



An Australian Government Initiative

National
Tax Clinics

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The Treasury's Consultation Paper on 'Combatting financial abuse perpetrated through coerced directorships' – Submission of the National Tax Clinic Program

Thank you for the opportunity to make a submission in relation to The Treasury's Consultation Paper.

The National Tax Clinic program is an independent, Australian Government-funded initiative that provides free tax advice and support to eligible taxpayers facing financial, social or personal challenges. The program operates through a national network of 20 clinics hosted by participating universities and TAFEs, ensuring help is accessible in communities across Australia. We acknowledge the continued support of the Australian Taxation Office (ATO), the Australian Government and our many partners who help make this program possible. Together, we are building a more inclusive and responsive tax system that leaves no one behind.

Background

This submission is guided by a combination of our clinical observations and research findings. Given our expertise in tax, this submission is focussed on perpetrators misuse of the tax system to financially abuse victim-survivors, so our responses below are to Consultation Question 12 onwards.

Critically, *any* business entity can be weaponised by perpetrators of financial abuse to create tax debts. The consequences can be severe, and our clients' coerced tax debts are often over \$100,000. This is debilitating given our clients are living in poverty and often at risk of bankruptcy and homelessness.

We acknowledge and support Treasury's decision to prioritise reforms at the federal level in the first instance. This is an important initial tranche of reform, especially given the possible challenges associated with state-level legislation governing partnerships and trusts. We commend Treasury and the government for their leadership and commitment to addressing the weaponisation of the tax system as a mechanism of financial abuse.

We recommend that there be a concrete time to evaluate the operation of the regime, and opportunity to consider extending its scope to include other business entity types.

Consultation Question 12. How can the ATO assist a coerced director to engage with them as soon as possible and bring their circumstances to the Commissioner's awareness?

Critically, a robust Victim of Domestic Violence Indicator (as recommended by the Tax Ombudsman, and as implemented in the US by the IRS), and a combination of up-to-date lodgements (most of our clients have many years of outstanding corporate tax returns), well-functioning Vulnerability Framework, trauma-informed frontline staff at ATO, specialist support within ATO for suitable triage, coupled with suitable legislative levers for the ATO to appropriately relieve coerced tax debts.

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.

Building on this, it is essential that engagement with the ATO itself be designed to be accessible, trauma-informed and supportive of people experiencing vulnerability. This can be achieved by:

- Establishing a dedicated toll-free phone line for coerced directors and victim-survivors. This phone line should be staffed by a team fully trained in:
 - o the challenges experienced by victim-survivors
 - o trauma-sensitivity
 - o the ATO's Vulnerability Framework; and
 - o how they can assist taxpayers experiencing financial abuse.

It is important that this dedicated phone line is clearly and safely advertised in ways that make victim-survivors feel safe to come forward.

- Educating the public regarding the tax secrecy provisions, so that victim-survivors are aware that information provided to the ATO cannot be shared with the perpetrator. This knowledge can be critical in giving victim-survivors the confidence to disclose their circumstances.
- Adopting a vulnerability-aware risk profiling framework that proactively identifies coerced directors and facilitates early engagement before enforcement escalates. High-risk cases could be identified based on objective indicators including:
 - o tax debts greater than \$50,000
 - o outstanding lodgements exceeding five years, or many lodgements in quick succession
 - o frequent director changes or deregistration attempts.

As the ATO generally interprets prolonged non-lodgement and significant accumulated debt as compliance failures rather than potential signs of financial abuse, this model must be used for protective engagement only and not enforcement. Recognising these patterns as vulnerability markers is essential to ensuring a genuinely trauma-informed approach.

- Implementing safe contact protocols once a case is flagged, to protect victim-survivors from retaliation and interception of correspondence. This should include:
 - o secure communication channels (including encrypted messaging)
 - o the ability to nominate a trusted third-party representative (in addition to a registered tax agent) for correspondence; and
 - o suppression or modification of standard notices where appropriate, to avoid triggering further harm.

To operationalise this framework, legislative amendments should permit controlled data sharing between the ATO and ASIC for vulnerability detection, subject to strict privacy safeguards.

In addition, we support the following measures, consistent with the findings of the Taxation Ombudsman's Review into the identification and management of financial abuse within the tax system (2025) and the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into Financial Abuse (2024):

- Introduce a dedicated "coerced director disclosure pathway" within the ATO like the ATO's existing vulnerable client frameworks but explicitly tailored to family and domestic violence (FDV) and coerced directorships.
- Enable third party authorised representatives (e.g. community legal centres, FDV services, financial counsellors) to notify the ATO on behalf of a victim-survivor without full proof of record requirements initially, if safety risks are present
- Add a confidential FDV/coercion flag to the ATO client record, ensuring victim-survivors do not need to repeat traumatic disclosures

It would be helpful if the ATO could give clients and their representatives a standard form to be completed in such circumstances, to simplify and speed up our engagement, including in particular (if and when there is greater legislative clarity) to what might constitute "good reasons" for a DPN defence. This could look like something similar to the existing NAT 15080 Application for Release in the context of income tax debts. Acknowledging of course, that such matters are often a question of fact and degree, still at the Tax Clinic in Adelaide we often feel like with each new client we are almost starting with a blank page when we make a submission to the ATO. Because of the many differences between clients and their circumstances, and the fact that clients are often not able to articulate their own story in a manner appropriate for a DPN defence, the amount of time to prepare a submission is greater than it need be.

The implementation of the above recommendations would overcome many of the challenges that victim-survivors currently face when engaging with the ATO. For example, when a victim-survivor first contacts the ATO, this conversation usually occurs with a less experienced ATO officer. Several consequences often follow:

- The officer may not be fully trained or equipped to deal with the trauma experienced by the victim-survivor.
- It may be difficult for the victim-survivor to meaningfully express their circumstances.
- The issues are often highly complex from a tax law perspective, and the officer may not be fully aware of these complexities.

As a result, misunderstandings frequently arise. It is not uncommon, for example, for a victim-survivor to be told by an ATO officer that since she (most typically) was a director, she is simply responsible for the company debt and must take immediate steps to pay it. A dedicated, trauma-informed pathway, supported by appropriate flags, risk profiling, and specialist staff, would significantly reduce these harmful interactions and better align the tax system with the realities of financial abuse.

Consultation Question 13. How can additional time be provided to coerced directors to obtain advice and determine the appropriate actions to take for their circumstances, while also upholding the DPN regime's intended purpose to recover employee entitlements from non-compliant directors in a timely manner?

The DPN regime's intended purpose goes much further than mere recovery from non-compliant directors. Given the severity in terms of both personal liability and time pressure, this makes it ill-suited to be used at scale, particularly against victim-survivors without careful safeguards and exclusion criteria.

Victim-survivors often cannot meet the current 21-day DPN timeframe due to delayed awareness of liabilities, lack of access to documents or risks to their safety. Research from the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into Financial Abuse Inquiry (2024) emphasises that rigid timelines disproportionately harm coerced directors.

Some recommended approaches:

- Introduce an automatic, safely accessible extension where coercive control is indicated
- Permit immediate suspension of DPN timeframes once notification is received
- Allow retrospective extensions where mail was intercepted or access was controlled

- Maintain employee-entitlement protections by enabling concurrent pursuit of shadow directors

Consultation Question 14. What are the benefits and risks of extending timeframes for coerced directors to take steps to have a DPN remitted or submit a defence?

The key risk is of misidentification, which can be readily mitigated with appropriate safeguards and robust evidentiary requirements. A benefit of extending timeframes would be to allow the coerced Director more time to access documents that may not initially be available.

Findings from the Taxation Ombudsman's Review into the identification and management of financial abuse within the tax system (2025) confirm that insufficient response time is a leading driver of bankruptcy among coerced directors.

Benefits of extending timeframes:

- Reduces unjust bankruptcies
- Enhances capacity for coerced directors to seek advice

Risks and Mitigation:

- Employee entitlement delays mitigated by parallel recovery from perpetrators
- Increased administrative load mitigated by streamline FDV pathways

Consultation Question 15. Are there any unintended consequences associated with introducing a new defence to explicitly include experience of coercive control?

As also outlined in the UNSW Tax and Business Advisory Clinic's submission, 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, because even though financial abuse is mentioned in the ATO's 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.

Consultation Question 16. Where director penalties also relate to a period before the victim-survivor experienced coercive control, should the victim-survivor be relieved of liability for the whole period or only for the period they experienced coercion?

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. It is for these reasons that our position is that victim-survivor be relieved of liability for the whole period given the complexity in pinpointing exactly when the pattern of coercive control begun, which will likely be a time and resource-intensive exercise to arrive at the same point that there is a significant coerced tax debt which itself grew over time.

Evidence from the Taxation Ombudsman (2025) shows that coercive control often evolves gradually and is rarely confined to discrete time periods. As acknowledged in the Financial Abuse Inquiry (2024), victim-

survivors frequently experience diminished autonomy long before overt coercion is visible to external parties.

We recommend that full relief should apply for the whole period of directorship, not just the period of covert coercion. Coercion may not be contemporaneously documented and requiring proof of precise timing risks unfairness. Partial liability may still lead to bankruptcy, contrary to government objectives to reduce financial harm.

Consultation Question 17. What are the benefits and risks of expanding the existing defence or introducing a new standalone defence for coercive control?

We are supportive of either approach; that is, expanding the existing defence or introducing a new standalone defence for coercive control. We recommend the former, which could take the form of 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...”

As noted in the above Question 14, the key risk is of misidentification, which can be readily mitigated with appropriate safeguards and robust evidentiary requirements.

Consultation Question 18. Are there any differences or considerations that should be accounted for between the corporate and tax systems when considering strengthening defences for directors' duties?

While consistent definitions are desirable, key structural differences require tailored implementation. Key considerations include:

- Tax liabilities arise more frequently and automatically, making the tax system more susceptible to abuse than corporate governance frameworks
- Corporate duties focus on director conduct, whereas the DPN regime imposes immediate personal liability irrespective of involvement

Our recommendation is to harmonise definitions of coercive control across systems but preserve differentiated administrative pathways.

Consultation Question 20. How and when do intermediaries and professionals enable or facilitate the weaponisation of company directorships? Should penalties apply to intermediaries and professionals in these circumstances?

Unfortunately, our clients often observe that the perpetrator and the accountant were friends and acted in concert throughout the course of the engagement. The UNSW clinic team and our research collaborators are currently exploring recommendations for suitable consequences and penalties that ought to apply to intermediaries and professionals in these circumstances. While we are still in early stages of this research, the US approach of requiring both spouses to get independent advice at point of separation has proven to be highly effective.

Intermediaries and professionals are limited by the information provided by their clients. Due diligence should be undertaken by both before engaging in line with their code of professional conduct.

If there is evidence that the victim has been excluded from relevant information related to debt, company records, etc by the intermediaries, there should be ramifications for those advisors.

Consultation Question 21. Are there opportunities to further empower parties such as liquidators, creditors and ASIC to identify and hold perpetrators accountable for debts incurred in their capacity as shadow directors?

Clients who have approached a tax clinic for assistance often mention circumstances of financial abuse through their involvement with partners who may be classified as *shadow* or *de facto* directors. A typical scenario is as quoted below:

"I was used as a director for companies that my husband set up. He operated and took care of all the business needs in our 12 years of marriage. Since separation, he has shut me off from all income and accounts, sent the businesses into extreme debt and because I am the director of these companies, I have debt collectors and lawyers chasing me. My credit rating is damaged. I was the primary caregiver throughout our marriage. He has opened other businesses and claims he has no money. I must sign his proposal or risk losing my home. I have tried seeking advice from the accounting firm that manages the businesses, but they are reluctant to speak with me due to conflicts of interest as they wish to retain him as a client."

These cases highlight that financial abuse and coerced directorships are a significant and under-recognised subset of shadow-director behaviour. They also demonstrate the need for regulators such as ASIC and the ATO to have clearer mechanisms to identify when the named director is not, in substance, the person controlling the company.

Key opportunities for improvement include:

- Establish formal notification pathways for coerced or non-participating directors: ASIC and the ATO could introduce standard procedures or forms allowing a coerced or non-participating director to report concerns that another individual is or has been controlling the business.
- Specialised support: Regulators could designate trained staff to handle financial-abuse-related directorship cases to ensure early intervention and appropriate triage.
- Improved information sharing: Earlier, structured exchanges between liquidators, the ATO and ASIC would help identify patterns of shadow or *de facto* control.
- Clarify in legislation that coercive control and financial abuse can constitute evidence of shadow or *de facto* directorship.
- Community education: Public messaging highlighting the serious legal consequences of operating as a shadow or *de facto* director, and the dangers of assuming nominal directorship under pressure.

Consultation Question 22. Are there other opportunities to ensure perpetrators are held to account and face appropriate consequences for the harms they create?

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.

The National Tax Clinic Program supports the law reform proposal 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', namely:

"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."

Accordingly, we recommend that a new provision be enacted, inspired by the US innocent spouse relief provisions, as this will offer a comprehensive and holistic policy response to the insidious problem of perpetrators misusing business structures and legal liability to put tax debts in the name of victim-survivors.

Consultation Question 23. To what extent does the existing definition of coercive control in the Telecommunications Industry Standard appropriately capture the scope of harms and different cohorts of victim survivors and perpetrators?

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).

Consultation Question 24. What are the appropriate types of evidence that would demonstrate the occurrence of coercive control?

We support the UNSW submission's recommendation that victim-survivors could substantiate their defence with independent and contemporaneous evidence. Such evidence includes but is 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.

Consultation Question 25. What difficulties may a victim-survivor encounter in providing evidence of experience of coercive control? What types of evidence may a victim-survivor have access to?

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 – often by design of the perpetrator. They may have safety concerns if the perpetrator monitors communications. They may also suffer from shame, trauma and fear of reprisal.

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.

The system should adopt a “reasonable grounds to suspect” threshold for initial protection, with full evidence only required later if needed.

Often victim-survivors flee from these circumstances without any evidence to support claims they may make in the future. Investigating ways to then secure evidence and documentation once in a new location could cause safety concerns if it somehow resulted in information being leaked about their whereabouts to the perpetrator. It can also be psychologically difficult for victim-survivors to be confronted with obligations to collect evidence.

Once again, thank you for the opportunity to make a submission in relation to this consultation.

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

Yours faithfully,
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