 9am-5pm AEST)



[facebook.com/TPB.gov](https://facebook.com/TPB.gov)



[linkedin.com/tax-practitioners-board](https://linkedin.com/tax-practitioners-board)



[twitter.com/TPB\\_gov\\_au](https://twitter.com/TPB_gov_au)



[youtube.com/TPBgov](https://youtube.com/TPBgov)

## Disclaimer

The information included in this webinar is intended as a general reference for users. The information does not constitute advice and should not be relied upon as such.

While the Tax Practitioners Board (TPB) makes every reasonable effort to ensure current and accurate information is included in this webinar, the TPB accepts no responsibility for the accuracy or completeness of any material contained in this webinar and recommends that users exercise their own skill and care with respect to its use.

Links to other websites may be referenced in this webinar for convenience and do not constitute endorsement of material on those sites, or any associated organisation, product or service.

Copyright is retained in all works contained in this webinar. Unless prior written consent is obtained, no material may be reproduced, adapted, distributed, stored or transmitted unless the reproduction is for private or non-commercial purposes and such works are clearly attributed to the TPB with a copy of this disclaimer attached.