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Australian Taxation Office  
Redefining Concessions Project

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## **ATO's approach to taxpayer relief provisions – Follow Up Submission of UNSW Tax and Business Advisory Clinic, Economic Abuse Reference Group and Johnson Winter Slattery**

Thank you for the opportunity to contribute to the 'Ideas for exploration' aspect of the ATO's refreshed approach to concessions. We strongly endorse the ATO's focus on supporting people experiencing financial abuse by tailoring the 'standard' evidentiary requirements for them. This aligns with our research and advocacy to date, and the support of the ATO would be invaluable in affecting positive change across Australia.

### **Recommendations**

We recommend this take the form of amendments to Practice Statement Law Administration 2011/18 ('Enforcement measures used for the collection and recovery of tax-related liabilities and other amounts'), as set out in **Annexure A**. The amendments include:

1. Adopting a list of 'prima facie' evidence of financial abuse to prevent the ATO from retraumatising the victim-survivor while also mitigating against the risk of exposing ATO staff to vicarious trauma where a government agency or trusted government-funded partner has already conducted sufficient evidence-gathering to merit such a finding.
2. Defining 'coercive control', 'domestic violence' and 'victim-survivor' in the section entitled 'Terms Used'.
3. Clarifying that DPNs will not be issued to victim-survivors who have not taken part in the management of the company at any time, incorporating a list of 'prima facie' evidence of DFV.

### **Background**

The UNSW Tax and Business Advisory Clinic has collaborated with the Economic Abuse Reference Group (**EARG**) and Johnson Winter Slattery (**JWS**) for the purposes of preparing this follow up submission.

EARG is a network of over 60 community organisations across Australia that work collectively with government and industry to reduce the financial impact of family violence. The network regularly provides feedback to guide industry, government and the community sector, and is a leading voice on addressing financial and economic abuse in Australia. Members include domestic and family violence (**DFV**) services, community legal services and financial counselling services. EARG's work encapsulates the experience of its members (as lawyers, financial counsellors or DFV support workers) who assist victim survivors of economic abuse. EARG has, within its membership, significant breadth and depth of expertise across the many legal, regulatory and government systems with which financial abuse intersects, particularly the tax and child support systems.

### **Prima Facie Evidence of Financial Abuse**

In many DFV cases there is no documentary evidence, or if there is it is very difficult for the victim-survivor to compile. This is because in most States financial abuse (in the absence of physical abuse) is not grounds for an ADVO or intervention order. Further, there are many other reasons why victim-survivors, particularly from First Nations or Culturally and Linguistically Diverse communities, will avoid police intervention. Due to these factors as well as the low rate of false reporting, we recommend that the ATO accept a victim-survivor's testimony (in the form of a written statement or statutory declaration) in most cases. Victim-survivors should be allowed to substantiate their defence with independent and contemporaneous evidence. Examples of such evidence are set out in paragraph 57C of **Annexure A**.

Requiring other forms of documented evidence can delay resolving the problem, place stress on the victim-survivor and may result in disclosure of very personal information – which can, in turn, increase the risk of vicarious trauma amongst frontline ATO staff.

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

Yours faithfully,

UNSW Tax and Business Advisory Clinic, Economic Abuse Reference Group, and Johnson Winter Slattery

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## ANNEXURE A

### Proposed Additions to Paragraph 9 of PS LA 2011/18

**Coercive Control** occurs when a person (the **first person**) is in a domestic relationship with another person (the **second person**) and the first person engages in a course of conduct against the second person that is intended to coerce or control the second person such that it would be reasonably likely to cause harm to the second person.

**Domestic Violence** means behaviour by a person (the **first person**) towards another person (the **second person**) with whom the first person is in a domestic relationship that:

- is physically or sexually abusive; or
- is emotionally or psychologically abusive (including behaviour that torments, intimidates, harasses or degrades the second person); or
- is financially abusive (including where the first person denies the second person financial autonomy or withholds (or threatens to withhold) the financial support necessary for meeting the reasonable living expenses of the second person or a child); or
- is threatening, controlling or coercive; or
- causes the second person to fear for their own or another person's, safety or wellbeing; or
- is otherwise reasonably likely to cause harm.

A **Victim-Survivor** is an individual that has experienced Domestic Violence or Coercive Control.

### Proposed Additions to Annexure B of PS LA 2011/18

#### *Victim-Survivors*

57A. We will not issue a DPN to a Victim-Survivor who has not taken part in the management of the company at any time as a result of coercive control or domestic violence. To avoid doubt, the following actions (undertaken by a director or former director Victim-Survivor, their registered tax agent, tax lawyer or other representative) will not be considered as taking part in the management of the company:

- contacting us in relation to the tax debt of the company; or
- working to get the books and records of the company up to date; or
- contacting liquidators, receivers or managers of the company in relation to tax debts of the company; or
- making enquiries to other directors and/or officers of the company in relation to tax debts of the company; or
- removing the Victim-Survivor from being a director of the company.

#### *Application of the Good Reasons Defence to Victim-Survivors*

57B. A Victim-Survivor director is not liable to a penalty if they have sufficient evidence to demonstrate that Domestic Violence or Coercive Control made it unreasonable to expect the Victim-Survivor director to take part (and, in fact, they did not take part) in the management of the company at any time when the directors were under an obligation to cause the company to meet its payment obligation.

57C. Victim-Survivors should substantiate their defence with independent and contemporaneous evidence. Examples of such evidence include but are not limited to:

- Police reports.
- Apprehended Domestic Violence Orders, intervention orders or restraining orders (as known in each state or territory).
- Court documents, including affidavits, sentencing remarks, and judgments.
- Reports or signed letters from psychologists, psychiatrists, general practitioners, registered counsellors, or hospitals.
- Letters from support professionals such as financial counsellors, community legal centres or Legal Aid lawyers, DFV case workers or social workers.
- Victim statements or statutory declarations.

- Documentation demonstrating receipt of a payment or vouchers from Government supported programs for Victim-Survivors, such as the Leaving Violence Program, Services Australia Crisis Payment, or a statutory victims' compensation scheme. Receipt of such a payment indicates that the administrator of the relevant government scheme has already obtained and assessed evidence of Domestic Violence or Coercive Control.
- Documentation evidencing the Victim-Survivor's exclusion from managing the company or their tax affairs. For example, absence of signed consents or agreements to act as a company director, absence of direct correspondence or meetings with the tax agent, evidence of forged or coerced signatures, no access to the company's bank account, or an email address not controlled by them was previously used for ATO correspondence.

57D. We encourage Victim-Survivors to contact us if they are experiencing difficulties with meeting the required timeframe for the lodgment of a defence.

*Disclosure to parallel debtors*

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83A. Once we become aware that the director or former director is a Victim-Survivor, we will not disclose the information listed in paragraph 82 to other directors or former directors of the company unless:

- a written request has been made by the Victim-Survivor for this to occur; or
- we have received express written consent from the Victim-Survivor to disclose the information.