Law Council
OF AUSTRALIA

Business Law Section

The Australian Taxation Office's management of small business collectable debt

Joint Committee of Public Accounts and Audit

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Introduction

1. The Business Law Section of the Law Council of Australia (**BLS**) welcomes the opportunity to participate in the Joint Committee of Public Accounts and Audit inquiry (**JCPAA**) into the Australian Taxation Office (**ATO**) management of small business collectable debt. The Taxation Committee, the Insolvency & Restructuring Committee, and the Small and Medium Enterprise (**SME**) Business Committee (together, the **Committees**) of the BLS have jointly prepared this submission.[1]

2. The Committees acknowledge the critical role that the ATO plays in raising tax revenue and restoring the payment performance of the taxpaying community and understand that this role can cause difficulties for taxpayers with outstanding tax debt.

3. However, the Committees are concerned about the impact that the combination of the high rate of the general interest charge (**GIC**) and the ATO's current debt management strategies is having on small businesses and their controlling individuals. Without wishing to be alarmist, many practitioners assisting clients in this area, often on a pro bono/reduced fee basis, have expressed concern that this issue could be the "next robodebt". Practitioners are increasingly attempting to assist taxpayers through a system in which meaningful human engagement is often absent and where processes can appear to create barriers rather than provide support.

4. Certain practitioners are concerned about the mental health of a number of affected small business operators. Members of the Committees have observed situations in which the system has effectively "broken" clients, causing significant financial and emotional distress and giving practitioners genuine concern for their clients' broader wellbeing.

5. The issues raised in this submission are illustrated by the case studies set out in Appendix A and Appendix B. These are actual matters. The issues highlighted are reflected across countless matters being handled by members of the Committees. Further case studies can be provided if that would assist the Inquiry.

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[1] The Committees have previously provided submissions to the Tax Ombudsman and the ATO on related debt collection matters and refer the JCPAA to each of those submissions if additional information is required.

Executive Summary

Based on practitioner and client feedback, the Committees ask the JCPAA to consider recommending an overhaul of the system including:

- A review of the ATO's strategic settings and key performance indicators (**KPIs**) to ensure they provide appropriate support for taxpayers and do not encourage an over-focus upon moving cases from potentially collectable debt to insolvent debt.
- A reduction in the GIC rate, particularly in circumstances where remission is rarely granted.
- A more sympathetic approach to GIC remission applications.
- Mandatory remission of GIC for all tax debt referable to the COVID-19 period.
- Consideration of GIC remission at the time an application is made, rather than only after the primary tax liability has been paid.
- A more flexible and supportive approach to payment plan applications, including allowing longer repayment periods and prioritising the repayment of primary tax liabilities before requiring payment of accrued GIC and penalties.
- The introduction of 'Review Payment Plans', to be agreed for an initial trial period of (say) six months, to increase initial acceptance of proposals and address ATO concerns about taxpayer compliance with proposed plans.
- Consideration of a model under which GIC remission is made conditional upon compliance with an agreed payment plan. This would reduce the length of payment arrangements, enable a greater number of payment plans to be administered, and protect the revenue by allowing GIC to be reimposed where payment plan obligations are not met. It would also encourage ongoing compliance with tax obligations.
- An overhaul of the existing practitioner engagement channels so that taxpayers and their advisers have meaningful access to ATO officers capable of discussing and resolving debt-related issues, including providing an internal review escalation point for GIC remissions, payment plan denials and DPN defence refusals.
- Changes to the ATO KPI framework to include reporting on dealing with vulnerable taxpayers and to expressly recognise the amount of GIC-inclusive debt moved to insolvent debt.
- Public guidance on how ATO staff should evaluate evidence of taxpayer vulnerability and the specific types of debt discretions case officers can exercise where vulnerability is found to exist.
- Continued improvements in the ATO's approach to vulnerable taxpayers, building on the positive steps already taken to date.
- Legislative amendments to:
  - introduce coercive control fix legislation;
  - reform relief for financial hardship;
  - reduce the rate of GIC;
  - repeal the denial of deductibility for GIC; and
  - improve statutory criteria for GIC remission.

ATO Strategic Direction

6. Since the COVID-19 pandemic, ATO leadership has refocused ATO resources on reducing its small business debt book and on limiting its unacceptable growth over time.

7. Practitioners regard this strategic shift as a 'tightening up' of ATO collection efforts, intended to signal to the small business population the severe consequences of non-payment. In their view, the ATO is using this as a form of deterrence messaging to encourage payment.

8. However, practitioners observe that this approach does not consider the side-effects of such stringent strategies, which risk disengaging small business operators from the tax administration system and reducing 'voluntary compliance' and 'willing participation'. As one practitioner observed, the approach relies too heavily on enforcement and too little on incentives to comply.

9. Practitioner feedback further observes that this refocusing has concentrated upon reducing ATO **collectable** debt in the small business market segment. The ATO has pursued this through 'firmer action strategies' that seek to enforce ATO liabilities through legal action, either through special ATO powers (such as garnishees and director penalty notices (**DPNs**)) or through debt collection litigation (against companies or their directors).

10. Practitioner feedback highlights statements by ATO staff that reflect an assumption that taxpayers have 'chosen not to comply'. ATO staff then rely on that assumption to justify firmer action strategies, rather than genuinely considering (and accepting) evidence of the reasons for non-compliance with payment obligations.

11. Practitioner perception is that ATO staff can be subject to 'anchoring bias'. For example, ATO staff refer to earlier instances of late payment or late lodgment as justification for not accepting payment plans or GIC remission submissions. In doing so, they do not recognise that the factors the taxpayer now relies on also applied in those earlier periods (and led to that past non-compliance).

12. It is the view of the Committees that this conceptual focus has various adverse effects, including:

    - moving a significant portion of any perceived reduction in collectable debt into the 'insolvency' debt category, without actually resulting in collection of any additional tax;
    - forcing many otherwise viable companies into insolvency, due to overly inflexible approaches from the ATO prior to taking firmer action strategies (through referral of taxpayer information to credit reporting bureaus, issuing garnishees on cash flow accounts, or proceeding to legal action);
    - ATO staff indiscriminately applying the full force of law to small business debt taxpayers without sufficient differentiation between:
        - those taxpayers who deliberately chose not to pay,
        - those taxpayers who experienced understandable commercial circumstances resulting in inability to pay, or

  - those vulnerable taxpayers who were unable to pay because of their vulnerability; and
- sending negative signals to the small business community and their advisers that damage willing participation in, and voluntary compliance with, the tax compliance system, because of perceptions about the ATO's inflexibility in approach, severity in the use of powers and insufficient regard for the circumstances of vulnerable taxpayers.

13. These features are reinforced by the ATO's current KPIs, which measure reductions in 'collectable debt', in line with the ATO strategic settings. The Committees recommend that the ATO KPIs should instead focus on measuring:

    - cash collections, rather than the move to insolvent debt;
    - successful implementation of payment plans, as an alternative to collection action; and
    - proper consideration of vulnerable circumstances (through remission of interest charges and penalties, and/or the allowance of defences against DPNs).

14. Overall, it appears to practitioners that the ATO is not appropriately applying the ATO's own Compliance Model, by ignoring the "BISEPT" (Business, Industry, Sociological, Economic, Psychological and Technological) factors that are the conceptual drivers underlying the compliance pyramid part of the model.

15. Practitioners are concerned about (and in some cases are satisfied that there have been) failures by the ATO to properly consider the evidence within ATO systems that would allow it to differentiate the small business debt risk population more appropriately on such factors. This leads to disproportionate outcomes, particularly for vulnerable taxpayers.

16. Feedback from practitioners indicates that the ATO has not yet implemented the previously proposed pillars for debt concession decision-making (Fairness, Conditionality, Context, Engagement and Exclusions). The Committees recommend that the ATO implement these pillars as soon as possible, together with the additional pillars (Circumstances, Evidence-based and Transparency) that the Committees recommended in their earlier submission on those pillars.[2]

General Interest Charges

Summary of the GIC regime

17. The GIC regime, introduced in 1999, was designed to be a single, uniform interest charge applicable to all overdue tax amounts, replacing the various penalty interest charges.

18. The ATO explains the operation of GIC[3] as being:

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[2] See, for example, Business Law Section, *The ATO's approach to taxpayer relief provisions* (Submission to the ATO, 2 October 2025).

[3] See Law Administration Practice Statement PS LA 2011/12 *Remission of General Interest Charge*.

GIC is imposed by law where an amount owing to us remains unpaid or where there is an underpayment of tax following an amendment to an assessment.

Very generally, the GIC is intended to:

- *encourage the timely payment of tax*
- *deny late payers an unfair financial advantage over those who pay on time, and*
- *compensate the Australian Government for the impact of late payments.*[4]

19. Despite its name, GIC still operates partly as a penalty. The GIC rate comprises a base interest rate[5] plus 7 percentage points.[6] GIC accrues daily on a compounding basis.[7] The penalty component of the GIC delivers on the policy intent to encourage timely payment, as it is designed to dissuade taxpayers from treating tax debt as a relatively cheap loan. The denial of deductions for GIC incurred in income years starting on or after 1 July 2025 compounds this effect.

20. The policy intent reflected what some taxpayers might have been doing, using the ATO as cheap finance. However, practitioners tell us that, in the small business context, this is not a consideration because most have no options. They do not choose to retain ATO debt at higher rates than bank rates; they do not have the option to obtain bank finance to discharge the debt. Often the key asset is the business, and lenders do not consider it sufficient security for bank loans.

Background to the process change that is reflected in current administration

21. On the emergence of COVID-19, the ATO offered a range of concessions to taxpayers struggling with their tax payment obligations. Relevantly, the ATO applied its discretion to remit GIC leniently during this period. The ATO also paused broader debt recovery efforts. The intention was to support taxpayers financially through COVID-19 by incentivising the de-prioritisation of tax payment obligations.

22. Following the pandemic, by 2023 the ATO's collectable debt book had increased to over $50 billion. However, many business taxpayers that continued to trade through COVID-19 could not repay the debt that had accumulated over that period. In practical terms, a large portion of the debt book was likely not 'collectable'.

23. The ATO consequently experienced the effects of allowing taxpayers to de-prioritise tax payment obligations. Once tax debt accumulated to unmanageable levels, coupled with the compounding nature of GIC, many taxpayers were unable to clear their unpaid debt whilst also paying their ongoing obligations. As part of resetting its debt recovery program to address its collectable debt issue, the ATO therefore

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4 Australian Taxation Office *Practice Statement Law Administration PS LA 2011/12: Remission of General Interest Charge*.
5 Being the monthly average yield of 90-day Bank Accepted Bills published by the Reserve Bank of Australia (section 8AAD of the TAA).
6 Section 8AAD of the *Taxation Administration Act 1953*.
7 Ibid, section 8AAC.

focused on improving the payment habits of taxpayers, including by sharpening its approach to GIC remissions.

24. The rationale behind this approach was that there needed to be an incentive for taxpayers to pay on time, and the concession of remission would only be available in cases where support was genuinely needed. Additionally, taxpayers on a payment plan would be incentivised to pay off their debt as soon as possible if full GIC continued to accrue. However, the ATO did not implement this posture by changing its administrative policy on the remission of GIC.[8] Rather, it focused on tightening its administrative practice around the remission of GIC. It did so by updating the procedures and processes of its frontline workforce that actioned GIC remission requests.

25. It is how the ATO has administered its GIC remission policy that has given rise to the community concerns regarding inconsistency, opaque decision-making processes and questionable outcomes. The requirement that frontline staff narrow the instances where GIC circumstances in which remission is granted has led taxpayers and advisers to experience interactions wherein which individual circumstances are not appropriately understood or, in some cases, considered. Further, there is little recourse to be able to understand how the ATO has arrived at decisions and, if appropriate, seek review.

26. Finally, there is a circular position. GIC is generally not being remitted, until primary tax has been paid, if it is remitted at all. As a result, the debt recorded on the books continues to "blow out". That is, the size of the debt under management continues to increase, which then creates the need for a further assessment of how to encourage taxpayers to toe the line.

Remission criteria too limited and ambiguous

27. The remission criteria for GIC are set out in section 8AAG of the *Taxation Administration Act 1953* (**TAA**). GIC may be remitted where the Commissioner is satisfied that one or more of the following has been demonstrated:

    (a) The act or omission is not the fault of the person being subjected to the charge or penalty and reasonable steps were taken to mitigate (no fair and reasonable additional test)[9]

    (b) The act or omission is the fault of the person being subjected to the charge or penalty and reasonable steps were taken to mitigate, and it is fair and reasonable to remit[10]

    (c) There are special circumstances that make it fair and reasonable to remit;[11]

    (d) It is otherwise appropriate to remit.[12]

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8 PS LA 2011/12 has remained substantively unchanged since the pandemic.
9 Subsection 8AAG(3) of the TAA.
10 Subsection 8AAG(4) of the TAA.
11 Paragraph 8AAG(5)(a) of the TAA.
12 Paragraph 8AAG(5)(b) of the TAA.

28. In relation to remission, PS LA 2011/12 states:

> *A client may request a remission of GIC at any time. The onus is generally on the client to satisfy us that remission is warranted and must provide us with sufficient information to allow us to make a decision.*
>
> *However, we may initiate remission ourselves if we are aware of circumstances justifying remission in a particular case or group of cases.*
>
> *We can remit all or part of the GIC payable by the client. You should consider partial remission when the circumstances of the case do not warrant full remission.*[13]

29. Practitioner feedback indicates that the combination of the legislation and the ATO practice is too restrictive. For instance, ATO case officers appear reluctant to accept contentions that small business taxpayers were unable to pay due to circumstances genuinely beyond their control and say, regardless, that it would be unfair to those paying on time if remission was granted.

30. Practitioners report that there are also significant issues with what the comparator should be for determining what is 'fair and reasonable' to remit or 'otherwise appropriate' to remit.

31. The ATO appears committed to the position that it must compare with other [small business] taxpayers that were both able to pay and chose to pay. This excludes (and disadvantages) taxpayers who were genuinely unable to comply (such as those in vulnerable circumstances).

Difficulty obtaining GIC remission

32. The tax practitioners who assisted with this document report that, in sharp contrast to prior years, they have observed a significant reduction in favourable GIC remission decisions during late 2025 and 2026.

33. To the contrary, ATO reports indicate that the ATO grants a large number of GIC remissions. The two positions can be reconciled on the basis that the ATO figures appear to include both ATO-automated remissions and taxpayer-initiated approaches by individuals with nominal tax debt contacting the ATO debt centre call line. A call centre operator has the delegation to remit lower-level GIC amounts.

34. Currently, where a tax debt is significant, the anecdotal evidence is that the ATO tends to reject GIC remission submissions, whether by individuals or representative practitioners. The responsible case officer does not contact the practitioner prior to making their [usually adverse] decision. As a result, the practitioner does not have the opportunity to provide further evidence or to persuade the case officer of the merits of the taxpayer's arguments.

35. Practitioners report that there are particular issues with ATO case officers taking restrictive positions on which arguments and supporting evidence from taxpayers they may accept as meeting the asserted onus of justifying exercise of that

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[13] Australian Taxation Office *Practice Statement Law Administration PS LA 2011/12: Remission of General Interest Charge*, [8]-[10].

discretion. The response to the GIC remission application often defaults to the statement that the taxpayer would have an unfair advantage over others who pay on time if GIC was remitted. The reality is that statement could apply to every application for remission. It should not be enough to give that reason as the only support for denying remission.

36. In practice, the ATO appears to administer debt collection using a combination of lower-skilled ATO staff and technology. Senior ATO officers presumably oversee the process. However, most taxpayers do not have access to these officers. Senior practitioners, through their networks, can access them. However, no system should rely on this for its effectiveness and most senior practitioners will not make use of their contacts except in the most dire of circumstances. What happens to taxpayers in dire circumstances using practitioners who do not have those contacts?

37. The ATO makes decisions without first contacting taxpayers to seek further information. Many taxpayers in a tax debt position do not have the funds to engage a tax professional to support their applications or, if they do, have limited funds to pursue this. The impact of this is significant, particularly given the restrictions on review rights (refer below).

Refusal to consider remission until after payment-in-full

38. Practitioners report that ATO staff consistently require payment of all current tax-related liabilities before they will even *consider* remission of the GIC component.

39. In many cases this means that payment plans cannot be approved. This is because the payment plan approval requires payment of the debt within several years. When GIC is continuing to accrue on a compounding basis the GIC can be higher than the repayments.

40. It is unfair that taxpayers cannot get payment plans because GIC remission is not to be considered until the payment of the tax debt.

41. One option that might benefit both the ATO as administrator and taxpayers is to make a contingent GIC remission decision up front, contingent on the taxpayer meeting the payment plan obligations. This encourages payment and meeting ongoing tax commitments. Importantly, it would reduce both the payments required to discharge the debt and the term of the payment plan.

No commercial basis for remission/part of sensible compromise

42. Practitioners consistently report small business operators' frustration that the ATO will not accept commercial compromise of GIC liabilities to support full payment of primary tax and the maintenance of the business.

Lack of internal review rights for adverse GIC remission decisions

43. Taxpayers may only seek judicial review of adverse GIC remission decisions, under the *Administrative Decisions (Judicial Review) Act 1977* (**ADJR**) or section 39B of the *Judiciary Act 1903*. To date, the Federal Court has considered relatively few adverse GIC decisions.

44. Practitioners suggest that this is due to the high cost of taking the matter to the Federal Court and the risk of having to pay ATO legal costs if unsuccessful. This is a very real factor for taxpayers unable to pay their tax debt due to lack of funds: they simply cannot afford to make an ADJR application. This results in a vertical inequity that frustrates taxpayers seeking to have an adverse decision properly considered and denies them access to justice.

45. Judicial review examines only the lawfulness of the decision-making process; it does not review the merits. Unlike taxation decisions covered by Part IVC of the TAA, a decision not to remit GIC carries no right of objection, and therefore no right to merits review by the Administrative Review Tribunal. The ATO has historically not provided any informal internal review process, despite having discussed doing so.

46. Practitioners regard this as an unacceptable situation, which results in a vertical inequity between small business operators who lack the financial resources to bring an ADJR action and larger taxpayers who have those resources.

47. This is not an administrative issue for the ATO in that it would require statutory amendment to enable a merits-based review. However, what it does mean to the administration of this area is that even more care should be taken to ensure that properly informed decisions are being made.

Non-deductibility of GIC/SIC counter-productive

48. Practitioners report that the statutory denial of deductions for GIC continues to have a strongly negative impact upon small business taxpayers' ability to meet tax-related liabilities, by imposing an additional penalty for late payment in addition to the interest charge base rate and the increased interest rate.

Payment Plans

ATO organisational reluctance to accept payment plan proposals

49. The ATO explains the power to pay by instalments as follows:

> *50. Section 255-15 gives us the power to permit taxpayers to pay an amount of a tax-related liability by instalments (payment arrangements) under an arrangement whether or not the liability has already arisen.*
>
> *51. An arrangement under section 255-15 does not vary the time at which the amount is due and payable. Any GIC, if applicable, in respect of any unpaid amount of the tax-related liability, begins to accrue when the liability is due and payable under the relevant taxation law, or at the time as varied under sections 255-10 or 255-20.*
>
> *52. We will not agree to accept payment arrangements as a matter of course. Any decision that we make to accept a payment arrangement will be made in accordance with the risk management guidelines set out in Law Administration Practice Statement PS LA 2011/6 Risk management in the enforcement of lodgment obligations and debt collection activities. Risk is clearly linked with the indicators of unwillingness to comply with taxation obligations in the Compliance*

> *model. We are unlikely to grant payment arrangements to those who continually fail to pay or meet their lodgment obligations on time.*[14]

50. The Committees note that the above extract discloses an assumption that non-compliance is due to an unwillingness to comply. It is the experience of the Committees that very few taxpayers are unwilling to comply. The issue is that, due to various circumstances, they cannot comply.

51. In general, practitioner feedback is that the ATO is refusing a very significant number of meritorious proposals, especially for small business taxpayers experiencing significant vulnerability of the types discussed above.

Not allowing Payment Plans where contingent upon GIC remission

52. In particular, practitioners are critical of the ATO's express policy that it will not consider payment plans that are contingent on the ATO agreeing to remit GIC, on the basis that this would be unfair to taxpayers who have complied.

53. In instances where the Commissioner would otherwise not be able to receive any payments of primary tax liabilities but would be paid in full if GIC could be remitted in full (potentially via external borrowing), the view of practitioners working in the area is that this policy is counterproductive and contrary to the interests of the community and Government.

Payment Plan duration

54. Practitioners report that, over the last three years, they have observed an undue and arbitrary reduction in the periods over which payments may be made under payment plans that the ATO is willing to accept.

55. Practitioners report that ATO case officers justify such reductions solely by reference to minimising the Commissioner's exposure to collection risk over time, even where the relevant small business operator has sufficient projected cash flow to pay over a longer period.

56. This tends to push small businesses that have the capacity to pay over a longer period than the ATO prefers into expensive external administration processes, when they are not actually 'insolvent' but are rather suffering from 'illiquidity' preventing immediate payment.

Not accepting reasons/explanations why previous non-payment occurred

57. Practitioners report consistent examples of ATO case officers refusing to accept payment plan proposals where small business operators have previously experienced financial difficulties that caused them to have earlier problems in meeting their payment obligations and/or have defaulted on earlier payment plans that they entered into with the Commissioner.

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[14] See Law Administration Practice Statement PS LA 2011/14 *General debt collection powers and principles*, [50]-[52].

58. As reflected in the above-quoted passage from the Practice Statement regarding not accepting payment plan proposals for taxpayers with a record of past non-compliance, the feedback from practitioners is that such perceived past non-compliance therefore acts as an 'anchoring bias'[15] that pushes the case officer's judgement against the ATO accepting the proposed Payment Plan.

59. Practitioners suggest that this occurs even when the practitioner has explained the taxpayer's current circumstances and has argued that the same types of circumstances led to the past non-compliance. The result is circular reasoning, as the existence of past non-payments prevents the taxpayer from using a payment plan to address those non-payments.

Payment Plan default criteria

60. Practitioners generally consider that the ATO is unwilling to accept payment plan proposals on a trial basis. Instead, the ATO expects small business operators to provide conclusive evidence that they will meet the payment plan terms before the ATO agrees to the proposal.

61. The Committees suggest that the ATO expand its use of 'Review Payment Plans'. Under these plans, the ATO would allow most small business operators an initial period of three to six months to meet the proposed payment plan terms, as a trial period before adopting a longer-term payment plan (beyond the current ATO guideline criteria).

Over-reliance upon security outside the business being required

62. Practitioners also report that, for longer-term payment plan proposals, ATO case officers strongly encourage small business operators to offer additional security, including personal guarantees and/or asset security from outside the particular small business entity with the relevant tax debts.

63. The risk for small business operators subject to such pressure is that they may decide to provide such security to protect their business entity's operations, without fully understanding that they lose the benefits of the separate legal entity status of the relevant business structure. In effect, providing such security removes the protection of the corporate veil and gives the Commissioner access to personal assets.

Dealing with vulnerable (small business) taxpayers

64. After previous consultation over five years, the ATO introduced the ATO Vulnerability Framework in October 2025.[16] The ATO intended for the Framework to signal a cultural change in how ATO staff recognise potential taxpayer vulnerability, what evidence they may obtain to assess such vulnerability, and what changes to ATO actions may therefore be appropriate.

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[15] See, for instance, Anchoring Bias: Definition, Examples, and How to Avoid It.
[16] See Our Vulnerability Framework | Australian Taxation Office.

65. Practitioner feedback on the development and implementation of the Vulnerability Framework is that it represents some progress. However, the fundamental assumption underlying the Framework is that taxpayers must comply with their taxation obligations. Practitioners suggest that this assumption does not account for the fact that some taxpayers are genuinely unable to comply due to their vulnerable circumstances. The community would expect the ATO to use its available discretionary powers to assist those taxpayers to ameliorate those circumstances to the extent possible within the current legislative provisions.

Physical medical issues

66. Practitioner feedback is that, despite the recent guidance on the types of evidence that ATO staff might consider, the ATO guidance does not address what ATO staff should then do about taxpayers with medical problems that may have prevented them from complying with their taxation obligations.

67. In particular, practitioners report that ATO staff do not appear to appreciate the impacts of such medical conditions and, in some cases, question or criticise independent medical evidence provided in support of taxpayer submissions.

Mental health issues

68. Practitioners report that the less well-understood and less-visible nature of mental health illnesses appears to create greater difficulties for ATO staff in recognising the impact of those conditions on taxpayer compliance. ATO staff appear to rely upon perceived inconsistencies between their lay expectations of people with mental health conditions and what taxpayers report. To a greater extent than for physical illnesses, ATO staff reportedly find evidence of mental health conditions difficult to evaluate, and practitioners report instances of ATO staff questioning evidence from mental health professionals.

69. Further, practitioners report repeated instances of ATO case officers rejecting submissions from small business operators who present evidence of severe mental health conditions and/or life-threatening suicidal ideation, on the basis that the small business was continuing to operate (as though that were inconsistent with the individual being unable to comply with their tax obligations). The Committees contend that this approach demonstrates a significant misunderstanding of the nature of mental health conditions. A person with a mental health condition may still appear to manage some parts of their business life, whilst being genuinely unable to manage others (in these cases, their tax obligations).

Culturally and linguistically diverse backgrounds

70. Practitioner feedback indicates that ATO staff seem to make assumptions about the level of understanding of taxation obligations that small business taxpayers with culturally and linguistically diverse backgrounds can realistically be expected to have.

71. Practitioners report particular issues with people who are not literate in their own native language, who are therefore unable to effectively understand key legal concepts in the Australian tax and corporate regulatory system, with varying

success/inconsistent results from different ATO case officers in very similar circumstances.

Domestic violence/financial abuse victims-survivors

72. While this submission deals with collateral financial abuse and coercive control in more detail below, practitioners report that ATO staff, whilst sympathetic to family violence situations to some degree, do not appear to understand the pervasive and damaging effects that family violence has on victim-survivors. Nor do ATO staff appear to understand the difficulties such small business taxpayers face in providing evidence to support their circumstances, given the concealed nature of such situations.

Evaluation of evidence of the above circumstances

73. After more than five years of practitioner advocacy about the need for such guidance, the ATO recently issued website material[17] listing the types of evidence that taxpayers experiencing some types of vulnerability might provide.

74. However, practitioners are concerned that this website guidance does not indicate how the ATO may assess that evidence. Practitioners report that this leaves vulnerable taxpayers facing an opaque internal ATO process, in which unidentified decision-makers apply undisclosed criteria.

75. Practitioners report that this is particularly a problem with DPN defences, where ATO case officers seem to take what practitioners judge to be an overly high standard for the Commissioner to be 'reasonably satisfied' of the availability of one of the key defences, in the relevant director's circumstances (see below).

Specific guidance on different actions to be taken by ATO staff for vulnerable (small business) taxpayers

76. In addition, practitioners have expressed ongoing concerns about the lack of any guidance about what decisions the ATO case officers should take as a result, if evidence is accepted as demonstrating that claimed vulnerability exists.

77. Practitioners report multiple anecdotes where ATO staff have apparently refused to accept submissions for remedial application of the Commissioner's power to assist vulnerable small business taxpayers who claimed that their circumstances prevented them from complying with their tax compliance obligations.

Garnishees

78. The ATO has the unusual power to garnishee third parties to require them to pay amounts otherwise payable to a taxpayer instead to the Commissioner.

[17] See Evidence of experiencing vulnerability | Australian Taxation Office

Statutory preference over other unsecured creditors

79. This garnishee power effectively provides the Commissioner with a statutory preference not dissimilar to a *Corporations Act 2001* unfair preference over other unsecured creditors, and the case law indicates that this requirement continues after a taxpayer enters insolvency, i.e. that third-party is still required to pay the relevant amounts to the Commissioner, rather than to the external administrator appointed for the taxpayer's estate in bankruptcy.

Lack of discrimination in issuing garnishees

80. There are no clear legislative boundaries governing when and how much may be garnisheed from a third party (like a major debtor or a financial institution holding funds on behalf of the taxpayer), leading to oppressive situations where such garnishee action threatens an otherwise viable business's cash flow.

Lack of internal review for first tier decisions seeking review of garnishees

81. There are no internal review mechanisms to challenge a garnishee decision. Instead, a taxpayer must seek judicial review under the ADJR, at significant cost and inconvenience, which limits access to administrative redress or justice.

Credit Reporting Bureau referrals

82. It may be understandable that the legislation authorises the ATO to refer large outstanding business debts to credit reporting Bbureaus. However, practitioners report that the ATO exercises this power without sufficient discrimination. The ATO often reports debts during payment plan negotiations, frequently immediately after refusing a proposal, even where the taxpayer has foreshadowed a further proposal. This practice acts as a practical impediment to businesses finalising financing arrangements.

Director Penalty Notices

83. The recent submission from the Committees to the Tax Ombudsman's review of ATO administration of DPNs contains most of the practitioner observations relevant to this Inquiry. Those observations are adopted in this submission.[18]

Commissioner having an unfair advantage against other unsecured creditors

84. Practitioners argue that the DPN regime gives the Commissioner a statutory (akin to unfair) preference over other creditors. Amounts required to be paid under a DPN in respect of a liquidated company go directly to the ATO, rather than to the liquidators on behalf of all unsecured creditors. This constitutes a statutory unfair preference.

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[18] Law Council of Australia, Business Law Section, *ATO's administration of Director Penalty Notices* (9 October 2026).

Fundamental conflict of 'lockdown' DPNs with statutory duties of directors not to engage in insolvent trading

85. The effect of the 'lockdown' DPN regime is that, once the ATO has served such a DPN on a director, that director has an incentive to keep the company operating rather than putting it into external administration, in the hope that the company can reduce the DPN liabilities. The alternative is that the director places the company into liquidation, administration or small business restructuring and remains liable to pay the DPN liability remaining above any dividend paid to the ATO as a creditor under that external administration.

Coerced directorships

86. The Committees continue to advocate for the changes canvassed in their previous submission to the Treasury review of Coerced Directorships.[19] which is attached for your reference. The Committees also note their forthcoming submission on the recent further consultation on this topic.[20]

Minority directors

87. Minority directors present particular difficulties for imposition of DPN liabilities, as they cannot force a company to take any specific action listed in the DPN statutory defence if a majority of board members outvotes them (or if an equal number of board members deadlocks the decision).

Phoenix victim directors

88. The victims of phoenix operators include the 'puppet' directors whom the true controller/shadow director appoints to assume responsibility for the debts of the company. Many of these cases involve situations and impacts very similar to domestic partner/family violence/coercive control situations but frequently include the additional vulnerabilities of financial need from low socioeconomic status and substance-abuse disorders, and/or other mental health conditions.

89. Practitioners report that, more than two years ago, ATO staff dealing with DPN defences accepted such situations as valid defences to a far greater degree than they do today. Practitioners now report a consistent refusal to accept such defences, even in what practitioners consider to be highly meritorious claims involving phoenix operator actions.

Insolvency action for disputed debt cases

90. The Commissioner's public position is that the ATO does not generally initiate insolvency action against taxpayers (including small businesses) whilst there is a dispute as to the underlying liabilities on foot.

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[19] Law Council of Australia, Business Law Section, *Combatting financial abuse perpetrated through coerced directorships* (24 December 2025).

[20] See, Treasury consultation, Tackling fraud and financial abuse.

91. However, practitioners report instances in which the ATO has taken legal action to enforce debts against small businesses while disputes remain unresolved. This adversely affects the taxpayer's ability to have that dispute properly considered, as the directors of a company or an individual sole trader lose control of their affairs once placed into external administration (liquidation for a company and bankruptcy for an individual).

92. Practitioners have expressed concern that any such actions by the ATO frustrate a small business taxpayer's ability to properly contest its dispute regarding the tax-related liabilities. Such actions effectively defeat the Parliamentary intent that taxpayers resolve such disputes through the legal system via Part IVC proceedings, where necessary.

Release for financial hardship

93. The ATO explains its approach to release for serious hardship[21] as follows:

> *9. The law allows for an individual to be partially or fully released from particular liabilities if we consider that payment would result in serious hardship. The provision also applies to the trustee of a deceased estate where the dependants of the deceased individual would suffer serious hardship if the trustee paid the liability.*
>
> *10. The particular liabilities for which release may be granted include:*
>
> *• income tax*
>
> *• pay as you go instalments*
>
> *• fringe benefits tax or a fringe benefits tax instalment*
>
> *• Medicare levy or Medicare levy (fringe benefits) surcharge*
>
> *• withholding taxes on dividends, interest or royalties*
>
> *• mining withholding tax*
>
> *• managed investment trust withholding tax*
>
> *• some penalties and interest charges associated with these debts.*
>
> *11. Where we have previously determined that a liability will not be pursued, we may still consider whether that liability should be released on the basis of serious hardship.*[22]
>
> *(Footnotes removed)*

94. As may be seen from the above list, the current release provision does not cover the more frequently occurring small business [activity statement] debt categories: PAYG withholding, SGC and GST. Nor can a director obtain release from a director penalty.

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[21] See section 340-5 of Schedule 1 to the TAA.
[22] Law Administration Practice Statement PS LA 2011/17 *Debt relief, waiver and non-pursuit*.

95. Practitioner feedback is that these limitations impose practical difficulties for small business operators seeking to deal with serious vulnerability that prevented them from meeting their tax-related liabilities as they arose.

96. The ATO specifies the approach taken to assess whether serious hardship exists in that Practice Statement, as follows:

> ***Definition of serious hardship***
>
> *17. 'Serious hardship' is given its ordinary meaning.*
>
> *18. We consider serious hardship to exist where the payment of a tax liability would result in a person being left without the means to afford basics such as food, clothing, medical supplies, accommodation or reasonable education.*
>
> *19. We have tests to apply in helping you decide whether serious hardship exists. The object of the tests is to determine whether the consequences of paying the tax would be so burdensome that the person would be deprived of what are considered necessities according to normal community standards.*
>
> *20. These tests are:*
>
> • *the income and outgoings test*
>
> • *the assets and liabilities test*
>
> • *other relevant factors*.[23]

97. Practitioners report that the current ATO administrative process for release applications is too cumbersome and time-consuming for the target audience of vulnerable taxpayers (including small business operators) to complete successfully. If a [small business] taxpayer is so vulnerable that the taxpayer does not have the resources to prepare the documentation to support a claim for release, that lack of resources will prevent the taxpayer from obtaining the intended release for that hardship.

98. Practitioner feedback indicates that the most significant concern with the release provision is the interpretation that the potential release for serious hardship must entirely relieve that hardship, failing which the Commissioner will not exercise the discretion to release. The practical effect is that [small business] taxpayers in the most serious circumstances of severe vulnerability will be unable to obtain any relief for that hardship through the exercise of that discretion.

Compromise of debts

99. According to practitioners, the debt compromise option is reportedly very seldom exercised in practice, limiting the ability of the ATO to properly support small business taxpayers experiencing substantial financial difficulties.

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[23] Ibid.

100. The ATO guidance on this limited power states:[24]

> *1. Tax debtors have a responsibility to meet their payment obligations as and when they fall due for payment. Where a tax debtor does not pay by the due date, we have a range of collection and recovery options (see Law Administration Practice Statement PS LA 2011/14 General debt collection powers and principles). These include, in appropriate cases, compromising the undisputed tax-related liabilities and other amounts payable to us (undisputed taxation debts).*
>
> *2. There is no express enactment under any of the taxation laws which empowers us to compromise undisputed taxation debts. Section 8 of the Income Tax Assessment Act 1936 (ITAA 1936) and equivalent provisions in other tax statutes confer upon the Commissioner of Taxation responsibility for the general administration of the relevant legislation.*
>
> *3. Section 15 of the Public Governance, Performance and Accountability Act 2013 (PGPA Act) invests in the Commissioner a power to enter into an agreement that includes an undertaking not to pursue part of a taxation debt owing to the Commonwealth, as part of a financially prudent bargain.*
>
> *4. Section 11 of the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule 2014) imposes on the Commissioner an obligation to pursue recovery of debts owing to the Commonwealth. This obligation is subject to some specified exceptions which, in effect, allow us to decide not to pursue a debt in particular circumstances.*
>
> *5. The powers of general administration, together with the powers in section 15 of the PGPA Act and section 11 of the PGPA Rule 2014, enable us to compromise undisputed taxation debts (that is, agree to accept payment of less than the full amount owed in full and final settlement of the whole debt).*
>
> *6. The power to compromise, however, is not an unfettered power that we can exercise for any reason. It is a power which can only be properly exercised if it is exercised for a permissible purpose. In so far as the power of general administration is relevant to the compromise of taxation debts, the fundamental purpose of the power is to enable the efficient collection of taxation liabilities from those who are obliged to pay them.*

101. Practitioners report that the ATO processes to access these powers are difficult to navigate and, as outlined above, do not appear to be successfully accessed very frequently in practice.

102. Given the lack of specific statutory powers for debt compromise, there is no formal review process available for small business taxpayers who unsuccessfully apply for a debt compromise. Practitioners contend that this is an unsatisfactory situation for such taxpayers, who may have meritorious cases with sound arguments in favour of compromise, but whose applications are unsuccessful.

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[24] See Law Administration Practice Statement PS LA 2011/3 *Compromise of undisputed tax-related liabilities and other amounts payable to the Commissioner*.

103. In addition, for further requests for compromise, practitioners report a lack of success in second applications, even when supported by additional evidence as to relevant circumstances.

104. The Committees would be pleased to discuss any aspect of this submission if it would assist in finalising the Inquiry. Please contact Bruce Collins on 0409 440 415, Chris Pearce on 0419 812 823, or Sue Williamson on 0411 646 783 if you would like to discuss this submission with representatives of the Committees who have contributed to the submission.

APPENDIX A – CASE STUDY 1

Family Trust owns a coffee shop. B and C are beneficiaries of Family Trust. B and C work 7 days a week, occasionally getting a day off. B and C had used the same tax agent for more than 25 years. B and C provided the tax agent with information to prepare returns and believed everything was being lodged. With few exceptions nothing was lodged or paid from 2019. This all came to light in the middle of 2025 when an employee did not receive a PAYG summary. B and C appointed a new tax agent. The new agent lodged all outstanding returns.

Together Family Trust, B and C now owe $660,000 in tax plus $840,000 in penalties and interest. None of the parties had received notices that returns had not been filed and taxes had not been paid as those notices were sent to the tax agent.

DPNs have issued. Defences are due. An application for a payment plan is being prepared but the concern is that it will be denied because the plan will cover more than 2-3 years given the compounding GIC. They are making weekly payments of $14,000 as if a payment plan were in place.

B and C do not deny the debt. They are considering all options including liquidating assets urgently. They are distressed and can't see a way out.

An application for remission of GIC will be filed. However, it is known that generally the current policy is not to remit until the full primary tax debt is paid.

B and C engaged their local lawyer to deal with the DPN. The lawyer tried to approach the ATO to discuss various matters: payment plan; remission of GIC; delaying DPN action. He was directed to lodge the matter by email through a general email address. Concerned that he was unable to speak to anyone at the ATO, the lawyer directed his clients to engage a tax lawyer.

What the taxpayers are dealing with

- Non-deductible GIC is accruing at 11.51% per annum (economic cost of 21.7% given non-deductibility), currently $3,300 per week.
- The ATO will not remit GIC until the taxpayers have paid the primary tax in full, so the taxpayers watch a growing debt notwithstanding payments.
- Regardless of timing, anecdotal evidence is that GIC remission is unlikely.
- A payment plan will not be agreed by the ATO unless the timeframe can be decreased.
- They and their representatives do not have access to speak to anyone at the ATO to try to come up with a plan.
- Management of the DPN process lacks transparency as correspondence goes through a generic 'summons team A' email address with no indication of when or if the correspondence will be responded to.
- If the tax lawyer has someone sit on the phone for hours to speak to someone, they will eventually reach a junior resource. Invariably the advice will be to email. Escalation rarely occurs.
- Generally, at the last minute things will work out because lawyers waste hours and hours on phones trying to get through to someone. Attention is given when there is a court deadline today/tomorrow.

The impact on the taxpayers

1. Financial: how do they trade out when interest is so high?
2. Relationship strain: divorce is not unusual.
3. Clients are forced to seek medical treatment for depression and other similar conditions

APPENDIX B – CASE STUDY 2

GIC Remission Request for Company

Background

We act on behalf of Company (the Taxpayer).

We respectfully request that the Commissioner exercise his discretion to remit the General Interest Charges (**GIC**) accruing to the Income Tax Account of the Taxpayer in respect of relevant income years.

We have been advised that the Taxpayer has complied with all outstanding lodgment obligations.

The primary tax debt has been paid.

Facts

Director is the sole director of the Taxpayer.

Director is 53 years of age.

The Taxpayer operates as a building contractor, specifically constructing residential properties.

The company is a small-scale contractor, usually only undertaking one project at any given time.

Each construction project typically takes 14-18 months to complete under normal circumstances.

Prior to 2020, the Taxpayer had established a consistent and reputable building practice, maintaining high standards and meeting project deadlines.

Bushfires

In September 2019, the Taxpayer commenced a new residential build project in an area that has experienced bushfires in Victoria (**Bushfire Town**).

During December 2019, extreme weather conditions with exceptionally hot temperatures impacted construction progress.

On 1 January 2020, significant bushfires began threatening the Bushfire Town, with the Australian army evacuating the town in January 2020.

The Taxpayer was forced to take extreme measures and went so far as to stay at the construction site in order to defend the properties from the fire.

For 2-3 weeks following the bushfire threat, smoke conditions were so severe that breathing was difficult on many days. Despite this the Taxpayer continued working on the construction project.

Following the bushfire crisis, the COVID-19 pandemic commenced, resulting in further complications and unprecedented disruptions to the construction industry, especially for those undertaking private contracts.

The state of Victoria experienced multiple COVID-19 lockdown periods that severely impacted the Taxpayer's ability to obtain building materials and continue construction:

- Lockdown 1: 31 March 2020 to 12 May 2020
- Lockdown 2: 9 July 2020 to 27 October 2020
- Lockdown 3: 13 February 2021 to 17 February 2021
- Lockdown 4: 28 May 2021 to 10 June 2021
- Lockdown 5: 16 July 2021 to 27 June 2021
- Lockdown 6: 5 August 2021 to 21 October 2021

A project such as this would usually be completed within a 14-18 month timeframe. Instead, the project was completed in June 2021, representing a 12-month delay beyond the expected completion date.

Following completion of the first delayed project, the Taxpayer faced significant delays in obtaining planning and building permits for his next construction project due to planning offices operating remotely as a result of COVID-19 restrictions.

It took three years to obtain the necessary planning and building permits, with the building permit finally being issued in November 2021.

Massive delays in building materials and roof trusses forced the Taxpayer to take unprecedented measures such as manufacturing trusses at his own yard.

Sons Accident and Subsequent Medical Issues

In June 2022 the police arrived at the Taxpayer's home to inform him of a car accident involving his second-oldest son (Son).

His 18-year-old son fell asleep while driving home, ran off the road, and struck a tree.

The son suffered life-threatening and life-changing injuries including:

- Three broken vertebrae in his neck
- Compound fractures to his left femur
- Completely shattered left knee
- Two fractures in his collarbone
- Bleeding on the brain
- Additional injuries

The son was initially taken to Albury Base Hospital, where two doctors from Royal Melbourne Hospital flew out to stabilise him before he was airlifted back to Melbourne in an induced coma. (See Medical Records attached, pg. 1)

The son spent eight days in intensive care at Royal Melbourne Hospital in a coma, undergoing multiple surgeries.

Following intensive care, the son spent an additional week at Royal Melbourne Hospital before being transferred to Epworth Hospital in Richmond for three months of rehabilitation.

The son continues to require surgeries on his leg and has undergone surgeries to brachial plexus injury, which were severed from the spinal cord in the accident.

Unfortunately, despite surgical intervention, the son's right arm has limited movement resulting from the damage to the brachial plexus.

The trauma of his son's accident severely impacted the Taxpayer's mental health and cognitive function, with the impact of the trauma lasting for a significant time after the incident.

Despite continuing to work daily, the Taxpayer's productivity was significantly diminished for 12-18 months following the accident.

Furthermore, the Taxpayer continues to suffer the impact of the incident, as the son will require further surgery to have the steel plate on his femur removed.

Impact On Tax Obligations

The combination of natural disasters, pandemic-related delays, family tragedy, and personal trauma created circumstances beyond the Taxpayer's control that significantly impacted his ability to maintain normal business operations and meet tax obligations in a timely manner.

The extended project timelines and reduced productivity directly affected the Taxpayer's cash flow and capacity to meet tax payment obligations when they fell due.

The Taxpayer's focus and attention were necessarily diverted to his son's medical care, rehabilitation, and family support during critical periods when tax obligations would normally have been attended to.

The 2020 bushfires that threatened the Bushfire Town represented a significant natural disaster that disrupted normal business operations and created an environment of extreme stress and uncertainty.

The severe smoke conditions that persisted for weeks following the bushfire threat created hazardous working conditions that impacted the Taxpayer's health and work capacity.

The COVID-19 pandemic and associated lockdowns created unprecedented disruptions to the construction industry, with material supply chains severely impacted and work restrictions limiting productivity.

The extended permit approval process due to government offices operating remotely was a direct consequence of pandemic restrictions and entirely outside the Taxpayer's control.

The life-threatening injuries sustained by the Taxpayer's son constituted a significant family medical emergency requiring immediate and ongoing attention.

The psychological trauma experienced by the Taxpayer as a result of his son's accident was a legitimate medical condition that impacted his mental health and ability to attend to business and tax matters.

The Taxpayer has now recovered sufficiently to address his outstanding tax obligations and is currently on a payment plan that has a final due date of 7 November 2025.

We have been advised that the Taxpayer has lodged all outstanding income tax returns and statements and paid all outstanding principal tax obligations.

The Taxpayer has implemented measures to ensure compliance with all future lodgment and payment obligations in a timely manner.

The natural disasters, pandemic impacts, and family medical emergency created unpredictable challenges that would have impacted any reasonable taxpayer's ability to maintain normal business operations and tax compliance.

Grounds for remission of GIC

Section 8AAG of the *Tax Administration Act 1953* provides the Commissioner with a discretion to remit all or a part of GIC. ….

In relation to the special circumstances which the Commissioner may consider, the Commissioner provides as follows in **PSLA 2011/12**:

> *"We may remit GIC if:*
>
> *• there are special circumstances relating to the client's case, and*
>
> *• because of those special circumstances, it would be fair and reasonable to remit……*

The discretion to remit where it is 'otherwise appropriate' is a broad discretion. As noted in **PSLA 2011/12** there is no exhaustive list of those circumstances which might warrant remission under this provision.

As noted above, s 8AAG(5) provides that the Commissioner may remit all or part of the GIC where it is "otherwise appropriate" to do so. The Commissioner provides in **PSLA 2011/12** as follows: *"There is a broad discretion and there is no exhaustive list of those circumstances which might warrant remission under the provision. However, it gives us a degree of flexibility for the remission of the GIC…..*

Moreover, the *Taxation Administration (Remedial Power – Remission of Charges and Penalties) Determination 2023* modifies the operation of the TAA to allow for the remission of the general interest charge (GIC) (section 8AAG), shortfall interest charge(SIC) (subsection 280-160(1) in Schedule 1), and administrative penalties including the failure to lodge (FTL) penalty (subsection 298-20(1) in Schedule 1)……

Application of s 8AAG(3)

Section 8AAG(3) applies where the delay in payment was not due to, nor directly or indirectly caused by, an act or omission of the Taxpayer, and the Taxpayer took

reasonable action to mitigate the effects of those circumstances. The facts strongly support that test being satisfied, at least for substantial parts of the period of accrual.

First, the relevant circumstances were overwhelmingly external to the Taxpayer. The bushfire emergency in January 2020, severe smoke conditions, repeated Victorian COVID-19 lockdowns, disrupted supply chains, remote planning office delays, and the son's life-threatening accident were all events outside the Taxpayer's control. They were not brought about by any voluntary conduct, default, or choice of the taxpayer. Rather, they were supervening events that materially impaired cash flow, productivity, business continuity and the practical ability to attend to tax liabilities when due.

Secondly, the facts disclose reasonable mitigation. The Taxpayer continued working despite the fire threat and smoke conditions; resumed and continued projects through the pandemic; took unusual steps to keep the second project moving, including manufacturing trusses in his own yard; ultimately completed the outstanding lodgments; paid the primary tax debt; and is said to have implemented measures to ensure future compliance. Those matters demonstrate ongoing efforts to reduce the effects of the external events rather than passively allowing the position to deteriorate.

On that footing, the better characterisation is that the delay in payment arose from a combination of natural disaster, pandemic disruption, government approval delays, supply chain interruption and acute family medical crisis, none of which were caused directly or indirectly by the Taxpayer. In circumstances where the Taxpayer nevertheless kept trading, completed projects, regularised lodgments and paid the principal, there is a strong basis to submit that remission is available under s 8AAG(3). The ATO's current public guidance confirms that GIC remission decisions are made by reference to PS LA 2011/12.

If the Commissioner were to conclude that some part of the delay was indirectly contributed to by the Taxpayer's own acts or omissions — for example, because payment arrangements were not put in place earlier, or because tax debts remained unattended for a period even while the business continued operating — remission should still be granted under s 8AAG(4).

That is because the facts also support the remaining limbs of s 8AAG(4). The Taxpayer took reasonable action to mitigate the effects of the circumstances, for the reasons above. More importantly, having regard to the nature of those circumstances, it would be fair and reasonable to remit all or a substantial part of the GIC. The circumstances were not ordinary cash-flow management problems. They included successive disaster-level interruptions:

bushfire threat and evacuation conditions, multiple pandemic lockdowns, serious permitting and supply chain disruption, then a catastrophic accident involving the Taxpayer's son requiring intensive care, prolonged rehabilitation and ongoing surgeries. These matters had direct human and commercial consequences and explain why the Taxpayer's attention and capacity were materially compromised.

Even if the Commissioner identifies some Taxpayer-side omission in not addressing the debt sooner, the surrounding circumstances substantially reduce culpability. This is not a case of deliberate non-payment, indifference to obligations, or choosing to prioritise other discretionary expenditure. It is a case where extraordinary events eroded the Taxpayer's earning pattern and cognitive capacity over an extended period. The fact that the Taxpayer

has since become compliant, paid the principal tax, and implemented steps for future compliance makes it fair and reasonable to remit the GIC, at least in part, under s 8AAG(4).

Application of s 8AAG(5)

There is also a strong alternative basis for remission under s 8AAG(5).

Special circumstances — s 8AAG(5)(a)

The cumulative facts plainly amount to special circumstances. PS LA 2011/12 explains that whether special circumstances exist depends on the facts of the particular case, and that the touchstone is whether it would be fair and reasonable to remit. The ATO's current remission guidance likewise states that remission requests are assessed by reference to that practice statement.

Here, the Taxpayer experienced a sequence of serious and unusual external events over a sustained period:

- a major bushfire emergency affecting the bushfire town project;
- prolonged smoke exposure and disruption to work;
- repeated COVID-19 lockdowns in Victoria;
- industry-wide material shortages and permit delays;
- a three-year delay associated with planning/building approvals;
- a catastrophic accident involving the Taxpayer's son, followed by ICU treatment, rehabilitation and ongoing surgery;
- significant trauma and reduced productivity for 12–18 months thereafter.

Taken together, those matters are well outside the ordinary course of business vicissitudes. They are precisely the sort of unusual, severe and compounding circumstances capable of meeting the "special circumstances" threshold. The attached draft also correctly points to the Commissioner's administrative approach to external adverse events and natural disasters.

Further, the *Taxation Administration Act 1953* remains in force, including s 8AAG as the statutory source of the remission discretion.

Otherwise appropriate — s 8AAG(5)(b)

Even if the Commissioner were not satisfied about "special circumstances", it is still otherwise appropriate to remit. The "otherwise appropriate" limb is broad and designed to preserve flexibility. On these facts, remission is appropriate because:

- the underlying causes of delay were predominantly external and serious;
- the Taxpayer continued attempting to work and keep projects alive;
- the principal debt has now been paid;
- outstanding lodgments have been brought up to date; and
- remission would be consistent with the ATO's acknowledged practice of assisting taxpayers affected by natural disasters and other serious external adverse events.

In that sense, continuing to impose full GIC would operate punitively rather than compensatorily. Once the Commissioner accepts that the debt position arose during a period marked by repeated external crises, later compliance and payment of principal become powerful indicators that remission is appropriate as an exercise of administration rather than indulgence.

PS LA 2011/12

Applying PS LA 2011/12, the strongest points are:

- the circumstances were serious, external and atypical;
- the taxpayer's conduct shows mitigation, not abandonment;
- the case should be assessed on its own merits;• the question of fairness should be viewed through the lens of what ordinary compliant Taxpayers would regard as fair and reasonable in the face of bushfire, pandemic disruption and catastrophic family medical emergency; and
- the Commissioner's own present guidance confirms that PS LA 2011/12 remains the governing policy framework for GIC remission requests.

These facts sit comfortably within the policy rationale for remission. They are materially different from a case of simple late payment, poor cash management, or a conscious choice not to comply. The combination of natural disaster, government-imposed restrictions, industry-wide shortages and acute family trauma provides a compelling policy basis for remission under the practice statement.

For those reasons, the Commissioner should be satisfied that the Taxpayer qualifies for remission under s 8AAG(3) because the delay was caused by circumstances external to the Taxpayer and reasonable mitigation steps were taken. Alternatively, if any part of the delay is characterised as having been contributed to by an act or omission of the Taxpayer, remission should be granted under s 8AAG(4) because the Taxpayer still took reasonable mitigating action and, having regard to the nature of the circumstances, it is fair and reasonable to remit.

In any event, the cumulative effect of the bushfires, COVID-19 disruptions, permit and supply chain delays, and the catastrophic accident involving the Taxpayer's son constitutes special circumstances, or at least makes remission otherwise appropriate, within s 8AAG(5).

Consistently with PS LA 2011/12, the Commissioner should remit all GIC, or at minimum remit GIC for the periods most directly affected by those extraordinary events.

ATO Response

Your request to remit general interest charge is declined

To whom it may concern,

You asked us to remit general interest charge (GIC) from your Integrated client account for the period up to 06 March 2026.

We've reviewed your request and declined your request for remission.

The reasons for our decision are attached to this letter.

What you need to do

To avoid further penalties and stay on top of your tax obligations log in to to.gov.au/onlineservices to see if you have any outstanding documents or overdue amounts.

If you have outstanding documents, lodge them as soon as possible. Visit ato.gov.au/howtolodge for help on how to lodge.

For any overdue amounts visit ato.gov.au/howtopay for payment options.

GIC applies to any overdue tax. This amount increases daily until your debt is paid in full. To find out more about GIC including the current rate, visit ato.gov.au/gic

If you don't agree with our decision

You may apply for a review by the Federal Court or the Federal Circuit and Family Court (Division 2) under the Administrative Decisions (Judicial Review) Act 1977. Fees will generally apply.

Applications for a review must be lodged within 28 days of the date of this letter. For more information visit ato.gov.au/externalreview.

Alternatively, if you have new information we didn't know about when we made our decision, you can reapply. If there's nothing new, we won't be able to review your request again.

Need help?

If you have any questions, contact us via our online services, by visiting ATO.gov.au/onlineservices

…….

GIC remission outcome

Your remission has been considered, we've decided to not remit.

Reasons for our decision

We considered your request under section 8AAG of the *Taxation Administration Act 1953*, and in line with Law Administration Practice Statement PS LA 2011/12 Remission of general interest charge. The Commissioner can remit the interest if he is satisfied that:

- The delay in payment was not caused by your acts or omissions, and you took reasonable steps to mitigate the effects of those circumstances.
- Although the delay in payment was due to your acts or omissions, you took reasonable action to mitigate the delay and it would be fair and reasonable to remit all or part of the charge.
- There were special circumstances making it fair and reasonable to remit all or part of the charge or because it would otherwise be appropriate to do so.

You told us (in summary):

We have reviewed your circumstances and understand that since 2018 your inability to remit GIC arose from the combined impacts of the 2020 Victorian bushfires, extended COVID-19 lockdowns, and significant personal hardship following your son's serious car accident. We acknowledge the resulting impact on your mental health and recognise the strain this placed on both your business and personal life.› You were in an area of Victoria impacted by the 2020 bushfires. While smoke conditions affected you for approximately three weeks and prevented access to work sites, you did not directly lose any assets as a result of the bushfires.

- You were impacted by COVID-19 lockdowns in Victoria for approximately 30 weeks between 2020 and 2022.
- During this time, your son was involved in a serious car accident, spending eight days in intensive care and a further week in hospital, followed by multiple knee surgeries, which has had an ongoing impact on your mental health and cognitive function.

We also considered:

- Your payment compliance history.
- You have entered into multiple payment plan arrangements; however, you did not adhere to the agreed terms. As a result, these arrangements were either cancelled or defaulted.
- On each occasion a payment plan was entered into, you acknowledged and agreed that General Interest Charge (GIC) would continue to accrue until the outstanding balance was paid in full.
- The BAS indicates that the business continued to make sales during this period. As GST is collected from customers and only amounts actually received are required to be reported, no information has been provided to explain why the GST liabilities could not be paid by the due dates.

Reason for Decision

You have not demonstrated how circumstances prevented payment by the due date. As a condition of entering into a payment plan, General Interest Charge (GIC) will continue to accrue until the outstanding debt is fully paid.

You have not demonstrated that you acted within a reasonable timeframe to address and reduce the impact of the circumstances that prevented timely payment.

You have not prioritised your tax obligations. It is your responsibility to manage your affairs to ensure lodgment and payment by the due date. Remission would not be considered fair and reasonable, as other taxpayers have taken appropriate steps to pay on time despite similar circumstances.

About the Business Law Section

The Business Law Section of the Law Council of Australia provides a forum through which lawyers and others interested in all matters pertaining to business law can discuss current issues, debate and contribute to the process of law reform in Australia, and enhance their professional skills.

The Section:

- prepares almost half of the Law Council's submissions each year, putting the views of the business community and the legal profession directly to the Federal Government and its agencies, and Federal Parliamentary Committees;
- provides a forum for debate of current issues, and assists lawyers to develop and maintain their professional skills and knowledge, through a schedule of regular conferences, workshops and seminars;
- represents the Law Council on a number of bodies—for example, the National Taxation Liaison Group and its sub-committees, the Customs and Border Protection National Consultative Committee and its sub-committees and the ASX Corporate Governance Council; and
- gives its members the opportunity to develop a network of professional contacts in their fields of practice.

About the Law Council of Australia

The Law Council of Australia represents the legal profession at the national level; speaks on behalf of its constituent bodies on federal, national, and international issues; promotes and defends the rule of law; and promotes the administration of justice, access to justice, and general improvement of the law.

The Law Council's Secretariat is based in Canberra. Its website is www.lawcouncil.au.