

24 December 2024

Inspector-General of Taxation and Taxation Ombudsman
GPO Box 551
Sydney NSW 2001

Dear Inspector-General of Taxation and Taxation Ombudsman,

**Re: Family and Domestic Violence Legal Workers Network (FDVLWN) Western Australia (WA)
Response to Inspector-General of Taxation and Taxation Ombudsman (IGTO): Identification and
management of financial abuse within the tax system**

Introduction

Background to the FDVLWN

The WA Family and Domestic Violence Legal Workers Network (FDVLWN) welcomes the opportunity to make this submission to the IGTO in relation to their review regarding the identification and management of financial abuse within the tax system (the Review).

The FDVLWN is comprised of members of legal assistance services operating in Western Australia (WA). The FDVLWN provides a mechanism to coordinate systemic advocacy, training and reform for the Community Legal Centre (CLC) sector. The FDVLWN shares information, promotes and organises professionals to assist building the capability of Network members, and leads the preparation of submissions relevant to the Network.

The FDVLWN is convened by Women's Legal Service WA (WLSWA). WLSWA is a specialist gender-specific community legal centre, providing services to women around WA who are financially disadvantaged, prioritising women experiencing family, domestic and sexual violence (FDSV). In addition to poverty and FDSV, WLSWA clients often live with multiple vulnerabilities which create additional barriers to accessing justice. WLSWA aims to empower women to make informed choices and participate fully in legal processes that impact them and their children. WLSWA also advocates for women's rights to be upheld and fosters social change through education and policy reform.

FDVLWN member CLCs offer a range of legal services, including:

- specific FDSV services for women;
- representation to Respondents to FVROs;
- representation for Family Law matters;
- criminal injuries compensation matters;
- Protection and care matters;
- representation to clients in criminal matters;
- consumer credit and financial abuse matters; and
- many other areas of law that intersect with FDSV.

Collectively, our organisations have significant knowledge and practical experience relating to the experiences of victim-survivors and perpetrators of sexual violence.

Acknowledgments

We acknowledge the Traditional Owners of the country on which WLSWA staff live and work, the Whadjuk people of the Noongar nation, and pay our respects to their Elders past and present.

We also endorse this statement from the National Plan to End Violence against Women and Children 2022-2032:

Victim-survivors must be at the heart of solutions. Victim-survivors have specific and contextual expertise that comes from lived experience of abuse and violence. They have intimate firsthand knowledge of services, systems, and structures that are meant to support them but have sometimes failed them. They know from experience the weaknesses and strengths of interventions in practice (p68).

We cannot develop effective solutions to FDSV without the input of the people most affected by it.

Background to the submission

This year has marked a pivotal shift in the WA discourse on FDSV with the implementation of the Family and Domestic Violence Taskforce and Lived Experience Reference Group. We are heartened by the Government's commitment to taking a whole of Government approach to addressing financial abuse experienced across the life course of victim-survivors – from primary prevention, perpetrator accountability, improving the taxation system, to recovery and support. We need long-term investment in preventing family, domestic and sexual violence.

FDSV commonly extends to financial abuse, which manifests in many forms and can affect anyone. In the context of the tax system, it may lead to one partner or family member being held responsible for personal tax liabilities or debts linked to entities they have little or no control over. This can have a devastating impact on victim-survivors, leaving them to cope with substantial financial burdens and instability due to debts that are not their own.

We have considered the Review in light of the current legislation and the State and Federal Governments' commitments to addressing FDSV and financial abuse. We have made comments below which relate to issues of key interest or relevance to the many clients who seek assistance from our respective legal practices.

Foundational principles

Please note that our submission to Review has been guided by the following ***underpinning principles***:

- A demonstrated and ongoing need for a systems approach to responding to financial abuse, including consistent and appropriate support for the victim-survivor throughout the process.
- Prioritising access to legal assistance for victim-survivors, including legal assistance to help navigate intersecting legal issues, from when a victim-survivor is considering whether to report their issue, through to the end of their legal matters.
- A need for an approach which is culturally secure, trauma-informed, and consistent across Australia.
- A need for well-trained, well-supported and well-resourced specialist staff across the justice and financial and tax services systems, with in-depth and ongoing training.

- The need for service responses to consider a dedicated/bespoke and appropriate regional/remote response which is culturally safe for Aboriginal and Torres Strait Islander Peoples. Such responses should have overall relevance for WA, as well as other parts of Australia through service delivery in very remote areas.
- The importance of acknowledging the nuances of responding to the needs of clients with intersectional experiences of FDSV, including gender diverse or queer clients or clients in non hetero-normative relationships, clients from culturally, ethnically, linguistically, or faith diverse communities, clients who also have additional needs relating to their mental health or dependence on alcohol or other drugs, clients with disabilities, clients who need literacy supports and many others.
- Ongoing legislative reform which retains a focus on broader cultural change and systems reform towards having trauma-informed, culturally safe and gendered violence-informed systems – with the purpose of both increasing conviction rates through the criminal justice system, as well as improving other outcomes for victim-survivors.
- Recognising where financial abuse occurs in the context of FDSV, we need responses that are tailored to this, as well as recognising intersecting legal issues that are likely to co-occur such as domestic violence orders, family law, child protection, victims of crime compensation, migration law (partner visas) and NDIS issues. Of particular importance is that financial abuse or economic abuse in this context is not usually a single incidence or incident. Such abuse is often used by perpetrators as part of a broader pattern of abuse, violence and control, and has wider, complex and long-term impacts on the lives of the victim-survivor and their children.

Formulating the FDVLWN response

The FDVLWN has consulted with lawyers and policy staff across the WA Community Legal Centre (CLC) sector and has built on work previously undertaken by Women’s Legal Services Australia (WLSA), the Economic Abuse Reference Group (EARG) and other submissions to government by the FDVLWN.

Due to timeframe, timing and resource constraints, as well as the specific experience held by members, the review questions have not been responded to individually. Instead, we have focused on key issues we would like to see considered by this Review. These are listed below. We have also included a de-identified case example provided by one of our members, which illustrates many of the key issues that we see frequently in our practices.

Key issues of concern

Relief for Goods and Services Tax (GST) Debt

Financial abuse can take various forms, including situations where individuals are unfairly burdened with financial responsibilities without their consent or awareness. For instance, this could occur when someone is appointed as a director of a family business, and subsequently incurs GST debt without their knowledge or involvement, yet they are held liable for that debt.

As per the Australian Taxation Office (ATO) website page detailing “Release from your tax debt”:

Individuals experiencing serious hardship may apply for release from paying some tax debts. We take into account your individual circumstances when considering your application.¹

However, companies, trusts, and partnerships are not eligible to apply for the release of tax debts. Moreover, not all tax debts are eligible for release, including GST. As a result, there is currently no pathway for GST relief in cases involving FDSV or financial abuse.

The Parliamentary Joint Committee on Corporations and Financial Services conducted an inquiry throughout 2024, resulting in the release of the Financial Services Regulatory Framework in Relation to Financial Abuse (Inquiry) in December 2024². The Inquiry offers valuable insights on relief for GST.

- The UNSW Tax and Business Advisory Clinic highlighted that perpetrators of financial abuse often make the victim-survivor the co-director or sole director of a company while denying them any real decision-making authority or access to financial information. This allows perpetrators to exploit the system, using it as a shield to avoid bankruptcy.
- The Australian Securities and Investments Commission (ASIC) noted amendments to the Corporations Act 2001 (Cth) in 2021, introducing the Director Identification Regime, requiring both new and existing directors to obtain a director identification number (Director ID) before being appointed as a company director.³
- The UNSW Tax and Business Advisory Clinic emphasised the importance of creating additional barriers by mandating a director ID. They also acknowledged that perpetrators may still coerce or pressure victim-survivors to access myGov or create a director ID, or they might use a spouse's identification documents to establish a myGov account or apply for a director ID.⁴
- ASIC highlighted the advantages of linking director IDs to the company register. This connection will help prevent the use of fraudulent identities, improve communication with directors upon their appointment, and enhance the traceability of directors' relationships with companies over time.⁵
- In cases where it becomes clear that a director was appointed without consent, ASIC can remove that person from the company register. However, ASIC also noted that, in disputes, it generally does not act as an arbitrator in conflicts regarding company officeholders.⁶
- The Economic Abuse Reference Group (EARG) pointed out that a victim-survivor may be disqualified from receiving Centrelink payments due to their directorship or suspected business assets, even if they are unaware of the business or their role as a director. Victim-survivors often only discover their directorship when their Centrelink application is denied.⁷
- The UNSW Tax and Business Advisory Clinic suggested that the ATO consider a policy change to focus enforcement on the perpetrator, in their capacity as a shadow or de facto director, where there is sufficient evidence that they control the company.⁸

¹ Australian Taxation Office, *Release from your tax debt* (Website, 11 April 2021) www.ato.gov.au/individuals-and-families/financial-difficulties-and-disasters/support-to-lodge-and-pay/in-detail/release-from-your-tax-debt.

² Parliamentary Joint Committee on Corporations and Financial Services, *Financial Services Regulatory Framework in Relation to Financial Abuse*, 5.46.

³ *Ibid* 5.47.

⁴ *Ibid* 5.48.

⁵ *Ibid* 5.49.

⁶ *Ibid* 5.50.

⁷ *Ibid* 5.51.

⁸ *Ibid* 5.52.

- EARG recommended an amendment to section 588H(4) of the *Corporations Act 2001* (Cth) to specifically recognise family and domestic violence as a valid reason for a director’s non-involvement in managing a company.⁹

The Inquiry puts forward several recommendations to address financial abuse. In light of the information and points discussed above, we fully support and advocate for the following recommendations to address the issue of relieving GST debt in cases involving financial abuse:

- **Recommendation 49:** 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 50:** That the Australian Government amend *the Corporations Act 2001* (Cth) 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 51:** That the Australian Government extend the time period allowed to respond to a Director Penalty Notice in cases of financial abuse.

Other tax debts

As identified by EARG in their submission to this review, the Australian taxation system does not currently provide tax debt relief specifically in situations of financial abuse. Consequences to victim-survivors include the following:

- paying tax debts on a two-year payment plan;
- future tax refunds used to offset their debts;
- external debt collectors; and
- bankruptcy.

Furthermore, the current guidance around the capacity of the ATO to release a taxpayer from a tax liability due to hardship is unclear when this hardship relates to financial abuse and FDSV. In general, the ATO does not specifically recognise that victim-survivors of FDSV as eligible for special protections or tax relief.

Perpetrators Minimising Taxable Income

FDVLWN members noted a frequent concern that ex-partners of women experiencing financial abuse frequently utilise a range of tactics to unfairly reduce their reportable income, or their assets, to impact child support payments or financial settlements. In particular, tactics such as failing to report income changes, or transferring assets, can significantly impact access to Centrelink payments, either through causing delay, or causing the victim-survivor to incur a debt. Other frequently-used tactics are common for perpetrators with small businesses, who will work for cash in hand, or make their new partner a business partner to split the income.

FDVLWN notes the ongoing work of the ATO to improve accountability for small businesses, which has had a positive impact on reducing some forms of financial abuse by some perpetrators. However, there remains a risk of unintended consequences, where a victim-survivor may become at greater risk of financial harm or physical harm following changes or recovery activities. FDVLWN is supportive

⁹ Ibid 5.53.

of the ATO implementing further accountability mechanisms, but encourages the development of additional policies to ensure that these do not increase risk to the victim-survivor.

Child Support Payments

The Inquiry revealed a significant lack of support for parents who were financially short-changed and found that weak enforcement was allowing mostly male parents who owed money to avoid accountability. The Inquiry's main recommendation regarding this topic was for Services Australia to transfer its child support payment responsibilities to the ATO, as it would be more effective at ensuring parents only pay what they owe. It also recommended that both child support payers and recipients report their payments to the ATO annually and submit evidence such as bank statements. If the ATO discovered discrepancies between the reported amounts and what the recipient was entitled to, or if no report was submitted, the child support payments should be transferred to the ATO's collection system.¹⁰

The Inquiry suggested several recommendations aligning with transferring the responsibility of child support payments to the ATO. We support and encourage the following recommendations from the Inquiry:

- **Recommendation 45:** 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 46:** 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 47:** 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 48:** 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 ATO as a debt owed to the Commonwealth.
- **Recommendation 52:** That the Australian Government amend the Social Security Act 1991 (Cth) to:
 - remove the requirement that a person has to have left their home to qualify for crisis support payment;
 - extend the deadline by which a person must apply for a crisis payment; and
 - ensure that a victim-survivor is not precluded from accessing a 'special circumstances' waiver if a perpetrator lies to Centrelink without the debtor's knowledge or consent, or if the debtor makes a false statement or misrepresentation as a result of coercion or duress by a perpetrator.

¹⁰ Hamish Hastie, *Australia has \$1.7b in unpaid child support. These MPs have a plan to claw it back* (The Age, 5 December 2024). www.theage.com.au/politics/federal/australia-has-1-7b-in-unpaid-child-support-these-mps-have-a-plan-to-claw-it-back-20241205-p5kw6l.html.

- **Recommendation 53:** That the Australian Government establish a standing inter-departmental taskforce to oversee the implementation of safety-by-design principles into all government services.
- **Recommendation 54:** That all 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 55:** That all government entities providing frontline services establish dedicated teams with specialised training in domestic and family violence and financial abuse.

ATO response to resolving complex financial matters in the context of financial abuse or other forms of FDSV

Overall, consultations within the network showed that for straightforward situations, the ATO has mostly adequate pathways, support systems and responses for situations where financial abuse has occurred. However, this was viewed as being inconsistent, and more challenging to address in complex financial matters, such as when there are small businesses, trusts and multiple properties. Some examples of where complex matters have resulted in a more challenging and time-consuming resolution included the following:

- Where one party has been given full responsibility for all debts, when they were not involved in incurring or applying for the debts and were sometimes unaware of the asset or business relating to the debt;
- Situations where there is offshore cryptocurrency, shares, and/or the majority of funds are inaccessible and unable to be released;
- Financial agreements relating to property that appear disproportionately favourable to one party; and
- Agreements executed under circumstances that suggest coercion.

Although it might be assumed that individuals with these particular concerns may be sufficiently resourced to engage private legal, accounting or administrative support to address them, the reality is that women experiencing financial abuse from their partner often have very little access to resources. Financial counselling services are not usually sufficiently resourced to provide more than a standard response, and not all counsellors are sufficiently trained or experienced to recognise where abuse has occurred. Complex matters require a more in-depth response that is not available in mainstream services, nor in the standard support service at the ATO.

Furthermore, we recognise the ongoing work the ATO has done to improve accountability of small business owners and others to remain fully accountable for their tax obligations.

In general, FDVLWN members noted that where there is a tax debt, the ATO can sometimes choose to pursue collection of the debt in an aggressive manner, which may mean that there will not be sufficient time or resources to identify whether a person is a victim-survivor of financial abuse. A person may feel pressured to pay the debt immediately, after which there may be little recourse to recover any money paid.

Moratorium on tax debt collection during family court proceedings

FDVLWN members raised concerns about situations where a tax debt is pursued by the ATO for a victim of financial abuse who has not incurred the debt and who are subsequently left with little

resources following a property settlement in the Family Court. In response to this issue, IFDVLWN supports the following recommendations made by the EARG in their submission to this Review.

- The ATO should pause any enforcement of tax liabilities (including a moratorium on interest and penalties) against a victim survivor of financial abuse while proceedings are on foot in the Federal Circuit and Family Court of Australia (including the Family Court of Western Australia (FCWA)).
- The ATO should release a victim survivor of financial abuse from a tax liability where the Federal Circuit and Family Court of Australia (including FCWA) has made an order indemnifying them in relation to the tax liability, and instead pursue the perpetrator for the tax liability.

ATO response to financial abuse for people with disability

Overall, the current ATO response to financial abuse experienced by people with disability is dependent on a person's ability to navigate the website to locate the relevant information in an "easier to read" format, or in Auslan. This is more than many government and other websites, and the ATO should be commended for their work in this area. However, we suggest that the ATO further consider the intersection of FDSV and people with disability, and improve their advice and response in this area. We also suggest a more specific "Easy Read" version for some key resources. Lastly, we note that Auslan resources were not located within the section relating to people with disability. There may be some improvements to accessibility to have this information in both locations.

ATO response to financial abuse for Aboriginal and Torres Strait Islander people

Similarly, the current ATO response to financial abuse experienced by Aboriginal and Torres Strait Islander peoples is dependent on their ability to navigate the website to locate the relevant information. The ATO website contains a comprehensive section focusing on ensuring that Aboriginal and Torres Strait Islander peoples can successfully navigate the Australian tax system. However, we suggest that the ATO consider the following enhancements to their website and services:

- A section focusing on information to respond to financial abuse, including clear and accessible guidelines around who should receive tax refunds, or Child Tax Benefits, potentially with a visual step by step guide; and
- Translations of key information in Aboriginal and Torres Strait Islander languages – an audio or video version would be most appropriate.

Depending on available resources and sourced participants from specific regions, audio and video would open up an entire demographic of Aboriginal and Torres Strait Islander clients and customers feeling supported and able to utilise ATO resources themselves without assistance.

Some suggested languages include:

- Yolŋu Matha (North East Arnhem Land);
- Kriol (Kimberly regions);
- Meriam Mir (Eastern Islands of Erub, Ugar and Mer);
- Yumplatok/ Torres Strait Creole (Torres Strait and Cape York Peninsula);
- Kala Lagaw Ya (Western Islands of Mabuiag and Badu); and
- Pidgin (South Sea Islander).

ATO resources to identify, respond to, and prevent financial abuse

A search of the ATO website did not reveal any specific resources around financial abuse as it relates to tax. We suggest that the ATO consider developing a series of resources to include this within the existing ATO resource suite, to improve awareness of this pervasive problem.

Some other opportunities for intervention could include:

- The inclusion of a specific reference to ATO support services throughout key correspondence with tax payers. For example, letters reminding a person to complete a tax return could also include a consideration that there may be important reasons why someone has not submitted their return, and that help may be available to them.
- Reasonable checks and balances when a person's tax refund has not been deposited into their own bank account.
- Training to ensure better understanding and skills in frontline ATO staff to recognise and appropriately respond to financial abuse.
- Better data sharing across other Government systems to identify financial abuse.
- Improved and additional algorithms to detect unusual or incongruent information which may indicate financial abuse.
- Improved information and capacity building for financial counsellors and accountants to prevent, identify and respond to financial abuse.
- Improved pathways for financial counsellors to access support services available through the ATO.
- Where a person is liable to pay a tax debt, the ATO should consider implementing payment plans which can be paid for terms greater than two years (e.g. up to four years)

Case Example - Julia

Julia (pseudonym), a 36-year-old mother of two, resides in regional Western Australia and works part-time. Three years ago, she separated from her partner, a self-employed tradesman, after years of coercive control and financial manipulation. Despite their physical separation, he continued to exercise control over Julia's financial wellbeing by exploiting the tax system.

Tax Liability and Debt Manipulation

During their relationship, he insisted that all financial matters, including tax returns, be handled jointly, claiming it was "easier" for their household. Without fully understanding the implications, Julia was added as a co-signer on his business tax accounts. Following their separation, Julia discovered that he had underreported his income and claimed fraudulent deductions, resulting in significant tax debts. Under Australian tax law, as a co-signer, Julia was held jointly liable for these debts, despite her lack of involvement in the misconduct.

Manipulation of Family Tax Benefits

His underreporting of income also led to Julia receiving overpayments of Family Tax Benefits (FTB), a crucial government support for low-income families in Australia. When the ATO identified the discrepancies, Julia was required to repay the overpaid amount. This placed her in a precarious financial position, even though she was unaware of Josh's deliberate misreporting.

Denial of Financial Information

After their separation, he refused to provide her with essential tax documents, such as income statements and business records. This obstruction left Julia unable to independently comply with her tax obligations, further exacerbating her financial stress. When she attempted to address the issue, Josh threatened legal action, using the system as a tool of intimidation.

Child Support Evasion

His manipulation of his taxable income through his business significantly reduced his child support obligations under the Australian formula. This left Julia struggling to meet basic needs for her children, while he continued to enjoy a comfortable lifestyle. His actions underscore the systemic flaws that allow self-employed individuals to avoid equitable contributions.

Impact on Julia's Life

The economic abuse perpetrated by the abuser had far-reaching consequences for Julia and her children:

- **Financial Hardship:** The combined tax debts, overpayments, and inadequate child support left her with insufficient funds to cover rent, utilities, and groceries.
- **Mental Health Struggles:** The ongoing financial strain and coercion led to severe anxiety and depression, further affecting her ability to secure stable employment.
- **Housing Insecurity:** The financial burden put her at risk of eviction, leaving her family in a state of constant uncertainty.

Support and Advocacy

Julia eventually sought assistance from a financial counselling service and a community legal organisation specialising in economic abuse. These services helped her navigate the complex tax and legal systems and advocate for systemic change. With their support:

- Julia applied for tax debt relief under ATO provisions for victims of financial abuse, leading to a partial waiver of her debt.
- She reported his fraudulent practices to the ATO, prompting an investigation into his business operations.
- Legal intervention has commenced proceedings to adjust reported incomes, in the hope of increasing the abuser's child support obligations.

Concluding remarks

The FDVLWN again thank the IGTO for the opportunity to prepare this submission. We are heartened by the commitment of the Western Australian and Australian Governments towards increasing the safety of victim-survivors of financial abuse, particularly in the context of FDSV. However, we contend that significantly more needs to be done, and hope that the work of the IGTO will go some way to achieving this.

Yours Sincerely

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