

Closing policy gaps: Tax law responses to lessen intimate partner financial abuse

We appreciate the opportunity to contribute to this targeted consultation.

Financial abuse occurs in nearly all domestic violence cases, disproportionately affects women, and impacts over 2.4 million Australians. Financial abuse costs victim-survivors and the national economy over \$10.9 billion annually, undermines child support and family tax benefit, and puts victim-survivors at critical risk of bankruptcy, homelessness and loss of child custody.

By modernising the tax law, Treasury will be advancing the objectives of the National Plan to End Gender Based Violence, complementing the Department of the Prime Minister and Cabinet's Audit of Australian Government Systems, and delivering on Bullet Point 1 of the ALP's 'Building Australia's future: Labor's commitment to women' election promise, namely:

"A re-elected Labor government will take steps to:

· Prevent perpetrators from using the tax and corporate systems to create debts as a form of coercive control and make perpetrators accountable for these debts if they do."

Perpetrators currently misuse business structures (companies, partnerships, trusts and sole trader arrangements) to create tax debts in the victim-survivor's name, giving rise to the perverse outcome of victim-survivors being held responsible for perpetrators' debts (please see **Annexure A: Client Stories**).

Our recommendations are summarised in the table below:

| # | Recommendation | Summary |
|---|---|---|
| 1 | Improve the "good reason" defence to Director Penalty Notices | Adding "financial abuse" to the good reason defence. Examples of acceptable evidence of financial abuse. |
| 2 | Enhance the Director Penalty Notice provisions to extend defence periods and other miscellaneous amendments | Extending the time period for a defence to be provided to the ATO based upon financial abuse to 12 months or any time providing a reasonable explanation for the delay is provided. |
| 3 | Modernise and improve the serious hardship relief provisions | Amending the serious hardship relief provisions to apply more broadly when taxpayers are experiencing serious hardship, thereby promoting vertical equity. |
| 4 | Introduce 'Innocent Partner Relief' provisions | Creating a provision that facilitates victim-survivors applying for a waiver of tax debts (and makes the perpetrator responsible for the tax debt by penalising them). |

Implementing these recommendations will deliver comprehensive coverage across all business structures, promoting integrity and fairness within robust legislative guardrails.

Recommendation 1: Improve the “good reason” defence to Director Penalty Notices

The Australian Taxation Office has issued over 110,000 Director Penalty Notices (‘DPNs’) since 2021, which require payment of the full amount of the tax debt within 21 days to avoid personal liability. It is imperative that care be taken to ensure that victim-survivors are not adversely affected by a DPN issued to them in relation to companies they played no part in managing. It is grossly unjust for victim-survivors to be potentially made bankrupt in these situations.

At present, one of the available defences to a DPN contained within section 269-35 of schedule 1 to the *Taxation Administration Act 1953* (Cth) is “...because of illness or for some other good reason...”. However, there is no legislative clarity, precedent or policy guidance on whether financial abuse meets the “good reason” defence.

There is a burning platform for legislative clarity, particularly given financial abuse was not specifically recognised in the ATO’s Draft Vulnerability Framework. This would guarantee that victim-survivors could draft a defence submission without having to engage in a debate with the ATO about whether financial abuse is a ‘good reason’. This is a critically important mechanism to give effect to Government policy.

We recommend adding the following wording to section 269-35 of schedule 1 to the *Taxation Administration Act 1953* (Cth) (proposed amendment in **bold**):

“...because of illness, **financial abuse**, or for some other good reason...”

Evidence of financial abuse

Taxpayers that rely on the ‘good reason’ defence are required to provide evidence of their illness or other good reason. In identifying the types of evidence that may demonstrate financial abuse it is important to first properly conceptualise both financial abuse and coercive control.

Financial abuse is an insidious form of domestic and family violence that commonly occurs alongside other forms violence and abuse including physical, sexual, psychological and emotional abuse. Victim-survivors of financial abuse may not even be aware that the abuse is occurring and, if they are aware, may be less likely to seek support due to the misconception that financial abuse is less serious than other forms of abuse.

Coercive control is the core dynamic of domestic and family violence, including intimate partner violence, encompassing multiple tactics of abuse, such as physical, sexual, emotional and financial abuse (Smyth et al, 2021). It is fundamentally a highly nuanced attack on the victim-survivor's sense of self, their perception of reality and freedom, which is intended to grant perpetrators control and power over victims (Stark, 2009). Coercive control is now a criminal offence in New South Wales and Queensland, with all the attorneys-general of the states and territories also agreeing to criminalise this behaviour.

Critically, the use of coercive control to create tax debts must recognise the broad spectrum of methods utilised by perpetrators, ranging from: (1) coercing debt through **fraud** (when debt is fraudulently created in the victim-survivor’s name without their knowledge); (2) coercing debt

through **force** (when the victim-survivor is coerced into creating debt without their consent, through threats or violence); and (3) coercing debt through **misinformation** (when the victim-survivor is provided with insufficient details, and therefore does not understand the true nature or extent of the debt).

It is critical that victim-survivors of financial abuse not be disadvantaged because they do not have police reports or apprehended domestic violence orders supporting their defence.

We recommend the following types of evidence be accepted:

- (1) Police reports.
- (2) Apprehended Domestic Violence Orders or Apprehended Violence Orders.
- (3) Court documents, including affidavits, sentencing remarks and judgments.
- (4) Reports or signed letters from psychologists, psychiatrists, general practitioners, registered counsellors or hospitals.
- (5) Letters from financial counsellors, community legal centres or social workers.
- (6) Victim statements or statutory declarations.
- (7) Documentation demonstrating receipt of a payment or vouchers from an escaping family violence payment from Australian Government supported programs such as the Uniting Communities Program or the Leaving Violence Program.
- (8) Documentation evidencing the victim-survivor's exclusion from managing their tax affairs. For example, absence of signed consents or agreement to act as a company director, absence of direct correspondence or meetings with the tax advisor, evidence of forged signatures, no access to the nominated bank account, no access to the nominated phone number, not named on any ATO correspondence, an email account not controlled by them was previously used for any ATO correspondence, etc.

Recommendation 2: Enhancing the Director Penalty Notice provisions to extend defence time periods and other miscellaneous amendments

One issue that we have experienced in our work with victim-survivors of financial abuse is that they are often still in the process of rebuilding their lives following their escape from domestic violence when they receive a DPN. Victim-survivors often do not have access to financial and tax records and as such need to go through extensive processes to prepare a defence to a DPN. Due to these circumstances the strict time periods that are currently in place within the DPN regime are almost impossible to meet.

To mitigate these challenges, we recommend the insertion of the following two subsections to section 269-35 of schedule 1 to the *Taxation Administration Act 1953* (Cth):

- (6) *A defence based upon financial abuse may be lodged with the Commissioner:*
 - (a) *At any time within 12 months from the date the notice was issued; or*
 - (b) *At any time, if the Commissioner is satisfied that the taxpayer has provided a reasonable explanation for the delay.*
- (7) *Subsections (4), (4A) and (5) do not apply to defences based upon financial abuse.*

Critically, perpetrators use other types of business structures (namely, partnerships, trusts and sole trader arrangements) to create tax debts in the victim-survivor's name (see **Annexure A: Client Stories**). So, our next two recommendations address the issue of victim-survivors being responsible for the tax debts of perpetrators more broadly than just in the context of DPNs.

Recommendation 3: Modernise and improve the serious hardship relief provisions

Victim-survivors of financial abuse are likely to be experiencing serious financial hardship and are often at critical risk of bankruptcy – which, in turn, has profound ripple effects on housing, employment, finance, and child custody. Troublingly, this is by design of the perpetrator, who uses financial insecurity as a further tactic of abuse.

Financial security is critical to leaving an abusive relationship and staying separate from the perpetrator. However, at present, the more serious the financial hardship the **less** likely it is that release of the tax debt will be granted. This gives rise to counterintuitive outcomes such as refusals to release victim-survivors from ‘sexually transmitted tax debts’ on the grounds that their hardship is **too** serious to warrant release (see **Annexure A: Client Stories**).

| To ensure these provisions offer a more adaptable and future-proofed conceptualisation of hardship, we recommend the following amendment to section 340-5(3) (proposed amendment in <i>bold</i>): | | | | | | | | |
|---|---------------|---|-----------|---|---------------|---|--|--|
| <table><tr><th>Item</th><th>Entity</th><th>Condition</th></tr><tr><td>1</td><td>an individual</td><td>you would suffer serious hardship if you were required to satisfy the liability are experiencing serious hardship</td></tr></table> | Item | Entity | Condition | 1 | an individual | you would suffer serious hardship if you were required to satisfy the liability are experiencing serious hardship | | |
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| 1 | an individual | you would suffer serious hardship if you were required to satisfy the liability are experiencing serious hardship | | | | | | |
| This amendment has the effect of removing the ‘causal relationship’ requirement (that the tax debt be the <i>sole cause</i> of the serious hardship). | | | | | | | | |
| We also recommend that a new subsection 340-5(8) be included (proposed amendments in <i>bold</i>): | | | | | | | | |
| <p><i>“Compliance with tax obligations not to be considered</i> (8) Compliance with, and non-compliance with, tax obligations must not be considered by the Commissioner when making a decision under this section.”</p> <p>Inspired by subsection 177A(3) of New Zealand’s <i>Taxation Administration Act</i> 1994, this subsection eliminates potentially prejudicial consideration of the taxpayer’s compliance history and focuses the Commissioner on whether the taxpayer is currently experiencing serious hardship.</p> | | | | | | | | |
| Note that section 340-10 of Schedule 1 to the TAA has the effect of excluding certain liabilities (for example, GST), primarily because they involve monies withheld from third parties. Further consideration should be given to whether all such liabilities are simply debts and whether there should be no limitation on relief. To the extent that there remain concerns about taxes ‘withheld’, this could be dealt with as a factor in the exercise of the Commissioner’s discretion to grant relief (that is, “the Commissioner <i>may</i> release you”). | | | | | | | | |

Recommendation 4: Introduce Innocent Partner Relief Provisions

The United States is the first and only country worldwide to grant relief for tax debts on grounds of intimate partner financial abuse – in place since 1998. Similarly amending our tax laws would counter the abuse of business structures and systems as tactics of coercive control. The US laws also give the IRS the discretion to offer relief from tax debts on grounds of financial hardship or public policy, as well as other targeted initiatives relevant to earlier stages of tax debt collection.

Our law reform proposal has been adopted as **Recommendation 54** of the [Final Report of the Parliamentary Joint Committee on Corporations and Financial Services](#) ‘Inquiry into financial services regulatory framework in relation to financial abuse’:

“That the Australian Government develop a tax relief model for victim-survivors of financial abuse similar to the United States IRS ‘innocent spouse relief’ provisions.”

The ATO also endorsed this proposed approach in its [Answers to Questions on Notice](#) from Senator Deborah O’Neill, stating: *“The ATO agrees with the principles outlined in the referenced UNSW paper.”*

Accordingly, we recommend that a new provision be enacted, as outlined below.

Element 1: ‘Prevent perpetrators from using the tax and corporate systems to create debts as a form of coercive control’

As a ‘second-mover’, Australia’s adoption of innocent partner relief provisions will benefit from transferrable lessons from the US experience, help mitigate intimate partner financial abuse significantly across Australia, and offer a best practice model for adoption by other jurisdictions. This more equitable approach recognises that victim-survivors with tax debts resulting from intimate partner financial abuse should not bear financial responsibility, which we recommend be drafted as follows:

Application for waiver of tax-related liabilities arising from intimate partner financial abuse

(1) A taxpayer may apply to the Commissioner to waive a tax related-liability (including any associated general interest charge, shortfall interest charge and penalties) if:

- (a) The taxpayer was in a relationship with an intimate partner; and
- (b) The taxpayer suffered abuse at any time during the course of the intimate partner relationship; and
- (c) The tax-related liability arose in an entity with which the taxpayer and the intimate partner were associates; and
- (d) The tax-related liability is sufficiently connected to the abuse due to the presence of any of the following circumstances:
 - (i) The taxpayer became an associate of the entity without giving informed consent; or
 - (ii) The taxpayer has signed documents connected to the entity as a result of coercion, duress, fraud or undue influence by the intimate partner; or
 - (iii) The taxpayer has not actively participated in the conduct of any enterprise carried on by the entity as a result of coercion, duress, fraud or undue influence by the intimate partner.

(2) An application under subsection (1) must be supported by evidence that, in the Commissioner’s

opinion, is reasonably sufficient to establish that the requirements of subsection (1) are met.

- (3) Without limiting subsection (2), supporting evidence may include:
- (a) a police report;
 - (b) an Apprehended Domestic Violence Order or Apprehended Violence Order;
 - (c) court documents, including affidavits, sentencing remarks and judgments;
 - (d) a report or signed letter from a psychologist, psychiatrist, general practitioner, registered counsellor or hospital;
 - (e) a letter from a financial counsellor, community legal centre or social worker;
 - (f) a victim statement or statutory declaration;
 - (g) documentation demonstrating receipt of a payment or vouchers under a program supported by the Commonwealth that provides assistance to individuals escaping family violence;
 - (h) documentation evidencing the taxpayer's exclusion from managing their tax affairs.
- (4) The absence of evidence listed in subsection (3) does not, of itself, justify refusal of an application, provided the Commissioner is otherwise satisfied that subsection (2) is met.
- (5) The Commissioner must ensure that all supporting evidence provided under subsection (3) is used solely for the purpose of considering the application under subsection (1), unless otherwise required by law or with the taxpayer's consent.
- (6) An application may be made at any time, including after proceedings to recover the tax-related liability have commenced, provided that the taxpayer meets the requirement set out in subsection (2).
- (7) The Commissioner may grant a partial waiver of the tax-related liability where a full waiver is not appropriate.
- (8) The Commissioner must notify the taxpayer in writing of the decision in respect of the application and provide reasons for any decision to refuse a waiver of the tax-related liability.
- (9) The taxpayer may object to the Commissioner's decision not to waive the tax-related liability in accordance with Part IVC of the *Taxation Administration Act 1953* (Cth), as if the decision were an objection decision for the purposes of that Part.

Note: A taxpayer who objects to a decision under subsection (9) may have the objection decision reviewed by the Administrative Review Tribunal or appealed to the Federal Court in accordance with Part IVC of the *Taxation Administration Act 1953* (Cth).

- (10) Whilst an application under subsection (1) is being considered:
- (a) the Commissioner must not take any steps to collect the tax-related liability; and
 - (b) no general interest charge, shortfall interest charge or penalties may accrue in relation to the tax-related liability.
- (11) In this section:
- 'Abuse' includes domestic violence, coercive control or financial abuse.
- 'Associate' has the same meaning as in section 318 of the *Income Tax Assessment Act 1936*.
- 'Intimate partner' has the same meaning as in subsection 10(1) of the *Family Violence Act 2016* (ACT).
- 'Entity', 'Enterprise' and 'Carrying on' have the same meanings as in the *A New Tax System (Goods and Services Tax) Act 1999*.

Element 2: 'Make perpetrators accountable for these debts if they do'

The second element of Bullet Point 1 of the ALP's election commitment presents a strong deterrent to perpetrators of intimate partner financial abuse and creates a disincentive for perpetrators' weaponisation of the tax system. Legislation will not be required in situations where the debt is in the name of the perpetrator. However, where this is not the case, or where the perpetrator is a 'shadow' director or business associate, then legislation will be needed to transfer the tax-related liability to the perpetrator. Incidentally, the best example of transferring liability between entities in the taxation laws is the DPN regime in TAA, Schedule 1, Division 269. We recommend Treasury look to this regime as the model for transferring liability from a victim-survivor to a perpetrator, while also imposing a 'penalty' on the perpetrator. While a fully drafted provision would likely span many pages, the critical part is the initial subsections which we recommend be drafted as follows:

Transfer of the tax-related liability arising from intimate partner financial abuse

(12) Where the circumstances set out in paragraphs (1)(a) to (d) are satisfied, the intimate partner is liable to a penalty equal to the amount of the tax-related liability.

(13) The penalty is due and payable on the same day as the tax-related liability was or is due and payable.

Lessons learnt from the US experience

As a 'second-mover', Australia's adoption of these rules would benefit from transferrable lessons from the US experience, help mitigate intimate partner violence significantly across Australia, and offer a best practice model for adoption by other jurisdictions.

The key translatable features of the US provisions are highlighted below:

- **How can risks to the victim-survivor be best mitigated?**

There may be safety concerns in situations where the perpetrator is retargeted by the ATO. To ensure additional protection, the IRS has a process in place to add a special 'Victim of Domestic Violence' marker on a taxpayer's account to identify and protect victim-survivors of domestic violence. The designation is intended to heighten sensitivity for IRS employees to prevent the improper disclosure of the victim-survivor's location to the perpetrator.

- **How should potential collusion between the partners be addressed?**

In the US, evidence of a transfer of assets between the spouses (from the NRP to the RP) results in a disallowance of a request for relief.

- **How should situations be managed when abuse is disclosed long after it occurred?**

This raises challenging evidentiary issues. In US, interestingly requests for equitable innocent spouse relief are afforded significantly more time than other innocent spouse relief requests. The general rule is the request must be lodged two years from the collection activity but that time is expanded to ten years for requests for equitable relief.

Ensuring that ATO staff are trauma-sensitive

It is important that any discretion given to the Commissioner of Taxation that allows for waiver of tax debt based on intimate partner financial abuse be accompanied by the training of ATO staff. Such training should ensure that ATO staff are trauma-sensitive and fully informed regarding the

challenges facing victim-survivors and how they can assist taxpayers experiencing financial abuse. In addition, any adoption in Australia would likely require close oversight by the Taxation Ombudsman and the Australian National Audit Office, to ensure that the new provisions are being applied appropriately and as intended.

Concluding remarks and next steps

Thank you for the opportunity to contribute to these discussions. Please contact A/Professor Ann Kayis-Kumar at a.kayis@unsw.edu.au if you have any questions or would like any further details.

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Annexure A: Client Stories

Please note: All names have been changed.



Carol had recently escaped an abusive relationship with her former partner, Greg. During the relationship, Greg pressured her to sign documents, threatening to withhold money if she refused. Without her knowledge, Greg made Carol a director of a **company**. Carol never participated in running the business and was unaware of her directorship. The ATO subsequently issued Carol with a **Director Penalty Notice**, in the amount of approximately \$175,000. With the support of the Clinic and senior lawyers from law firm Johnson Winter Slattery providing pro bono support, Carol successfully defended the DPN. However, the process required significant time and specialist expertise; support that most people in her situation would not have access to. Without it, Carol would have been forced into bankruptcy for a debt she neither knew about nor was responsible for creating.



Ruby experienced domestic abuse from her ex-husband John. John made Ruby set up an **ABN solely** in her name despite him also being involved in the business. Ruby relied on John to prepare BAS and tax returns due to his experience as an accountant. Ruby was audited by the ATO which resulted in a GST debt of approximately \$9,500 and penalties for failure to take reasonable care. Ruby works seven days a week to make ends meet and is willing to pay an amount each month but is unable to afford the current **payment plan** which requires repayment within 24 months.



Angela and her ex-husband Brad had a family partnership. Brad ran the business whilst Angela was a stay-at-home Mum to four children. Angela left the marriage with no assets due to physical and financial abuse. Angela could not afford to hire a family lawyer and was left with a tax debt of approximately \$32,000 (due to the **partnership** income) and a Centrelink debt of approximately \$18,000. Angela's tax debt is currently 'on hold' and any refunds she receives will be used to offset the debt. Angela's annual income is \$48,000 and she is now caught in a debt cycle.



Zoe, a medical professional and mother of two, escaped over 20 years of physical, psychological, and financial abuse in 2022. Her former husband remains in their \$5 million family home while she and her children have lived in a refuge for 3 months and are now in transitional housing. Zoe and her former husband have their own medical practice, including premises, so there is a **business, trust, self managed super fund**, but he refuses to lodge tax returns, has manipulated his business income and is no longer paying the mortgage, strata or rates, thereby deliberately forcing arrears in their joint names. He has never paid any child support. Zoe has received repeated ATO notices of outstanding tax obligations in their joint affairs, including a final warning letter as the self managed super fund tax returns are long overdue (risking fines and imprisonment). However, other than putting a hold on recovery/lodgement action there are few options available to the ATO while a family law matter is on foot. Zoe's former husband has told her that he intends to make her bankrupt, which is a real risk. This would result in her losing standing in family court and she would likely also lose child custody.



Lisa experienced intimate partner financial abuse from her former husband. As a single mother of 8, Lisa relies on Centrelink payments to cover essential expenses and lives in temporary accommodation. Lisa's former husband created an **ABN solely** in Lisa's name in 2017. Lisa was never involved in the business and did not receive any financial benefit from it. The matter has been reported to the police. Lisa has a large tax debt of around \$100,000 in her name due to the actions of her former husband. Significant Centrelink debts created by the overpayment of Family Tax Benefit based on false business income of her former husband would render Lisa ineligible for **serious hardship relief** in its current form.