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Rob Thomson
Assistant Commissioner
Individuals and Intermediaries
Australian Taxation Office

E: VulnerabilityConsultation@ato.gov.au

UNSW Tax and Business Advisory Clinic – Submission in response to the ATO Consultation Paper on the draft Vulnerability Framework

Opening Remarks

Thank you for the opportunity to make a submission in response to the Consultation Paper on the draft ATO Vulnerability Framework (Framework), and for your efforts in its co-design.

It is encouraging to see the ATO dedicating time and resources to improving the Australian tax system for vulnerable taxpayers. The development of the Framework is a positive step that demonstrates the ATO's commitment to a values-driven approach to tax administration – and, if designed and implemented well, will serve as an exemplar for inclusive tax administration globally.

Background

This submission is guided by a combination of: our frontline Clinical observations; our systemic research findings; and, feedback from the UNSW Tax and Business Advisory Clinic Working Group, which is a collaborative cross-sector partnership between industry professionals (tax agents and tax lawyers), community sector leaders, and interdisciplinary academics.

Partnering with the community sector (namely, financial counsellors, financial abuse specialist support, crisis support, domestic violence support, and pro-bono legal clinics) is critically important to identifying and supporting people in genuine need.¹

Endorsements

We support the recommendations outlined in Financial Counselling Australia's submission focussing on a people-centred, accountable, trauma-informed and collaboratively designed approach to addressing vulnerability in tax administration. Further, we also support the recommendations outlined in the Economic Abuse Reference Group's submission which is particularly significant given their deep expertise in identifying and supporting individuals experiencing intersecting forms of vulnerability. In addition, the Law Council of Australia's submission offers invaluable insights on the intersection of financial vulnerability and tax law, policy, and administration. These peak bodies offer a depth of expertise that – if embedded in the ATO Vulnerability Framework – will be paramount to its successful operationalisation.

¹ Indeed, in 2019 UNSW Tax and Business Advisory Clinic pioneered a tax clinic model fully integrated into the community sector. Described as "a *godsend*" (Fiona Guthrie AM, then-CEO of Financial Counselling Australia).

Recommendations

By way of summary, our key recommendations to enhance the Framework are:

- (a) **Commitment to actions** – Providing a robust commitment to actions the ATO can take to assist vulnerable taxpayers. This may include appointing a dedicated case officer, relaxing payment plan conditions, using the Commissioner's discretionary powers, granting extensions and not disclosing information provided by vulnerable taxpayers to other government agencies.
- (b) **Financial abuse** – Specifically recognising domestic violence and financial abuse as a source of vulnerability.
- (c) **Evidence** – Providing examples of the evidence that may be requested to demonstrate the personal circumstances of vulnerable taxpayers.
- (d) **Lived experience** – Hearing from vulnerable taxpayers and their advisors to learn more about the lived experiences of vulnerable taxpayers both in terms of their circumstances and interactions with the ATO.
- (e) **Evaluation and evolution** – Clearly articulating how the Framework will be evaluated, tracked and managed to ensure that it is fit for purpose and being applied to all vulnerable taxpayers.
- (f) **Escalation** – Setting out a clear escalation pathway.

Further recommendations (and more detail about the recommendations set out above) has been included as part of the response to the consultation questions below.

Response to Consultation Questions

Our response to each Consultation Question is outlined in turn below.

Consultation Question 1: How clearly does the Framework explain our commitment to supporting people experiencing vulnerability? What aspects are most clear or meaningful to you? Are there areas that could be improved?

The existing wording of the Framework risks conflating deliberate non-compliance with behaviours that may be indicators of financial vulnerability.

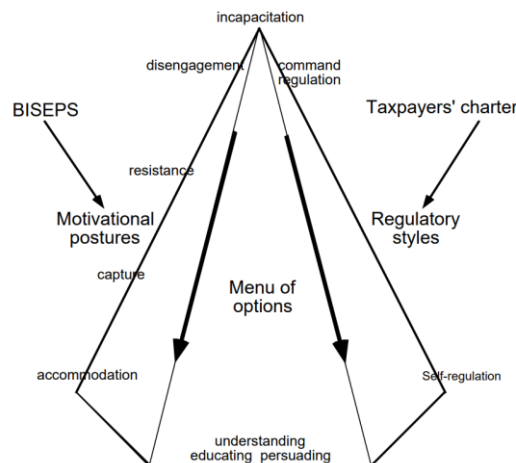
Fortunately, this nuance is already within scope of the ATO's existing compliance pyramid, conceptualised by Braithwaite and Braithwaite in 'A representation of the ATO compliance model' as including the following "BISEPS" motivational postures:²

"On the left face of the pyramid are the motivational postures of taxpayers and/or their agents from accommodation at the bottom through capture, resistance, and at the top, disengagement. Overarching all these postures are the business, industry, sociological, economic, and psychological systems (BISEPS) that might explain why taxpayers present themselves to tax officers as they do. The ATO Compliance Model requires staff to investigate these factors to gain insight into how they might engineer a more cooperative regulatory encounter."

This is visually represented in *Figure 1* as follows:

² Valerie Braithwaite and John Braithwaite, 'Managing taxation compliance: The evolution of the ATO Compliance Model', in Michael Walpole and Chris Evans (eds): *Tax Administration in the 21st Century* (Prospect Media Pty Ltd, 2001).

Figure 1: The ATO compliance model (Braithwaite and Braithwaite, 2001)



Importantly, the role of the ATO in investigating and responding to structural underpinnings of non-compliance are also within scope of the ATO's compliance model. As described by Braithwaite and Braithwaite:

“Furthermore, systematic attention to the BISEPS over an extended period of time is believed to enhance ATO understanding of the structural underpinnings of non-compliance and provide the necessary intelligence for its early prevention.”

A continual process of gauging and adapting to these “*structural underpinnings of non-compliance*” is vital to maintaining trust and confidence in the ATO, and protecting the ATO from reputational harm. Specifically, in the context of financial hardship and financial vulnerability, these structural underpinnings of non-compliance can be visually represented in the Financial Iceberg Illusion (Figure 2):

Figure 2: The Financial Iceberg Illusion (Voola, 2019)



The Financial Iceberg Illusion visually represents the most prominent surface level indicators of financial hardship are over-indebtedness, late payments of bills, arrears backing up for months, non-response to

communications from creditors.³ However, these are only the tip of much larger problems – that is, the structural underpinnings and systemic issues extending beyond individual-level (including personal health, demographic disadvantage, and domestic and family violence) to community- and societal-level factors (including cost of living, housing unaffordability and un/under-employment).

In the context of tax, small businesses and financial vulnerability, these surface indicators often manifest as long-term non-lodgement of income tax returns and BAS resulting in large tax debts. When large tax debts arise alongside serious financial hardship, the challenge for the ATO becomes particularly acute; especially given the deficiencies in the design and operation of the serious hardship relief provisions. As O'Rourke et al highlight, these provisions are outdated and in urgent need of reform given both the systemic barriers and the legislative constraints hampering their effective functioning.⁴

Consultation Question 2: Is the language in the Framework clear, respectful, and easy to understand? Let us know if there are words or sections that could be clearer.

While the language is clear, respectful and easy to understand for a professional, it is less so for many people experiencing vulnerability. It is not a 'welcoming' document and its size, while understandable, will be intimidating for some. A one page statement accompanying the Framework may assist with this.

At times it reads like a series of disclaimers about what the ATO cannot do to assist those experiencing vulnerability (see especially page 4 where it states no less than three times that the ATO must act according to law). To that end, the Framework could mention that there are many ways in which the ATO can assist. For example, in some areas the ATO has wide discretionary powers and it would be useful to indicate that the ATO would seek to exercise these discretionary powers having regard to the specific facts and circumstances of the person experiencing vulnerability.

We understand that the Framework is necessarily 'high level', but divorced from its practical utility it may not garner the respect it deserves. We understand that the ATO is assessing the viability of six key initiatives, including financial coercion and domestic abuse. This is to be welcomed. It would be helpful to publicise these initiatives, together with expected timeframes and contact officers. This would also assist in bringing the Framework to life and in attracting wider support within the community.

Consultation Question 3: How well does the Framework explain what vulnerability means and how it may affect people's experience with the ATO? Do you think the definition of vulnerability is clear and inclusive? What, if anything, should be added or clarified?

We commend the ATO in its efforts to holistically define vulnerability. However, we were surprised to see that financial abuse was not included within scope of the definition. We implore the ATO to reconsider this position.

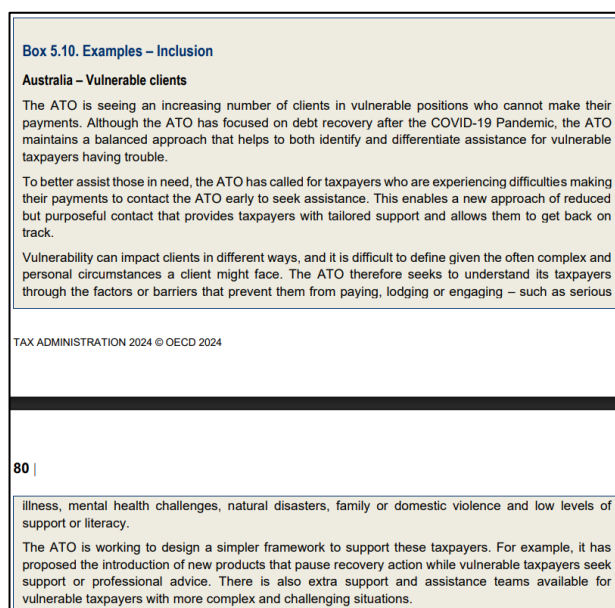
This will re-align the Framework's conceptualisation of vulnerability with internationally established literature (financial distress and financial abuse are significantly associated), other vulnerability frameworks created by government agencies and the private sector (including AFSA and the ABA), and the ATO's own position as showcased in the OECD Tax Administration Series 2024 (*Figure 3*):⁵

³ Archana Voola, 'Tracking the Financial Icebergs in Australia' (Power to Persuade blog, 12 August 2019); available at: <https://www.powertopersuade.org.au/blog/tracking-the-financial-icebergs-in-australia/12/8/2019>.

⁴ See further: Kevin O'Rourke, Ann Kayis-Kumar and Michael Walpole, 'Serious Hardship Relief: In Need of a Serious Rethink?' (2021) 43(1) *The Sydney Law Review* 1-42.

⁵ OECD (2024), *Tax Administration 2024: Comparative Information on OECD and other Advanced and Emerging Economies*, OECD Publishing, Paris, <https://doi.org/10.1787/2d5fba9c-en>

Figure 3: 'Australia – Vulnerable clients' (OECD, 2024)



It is imperative that the ATO adopt a best practice approach when conceptualising vulnerability as part of its Framework. Given financial abuse occurs in nearly all domestic violence cases (Kutin et al, 2017), disproportionately affects women (ABS, 2023), and costs the Australian economy over \$10.9 billion annually (CBA, 2022) there is strong evidence that financial abuse should be expressly included within scope of the Framework's definition of vulnerability.

To that end, we respectfully submit that the implementation of the Framework and the resultant changes to ATO processes must explicitly incorporate Safety by Design. Safety by Design principles involve the proactive identification and mitigation of risks that may inadvertently cause harm to vulnerable taxpayers.

To ensure that the Framework is structurally protective, the ATO should incorporate:

- (a) Design safeguards in digital portals and correspondence to prevent distress or confusion (eg simplified language).
- (b) Trauma-informed design in the taxpayer interaction processes (particularly for victim-survivors of domestic abuse).
- (c) System-level mechanisms to reduce the burden on vulnerable taxpayers to continually re-disclose sensitive circumstances.

Consultation Question 4: How clearly does the Framework explain our role, in supporting people experiencing vulnerability, including what we can and can't do? Is there anything about our role that could be explained more clearly?

The Framework, as presently drafted, does not directly address the role of the ATO in supporting vulnerable taxpayers. The Framework is very clear about what the ATO cannot do but is less clear about what the ATO can do. This makes it difficult for vulnerable taxpayers to understand how the ATO will support them.

By their very nature and as a result of their circumstances, vulnerable taxpayers need additional support, compassion and understanding from the ATO. The Framework does not explain how the ATO will meet this need.

Whilst we appreciate that it is important to acknowledge that the ATO does not always have the power to change taxation outcomes under the law, as set out in our response to Question 2, the Framework does not address the use of the Commissioner's discretionary powers to support vulnerable taxpayers. Additionally, there are many things that the ATO can do to streamline the interaction between vulnerable taxpayers, the ATO and the Australian tax system that do not directly relate to taxation outcomes themselves.

The Framework could be enhanced by the ATO providing a robust commitment to the actions that it can take to assist vulnerable taxpayers. The ATO could assist vulnerable taxpayers by:

- (a) providing a dedicated phone line and dedicated case officer to vulnerable taxpayers (to prevent them from having to repeatedly explain their circumstances to frontline staff);
- (b) changing its policy in relation to payment plans for vulnerable taxpayers (for example, removing the 10% upfront requirement and extending plans beyond two years);⁶
- (c) delaying debt enforcement action until after family law proceedings are concluded;
- (d) committing to grant extensions of time to vulnerable taxpayers (including for tax lodgements, objections, Director Penalty Notice defences and any other relevant tax/ATO timeframes); and
- (e) committing to not disclosing the information provided by vulnerable taxpayers in relation to their vulnerability (and the evidence provided to the ATO to demonstrate vulnerability) to other government agencies.

Examples of evidence

Further, the Framework makes clear that the ATO may ask for information or evidence about the personal circumstances of vulnerable taxpayers to determine the impact they have on their tax obligations. This part of the Framework could be enhanced by providing some examples of the evidence that may be requested. We consider that the types of evidence that may be requested include:

- (a) Police reports.
- (b) Apprehended Domestic Violence Order or Apprehended Violence Orders.
- (c) Court documents (including affidavits, sentencing remarks and judgments).
- (d) Reports or signed letters from psychologists, psychiatrists, general practitioners, registered counsellors or hospitals.
- (e) Letters from financial counsellors, registered tax agents or accountants, community legal centres or social workers.

We also acknowledge that the ATO is likely to have further thoughts on the type of evidence that may be required and including these thoughts within the Framework would be of significant benefit to vulnerable taxpayers.

Lastly, in relation to the ATO's role in supporting vulnerable taxpayers, the Framework could be enhanced by providing a clear escalation pathway, in the event that vulnerable taxpayers do not receive sufficient support or assistance from the first ATO officer assigned to their matter. We expect that with the benefit of specialised training, and further experience with vulnerable taxpayers, the frequency of use of the escalation pathway would decrease over time.

⁶ "It is well known that the Commissioner of Taxation (Commissioner) has considerable powers to collect taxation debts. But the Commissioner also has powers to assist taxpayers in paying their taxation debts. These latter powers are not well understood. This article will explore the powers of the Commissioner to assist taxpayers with taxation debts and will examine the source of those powers. It will be seen that some powers are express legislative powers conferred on the Commissioner, while other powers are at best incidental to an express power ... This is an unsatisfactory state of affair. This article calls for a redefining of the Commissioner's powers to assist taxpayers with their taxation debts": Kevin O'Rourke, Ann Kayis-Kumar and Michael Walpole, 'Redefining ATO Powers at the Intersection of Debt and Financial Vulnerability' (2025) 54(2) *Australian Taxation Review* 94-112.

Consultation Question 5: Do the guiding principles, for example, empathy, fairness, and inclusion, feel appropriate and meaningful? What do these principles mean to you in the context of people experiencing vulnerability engaging with the ATO?

The guiding principles of empathy, fairness and inclusion outlined in the Framework are conceptually appropriate and reflect recognition of the fact that engagement with the Australian tax system does not occur in a vacuum. Vulnerable taxpayers face a range of circumstances including mental or physical health issues, domestic violence (including coercive control and financial abuse), financial distress or bereavement that can impact their capacity to meet their tax obligations.

It is particularly noteworthy that in his first appearance at Senate Estimates, the Commissioner of Taxation Rob Heferen chose to refer explicitly to **compassion**,⁷ as follows:

“The community can rightly expect us to communicate and act with sensitivity, compassion and sound judgement ... I'd like to emphasise we'll always have a pathway for those facing genuine hardship. There are a range of actions the ATO can take to support taxpayers affected by financial hardship or domestic violence, including deferrals, use of hardship provisions, withdrawing director penalty notices, and remitting general interest charges”

The distinction between compassion and empathy is meaningful. Empathy involves understanding and sharing the feelings of others whilst compassion is a deeper commitment to act in response to that understanding. For taxpayers experiencing vulnerability, this shift from passive understanding to active support is imperative.

In this context:

- (a) empathy means that the ATO seeks to understand the individual's context before applying enforcement or compliance action. This requires enhanced processes for listening to and identifying indicators of vulnerability at all stages of interaction with the ATO;
- (b) to be effective, fairness must go beyond equal treatment and embrace equity. The ATO must acknowledge that standardised approaches do not always result in fair outcomes. A truly fair system must be capable of adapting to the needs of vulnerable taxpayers.
- (c) inclusion must go beyond representation and accessibility in principle. It means ensuring all individuals (regardless of their circumstances) can engage with the Australian tax system in ways that are respectful, accessible and responsive to their needs.

These principles are important, but their value will be measured by their implementation. Vulnerability should not be seen as a fixed label but as a context that requires care, dignity and flexibility. Compassion, fairness and empathy are only meaningful to vulnerable taxpayers if these principles translate into practical, measurable and concrete change.

Consultation Question 6: Is there anything missing that would make the Framework more useful or complete?

In addition to the inclusion of financial abuse (outlined above in response to Consultation Question 3), we recommend the incorporation of two additional elements to increase transparency in relation to the operation of the Framework.

First, mapping problem solving; and second, exclusion criteria transparency. Each will be dealt with in turn below.

⁷ Commonwealth of Australia, Senate Estimates, Economics Legislation Committee (Canberra, 25 June 2024), 3-4; available at: https://www.aph.gov.au/-/media/Estimates/economics/bud2425/Hansards/Economics_Legislation_Committee_2024_06_25.pdf.

Mapping problem solving

The Framework lacks transparency regarding how vulnerability will be treated within the ATO's internal decision-making architecture. A publicly documented problem-solving framework will ensure consistency of treatment across the ATO and assist tax advisers in navigating the process on behalf of clients.

Such a framework should clarify:

- (a) The escalation process for complex or multifaceted vulnerability cases.
- (b) Cross-team coordination when a vulnerable taxpayer's circumstances interact with multiple areas of the Australian tax system.
- (c) Oversight mechanisms to review decisions involving vulnerable taxpayers.

A well-articulated map would enhance administrative transparency and improve confidence in the Framework's equitable application.

Exclusion criteria transparency

The Framework does not provide adequate transparency regarding the grounds on which taxpayers may be excluded from its application. The lack of clearly defined exclusion criteria introduces a risk of inconsistent decision-making and may lead to perceptions of unfairness among affected taxpayers and their advisers.

To strengthen the integrity and fairness of the Framework, the ATO should articulate explicit guidance on:

- (a) The circumstances or categories that are deemed out of scope for application of the Framework.
- (b) The criteria used to assess when a taxpayer no longer qualifies for the Framework to be applied to them.
- (c) The procedural safeguards in place to ensure that exclusion decisions are consistent, reviewable and clearly articulated to affected taxpayers.

Establishing clear exclusion parameters is essential to ensure procedural fairness, promote consistency in decision-making and enhance trust in the administration of the Framework. It also enables tax practitioners and taxpayers to engage with the Framework with greater confidence and predictability.

Consultation Question 7: Would you use the Framework for yourself or in your work, or share it with others? If so, how might you use it? For example, as a taxpayer, practitioner, or advocate.

The tax agents and tax lawyers in the UNSW Tax and Business Advisory Clinic Working Group are unlikely to use the current draft of the Framework in our professional practice. Whilst we commend the ATO for recognising the importance of developing a framework for vulnerable taxpayers, the current draft lacks the detailed practical guidance and operational clarity necessary for effective application by practitioners. By way of example, the Framework does not clearly:

- (a) outline the types of support available to vulnerable taxpayers; and
- (b) provide a process for identifying vulnerability or determining eligibility.

Both of the above points make it difficult for advisors to know how or when the Framework would be applicable to clients.

For the Framework to achieve its purpose, it must explain how the ATO is going to support vulnerable taxpayers. We have made various recommendations to enhance the Framework in our responses to other questions. A Framework that includes these recommendations would be of significant benefit to both vulnerable taxpayers and the tax profession which strives to advocate on behalf of these vulnerable individuals.

Once the recommendations are implemented, we would be more inclined to use the Framework in our professional practice, share it confidently with colleagues and clients and support the Framework's role in fostering a tax system that is responsive to the needs of vulnerable taxpayers.

Consultation Question 8: Is there anything else you would like us to consider before the Framework is finalised?

The ATO should clearly articulate how the Framework will be evaluated, tracked and managed to ensure that it is fit for purpose and is being applied to all vulnerable taxpayers. Such oversight should be undertaken on a regular basis with adjustments being made in a timely manner as required. One way that this could occur is through independent evaluation or review undertaken by the Tax Ombudsman. But, before this can happen, there needs to be a clear articulation of what success looks like for the Framework and how that would be achieved in practice. While the framework outlines what the ATO wants to do, it does not adequately explain *why* it wants to do it or what outcomes it hopes to achieve. One might argue that this level of detail sits outside the framework, but without it, the framework lacks coherence and direction.

Many of the issues raised above could be addressed by taking the following steps. Importantly, there is ample academic and practical knowledge available to support this work:

1. **Clearly state the problem** the ATO is trying to address.
2. **Demonstrate why the problem exists**, including:
 - (a) The structure and limitations of the current tax and transfer system.
 - (b) External (non-ATO) factors that contribute to and sustain vulnerability
 - (c) How external and ATO-specific factors interact—for example, how perpetrators of financial abuse exploit the tax system to cause harm to victim-survivors and avoid tax liabilities.
3. **Describe how the framework will address the problem**, even partially.

This is not about suggesting the ATO is solely responsible for solving vulnerability. Rather, it is about capturing the complexity of the issue so that any intervention has a realistic chance of success. A stronger framework would also create space to explore partnerships with other organisations that could work alongside the ATO to tackle vulnerability more holistically. All of this could be captured in an accessible theory of change model, which would also serve as a foundation for future evaluation.

A framework is meant to be the starting point for something bigger; like the timber structure of a house. Right now, it is unclear what that 'something bigger' is for the existing design of the Framework. That vision would be far more tangible if the problem was clearly defined, the causes acknowledged, and the actions aligned with addressing those causes.

The ATO would significantly benefit from hearing from vulnerable taxpayers and their advisors (tax agents, lawyers (both tax and family lawyers) and financial counsellors). Learning more about the lived experiences of vulnerable taxpayers both in terms of their circumstances and interactions with the ATO would provide unique insights that would assist the ATO to shape the focus of the Framework.

By way of example, we set out some stories of the clients of the UNSW Tax and Business Advisory Clinic (with names changed to protect privacy) as follows:

- (a) Greta is a victim-survivor of extreme coercive control and financial abuse. She agreed to become a director of a company her husband controlled as she was fearful of the consequences that would arise from her husband if she refused. Greta received two DPNs in relation to unpaid SGC and PAYGW, totalling approximately \$150,000. Greta's good reasons defence was unsuccessful, but the ATO reduced her debt to approximately \$40,000 due to the remainder being invalidly levied.
- (b) Nina is a migrant and is not highly educated. Her then husband was an accountant (in the country they migrated from) and set Nina up as a sole trader even though he also worked in the business. Nina trusted him to prepare the BAS for the business - when the ATO audited her BAS due to the high level of refunds, she trusted him to supply all the documentation for the input tax credits. When they could not be substantiated, she was left with the GST debt and penalties. The UNSW Tax Clinic assisted Nina to apply to have the penalties remitted, however she is on an extended payment plan to pay off the GST debt.
- (c) Lisa, now a single mother of 8 children, has experienced domestic violence (including financial abuse) from her husband. Lisa's abusive partner opened a business under her name though she was never involved in the business and did not financially benefit from it. Lisa now has a large tax debt of around \$100,000 in relation to the business. The Clinic lodged an objection with the ATO which was not actioned for many months. Three months later the Clinic sent a complaint to the ATO in relation to the delay in processing the objection which resulted in a case officer being assigned two months later.

Closing Remarks

Thank you for the opportunity to provide feedback on the Framework. The Framework represents an important step in recognising the diversity of taxpayer experiences. We commend the ATO for its consultative approach to the development of the Framework and its aspiration to foster a tax system that is responsive to the needs of vulnerable taxpayers.

We would be pleased to provide further consultation to the ATO in respect of the Framework. The UNSW Tax and Business Advisory Working Group has a broad range of experience that we believe could provide the ATO with incredibly useful insights to further enhance the Framework.

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

Yours faithfully,

UNSW Tax and Business Advisory Clinic



A/Professor Ann Kayis-Kumar
Founding Director



Kevin O'Rourke OAM
Adjunct Professor



Annemarie Wilmore
Partner (Tax)
Johnson Winter Slattery



Gina Iskander
Senior Associate (Tax)
Johnson Winter Slattery
Teaching Fellow (Tax Law) UNSW



Dr Jack Noone
Senior Research Fellow



Michael Walpole
Professor



Jasmine Opdam
Senior Policy and Advocacy Officer
Redfern Legal Centre's Financial Abuse
Service NSW



Tony Martins
Principal Clinic Supervisor and Tax
Agent



Jonathan Dorse
Clinic Supervisor and Tax Agent



Helen Lam
Clinic Supervisor and Tax Agent



Annette Tasker
Clinic Supervisor and Tax Agent