



29 September 2026

Tax Ombudsman
Director Penalty Notices Review
GPO Box 551
Sydney NSW 2001

Email: consultations@taxombudsman.gov.au

Dear Sir/Madam,

SMSF ASSOCIATION SUBMISSION – REVIEW OF AUSTRALIAN TAXATION OFFICE ADMINISTRATION OF DIRECTOR PENALTY NOTICES

The SMSF Association welcomes the Tax Ombudsman's review of the Australian Taxation Office's (ATO) administration of Director Penalty Notices (DPN), and particularly its focus on whether the ATO appropriately and consistently identifies and responds to vulnerability, coerced directorship and financial abuse. Although our submission does not address the operation of the DPN regime generally, the review provides an important opportunity to identify practical learnings that can be applied across the ATO when dealing with victim-survivors of financial abuse, coercive control and family and domestic violence.

This is directly relevant to the SMSF sector. Where an SMSF has a corporate trustee, members are required to also be directors of the trustee company. A victim-survivor may be fraudulently or coercively appointed as a director, or may initially consent to the appointment before the corporate trustee structure or the SMSF is subsequently used by a perpetrator as a mechanism of control. This may expose the victim-survivor's superannuation benefits to unauthorised access or misuse. It may also expose them to non-concessional tax rates, administrative penalties, SMSF compliance action or director disqualification arising from conduct over which they had little control. Exiting the SMSF and corporate trustee structure can itself be complex, particularly where the victim-survivor cannot access fund records, financial resources or independent professional advice.

The consequences of abuse are not confined to the DPN regime, and the administrative challenges are similar. The ATO must be able to distinguish a person who exercised genuine control from a person whose formal status as a director masks coercion, restricted participation or lack of knowledge. The current review provides an opportunity to identify practices that enable the ATO to recognise and respond appropriately to these circumstances and recommend that relevant practices also be incorporated into the ATO's SMSF compliance, enforcement and regulatory processes.

Transferable learnings for SMSF administration

Early identification and specialist escalation.

Indicators of coercion and financial abuse, trauma-informed questioning and referral pathways identified through the DPN review should also be embedded into the ATO's SMSF compliance and



regulatory processes. This should include cases involving suspected unauthorised access to SMSF benefits, misuse of fund assets, non-lodgement or inaccurate reporting, trustee disqualification and other compliance consequences potentially arising from a perpetrator's conduct. Cases involving credible claims of financial abuse should be capable of referral to appropriately trained specialist officers rather than being managed solely through ordinary compliance channels.

A safe, coordinated whole-of-ATO response.

Information about an identified vulnerability should, subject to privacy and safety safeguards, be visible to relevant ATO business lines so that one area of the ATO does not provide support while another takes action arising from the same abusive conduct. This should then create a single point of contact to streamline and simplify the victim's engagement with the ATO. Where the law permits, non-urgent compliance or recovery action should be paused while the circumstances are properly assessed.

Flexible evidence and clearer communication.

Victim-survivors may have limited access to company or SMSF records and may be unable to produce direct evidence of the perpetrator's conduct or their own lack of involvement. The ATO should adopt proportionate evidentiary approaches in SMSF cases involving alleged coercion or financial abuse, including appropriate reliance on information from trusted third parties such as legal advisers, financial counsellors, family violence services and relevant professionals. The ATO should also publish clear guidance explaining how an impacted SMSF member or director can raise financial abuse, what information may assist the ATO, and the support and referral pathways available.

Consistent exercise of discretion.

Where the Commissioner has a statutory or administrative discretion in relation to SMSF compliance consequences and penalties, decision-making guidance should require officers to consider whether the conduct or liability arose during a period of coercion or financial abuse and the extent to which the affected person had knowledge of, participated in or could reasonably have prevented that conduct. This should apply, where relevant, to decisions concerning administrative penalties, remission, compliance and enforcement action and trustee disqualification. This does not require a blanket exemption from responsibility. Rather, it ensures that the ATO's regulatory response reflects the actual conduct and circumstances of the person concerned and does not compound harm caused by the perpetrator.

Vulnerability Capability

The Tax Ombudsman's 2025 review into financial abuse within the tax system already identified the importance of specialist capability, staff training, accessible reporting channels, system indicators and a 'Safety by Design' approach. This DPN review provides an opportunity to test how those principles are operating in practice. We encourage the final report to expressly identify transferable learnings and recommend that the ATO incorporate them into its Vulnerability Capability and into relevant SMSF compliance, enforcement and decision-making guidance. Doing so would improve consistency, reduce the risk of secondary harm to victim-survivors and help the ATO distinguish between perpetrators and people whose formal status as a trustee or director did not reflect genuine control.



If you have any questions about our submission, please do not hesitate to contact Tracey Scotchbrook, Head of Policy and Advocacy via email traceyscotchbrook@smsfassociation.com

Yours sincerely,

Tracey Scotchbrook

Tracey Scotchbrook
Head of Policy and Advocacy

ABOUT THE SMSF ASSOCIATION

The SMSF Association is the peak body representing the self-managed superannuation fund (SMSF) sector which is comprised of over 1.2 million SMSF members and a diverse range of financial professionals. The SMSF Association continues to build integrity through professional and education standards for practitioners who service the SMSF sector. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial advisers, tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them with access to independent education materials to assist them in the running of their SMSF.