



Australian Government



# Compliance: the year in review

**Presented by**

Ryan McDonald, Compliance Director  
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.'*

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## What we will cover today

- ✓ 2022-23 compliance outcomes
- ✓ Personal tax obligations strategy
- ✓ Fit and proper requirements
- ✓ TPB and ATO shared compliance focus
- ✓ Expanded compliance program
- ✓ Case studies
- ✓ Questions

## Tax practitioner compliance

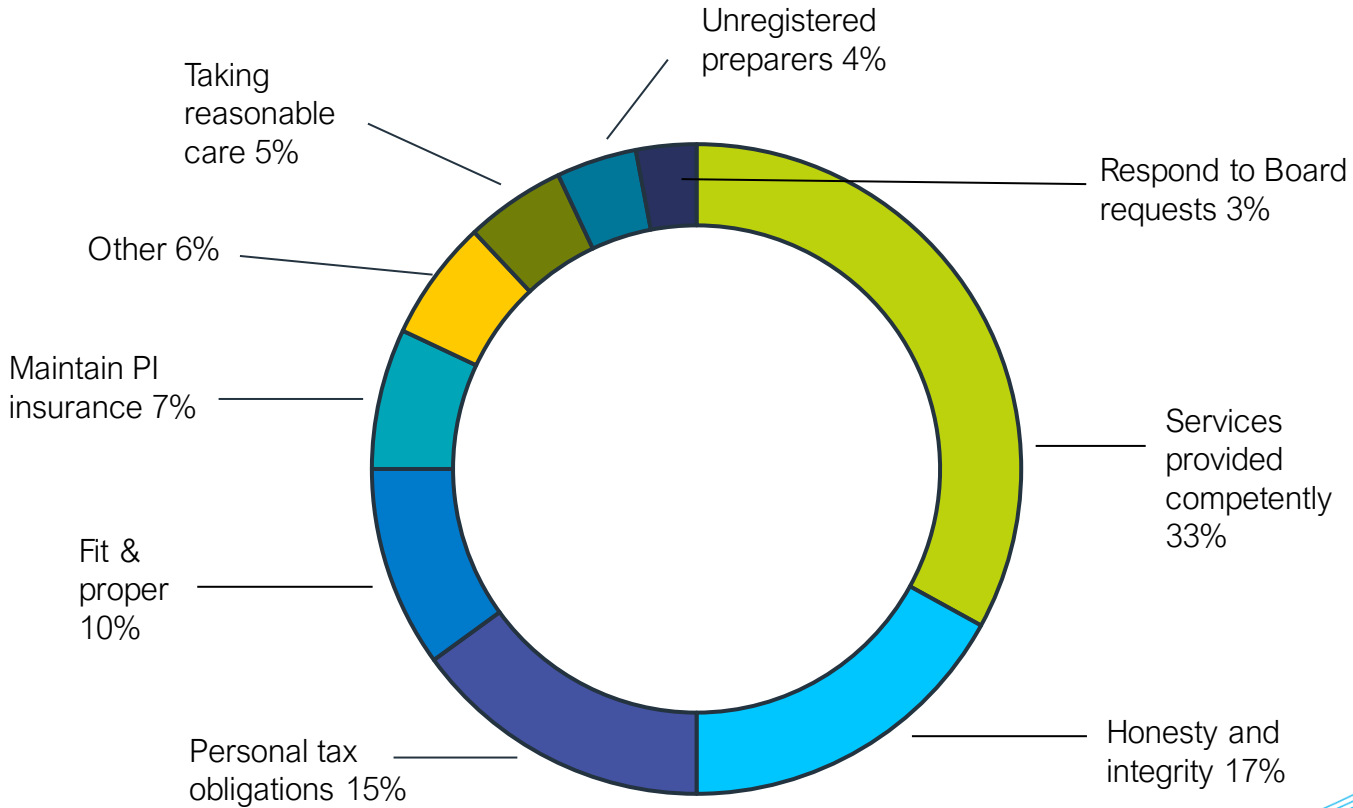


- The vast majority of tax practitioners are compliant.
- 89% of consumers have a high level of trust in their tax practitioner.
- There are a small group of tax practitioners that don't comply, and we classify these tax practitioners as high-risk.
- We need to take firm action to safeguard the integrity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

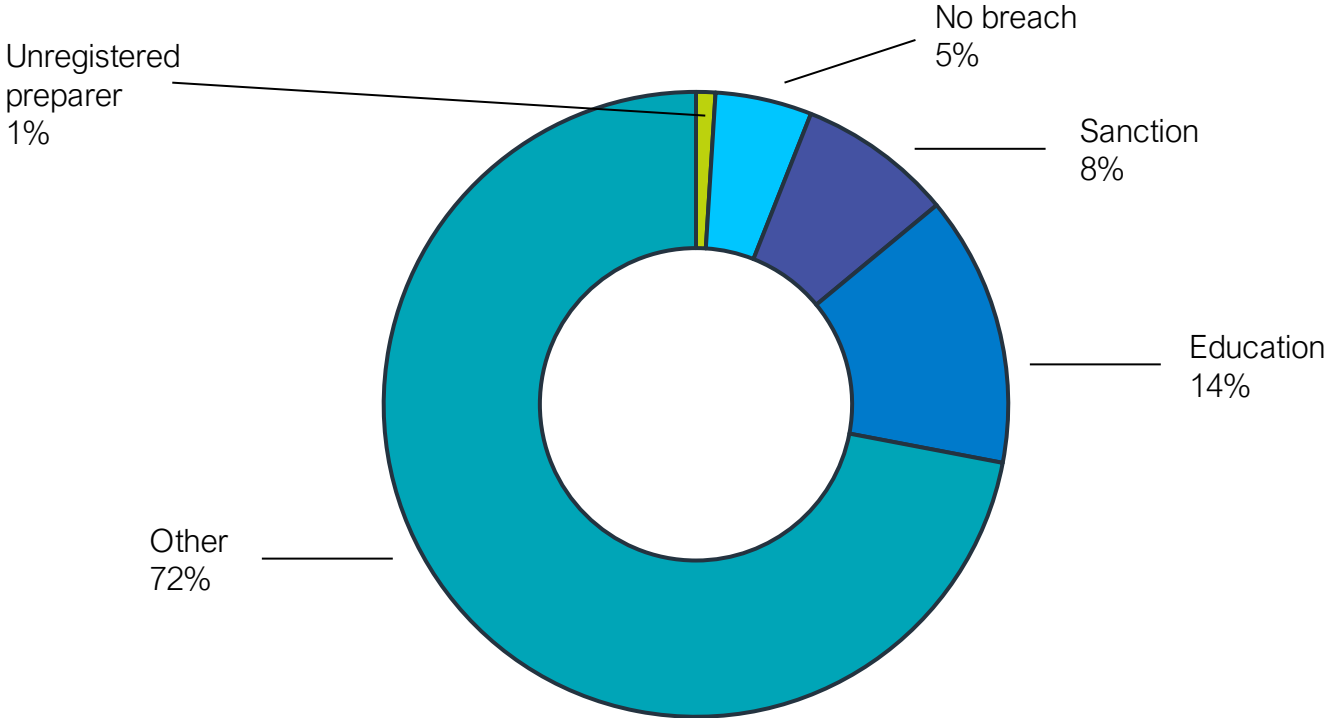
# Compliance outcomes 2022-23



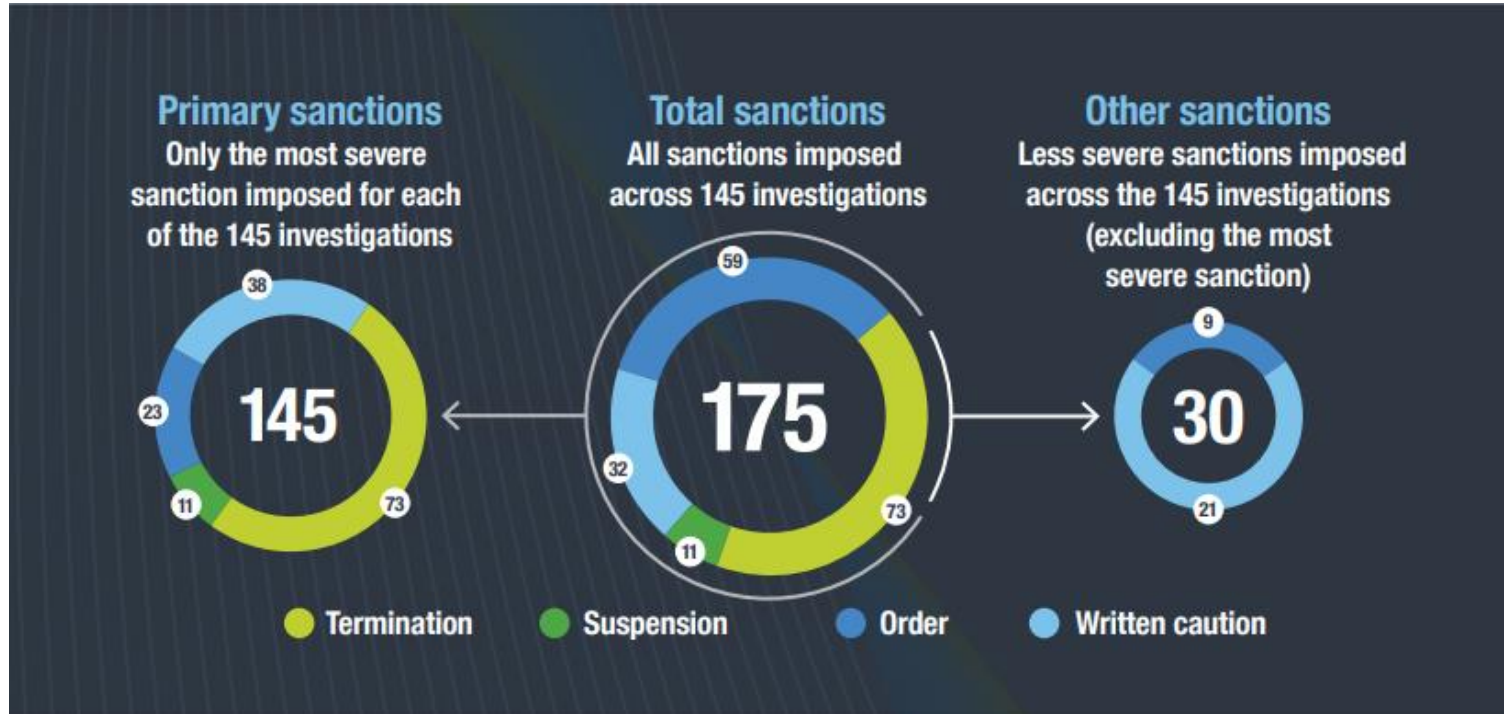
# Compliance cases 2022-23



# Compliance outcomes 2022-23



# Sanctions in 2022-23





## 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.

## Favourable Federal Court decision



- Jessa Van Stroe (also known as Jessa Layola) was ordered by the Federal Court to pay \$230,000 in penalties.
- She illegally charged clients fees to lodge returns on their behalf and engaged in 531 contraventions of the TASA.
- The Court imposed a permanent injunction restraining her from providing tax agent services.
- Ms Van Stroe exploited vulnerable taxpayers, in circumstances where they had sought and paid for legitimate advice.
- Many clients had excessive and unsubstantiated deductions, exposing them to penalties and unpaid taxes.

# Personal taxation obligations



## Poll 1



What entities are covered when we refer to ‘your personal tax affairs’?

1. The tax affairs of registered tax practitioners (individual or non-individual).
2. The tax affairs of related entities of which you are a director, partner or trustee.
3. The tax affairs of related companies of which you are a minority shareholder.
4. The tax affairs of your spouse.
5. All of above.

## Personal tax obligation findings



- Over 2,700 tax practitioners have outstanding ATO debts of \$10,000 or more without a payment arrangement.
- Over 3,300 tax practitioners have not lodged one or more personal income tax return.
- Over 1,400 tax practitioners have more than one outstanding BAS for their business or trading entity.
- Over 1,000 tax practitioners have a combination of outstanding income tax returns and BAS.
- 875 tax practitioners have been the subject of personal tax compliance actions.

## Personal tax obligations treatment

- Lower risks – targeted communications to educate and nudge behaviour.
- Higher risks – increasing to sanctions such as orders, suspensions, and termination.



**Shared compliance focus**

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## Working with the ATO



- While we are independent of the ATO, we work collaboratively to ensure the integrity of the tax and super system.
- Both agencies help maintain community confidence by promoting a capable and well-regulated tax profession.
- We regularly share information on areas of mutual interest.
- This allows tax practitioners who pose a threat to the community to be more quickly identified and addressed.
- We're using data-driven strategies to target our combined efforts and expand our scope.



## Desired outcome



- Use real-time reporting and compliance governance.
- Leverage the ATO's compliance intelligence and risk assessment tools.
- Reduce the number of tax practitioners with outstanding tax obligations.
- Take action against the most egregious tax practitioners.
- Enhance the integrity of the tax system.
- See an increase in consumer confidence in the regulatory system.
- Enhance taxpayer compliance.

# Fit and proper requirements



# Professional conduct of tax practitioners

- ‘Professional conduct’ means the way in which you act in your professional capacity.
- It includes attributes such as competence, good fame, integrity and character.
- Your conduct should be such that the TPB, ATO and the public can have the confidence that you perform your role competently and with integrity.
- Matters affecting fitness and propriety may also lead to a breach of the Code of Professional Conduct or civil penalty provisions in the TASA.

## Fit and proper - Overview



To be satisfied that an individual is a fit and proper person, the TPB must consider if the individual:

- is of good fame, integrity and character
- any event described in s20-45 of the TASA has occurred in the previous 5 years
- the individual had the status of an undischarged bankrupt during the previous 5 years
- the individual served a term of imprisonment, in whole or in part, during the previous 5 years.

## Events affecting registration



1. You are convicted of a serious taxation offence.
2. You are convicted of an offence involving fraud or dishonesty.
3. You are penalised for being a promoter of a tax exploitation scheme.
4. You are penalised for implementing a scheme that is materially different to that described in the product ruling.
5. You become an undischarged bankrupt or go into external administration.
6. You are sentenced to a term of imprisonment.

## Poll 2



- Veronica a BAS agent, lodges her personal income tax returns for herself and her business by the due dates.
- She also lodges her BAS on time.
- Veronica receives a notification from the ATO advising she has an outstanding tax bill to pay.
- Veronica renews her BAS agent registration without mention of the outstanding tax bill.
- She contacts the ATO and comes to an arrangement with them to pay the amount owing.
- Has Veronica met her obligations as a registered BAS agent?

# Expanded compliance program



## Expanded compliance program overview



- Commenced on 1 July 2023 and will run for 4 years.
- Focus on tax practitioners who display high-risk attributes engaging in tax avoidance or evasion.
- Target those that have the greatest risk to the community.
- Identifying and addressing higher risk tax advisers, including those operating outside the system.



# Case studies

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## Case study 1



- Tax agent, Isaac Brown, had his registration terminated after lodging false BAS totalling millions of dollars. The termination also includes the maximum 5-year ban from re-applying.
- Mr Brown, operating as Ausred Accounting, breached 5 Code items.
- He lodged false BAS without the knowledge or authorisation of clients, resulting in the ATO cancelling the lodgements to prevent over \$3.75 million of BAS credits being paid.
- Mr Brown subsequently misappropriated client refunds – to cover this, he fabricated engagement.

## Case study 2



A tax agent had their registration terminated with a 5-year ban for:

- Failing to declare over \$16 million of reportable income, resulting in a tax shortfall of over \$7.4 million and penalties of over \$6.6 million.
- Maintaining 2 or more sets of financial records.
- Failing to declare outstanding personal taxation obligations.
- Not lodging income tax returns and BAS by their due dates.
- Failing to ensure tax agent service they provided were provided competently and to take reasonable care in ascertaining the client's state of affairs.

## Case study 3



- Unregistered preparers operate outside of the law, they unqualified, poorly trained, and uninsured.
- We're continuing to combat this illegal behaviour and brought a case to the Federal Court.
- Anthony Dean Buckland, a previously registered tax agent, provided tax agent services for a fee while not registered.
- The Federal Court ordered him and his company, Apat Na Seasons Pilipinas Corporation to stop preparing and lodging income tax returns for a fee.
- If they breach this order, they may be in contempt of court and face penalties, including imprisonment for Mr Buckland.

## Case study 4



- A tax agent breached Code item 2 by failing to lodge tax returns and activity statements by their due dates and to pay outstanding tax debts when they fell due.
- They also breached Code item 14 by failing to comply with an order relating to outstanding taxation obligations, even after several extensions were provided.
- The company's registration was terminated due to the serious nature of the conduct and that the evidence showed an extended failure to comply with personal tax affairs.

## Case study 5



- A registered tax agent Duncan Bell accumulated substantial ATO debts over a lengthy period, with liabilities in excess of \$474,000.
- Although he entered into a payment arrangement with the ATO he defaulted within a month.
- Mr Bell appealed to the AAT he believed the decision was not a proportionate response.
- The AAT found Mr Bell failed to comply with his tax obligations over a long period of time and termination of his registration was the appropriate sanction.

## Case study 6



- Terry Borella has an extensive history of not complying with his personal tax obligations, and TPB sanctions.
- He had numerous interactions with us in relation to outstanding tax obligations and was found to no longer be a fit and proper person, by failing to lodge and pay tax debts and comply with 2 orders.
- Mr Borella had over \$110,000 owing to the ATO and failed to lodge 3 BAS.
- Mr Borella applied to the AAT for a review and stay of our decision.
- The AAT upheld our termination decision and 2-year ban from reapplying as a registered tax agent.

## Case study 7



- Tax agent, Grant McCarthy failed to comply with a payment plan and employee SG obligations.
- He failed to pay tax debt of over \$600,000 which was not under a payment arrangement.
- Mr McCarthy failed to lodge BAS by their due dates and didn't respond to requests and directions from the TPB in a timely, responsible and reasonable manner.
- The AAT considered his conduct to be serious – not only did he keep and use money belonging to the ATO, he also failed to keep his employee superannuation payments up to date.





**Questions**

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1300 362 829

Overseas enquiries  
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