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Parliamentary Joint Committee on Corporations and Financial Services  
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## **UNSW Tax and Business Advisory Clinic – Inquiry into the financial services regulatory framework in relation to financial abuse in Australia**

Thank you for the opportunity to make a submission to the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the financial services regulatory framework in relation to financial abuse.

### **Background**

Established in 2019, the UNSW Tax and Business Advisory Clinic's long-standing commitment to exclusively serving clients in serious financial hardship has been recognised with both international- and national-level accolades.<sup>1</sup>

Unfortunately, most of our female clients since our inception in 2019 have been victim-survivors of financial abuse. Worryingly, over 80% of our female clients so far this year have self-reported experiencing domestic violence – up from an average of 58% in our [4-year study](#) of this issue.

Described as “a *godsend*” by the CEO of Financial Counselling Australia,<sup>2</sup> our free tax and business advisory services enable the most disadvantaged to navigate a system that is almost impossible to navigate without professional representation. In addition, we aggregate client casework data to conduct innovative grassroots research and catalyse social impact across Australia. This submission is guided by a combination of our clinical observations and research findings and is focussed on **Question 5 and Question 7** (addressed in turn below).

More broadly, we endorse the submission of the Economic Abuse Reference Group.

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<sup>1</sup> Awarded the AACSB International's Innovations That Inspire Award in 2021, and Finalist at the Australian FinancialReview (AFR) Higher Education Awards in 2022 and 2023.

<sup>2</sup> “It has been a godsend to have services such as the UNSW Tax & Business Advisory Clinic as a referral option for financial counsellors with small business clients. The clinic can help clients with preparing records, lodging tax records and negotiating payment arrangements with the ATO”: Fiona Guthrie, quoted in: Ann Kayis-Kumar and Michael Walpole, ‘Throwing a financial lifeline to struggling microbusinesses’ (UNSW BusinessThink, 22 August 2023); available at: <https://www.businessstink.unsw.edu.au/articles/microbusinesses-tax-finances>.

### **Question 5: The role of government agencies in preventing and responding to financial abuse**

The Federal Government is taking considerable strides in providing legislative and regulatory protections for women experiencing coercive control.<sup>3</sup> Unfortunately, reforms to the tax system are notably absent from this ongoing policy development and resulting law design.

Yet, 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.<sup>4</sup> Existing tax law and administration requires the victim-survivor to repay these debts – even if these debts are not rightfully theirs.

Australia has no specific avenues for tax debt relief on grounds of financial abuse, and our serious hardship relief provisions as contained in Division 340 of Schedule 1 to the *Taxation Administration Act 1953* (Cth) are outdated and in urgent need of reform.<sup>5</sup> The only pathways available to the ATO in collecting these debts from victim-survivors are payment plans (requiring payment within 2 or 3 years), offsetting of future tax refunds, engaging external debt collectors, or initiating bankruptcy proceedings.<sup>6</sup> Each of these pathways are financially debilitating for victim-survivors (for client stories from UNSW Tax and Business Advisory Clinic, please see **Annexure A** below).

This presents a critical gap in the government's ability to address financial abuse comprehensively.

In contrast, the U.S. presents a notable – and internationally unique – solution with 'innocent spouse relief' provisions in place since 1971, and specific tax relief for victim-survivors of intimate partner financial abuse since 1998.<sup>7</sup>

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

- **New provisions and practice** – The U.S. laws give the IRS the discretion to offer relief from tax debts on grounds of financial hardship or public policy, in addition to other targeted initiatives relevant to earlier stages of tax debt collection.<sup>8</sup>
- **'Revenue-positive' reform** – By granting relief to victim-survivors and instead pursuing perpetrators, this reform will empower the ATO to better target its

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<sup>3</sup> Notable examples include the National Principles to Address Coercive Control in Family and Domestic Violence, the Working for Women Strategy, and the Financial Services Regulatory Framework in Relation to Financial Abuse inquiry by the Parliamentary Joint Committee on Corporations and Financial Services.

<sup>4</sup> Ibid; see also, Chen, V., 'Hidden Risks of Economic Abuse through Company Directorships' (2024) 47(1) *University of New South Wales Law Journal*.

<sup>5</sup> For a detailed analysis of the legislative background and the regulatory landscape, and the systemic issues faced by taxpayers in litigating serious hardship cases, please see: O'Rourke, K., Kayis-Kumar, A., & Walpole, M., 'Serious Hardship Relief: In Need of a Serious Rethink?' (2021) 43(1) *Sydney Law Review* 1-42.

<sup>6</sup> 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.

<sup>7</sup> Speidel, C.S., Patten, A. 'A Practitioner's Guide to Innocent Spouse Relief: Proven Strategies for Winning Section 6015 Tax Cases' (2022).

<sup>8</sup> Notable initiatives relevant to earlier stages of tax debt collection include: (1) "Offset Bypass Refunds", (2) longer payment plan timeframes, (3) triaging clients by using a Victim of Domestic Violence Indicator ('VODV'), and (4) Offers In Compromise ('OIC') based on Reasonable Collection Potential ('RCP').

resources and efforts towards collecting debts from taxpayers with better capacity to pay.

- **Improved equity** – It is appropriate that the perpetrator is responsible for payment of a debt that they originally incurred and had the economic benefit of. This reform will result in significantly better outcomes for financially vulnerable victim-survivors, while also improving trust and confidence in the ATO among the wider community.
- **Improved public awareness** – This reform could be supported by public education and/or community legal centres and National Tax Clinics being mobilised to offer training to support the implementation phase.

### **Question 7: Any other related matters, including comparative information about arrangements in relevant overseas jurisdictions**

Our latest research<sup>9</sup> 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<sup>10</sup> and The Guardian.<sup>11</sup>

This work outlines both the legislative history and regulatory landscape across Australia and the United States, and explores the systemic issues faced by survivors of domestic violence. Identifying lessons learnt from developments in the United States, this research offers evidence-based recommendations to modernise Australia's current law and policy design, and includes an emphasis on supporting victim-survivors of financial abuse in the ATO's administrative practice. It is hoped that these recommendations will assist policymakers, support the ATO's efforts in evaluating meritorious applications for tax relief, and improve outcomes for victim-survivors of financial abuse.

Our recommendations are extracted below:

#### **Recommendation 1: Raising awareness of financial abuse amongst the tax profession**

It is highly problematic for tax professionals to be unwittingly (at best) or willingly (at worst) establishing and maintaining structures that enable financial abuse. Appropriate responses include domestic violence and coercive control awareness training.<sup>12</sup>

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<sup>9</sup> Ann Kayis-Kumar, Christine Speidel and Leslie Book, '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.

<sup>10</sup> Nassim Khadem, 'The ATO is reviving old tax debts totalling billions, threatening some taxpayers with bankruptcy' (ABC, 14 March 2024) <<https://www.abc.net.au/news/2024-03-14/ato-reignites-old-debts-individuals-businesses-struggle/103578746>>.

<sup>11</sup> Jonathan Barrett, 'Financial abuse can follow victims long after relationships end. Australian experts are calling for reform' (The Guardian, 29 March 2024) <<https://www.theguardian.com/society/2024/mar/29/financial-abuse-can-follow-victims-long-after-relationships-end-australian-experts-are-calling-for-reform>>.

<sup>12</sup> This would be akin to the Deakin Business School's "Counting on U" workplace mental health first aid training offered to client-facing accounting professionals across Australia and New Zealand: Deakin Business School, *Deakin University* (Web Page) <<https://blogs.deakin.edu.au/counting-on-u/>>; see further: InTheBlack, 'Mental Health First Aid Training Essential for Accountants' (Blog Post, 1 October 2021) <<https://intheblack.cpaaustralia.com.au/work-life/mental-health-first-aid-training-essential-for-accountants>>.

### **Recommendation 2: Update ATO practice on the issuance of DPNs**

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

### **Recommendation 3: Improved transparency of ATO processes**

Practice Statement *PS LA 2011/17 Debt relief, waiver and non-pursuit* is the only guidance a taxpayer has in relation to debt relief or release. There is no mention of financial abuse being used as a factor in determining whether to grant relief from tax debts. While financial abuse may be accepted as an indicator of vulnerability and is likely part of the ATO's internal processes when dealing with vulnerable taxpayers, there is currently no clear statement, recognition or process outlining that this group of taxpayers is deserving of special protections. This contrasts with the IRS's approach, publicly detailing its use of the VODV on taxpayer accounts and its consideration of financial abuse in spousal relief determinations. This submission suggests revising ATO guidance to reflect a recognition of financial abuse as an indicator of financial vulnerability.

### **Recommendation 4: Legislative reform overriding the general rule requiring the offsetting of tax refunds against outstanding tax liabilities in situations of financial hardship**

There is much to be gleaned from the US treatment of taxpayers struggling with financial hardship, including the offset bypass refund (OBR) mechanism.<sup>13</sup> Even if the ATO have determined a victim-survivor's tax debt is non-economical to pursue and therefore put it "on hold", any future tax refunds received by the victim-survivor will be used to offset the old tax debt. This hinders the ability of victim-survivors to save funds for their future, thereby exacerbating ongoing, long-term financial instability. This presents a particularly perverse outcome that requires legislative reform to address through a systemic waiver, as proposed by Fogg/ABA.<sup>14</sup> To address this issue, we submit the possibility of legislative reforms to override the general rule of offsetting tax refunds against outstanding tax liabilities in cases where the taxpayer is a victim-survivor of financial abuse experiencing serious financial hardship. This reform could be modelled after the US OBR mechanism, allowing victim-survivors to receive their full tax refunds without offsets, provided they meet certain criteria demonstrating financial hardship and financial abuse.

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<sup>13</sup>As noted in Part 4.3.2, there is even greater potential for use of the economic hardship data than the IRS currently employs.

<sup>14</sup>The Fogg/ABA proposal creates a systemic waiver by income and/or for welfare payments delivered through the tax system: see further: Keith Fogg, "Requesting an Offset Bypass Refund and Tracing Offsets to Non-IRS Sources", *Procedurally Taxing* (Article Post, 9 December 2015) <<https://www.taxnotes.com/procedurally-taxing/requesting-offset-bypass-refund-and-tracing-offsets-non-irs-sources/2015/12/09/7h5dh?pt=1>>.

**Recommendation 5: Modernise serious hardship relief provisions by legislating for ATO discretion for tax relief for victim-survivors of financial abuse experiencing serious financial hardship**

Inspired by a combination of both the innocent spouse relief provisions and the IRS discretion for relief on grounds of public policy, Australian policymakers would be able to adapt either or both mechanisms to provide relief for this cohort of financially vulnerable taxpayers.<sup>15</sup> Academic research in the US has put a spotlight on issues faced by vulnerable taxpayers, which has in turn led to the design and implementation of legislative and administrative provisions giving the IRS more flexibility in the exercise of its discretion to relieve financially vulnerable taxpayers from their debts. Notably, a critique that remains of the IRS approach is that while it has appropriate provisions in place, these are not always operationalised in practice.<sup>16</sup> This highlights the need for any similar reform in the Australian context to be accompanied by adequate implementation and oversight frameworks, and regular, iterative and trauma-informed training of ATO decision makers to ensure the provisions are widely utilised in meritorious cases in practice.

These recommendations are designed to attain better outcomes for survivors of financial abuse while also maintaining trust and confidence in the Australian Taxation Office among the wider community.

If you have any questions about this submission, please contact A/Professor Ann Kayis-Kumar at [REDACTED]

Yours faithfully,

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<sup>15</sup>It may also be a viable proposal for the US to add economic abuse to the ETA criteria for non-income tax debts caused by abuse, such as TFRP, and make ETA a viable path for offers.

<sup>16</sup>As noted in Parts 4.1 and 4.3, there remain ongoing calls for greater transparency in the implementation of the VODV indicator as well as the IRS's use of its compromise authority.

# Annexure A – Client Stories

Please note: All names have been changed.



Angela and her ex-husband, Brad, had a family partnership. Brad was involved with running the business while Angela was a stay-at-home mum with four children. Angela was not involved in the business. Brad was physically and financially abusive to Angela. Angela left the marriage with no assets. She couldn't afford to hire a family lawyer to assist her. She was left with a tax debt of approximately \$32,000 (as the income from the partnership was split 50/50 in the tax return) and a Centrelink debt of approximately \$18,000 due to the repayment of family tax benefit which she was unable to pay. Further, during the process of separation, one of Angela's children was diagnosed with a major illness which added to the financial strain for Angela. Angela's tax debt is currently 'on hold' and any refunds she receives will be used to offset the debt. Given Angela's annual income is \$48,000, she is now likely to be caught in a debt cycle.



Carol was in a financially dependent relationship with her partner, Greg. Greg asked Carol to sign paperwork otherwise he would not provide her with money. Unbeknownst to Carol, she was made a director of the company. Carol was not involved with running the company and she didn't know she was a director. Carol ended the relationship with Greg due to the domestic abuse. The ATO issued Carol a director's penalty notice, in the amount of approximately \$175,000, which she needs to pay within 21 days. Carol is currently in the process of defending the DPN, however, if this is unsuccessful, she will need to declare bankruptcy for a debt she was not aware of – nor responsible for creating.



Tanya and Sam were married with four children and ran a business together as a partnership. Sam had an addiction problem and, unknown to Tanya, spent their money on his addiction. Tanya was not as involved in the business as all the children were under 6. Tanya and Sam separated due to his addiction. Sam was then incarcerated. Tanya was left with the children and had to declare bankruptcy as she was unable to pay the tax and business debts which totalled approximately \$160,000. She will carry this label for the rest of her life, and it will limit her ability to obtain finance and will likely adversely impact her future employment opportunities.



Ruby was in a financially dependent relationship with her ex-husband, John. John made Ruby set up an ABN in her name, even though they were both involved in the business. Ruby relied on John to prepare the business activity statements and tax returns due to his background as an accountant. Ruby was audited by the ATO however, Ruby asked the ATO to liaise with John as he prepared the documents. At this time Ruby and John were separated due to domestic abuse and her concerns for her children's safety. Ruby was penalised by the ATO for failing to take reasonable care. She is working seven days a week to make ends meet, and is now left with the GST debt of approximately \$9,500 due to the audit. She is unable to pay this amount over the current payment plan period of 24 months – although she is willing to pay an amount each month.



Lisa has experienced past and recent domestic violence (including financial abuse) from her husband. They have recently separated. As a single mother of 8 children, Lisa relies on Centrelink payments to cover essential expenses. She has recently moved into temporary accommodation after having to leave her previous rental. Part of the financial abuse perpetrated by Lisa's abusive partner was to open a business under her name with an ABN created in 2017. Lisa has never been involved with the business, had no control over it, and did not receive financial benefit. The matter has been reported to the police. Lisa now has a large tax debt of around \$100,000 in her name related to this activity. There is also a significant Centrelink debt connected to this, due to overpayments of Family Tax Benefit based on the business income of her abuse ex-partner.