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Ms Ruth Owen CBE
Taxation Ombudsman
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Sydney NSW 2001

Email: consultations@taxombudsman.gov.au

29 September 2026

Dear Ms Owen,

Review: ATO's administration of Director Penalty Notices

CPA Australia is Australia's leading professional accounting body and one of the largest in the world. We represent the diverse interests of more than 175,000 members in over 100 countries and regions. We make this submission in response to the Taxation Ombudsman's **Review: ATO's administration of Director Penalty Notices** on behalf of our members and in the broader public interest.

CPA Australia welcomes the opportunity to contribute to the Tax Ombudsman's review of the Australian Taxation Office's (ATO) administration of Director Penalty Notices (DPNs). This submission draws on the experiences of our members and their clients nationally. Some members found the process timely and constructive; others reported delays, inaccurate liabilities, limited access to information, inconsistent recovery action and inadequate responses to vulnerability or coercion. These concerns warrant systemic reform.

Executive summary

Feedback from CPA Australia members indicates that the three statements raised by the Taxation Ombudsman are not consistently reflected in practice. Positive experiences arose where information was accurate and ATO officers engaged constructively. However, our members also reported delayed notices, disputed calculations or classifications, limited access to records, inconsistent recovery action and inadequate responses to vulnerability or coercive directorship.

Key recommendations

We make the following key responses:

- **Improve pre-DPN engagement:** provide company directors with early warning, a clear reconciliation of the debt and a reasonable opportunity to correct records before a notice is issued.
- **Strengthen quality assurance:** verify lodgement due dates, agent extensions, PAYG withholding obligations, superannuation guarantee charge calculations and late-payment offsets before classifying a DPN as lockdown or non-lockdown.
- **Introduce service standards:** set transparent timeframes for issuing DPNs, deciding defences and objections, providing records, and escalating disputed matters.
- **Provide secure digital delivery:** retain legally effective service while also sending notices and alerts through reliable electronic channels and recording delivery attempts.

- **Pause recovery where appropriate:** defer litigation, garnishee action and credit reporting while a genuine liability dispute, objection, DPN defence or review is unresolved, unless there is a demonstrated risk to revenue.
- **Apply differentiated case management:** distinguish deliberate non-compliance from genuine business failure, honest error and circumstances outside a director's control.
- **Make vulnerability safeguards effective:** use trauma-informed, culturally appropriate and safety-conscious processes for illness, disability, limited English proficiency, coercive control, family violence and nominal or coerced directorships.
- **Increase oversight and accountability:** publish de-identified DPN data, reasons for key decisions, processing times, aged cases and outcomes of internal review.

Please refer to Appendices A and B for our summary and detailed discussions and member responses to the three statements. We are also happy to organise a discussion with you and our members to discuss these issues further.

If you have any queries, please contact Jenny Wong, Tax Policy Lead on jenny.wong@cpaaustralia.com.au or Bill Leung, Tax Technical Advisor on bill.leung@cpaaustralia.com.au

Yours sincerely,

Jenny Wong
Tax Policy Lead

Appendix A

Consultation statements

Response to statement 1

Statement: *The ATO's communications to current and former directors provide adequate and timely information about their obligations, the director penalty, the underlying tax debt and actions they may take.*

What CPA Australia members told us: Experiences were mixed. Some members received advance notice, adequate information and constructive assistance. Others reported notices issued years after the liabilities arose, including after liquidation or deregistration, without the context or records needed to verify the debt or respond within the statutory period. This is because the ATO is not legally required to send a warning letter before issuing a formal DPN.

Key concerns reported by our members are:

- **Long delays:** members described DPNs issued several years after the company had ceased trading or entered liquidation. A director may reasonably believe their affairs have been resolved, rebuild their finances and enter new family or financial commitments before an unexpected personal liability emerges. Delay also makes records harder to obtain and advice more difficult to provide.
- **Errors in classification and calculation:** reported examples included lockdown DPNs based on standard quarterly due dates where a tax-agent extension applied; PAYG withholding liabilities affected by administrative concessions for closely held payees; and superannuation guarantee charge DPNs issued without first recognising available late-payment offsets.
- **Insufficient explanation:** notices may state an amount and deadline without a clear period-by-period reconciliation, the assumptions used, how interest or administrative components were calculated, why the notice is lockdown or non-lockdown, or what information would support a defence.
- **Disadvantage to former directors:** former directors may no longer have access to company records, online services or the company's advisers. Members reported difficulty obtaining ATO-held material, including delays through freedom of information processes that did not align with the speed of recovery activity.
- **Unreliable service:** postal delivery can consume most or all of the statutory response period or fail altogether. One member reported receiving a DPN only one day before the 21-day period expired, although the notice had appeared on the director's account three weeks earlier, without any direct notification to the director or their agent. Another notice was reportedly sent to an address that did not exist. The absence of timely supplementary communication can turn a service technicality into a substantive denial of the opportunity to respond.
- **Inconsistent follow-up:** some notices prompted constructive engagement and timely payment arrangements. Others were not followed up, were issued despite active negotiations or regular voluntary payments, or were issued shortly after a payment arrangement had been agreed. Members also contrasted prompt action against some company directors with prolonged inaction on larger debts in other cases. This inconsistency reduces certainty for directors and advisers.

Recommendations

1. Require a pre-issue quality review that reconciles each component of the debt against lodgement history, applicable extensions, amendments, objections, payments and offsets.
2. Issue a pre-DPN warning to each known current and former director, except where urgent action is justified, with a plain-English explanation of the potential liability and a contact point able to resolve discrepancies.
3. Attach or make readily available a period-by-period statement showing the underlying liability, due date used, lockdown status, payments, credits, offsets, interest and any administrative charge.

4. Use secure electronic notification in addition to post, including prompt notification to the director and an authorised tax agent where permitted, and keep an auditable record of addresses checked, the date the notice was made available and all delivery attempts.
5. Provide former directors with an expedited mechanism to access the ATO-held records reasonably required to understand and contest the liability.
6. Adopt a published administrative timeframe for issuing a DPN after the relevant liability is established, together with senior approval and reasons where older liabilities are pursued.

Response to statement 2

Statement: *The ATO appropriately and consistently considers the circumstances of affected directors, including during recovery of the debt.*

What CPA Australia members told us: Members reported inconsistent consideration of directors' circumstances. Some described constructive engagement following genuine business misfortune. Others reported recovery continuing despite unresolved objections, reviews, calculations or payment proposals. Members considered that the process did not adequately distinguish honest mistakes, inherited problems or responsible insolvency action from deliberate non-compliance.

Key concerns reported by our members are:

- **Recovery while liability remains contested:** members reported recovery proceedings continuing while objections, DPN defences or administrative law proceedings were unresolved. In one matter, the amount was materially reduced after late-payment offsets were applied, yet recovery continued against a director.
- **Failure to coordinate decisions:** amended assessments, objections, payment arrangements, credit reporting and litigation may be handled on separate tracks. This can produce contradictory outcomes and leave directors unable to obtain a payment arrangement while the ATO continues enforcement.
- **Inconsistent exercise of discretion:** members observed markedly different treatment of taxpayers in apparently comparable debt circumstances. Some directors were contacted promptly about relatively modest debts, including where regular voluntary payments were being made, while substantially larger debts in other cases remained untouched for long periods. Members considered that differences in legal structure should not produce outcomes that appear arbitrary or disproportionate.
- **Insufficient weight given to conduct and circumstances:** examples included directors who promptly appointed an administrator or liquidator, attempted repeatedly to correct superannuation guarantee records, relied on ATO advice, made regular voluntary payments, or were actively negotiating payment arrangements when DPNs were issued. Members also reported cases where bereavement, illness, staffing pressures and the use of personal funds to support a business were not evident in the ATO's approach, despite the director demonstrating an intention to meet the liability.
- **Consequences for third parties:** delayed recovery can affect a director's spouse and family years after a business failure. The consequences may be more severe where the director could have made different insolvency or personal financial decisions had the potential DPN liability been disclosed earlier.
- **Limited reviewability and delay:** members reported lengthy delays in deciding defences, including one defence outstanding for more than two years, and difficulty obtaining a reviewable decision before recovery progressed.
- **Quality of relief decisions:** members questioned whether applications for relief are always assessed with sufficient technical scrutiny. They reported concerns that statutory tests may be misinterpreted, additional conditions may be imposed without a clear legislative basis, and detailed supporting evidence may not be addressed in the reasons for decision.
- **Emerging superannuation compliance risks:** members cautioned that a seven-day payment timeframe after each pay run could increase DPN exposure for otherwise compliant directors, particularly for small businesses with weekly payrolls. Illness, workload pressures, returned payments and delays through third-party clearing systems may result in funds reaching a superannuation fund after the deadline even where payment was initiated promptly.

Recommendations

1. Adopt a documented proportionality framework that addresses the director's conduct, knowledge, period of control, efforts to rectify the company's position, reliance on ATO advice, business failure circumstances and the age of the debt.
2. Assign a single accountable case owner where a DPN intersects with objections, amended assessments, payment arrangements, litigation, credit reporting or insolvency administration.
3. Suspend coercive recovery while a genuine and material dispute or defence is being determined, subject to an exception for identified dissipation or revenue risk, with written reasons for any decision to continue.
4. Set service standards for defence and objection decisions, require periodic updates, and provide an escalation pathway when a standard is exceeded.
5. Require senior approval before issuing a DPN that is inconsistent with an assurance given during payment negotiations or immediately after a payment arrangement has been formalised.
6. Require DPN relief and exemption decisions to be legally correct, evidence-based and subject to appropriate technical quality assurance, with reasons that address the statutory tests and material evidence provided.
7. Before taking superannuation-related DPN action, distinguish deliberate non-payment from short administrative or payment-system delays, verify when payment was initiated and received, and provide a reasonable opportunity to correct inadvertent breaches.
8. Publish operational guidance and de-identified data to improve consistency across teams and enable the Tax Ombudsman to identify outliers.

Response to statement 3

Statement: *The ATO appropriately and consistently considers and responds to factors such as vulnerability, coercive directorship and financial abuse.*

What CPA Australia members told us: Serious cases suggest that vulnerability, coercive directorship and financial abuse were not always addressed appropriately. Members reported that identification as a vulnerable person did not necessarily result in a safer or more flexible approach. Cases involved severe mental illness, cognitive impairment, limited English proficiency, coercive control, family violence, power imbalances and directors excluded from management or access to records.

Key concerns reported by our members are:

- **Framework without practical adjustment:** one vulnerable director reportedly experienced a forced change of case officer after building trust with the existing officer, despite not wanting the change. A vulnerability response should preserve continuity where safe and preferred.
- **Unsafe evidence requests:** in a family violence matter, the ATO reportedly requested a statement from the alleged perpetrator despite an intervention order. Evidence requirements must not expose a person to legal breach or renewed contact with an alleged abuser.
- **Coercive or nominal directorship:** reported cases involved a junior person brought into a business by a senior operator, a director with limited English and no genuine management role, and directors appointed because of financing requirements while relying on another director to manage the business. Formal appointment alone may not reveal the person's actual influence, access to records or capacity to prevent non-compliance.
- **Illness and cognitive impairment:** members reported defences denied despite medical records relating to severe depression or evidence that a director responsible for financial matters had undiagnosed dementia. The framework should recognise that diagnosis may occur after the relevant conduct and that contemporaneous symptoms and treatment can still be probative.
- **Separation from the business:** a departing director may remain exposed for a payroll period that began while they held office even if they left before the payment due date and no longer had control. The ATO should

examine the commercial separation, actual control and recovery action against the company and responsible persons.

- **Heightened harm from rigid procedures:** accelerated recovery, repeated requests for unavailable records and long periods without a decision can aggravate vulnerability and reduce a person's capacity to engage.

Recommendations

1. Introduce mandatory screening for vulnerability, coercion and family violence at first contact and at key enforcement decisions, supported by appropriately trained specialist officers.
2. Prepare an individual case-management plan with the affected person or their representative, covering preferred communication, continuity of contact, additional time, safe evidence collection and referral pathways.
3. Prohibit evidence requests that would require contact with an alleged perpetrator, breach a protection order or create a foreseeable safety risk; accept reasonable alternative evidence.
4. Assess actual control, access to information, economic dependence, language barriers, coercion and the timing of appointment and resignation rather than relying principally on formal directorship records.
5. Ensure medical evidence is assessed by officers with appropriate expertise and that retrospective diagnosis does not, by itself, prevent consideration of the person's condition during the relevant period.
6. Provide written reasons showing how vulnerability evidence affected the decision. If it did not change the outcome, explain why and identify the available review pathway.
7. Pause recovery and avoid credit reporting while a substantiated vulnerability or coercion claim is assessed, unless senior officers document an overriding and immediate revenue risk.

Cross-cutting administrative reforms

Member feedback indicates that isolated changes will not be enough. The ATO should adopt an end-to-end DPN governance model linking debt identification, director records, notice preparation, service, defence assessment and recovery. It should include:

- a verified chronology and liability schedule for every DPN;
- clear accountability for data accuracy and the legal classification of each notice;
- early involvement of authorised advisers and access to relevant records;
- documented reasons for delay, continued recovery and any departure from standard safeguards;
- independent internal review by an officer not involved in the original decision;
- regular training on superannuation guarantee offsets, lodgement concessions, tax-agent extensions, insolvency interactions, administrative law, family violence and trauma-informed practice; and
- public reporting on volumes, the age of underlying liabilities, amendments, withdrawals, processing times, vulnerability cases, litigation and complaints, together with de-identified benchmarking information that helps tax agents understand how their clients' debt and lodgement performance compares with similar practices.

Conclusion

DPNs are a powerful recovery mechanism with potentially life-changing consequences. CPA Australia supports effective action against deliberate non-compliance, but the ATO's administration must be accurate, timely, transparent, reviewable and proportionate. Positive member experiences show that constructive administration is achievable. Stronger controls are needed to ensure that fair treatment does not depend on the individual officer or escalation after harm has occurred. The Tax Ombudsman should recommend enforceable service standards, stronger quality assurance, coordinated dispute and recovery processes, and practical vulnerability safeguards across the DPN lifecycle.

Appendix B

Summary of CPA Australia members feedback and priority reforms		
Review statement	**What CPA Australia members said**	**Priority reforms**
1. Communications are adequate and timely	Experiences were mixed. Some communications prompted constructive engagement, but members also reported notices issued years late, errors in liabilities or lockdown status, insufficient explanation, delayed access to records, unreliable postal service, notices arriving near the end of the response period and limited direct notification to authorised agents.	Pre-issue quality assurance; early warning; period-by-period debt reconciliation; prompt secure electronic notification to directors and authorised agents; expedited access to records; and time limits for aged liabilities.
2. Directors' circumstances are considered appropriately and consistently	Members reported inconsistent treatment, recovery during unresolved disputes, poor coordination between ATO processes, insufficient recognition of responsible conduct and personal circumstances, variable technical quality in relief decisions, and emerging risks from short superannuation payment timeframes and third-party processing delays.	Proportionate case management; a single accountable case owner; suspension of coercive recovery during genuine disputes; decision service standards; technically assured and evidence-based relief decisions; safeguards for inadvertent superannuation payment delays; and senior oversight of inconsistent action.
3. Vulnerability, coercive directorship and financial abuse are addressed appropriately	Serious cases indicated that vulnerability status did not always change the ATO's approach. Members reported unsafe evidence requests, inadequate recognition of actual control, and insufficient consideration of illness, cognitive impairment, coercion and family violence.	Mandatory screening; specialist case management; safe and flexible evidence requirements; assessment of actual control; expert consideration of medical evidence; written reasons; and a recovery pause while claims are assessed.