

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



## Executive Summary

1. Many women in hardship have tax debts that arise from intimate partner violence.
2. Current tax administration practices require that these tax debts are paid. The tax system operates on a fundamental premise that the tax debt is genuine. This premise should be rebutted in circumstances where the tax debt arises from intimate partner violence.
3. Modernising tax administrative approaches form an important part of the framework required to support the National Plan to End Violence against Women and Children, and will improve overall community confidence in the fairness of the tax system.
4. We summarise our main recommendations to improve tax administration for victim-survivors of domestic violence and coercive control as follows:
  1. ATO to develop a Financial Safety by Design framework and diagnostic tool to assess whether its policies and guidance include features that prevent misuse and mitigate potential harm.
  2. Establish a specialised team who receive trauma-informed training to work with and identify victim-survivors (including an ATO liaison program).
  3. Revise ATO protocols for debt recovery of victim-survivors.
  4. Simplify working with victim-survivors to update their details with the ATO.
  5. Enhance fraud detection through the use of flags in the system.
  6. Revoke assessments that have resulted from financial abuse and instead issue assessments to the perpetrator.
  7. Do not pursue the recovery of the tax debts of victim-survivors.
  8. Provide more flexible and longer payment plans for victim-survivors.
  9. Establish a policy position that domestic violence and coercive control meet the “good reasons” defence to Director Penalty Notices.
  10. Accepting the testimony of victim-survivors as evidence of domestic violence and coercive control.

**Please see the “Recommendations” section of this document for a more detailed explanation of all of our recommendations.**

## Background

Approximately 2.4 million Australians are victim-survivors of economic and financial abuse perpetrated as part of intimate partner violence (‘IPV’). This disproportionately affects women (ABS, 2023) and costs the Australian economy \$10.9 billion each year (CommBank, 2022).

Clinical data shows that around 14% of women in hardship with unmet tax needs also have tax debts arising from IPV (or ‘sexually transmitted tax debts’) (Kayis-Kumar et al, 2024). This is often the result of perpetrators placing tax and other debts in the victim-survivor’s name, thereby weaponising existing tax law and administration as a further tactic of abuse.

Existing tax law and administration requires the victim-survivor to pay 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 (O’Rourke et al, 2021). The only pathways available to the ATO in collecting these debts from victim-survivors are payment plans (requiring payment within 2 years), offsetting of future tax refunds, engaging external debt collectors, or initiating bankruptcy proceedings.

Each of these pathways are both financially debilitating and unjust for victim-survivors. This is most problematic in situations where ‘sexually transmitted tax debts’ are pursued to ATO-initiated bankruptcy. Bankruptcy has far-reaching and profound implications. It presents not only a financial challenge but can also significantly impact mental health, access to housing, ability to obtain credit, higher interest rates, ability to travel abroad, ability to establish a business, and it impacts standing in property settlements in the family court which in turn can affect child custody (because the parent must be able to prove to the family court they are capable of providing food, clothing, and housing to their child in order to be granted custody).

This systems-level deficiency enables and exacerbates the cycle of abuse, underscoring the urgent need for legislative reform which shifts tax liability from victim-survivors to perpetrators and supports victim-survivors with hardship relief provisions.

This has been the focus of our research and advocacy efforts to date, culminating in citation and endorsement by the Rapid Review of Prevention Approaches to End Gender-Based Violence (‘the Rapid Review’), and supporting the Federal

Government's National Plan to End Violence against Women and Children ('the National Plan'). Specifically, as noted in the Commonwealth media release 'Commonwealth investments to prevent and respond to gender-based violence' on 6 September 2024:

"To stamp out opportunities for systems abuse, the Government will immediately commence an audit of key Commonwealth government systems to identify areas where they are being weaponised by perpetrators of family and domestic violence. The audit will include the child support, social security and **tax systems** and will leverage existing reviews underway that seek to strengthen these systems."

Modernising tax administrative approaches forms an important part of the regulatory and administrative framework to support the National Plan. To that end, the remainder of this note sets out our recommendations for a trauma-informed administrative framework and modernised approach to supporting victim-survivors and disrupting perpetrators of intimate partner financial abuse.

### Recommendations

Consistent with Recommendation 16 of the Rapid Review, and developments in the banking and insurance sectors, we recommend that the ATO develop a tailored Financial Safety by Design framework and diagnostic tool to assess whether its policies and guidance include features that prevent misuse and mitigate potential harm. This work should be developed in conjunction with people with lived experience, academics, community service providers, and experts in domestic and family violence ('DFV') and financial abuse, including the UNSW Gendered Violence Research Network, Redfern Legal Centre's Financial Abuse Service NSW, Centre for Women's Economic Safety and other members of the Economic Abuse Reference Group.

While our research on this topic is ongoing, we recommend that the ATO develop a systematic financial abuse intervention response grouped in the following three-fold categories: prevention, early intervention, and crisis response.

#### 1 Prevention – Proactively prevent financial abuse through behavioural and attitudinal change.

- Trauma-informed ATO Staff
- a. introduce clear and transparent processes for how the ATO will respond to matters involving family violence and financial abuse;

Notably, 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 economic abuse being used as a factor in determining whether to grant relief from tax debts. While economic 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 'Victim of Domestic Violence'? on taxpayer accounts. We recommend revising ATO guidance to reflect a recognition of economic abuse as an indicator of financial vulnerability (Kays-Kumar et al, 2024).

- b. mandate family violence training for all customer-facing ATO staff in order to identify and assist victim-survivors;
- c. establish a specialised team who receive trauma-informed training to identify and assist victim-survivors (victim-survivors could have their own ATO liaison so that they do not need to constantly explain their circumstances to frontline staff);
- d. revise ATO protocols for debt recovery in respect of victim-survivors; and
- e. simplify 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 contact methods nominated by the victim-survivor.

#### 2 Early intervention – Detect and address financial abuse at its earliest stages, protecting victim-survivors and denying abusers the opportunity to abuse.

- Enhancements to fraud detection including a flag in ATO systems:
  - a. that 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. being 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 weaponization of tax administration.

### 3 Crisis response – Immediate action required when financial abuse has been identified to provide safety and support victim-survivors and hold abusers to account.

- **Assessments:**
  - a. the Commissioner should revoke assessments resulting from financial abuse that have been issued to victim-survivors and instead issue corresponding assessments to perpetrators; and
  - b. a set of criteria should be drafted that governs the exercise of the Commissioner’s discretion to grant extensions of time for victim-survivors to lodge an objection.
- **Improved debt recovery processes including:**
  - a. the Commissioner not to pursuing the debts of victim-survivors; and
  - b. more flexible and longer payment plans for victim-survivors.
- **“Good reasons” defence to Director Penalty Notices (‘DPN’):**
  - a. establish a policy position that domestic violence and coercive control meet the “good reasons” defence; and
  - b. 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.”
- **Accepting the testimony of a victim-survivor as evidence:**
  - a. 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 economic 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.

- b. Due to these factors as well as the low rate of false reporting, the ATO should accept a victim’s testimony (in the form of a written statement or statutory declaration ) in most cases.
- c. Requiring other forms of documented evidence of DFV 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.

#### Concluding remarks and next steps

Thank you for the opportunity to contribute to, and engage in, these discussions. We would be grateful for the opportunity to further engage on this important issue through co-design, supporting the provision of trauma-informed training of frontline staff and/or contributing any further research or evidence, as appropriate.

**If you have any questions or would like any further details, please contact A/Professor Ann Kayis-Kumar at [a.kayis@unsw.edu.au](mailto:a.kayis@unsw.edu.au).**



For our latest research please see: 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.

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