

Shine together

19–21 October 2022

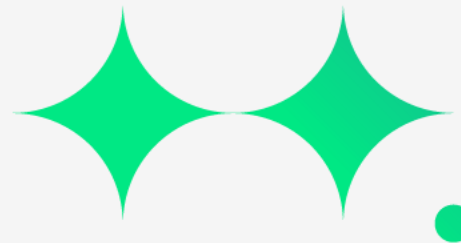
ICC Sydney

20 CPD Hours

An update from the IGT

Presenter:

Karen Payne, CTA, Inspector-General of Taxation and Taxation Ombudsman



Let's start with a poll – Question 1 of 2

Is independent assurance and investigation of taxation complaints and disputes important to uphold the **integrity** of the tax system?

- a. Yes
- b. No
- c. Don't Know ... what do you mean by integrity?

Let's say integrity means ...



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Meaning of integrity of the tax system ... NZ



Without limiting its meaning, the integrity of the tax system includes —

- a. the public perception of that integrity; and
- b. the rights of persons to have their liability determined fairly, impartially, and according to law; and
- c. the rights of persons to have their individual affairs kept confidential and treated with no greater or lesser favour than the tax affairs of other persons; and
- d. the responsibilities of persons to comply with the law; and
- e. the responsibilities of those administering the law to maintain the confidentiality of the affairs of persons; and
- f. the responsibilities of those administering the law to do so fairly, impartially, and according to law.

Let's go back to Question 1

Is independent assurance and investigation of taxation complaints and disputes important to uphold the **integrity** of the tax system?

- a. Yes
- b. No
- c. Don't Know?



Question 2 of 2

Are you aware of or have you used the services of the Taxation Ombudsman?

- a. Yes
- b. Yes - I'm aware but I'm not sure what they do
- c. No - I didn't know Australia had a Taxation Ombudsman



We add value, integrity and fairness to the tax system

*“Taxpayers who are aware of their rights and expect, and in fact receive, a fair and efficient treatment are **more willing to comply**”*

The Organisation for Economic Co-operation and Development



The IGTO receives \$6.5m per year to **improve tax administration**



A team of 28 tax professionals based in Sydney with national responsibilities



Our mission is to ensure that the tax system is administered **fairly, equitably and transparently**



We contribute to the overall integrity and transparency of the tax system & enhance voluntary compliance

- as people are more willing to engage with the tax system where they trust in its integrity

The principal activities of the IGT0



independently investigate

- taxation decisions, actions, systems and laws of the ATO and the TPB



provide independent assistance and assurance

- directly to taxpayers and tax professionals and investigate taxation disputes (or unresolved complaints) about their tax affairs



investigate and report on issues arising from complaints and dispute investigations which are in the public interest



undertake review investigations, informed by community consultations, of actions, systems and taxation laws (to the extent they deal with tax administration matters) to provide independent advice and recommendations to Government, the ATO and the TPB

- to improve taxation administration

Features of Good Tax Administration



- The Australian community expects and benefits from a tax system that is administered fairly, equitably and transparently
- Consistent, reliable, honest and fair administration improves integrity
- People are more willing to engage with the tax system where they trust in its integrity
- The IGTO is part of Good Governance and Accountability in the Tax System

Current IGTO Review Investigations



The Australian Taxation Office's Administration and Management of Objections

Interim Report published on 10 October 2022

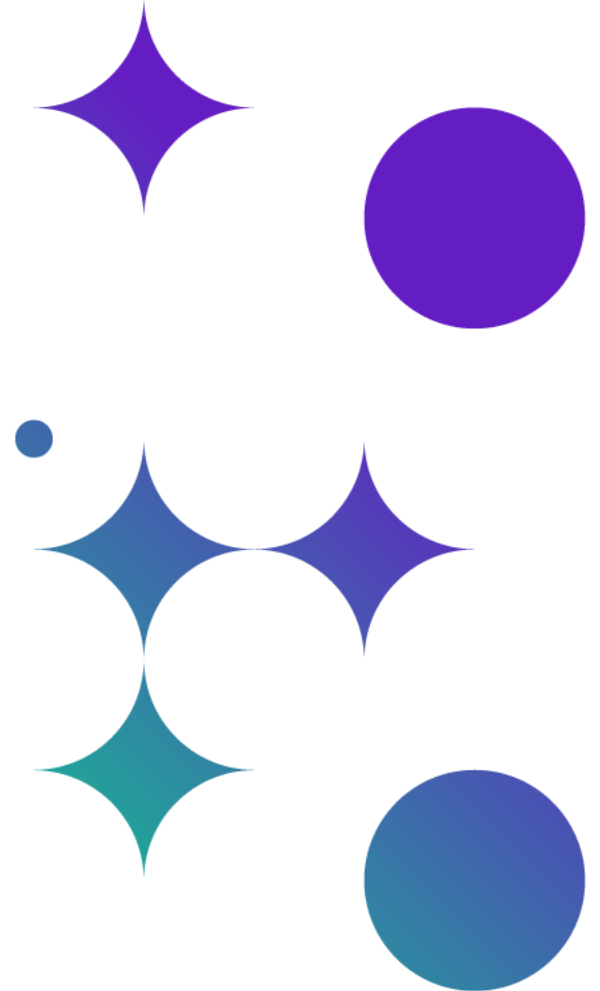
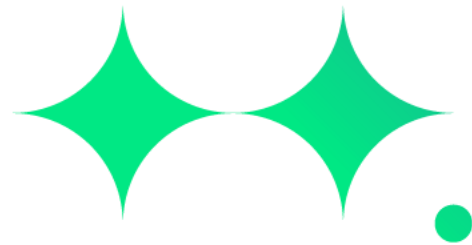


The Exercise of the General Powers of Administration



The Exercise of the Commissioner's Remedial Power

The Australian Taxation Office's Administration and Management of Objections



Data discoveries explored in the Report and slide deck

- 27,780 objections were lodged in FY21
 - more than 50% of objections are allowed in full but this is not the full story
 - more than 50% of objections received by the ATO in FY19 – FY21 (excluding COVID-19 objections) are self-initiated
 - That is, taxpayers objecting against their own self assessment
 - a significant number and proportion of objections are determined by the ATO to be invalid
 - a significant number and proportion of objections were withdrawn by taxpayers
 - a significant number and proportion of small business objections were disallowed in FY21 compared to the previous two years



There is no deadline to finalise an objection

Days to finalise objections



- Up until FY16, the ATO applied a service standard of 56 days to finalise objections
- The due date is now agreed between the ATO and taxpayer
- Although an objection service standard is not a taxpayer right, the statute provides an escalation mechanism and deemed disallowed objection result after 120 days (60 days after the taxpayer serves notice on the ATO) - [section 14ZYA TAA 1953](#)

As per ATO website

If we have not responded to your objection in 60 days of lodgment, you can give us written notice to make a decision. Then, if we don't make a decision in 60 days of this notice, your objection is deemed to be disallowed. This means you can seek an external review by a court or tribunal.

- Most objections are finalised within six months but this can vary – especially objections against ATO compliance action (eg audit decisions)

Average duration of objections from receipt to finalisation (FY19-FY21)

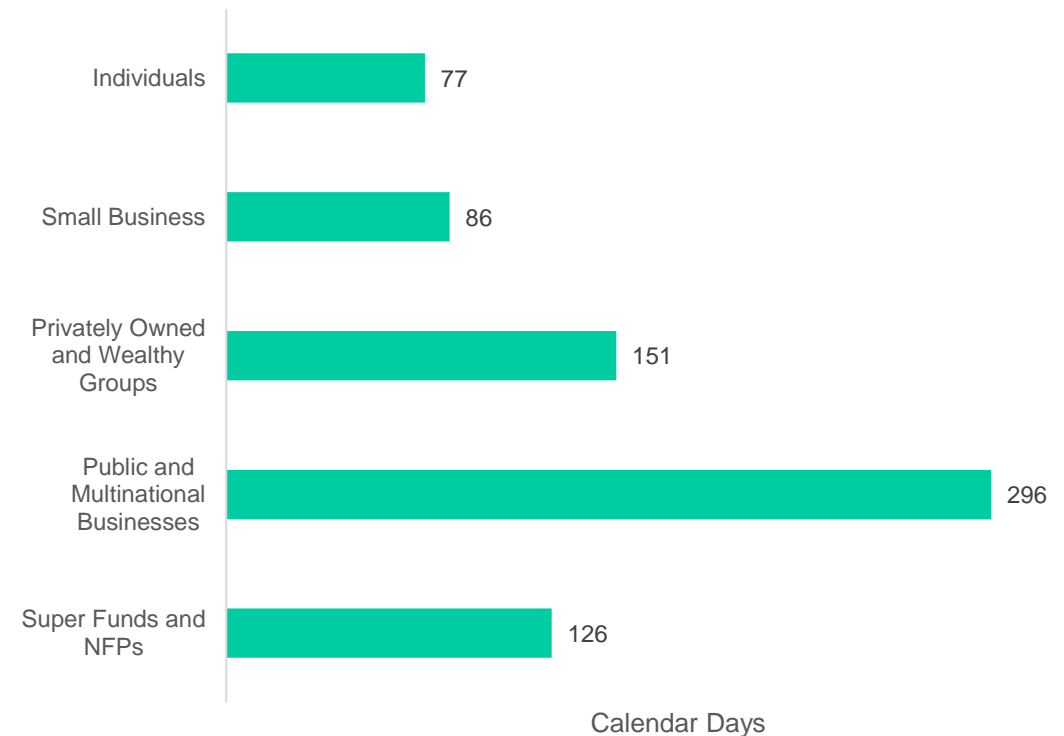


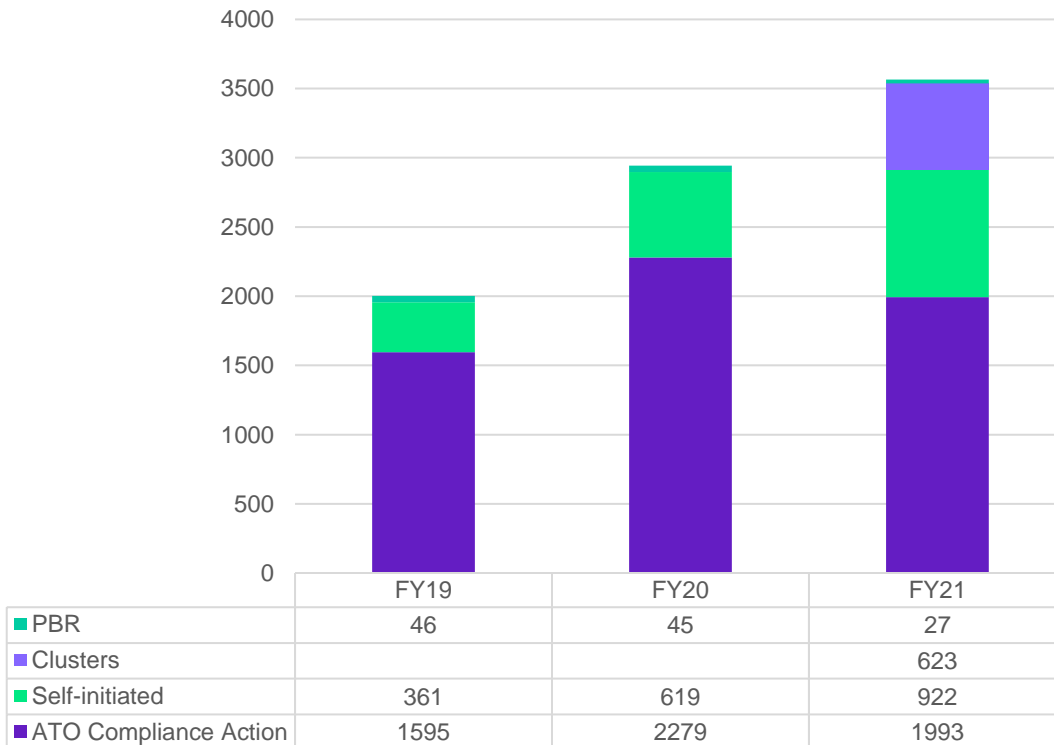
Figure 2.17 of the Report

Objections which take longer than six months to finalise...

Figure 2.18: Number and breakdown of objections requiring > 6 months to finalise

Mostly ATO compliance action objections

- Across all three FYs and client experience groups, objections relating ATO compliance action appear to take the longest to finalise
- The only exception to this overall trend is in relation to Public and Multinational Businesses
 - only in relation to FY21, where objections within a particular cluster accounted for the largest cohort of cases taking more than 6 months
- See Figures 2.18 – 2.23 of the Report



new measures (like COVID-19 Tax measures) may create increased costs for both the ATO and taxpayers

Minimum and Maximum FTE levels, FY17 to FY21

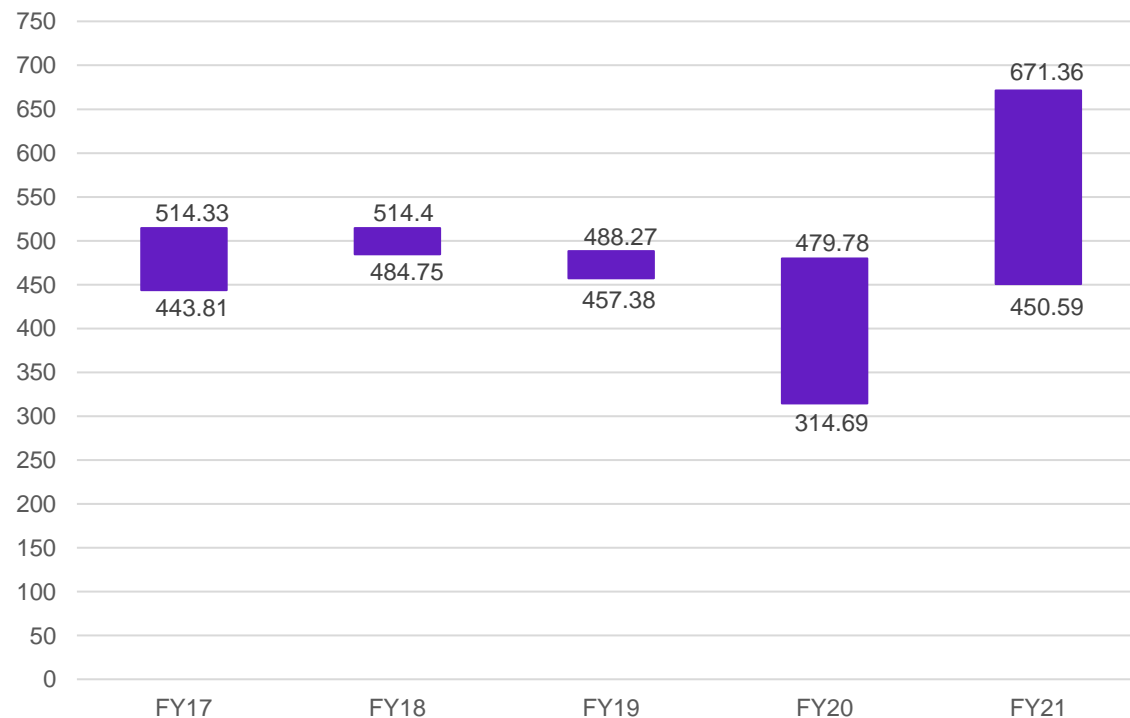
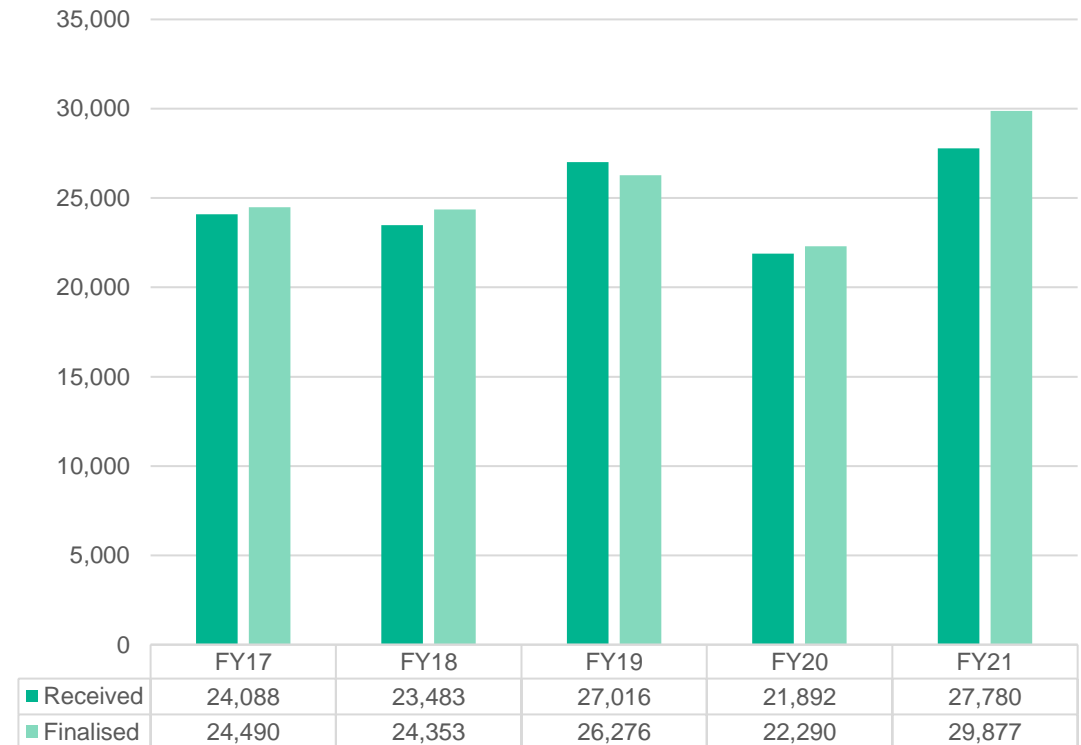


Figure 4.1: Objections Received and Finalised - FY17 to FY21

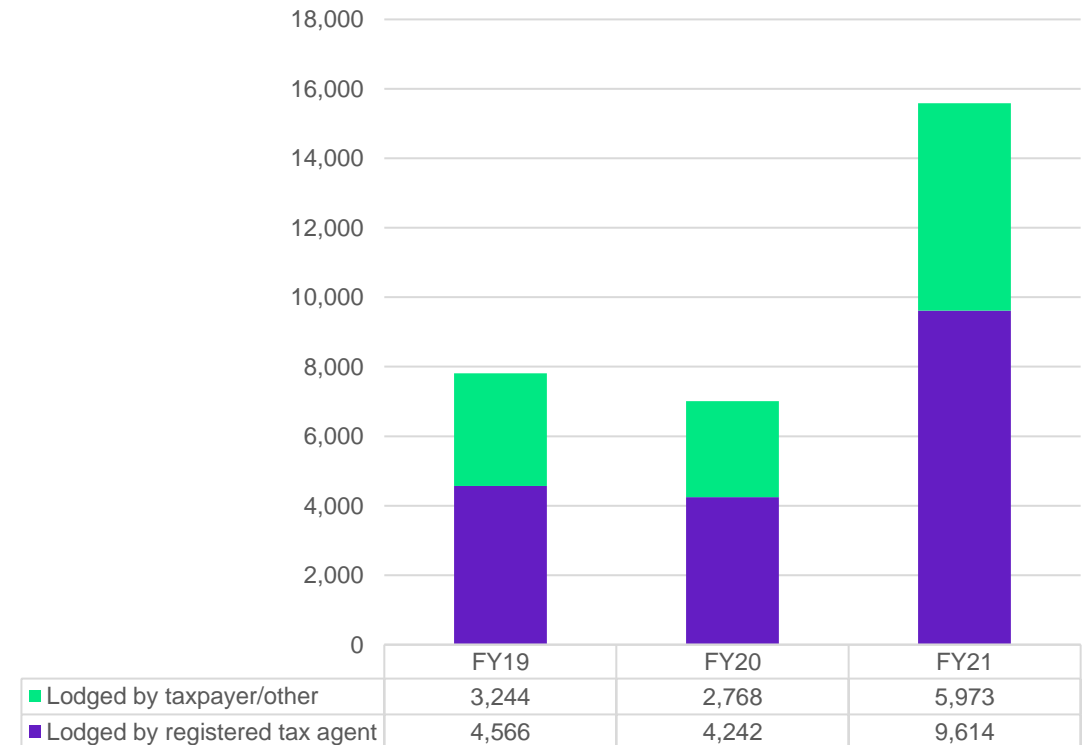
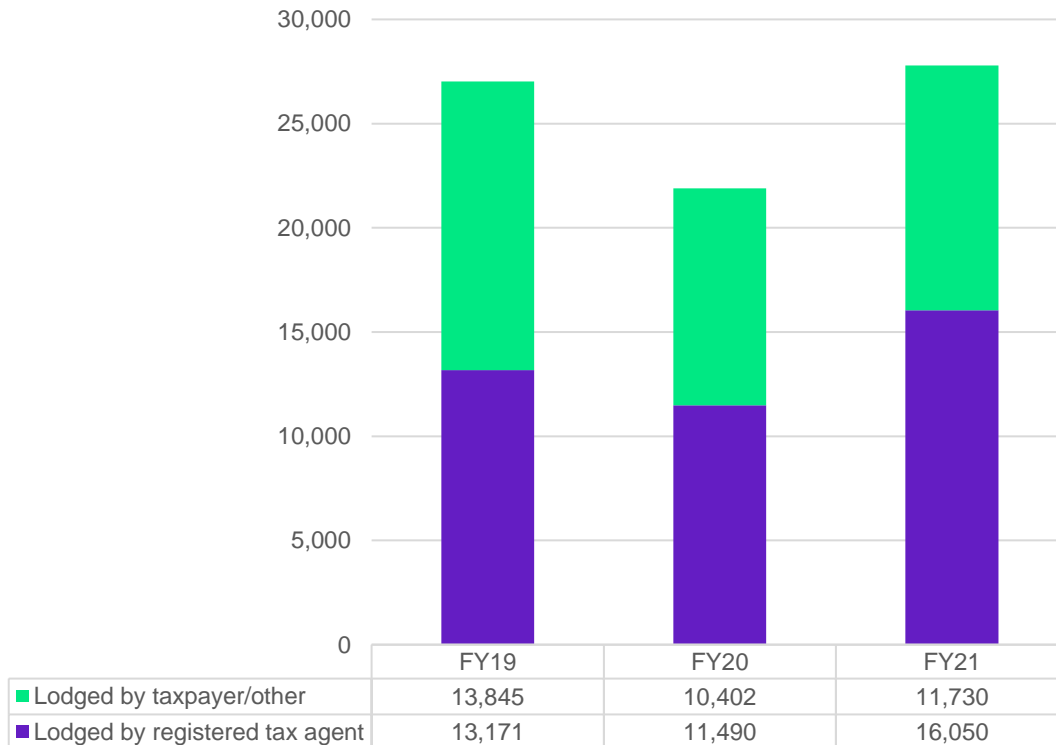


Small Business increased their reliance on registered tax agents for objections in FY21 - many tax agents are themselves also small businesses

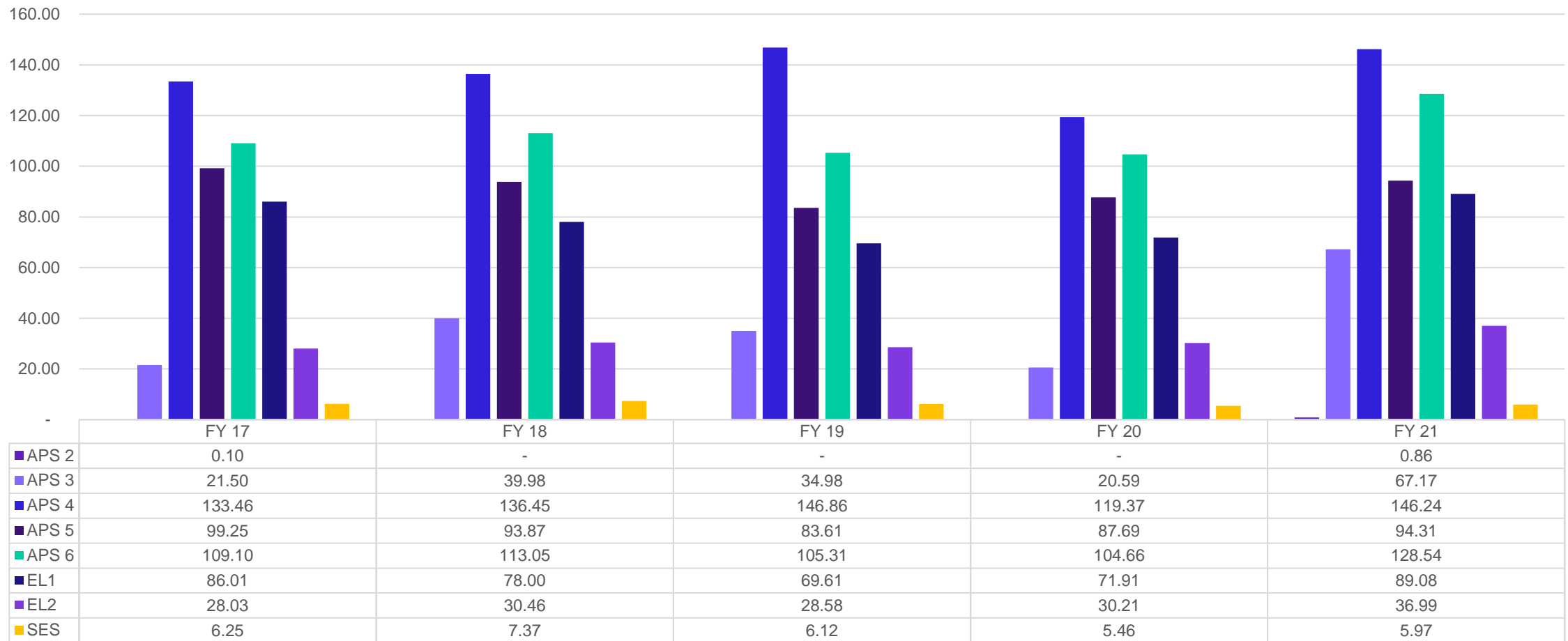
Figure 4.25: Objections lodged by registered tax agents vs lodged by taxpayer/other - Overall



Figure 4.27: Objections lodged by registered tax agent vs lodged by taxpayer/other – Small Business



FTE by Classification as at 30 June, FY17 to FY21



IGTO observation – The Objections Process

- **Currently a manual process** - The process for lodging an objection is manual & paper based, which can affect the quality of data captured and available for tax administration governance purposes
 - See the Report, paragraph 1.7 and 2.25 and Appendix B
- **Data is not captured** - The ATO does not systematically capture data on:
 - the quantum of tax in dispute through objections
 - the quantum of tax returned to taxpayers as part of the objection process



More than 50% of objections are allowed in full ... but this is not the whole story

See also Figures 2.25 – 2.35 of the Interim Report

Figure 2.24: Total outcomes for all valid Objections

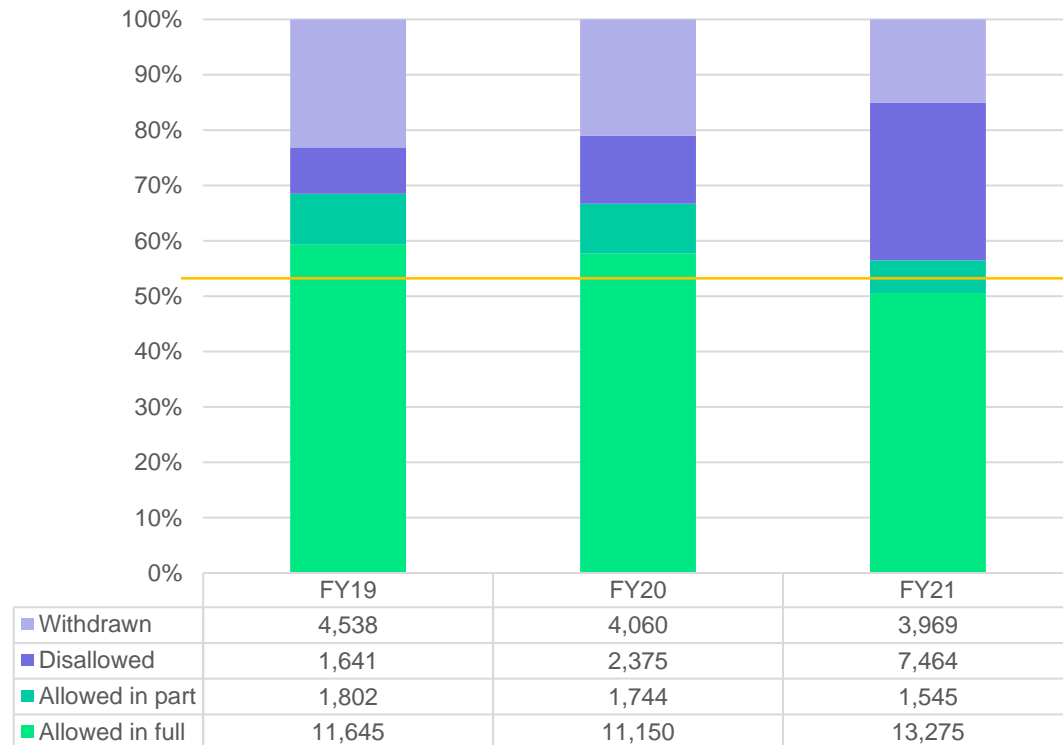
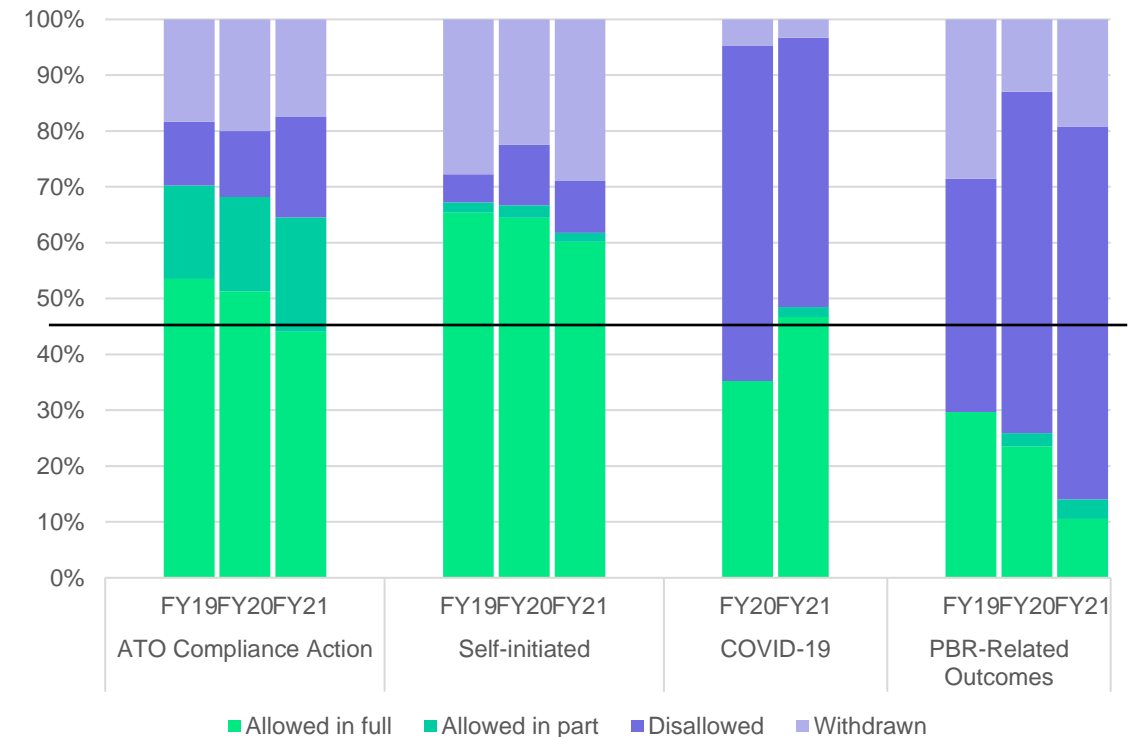
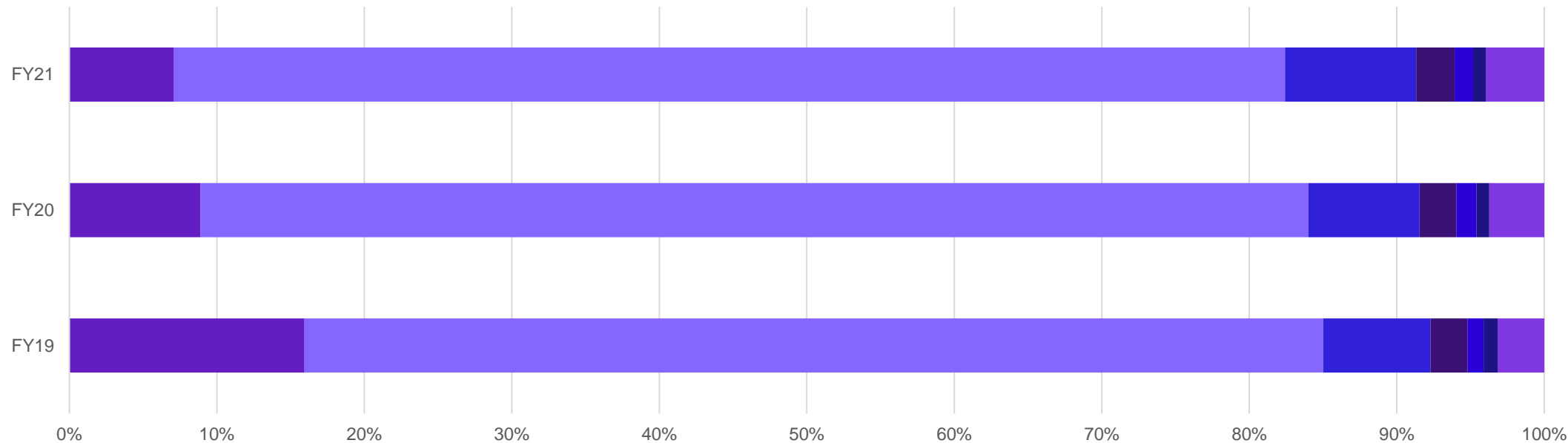


Figure 2.30: Breakdown of outcomes for valid Objections (Overall)

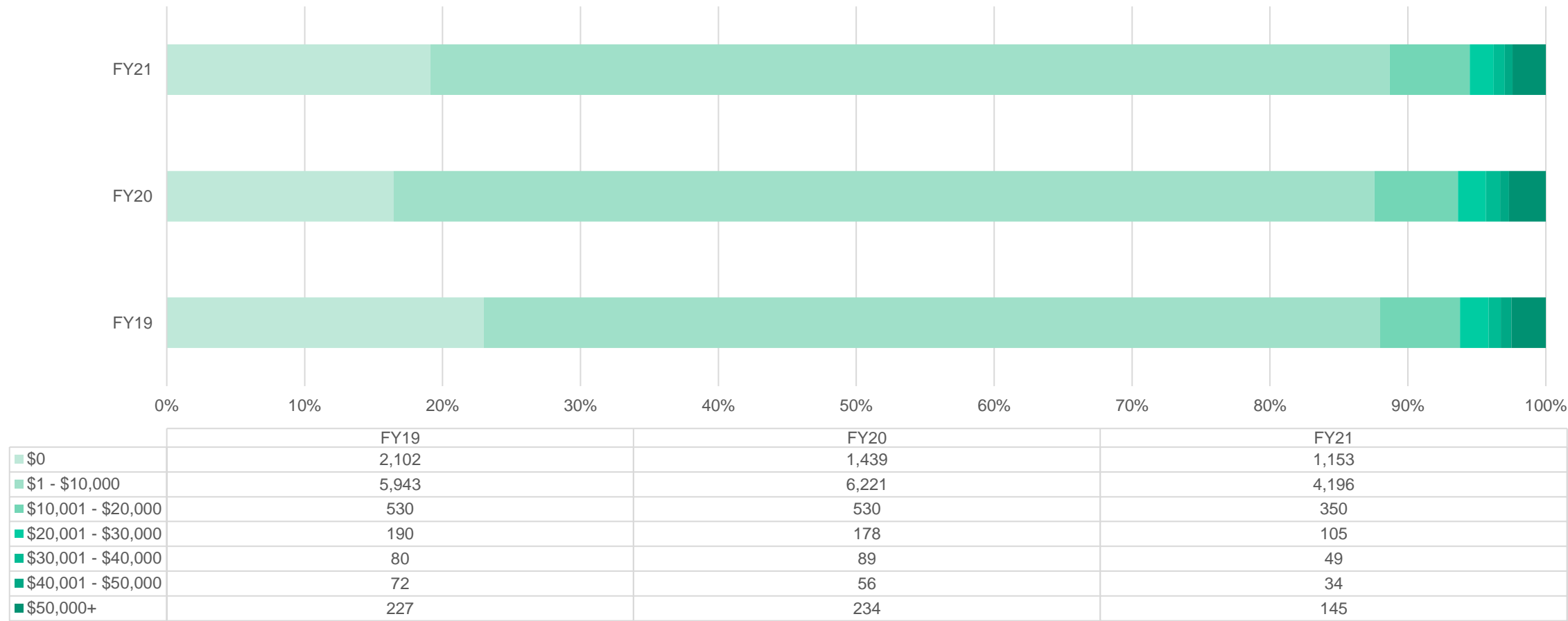


Quantum of tax in dispute – Individuals

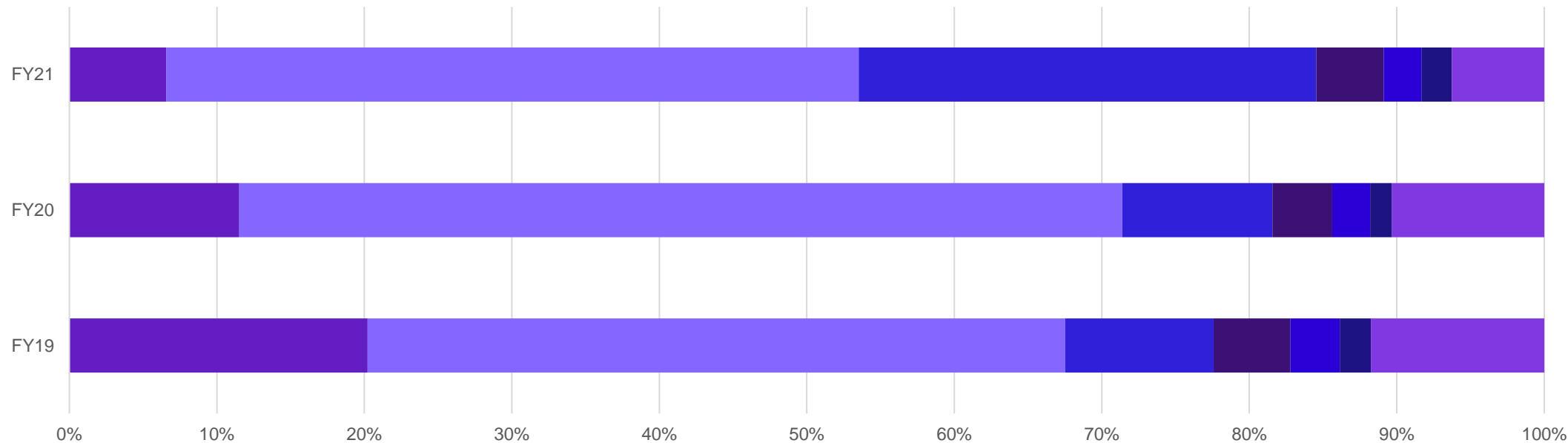


	FY19	FY20	FY21
\$0	1,459	779	428
\$1 - \$10,000	6,323	6,571	4,547
\$10,001 - \$20,000	665	661	537
\$20,001 - \$30,000	230	220	157
\$30,001 - \$40,000	101	117	76
\$40,001 - \$50,000	86	76	51
\$50,000+	290	327	240

Objection decisions (allowed in part or in full) by quantum of tax – Individuals

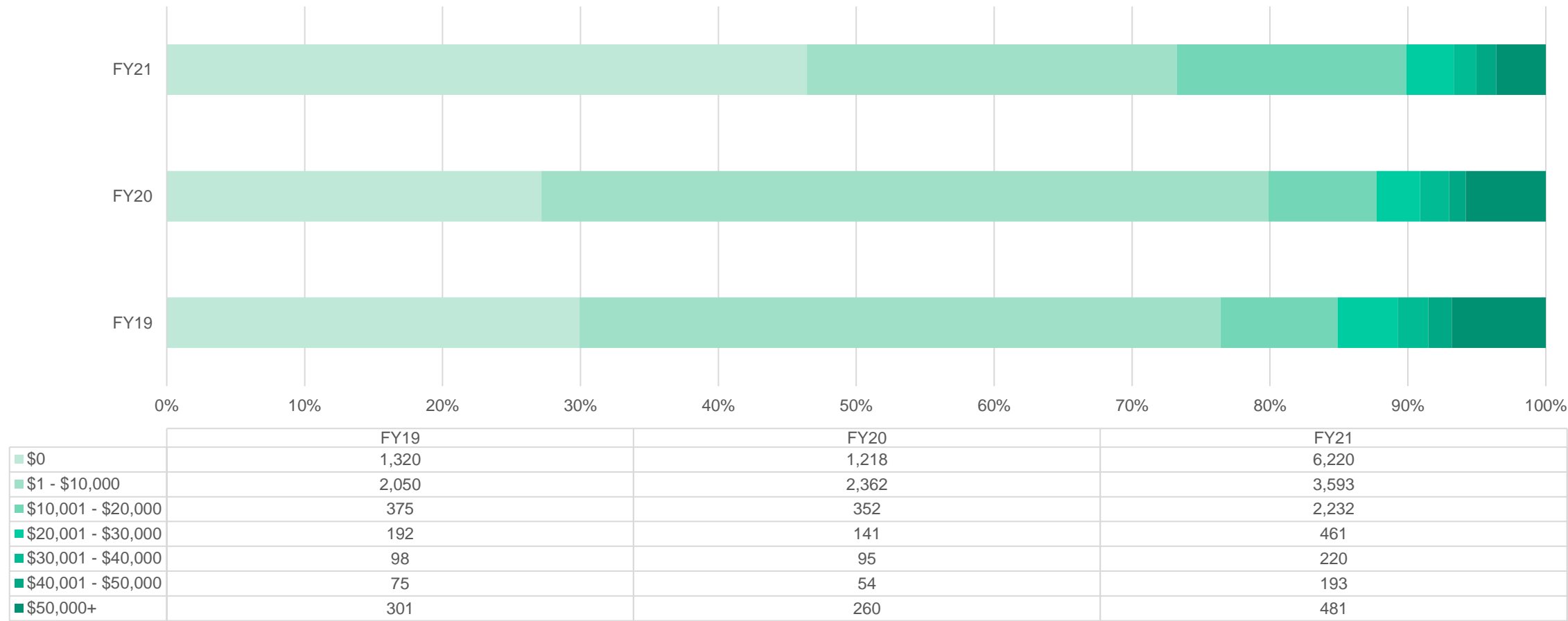


Quantum of tax in dispute – Small Business



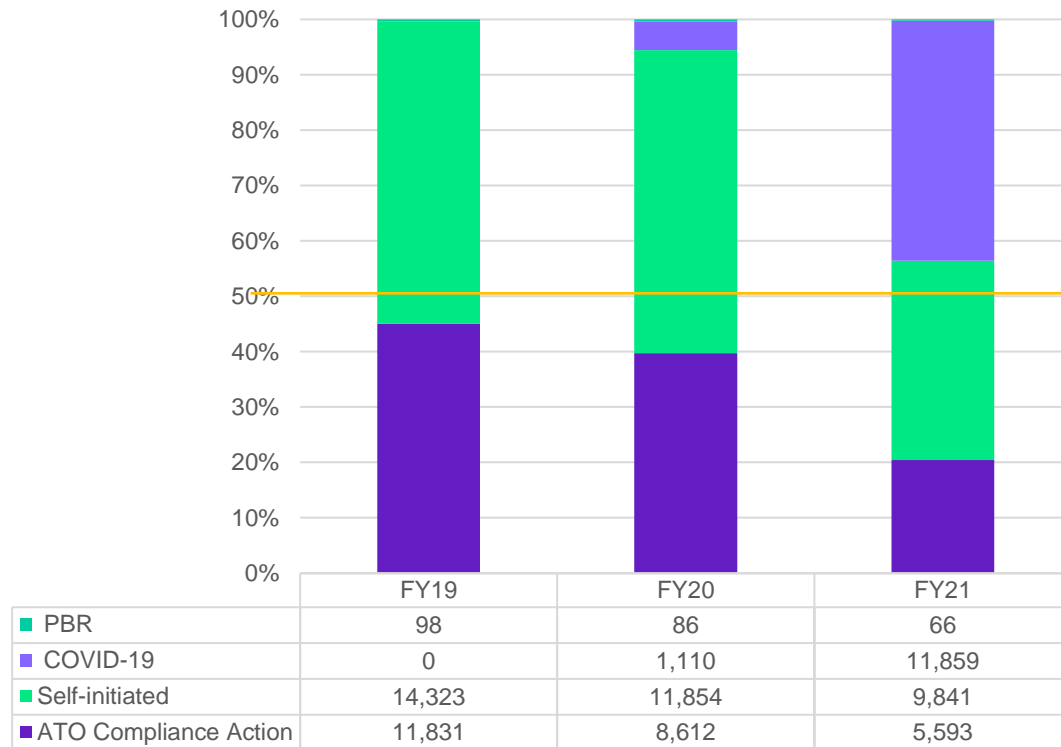
	FY19	FY20	FY21
\$0	894	517	879
\$1 - \$10,000	2,091	2,687	6,295
\$10,001 - \$20,000	445	457	4,160
\$20,001 - \$30,000	230	182	612
\$30,001 - \$40,000	148	115	343
\$40,001 - \$50,000	93	67	277
\$50,000+	520	463	840

Objection decisions (allowed in part or in full) by quantum of tax – Small Business



Self-initiated objections represented more than half the objections received by the ATO in FY19 – FY21 (excl COVID-19 objections) (See Figure 2.1 of the Report)

Figure 2.1 - Breakdown of total objections received FY19 – FY21

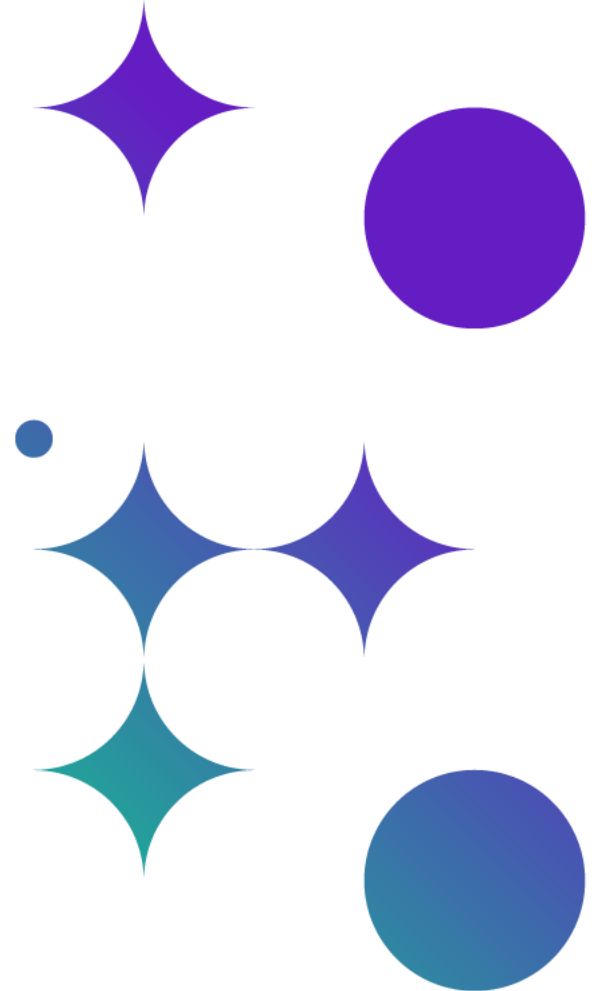
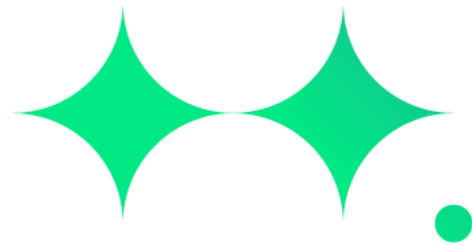


Why

- For example - Taxpayers objecting against their own self-assessed tax
- Is this simply taxpayers requesting an amendment to their prior year returns because an objection is the only way to amend (when they are out of time) or is something else going on?



The Exercise of the General Powers of Administration (GPA)



GPA

- This investigation seeks to examine:
 - the ATO's decision making approach in applying the Commissioner's GPAs and the policies, procedures and guidance available to ATO staff to assist them in making 'good administrative decisions'
 - what guidance and communications are available to taxpayers and tax practitioners to assist them in understanding the nature, scope and ATO approach to the GPA.
- Decisions made under the GPA are not reviewable under Part IVC TAA 1953
 - Hutchins v Deputy Commissioner of Taxation (1996)
 - *If a decision is neither expressly nor impliedly required by an enactment and, although authorised, is authorised by an enactment only in a very general way, it is unlikely to have the character of a decision for which provision is made under an enactment. The connection between the text of the enactment and the decision is likely to be too remote for the decision to have the requisite character.*

Good decision making – Administrative Law requirements ... NSW Ombudsman

Proper authorisation

1. There is a legal power to make the decision.
2. The person making the decision has the legal authority to do so.
3. The decision is within the scope of the decision-making power (including, in particular, within the bounds of any discretion that is a component of the power).

Appropriate procedures

4. The decision has followed a fair process.
5. The procedure meets other legal and ethical obligations.
6. Reasons are given for the decision (particularly decisions that affect the rights or interests of individuals).

Appropriate assessment

7. The decision answers the right question (which necessitates asking the right question).
8. The decision is based on a proper analysis of relevant material.
9. The decision is based on the merits and is reasonable in the circumstances.

Adequate documentation

10. The circumstances surrounding the making of decisions are adequately documented and records kept.

Why does GPA matter?

Sometimes Parliament provides an express administrative discretion

For Example

- The trustee or partnership must give the *member written notice of the determination. The notice ...
 - (b) must be given to the member within 3 months after the end of the income year, or within such further time as the Commissioner allows.
- The agreement must: ...
 - a. specify the income year of the transfer (which may be earlier than the income year in which the agreement is made); and
 - b. specify the amount of the *tax loss being transferred; and
 - c. be signed by the public officer of each company; and
 - d. be made on or before the day of lodgement of the *income company's *income tax return for the *deduction year, or within such further time as the Commissioner allows.
- After considering the request the Commissioner must decide whether to agree to it or refuse it



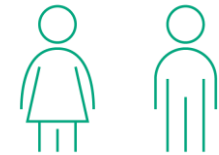
Sometimes the Parliament or the Act is silent

For Example

A person may apply for ...

Every person must, if required by legislative instrument, give to the Commissioner a return for a year of income within the period specified in the instrument

- What happens when life [circumstances] intervene?
 - Floods
 - Terminal illness
 - Made a genuine mistake
 - Not reasonably possible in all the circumstances



The Tax Acts are always subject to the *Acts Interpretation Act 1901*

Section 15AA

- In interpreting a provision of an Act, the interpretation that would best achieve the purpose or object of the Act (whether or not that purpose or object is expressly stated in the Act) is to be preferred to each other interpretation.

Section 23

In any Act:

- a. words importing a gender include every other gender; and
- b. words in the singular number include the plural and words in the plural number include the singular.

Section 33

- 3) Where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Commissioner's duty of care and management – section 6A TAA 1994 (NZ)

Care and management

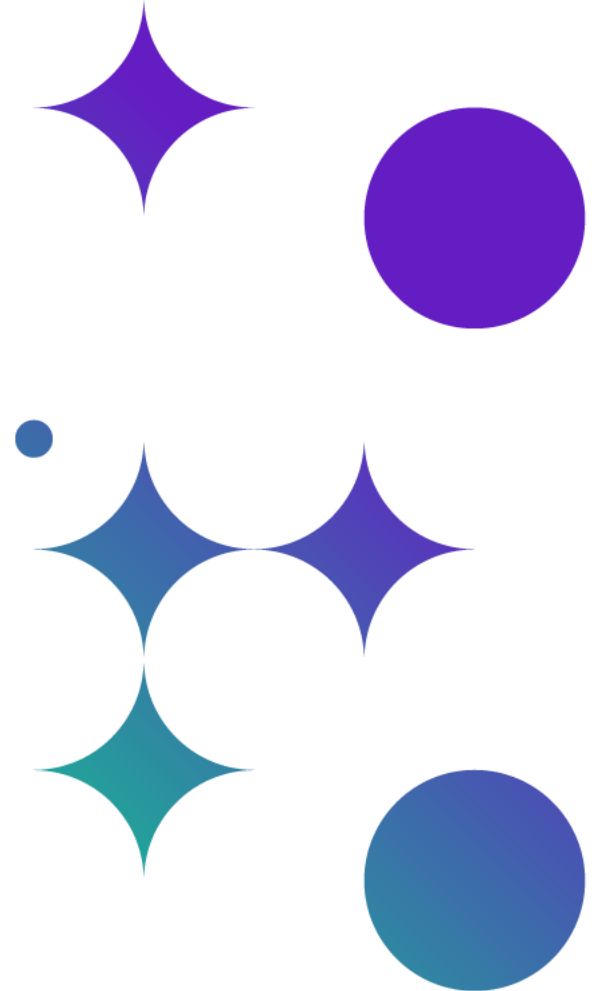
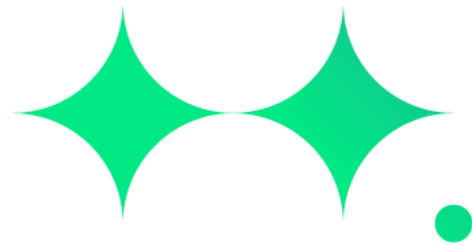
(1) The Commissioner is charged with the care and management of the taxes covered by the Inland Revenue Acts and with such other functions as may be conferred on the Commissioner.

Highest net revenue practicable within the law

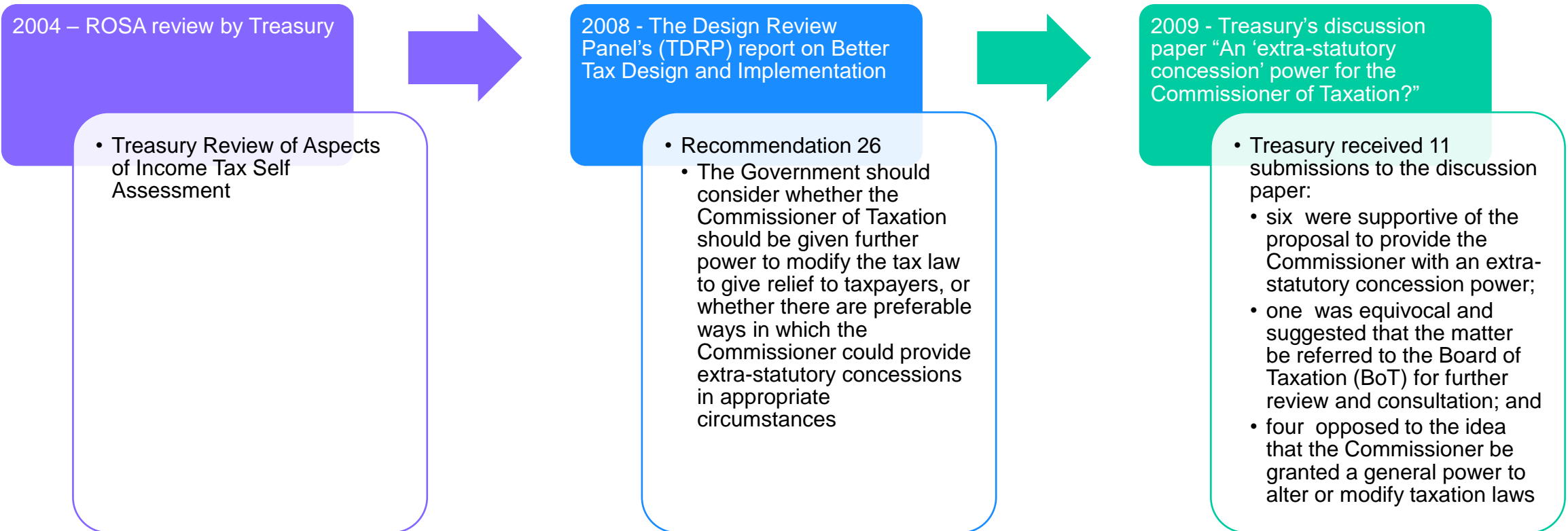
(2) In collecting the taxes committed to the Commissioner's charge, and despite anything in the Inland Revenue Acts, it is the duty of the Commissioner to collect over time the highest net revenue that is practicable within the law having regard to—

- (a) the resources available to the Commissioner; and
- (b) the importance of promoting compliance, especially voluntary compliance, by all persons with the Inland Revenue Acts; and
- (c) the compliance costs incurred by persons.

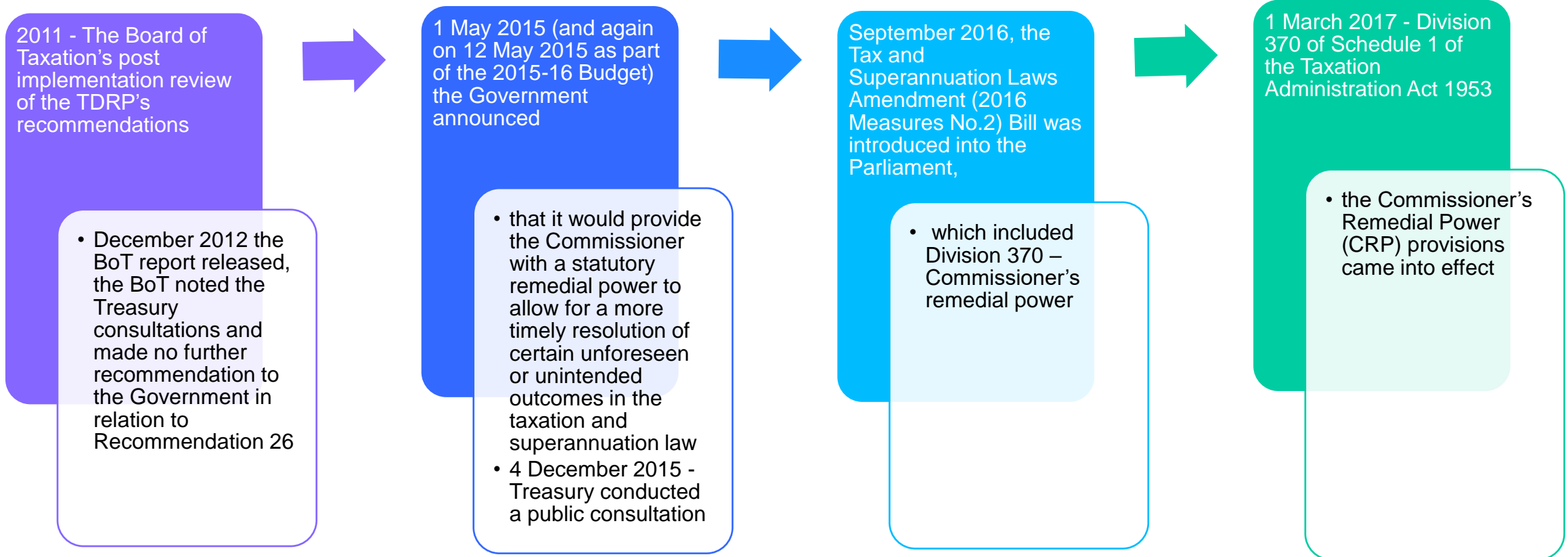
The Exercise of the Commissioner's Remedial Power



History and Background



History and Background



CRP – subsection 370-5(1)

(1) The Commissioner may, by legislative instrument, determine a modification of the operation of a provision of a *taxation law if:

(a) the modification is not inconsistent with the intended purpose or object of the provision; and

(b) the Commissioner considers the modification to be reasonable, having regard to:



(i) the intended purpose or object of the provision; and

(ii) whether the cost of complying with the provision is disproportionate to that intended purpose or object; and

(c) any of the following persons advises the Commissioner that any impact of the modification on the Commonwealth budget would be negligible:

(i) the Secretary of the Department, or an APS employee in the Department who is authorised by the Secretary for the purposes of this paragraph;

(ii) the *Finance Secretary, or an APS employee in the *Finance Department who is authorised by the Finance Secretary for the purposes of this paragraph.

Progress Report

- The ATO has approved five (5) issues for the use of the CRPs

Title	Instrument	Period of Effect
Foreign resident capital gains withholding	Taxation Administration (Remedial Power – Foreign Resident Capital Gains Withholding) Determination 2017.	17 October 2017 to 1 October 2027
Small business restructure roll-over	Taxation Administration (Remedial Power – Small Business Restructure Roll-over) Determination 2017.	8 May 2008 to 1 April 2028
Disclosure of protection information by taxation officers	Taxation Administration (Remedial Power – Disclosure of Protected Information by Taxation Officers) Determination 2020	15 May 2020 to 1 April 2030
Certificate for GST-free supplies of cars for disabled people	Taxation Administration (Remedial Power – Certificate for GST-free supplies of Cars for Disabled People) Determination 2020.	9 December 2020 to 1 January 2022 (Modification legislated)
Seasonal labour mobility program	Taxation Administration (Remedial Power – Seasonal Labour Mobility Program) Determination 2020.	14 May 2021 to 1 April 2022 (modification legislated)

- The ATO has published, on its website, a list of 41 instances where the CRP was considered but not applied.



Thank you

Please complete your evaluation form

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