

Parliamentary Joint Committee, Corporations and Financial Service

Corporate Insolvency in Australia

ANSWERS TO QUESTIONS ON NOTICE

Agency: Australian Taxation Office
Topic: DPNs and domestic violence or elder abuse
Senator/MP: Senator Deborah O'Neill

Question:

CHAIR: I also ask you to look at evidence that we received yesterday from the financial counselling support services, who made a point in particular about coercive practices with regard to directors in domestic violence or elder abuse situations, where directors might be receiving these notices [DPNs] from you in a sociological reality that is very different from what might happen if it's a business where things are functioning, but the business is failing because of financial reasons rather than power and abuse reasons. So I just seek your comfort and information on how you respond to that.

Answer:

Before commencing any legal action, ATO staff make decisions based on information available to them primarily to determine capacity to pay or likelihood of recovery but also to understand if there are other client circumstances which may need to be considered. This would include evidence of domestic violence or elder abuse.

Section 269-35 of Schedule 1 to the Taxation Administration Act 1953 contemplates situations in which a director could not have been reasonably expected to take part in the management of the company over the relevant period due to "illness or...some other good reason". Where domestic violence or elder abuse may be present, the ATO will take this into account along with the rest of the client's circumstances when determining whether the defence applies.