28 October 2026

Mr Josh Burns, MP
Committee Chair
Joint Committee of Public Accounts and Audit
PO Box 6021
Parliament House
Canberra ACT 2600

via email: jcpaa@aph.gov.au

Dear Mr Burns

Inquiry into the Australian Taxation Office's management of small business collectable debt

The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) welcomes the opportunity to make a submission to the Joint Committee of Public Accounts and Audit's Inquiry into the Australian Taxation Office's (ATO) management of small business collectable debt.

The ASBFEO recognises the importance of effective collection of tax debt, as persistent non-payment can impact services to the community and may create a market advantage over small businesses that do meet their obligations in a timely way. However, non-payment may be a sign that the business is facing underlying challenges, such as changes in business conditions or significant personal circumstances. The ATO's approach to the management of collectable debt should therefore be proportionate, risk-based, transparent and responsive to the practical circumstances of small businesses.

The Australian National Audit Office (ANAO) indicates that small business collectable tax debt reached $35.9 billion in 2024–25, representing 66.1% of the ATO's total collectable debt and an increase of 118% since 2018–19.[1] Approximately 1.34 million small businesses hold this debt, at an average of about $26,800 per business.[2] The scale of small business tax debt highlights the importance of understanding the factors driving small business collectable debt and why it is growing, and which interventions are most effective in achieving compliance.

This is especially relevant where small businesses self-report tax liabilities, which suggests they are willingly engaging with the tax system even though they cannot pay on time. Non-payment can be an indicator of cash flow pressures, rather than evidence of deliberate non-compliance, reflecting limited cash reserves and the need to meet wages, rent, suppliers, superannuation, unexpected expenses and tax obligations from the same working capital.

The ASBFEO supports the ATO adopting an approach to small business collectable debt that combines early engagement, accessible human assistance, sustainable payment arrangements, transparent performance measures and proportionate recovery action. Such an approach can support small businesses to resolve tax debt and achieve compliance, while allowing stronger regulatory action to focus on deliberate and persistent non-compliance.

The ANAO's recommendations provide the basis for an improved approach. In particular, recommendations 4 (evaluating engagement) and 7 (monitoring outcomes) would enable the ATO

[1] Australian National Audit Office (ANAO), *Australian Taxation Office Management of Small Business Collectable Debt*, Auditor-General Report No. 45 of 2025–26 (30 June 2026), audit snapshot; paras 7 and 9.
[2] ANAO, *Australian Taxation Office Management of Small Business Collectable Debt*, Auditor-General Report No. 45 of 2025–26 (30 June 2026), audit snapshot; para 1.4; Table 3.2, para 3.35.

to identify which interactions lead to payment, re-engagement and sustained compliance. Better evidence about what works should guide the treatment of small business debt and strengthen both taxpayer outcomes and revenue collection.

It is also important to note that the ATO's firmer approach to collectable debt that it is currently taking is not happening in isolation and is occurring at the same time as small businesses are navigating higher costs of doing business, increased regulatory burdens and in many sectors, reduced consumer demand.

Early engagement can help tax debt from becoming unmanageable

For small businesses operating with tight cash flow, a temporary shortfall can become a larger debt as interest and penalties accumulate (in July–September 2026, the ATO's General Interest Charge (GIC) annual rate was 11.43%).[3] Early engagement by the ATO can help a small business understand its liability and review available options and payment pathways before interest and penalties apply, enabling it to act before the debt becomes unmanageable.

The ASBFEO has consistently advocated for early engagement, including in submissions on GIC remission, taxpayer relief and the ATO Vulnerability Framework. We have called for the ATO to take into consideration the taxpayer's circumstances, apply consistent decision-making, and provide clear and accessible guidance and assistance.

This approach should also apply to the management of small business collectable debt. The ATO should evaluate which forms of early engagement support re-engagement and debt payment and use that evidence to design its approach, consistent with ANAO recommendations 4 and 7.

The effectiveness of engagement is more important than the volume of communication. A letter, email or phone call is only effective if it helps the small business understand the issue, the reasons for the decision and the steps it needs to take towards resolution. This is consistent with the Tax Ombudsman's October 2026 *Insights from Tax Ombudsman complaints* report, which observed that, where complaints relate to ATO communications, even when a decision is reasonable, people may need clearer explanations and support to understand and navigate the tax system.[4] Where a matter involves hardship, vulnerability, disputed facts or complex circumstances, small businesses should have timely access to an appropriately trained ATO officer who can explain the available options and exercise judgement.

Consistent approaches and clear escalation pathways

In our submission to the 2025 Tax Ombudsman General Interest Charge Review, we highlighted difficulties small businesses may experience accessing ATO decision-makers, receiving consistent advice and obtaining timely decisions where individual circumstances require judgement. We also emphasised the importance of considering the circumstances contributing to tax debt, including financial hardship and vulnerability, and providing clear guidance on remission, escalation and review pathways.

These principles should also apply to the ATO's management of small business debt. Small businesses should have access to appropriately trained officers who can consider relevant evidence and individual circumstances, with clear pathways to escalate or review more complex matters. Decisions should be consistent, timely and clearly explain how relevant circumstances have been considered and what options remain available.

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[3] Australian Taxation Office (ATO), 'General interest charge (GIC) rates', quarterly rates for 1 July–30 September 2026.
[4] Tax Ombudsman, *Complaints Insights Report: April to September 2026*, 27 October 2026.

A dedicated small business assistance channel could support this approach by providing a clear point of contact for businesses to understand their liabilities and available options, and to identify matters requiring further consideration or escalation. While requiring investment, this may in turn yield greater returns by assisting more small businesses to become compliant, faster.

Payment arrangements should be sustainable

Payment arrangements should reflect a business's realistic capacity to repay collectable tax debt while continuing to meet new tax obligations. An arrangement that exceeds available cash flow may simply defer the problem, with the business falling behind on new liabilities while old debt remains outstanding and interest and penalties accrue.

The assessment of payment arrangements should therefore consider a range of 'sustainability' factors, including whether it is capable of being adhered to and is designed to enable the small business to reduce tax debt over time while achieving compliance with new obligations.

Where financial distress is more serious, small businesses need timely access to trusted advice and appropriate restructuring and insolvency pathways. The objective should be to resolve the business's tax debt where possible, while having the flexibility to move to a different pathway where it is deemed necessary.

Interest and penalties can make existing debt more difficult to resolve. Payment arrangements and other debt management options should therefore consider a small business's circumstances and realistic capacity to repay, rather than contribute to further accumulation of debt.

The following case study illustrates how individual circumstances can affect a small business owner's capacity to meet ongoing tax obligations and contribute to the accumulation of interest and penalties. It highlights the importance of considering relevant circumstances and the taxpayer's efforts to address their underlying liabilities, and to applying judgement when making a decision.

Case study 1: Serious illness and compounding charges

A small business assisted by the ASBFEO fell behind on its tax obligations while the owner and their spouse were experiencing serious health issues. The spouse, who managed the business's finances had a terminal illness, while the owner experienced life-threatening complications from a separate illness.

After switching accounting practices, the business lodged outstanding activity statements covering a six-year period from 2018 to 2024. This resulted in approximately $200,000 in BAS liabilities, $30,000 in income tax liabilities and $150,000 in general interest charges and penalties.

The owner refinanced the family home and used personal savings to pay the outstanding BAS and income tax liabilities. However, they were unable to raise sufficient funds to pay the remaining interest and penalties. The owner sought remission of the penalties and general interest charges, but the request was unsuccessful.

ATO's management approach should enable informed decision-making with expert human oversight

Automated processes can support the efficient and consistent administration of a large debt book. However, some small business matters require individual consideration and the exercise of judgement. This may include cases involving financial or personal hardship, disputed facts or significant changes in business circumstances.

Where individual circumstances are relevant to a decision, small businesses should have a reasonable opportunity to provide evidence for consideration by an authorised expert decision-maker. Automation should be supported by appropriate human oversight and clear escalation pathways for decisions that require judgement.

This is particularly important for small business experiencing vulnerability or financial distress, which may affect their capacity to navigate ATO processes, understand their options or meet required timeframes. Our experience through the Tax Concierge service and which we have highlighted in previous submissions, is the importance of small businesses receiving clear reasons for decisions and information about available review rights and having options for resolving their tax liabilities.

The following case study illustrates why some small business matters require individual consideration rather than a standardised approach, particularly where the circumstances and operating model of the business are relevant to the decision.

Case study 2: Access to evidence and a decision-maker

A business assisted by the ASBFEO reported providing extensive records for an ATO audit. The owner claimed the ATO relied on unsuitable comparisons and did not understand aspects of the agricultural business and subsequently cancelled GST and PAYG registrations across related businesses.

The complainant reported receiving significant penalties and that related companies were also affected, without adequate explanation or an effective opportunity to speak with someone and provide further information.

ATO's debt management approach should focus on sustainable outcomes and continuous improvement

The ATO's debt collection approach should support small businesses to address tax debts before they become unmanageable and return them to ongoing compliance. Performance measures should assess not only debt recovered, but whether small businesses are meeting payment arrangements, keeping up with new obligations and avoiding further debt.

The age and growth of small business debt could provide an important indicator. As noted by ATO Deputy Commissioner Anna Longley in her 2025 Tax Institute Tax Summit address, more than half of the collectable debt balance at the end of 2024–25 was less than 12 months old. Monitoring whether new small business debt is increasing, and the circumstances contributing to that increase, could help identify whether businesses are experiencing broader difficulties meeting their tax obligations and whether earlier intervention is required.

Recovery action should be proportionate and support fair treatment

Firm recovery action has an important role where taxpayers deliberately avoid legitimate obligations or persistently fail to engage. Temporary financial distress, however, should not automatically be treated as deliberate non-compliance. Where liabilities have been self-reported but remain unpaid, the ATO should seek to understand whether the issue is an unwillingness to comply, lack of payment capacity or another barrier to resolution, and select appropriate interventions accordingly.

Consistent with ANAO Recommendations 4 and 7, the ATO should review the effectiveness of its engagement strategy and monitor which interactions lead to payment, re-engagement and sustainable compliance. This evidence can support earlier, tailored assistance for businesses experiencing genuine financial pressure while allowing stronger recovery action to be targeted

towards deliberate and persistent non-compliance. Poorly targeted recovery action can otherwise deepen financial distress and make repayment more difficult.

This may ultimately assist with achieving greater end recoveries rather than increasing what may become unrecoverable uncollected debts.

Firmer recovery powers should be used proportionately

The consequences of firmer recovery action, including director penalty notices (DPNs), garnishee notices, public disclosure of tax debt and insolvency action can be significant for small businesses and their owners. Small businesses should therefore receive timely notice, clear information and a reasonable opportunity to obtain advice and respond before consequential action is taken.

The ASBFEO's recent submission to the Taxation Ombudsman's review of the ATO's administration of DPNs highlighted the importance of considering vulnerability, a director's role and period of appointment, access to relevant information and, where practicable, a consistent point of contact. These principles should also inform the proportionate use of firmer recovery powers more broadly. The submission is provided for your reference at **Attachment A**.

While there must be disincentives for non-compliance with taxation obligations in order to incentivise compliant behaviours, a practical and considered approach to small business tax debts may actually increase tax receipts. A small business whose tax debt accumulates with penalties and GIC to such a level that that repayment becomes completely unachievable may end up paying less than a small business who has been provided with some accommodations for their circumstances.

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

Attachment A

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.[5]

[5] 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.[6] 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.[7]

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.[8] In contrast, a bankruptcy notice gives an individual 21 days from the date the notice is served or received.

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.[9]

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[6] Department of the Treasury, *Unpaid Superannuation Guarantee Package: Impact Analysis*, Australian Government, 2023, p 9.
[7] Australian Taxation Office (ATO), PS LA 2011/18 Enforcement measures used for the collection and recovery of tax-related liabilities and other amounts.
[8] 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.
[9] Taxation Administration Act 1953 (Cth) sch 1, div 269.

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.[10]

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.

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.

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

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-today 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.[11] 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

[11] ASBFEO, Submission to ATO Vulnerability Framework – consultation paper, ASBFEO, Australian Government, July 2025.