

6 October 2026

Ms Ruth Owen CBE GAICD
Inspector-General of Taxation and Taxation Ombudsman
Director Penalty Notices Review
GPO Box 551
Sydney NSW 2001
via email: consultations@taxombudsman.gov.au

Dear Ms Owen

Review of the ATO's administration of Director Penalty Notices

The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) welcomes the opportunity to make a submission to the Tax Ombudsman's review of the Australian Taxation Office's (ATO) administration of Director Penalty Notices (DPN).

The DPN regime was established with the objective of protecting public revenue (Goods and Service Tax) and employee entitlements, particularly pay as you go (PAYG) withholding and super guarantee charge (SGC), and to holding directors to account for these obligations. The regime has expanded significantly since, with the ATO increasing its use of personal director liability as a debt-recovery mechanism, reflected in the 136% increase in DPNs between 2023–24 and 2024–25.

The ASBFEO recognises that DPNs are an important instrument for enabling the ATO to recover debts from Australian companies, however, there are a range of ways the administration of DPNs could be improved to better support small business directors to respond – both to the DPN and to the tax debt it is based on.

Our submission advocates for changes to strengthen the DPN regime, by providing directors with:

- adequate time to consider, obtain advice on, and respond to DPNs
- statutory defences which are more responsive to their circumstances
- clear guidance and early assistance to support more effective responses.

Understanding the constraints of small business

Many small business directors have gaps in their understanding of obligations under the *Corporations Act (2001)*, particularly the consequences of non-compliance. Recent ASIC research indicates that one third of small business directors have little or no understanding of the consequences of breaching their obligations, highlighting as key barriers:

- the lack of time and resources to keep abreast of frequent, complex changes in regulatory requirements
- the cost of seeking professional advice
- the cost of maintaining compliance.¹

¹ Australian Securities and Investments Commission (ASIC), *ASIC launches new digital resources for small business directors*, ASIC media release, Australian Government, August 2026, accessed 25 September 2026.



Consequently, many small business directors do not fully understand that they can become personally liable for a company's unpaid PAYG withholding, GST and SGC liabilities.

The vast majority of small businesses want to meet their compliance obligations, including paying their tax debts as and when they fall due. For example, approximately 95% of SGC liabilities are paid without ATO intervention.² Many small businesses, however, lack the capacity — in time, specialist knowledge and financial resources — to anticipate, understand and discharge those obligations within the time required.

These constraints can be especially acute in relation to understanding and keeping abreast of their tax liabilities. For example, determining PAYG withholding and SGC liabilities under Division 268 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)* (the Act) relies on a process of estimation.

By better understanding the constraints of small business the ATO can support otherwise compliant businesses to meet their obligations in a way that minimises the administrative burden and stress of DPNs, while optimising their utility as a means of debt recovery.

DPN processes can present challenges for small business directors

ATO guidance indicates there are a range of measures the ATO can use to encourage payment of tax debt. The ATO's relevant Practice Statement sets out 13 enforcement measures which it may take, including:

- telephone or further written contact with the tax debtor
- accepting payment of a tax-related liability by instalments.³

DPNs are a blunt instrument for securing the payment of tax liabilities, with potentially severe consequences for small business directors with administrative oversight. Under Section 269-25 of the Act, the ATO may commence recovery action for a tax debt once the statutory 21-day response period has expired.

The ASBFEO has heard from stakeholders that DPNs are often issued before other enforcement measures have been used to encourage payment of debt. This is consistent with the ATO's increased reliance on DPNs as the preferred way to enforce payment of debts, without first utilising other measures that are available.

The ASBFEO has also heard that the 21-day period for recovering penalty amounts provides insufficient time for a small business director to obtain professional advice, access company records, assess the available options and make an informed decision. Furthermore, the time for responding is in reality less than 21 days as the period commences from the date of the DPN being issued, not when the director receives or becomes aware of the notice.⁴ In contrast, a bankruptcy notice gives an individual 21 days from the date the notice is served or received.

² Department of the Treasury, *Unpaid Superannuation Guarantee Package: Impact Analysis*, Australian Government, 2023, p 9.

³ Australian Taxation Office (ATO), PS LA 2011/18 *Enforcement measures used for the collection and recovery of tax-related liabilities and other amounts*.

⁴ *Taxation Administration Act 1953 (Cth)* sch 1, div 269-25; ATO, PS LA 2011/18 *Enforcement measures used for the collection and recovery of tax-related liabilities and other amounts*.

The options available to directors during the 21-day recovery period depend on the type of DPN and the company's lodgement history. These include ensuring that the company pays the outstanding amount in full, appointing an administrator, or appointing a small business restructuring practitioner.⁵

Stakeholders report that some directors do not become aware of a DPN, or their personal liability for the underlying debt, until the ATO commences recovery action. This can arise for simple administrative reasons – for example, ASIC's register has not been updated when a company director has changed their address.

It is also not uncommon for former directors to be issued with DPNs in respect of liabilities relating to a time when they were a director – sometimes many years before.

Stakeholders also highlighted that some directors have limited visibility of a company's operations or financial position. For example, in some family businesses the finances, records and correspondence may be controlled by another family member, or the director may have been coerced into, or fraudulently registered as, a director without their informed consent.

Administration of statutory defences

Section 269-35 of Schedule 1 to the Act sets out the defences available to directors subject to a DPN. They may satisfy a defence if they can demonstrate they:

- did not take part in the management of the company during the relevant period due to illness or some other good reason
- took all reasonable steps to take action to address the debt, including through payment or voluntary administration.

The available defences have been criticised as being too narrowly defined and difficult to establish. For example, an illness or other good reason must generally cover the entire period from when the relevant obligation arose until the DPN expired. Illness or incapacity for a substantial part of that period may therefore be insufficient.⁶

In addition, stakeholders have raised concerns that the available defences fail to adequately take account of culpability and capacity as between, for example, a director:

- who intentionally avoided payment of debts
- experiencing mental illness, financial abuse or another form of vulnerability
- who took reasonable steps but could not obtain the agreement of co-directors.

The ASBFEO recommends that the Australian Government consider amending the statutory defences under Division 269 of Schedule 1 to the Act to enable the ATO to have greater regard to each director's individual circumstances, including their actual role within the business, access to company information and funds, voting power within a co-director structure, and the extent of their vulnerability.

⁵ *Taxation Administration Act 1953* (Cth) sch 1, div 269.

⁶ *Canty v Deputy Commissioner of Taxation* [2005] NSWCA 84.

Improving outcomes for small businesses

The DPN regime should operate in a way that best enables small businesses to meet their compliance obligations, including their tax liabilities.

Small business directors should clearly understand what is required of them as company directors under the *Corporations Act (2001)*. Individuals considering a directorship should understand the legal and financial responsibilities associated with the role, including the obligation to remain informed about the company's tax and superannuation affairs and the circumstances in which they may become personally liable for company debts.

Clear, accessible and timely guidance would encourage prospective and existing directors to make informed decisions, seek advice earlier and take action before liabilities escalate to a DPN.

The ATO's Vulnerability Framework provides a mechanism for supporting small business directors experiencing difficulty meeting their tax obligations or responding to a DPN, alongside the day-to-day demands of operating a business.

The ATO should work with trusted third parties, including tax advisers, accountants and financial counsellors, to consistently apply the Framework across the DPN regime. This should include:

- developing clear, practical and accessible guidance for directors and their advisers about DPN obligations, processes and available support, drawing on the approach adopted by ASIC's Small business director essentials online guide
- establishing clear contact and escalation pathways for advisers supporting directors who may be experiencing vulnerability in relation to DPNs
- ensuring information is shared consistently with taxpayer secrecy, privacy and consent requirements
- strengthening networks of trusted advisers to support vulnerable small business directors.

The ASBFEO has previously observed that the Framework needs to explain more clearly how the ATO will work with trusted third parties to identify and support vulnerable small business owners.⁷ Any sharing of protected taxpayer information should remain subject to appropriate legislative safeguards and, wherever practicable, the director's explicit and informed consent.

If you require any further information, please do not hesitate to contact the ASBFEO Policy and Advocacy team at advocacy@asbfeo.gov.au.

Yours sincerely



Lynda McAlary-Smith

Australian Small Business and Family Enterprise Ombudsman

⁷ ASBFEO, *Submission to ATO Vulnerability Framework – consultation paper*, ASBFEO, Australian Government, July 2025.