

Closing policy gaps: Preventing the weaponisation of the tax system by perpetrators of economic abuse



1 Executive Summary

There is a critical gap in federal policy to help women who are victim-survivors of coercive control.¹ The role of tax in coercive control does not seem to be on the agenda.

There is an opportunity for improvement by enacting additional legislative measures to recognise that women who have tax debts as a result of coercive control ought not be responsible for the tax debt. Under these new legislative measures, the tax liability would be shifted to the perpetrator. Such measures could be modelled on the US innocent spouse relief and tailored to the Australian tax system. Legislative measures of this nature would improve the Australian tax system by:

- Increasing tax debt collection as the perpetrator has the capacity to pay the debt.
- Improving trust and confidence in the Australian Taxation Office (ATO).
- Enhancing the efficiency and responsible use of the ATO's resources.

We are actively engaged in discussions with the ATO about this issue. However, even if the ATO broadens its guidance materials in this area, there remains a fundamental gap that requires a legislative solution. We are happy to engage in further meetings with you to co-design a draft form of the legislation, prepare a further consultation paper, or provide further research or evidence, as appropriate.

2 Background

2.4 million Australians are victim-survivors of economic and financial abuse perpetrated as part of intimate partner violence ('IPV'). This disproportionately affects women (ABS, 2023)² and costs the Australian economy over

\$10.9 billion each year.³ Approximately 14% of women in hardship with unmet tax needs also have tax debts arising from IPV (or 'sexually transmitted tax debts').⁴ Perpetrators place tax and other debts solely in the victim-survivor's name, thereby weaponising existing tax law and administration.⁵

Existing tax law and administration requires the victim-survivor to repay these debts – even if these debts are not rightfully theirs. Australia has no specific avenues for tax debt relief on grounds of financial abuse, and our serious hardship relief provisions as contained in Division 340 of Schedule 1 to the *Taxation Administration Act 1953* (Cth) are outdated and in urgent need of reform.⁶ The only pathways available to the ATO in collecting these debts from victim-survivors are payment plans (requiring payment within 2 years), offsetting of future tax refunds, engaging external debt collectors, or initiating bankruptcy proceedings.⁷ Each of these pathways are financially debilitating for victim-survivors (for client stories from UNSW Tax and Business Advisory Clinic, please see Annexure A below).

3 Impact on women

Evidence confirms that financial stress and economic hardship for women is significantly associated with economic abuse,⁸ which is a form of coercive control. Women who leave abusive relationships generally do so with increased debt, reduced assets, insecure housing and longer-term economic insecurity. Most of these women will continue to experience economic abuse even after the relationship has ended, and cite financial instability as a key factor driving them back into abusive relationships. Our research finds that at least 26,000 women who seek

¹ Our focus on women is reflective of the data which shows that the majority of abuse – in both volume and prevalence – occurs against cisgender heterosexual women. It is important to recognise that both men and women can be victims and perpetrators of domestic abuse. Further, we also recognise that this binary language does not reflect the gender diversity of people. Our language is not intended to exclude or diminish the experiences of people who do not identify as male or female or have heterosexual relationships. We acknowledge that domestic abuse is also perpetrated against lesbian, gay, bisexual and transgender people – and that these cohorts may face complex challenges and additional barriers in accessing domestic abuse services.

² Australian Bureau of Statistics, 'Partner violence: Statistics on partner violence, emotional and economic abuse, including socio- demographics, behaviours and relationship characteristics' (2023).

³ Deloitte Access Economics and CommBank Next Chapter, 'The cost of financial abuse in Australia' (2022).


⁴ Kayis-Kumar, A., Speidel, C.S. & Book, L., 'Squeezing blood from stones: a comparative analysis of tax relief for victim-survivors of economic abuse in Australia and the United States' (2024) *Australian Tax Forum* (forthcoming).

⁵ Ibid; see also, Chen, V., 'Hidden Risks of Economic Abuse through Company Directorships' (2024) 47(1) *University of New South Wales Law Journal*.

⁶ 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: O'Rourke, K., Kayis-Kumar, A., & Walpole, M., 'Serious Hardship Relief: In Need of a Serious Rethink?' (2021) 43(1) *Sydney Law Review* 1-42.

⁷ Kayis-Kumar, A., Lim, Y., Noone, J., Walpole, M., Breckenridge, J., & Book, L., 'Identifying and supporting financially vulnerable women experiencing economic abuse: a grounded theory approach' (2023) 21(2) *eJournal of Tax Research* 173-202.

⁸ Gendered Violence Research Network (Jan Breckenridge, Co-Convenor), *Understanding Economic and Financial Abuse in Intimate Partner Relationships* (October 2020).



financial counselling each year are likely experiencing economic abuse. This number is an underestimate of the full scale of the problem.⁹

4 Substantive recommendation

The Federal Government is taking considerable strides in providing legislative and regulatory protections for women experiencing coercive control.¹⁰ Reforms to the tax system are notably absent from this ongoing policy development and resulting law design.

This presents a gap in the government's ability to address coercive control comprehensively. 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 1998.¹¹

Similarly amending our tax laws would counter the abuse of business structures and systems as tactics of coercive control. Key elements include:

- **New provisions and practice** – The U.S. laws give the IRS the discretion to offer relief from tax debts on grounds of financial hardship or public policy, in addition to other targeted initiatives relevant to earlier stages of tax debt collection.¹²
- **'Revenue-positive' reform** – By granting relief to victim-survivors and instead pursuing perpetrators, this reform will empower the ATO to better target its resources and efforts towards collecting debts from taxpayers with better capacity to pay.
- **Improved equity** – It is appropriate that the perpetrator is responsible for payment of a debt that they originally incurred and had the economic benefit of. This reform will result in significantly better outcomes for financially vulnerable victim-survivors, while also improving trust and confidence in the ATO among the wider community.
- **Improved public awareness** – This reform could be supported by public education and/or community legal centres and National Tax Clinics being mobilised to offer training to support the implementation phase.

5 Next steps

We are actively engaged in discussions with the ATO about this issue. We suggest that the ATO/Treasury conduct a consultation in the first instance. We are happy to engage in further meetings with you to co-design a draft form of the legislation, prepare a further consultation paper, or provide further research or evidence, as appropriate.

For the underlying paper please see: Ann Kayis-Kumar, Christine Speidel and Leslie Book, 'Squeezing blood from stones - A comparative analysis of tax relief for victim-survivors of economic abuse in Australia and the United States' *Australian Tax Forum* (forthcoming), available at SSRN: <https://ssrn.com/abstract=4746954>.

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⁹ Each year there are around 80,000 financially disadvantaged people who are unable to access independent professional tax advice: Kayis-Kumar, A., Noone, J., Lim, Y., Walpole, M., and Mackenzie, G., 'Tax Accounting for Financial Wellbeing: Quantifying the Unmet need for Pro Bono Tax Advice' (2022) 51(3) *Australian Tax Review* 228-257. Women comprise approximately half of this cohort. Extrapolating the finding that 65% of women referred to the clinic are experiencing economic abuse, this means around 26,000 women who seek financial counselling are also experiencing economic abuse. Importantly, this is an underestimate given the analysis is limited by the segment of the population that is aware of the existence of financial counsellors to assist people in financial distress, and does not include other referral pathways like domestic violence services, family lawyers, womens' shelters, mental health services, among others.

¹⁰ 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.

¹¹ Speidel, C.S., Patten, A. 'A Practitioner's Guide to Innocent Spouse Relief: Proven Strategies for Winning Section 6015 Tax Cases' (2022).

¹² Notable initiatives relevant to earlier stages of tax debt collection include: (1) "Offset Bypass Refunds", (2) longer payment plan timeframes, (3) triaging clients by using a Victim of Domestic Violence Indicator ("VODV"), and (4) Offers in Compromise ("OIC") based on Reasonable Collection Potential ("RCP").

Annexure A – 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.