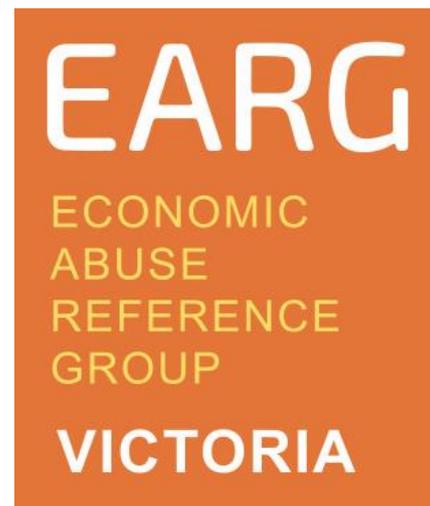


20 July 2020

Family Violence Monitor
GPO Box 4912, Melbourne
VIC 3001



Contact: carolyn@womenslegal.org.au

By upload: <https://www.fvrim.vic.gov.au/family-violence-reform-implementation-monitor>

Submission to the Family Violence Reform Implementation Monitor: Monitoring the Family Violence Reforms

Thank you for the opportunity to respond regarding progress made implementing the family violence reforms. Our response is focused on Recommendations 107-113 (the 'economic' recommendations).

We submit that:

- The 'economic' recommendations have largely been implemented and have improved outcomes for victim survivors
- Ongoing work is required (by industry government and community) to embed the reforms
- Some issues require a stronger industry response and/or regulation to provide better outcomes
- Community organisations (EARG members), with experience at the 'front line' have significantly influenced the reforms
- Specialist family violence financial counsellors and community lawyers produce better outcomes for victim survivors and are able to share their experiences and help monitor the effectiveness of the reforms
- Since the Royal Commission, EARG members continue to identify additional areas where change is required and continue to work with government and industry to identify and implement solutions.

Economic Abuse Reference Group

The Economic Abuse Reference Group (EARG) is a network of community organisations which influences government and industry responses to the financial impact of family violence. Members include family violence services, community legal services, financial counselling services and women's services¹. See eag.org.au

EARG was funded by the Victorian Government to co-ordinate community sector input to industry and government policies and processes to respond to customers who are experiencing family violence and/or economic abuse. In addition to regularly engaging with government, industry and regulators, EARG has produced guiding principles for use by industry and provided input to draft industry codes, guidelines and reviews.

EARG's Work and Report

EARG's initial focus was providing input to Recommendations 107-113 (the 'economic recommendations'). However, EARG has continued to respond to other issues which impact on the economic wellbeing of victim survivors, and is increasingly identifying additional matters which require a response. For example, EARG is currently engaging with the insurance industry about insurance related issues, Transurban on its family violence policy for customers and with VicRoads in relation to transferring vehicle registration between ex-partners where there is family violence.

EARG has demonstrated the benefits of bringing together the views of different types of services (family violence, financial and legal), and therefore providing input through multiple lenses. It has been demonstrated that input from EARG often influences outcomes that benefits victim survivors.

Responding to Financial Abuse – Full Report

EARG recently produced a report² about our work, the impact of the reforms, and our members' experiences assisting victim survivors, which forms part of this submission. Refer to the report for more details on:

- Banks
- Customer Owned Banks
- Relationship Debt
- Mortgage Arrears
- Credit Reporting
- Debt Collection

¹ Members which have an interest in Victorian state issues include Consumer Action Law Centre, Council of the Single Mother and Her Children, Domestic Violence Victoria, Financial Counselling Australia, Financial Counselling Victoria, Good Shepherd Youth and Family Services Australia & New Zealand, Justice Connect, No to Violence, Social Security Rights, Thriving Communities Partnership, Uniting Kildonan, WEstjustice, Women's Information & Referral Exchange, Women's Legal Service Victoria.

² Carolyn Bond, Dr. Madeleine Ulbrick, [Responding to Financial Abuse – Full Report. Community, Business and Government Responses to the financial impacts of family violence in Australia](#), 2020

- Debt Management Firms
- Superannuation
- Insurance
- Water
- Energy
- Telecommunications
- Tenancy
- Department of Human Services (Comm)
- Fines Victoria
- VicRoads
- Local Councils

Question 1

How the family violence service system, and users' experience of it, has changed since the Royal Commission

Reforms related to the 'economic' recommendations have made a significant difference to the financial well-being of victim survivors. There is an increasing understanding that many businesses and government departments can have a positive impact on family violence (including economic abuse). As these reforms have progressed, additional areas for reform have been identified (which weren't identified in the RCFV) and this work is progressing.

These recommendations have generally been implemented well, although ongoing work is required to embed them into everyday practice. Examples of positive impacts on victim survivors of include waiver of debts and fines, prevention of disconnection of utilities, access to industry hardship programs, and better resolution of disputes regarding liability for joint debts.

Legal and financial counselling services which specialise in economic abuse issues, help ensure victim survivors can take advantage of these new processes, advocate on their behalf, and also play an important role in monitoring the effectiveness of reforms, identifying emerging issues and providing feedback to industry and government.

Recommendation 107 (Family violence training for financial counsellors)

In line with the recommendations, all Victorian Government funded financial counsellors have received training about family violence and economic abuse. The Victorian Government provided funding for 11 specialist family violence financial counsellors (recently increased to 21) and these practitioners receive additional specialist training. See Appendix 1 for information about the specialist family violence financial counselling program.

Recommendation 108 – Amending National Credit Code (NCC) and Telecommunications Consumer Protection Code (TCPC).

NCC

The National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017 (SACC Bill) contains an amendment to clarify that family violence is a reasonable cause of hardship. However, the Bill, which contains a range of important consumer protections, has not been presented to Parliament.³

Despite this, as far as the family violence provision, a range of other reforms have led to credit providers taking family violence into account when responding to financial hardship, including amendment of the Banking Code of Practice and the Australian Financial Complaints Authority's (previously FOS) approach to responding to joint account disputes. However, national credit laws need further reform to adequately respond to the incidence of economic abuse. Credit laws "have limited capacity to assist victims of economic abuse, in the absence of provisions for severing liability for joint debt incurred in the context of gendered dynamics of power and control."⁴ See further detail below under Question 2.

TCPC

The industry body, Communications Alliance (CA) amended the TCPC to list family violence within the definition of financial hardship, however there is not a list of minimum eligibility criteria as recommended. CA also produced industry guidance on customers experiencing family violence in consultation with EARG members. EARG members have ongoing concerns about telecommunications, in part because the industry doesn't have responsible lending obligations, and it is common practice to put many devices on one account which can be exploited by perpetrators. The TCPC requires businesses to inform the customer that they remain liable for the use of the service, but only if "the supplier is made aware that the customer is not going to be the principal end user".

Recommendation 109 – Code changes and guidelines for energy and water businesses.

The Essential Services Commission (ESC) amended the Water Code in April 2017 to place responsibility on water businesses to adopt robust family violence policies.

The water industry has been a leader in developing and implementing family violence responses and, in some cases, has supported energy businesses by sharing experiences. The ESC's evaluation of the effectiveness of the family violence changes to the Water Code found that the majority of the family violence financial counsellors and their clients who had accessed their water company had a positive experience.

The Energy Code was amended in 2019 (to apply from January 2020) to include obligations upon energy retailers to have a family violence policy and meet minimum standards of

³ See Consumer Action Law Centre, *Time's Up: Government must step up and pass payday lending and rent-to-buy reforms*, 2020. <https://consumeraction.org.au/small-amount-credit-contracts-senate-inquiry/>

⁴ Paul Ali, Evgenia Bourova, Ian Ramsay, 'Limitations of Australia's Legal Hardship Protections for Women with Debt Problems Caused by Economic Abuse' (2019) 42(4) UNSW Law Journal, p.1167

conduct. This included better training for frontline staff, improving account security and debt management practices.

The ESC held a number of workshops for businesses and has published revised guidance for water and energy businesses⁵. We believe this groundwork, which included engagement with the community sector, was an important part of educating, and preparing, the businesses for the new regulation.

Feedback from financial counsellors indicates that some individual energy companies are reasonably advanced in developing their response (e.g. “bigger energy providers are good to deal with”), while others are at the early stage⁶. We understand that the ESC’s work in this area is ongoing, and EARG members will continue to engage with the ESC and energy sector to encourage appropriate and consistent responses.

Recommendation 110 (Ombudsman Schemes)

The Victorian Energy and Water Ombudsman (EWOV) and the Australian Financial Complaints Authority (previously the Financial Ombudsman Service) (AFCA) have published their approaches to matters involving family violence⁷. These documents provide clear guidance to industry about good practice, and the ombudsman’s approach if a dispute arises. EWOV has held a number of forums on family violence and both schemes have consulted with community organisations about this work.

Ombudsman schemes play a vital role alerting industry to what is considered appropriate practice as well as helping to resolve individual disputes. There are likely to be emerging issues related to family violence, as well as some current ones which will require EARG to continue to engage with these schemes.

Recommendation 111 (Banks)

In line with the recommendations, the Australian Bankers’ Association developed an industry family violence guideline⁸ in 2016. This focused more on intimate partner violence, and complimented it’s 2014 guidance⁹, which was more relevant to elder abuse. While both are forms of family violence, we find that they often take different forms and require different responses. Since then, the major banks have implemented significant programs to develop and improve responses to customers experiencing family violence. The major banks have quite highly developed processes. Some are prepared to waive debts in certain family violence circumstances, and some have been prepared to consider

⁵ Essential Services Commission, [Better Practice in Responding to Family Violence \(2019\)](#)

⁶ Carolyn Bond, Dr. Madeleine Ulbrick, [Responding to Financial Abuse – Full Report. Community, Business and Government Responses to the financial impacts of family violence in Australia](#), 2020, p26

⁷ EWOV, [Position Statement 7 – Family Violence](#) (2019) and AFCA, [The AFCA Approach to joint facilities and family violence](#) (2017)

⁸ Australian Bankers’ Association, [Industry Guideline: Financial abuse and family and domestic violence policies](#) (2016)

⁹ Also, ABA, ‘Industry guideline: Protecting vulnerable customers from potential financial abuse’ (December 2014), https://www.ausbanking.org.au/wp-content/uploads/2019/05/Industry_Guideline_Protecting_vulnerable_customers_from_potential_financial_abuse2.pdf.

solutions that went beyond what the customer requested. There have been some very good outcomes for customers, and EARG members say that the major banks were generally quite good at responding to family violence, were ahead of most other businesses, and had an improved understanding of economic abuse issues. For example, one bank recently identified internet banking being used to send abusive and threatening messages¹⁰ and is developing responses to this complex issue.

However, banking continues to be a key focus of community advocates because bank products are used for financial abuse - whether it's drawing down on a joint mortgage without the other person's knowledge, refusing access to a joint account or coercion to apply for credit.

Recommendations 112 and 113 (Infringements)

In line with the recommendations, the law has been implemented. While the new laws are effective, more work needs to be done to:

- reduce the time taken to resolve applications
- ensure reasonable test of the nexus between family violence and the fine.

The law was changed to introduce a Family Violence Scheme where victim survivors can apply to Fines Victoria to have infringement fines withdrawn if family violence substantially contributed to the offence or it is not safe for them to name the responsible person.

The law has been implemented and there has been feedback from EARG members that the changes have been working reasonably well. However, applications have reportedly been taking considerable time to process. Concerns have also been reported about activation of a fine while it is meant to be 'on hold' while an application is considered. These issues have been linked to significant IT problems at Fines Victoria which, we understand, they are working to resolve.

Members also say that the proof required of the nexus between the violence and the fine is too high – for example showing not only that the person was experiencing family violence at the time, but that an incidence of family violence directly led to the fine. For example, in one case where it could be shown that a woman was subject to ongoing abuse which she fled on a regular basis, she was asked to show that on the particular day the fine was incurred she had been subject to abuse.

We understand that the Infringements Working Group will be making a submission and we refer you to that for further detail.

Question 2

Looking forward: what is still required in the family violence reforms?

¹⁰ <https://www.commbank.com.au/guidance/newsroom/cba-moves-on-technology-facilitated-abuse-202006.html>

While significant progress has been made in implementing the 'economic' reforms, there is much more that can be done. See the attached report for full details, but some of these issues are outlined below:

Victorian Government:

- ESC to continue its work with energy and water industries to ensure effective implementation of family violence policies and processes
- Improve outcomes for victim survivors who have incurred fines (see Infringements Working Group submission)
- Require local government to implement appropriate financial hardship programs to better respond to residents experiencing family violence
- Consumer Affairs to ensure family violence experts are consulted to ensure appropriate safeguards for goods storage businesses in the legislation
- Continue and extend funding for specialist family violence financial counsellors and community lawyers
- Continue to fund community organisations to engage with government and industry

Commonwealth Government:

- Progress the 2017 SACC Bill
- Introduce stronger consumer protections for telecommunications companies (for example responsible lending obligations)
- In the longer term, any review of credit legislation should take economic abuse into account to better protect consumers who enter into contracts under duress

EARG:

Continue working on identified issues/reforms including:

- VicRoads (registration transfer)
- Equifax (credit reporting)
- Insurance Council of Australia
- Debt collection
- Utilities

Financial counselling and legal help

Addressing the financial needs of people who have experienced violence assists them with recovery, reduces the risk that they will return to violence and enables them to lead more independent lives.¹¹

¹¹ Camilleri, Oliver, Corrie, Tanya & Moore, Shorna, 2015, 'Restoring Financial Safety: Legal Responses to Economic Abuse', *Good Shepherd Australia New Zealand and Wyndham Legal Service Inc*, 71

The Victorian family violence financial counselling program has been a successful innovation, which is being replicated elsewhere (albeit on a much smaller scale)¹². The Victorian program has demonstrated the importance of financial counselling as a fundamental part of family violence service provision.

Some community legal services employ lawyers with expertise in credit and debt law, who focus on family violence matters, and who can provide legal support to financial counsellors and/or act for clients who have more complex legal matters.

Funding these services, which work closely with family violence services, is vital in helping victim survivors to re-establish their lives after family violence.

Credit

Despite increasing recognition of family violence in relation to financial hardship, and some positive outcomes from some banks in relation to coerced debt, it remains very difficult for a victim survivor to successfully challenge the legality of a debt, either through the family court or AFCA, even where there has been a benefit only for the perpetrator and significant pressure to sign. In 'Limitations of Australia's Legal Hardship Protections for Women with Debt Problems Caused by Economic Abuse', the authors found that "While it is often possible to obtain a variation due to financial hardship, victim survivors have limited legal avenues (either through credit law or the family law system) to have liability severed. The study suggests that "in the absence of provisions for severing liability for joint debt, the legal hardship protections have limited capacity to assist victims of economic abuse." They provide an example of how consumer credit law enforces women's responsibility for debts that are the product of gendered dynamics of power and control, rather than their free consent, when that absence of consent should have invalidated the liability in the first place.¹³

We have ongoing concerns about some lenders failing to identify 'red flags' which should alert them to potential abuse (for example when granting a loan), about the lack of adequate staff training and, in some cases, collection activity that endangers the safety of victim survivors.

While there is family violence guidance for banks, this is not the case for all lenders, and third parties (such as debt collectors and finance brokers).

Monitoring current reforms and identifying new opportunities

Ongoing work is required to monitor the effectiveness of the industry reforms and application of the legal reforms (infringements and tenancy). EARG members continue to share information about their clients' experiences in relation to the reforms, and to raise

¹² For example, the philanthropic Financial Counselling Foundation recently provided \$3.9million over three years to fund 10 specialist Financial Counsellors around Australia.

¹³ Paul Ali, Evgenia Bourova, Ian Ramsay, 'Limitations of Australia's Legal Hardship Protections for Women with Debt Problems Caused by Economic Abuse' (2019) 42(4) UNSW Law Journal, p.1167

new issues which may need to be addressed. For example, EARG is consulting with the insurance industry (which has already developed family violence guidance), VicRoads and Equifax (regarding credit report defaults resulting from family violence).

Emerging Issues

Examples of the ongoing need (by businesses and governments) to identify and respond to issues that impact on victim survivors are reflected in two cases provided by Consumer Action Law Centre.

Goods Storage Companies

One issue that confronts victim survivors is where to store their belongings while trying to obtain secure accommodation.

As Consumer Action Law Centre says, “It is worth noting that our clients that experience difficulties with storage contracts and services are often extremely vulnerable. These include people who are in transitional accommodation, because they are leaving domestic violence situations, or they are experiencing homelessness. Noting this, we consider that the consumer protections benefiting storage consumers should be strong, and that there should be an active compliance and enforcement regime to ensure traders comply with statutory rules.”¹⁴

The Consumer protection framework for goods storage in Victoria is completely inadequate to protect victim survivors who are storing their goods due to fleeing violence or financial hardship. The current review of the Warehousemen's Liens Act in Victoria by Consumer Affairs Victoria needs to engage with family violence experts to ensure appropriate safeguards are put in place.

See case study in Appendix 2.

Bankruptcy Trustees

Bankruptcy trustees are likely to be involved in some cases where there is family violence, and their actions could place a victim survivor at risk (see case study at Appendix 2). Trustees should be alert to the indicators and risks and know how to respond to protect the individual's safety. The Australian Financial Security Authority (AFSA) could develop industry guidance in consultation with family violence experts.

Question 3: the impact of the COVID-19 pandemic

¹⁴ Consumer Action Law Centre, Submission to Consumer Affairs Victoria re Review of the Warehousemen's Liens Act 1958 (VIC) <https://consumeraction.org.au/wp-content/uploads/2016/03/CALC-comment-Review-of-the-Warehousemens-Liens-Act-FINAL.pdf>

We know from previous research into disasters and family violence that natural disasters, financial hardship and job loss are triggers for increased family violence, this includes economic abuse. However, evidence for economic abuse can be slow to emerge. Evidence of economic abuse is often slow to appear, for example being coerced into signing a loan may not have an impact until the perpetrator stops making payments. Withdrawal of funds or redraw on mortgage funds can occur without a joint account holder's knowledge or authority. Victim survivors tend to seek help with financial issues after they have left the relationship, even if it has been occurring over some time.

Our members expect that during the pandemic, it is likely that there will be an increase in:

- Victim survivors signing for loans (including payday loans) which are not for their benefit;
- Fraud in relation to online credit applications (where a perpetrator can often simply apply for a loan in the victim survivor's name)
- Withdrawal of funds from joint accounts or mortgage redraw with the other person's authority or knowledge
- Pressure to withdraw funds from superannuation
- Coercion to make false statement in relation to social security benefits
- Avoidance of paying child support

EARG members, and other community organisations are working closely with industry (such as banks and utilities) to share experiences and consider how we can better help prevent economic abuse, and better respond to victim survivors during COVID19.

Please don't hesitate to contact me if you have any queries.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Carolyn Bond', written in a cursive style.

Carolyn Bond AO
Project Manager
Economic Abuse Reference Group

Appendix 1

Specialist Family Violence Financial Counsellors

Specialist family violence financial counsellors play a vital role in assisting family violence victim survivors. Financial counselling is an essential part of recovery for family violence and economic abuse as it supports women to navigate across the complex territories of family law, family violence and debt. The value of having financial counsellors assisting these clients is increasingly recognised.

Some financial counsellors work within agencies that provide other family violence services, or that provide family violence legal services – others work closely with a local family violence service/s. Working collaboratively helps the clients to receive a seamless service, and can support the financial counsellors who, while specialist trained, are not family violence workers.

While regularly interacting with banks, finance companies and energy companies in relation to their clients' debts, financial counsellors and community legal centres also have a history of challenging unfair practices in the courts, in law reform campaigns and media campaigns. Through this advocacy over the last four decades, the sector has influenced laws and practices relating to credit, debt collection and utility hardship programs and was active in establishing industry ombudsman schemes.

From July 2017 – June 2019 the initial 11 specialist family violence financial counselling positions assisted almost 6,000 people. A stark picture of financial distress became clear when analysing client data¹⁵:

- 98% were financially disadvantaged, despite the fact that there are no income restrictions on eligibility to receive specialist family violence financial counselling; and
- 69% were in receipt of Centrelink payments, compared to 49% of all clients of generalist financial counselling services.

Clients presenting to family violence financial counsellors had multiple financial problems. Many clients had three, four or more of the following issues:

- Homelessness after leaving violent relationship, including living in their car.
- Unsuitable living conditions (due to lack of options) for example sharing with others who may be abusive.
- Concerns about physical safety and perpetrator locating them.
- Difficulties finding work – or keeping work – due to disruption, sabotage by perpetrator, need to be absent for court, medical and legal appointments etc.
- Health issues (including mental health).
- Concerns about their children's wellbeing.

¹⁵ Consumer Affairs Victoria, *Financial Counselling Program Summary Report 2017-2018*

- Debts which were incurred for the perpetrator's benefit, often under coercion, including perpetrator's use of secondary card on victim survivor's account.
- Outstanding utility bills (which have often been just in the victim survivor's name).
- Concerns about repossession of financed goods such as fridges and televisions.
- Contact from debt collectors, threats of court or bankruptcy for debts.
- Lack of knowledge about what bills and debts are in their name.
- Mortgage and rates arrears, being unsure whether they can afford to keep the home.
- Lack of access to a vehicle (or fears of losing vehicle, can't afford to maintain roadworthiness, etc.).
- Telephone/mobile phone debts, but also need the phone for safety and to stay in touch with supports.
- Five, ten or even more bills/debts which are overdue.
- Poor credit record either because they couldn't pay, or they were unaware of the debts in their name.
- Liabilities in their name for small business of which they sometimes knew little.
- Have experienced significant physical violence (some ex-partners are in prison when clients make contact).

Appendix 2

Case Studies

Storage Company

- Farah (name changed) was referred to us from Victoria Legal Aid. Farah was incredibly vulnerable, as she told us she was homeless and had experienced significant family violence. Farah said she had number of serious health concerns as a result of the family violence, and was also a victim of crimes perpetrated against her while she was homeless. Her sole income was from social security benefits and she had various other outstanding debts.
- Farah needed a place to store her personal effects because she was homeless. Farah said she saw a storage facility advertised online, and she said that when she contacted them they told her it would be \$1 for the first month, then a little under \$300 for following months.
- Farah said she paid just under \$300 to store her goods for two months and an additional fee of just over \$315 for insurance.
- Farah said that she was unable to make payments one month and was told her goods would be locked and she would be charged a late payment fee.
- Farah said that the company then told her if she wasn't able to pay within five days, then they would sell or dispose of her goods.
- Farah told us that she had not been able to negotiate an extension and that the storage company wouldn't allow her to pay in instalments. She said she was told that she needed to pay the amount in full, and that the company does not consider hardship. Farah said that the staff member she spoke to was very rude and Farah was very distressed when she called us.
- Consumer Action contacted the company on Farah's behalf. Consumer Action was told that they may be able to extend out the payment timeframes a bit if she keeps in touch with them, but otherwise they will continue to follow the process of disposing of the goods (excluding personal information) that Farah had stored.
- Throughout this time, Farah did not have a stable or safe place to stay.

Bankruptcy trustee

- Sally (not her real name) told us she is a single mum, living in accommodation that was too small to accommodate her family and she was worried about living with some family members due to their particular vulnerability to COVID-19 risks.
- Sally told us that she was made bankrupt some time ago and that the bankruptcy trustee had repossessed her home during COVID-19.
- Sally told us she is a survivor of family violence, yet the bankruptcy trustee continued to contact her ex-partner, which led to her suffering from further family violence.
- Sally told us that the bankruptcy trustee let her ex-partner into her former home.
- Sally informed us that she felt harassed by the bankruptcy trustee.
- Sally wants to complain to the regulator about the trustee's conduct

