

5 September 2024

Committee Secretary  
Parliamentary Joint Committee on Corporations and Financial Services  
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Parliament House  
Canberra ACT 2600

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## **UNSW Tax and Business Advisory Clinic – Responses to Questions on Notice from Inquiry into the financial services regulatory framework in relation to financial abuse in Australia**

Thank you for the opportunity to present at the Public Hearing on 9 August 2024, and for the opportunity to provide responses to your Questions on Notice.

Our responses are as follows:

### **Question 1 [page 46]**

**Senator PRATT:** You can get a myGov ID that has your ATO, your Medicare and your health record. How can we put some more protective factors in that digital identity that can help people escape financial abuse?

While it is both understandable and admirable that the Committee is exploring protective factors in the design of digital systems, community-based research being led by the UNSW Institute for Cyber Security has consistently demonstrated the importance of understanding Government online services as part of an interconnected network of social and technical elements. While we can use technology to help protect end users the importance of real-world support mechanisms cannot be underestimated. The danger is that as we move to deliver more services online we deplete the social and community-based mechanisms that would have previously alerted us to financial abuse.

Further, technologies that present powerful security and protection against unauthorised access are not necessarily well-suited to supporting people experiencing financial abuse. For example, perpetrators can easily access the phone of their spouse to insert the authentication code, and one of the issues commonly reported by victim-survivors is that their partner changes their myGov password and they cannot access their account. Perpetrators may also link their accounts meaning any debts can be taken from benefits and other financial payments such as tax returns to cover the perpetrator's debts. Even when victim-survivors go into Centrelink to ask for assistance, they might meet with refusal to change the password. MFA may perhaps help but could also put victim-survivors at risk of coercion and further violence if they are required to access their devices to authenticate. Similar issues arise from requiring facial recognition to authenticate logging into an individual's myGov account.

Accordingly, we need to consider the technical design of any online services within the context of the ecosystem that shapes the user's experience of that system. The issue of financial abuse online requires socio-technical solutions where support mechanisms (from Government or the third sector) provide an early-warning system to instances where online abuse may occur and a place where individual users are able to express any concerns about their online experiences to a real person. We are keen to engage further with the Committee on this, and to that end there is strong alignment with the expertise of the UNSW Institute for Cyber Security for further engagement on this topic.

**Question 2 [page 48]**

**Dr Kayis-Kumar:** I'm so glad you asked that, because we do have a situation of a client who had come to us with a director penalty notice. As you probably already know, a director penalty notice gives you only 21 days to pay the full amount of the debt; otherwise, you become personally liable. For her, that was a huge shock because she hadn't realised she was a director of a company, or that that company even existed, but she had her abusive former partner force her to sign paperwork and hadn't been given visibility over what she was signing.

**Senator PRATT:** How long ago was that? Do you know?

That particular client was appointed as Director on 10 March 2021 and resigned on 20 March 2023.

**Question 3 [page 48]**

**Senator PRATT:** Yes. You do have to apply for a director's number, but I'm interested in the idea that liability would not be live until you'd gone through the process of properly registering through the system, which we could use an opportunity to put some of those protective factors in. Equally, though, we would want to ensure that we're not using that system to presume that a victim hasn't been manipulated into becoming a director, so I'm keen to see what you think about that.

Regarding obtaining a Director ID, creating more friction in the system is critical – while also recognising that perpetrators may still pressure or coerce victim-survivors to log on myGov or create a Director ID or the perpetrator can use the spouse's ID documents to set up a Director ID or myGov account.

Concerningly, one of the issues that we are currently seeing is that perpetrators may make their spouse a director as a way of protecting themselves from bankruptcy. However, if the victim-survivor then becomes bankrupt due to business debts, they may have no standing to seek orders for a property settlement in the Federal Circuit and Family Court of Australia. Meanwhile, the perpetrator can seek orders for a property settlement and be prioritised over the creditors, even where their conduct contributed to the bankruptcy.<sup>1</sup> This perversely results in perpetrators receiving funds and being able to move forward and establish a new business, while the victim-survivor receives no funds and is left to bear the consequences of bankruptcy.

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<sup>1</sup> For further information, please see our paper entitled 'Legal responses to economic and financial abuse in the context of intimate partner violence' (available at: [https://www.commbank.com.au/content/dam/commbank-assets/support/2023-06/BRA0608\\_NC\\_Report\\_Legal\\_Responses.pdf](https://www.commbank.com.au/content/dam/commbank-assets/support/2023-06/BRA0608_NC_Report_Legal_Responses.pdf)) and Redfern Legal Centre's submission to the Personal Insolvency Discussion Paper (available at: <https://rlc.org.au/sites/default/files/2023-10/Submission%20in%20response%20to%20Personal%20Insolvency%20Discussion%20Paper%2011%20October%202023.pdf>).

Some suggestions to safeguard against victim-survivors being manipulated into becoming a director could include:

- a) mandating that a Director ID will not be issued unless the potential director has met with a solicitor, tax agent or accountant to receive information about their duties and responsibilities (both from a corporate law and tax law perspective). A letter could be issued evidencing the meeting; and,
- b) requiring first-time directors to attend a short training course (canvassing the roles and responsibilities of a director) prior to being issued with a Director ID.

**Question 4 [page 51]**

**CHAIR:** These are the kinds of sticky bits that I'm interested in. If money's going to be allocated, can it be allocated only to a sole user of an account, and not to shared accounts, so that other people can't get access to it or it makes it harder for them? Can I ask you to think about what protective things could be advised to not only the advisers who are going to help set up these structures, but the ones who've already set them up and have enabled them. What happens then? They're two very different situations. I get the preventive stuff, but where abuse is identified and it continues to be maintained, what's the professional cost that needs to be applied to incentivise this whole workforce of financial professionals to do the decent and the right thing—to interrupt financial abuse, not facilitate it?

It is unlikely to be realistic to mandate separate bank accounts. However, accountants and tax agents could be required to:

- a) withdraw from acting for either party once they are aware of a relationship breakdown; and/or
- b) provide a copy of all financial and tax records to the other party's new accountant or tax agent (or the individual themselves if they are self-represented).

In general, it is also important that accountants and tax agents are reminded of their obligations to ensure that their instructions are coming from both parties and to avoid conflicts of interest.

Additional requirements could be mandated that:

- a) place an onus on the accountant or tax agent to only conduct meetings with both clients;
- b) ensure that the accountant or tax agent makes each client aware of their rights, obligations and responsibilities before setting up structures or lodging tax returns; and
- c) any financial, tax or accounting advice is to be sent to both partners to the relationship.

**Question 5 [page 52]**

**CHAIR:** Could I ask you to give some consideration to the financial services profession and all the people who have different roles in that? We have a quasi-regulatory partnership, as a government, with Chartered Accountants Australia & New Zealand, the IPA and the CPA. We also have participants in this economic ecosystem who have no professional qualifications or associations of any kind. We've got financial advisory bodies, and we've got research houses. We've got all sorts of different people engaging. How sufficiently robust or adequate are the current regulatory structures for ensuring compliance with ethical standards with regard to taxation and other forms of financial advice?

The professional associations to which many finance professionals belong already have detailed ethical codes that require them to deal with conflicts of interest and behave ethically (for example, the Accounting Professional Standards Board (APESB) Codes). Where there is a vacuum (i.e. no professional code applicable) the Tax Agents Services Act Code of Professional Conduct can plug gaps (and sometimes overlap). There is no shortage of regulation of such types except where the financial service is not a profession and is unregulated. There are ethical guidelines for how audit work is to be conducted, there are separate guidelines for how tax advice and compliance services are to be handled.

It would be no great step to identify the facilitation of financial abuse as a professional failure and to require reasonable professional safeguards to operate within professional practices.

A delicate balance is required between regulating behaviour and wrapping it up in so much red tape that it is stifled. Therefore, it seems what is required is greater scrutiny and greater activism mainly under the existing ethical frameworks. It is time that a professional is called to account for having aided a client in perpetrating financial abuse of a spouse (for example). A great start would be to use what is already there to regulate this aspect of professional performance.

We think there is a role for greater education and awareness amongst the profession. We suspect that many tax advisors would be willing to assist but are unaware of the early warning signs and therefore miss the opportunity to assist before things escalate out of control. In addition to greater education amongst tax advisors, there is a concern that the rigidity of the tax system in overlooking the complexities of financial abuse results in a general lack of awareness.

To that end, improved ATO processes that incorporate Safety by Design principles would in turn increase awareness amongst the profession and advisors. This would also complement Recommendation 16 of the Report of the Rapid Review of Prevention Approaches to End Gender-Based Violence, extracted below:<sup>2</sup>

#### Recommendation 16

The Commonwealth and state and territory governments to undertake an immediate audit of how DFSV perpetrators are weaponising government systems, and to respond to these findings. This audit and subsequent plans for reform should be informed by Safety by Design principles.

The Commonwealth Government should build on work that is already underway and prioritise systems where significant harm is occurring, such as: family law, child support, immigration, and taxation.

Finally, the question might be asked whether any professional has been seriously questioned as to their criminal complicity in a client's fraud – whether as having stolen the identity of a domestic partner, for example, or having caused the unlawful claim of a tax refund or creation of a tax liability in the name of some other innocent party. Much can be achieved through greater awareness and scrutiny and use of existing frameworks without necessarily creating a maze of new rules.

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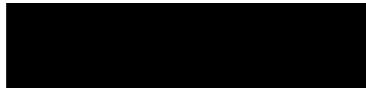
<sup>2</sup> Please see 'Unlocking the Prevention Potential: accelerating action to end domestic, family and sexual violence' (available at: <https://www.pmc.gov.au/sites/default/files/resource/download/unlocking-prevention-potential.pdf>).

If you have any questions about these responses, please contact A/Professor Ann Kayis-Kumar at [a.kayis@unsw.edu.au](mailto:a.kayis@unsw.edu.au).

Yours faithfully,



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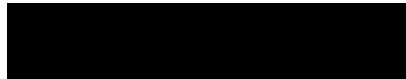
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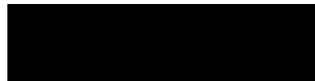
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