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National Tax Clinic Program – Submission on Inquiry into the financial services regulatory framework in relation to financial abuse in Australia

Thank you for the opportunity to make a submission to the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the financial services regulatory framework in relation to financial abuse.

Background

Tax clinics in Australia began with the establishment of the first clinic at Curtin University in 2018. This initiative aimed to address the evolving demands of tax and legal education and to provide free, reliable tax advice to unrepresented taxpayers. Following its success, the National Tax Clinic Program (NTCP) was launched in 2019, involving ten academic institutions across various states and territories in a 12-month funded trial. The trial's success led to further funding and an expansion of the program, with grants now awarded on a competitive basis to academic institutions, cementing tax clinics as a permanent fixture in Australia's tax landscape. The mission of the tax clinics is to provide free tax assistance and education to those in need, particularly focusing on unrepresented taxpayers, including individuals and small businesses. The clinics operate under the supervision of experienced tax practitioners, ensuring high-quality advice while offering practical learning opportunities for students.¹

One of the key successes of these tax clinics has been their close partnerships with the community sector (including financial counsellors, community legal centres, social workers and mental health support workers) to identify and support financially vulnerable people, including victim-survivors of domestic abuse. These individuals often face significant challenges and complexities in complying with their tax obligations.² The tax clinics provide critical support by helping them understand their tax rights and obligations, applying for remissions of penalties, negotiating payment plans, and offering general tax advice. This support can be crucial in helping victim-survivors of domestic abuse regain financial stability and independence.

This submission is guided by a combination of our clinical observations and research findings and is focussed on **Question 5** and **Question 7** (addressed in turn below).

¹ Robert Whait, Connie Vitale, Donovan Castelyn, 'Tax Clinics in Australia: The Road to Legitimacy' (2022) 17(1) *Journal of the Australasian Tax Teachers Association* 57-84.

² Connie Vitale, Donovan Castelyn, Belinda Harrison, Robert Whait, 'Slipping Through the Cracks: Deficiencies in the Australian Taxation Office's Application of its Compliance Model,' (2024) *Australian Tax Review*, forthcoming; see also, Ann Kayis-Kumar, Youngdeok Lim, Jack Noone, Michael Walpole, Jan Breckenridge and Leslie Book, 'Identifying and supporting financially vulnerable women experiencing economic abuse: a grounded theory approach' (2023) 21(2) *eJournal of Tax Research* 173-202.

Question 5: The role of government agencies in preventing and responding to financial abuse

The Federal Government is making significant strides in providing legislative and regulatory protections for victim-survivors of coercive control.³ Unfortunately, reforms to the tax system are notably absent from this ongoing policy development and resulting law design. This presents a critical gap in the government's ability to address financial abuse comprehensively.

Existing tax laws compel the Australian Taxation Office ('ATO') to pursue victim-survivors for these tax debts through payment plans, offsetting of future tax refunds, issuing Director Penalty Notices, engaging external debt collectors or initiating bankruptcy proceedings, inadvertently enabling and exacerbating the cycle of abuse.⁴ Each of these pathways are financially debilitating for victim-survivors.

Unfortunately, this is a systemic issue, with client stories from the National Tax Clinic Program underscoring that these issues are seen across the country (please see **Annexure A** for select examples of client stories). The common thread across these client stories is that people who have escaped relationships involving domestic abuse are frequently deeply traumatised. They are seeking to re-establish a normal life and this process can take a long time. Such clients are often focussed on the immediate physical requirements of themselves and dependent children – how will they support themselves, where will they sleep, what will they eat, where will the children go to school, how will they obtain work, etc. The capacity of such clients to engage with other tax and legal requirements and obligations is often extremely compromised given the other complex and pressing challenges they are navigating.

The following recommendations stem from these recurring themes and are designed to offer practical and meaningful proposals for legislative reform to empower government agencies in responding to financial abuse.

Director Penalty Notices

Victim-survivors of financial abuse who are nominally directors of a company should not be taken to be managing the company merely by engaging with the ATO to identify the nature of the issues the ATO has with the company.

We understand the policy considerations and reasons for people acting as directors of company to take prompt action to address problems arising from failure to remit PAYG withholding (**PAYGW**), superannuation guarantee charge (**SGC**) and Goods and Services Tax (**GST**). The penalties imposed under section 269-20 of Schedule 1 of the *Taxation Administration Act 1953* for the failure to remit these amounts by the relevant due dates is appropriate for people who are actively engaged in the management of the company. We also accept that these penalties are appropriate for people who willingly consent to act as director but choose not to be actively engaged in the management of the company. The 30-day grace period prescribed in section 269-20(3) for new directors also is arguably appropriate for people who willingly agree to act as directors (as those people can investigate the affairs of the company before agreeing to assume the role).

However, such a limited time frame is onerous for a person who only discovers they are a director when contacted by the ATO about the existence of such debts.

Recommendation 1: In relation to Director Penalty Notices, we request the committee considers the merits and the feasibility of:

- **Providing for a longer period for victim-survivors to obtain advice and take steps to address issues if they have been appointed as a director of a company by the perpetrator.**
- **Amending the legislation to provide for a defence to director penalty notices in cases of financial abuse and coercive control.**

³ Notable examples include the National Principles to Address Coercive Control in Family and Domestic Violence, the Working for Women Strategy, and the Financial Services Regulatory Framework in Relation to Financial Abuse inquiry by the Parliamentary Joint Committee on Corporations and Financial Services.

⁴ Ann Kayis-Kumar, Christine Speidel and Leslie Book, 'Squeezing blood from stones? A comparative analysis of tax relief for victim-survivors in Australia and the United States' (2024) 39(2) *Australian Tax Forum* 191-220.

Introduction of US-inspired innocent spouse relief

This systems-level deficiency underscores the urgent need for legislative reform to shift tax liability from victim-survivors to perpetrators. There are presently no relief measures available to victim-survivors in relation to tax debts associated with domestic and family violence. Further, Australia's serious hardship relief provisions are not fit for purpose and are in urgent need of law reform.⁵

For example, victim-survivors are currently liable to repay tax debts placed in their name by perpetrators of intimate partner financial abuse, with no mechanism to re-target perpetrators for tax debts that they were responsible for creating.⁶ In contrast, the U.S. presents a notable – and internationally unique – solution with 'innocent spouse relief' provisions in place since 1971, and specific tax relief for victim-survivors of intimate partner financial abuse since 1998.⁷

Recommendation 2: We recommend that the ATO/Treasury conduct a consultation on the design and operation of the existing regulatory regime as it impacts victim-survivors in Australia. Following this initial consultation, we recommend the co-creation of a best practice model for the adoption of US-inspired innocent spouse relief in the Australian context.

Question 7: Any other related matters, including comparative information about arrangements in relevant overseas jurisdictions

Emerging research⁸ presents a detailed comparative analysis of the tax collection practices and grounds for relief from tax debts available in Australia and the United States to victim-survivors of financial abuse – and makes recommendations for reform given lessons learnt from the United States experience. This research has also been the subject of multiple media articles, including by the ABC⁹ and The Guardian.¹⁰

In addition to the above, it has been noted by multiple tax clinics who serve Indigenous communities in rural and regional Australia that financial abuse is prevalent in these communities.¹¹ Since many regional areas lack adequate internet connection and banking services, community members must travel to the nearest towns to access support including financial counsellors. This can be three to five hundred kilometres away. There is certainly a need for greater access to support services to better protect and support the victims of financial abuse in rural and regional Australia.

If you have any questions about this submission, please contact A/Professor Ann Kayis-Kumar at a.kayis@unsw.edu.au.

⁵ For a detailed analysis of the legislative background and the regulatory landscape, and the systemic issues faced by taxpayers in litigating serious hardship cases, please see: Kevin O'Rourke, Ann Kayis-Kumar and Michael Walpole, 'Serious Hardship Relief: In Need of a Serious Rethink?' (2021) 43(1) *Sydney Law Review* 1-42.

⁶ Financially abuse tax debts often arise from business debts, bankruptcy, corporate directorships and director penalty notices: Ann Kayis-Kumar, Christine Speidel and Leslie Book, 'Squeezing blood from stones? A comparative analysis of tax relief for victim-survivors in Australia and the United States' (2024) 39(2) *Australian Tax Forum* 191-220.

⁷ Christine S Speidel and Audrey Patten, 'A Practitioner's Guide to Innocent Spouse Relief: Proven Strategies for Winning Section 6015 Tax Cases' (2022).

⁸ Ann Kayis-Kumar, Christine Speidel and Leslie Book, 'Squeezing blood from stones? A comparative analysis of tax relief for victim-survivors in Australia and the United States' (2024) 39(2) *Australian Tax Forum* 191-220.

⁹ Daniel Ziffer 'Australia's tax system is an unwitting 'weapon' family violence offenders use against their victims. These people want to stop it.' (ABC, 19 June 2024) <<https://www.abc.net.au/news/2024-06-19/abusive-partners-using-tax-system-as-weapon/103990186>>; see also, Nassim Khadem, 'The ATO is reviving old tax debts totalling billions, threatening some taxpayers with bankruptcy' (ABC, 14 March 2024) <<https://www.abc.net.au/news/2024-03-14/ato-reignites-old-debts-individuals-businesses-struggle/103578746>>.

¹⁰ Jonathan Barrett, 'Financial abuse can follow victims long after relationships end. Australian experts are calling for reform' (The Guardian, 29 March 2024) <<https://www.theguardian.com/society/2024/mar/29/financial-abuse-can-follow-victims-long-after-relationships-end-australian-experts-are-calling-for-reform>>.

¹¹ Commonwealth Bank, 'New research shows how banks can better address economic and financial abuse' (Newsroom, 12 November 2020) <<https://www.commbank.com.au/articles/newsroom/2020/11/UNSW-financial-abuse.html>>. Also see Jan Breckenridge, 'Understanding Economic and Financial Abuse in Intimate Partner Relationships' (UNSW Gendered Violence Research Network, October 2020) <<https://www.commbank.com.au/content/dam/caas/newsroom/docs/UNSW-report1-Financial-Abuse-and-IPV-newsroom.pdf>>.

Yours faithfully,

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Annexure A – Select examples of client stories

Please note: All names have been changed

Angela and her ex-husband, Brad, had a family partnership. Brad was involved with running the business while Angela was a stay-at-home mum with four children. Angela was not involved in the business. Brad was physically and financially abusive to Angela. Angela left the marriage with no assets. She couldn't afford to hire a family lawyer to assist her. She was left with a tax debt of approximately \$32,000 (as the income from the partnership was split 50/50 in the tax return) and a Centrelink debt of approximately \$18,000 due to the repayment of family tax benefit which she was unable to pay. Further, during the process of separation, one of Angela's children was diagnosed with a major illness which added to the financial strain for Angela. Angela's tax debt is currently 'on hold' and any refunds she receives will be used to offset the debt. Given Angela's annual income is \$48,000, she is now likely to be caught in a debt cycle.

Carol was in a financially dependent relationship with her partner, Greg. Greg asked Carol to sign paperwork otherwise he would not provide her with money. Unbeknownst to Carol, she was made a director of the company. Carol was not involved with running the company and she didn't know she was a director. Carol ended the relationship with Greg due to the domestic abuse. The ATO issued Carol a director's penalty notice, in the amount of approximately \$175,000, which she needs to pay within 21 days. Carol is currently in the process of defending the DPN, however, if this is unsuccessful, she will need to declare bankruptcy for a debt she was not aware of – nor responsible for creating.

Tanya and Sam were married with four children and ran a business together as a partnership. Sam had an addiction problem and, unknown to Tanya, spent their money on his addiction. Tanya was not as involved in the business as all the children were under 6. Tanya and Sam separated due to his addiction. Sam was then incarcerated. Tanya was left with the children and had to declare bankruptcy as she was unable to pay the tax and business debts which totalled approximately \$160,000. She will carry this label for the rest of her life, and it will limit her ability to obtain finance and will likely adversely impact her future employment opportunities.

Ruby was in a financially dependent relationship with her ex-husband, John. John made Ruby set up an ABN in her name, even though they were both involved in the business. Ruby relied on John to prepare the business activity statements and tax returns due to his background as an accountant. Ruby was audited by the ATO however, Ruby asked the ATO to liaise with John as he prepared the documents. At this time Ruby and John were separated due to domestic abuse and her concerns for her children's safety. Ruby was penalised by the ATO for failing to take reasonable care. She is working seven days a week to make ends meet, and is now left with the GST debt of approximately \$9,500 due to the audit. She is unable to pay this amount over the current payment plan period of 24 months – although she is willing to pay an amount each month.

Lisa has experienced past and recent domestic violence (including financial abuse) from her husband. They have recently separated. As a single mother of 8 children, Lisa relies on Centrelink payments to cover essential expenses. She has recently moved into temporary accommodation after having to leave her previous rental. Part of the financial abuse perpetrated by Lisa's abusive partner was to open a business under her name with an ABN created in 2017. Lisa has never been involved with the business, had no control over it, and did not receive financial benefit. The matter has been reported to the police. Lisa now has a large tax debt of around \$100,000 in her name related to this activity. There is also a significant Centrelink debt connected to this, due to overpayments of Family Tax Benefit based on the business income of her abuse ex-partner.

Marbaruk migrated to Australia with her family from Africa. Marbaruk is the only sister and she has 3 older brothers. Her brothers applied for an ABN and began operating a business. This business was not viable and incurred thousands of dollars' worth of debt. Marbaruk was unaware that the ABN was registered in her name as a sole trader and collection agencies were contacting Marbaruk for payment. Although the matter should have been reported to police, Marbaruk declined this assistance for fear of the repercussions from her family and being outcast which would be difficult considering she is a young woman in a foreign country. Marbaruk has resigned herself to paying these debts off overtime. The tax clinic assisted Marbaruk to cancel the ABN registration.

Peter and Jane had been married for 20 years and have 2 young children (6 and 8 years old). Peter is educated in information systems and Jane is an accountant and tax agent. When the children were born it was decided that Peter would stay home with the children and Jane would work full time. Jane had set up a family trust for herself and Peter, and due to Jane's expertise, she looked after all of the financial circumstances for the family. Jane began to distance herself from Peter and eventually moved into a rental property in the same street as Peter and the children. Jane was still giving Peter an 'allowance' to pay for

his rent, to feed the children and to care for the animals. Jane then started to reduce the allowance that she provided to Peter and he therefore attempted to access money from Centrelink. This was however denied because Jane had made Peter presently entitled to all the previous year's trust income of \$73,000 (which he never received) and although Peter had not yet completed his tax return Centrelink based their decision on the documents already lodged with the ATO. Peter was now not receiving any allowance from Jane and she told him to move in with his mother who lives 50 minutes away and the children would stay with her. This would prevent him seeing his children and from having his own independence. Due to what appeared to be fraudulent behaviour by Jane, Peter was referred to a men's free legal service.

Maria, from the Darwin region, endured years of domestic violence before she found the courage to leave her abusive partner. Escaping with her two young children, she faced numerous challenges, including the daunting task of managing her taxes, a responsibility previously handled by her husband. She had heard about the CDU Free Tax Clinic services through another service she was referred from, and it became a source of hope, offering the help she desperately needed. Maria's journey to the CDU Free Tax Clinic started when a local mental health service told her about it. She was overwhelmed by her financial situation, having been controlled by her abuser. She didn't understand her tax obligations and was afraid of the consequences of not filing her tax returns for a couple of years. Her abuser had kept her from accessing records, leaving her in the dark about her own finances. At the CDU Free Tax Clinic, Maria was greeted with empathy and understanding. The team of volunteers, including the supervisors, ensured a safe and supportive environment. They knew her situation was delicate and made sure she felt comfortable and secure throughout the process. The first step involved a thorough review of Maria's financial situation. Under the strict supervision of a supervisor, a volunteer helped her gather necessary documents, such as income statements and any available financial records. They patiently explained each step in simple terms, gradually easing Maria's anxiety as she realised she wasn't alone. A significant way the CDU Free Tax Clinic assisted Maria was by filing several years of unfiled tax returns. The volunteer carefully reviewed her financial records to ensure accuracy and compliance with tax regulations. Maria was also guided in understanding her eligibility for offsets and deductions, such as the Zone Offset as a single parent, which provided much-needed financial relief. Additionally, the clinic's supervisors helped Maria address issues related to her abuser's financial misconduct. They connected her with a local legal service provider offering free assistance, empowering Maria to take control of her financial future. At CDU Free Tax Clinic, Maria successfully filed her tax returns and received refunds that helped stabilise her finances. More importantly, she regained a sense of control and confidence. Maria's story illustrates the profound impact of compassionate and comprehensive tax assistance. The CDU Free Tax Clinic not only helped her with her taxes but also laid the foundation for a brighter, more secure future for her and her children.

Sandra had a mental disability, she was self-employed, earning her revenue through the Only Fans internet platform. When the taxpayer commenced her business, she registered an ABN without GST registration. Soon after commencing the business the taxpayer asked her brother how she should record her revenue and expenses, he advised her that the money she received was not income for tax purposes and was only a hobby. He further advised her that she would be entitled to Centrelink benefits. Trusting her brother, the taxpayer applied for Centrelink payments and didn't declare the income derived from the website, although the turnover exceeded \$50,000. Further the taxpayer gave her brother the money she had put aside for a potential tax liability to pay off his debts. Sandra was referred to the Western Sydney University Tax Clinic by her financial counsellor. The tax clinic assisted Sandra collating all her information before preparing and lodging her outstanding taxation returns. The tax clinic advised the ATO of her situation and is working with the ATO to find the best course of action for Sandra. She now finds herself with a debt to Centrelink and the ATO without any financial support from her brother.

Susie and her ex-husband are trustees and members of a self-managed superannuation fund. Susie's ex-husband has had control of the contributions and how they were invested but was neglectful in compiling the appropriate paperwork to complete the financial statements and tax return of the fund for several years. This resulted in the fund not meeting its tax and superannuation obligations for those years. After Susie left her husband, she wanted to achieve financial independence from him by rolling her balance over into another fund. She sought assistance from UniSA Tax Clinic regarding what information she needed to bring the financial statements and tax returns of the fund up to date. This included information about where the funds were invested, copies of the year-end tax statements for each managed investment, and copies of the dividend remittances and bank statements. Unfortunately, although she is a trustee of the fund, Susie's ex-husband maintains control over access to this information but is unwilling or unable to share the relevant online login details. Without such information Susie is unable to determine the amount of her member's balance and consequently cannot inform a new fund of the appropriate amount to be rolled over. Moreover, due to her husband's neglect, there is a risk that the fund will be issued a Notice of Non-compliance resulting in extra tax being charged on the fund's taxable income which will negatively impact her balance. Even

though Susie technically has the same rights and responsibilities as her ex-husband with respect to managing the fund, the power imbalance between Susie and her husband has left her in a disadvantaged position. At worst, Susie may lose access to her superannuation unless a resolution can be found.

Melanie was a sole trader, operating a photography business, using her own ABN until June 2011. Her husband, Ben (now separated) was employed as a glazier. Ben works as an employee glazier for a glazier business that was unrelated to him and he also did some additional work "on the side" for the same glazier business that he was already working for. This additional work that Ben undertook was no different from his duties as an employee glazier as Ben was only required to provide his labour. Ben was supplied with all the necessary materials, equipment and tools to do the work.

In October 2011, Ben informed Melanie that a new discretionary trust ("the trust") had been established and this new trust would be used to operate Melanie's photography business, resulting in a better tax outcome for her. Despite Melanie being a joint trustee with Ben, she did not really understand how the trust structure worked and entrusted Ben and their tax agent at the time to attend to their tax compliance obligations.

Since the trust was established in October 2011, the trust was used as the structure to operate two businesses: the photography business that was previously operated by Melanie and the glazier business, with Ben personally providing the glazier services. The trust's assessable income includes income from the photography business and income from Ben's work as a glazier. There were various deductions relating directly to the photography business such as photography aids, materials and photography equipment while there were minimal deductions against the glazier income. The trust's net income (after deductions) was mainly comprised of the income from the glazier services, which was essentially income from Ben's personal services.

Almost all the trust's net income was distributed to Melanie each income year, except for small amounts (up to tax free threshold for minors) to Melanie and Ben's two children. Melanie did not physically receive the trust distributions in cash. Ben was not allocated any trust income as his income was already quite high. Melanie said that she was unaware of the consequences and implications of such arrangements in dealing with the trust income.

Melanie and Ben separated about 2 years ago and since the separation, Melanie had tried to manage her own tax affairs and only became aware of the significant debts owed on her income tax account and her activity statement account to the ATO.

Melanie was left with limited financial means following the separation as Ben controlled the family's finances. Overwhelmed by the significant tax debts and finding out that there were outstanding tax returns for both the trust and herself for a number of years, Melanie came into the Curtin Tax Clinic for assistance. Melanie asked if her tax returns could be amended to remove the trust income that was distributed to her as that would reduce her tax debts significantly.

Our clinic manager reviewed the trust's financial information and trust tax returns prepared by their tax agent for previous years. After asking various questions relating to the photography and glazier services businesses, we concluded that the income from the glazier business is essentially personal services income (PSI). As such, under the PSI rules, income from the glazier business would have to be attributed to Ben individually despite being invoiced through the trust.

By using the trust structure, Ben had diverted his personal services income to the trust and ultimately shifted the tax burden on that income to Melanie through the distribution of the trust's net income to Melanie. Regrettably, as Melanie did not fully comprehend the consequences of this until her separation, she is now left with significant tax debts.

The Curtin Tax Clinic is currently working with Melanie to see if amending prior years' tax returns would be permitted as amendments are subject to time limits.

Jane (family and domestic violence victim appointed as director of company by abusive partner) was referred to Monash Tax Clinic by a financial counsellor. Jane had been in a domestic relationship where her partner was the sole income earner for the family and had sole control over household finances. Jane's partner used this as leverage against her. Jane's partner made her cease working for other employers and become entirely financially dependent on him. Jane had a monthly allowance (subject to providing receipts).

Jane's partner forced her to sign paperwork (with the threat of physical violence against her if she did not sign the documents) in circumstances where he did not:

- allow Jane to read the documents;
- explain the documents to Jane;
- explain what her responsibilities and liabilities would be; or
- allow Jane to seek independent legal advice.

Jane's partner made multiple fraudulent finance applications in her name and without her knowledge. These applications included an application to a finance company where Jane's partner forged her signature and used false details on loan documents for a loan of approximately \$15,000. The finance company later released Jane from liability because it acknowledged that the debt had arisen because of fraud.

Throughout the relationship, there was a sustained period of physical, financial and emotional abuse and family violence against Jane including:

- holding her by the throat and threatening her on multiple occasions including in front of children and throwing her against the wall;
- smashing her phone so she couldn't contact anyone;
- assaulting her when drunk resulting in bruises that were very visible;
- restricting her access to family, meaning she had to visit them in secret and lie that she had been elsewhere;
- restricting her access to all bank accounts;
- controlling her spending including requiring her to seek approval for all transactions of nominal value; and
- preventing her from understanding her financial and tax affairs, including that of the business.

After many years, Jane fled the relationship and obtained a Family Violence Intervention Order (IVO) against her partner. Jane engaged with a family violence agency to assist her in healing from the family violence.

Background to the ATO matter

Jane's partner established a business involved in dealing in second-hand goods (the business) that was operated through a company. Jane's partner was unable to obtain a licence to be a second-hand dealer as he had a criminal record and was ineligible. Jane's partner put the licence in her name for the sole purpose of overcoming his ineligibility for the licence. The company was established with Jane as the sole director. Jane was not aware that she was a director of the company. All decisions regarding the operation of the business were made by her partner. Jane instructed the Clinic that she was not sure how she had been appointed as the sole director of a business. However, she indicated that it occurred either without her knowledge (on the basis that her signature was forged by the client's partner) or under duress and/or undue influence (where her partner made her sign documents without allowing her to identify what she was signing). Jane is the sole person listed on all the company's documents, business bank accounts, business loan applications and credit cards.

Jane instructed the Clinic:

- she was not allowed to open any mail relating to business operations or the company;
- she was not provided any copies of any correspondence relating to business operations or the company;
- she was not provided any correspondence from the ATO relating to herself or the company;
- she was forced to work in the shops of the business on occasions when short-staffed but did not receive any remuneration in any kind;
- she did not receive any funds directly from the business; and
- she did not receive any benefit from the funds of the business.

Jane instructed the Clinic that she only became aware she was a director in 2021 when the ATO contacted her regarding a payment plan for debts of the company. The company had failed to meet its obligations to pay Pay-As-You-Go-Withholding (PAYGW) and Superannuation Guarantee Charge (SGC) liabilities during a 6-year period. There also appeared to be outstanding income tax assessments and PAYG instalments of the company. It was not entirely clear what the total amount of the liabilities was, although it would appear the liabilities were in the order of \$500,000 as Jane indicated that the ATO's proposed payment plan

involved payments of approximately \$4,500 per week. Jane had received a director penalty notice (DPN) for PAYGW and SGC. These debts were approximately \$110,000 in PAYGW and approximately \$40,000 in SGC.

ATO communications

The ATO indicated their records identified 3 separate occasions when they had been in contact with Jane about debts of the company:

- Year 2 – Jane contacted the ATO to negotiate a payment plan for the company's debt of \$24,000.
- Year 5 – Jane advised the ATO that the reason for the non-compliance with SGC obligations for the financial years ending 2020 and 2021 was due to:
 - financial difficulties caused by COVID-19 lockdowns in Melbourne;
 - financial difficulties in paying for a tax agent to lodge the SGC statements; and
 - the current separation between the client and her partner who was responsible for SGC obligations.
- Year 6 – Jane advised the ATO that she did not take steps regarding this outstanding debt because:
 - she had placed her trust and faith in her partner to take care of the business; and
 - she thought her partner and the accountant were on top of the tax obligations.

Jane instructions to the Clinic about these conversations were confused. She instructed the Clinic that generally communications with the ATO occurred when her partner was standing next to her and telling her what to say. However, her instructions about these specific communications were:

- Year 2 – The ATO contacted Jane via mobile regarding personal debts of approximately \$50,000 in her name which she paid in instalments. She cannot recall any reference to her alleged position as director of the company.
- Year 5 – Jane could not give clear instructions regarding this conversation. Jane could not recall whether the date of this conversation recorded by the ATO was before or after she had left the abusive relationship.
- Year 6 – Jane could not give clear instructions regarding this conversation. The Clinic understands this interview took place after Jane had left the abusive relationship. The Clinic considers the ATO's records of the statements Jane made to the ATO are consistent with her understanding of what had been occurring (although it is extremely unlikely Jane would have used the words "trust and faith" – a more likely formulation would have been that "her partner was running the business").

Engagement with the ATO

Jane's financial counsellor had contacted the ATO and provided a detailed outline of Jane's circumstances and a request to the ATO to withdraw the DPN. The ATO declined to withdraw the DPN. The ATO indicated that Jane's communications with the ATO indicated that the client was acting as a director of the company.

Other considerations

Jane was a party to family law proceedings for divorce, parental rights, and property settlement. Jane and her ex-partner are divorced. Proceedings in relation to parental rights and property settlement were ongoing. The only assets of any value available for any property settlement were the businesses. Jane instructed the Clinic that she had been advised that it generally was detrimental for victims of family violence to remove themselves as directors in such proceedings. Jane had not made attempts to wind up the company and remove herself as director. The business operated by the company was profitable and represented the best means of providing financial support for Jane and her children. Jane had assumed control of the company and was now running the business. The company was realising some income from the business and was paying GST and fulfilling its PAYG and superannuation obligations. Jane wanted to retain control of the business if possible as this was the most viable means of supporting herself and her children.

Advice to the client

Monash Tax Clinic advised Jane that although she may have been able to argue that she was not a director of the company when her former partner was exerting control over her, she had since assumed control of the company and now was clearly acting as director. The provisions governing DPNs dictate that if she becomes a director of a company that has accrued PAYGW, SGC or GST debts, she must take steps to sort out those debts within 21 days of assuming the position as director. Therefore, Jane now had no legal basis to challenge the DPNs that had been issued to her. Jane would remain liable for these debts unless

the ATO agreed to withdraw the DPNs. Although the circumstances of domestic abuse may have provided a basis for a submission to the ATO to withdraw the DPNs, such a decision involved an exercise of discretion by the ATO. The ATO had declined to exercise that discretion although full details of Jane's circumstances had been provided to the ATO. The decision not to exercise the discretion was not reviewable.

Elena (family and domestic violence victim appointed as director of company by abusive partner) was referred to the Monash Tax Clinic by another community organisation in early 2024. She is a young, professional woman in her early 30s living and working in Melbourne. She is recently separated from her husband and in the process of applying for a divorce. She has no children but hopes to have them one day. Elena's marriage was characterised by family violence. This included financial abuse, coercive control and psychological abuse. Elena eventually fled her home with no access to assets or other financial supports. She has lived with her family since the separation and is grateful for the support of her family, friends and colleagues as she grieves the end of her marriage and starts rebuilding her life. After leaving her violent husband, Elena learned she owes millions of dollars in debt, including almost half a million dollars to the Australian Tax Office (ATO). Elena is one of many victim survivors of family violence we see at Monash Tax Clinic with tax debt related to, or directly caused by, the violence perpetrated against them by current or former intimate partners.

Background to the debt/ATO matter

Elena now faces insurmountable debt because of her abusive husband's actions. These debts form part of the trail of damage caused by him and the violence he inflicted. Early on in their relationship, when Elena was in her mid-20s, her husband had asked her to become the director of multiple companies he was setting up and running. He couldn't be a director of a company because of a criminal history, so he asked her to become the sole director. She trusted him, and he told her his offer to involve her in this way showed how deeply he loved her. On this basis, Elena agreed. She also agreed to personally guarantee several loans taken out by the companies. After Elena had agreed to become the sole director of her husband's companies, and had agreed to personally guarantee the loans, Elena's husband took sole responsibility for the day-to-day oversight and financial management of the companies. He did not allow Elena to review the financial records, engage in company decisions, or involve herself in the operations of the companies. She was denied access to company records and was not informed of any issues, financial or otherwise, associated with the management of the companies. After Elena had left the violent marriage, the companies became insolvent due to many unpaid liabilities including to the ATO. Elena, as the sole director, was issued multiple Director Penalty Notices. This was the first time she knew of any issues relating to the companies' finances. As a result of these Director Penalties, Elena owes the ATO over \$480,000.

Options for Elena and assistance from Monash Law Clinics

Elena has limited options to address the debts she owes, including her ATO debt. Monash Tax Clinic is assisting Elena to request she be released from her ATO debt, but there is no guarantee they will agree and their discretionary decision will not be reviewable. It is particularly difficult for victim survivors like Elena to produce supporting evidence of the family violence experienced and to demonstrate the link between the violence and their role as the (on paper) director of the perpetrator's companies. For Elena, the ATO may choose to issue formal legal proceedings against her or force her into bankruptcy. There is no mechanism which allows the ATO to take action against Elena's husband as he was not a co-director, nor is there a legislated family violence defence to a Director Penalty for victim survivors like Elena. Without being able to safely take action against her husband directly, Elena is left at the mercy of the creditors and the ATO. She faces a very real, and potentially devastating, prospect of bankruptcy which may prevent her from continuing to work in her profession or from owning her own home. All Elena did was trust her husband; a man who used Australia's financial services, corporations and tax laws to inflict devastating financial abuse on his wife. The very systems he was able to manipulate and use against her, do not provide Elena with a clear pathway towards resolution.

Elena's case is not isolated. She is one of multiple victim survivors of family violence we see at Monash Tax Clinics facing similar fallout from violent relationships.