Law Council
OF AUSTRALIA

# Draft ATO Vulnerability Framework

## Australian Taxation Office

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The Law Council advises governments, courts, and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world. The Law Council was established in 1933, and represents its Constituent Bodies: 16 Australian State and Territory law societies and bar associations, and Law Firms Australia. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Law Society of the Australian Capital Territory
- New South Wales Bar Association
- Law Society of New South Wales
- Northern Territory Bar Association
- Law Society Northern Territory
- Bar Association of Queensland
- Queensland Law Society
- South Australian Bar Association
- Law Society of South Australia
- Tasmanian Bar
- Law Society of Tasmania
- The Victorian Bar Incorporated
- Law Institute of Victoria
- Western Australian Bar Association
- Law Society of Western Australia
- Law Firms Australia

Through this representation, the Law Council acts on behalf of more than 107,000 Australian lawyers.

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The Chief Executive Officer of the Law Council is Dr James Popple. The Secretariat serves the Law Council nationally and is based in Canberra.

The Law Council's website is www.lawcouncil.au.

# Acknowledgements

The Law Council of Australia is grateful to the Taxation Committee and SME Business Law Committee of the Business Law Section (**BLS**), and to the Law Institute of Victoria, for their contributions to the preparation of this submission.

# Executive summary

The Law Council appreciates the opportunity to comment on the Australian Taxation Office (**ATO**) draft Vulnerability Framework (the **Framework**). The Framework has an important role to play in positioning the ATO to better deal with vulnerable taxpayers in its operations when administering the nation's tax and transfer systems.

The Law Council considers that the Framework articulates commendable values, such as empathy, fairness and inclusion, which are paramount when working with vulnerable people. However, as set out in this submission, the Framework could provide more practical detail to guide both internal decision-makers and external users. The Law Council is concerned that, without practical details and language, the Framework's useability and accessibility are reduced and may leave vulnerable taxpayers uncertain about their options.

A key point made in this submission is the lack of meaningful recognition in the Framework that the ATO can take action to alleviate some of the effects of financial abuse using existing powers. Further, the Framework does not recognise that there should be an attempt to do so in every case where financial abuse is identified. The Framework's current focus on what the ATO ***cannot*** do (as opposed to what it ***can*** *do*—and, perhaps, ***ought*** to do), should be revisited. On that point, as noted throughout this submission, the Tax Ombudsman has recently recommended the Commissioner explore existing powers and seek legislative change.[1] In our view, the draft Framework fails to address this recommendation.

Further, the Law Council submits that the Framework's explanation of vulnerability may be too general and does not provide accessible guidance to taxpayers, practitioners or ATO staff. While we agree that is appropriate to avoid rigid definitions to ensure decision-makers have enough practical flexibility to apply the Framework in an ever-changing environment, the current draft risks being too ambiguous and non-specific without a non-exhaustive list of common vulnerability scenarios to guide users.

Overall, the Law Council suggests the Framework would benefit from moving beyond aspirational language to become a practical tool for all users. Ideally, the Framework should be a tool that is straightforward, transparent and actionable. It should clearly define the ATO's commitments, provide examples to guide consistent application, and embed mechanisms for accountability. Vulnerable taxpayers, and the practitioners and advocates who support them, need a system that is principled in intent and reliable in practice. A clearer, more direct Framework is essential to achieving this aim.

The Law Council's BLS, in particular its Taxation Committee and SME Business Law Committee would welcome the opportunity to be further consulted on the codesign of the Framework and its implementation—perhaps as part of an ongoing Stakeholder Reference Group for this multi-year ATO journey. We encourage the ATO to consult our experts and broader community representatives, in the interests of achieving the desired cultural change initiatives to improve how the ATO deals with vulnerable people's tax-related and transfer-related obligations.

[1] Tax Ombudsman, *Identification and management of financial abuse within the tax system* (April 2025).

# Introduction

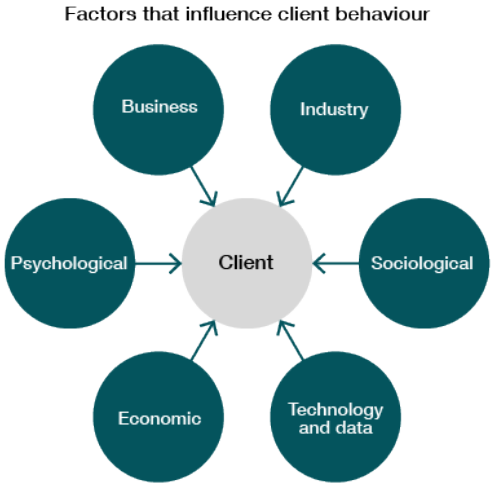
1. The Law Council regards the Framework as a necessary, but not sufficient, step for the ATO to outline the cultural changes required for staff to recognise situations of vulnerability affecting taxpayers, to assist in changing organisational cultural expectations for staff actions, and to train staff in how to carry out appropriate actions in line with those cultural changes.

2. From the outset, we reiterate the views provided in an earlier submission to the ATO by our BLS's Taxation Committee and SME Business Law Committee on '*Improving how the ATO deals with vulnerable taxpayers*'.[2] Recommendations made in this previous body of work appear equally applicable to this further consultative process on the same topics almost four years later.

3. Further, having reviewed some of the other submissions already provided in this round of consultation, the Law Council supports the comments and broad recommendations of the following submissions to the current review:

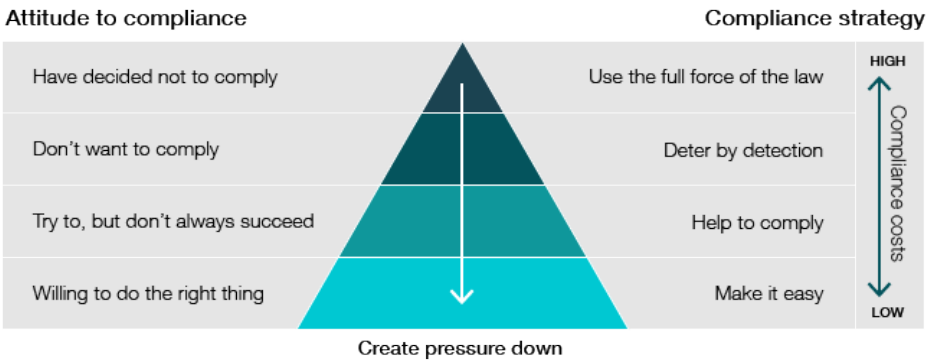
   - CPA Australia submission;[3]
   - CA ANZ submission;[4]
   - Joint submission from the financial counselling sector;[5] and
   - UNSW Tax and Business Advisory Clinic.

4. Importantly, from a conceptual perspective, we are concerned that the Framework does not articulate or draw upon the underpinnings of the ATO's Compliance Model, which has been a long-standing basis for the ATO's strategic approach to dealing with tax administration.[6] In particular, the following elements would appear highly relevant to the articulation of ATO responses to instances of taxpayer vulnerability:




[2] Law Council of Australia, Submission to The Treasury, *Improving how the ATO deals with vulnerable taxpayers* (30 November 2021) 7-10 <https://lawcouncil.au/resources/submissions/improving-how-the-ato-deals-with-vulnerable-taxpayers>.
[3] See, <unsigned-ato-vulnerability-framework-cpa-australia-submission---18-july-2025.pdf>.
[4] See, <https://www.charteredaccountantsanz.com/news-and-analysis/advocacy/policy-submissions/submission-on-the-draft-ato-vulnerability-framework>.
[5] See, <https://www.financialcounsellingaustralia.org.au/docs/joint-submission-from-the-financial-counselling-sector-ato-vulnerability-framework/>.
[6] See, <https://www.ato.gov.au/about-ato/managing-the-tax-and-super-system/how-we-help-and-influence-taxpayers>.

5. In turn, we submit that understanding these 'BISEPT' factors[7] should then shape the ATO's strategic choices in dealing with instances of taxpayer vulnerability, using the other part of the Compliance Model:




6. As a result of the above 'BISEPT' conceptual factors in the Compliance Model, it would appear appropriate for the Framework to articulate how ATO officers may use the Commissioner's existing range of powers to properly help vulnerable people to comply or to modify their compliance obligations, taking into account the circumstances leading to, and compliance effects of, the person's vulnerability. This ***adaption*** to suit the circumstances of the vulnerable people would appear to be a practical realisation of the Compliance Model throughout the ATO's compliance activities impacting on those vulnerable people.

7. Further, the Framework does not seem to consider all the duties contained in the *Public Governance, Performance and Accountability Act 2013* (Cth), in which section 15 states:

> ***Duty to govern the Commonwealth entity***
>
> *(1) The accountable authority of a Commonwealth entity must govern the entity in a way that:*
>
> *(a) promotes the proper use and management of public resources for which the authority is responsible; and*
>
> *(b) promotes the achievement of the purposes of the entity; and*
>
> *(c) promotes the financial sustainability of the entity.*

8. As previously referenced in our earlier submission, the second element in those duties would seem to encompass the Commonwealth entity (the ATO) attempting to promote the achievement of the underlying purposes of the entity, which, in the ATO's case, would appear to be to develop and maintain voluntary compliance and willing participation by the community in meeting their obligations under the tax and transfer systems. The Law Council submits that the ATO more effectively supporting people with significant vulnerability would contribute to the achievement of those purposes, by showing the fairness of, and flexibility in, the use of the Commissioner's powers and discretions—thus promoting greater community engagement and willing participation in the tax and transfer systems.

9. We also suggest that the Framework should expressly recognise the categories of intermediaries, advisers and advocates who are often brought in to assist vulnerable people to engage with the ATO to deal with their vulnerability. These would include lawyers, tax practitioners, financial advisers or counsellors, community service bodies and Tax Clinics. We recommend that the ATO overtly refer to those roles,

[7] **B**usiness, **i**ndustry, **s**ociological, **e**conomic, **p**sychological, **t**echnology and data factors.

and how they may assist the vulnerable people and the ATO to navigate these difficult situations, as part of the system in subsequent versions of the Framework.

10. In contrast to other ATO communications—noting, for example, the positive and supportive tone in the flexible approach to people dealing with the consequences of natural disasters[8]—the current draft of the Framework seems unfortunately to be cast in a negative manner, which suggests a lack of ability or accountability for the ATO to effectively deal with the consequences of taxpayer vulnerability.
We recognise that the Commissioner must deal with taxpayers under existing legislative requirements and that the causes of vulnerability largely lie outside the ATO's control. However, the current text appears to largely focus on ATO recognition of vulnerability, rather than the resulting ATO actions within the Commissioner's powers to better deal with that vulnerability. In this context, we note that the ATO's response to natural disaster victims provides automatic protections from lodgement and payment obligations and/or remission of interest charges for such victims. This may provide a useful model for the ATO to include the Framework for other sources of vulnerability.

11. Unfortunately, the current version of the Framework repeatedly explains the impact of existing legislative provisions on vulnerable people as requiring full compliance with taxation and transfer obligations, rather than attempting to explain how the ATO may ***adapt*** to respond more appropriately to non-compliance with those obligations that arises because of serious instances of taxpayer vulnerability. This is in contrast to other similar documents, like the one produced by the Australian Financial Security Authority.[9]

12. As a result, the Framework unfortunately misses multiple opportunities to articulate or explain instances where taxpayer vulnerability should justify the exercise of the Commissioner's various statutory discretions, or other powers, to ameliorate the harshness that would otherwise arise for those vulnerable taxpayers.

13. Further, in missing those opportunities (aside from some brief coverage of culturally and linguistically diverse taxpayers, and the digital divide), the Framework does not adequately cover the most frequently encountered instances of taxpayer vulnerability, such as:

    (a) serious physical health conditions;

    (b) serious mental health conditions, including conditions involving substance abuse disorders and other long-term or chronic psychiatric conditions;

    (c) family violence, financial abuse and coercive control, especially noting the 'weaponisation of the tax system' in such cases;[10] and

    (d) susceptibility to elder abuse.

14. The Framework does not seem to contemplate the ATO providing any form of fast-track contact mechanism to assist in identifying, assessing or prioritising vulnerable people who are encountering difficulties with their tax or transfer compliance

[8] See, <https://www.ato.gov.au/individuals-and-families/financial-difficulties-and-disasters/support-in-difficult-times/natural-disaster-support>.
[9] See, <https://www.afsa.gov.au/about-us/accountability-and-reporting/key-documents/vulnerability-framework>.
[10] Tax Ombudsman, *Identification and management of financial abuse within the tax system* (April 2025), <https://www.taxombudsman.gov.au/publications/review-into-the-identification-and-management-of-financial-abuse-within-the-tax-system/>. It seems anomalous that nothing in relation to the recommendations in this Report has been included in the Framework, despite the ATO foreshadowing that this Framework would be a central component in the ATO responding to the issues affecting victims of financial abuse.

obligations as a result of their vulnerable circumstances. We note that a large number of such priority channels are established to deal with instances of domestic violence or mental health crises impacting on people in other contexts, ranging from bank/financial institutions to utility providers and even other Government agencies. It would appear appropriate for the Framework to canvass the ATO providing a similar set of channels to assist those in highly vulnerable circumstances (and their supporting advisers or advocates) of the types discussed in this submission.

15. While the Framework does briefly touch on the ATO requesting information about taxpayers' vulnerabilities, it does not provide any guidance on what information or evidence might be beneficial to provide and how that information may be reviewed by ATO staff in exercising the Commissioner's statutory powers, especially the above-mentioned powers or discretions that might usefully mitigate the impacts of taxpayer vulnerability.[11] Advance guidance on this evidentiary process to clarify, socialise and refine the requirements over time would appear to be highly beneficial to the system, both for ATO officers and for practitioners or advocates who may be dealing with or supporting vulnerable people in engaging with the ATO regarding the impacts of their vulnerability on their tax and transfer obligations.

16. Lastly, the Framework does not seem to embrace the role that the ATO has in recommending further changes to the tax administrative systems through legislative recommendation and feedback to Government. The current limited scope of relief for hardship for vulnerable taxpayers is an obvious example of this, in practice. Another instance relates to the provision of targeted relief for spousal abuse victims.[12]

17. The next version of the Framework would therefore benefit from considering the above feedback and addressing the previous recommendations, including in our earlier submission, made by the professional bodies and other advocates regarding how the ATO should deal better with vulnerable taxpayers. The broad summary of those recommendations includes the Framework providing guidance on:

    - the more frequently encountered different types of vulnerability,
    - what powers and discretions available to the Commissioner could be used to deal with the tax consequences of people's vulnerability,
    - evidence that vulnerable people might produce, and how ATO officers may assess such evidence, and
    - the ATO's role in recommending improvements to the Commissioner's powers to deal with the tax compliance impacts flowing from people's vulnerability.

18. The Law Council also offers the involvement of its BLS in further consultation on the codesign of the Framework and its implementation, perhaps as part of an ongoing Stakeholder Reference Group for this multi-year ATO journey. We encourage the ATO to consult as proposed (including more broadly with vulnerable community representatives), in the interests of achieving the desired cultural change initiatives

[11] For instance, police information regarding financial abuse/domestic violence situations, medical or mental health evidence regarding physical or mental health disorders, aged-care support evidence for elder abuse situations.

[12] See, for instance: Kayis-Kumar A, Speidel C and Book L, 'Squeezing blood from stones? A comparative analysis of tax relief for victim-survivors in Australia and the United States' (2024) 39 *Australian Tax Forum* 191-220, and Kayis-Kumar A, Lim Y, Noone J, Walpole M, Breckenridge and Book L, 'Identifying and supporting financially vulnerable women experiencing economic abuse: A grounded theory approach' (2023) 21(2) *eJournal of Tax Research* 173-202.

to assist in improving how the ATO deals with vulnerable people's tax-related and transfer-related obligations.

# Responses to Consultation Questions

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

19. The Law Council considers the Framework, as currently drafted, could be improved by providing guidance for vulnerable taxpayers on important matters such as whether they would meet the vulnerability criteria, how they may approach the ATO to seek assistance, and what other tools and assistance are available.

20. For example, the Framework Objective states:

> *While this Framework sets out overarching commitments, these will inform the design of practical tools, staff capability building and inclusive processes* ***over time****. (with emphasis)*

21. The Law Council commends the intent but is concerned that there may be a lack of clarity to meaningfully support people experiencing vulnerability. The reference to developing processes 'over time' introduces ambiguity around when and how the ATO's commitments will translate into tangible support. For individuals facing vulnerability, uncertainty in institutional responses can be distressing and may undermine trust in the system.

22. The Law Council welcomes the Framework's recognition that vulnerability is dynamic and can affect anyone. This inclusive framing is important and aligns with contemporary understanding of vulnerability. However, as currently drafted, the Framework may not sufficiently translate this positive recognition into concrete and actionable commitments to provide certainty for vulnerable taxpayers and ATO officials applying the Framework. This risks inconsistent application and limits the ability of stakeholders to scrutinise and contribute meaningfully during the consultation process.

23. The Law Council suggests that the Framework could provide certainty to all taxpayers through the following:

- articulating specific mechanisms that the ATO will implement to support vulnerable individuals, including timelines and accountability measures;
- providing clear definitions and examples of vulnerability to guide ATO staff and ensure consistent application;
- embedding safeguards and review processes to ensure that discretion is exercised fairly and transparently; and
- ensuring early visibility of practical tools and inclusive processes, rather than deferring development to an unspecified future.

24. The Law Council reiterates that the overarching commitments are a positive step. However, the Framework should evolve to offer more concrete, immediate and transparent guidance. This will ensure that vulnerable individuals are supported by a system that is responsive, predictable and accountable.

**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.**

25. It is a positive sign that the ATO has committed to implementing a Vulnerability Framework and to training ATO staff to better recognise instances of vulnerability. However, the current draft content does not effectively support people experiencing vulnerability, but merely encourages ATO staff to recognise such vulnerability and then to direct people to other services.

26. The Law Council considers the language used in the Framework is respectful and well-intentioned. It demonstrates the ATO's genuine commitment to inclusivity and acknowledges the importances of supporting people experiencing vulnerability. However, as mentioned in response to Question 1, the Framework could improve overall clarity and accessibility, while attempting to incorporate clearer commitments to action, supported by indicative timeframes or milestones.

**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?**

27. The Law Council commends the Framework's foundational understanding of vulnerability and acknowledgement of its potential impact on individuals' ability to engage effectively with the ATO. Importantly, the Framework recognises vulnerability as a dynamic and universal human experience, one that can affect anyone, at any time. This inclusive framing is a strength, as it avoids stereotyping and encourages a compassionate approach to service delivery.

28. However, as noted in response to Question 1, the definition and explanation of vulnerability could be improved with more clarity for practical application. The ATO rightly states that vulnerability is 'not a checklist or label'. However, without further elaboration, this statement risks leaving Framework users uncertain about what specific circumstances may warrant additional support and intervention. In practice, this ambiguity may lead to inconsistent recognition of vulnerability and uneven service outcomes for individuals facing similar challenges.

29. The Framework should incorporate a non-exhaustive list of illustrative vulnerability examples. This could include serious physical or mental illness, bereavement, unemployment, financial abuse, and family or domestic violence. These examples are not applied as rigid criteria, but guide users to better understand the types of experiences that may impair a person's ability to interact with the ATO. Including such examples would support more consistent internal decision-making and application.

30. As a final point, the language used seems to overly focus upon vulnerable people 'feeling' listened to and 'included', rather than in providing any practical guidance as to how and in what circumstances ATO staff may be able to effectively assist such vulnerable people through the exercise of the Commissioner's existing powers and discretions.

**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?**

31. The Framework outlines the ATO's core focus areas, such as empathetic communication, flexible service delivery and staff training, which help define its role in supporting people experiencing vulnerability. The Framework makes clear that the ATO aims to engage with taxpayers, practitioners and advocates in a respectful and compassionate manner, and to adapt its services to meet individual needs where possible.

32. However, while the current content does provide some useful definitional support in describing vulnerability in aggregate, it does not seem to include sufficient specifics on the types of vulnerability that are most likely encountered in practice. Greater specificity on the more frequently encountered forms of vulnerability, including in shaping the different mechanisms that might be appropriate for ATO staff to engage with such people to better support them in navigating their tax-related obligations and shaping the ATO's regulatory responses to the use of the Commissioner's existing discretions and powers. In particular, the Framework should cover specific references to identifying and dealing with:

    - serious physical health conditions;
    - serious mental health conditions, including conditions involving substance abuse disorders and other psychiatric conditions;
    - family violence, financial abuse and coercive control, especially noting the 'weaponisation of the tax system' in such cases;
    - elder abuse;
    - culturally and linguistic diverse background issues, including English language barriers like illiteracy; and
    - digital divide issues, including those arising from socioeconomic disadvantages and remote locations.

33. Further, the Framework should clarify the limits of the ATO's role. For example, the Framework would benefit from outlining what the ATO can (or cannot) provide, such as payment plans, deferral of lodgement dates, additional guidance through its support channels. Similarly, the services it cannot provide should be outlined, such as legal advice, financial counselling or mental health support. In our view, these are critical distinctions that the Framework should make more explicit to help manage expectations and ensure that vulnerable individuals are referred to appropriate external services when needed.

34. Clarifying what the ATO cannot do, such as intervening in family disputes, resolving housing insecurity, or offering crisis support, would help both staff and the public understand the boundaries of the ATO's responsibilities. This would also support more consistent decision-making and reduce the risk of individuals falling through the cracks due to misunderstandings about the ATO's role.

**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?**

35. At a high level, the guiding principles outlined in the Framework, such as equity, fairness, empathy, accessibility, inclusiveness, transparency and accountability, reflect what the public rightly expects from an agency such as the ATO. These principles set a strong foundation for how the ATO should engage with taxpayers, particularly those experiencing vulnerability.

36. The ease of the ATO recognising people's vulnerability is only an initial stage in the process of engagement, while the effectiveness of the ATO responses to deal with that vulnerability is the major determinant of whether the Framework makes any real difference in the ATO's operations and its underlying culture.

37. The Law Council has received reports of a disconnect between these principles and the ATO's actions. Practitioners have reported that the ATO has not always responded with tailored approaches to taxpayers who present with unique and complex circumstances. For example, the Law Institute of Victoria's members have raised examples where vulnerable taxpayers received standardised responses that did not recognise their individual circumstances.

38. As an overall comment, the Framework's principles would benefit from the ATO outlining its administrative discretion and providing practical examples of the principles in action. For example, the Framework could benefit from a simplified explanation of the General Powers of Administration and the Commissioner's Remedial Powers. These are tools the ATO can use to provide meaningful relief in cases of vulnerability. Noting these powers in the Framework would strengthen credibility and demonstrate commitment to using all available mechanisms to support those in need.

39. In this regard, much of the current content is focussed on what the ATO ***cannot*** do, rather than providing insight as to what the ATO ***can*** do within the range of the Commissioner's existing statutory powers and discretions.

40. Specific feedback on each of the Framework's guiding principles is set out below:

## Equity and fairness

41. The Framework's description of equity and fairness as a principle may be too narrow. The Framework only focuses on 'inform[ing] taxpayers about their entitlements' and notes that 'some people may need extra support to fulfil their obligations'. This framing risks understating the reality of what vulnerable taxpayers typically require. In many cases, information alone is insufficient, and vulnerable taxpayers will need more practical relief. This could include extended time to pay debts, assistance in applying for release from tax liabilities due to serious hardship, or, in some cases, cancellation of debts altogether.

42. To illustrate, individuals impacted by family and domestic violence may face a Director Penalty Notice (**DPN**) for company debts they had no control over, often due to coercive financial abuse. In such cases, rigid enforcement of obligations without consideration of context can compound distress and deepen vulnerability.

## Accessibility and inclusion

43. This guiding principle builds on important work the ATO has undertaken to improve accessibility, particularly for culturally and linguistically diverse communities and people with disabilities. The expansion of multilingual resources on the ATO website is a positive step, and practitioners hope this commitment grows to include more languages and formats to reflect Australia's diverse population.

44. However, the Law Council understands that potential disconnects exist between the Framework and their practical experience in delivery of support. For example, practitioners have raised concerns about the Indigenous Helpline, which is intended to provide culturally safe assistance to Aboriginal and Torres Strait Islander peoples, where callers can typically be redirected to the general call centre, and connected with staff who may not be trained in culturally appropriate engagement. These experiences undermine the expectations set by the Framework.

45. Additionally, whilst the Framework references the Digital Inclusion Guide and the availability of accessible formats, it does not address the needs of individuals with low digital literacy or limited access to devices and internet services. Vulnerable taxpayers, particularly older Australians, people in remote communities, and those experiencing financial hardship, may struggle to engage with digital platforms. Without alternative pathways, these individuals risk exclusion from essential services. While digital channels may be efficient for routine transactions, these channels are often unable to resolve complex issues such as lodgement errors, debt disputes or complaints. In these situations, taxpayers need to speak directly with a staff member who can understand their circumstances and provide meaningful assistance.

## Empathy and compassion

46. The Law Council welcomes the ATO's continued commitment to respectful, empathetic and compassionate communication with taxpayers. These values are essential, particularly when engaging with individuals experiencing vulnerability. However, the Law Council has received reports that, in practice, there are instances of inconsistency in how the ATO applies these principles. Practitioners have reported cases where vulnerable taxpayers are asked to provide contemporaneous evidence of their circumstances, even after submitting reasonable documentation. These requests can run contrary to the Framework's empathy and compassion principes. Examples include:

    - Taxpayers experiencing mental health issues have been asked to provide evidence of treatment during the relevant period, despite the fact that many individuals delay seeking help or are only diagnosed years later.
    - Victim-survivors of family and domestic violence have been asked for police reports or medical records, even though most do not report these incidents due to fear, stigma, or safety concerns.

47. The Law Council recognises and appreciates the role of the ATO's integrity checks to ensure claims are valid. However, these requests can risk retraumatising individuals and make them feel disbelieved or dismissed, especially when they have already shared deeply personal and painful details. The Law Council suggests that the Framework could increase support for vulnerable people by recognising the need for an empathetic approach when requesting evidence to demonstrate vulnerability. This could mean the ATO may accept reasonable evidence without imposing additional and difficult requirements for vulnerable people, outlining that the ATO may apply discretion where warranted, and that the ATO may offer relief.

Representatives of community organisations supporting persons with mental health issues and family violence victim-survivors would be best placed to advise on alternative forms of reasonable evidence to support claims made.

## Transparency and accountability

48. The Law Council welcomes ATO's continued commitment to transparency and accountability, which is a distinct feature of the Framework, particularly the efforts being made to explain processes clearly once a taxpayer engages with the system. For individuals experiencing vulnerability, this clarity is essential to help them navigate complex interactions and make informed decisions.

49. However, the Framework could benefit from an outline of how the ATO may manage covert audits or compliance actions against vulnerable people. Vulnerable taxpayers subject to these processes must be afforded the same level of openness and accountability. Without access to clear information about what is happening and why, these individuals are left disempowered and unable to respond appropriately.

## Privacy and data security

50. The ATO's commitment to privacy and data security is positive and necessary to respond to the growing threat of scams and identity theft. However, the Law Council highlights that privacy concerns extend beyond cybersecurity and data protection. It also includes access to information—particularly for vulnerable people. For example, the Law Council understands that victim-survivors can be held liable for tax debts they know little or nothing about due to financial abuse or coercive control. In these cases, the lack of access to relevant information, such as account activity or historical tax decisions, can prevent them from understanding or challenging their liabilities.

51. The Treasury's *Review of Tax Regulator Secrecy Exceptions* (conducted between December 2024 and February 2025) brought renewed attention to the implications of secrecy provisions in vulnerable contexts. Notably, many public submissions highlighted the adverse impact of these provisions on victim-survivors of domestic and family violence. For example, submissions from the UNSW Tax and Business Advisory Clinic and Economic Abuse Reference Group[13] and Financial Counselling Australia[14] underscored how secrecy laws can prevent victim-survivors from accessing critical information about tax debts incurred through financial abuse or coercive control.

52. Without access to this information, individuals are unable to understand, dispute or seek relief from liabilities that may have been created without their knowledge or consent. While protecting information is important, the Law Council is aware that taxpayers with vulnerability encounter significant issues accessing their own information where they are unable to provide documents. The guiding principle as drafted does not provide guidance to taxpayers with vulnerability on how the ATO will assist them with access to their own information. This issue reinforces the need for the ATO to consider how secrecy provisions intersect with vulnerability, and to ensure that privacy protections do not inadvertently shield perpetrators or obstruct victim-survivors from accessing justice.

[13] University of New South Wales, submission to The Treasury, *Review of Tax Regulator Secrecy Exceptions* (28 February 2025) 6.
[14] Financial Counselling Australia, submission to The Treasury, *Review of Tax Regulator Secrecy Exceptions* (7 March 2025) 2.

53. The Law Council also considers that privacy and data security principles would benefit from clear and proactive guidance on how the ATO can assist taxpayers who have been scammed through fraudulent ATO communications. This could include what steps can be taken to secure compromised accounts, how affected individuals can regain access to their information safely and what protections are in place to prevent further harm. This clarity would provide support at a time when the vulnerable are most in need of reassurance and practical help. Strengthening this aspect of the Framework would demonstrate a genuine commitment to both security and compassion.

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

54. As indicated above, the current version of the Framework appears to lack:

- specificity about the more frequently encountered different types of vulnerability;
- details as to what powers and discretions available to the Commissioner could be used to deal with the tax consequences of people's vulnerability;
- guidance on evidence that vulnerable people might produce and how ATO officers may assess such evidence; and
- an explanation as to the ATO's role in recommending improvements to the Commissioner's legislative powers or discretions to more effectively deal with the tax compliance impacts flowing from people's vulnerability.

55. In our view, it would be beneficial for the Framework to include case studies and examples of situations where a person's vulnerability has adversely affected their compliance with tax-related obligations and how the ATO officers could deal better with those circumstances through the lens of empathic understanding of that vulnerability.

56. Finally, the Framework could benefit from insights and recommendations provided in submissions to other reviews concerning vulnerability, including those conducted by the Taxation Ombudsman. These submissions, alongside those referenced above, contain practical, evidence-based suggestions that would strengthen the Framework and make it more responsive to the needs of vulnerable taxpayers.

**Law Council's Business Law Section's 2021 submission**

57. As noted above, in November 2021, the BLS's Taxation Law Committee and SME Business Law Committee submitted a paper titled *Improving how the ATO deals with vulnerable taxpayers*.[15] This submission identified key challenges faced by vulnerable individuals in navigating the tax system, and outlined how vulnerability can significantly impair a taxpayer's ability to meet their obligations or access entitlements. Importantly, the submission set out a series of desired outcomes aimed at improving the ATO's approach. These include:

- changing ATO culture and decision-making processes to more effectively recognise wider forms of vulnerability in making ATO decisions when responding to vulnerable taxpayers' circumstances;

[15] Law Council of Australia, submission to The Treasury, *Improving how the ATO deals with vulnerable taxpayers* (30 November 2021) 7-10.

- clearly articulating the range and types of evidence that vulnerable taxpayers and their practitioners may seek to provide to the ATO to have that vulnerability recognised;
- updating ATO internal guidance and education vis-à-vis ATO client-facing staff and their leaders about how to better recognise and respond to vulnerable taxpayers' circumstances; and
- updating ATO website content and related communications for vulnerable taxpayers and supporting practitioners about how affected vulnerable taxpayers' circumstances will be recognised by the ATO in making a decision responding to that vulnerable taxpayers' tax and superannuation compliance obligations.

58. In our view, the Framework could benefit from incorporating these outcomes.

**Tax Ombudsman report—Identification and management of financial abuse within the tax system**

59. In April 2025, the Tax Ombudsman released her report on financial abuse.[16] Financial abuse has been more readily discussed in the media and on social media, as abusers increasingly use the tax system to harm victims financially. In the report, the Tax Ombudsman made recommendations under four categories and included the ATO's responses to her recommendations, all of which were agreed by the ATO. Specifically, concerning vulnerability, the ATO responded:

> *Further, the ATO is currently implementing a Vulnerability Capability that will strengthen and coordinate the way the ATO supports people experiencing vulnerability. This program of work will include the development of a Framework, together with specific actions and activities to support people experiencing vulnerability, including financial abuse. The current program identifies that the development and delivery of additional training to frontline staff, and other staff to engage with taxpayers is required.*[17]

60. The Law Council suggests the ATO consider the Tax Ombudsman's report on financial abuse recommendations as it remains highly relevant. Incorporating the report's recommendations into the Framework would improve the Framework's practicality and align it with the lived experiences of vulnerable people.

**Weaponisation of tax debts as an extension of domestic and family abuse and financial abuse**

61. Articles and academic research have increasingly highlighted how certain legal and administrative frameworks, particularly relating to child support and DPN liabilities, can exacerbate vulnerability, especially in cases of economic abuse. These are circumstances where timely and informed intervention by the ATO could reduce harm and provide meaningful support when assistance is requested.

62. For example, Dr Vivian Chen explores how provisions in the *Taxation Administration Act 1953* (Cth) and the *Corporations Act 2001* (Cth) can unintentionally facilitate economic abuse.[18] Dr Chen explains how victim-survivors, who are often coerced

[16] Tax Ombudsman, *Identification and management of financial abuse within the tax system* (Final Report April 2025) 4-5.
[17] Ibid, 51,
[18] Vivien Chen, 'Hidden Risks of Economic Abuse through Company Directorships' (2024) 47(1) *University of New South Wales Law Journal* 105.

or defrauded into becoming company directors, are left personally liable and "bear the liability for business failure" or business debts under the DPN regime.[19]

63. This issue disproportionately affects women, with Dr Chen indicating that 78–99% of women seeking assistance from family violence services report experiencing economic abuse.[20] These situations underscore the urgent need for the ATO to recognise and respond to the complex ways in which tax law and administration can intersect with economic abuse. The Law Council suggests that the Framework could go beyond general principles and acknowledge these risks and provide practical advice about how the ATO may respond to requests for assistance in these circumstances. This would minimise risk that victim-survivors are further harmed by systems that don't account for coercion, control, and unequal power dynamics.

64. Similarly, recommendations for legislative change on the mechanisms to provide relief in such situations are being publicly discussed, which proposals appear well worth exploring.[21] The Law Council endorses exploring these proposals to deal with such serious misuse of the tax and transfer systems by coercive controllers and financial abusers.

**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.**

65. In its current form, while a step in the right direction, the Framework unfortunately lacks utility for taxpayers, practitioners or advocates—it does not focus on what powers the Commissioner has that might be used to deal with the tax consequences of people's vulnerability or how people can appropriately demonstrate their vulnerability in their dealings with ATO staff.

66. As a result of the above feedback, taxpayers, practitioners and advocates will be unlikely to be able to use the Framework in a meaningful fashion in its current form. Conversely, if the Framework is substantially enhanced by adopting the recommended additional elements contained in this submission and those of other stakeholders, it could well become a vital part of the overall management of the tax and transfer systems.

[19] Ibid, 106.
[20] Ibid.
[21] See, again Kayis-Kumar A, Speidel C and Book L, 'Squeezing blood from stones? A comparative analysis of tax relief for victim-survivors in Australia and the United States' (2024) 39 *Australian Tax Forum* 191-220 and Kayis-Kumar A, Lim Y, Noone J, Walpole M, Breckenridge and Book L, 'Identifying and supporting financially vulnerable women experiencing economic abuse: A grounded theory approach' (2023) 21(2) *eJournal of Tax Research* 173-202.