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The Treasury's Review of Tax Regulator Secrecy Exceptions Consultation Paper – Joint Submission of UNSW Tax and Business Advisory Clinic and Economic Abuse Reference Group

Thank you for the opportunity to make a submission in relation to The Treasury's Review of Tax Regulator Secrecy Exceptions. This submission is focussed on Question 39 ("Are any further changes necessary to the tax secrecy regime to address gender-based violence and support victim-survivors?").

Executive Summary

Our recommendations to assist people experiencing financial abuse include reforms to both tax law and tax administration:

1. Amend the tax secrecy provisions to provide exceptions such that the ATO, former tax agents or other entities, can provide certain documents to the tax agent or lawyer of a victim-survivor or the victim-survivor themselves.
2. Clarify that coercive control and financial abuse amount to a 'serious offence' permitting disclosure for law enforcement purposes.
3. Enable disclosure of ATO-held information to the Federal Circuit and Family Court of Australia, the Child Support Agency and other government agencies.
4. Require the ATO to exercise its powers of investigation in cases of fraud by perpetrators of intimate partner violence.
5. Comprehensively display taxpayer information related to business structures from ATO and ASIC databases on myID and/or myTax accounts.
6. Update ATO practice on the issuance of Director Penalty Notices (**DPN**s) to ensure that appropriate defences are recognised and the appropriate individual is pursued for the liability.
7. Accept the testimony of a victim-survivor as evidence, particularly in circumstances where limited other evidence is available.
8. Update ATO processes and training for ATO staff to ensure that the ATO can identify and reduce the impact of financial abuse.
9. Use a system flag to detect financial abuse at its earliest stages and alert ATO officers who may be dealing with perpetrators, victim-survivors or their advisers.

Background

Established as part of the National Tax Clinics Pilot Program in 2019, the UNSW Tax and Business Advisory Clinic provides independent, free and confidential tax advice to individuals and small business owners in severe financial distress. Our aim is to bridge the gap between client casework and tax research to identify systemic issues, catalyse positive social change, reduce inequalities and improve outcomes for the most in need.

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

EARG is an informal network of over 50 community organisations across Australia that work collectively with government and industry to reduce the financial impact of family violence. Our 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.

This submission is guided by a combination of our clinical observations and research findings. Our latest research[1] presents a detailed comparative analysis of the tax collection practices and grounds for relief from tax debts available in Australia and the United States to victim-survivors of financial abuse. This research has also been the subject of multiple media articles, including by the ABC[2] and The Guardian,[3] and has featured on ABC's The Business.[4]

We strongly support the Treasury's focus on supporting people experiencing financial abuse. This aligns with our research and advocacy to date, and the support of the Treasury would be invaluable in affecting positive change across these areas.

The Treasury's current review is particularly well timed given the recent developments:

- The Federal Government-initiated Rapid Review of Prevention Approaches to End Gender-Based Violence, with the Final Report[5] including Recommendation 16:

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[1] Kayis-Kumar, A., Speidel, C. and Book, L., 'Squeezing blood from stones? A comparative analysis of tax relief for victim-survivors in Australia and the United States' (2024) 39(2) *Australian Tax Forum* 191-220.

[2] Khadem, N., 'The ATO is reviving old tax debts totalling billions, threatening some taxpayers with bankruptcy' (ABC, 14 March 2024); available at: https://www.abc.net.au/news/2024-03-14/ato-reignites-old-debts-individuals-businesses-struggle/103578746.

[3] Barrett, J., 'Financial abuse can follow victims long after relationships end. Australian experts are calling for reform' (The Guardian, 29 March 2024); available at: https://www.theguardian.com/society/2024/mar/29/financial-abuse-can-follow-victims-long-after-relationships-end-australian-experts-are-calling-for-reform.

[4] Ziffer, D., 'Australia's tax system is an unwitting 'weapon' family violence offenders use against their victims. These people want to stop it.' (ABC, 19 June 2024); available at: https://www.abc.net.au/news/2024-06-19/abusive-partners-using-tax-system-as-weapon/103990186.

[5] Report of the Rapid Review of Prevention Approaches, 'Unlocking the Prevention Potential: Accelerating action to end domestic, family and sexual violence' (24 August 2024); available at: https://www.pmc.gov.au/sites/default/files/resource/download/unlocking-the-prevention-potential-4.pdf.

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.

- The Parliamentary Joint Committee Hearing on Corporations and Financial Services Inquiry into financial services regulatory framework in relation to financial abuse (the 'Financial Abuse Inquiry'), in its Report[6] made 61 Recommendations, of which 15 are relevant to the field of taxation (extracted in **Annexure A** below). Notably, Recommendation 54 calls for the adoption of 'innocent spouse relief' provisions that enable the ATO to re-target the perpetrator only for tax debts which are jointly also in the victim-survivor's name:

Recommendation 54

5.117 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 Inspector-General of Taxation's current Investigation on 'Identification and management of financial abuse within the tax system'.

The weaponisation of the tax system by perpetrators of intimate partner financial abuse

Unfortunately, since our inception in 2019 most of our female clients have been victim-survivors of financial abuse. Worryingly, over 86% of our female clients in 2024 self-reported experiencing domestic violence – up from an average of 58% in our 4-year study of this issue.[7]

It is commonplace for perpetrators to create business structures and place tax debts solely in the victim-survivor's name, thereby weaponising existing tax law and administration.[8] A victim-survivor may be appointed a straw director of a company controlled by their perpetrator, either through coercion or fraud, or may lose control of their own company over time through sabotage and coercion by the perpetrator. These 'sexually transmitted tax debts' arise from business structures and have severe ramifications, leaving victim-survivors with debilitating financial burdens, reduced assets, insecure housing and prolonged economic instability, long after leaving abusive relationships.

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[6] Parliamentary Joint Committee on Corporations and Financial Services, 'Financial abuse: an insidious form of domestic violence' (December 2024); available at: https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000471/toc_pdf/Financialabuseaninsidiousformofdomesticviolence.pdf.

[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] Chen, V., 'Hidden Risks of Economic Abuse through Company Directorships' (2024) 47(1) *University of New South Wales Law Journal*.

Existing tax law and administration requires the victim-survivor to repay these debts – even if these debts are not rightfully theirs. Existing tax laws compel the Australian Taxation Office (**ATO**) to pursue victim-survivors for these tax debts through payment plans (often requiring 10% to be paid upfront and the remainder to be paid within 2 or 3 years), offsetting of future tax refunds, engaging external debt collectors, or initiating bankruptcy proceedings.[9]

Each of these pathways is financially debilitating for victim-survivors (for client stories from UNSW Tax and Business Advisory Clinic, please see **Annexure B** below).

In particular, ATO-initiated bankruptcy as a result of 'sexually transmitted tax debts' presents a perverse outcome with far-reaching unintended consequences and profound implications. In addition to the financial challenge, it also gives rise to adverse mental health outcomes, restricts access to housing, restricts ability to obtain credit, results in higher interest rates, an inability to travel abroad, and an inability to establish a business.

Further, ATO-initiated bankruptcy impacts a victim-survivor's standing to seek orders in relation to property in the Federal Circuit and Family Court of Australia which, in turn, can result in the victim-survivor losing child custody. ATO-initiated forced bankruptcies are increasing significantly year-on-year: in FY23/24, the ATO initiated 14 per cent of matters in the Bankruptcy list of the Federal Court of Australia (241 of 1719), up from 5 per cent in FY22/23 (69 of 1368) and just 1 per cent in FY21/22 (12 of 1615), despite the total number of bankruptcies remaining steady.

These systems-level deficiencies enable and exacerbate the cycle of abuse and underscore the urgent need for legislative, regulatory and administrative change to disrupt perpetrators and support victim-survivors. The tax secrecy regime currently acts as a barrier to the ATO sharing information with courts, other government agencies and organisations that would assist victim-survivors. Reforms are needed to ensure the tax secrecy regime is not exploited by perpetrators to obscure information about their tax affairs, frustrating family court proceedings and further perpetuating the impacts of financial abuse.

Furthermore, the assiduous pursuit of tax debt collection measures such as garnishee orders can adversely impact the ability of victim survivors to obtain professional advice and other means to argue their case.

Common issues experienced by victim-survivors

A victim survivor typically faces multiple legal issues after escaping a relationship where they experienced financial abuse. In relation to tax debt specifically, we have seen the following four common issues:

(a) Victim-survivors may not have sufficient financial resources to engage a tax lawyer or tax agent to prepare a submission to the ATO or to liaise with the ATO on their behalf. In this situation the victim-survivor may contact a tax clinic for assistance. Depending upon the circumstances of the victim-survivor they may not be eligible for assistance from a tax clinic. Where this is the case,

[9] 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,

there is likely to be a cohort of victim-survivors that are trying to advocate to the ATO by themselves or with the assistance of family and friends.

(b) Victim-survivors that are able to engage a tax lawyer or tax agent may not be aware of how to engage such professional advisors or when the appropriate time to do so would be. This issue arises in circumstances where the victim-survivor was in a prior relationship where their spouse controlled all financial and tax-related matters. In such circumstances, it is expected that receiving correspondence from the ATO would be quite distressing and there might be a tendency to ignore the problem in the hope that it will go away. Further, victim-survivors who "owe" tax to the ATO may not understand or fully appreciate the consequences that can flow from hoping that the issue will be resolved without contacting the ATO. Victim-survivors who do contact the ATO, risk experiencing re-traumatisation as they are required to repeatedly explain their circumstances to a number of frontline staff, and are sometimes told there are no options available to them to dispute liability for their tax debts, even where they arose due to the perpetrator's misconduct.

(c) Victim-survivors generally do not have copies of, or access to, the documentation that is required to engage with, and make submissions to, the ATO. Such documents could include, but are not limited to, historical personal tax returns, historical tax returns of companies that they were once a director of, the Running Balance Account of such companies, historical trust or partnership tax returns and historical correspondence from the ATO. Further, where a victim-survivor is trying to defend a DPN in relation to unpaid Superannuation Guarantee Charge that was incorrectly levied, evidence of superannuation being paid in the correct amounts, to the correct superannuation funds and on time will be required. Former directors are unlikely to have access to this information or the ability to obtain this information, particularly in circumstances where their former spouse continues to be the controlling mind of the relevant company.

(d) The current drafting of Division 355 of Schedule 1 to the *Taxation Administration Act 1953* (Cth) (**TAA**) prohibits disclosure of information and documentation about the tax affairs of a particular entity, except in certain specified circumstances. This prevents victim-survivors from obtaining information and documentation that would assist them to make submissions to the ATO and prepare DPN defence submissions. Regarding these provisions:

(i) The offence provision for taxation officers is subsection 355-25(1) of Schedule 1 to the TAA. Subsections 355-25(2)-(3) provides a number of exclusions and there are exemptions in other provisions within Subdivision 355-B.

(ii) The purpose of this provision is to preserve confidentiality in respect of protected information. By way of summary, protected information is generally information that was disclosed or obtained under a taxation law, relates to the affairs of an entity and identifies (or is reasonably capable of being used to identify) the entity.[10]

[10] Subsection 355-30(1) of Schedule 1 to the TAA.

(iii) The offence provision for non-taxation officers is section 355-155 of Schedule 1 to the TAA. This provision does not contain any exclusions but there are exemptions within Subdivision 355-C.

Set out in Recommendation 1 below is an explanation of how amendments to the secrecy provisions can improve access to the information required by victim-survivors to make submissions to the ATO in respect of tax debt.

Recommendations

Our recommendations to assist people experiencing financial abuse are set out below.

Recommendation 1: Amend the tax secrecy provisions to provide exceptions such that the ATO, former tax agents or other entities, can provide certain documents to the tax agent or lawyer of a victim-survivor or the victim-survivor themselves

Victim-survivors would be greatly assisted by the tax secrecy provisions being amended so that it would be permissible for:

(a) the ATO;
(b) the tax agent of a former company that the victim-survivor was a director of; or
(c) any other entity with the requisite information or documentation (for example a liquidator/receiver/manager or a superannuation clearing house),

to provide particular documents to the victim-survivor themselves or their lawyer or tax agent for the purposes of preparing submissions, objections (or other methods of challenging an assessment) or defences to the ATO or for defending themselves in court against ATO debt recovery proceedings or bankruptcy proceedings.

This could be done by way of drafting an exception to the provisions that only applies to victim-survivors.

To ensure that the purpose of the tax secrecy provisions is maintained, the exception could be limited to certain documents and information. For example, the exception could only apply to the following:

(a) Historical personal tax returns of victim-survivors.
(b) Historical trust returns for trusts for victim-survivor beneficiaries.
(c) Historical partnership returns where the victim-survivor was formerly a partner of that partnership.
(d) Historical BASs (of entities formerly connected to the victim-survivor).
(e) Historical Running Balance Accounts (of entities formerly connected to the victim-survivor).

Recommendation 2: Clarify that coercive control and financial abuse amount to a 'serious offence' permitting disclosure for law enforcement purposes

The exceptions set out in section 355-70 of Schedule 1 to the *Taxation Administration Act* 1953 permit disclosure to an authorised law enforcement agency, a court or tribunal for the purposes of investigating a serious offence or enforcing a law, the contravention of which is a serious offence. A serious offence

is defined as an offence against an Australian law that is punishable by imprisonment for a period exceeding 12 months.

As understandings of gender-based violence develop, additional forms of violence such as coercive control are increasingly being criminalised in Australian states. For example, as of 1 July 2024, coercive and controlling behaviour in intimate relationships (which is defined to include financial and economic abuse) is a criminal offence punishable by up to 7 years' imprisonment (see section 54D of the *Crimes Act* 1900 (NSW)). Queensland became the second state in Australia to criminalise coercive control with the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023* which passed on 6 March 2024, with a maximum penalty of 14 years' imprisonment.

The ATO, victim-survivors and their advocates would benefit from clarification that coercive control, at least in these states, amounts to a 'serious offence' permitting disclosure for law enforcement purposes. If this is not the case, we recommend that Treasury consider additional provisions clarifying how gender-based violence falls within the scope of the law enforcement exception.

Recommendation 3: Enable disclosure of ATO-held information to the Federal Circuit and Family Court of Australia, the Child Support Agency and other government agencies

The non-lodgement of tax returns is a common tactic employed by perpetrators of financial abuse to minimise or avoid their child support liabilities. With a debt of close to $2 billion, the child support system is struggling to ensure fair redistributive payments of child support, with long-term ramifications for the financial stability and wellbeing of victim survivors and their children. Perpetrators commonly fail to lodge their tax returns, leaving victim-survivors to rely on out-of-date information about the perpetrator's taxable income, resulting in miscalculation of Family Tax Benefit. This often leads to the generation of a debt to Services Australia in the victim survivor's name due to overpayment of Family Tax Benefit, as the system assumes the victim survivor has received the correct amount of child support.

Similar tactics are employed in the Federal Circuit and Family Court of Australia (**FCFCOA**), where perpetrators commonly fail to comply with their obligations to provide full and frank financial disclosure, including of their income, assets, liabilities and other financial information. While the FCFCOA has the power to allow a subpoena to be issued to a bank, employer or financial institution to obtain information, there is no power for parties to family court proceedings, or the FCFCOA itself, to request information held by the ATO beyond information about the parties' superannuation. This facilitates systems abuse and ongoing financial abuse by perpetrators through withholding information, prolonging legal proceedings, and increasing costs for the victim-survivor. If a perpetrator fails to comply with financial disclosure or other orders of the court, the victim-survivor must incur further legal fees and engage in protracted and costly litigation to seek penalties for non-disclosure.

Despite this information asymmetry between victim survivors and perpetrators, the ATO holds information about the perpetrator's income and financial affairs which would greatly assist the victim survivor in their engagements with Services Australia and the FCFCOA. We recommend an exception to allow the ATO to disclose pre-filled information reported to the ATO (including payroll information, BAS, dividends, distributions from managed funds and other income) to the FCFCOA, the Child Support Agency and other government agencies in the event the perpetrator fails to lodge their tax returns or refuses to disclose the information to the FCFCOA. This would neutralise perpetrators' ability to extend their financial abuse by not lodging

tax returns or not providing financial disclosure and would allow for the efficient resolution of family court proceedings and the correct calculation of child support and Family Tax Benefit.

Recommendation 4: Require the ATO to exercise its powers of investigation in cases of fraud by perpetrators of intimate partner violence

The ATO has powers of investigation in cases of fraud. We respectfully submit that these powers need to be exercised in cases of fraud by the perpetrator of intimate partner violence. Absent the legal grounds to release a victim-survivor from tax debts on grounds of serious hardship and re-target the perpetrator using 'innocent spouse relief' provisions, there ought to be a requirement for the Commissioner to investigate where there is prima facie evidence of fraud by the perpetrator. The justification for this is confidence in and integrity of the tax system.

At present, the ATO position appears to be that fraud by known third parties is a civil matter that the victim-survivor needs to progress against the perpetrator. In these instances, the ATO will not exercise its powers of investigation. This is particularly problematic for victim-survivors who may not be able to seek relief on grounds of serious hardship and instead have these debts placed 'on hold'. Neither pathway presents a just nor equitable outcome for the victim-survivor. This is because the serious hardship relief provisions are outdated and not fit for purpose,[11] and a decision not to pursue a debt is never final – and can be re-raised on a client's account at a future time. While this mechanism is useful and pragmatic from a tax administration perspective, from the perspective of a financially vulnerable taxpayer it may feel more like a 'Sword of Damocles'.

Recommendation 5: Comprehensively display taxpayer information related to business structures from ATO and ASIC databases on myID and/or myTax accounts

Due to privacy provisions and the tax secrecy regime, taxpayers can only access their own ATO data. However, this ATO data could be extended to include other relevant information about the taxpayer – especially in cases where a victim-survivor of domestic and family violence has had their myID, TFN, ABN, Director ID, etc compromised and/or fraudulently used by the perpetrator to create business structures and, in doing so, place tax debts in the victim-survivor's name. This information could assist in following up on these business structures.

Displaying a list of offices held by an individual in real time on myGov and/or myTax would bring awareness to victim-survivors who have been made officeholders without their consent and give them an opportunity to seek legal or tax assistance and correct the ASIC business registers before they incur further financial and taxation consequences.

Many victim survivors in this position do not realise they have been appointed as a director of a company controlled by the perpetrator until they check their credit reports, a creditor obtains judgment against them or seeks to make them bankrupt, or they are pursued by the ATO for tax liabilities attached to the business. Obtaining the necessary documents to screen for and begin to remedy financial abuse is prohibitive for many victim-survivors, particularly if they cannot afford to engage professional advisors or are not eligible for assistance from a tax clinic and are trying to advocate to the ATO by themselves. Other support services that assist

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

victim survivors, such as community legal centres and financial counselling agencies, are not funded to pay for disbursements such as ASIC search fees.

The tax office already lists a taxpayer's ABN on their profile, and there is visibility of entities that the taxpayer is associated with. It is unclear whether this includes all associates at any point in time, or only at the time of registration of an ABN. At present at least one director and shareholder must be included, so it may be possible to skip adding certain associates. If so, this element of the system is vulnerable to exploitation by perpetrators.

Further, other labels and information could be listed as well, namely:

- Director ID (if available) – The Director ID (in conjunction with ASIC) could then be used to search for any company(ies) that the taxpayer is a director of. This is particularly useful because it is not uncommon for victim-survivors to be unwittingly made a director of several companies, but if they do not know the names of the companies, they must purchase a current and historical personal name extract from ASIC or a third party provider to obtain details of the offices they have held.
- Partnership(s) TFN – Visibility of a partnership that a taxpayer is a partner of would greatly assist in situations where the taxpayer was not aware of the existence of a partnership. It is worth noting that partnership income is included on the prefilling report – unfortunately, it only appears if the partnership lodges a tax return and the partner's TFN was on that partnership return (as you don't need to include the partner's TFN on the return; the ATO uses date of birth and address to match it to the taxpayer, which itself presents a further vulnerability to exploitation by perpetrators).

Recommendation 6: Update ATO practice on the issuance of Director Penalty Notices (DPNs) to ensure that appropriate defences are recognised and the appropriate individual is pursued for the liability

This submission respectfully suggests that the ATO adopt safeguards to ensure that victim-survivors are not adversely affected by a DPN issued to them for a company that they did not genuinely control. It is well-established that abusive partners coerce victim-survivors into becoming a co-director or sole director of companies controlled by the abuser, while denying them decision-making power and access to financial records, bank accounts and information.

The ATO should consider a policy response that allows them to pursue the perpetrator only (in their capacity as a director or shadow/*de facto* director), provided there is sufficient evidence of the perpetrator's control over the company.

This could be achieved by revoking:

(a) assessments that have resulted from financial abuse and issuing assessments to the perpetrator using item 5 (fraud) of the table in 170(1) of the *Income Tax Assessment Act 1936* (Cth) (**ITAA**)). The ATO is currently in the process of rewriting PS LA 2008/11 which governs suspected fraud by a third party or tax practitioner. The scope of this PS LA should be broadened to include fraud by a former spouse; and
(b) the DPN issued to the victim-survivor and issuing a DPN to other directors of the company (including the perpetrator).

Either of the above options are beneficial to the ATO as the perpetrator or other directors of the company are likely to have a higher capacity to pay the debt.

Where a victim-survivor receives a DPN, the ATO should accept that domestic violence, coercive control and financial abuse meet the "good reasons" defence.

The ATO should also include a statement in DPN letters that domestic violence and coercive control meet the "good reasons" defence. The statement could be to the following effect "If you are a victim-survivor of domestic violence or coercive control you may be able to rely on the good reasons defence. We recommend you contact your local tax clinic, financial counselling service or community legal centre for assistance."

This still leaves the victim-survivor at risk of being pursued if the ATO is unable to gather sufficient evidence of domestic violence or coercive control. Consideration should be given to developing a defence to a notice on the grounds that the victim survivor was coerced and did not have genuine control. Careful thought will need to be given to what standard of proof is required.

In order to minimise the potential for further distress on the victim-survivor, it is recommended that the ATO accept third party accounts of abuse, such as from police, domestic violence case workers, financial counsellors, community lawyers and other witnesses.

Recommendation 7: Accept the testimony of a victim-survivor as evidence, particularly in circumstances where limited other evidence is available

In many financial abuse cases, there is no documentary evidence, or it is very difficult for the victim-survivor to compile such evidence, as withholding and destruction of financial and/or other documentation is often a key tactic of the financial abuse. Where physical abuse does not occur, there may not be grounds for an Apprehended Domestic Violence Order or intervention order and people from First Nations or Culturally and Linguistically Diverse communities may avoid police intervention. These factors, coupled with low rates of false reporting demonstrate that the ATO should accept a victim's testimony (in the form of a written statement or statutory declaration) in most cases.

Requiring other forms of documentary evidence can delay resolving the issue, place stress on the victim-survivor and may result in disclosure of personal information (which can increase the risk of vicarious trauma amongst ATO staff).

Recommendation 8: Update ATO processes and training for ATO staff to ensure that the ATO can identify and reduce the impact of financial abuse

The ATO can reduce the impact of financial abuse by:

(a) mandating financial abuse and family violence awareness training for all customer-facing staff in order to identify and assist victim-survivors;
(b) establishing a specialised team who receive trauma-informed training to identify and assist victim-survivors (for example victim-survivors could have their own ATO liaison so that they do not need to explain their circumstances to frontline staff repeatedly); and
(c) simplifying working with victim-survivors to update their records (particularly postal address and email address) to ensure that all ATO correspondence is received in a timely manner and via safe methods nominated by the victim-survivor.

Recommendation 9: Use a system flag to detect financial abuse at its earliest stages and alert ATO officers who may be dealing with perpetrators, victim-survivors or their advisers

The ATO could enhance detection of fraud using a flag in ATO systems that:

(a) alerts ATO staff that further investigation may be required when income tax returns and BAS are lodged for multiple periods in quick succession; and
(b) is placed on the TFNs of individuals who have:

(i) received an escaping family violence payment; or
(ii) received a Victim's Certificate; or
(iii) been issued an Apprehended Domestic Violence Order or equivalent.

The purpose of this flag is to indicate that they may be a vulnerable taxpayer. Further, this information could be utilised to flag the perpetrator and related entities. This will enable compliance and debt collection staff to disrupt perpetrators, thereby helping to stop the cycle of escalating abuse, associated tax debts and the weaponisation of tax administration.

Where there is a financial abuse system flag, the ATO should only disclose information to other organisations where it has the power to do so under other secrecy exceptions, and where it is satisfied it will not put the victim-survivor's safety at risk.

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

Yours faithfully,

UNSW Tax and Business Advisory Clinic and Economic Abuse Reference Group

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ANNEXURE A

Extract of Recommendations from the Financial Abuse Inquiry

Recommendation 36

3.217 That the Australian Government consider the implementation of minimum operating standards, with a view to moving to best practice standards through continuous improvement over time, to mitigate the risk of elder abuse in relation to superannuation.

Recommendation 37

3.220 That accounting bodies, financial advice and planning peak bodies, and victim-survivor advocate organisations co-design education resources for service providers to enable increased identification of financial abuse and timely reporting of suspected abuse to financial institutions and law enforcement bodies.

Recommendation 38

3.221 That accounting, financial planning and financial advice industry bodies develop and review ethical obligations of their profession in relation to receipt of instructions which may have a financial abuse motive and institute accompanying penalties for members who actively enable or facilitate financial abuse on behalf of their clients where there is no other reasonable basis underlying the instructions given by the client.

Recommendation 45

4.93 That financial institutions, government and relevant stakeholders all provide appropriate support to culturally and linguistically diverse consumers through:

- **culturally appropriate financial literacy programs and plain language product descriptions or ways of talking about financial abuse to promote financial awareness and help-seeking; and**
- **where a language barrier is identified, the provision of interpreters and employees trained in providing interpreting services in the family violence context.**

Recommendation 49

5.102 That the Australian Government make the necessary legislative and regulatory changes to enable the Australian Taxation Office to assume responsibility for government child support collections, replacing the Agency Collect program currently managed by Services Australia.

Recommendation 50

5.107 That the Australian Government mandate annual payer and payee declarations to the Australian Tax Office for individuals in private child support payment arrangements; and require appropriate acquittal documentation, including but not limited to bank statements, to substantiate all declarations.

Recommendation 51

5.108 That, where an annual payer declaration shows that child support payments are not reasonably aligned with payee child support entitlements, or where an annual payer declaration is not made, Private Collect child support payment arrangements automatically convert to Agency (Australian Tax Office) Collect child support arrangements.

Recommendation 52

5.111 That, at the end of each financial year, the Australian Government provide child support payees with refundable tax credits equal to any shortfall in child support payments for the preceding year; and raise a corresponding tax debt against the relevant child support payer, collectable by the Australian Tax Office as a debt owed to the Commonwealth.

Recommendation 54

5.117 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.

Recommendation 55

5.120 That the Australian Government amend the *Corporations Act 2001* to ensure that the company director provisions appropriately recognise family and domestic violence, including financial abuse, as a reason why a director may be regarded as not in fact managing a company.

Recommendation 56

5.121 That the Australian Government extend the time period allowed to respond to a Director Penalty Notice in cases of reasonable claims of financial abuse.

Recommendation 57

5.123 That the Australian Government undertake a review of current legislative and regulatory settings relating to trusts, with a view to addressing the abuse and misuse of trusts as a mechanism for financial abuse and coercive control.

Recommendation 59

5.130 That the Australian Government establish a standing inter-departmental taskforce to oversee the implementation of safety-by-design principles into all government services.

Recommendation 60

5.132 That all relevant government agencies provide training to frontline staff on the identification of domestic and family violence, including financial abuse, and require mandatory reporting of suspected financial abuse

Recommendation 61

5.134 That all relevant government entities providing frontline services establish dedicated teams with specialised training in domestic and family violence, including financial abuse.

ANNEXURE B

Client Stories

Please note: All names have been changed.

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 was unable to obtain information from her previous accountant as Greg was still a client for this accountant and there was push back from the Greg. 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.

Carol had called the ATO numerous times to seek advice on what she should do. She had to tell her story each time which was not only frustrating but also upsetting as she had to recount her story numerous times. She was advised to write to the ATO about her situation, but felt the ATO wasn't listening as she was sent debt reminder letters.

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.

Ruby found the audit process daunting as she did not prepare the BAS and her former husband had control of the finances. She was penalised for failing to take reasonable care. She felt the ATO did not take into account her circumstances with the domestic violence and her ex-husband controlling the BAS lodgements. The ATO sent numerous letters following up the debt and requesting she enter into a payment plan which she could not afford. The Clinic assisted Ruby with the request for remission of the penalty and also negotiated a temporary payment plan which allowed her to pay a lower 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 abusive ex-partner.

The Clinic lodged an objection with the ATO which was not actioned for many months. Three months later the Clinic sent a complaint form to the ATO in relation to the delay in progressing the objection. Two months later a case officer was assigned, who asked if any further documentation was available in regards to the legal action with the client's ex-partner. The Clinic had not heard back in over 2 weeks since responding to this request. Excessive delays associated with the objection process heightened Lisa's distress and exacerbated her economic instability in what was already a difficult time.

Taylor and Frank decided to start a company – their relationship was going well at this point in time. Frank suggested Taylor be the sole director as Frank had a bad credit rating and told Taylor if would be easier for the company to obtain finance if Frank was not a director. As the business grew, Frank became more controlling and physically abusive to Taylor to a point where Frank told Taylor to stay at home and he diverted the earnings from the business to another bank account. Frank sold the business without notifying Taylor. As Taylor is the sole director, she's left with the debts of the company, including tax debts and equipment loans. Taylor is afraid to request information about the company's accounts and tax position from the previous accountant due to their relationship with Frank. She is also unable to obtain further information from the ATO other than the debt notices.

Taylor had called the ATO numerous times and was even allocated a case officer, however, the case officer was promoted to a different department and no one new has contacted her about her case. She felt she was being heard whilst she had a case officer, but now is frustrated and distressed she continually receives the debt reminders and each time she calls the ATO, she has to repeat her story.