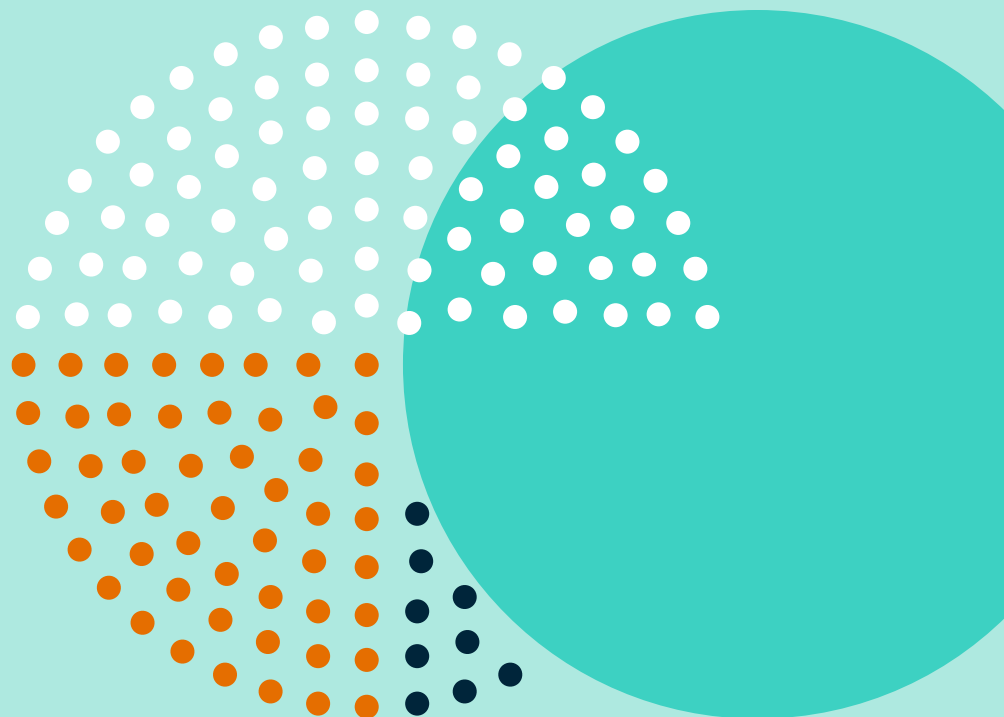


RESPONDING TO **FINANCIAL ABUSE** FULL REPORT

Community, business and government responses to the financial impacts of family violence in Australia.



RESPONDING TO FINANCIAL ABUSE FULL REPORT

Community, business and government responses
to the financial impacts of family violence in Australia

*Carolyn Bond and Dr Madeleine Ulbrick,
for the Economic Abuse Reference Group*

January 2020

This report has been prepared by the Economic Abuse Reference Group (EARG), an informal network of almost 20 community organisations, who work collectively to influence government and industry responses to reduce the financial impact of family violence. Members include family violence services, community legal services and financial counselling services.

The Report builds on an earlier EARG published report “Responding to Financial Abuse” report 2018.¹

The term ‘advocate’

The term “advocate” in this report refers to the financial counsellors and community lawyers who work with family violence clients and provided feedback for this report.

The term “victim survivor”

The term “victim survivor” refers to people who have experienced, or are currently experiencing, family violence.²

¹ Carolyn Bond, Stephanie Tonkin and Ciara Sterling, *Responding to Financial Abuse: Community, industry and government responses to the financial impacts of family violence in Victoria (Economic Abuse Reference Group, 2018)*.

² For more about why this term is used, see State of Victoria, *Ending Family Violence, Victoria’s Plan for Change (2016)* pV.



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INTRODUCTION

This report spans the period from March 2016 to December 2019 and describes the work of the Economic Abuse Reference Group (the EARG), and its individual members, in influencing industry and government initiatives in the acknowledgement and response to economic abuse.

With a primary focus on the 15 recommendations from the Victorian Royal Commission into Family Violence (the Royal Commission) that relate to financial security and economic abuse (see Appendix A), the purpose of this report is three-fold. Firstly, the report provides an introduction to the recent context of family violence and economic abuse in Victoria. Secondly, this report examines progress with reducing the economic impact of family violence in the period from the Royal Commission's report of March 2016 to December 2019, across the domains outlined in the dot points below:

- industry and government initiatives to respond to customers experiencing family violence (i.e. what is changing);
- outcomes for victim survivors, particularly with the support of a financial counsellor, (i.e. how the changes are working "on the ground"); and
- contributions and achievements of the EARG members.

Finally, this report aims to support further work and discussions for continuing to positively influence business and government responses to economic abuse. As part of this function, the report will outline key learnings and identify areas of focus for the EARG's future work.

This report builds on an earlier report of the EARG.³

Methodology

The approach taken in this report was three-fold. It involved:

- a preliminary literature review of the key national developments and recent recommendations arising at the state and federal level in relation to economic abuse and, specifically, family violence related debt;
- consultations with Victorian expert advocates (14 specialist family violence financial counsellors and two community lawyers working on family violence matters) to understand how economic abuse, including family violence related debt, was being dealt with in practice by financial service providers, utilities and some government departments; and
- a review of the data, narrative and case study reporting that the family violence financial counsellors are required to provide to Consumer Affairs Victoria.

³ Carolyn Bond, Stephanie Tonkin and Ciara Sterling, Above n1.

"[Debt Collector] is terrific to deal with – [staff member] is great but [from what my clients say] they appear to have poorly trained staff in the call centre".

Financial counsellor

Interviews

All advocates interviewed for this report worked for not-for-profit agencies and provided free services to clients.

All data collected from the consultation interviews was then analysed thematically.

Limitations

This research was not designed to identify the responses customers might receive if they made direct contact with a business without an advocate. Nor did it include the extent to which front-line staff identified indicators of potential family violence when the customer doesn't disclose.

This research is limited to victim survivors who are assisted by an advocate who:

- can make direct contact with the relevant department – or even a particular individual – rather than via a call centre;
- can disclose, and clearly explain, the relevant circumstances of the client;
- has knowledge of a particular business' family violence policies and of the appropriate solutions which should be offered; and
- is prepared to strongly advocate for the client if they believe the business' response is poor.

EXECUTIVE SUMMARY

The *“Responding to Financial Abuse: Full Report”* has three distinct sections.

Context of Family Violence and Economic Abuse in Victoria

Part 1 provides a contextual setting for family violence and economic abuse and provides an understanding of the critical role of financial counsellors and the work of the EARG.

Economic Abuse

In handing down its report in March 2016, the Royal Commission dedicated a chapter to financial security, acknowledging that “victims of family violence are more likely than other women to experience financial difficulty and many women experience poverty as a result of family violence, regardless of their prior economic circumstances.”

People experiencing economic abuse are overwhelmingly women, and it makes it impossible for them to navigate the day-to-day because of crushing debt, bad credit records, unpaid fines and bad tenancy records, most of which are inherited from the violent partner.

Joint debt and insurance policies, telecommunications accounts and drawn out Family Law disputes can be used to abuse a victim survivor and create further costs for years after separation.

Financial Counselling and Family Violence

Financial counsellors are at the frontline of economic abuse recovery. They have an extensive knowledge of a range of areas of law and policy including consumer credit law, debt enforcement practice, the bankruptcy regime, industry hardship policies and government concession frameworks. Specialist family violence financial counsellors have additional skills and knowledge about family violence and economic abuse. They often work with other community services to provide the best outcomes for clients. The services they provide are free, independent and confidential.

Some community lawyers also specialise in assisting people in relation to credit and debt arising from family violence.

Family violence clients present with complex cases and often have four or more presenting problems, including personal safety, lack of housing and health issues. The cases take some time to resolve, which creates further challenges for the client who may disengage from the service due to safety concerns and other crisis driven disruptions in their life.

Economic Abuse Reference Group (EARG)

This network (including financial counselling, family violence, community legal services and women's services) has provided input, advice and support to several industry and government reviews, and to individual organisations. It also developed a range of resources for organisations to use. The EARG's

status and credibility as the "go to" for informed support that reaches a network of community providers, working together to reduce the adverse impact of economic abuse, has seen it influence much of the industry and government-based changes in policies and practice.

Industry and Government Response

In **Part 2** the Report details industry and government responses to the financial impact of family violence as observed by the EARG and the advocates. The Royal Commission triggered a significant shift in momentum for business and government to respond to the financial impact of family violence.

Leadership has been demonstrated by many larger industry organisations across banking, insurance, utilities and telecommunications, with commitment to dedicated policies and often dedicated staff.

Some reforms were driven by Royal Commission recommendations (such as the development of banking family violence guidelines, and codes of practice for energy and water businesses).

However, many industry and government bodies have continued to develop and refine their initial responses. Others, who were not subject to a specific recommendation (for example the Insurance Council of Australia and VicRoads) have responded to issues raised by the EARG by developing policies and processes to better respond to customers experiencing family violence. While some businesses share their approaches with each other,⁴ many issues are industry specific and require tailored responses (for example cancellation of joint insurance by a perpetrator or car registration transfer issues).

The development, implementation and refinement of family violence policies is ongoing. EARG co-ordinates vital input to this work from the community sector, reflecting the casework experience of advocates.

The advocates interviewed for this report recognised the benefits to their clients of the changes implemented by government and business, and reported many instances of responsive service.

Unfortunately, however, a good response sometimes relies on the advocate accessing a particular staff member within an organisation. Advocates also identified some businesses and government bodies that do not yet recognise the role they can play and appear to have little to no commitment to responses. They reported that these bodies were very difficult to engage and were far less likely to offer an appropriate response.

It was clear that the involvement of an advocate increases the chances of a good outcome for the victim survivor, due to the complexity of the negotiations and the knowledge and experience of the advocates.

The Report details the progress made by industry and government and covers the banking and finance sector (including relationship debt, superannuation and debt collection), utilities, telecommunications, tenancies, fines and local government.

⁴ For example, through the Thriving Communities Partnership <https://thriving.org.au>

Future for Industry, Government and EARG

In **Part 3** the Report concludes with the future priorities and role of the EARG.

The key work going forward with business and government bodies is to:

- continue to encourage awareness of and commitment to responsiveness to family violence;
- embed good practice across businesses, to ensure all customers can achieve a consistently good outcome without the need for strong advocacy; and
- encourage consideration of potential family violence risks when designing products and processes and when granting credit.

The Report identifies specific business processes that would assist supporting family violence victim survivors experiencing economic abuse in a respectful and timely manner. These include understanding the role of an advocate and particularly financial counsellors, ensuring that staff are appropriately trained, and ensuring that businesses are not enabling abuse through their products, services and processes.

The role of EARG to monitor, inform and advocate to industry and government will continue, along with specific emphasis on select priority areas including the complex issue of joint accounts.

It is clear that effective family violence policies and processes (within businesses and government) make a significant difference to the lives of their customers who are experiencing family violence. Industry peak bodies, ombudsman schemes and regulators play an important role and can deliver real change. Collaboration between industry, government and the community sector going forward will continue to improve practice and outcomes for victim survivors of economic abuse.



PART ONE

CONTEXT OF FAMILY VIOLENCE AND ECONOMIC ABUSE IN VICTORIA

Royal Commission into Family Violence

In February 2015 the Victorian Government established a Royal Commission into Family Violence. In announcing the Victorian Government's intention to establish the Royal Commission, the Premier declared that family violence was "the most urgent law and order emergency occurring in our state and the most unspeakable crime unfolding across our nation."⁵

When the Royal Commission handed down its report and recommendations in March 2016, it included a chapter dedicated to financial security, along with 15 recommendations: 107 to 121 (see Appendix A), most of which reflected submissions made to the Royal Commission by community sector organisations.

The focus of the economic recommendations is to reduce adverse financial impacts on victim survivors of family violence, and to support better recovery. These recommendations covered three main areas:

- enhance ability of community services to help address, and prevent, personal economic problems and financial distress that result from family violence;
- change business processes to reduce the financial impact of family violence on customers (this includes staff training and improved responses to signs of family violence and the resulting financial hardship); and
- change legislation, specifically in the area of tenancy laws and fines, to improve outcomes for people experiencing family violence.

⁵ Victoria, Royal Commission into Family Violence, *Summary & Recommendations* (2016) p1.

Royal Commission into Family Violence Recommendation 107

The Victorian Government encourage the Financial and Consumer Rights Council to require that its members receive family violence and economic abuse training as part of continuing professional development and in order to remain members. The council should also work with other financial counselling member organisations to encourage them to do the same [from 1 January 2017].

In response to Recommendation 107 the Victorian Government provided \$7.75 million over five years to the Department of Justice and Community Safety (Consumer Affairs Victoria) to fund:

- the equivalent of 11 specialist family violence financial counselling full time equivalent positions;
- training of all Victorian financial counsellors in family violence and economic abuse; and
- the employment of a co-ordinator to support the Economic Abuse Reference Group (EARG) for 2 days a week until July 2020

The specialist family violence financial counsellors began service in October 2016 and experienced unprecedented demand. In response to the demand, the Victorian Government funded a further 10 specialist family violence financial counsellors in September 2019.

The Economic Abuse Reference Group

A group of community organisations formed EARG so they could work collectively to improve industry and government protocols and procedures in response to their customers who are experiencing family violence and/or economic abuse.

The group was funded to contribute to six of the financial security recommendations (108 to 113) relating to banks, energy, water and telecommunications companies, and law reform in relation to infringements (fines), residential tenancy and consumer credit.

The EARG's reputation for collaborative influence has seen it grow from an original group of eight organisations in Victoria, to almost 20 organisations in 2019, including national and representatives from other states. See Box 1 for the EARG's current members.

The EARG is a central point for industry and government to seek community input to family violence responses, and is committed to sharing examples of good practice that continue to evolve as issues are further considered and new examples of good practice arise.

EARG members also advocate, act and respond individually where appropriate.

The EARG uses the term "economic" rather than "financial" because the issues are often broader than finance, for example access to utilities or a vehicle.

Some of the EARG's work touches on personal safety, for example risks of perpetrators locating a victim survivor via a water account or mobile phone, however broader work on physical safety issues is out of scope.

The EARG has developed a range of publications to support business and government departments to turn around their policies and practices to better support customers experiencing family violence. These publications include guides on good practice, staff training, and referral options and can be accessed on the EARG's website www.earg.org.au. See Appendix B.

Box 1 **Economic Abuse Reference Group Members**

- CARE Financial Counselling Service and Consumer Law Centre (ACT)
 - Consumer Action Law Centre etc.
 - Council of the Single Mother and Her Children
 - Domestic Violence Victoria
 - Financial Counselling Australia
 - Financial Counselling Victoria
 - Financial Rights Legal Centre (NSW)
 - Good Shepherd Youth and Family Services Australia & New Zealand
 - Justice Connect
 - No to Violence
 - Redfern Legal Service
 - Social Security Rights Victoria
 - Thriving Communities Partnership
 - Uniting Kildonan
 - WEstjustice
 - Women's Information & Referral Exchange (WIRE)
 - Women's Legal Service Victoria
- Other regulator contributors to EARG's work include:**
- Legal Aid New South Wales
 - Legal Aid Queensland
 - Victoria Legal Aid
 - Women's Legal Service Queensland



Economic Abuse

The Royal Commission heard evidence that financial security is a significant protective factor in victim survivors gaining freedom from abusive partners. It states that in the current environment, “victims of family violence are more likely than other women to experience financial difficulty and many women experience poverty as a result of family violence, regardless of their prior economic circumstances.”⁶

At its core, economic abuse is an expression of power and control; it involves intentional use of finances to control the other person in an abusive and non-consensual way.

According to Victorian legislation, economic abuse is behaviour that is coercive, deceptive or unreasonably controls another person in a way that denies economic or financial autonomy or withholds the financial support necessary for meeting reasonable living expenses.⁷

Economic abuse can occur in isolation from or in combination with other forms of abuse. The practical reality is that economic abuse is a subtle form of violence that is often hard to identify. For women experiencing these abusive behaviours it can mean a combination of financial problems that make it impossible to navigate the every-day, including:

- bad credit records
- inherited joint debt
- bad tenancy records leading to homelessness
- low confidence in making financial decisions.

Examples of economic abuse can include coercing a victim survivor to claim social security payments or generating debt in their name by pressuring them to sign a contract for the provision of finance, a loan or credit, or a contract of guarantee. It can also include threatened or actual default on a joint debt to affect the victim survivor’s credit record.

Disputes over Family Court matters, jointly acquired debt or assets can be used to taunt a victim and create further costs for years after separation.

Economic abuse is both under-recognised and under-reported as a form of family violence. Currently, the body of research and evidence about the nature, scale and prevalence of economic abuse is small and in turn the empirical evidence base is limited. What is clear however is that: women are predominantly the victim; men are predominantly the perpetrator; and between 78-99% of women presenting to family violence services, report a history of economic abuse.⁸

⁶ Victoria, Royal Commission into Family Violence, *Vol IV, Report and Recommendations* (2016) p93.

⁷ *Family Violence Protection Act 2008* (Vic) S.6

⁸ Jozica Kutin, Roslyn Russell & Mike Reid, ‘*Economic abuse between intimate partners in Australia: prevalence, health status, disability and financial stress*’ (2017) 41(3) *Australian and New Zealand Journal of Public Health*, p269.

“Financial counsellors can sometimes get better outcomes than lawyers can by taking legal action.”

Community lawyer

In a recent Family Court property matter, the judge commented about the high quality of the work done by the financial counsellor.

Lawyer with Women’s Legal Service Victoria

“Working within a legal service which specialises in family violence, I have the support of lawyers dealing with family law and family violence, as well as a social worker. I can also help the lawyers when they want help to understand their client’s financial statements.”

Financial counsellor with Women’s Legal Service Victoria

Financial Counselling and Family Violence

Financial counsellors are at the frontline of economic abuse recovery. They are accredited professionals (Diploma of Community Services – Financial Counselling) and provide information, support and advocacy to assist people in financial difficulty from such things as credit card, personal loans debts, utility bills, mortgage default, unpaid fines or insufficient income. Working in community organisations, their services are free, independent and confidential.

Financial counsellors have an extensive knowledge of a range of areas of law and policy, including consumer credit law, debt enforcement practices, the bankruptcy regime, industry hardship policies and government concession frameworks.

Family Violence Financial Counselling is a specialist field where the financial counsellor has been trained in identifying indicators of economic abuse and assisting clients who have financial issues arising from family violence. They can also refer clients to other appropriate services, e.g. community legal services and family violence services.

In Victoria, all financial counsellors have received some training in identifying family violence and economic abuse. Additional family violence training has been provided to the specialist family violence financial counsellors.

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.⁹

“Financial counsellors need to put together pieces of a puzzle – it can take a long time to assess the situation.”

Financial counsellor

“It takes stamina for clients to stay engaged and continue working with a financial counsellor – it is very difficult for women who have other issues in their lives.”

Financial counsellor

Financial Counselling Family Violence Client Profile

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

- 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.

Box 2 illustrates the factors that most often impact family violence clients who present to financial counsellors.

Complexity of Casework for Economic Abuse

Family violence financial counselling casework is complex. “Family violence clients present with significant emotional and financial challenges including mental health vulnerabilities which need to be actively managed throughout the casework.”¹⁰

Clients present with multiple issues usually involving family law, intervention orders and breaches, children, assets, property settlements, fines, and other debts. These issues, along with safety concerns and the mental health status of the client, need to be managed simultaneously.

Given the breadth and depth of casework complexity, it takes longer to resolve a single case than an average financial counselling case. This, in turn, can pose significant problems for clients who may need to prioritise personal safety or wellbeing of children before finance issues can be resolved. The need to turn around these emotionally charged and complex cases as soon as possible places pressure on specialist family violence financial counsellors and a number interviewed mentioned that the role can be quite stressful.

Box 2 Economic Abuse Client Profile

When family violence clients present to family violence financial counsellors, they have multiple financial problems. Many clients have 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 the perpetrator locating them.
- Difficulties finding work – or keeping work – due to disruption, sabotage by the perpetrator, need to be absent for court, medical and legal appointments etc.
- Health issues (including mental health).
- Concerns about their children's wellbeing.
- Debts which were incurred for the perpetrator's benefit, often under coercion, including the 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 a vehicle, unable to afford or maintain roadworthiness, etc.).
- Telephone/mobile phone debts, but also need the phone for safety and to stay in touch with supports.
- Overdue bills - five, ten or even more bills/debts
- 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).



PART TWO

INDUSTRY AND GOVERNMENT RESPONSES TO THE FINANCIAL IMPACT OF FAMILY VIOLENCE

This section documents the progress made by industry and government departments in responding to economic abuse from the perspective of EARG members and advocates.

Appendix C provides a summary of the key issues for industry and governments that EARG members have identified for future consideration.

Advocates have seen the impact of improvements made by some businesses and government departments, since the Victorian Royal Commission into Family Violence (see Box 3 below)

Financial counsellors are regularly successful in having debts waived for clients, particularly by major banks and some utilities. Other lenders (such as some car financiers) appear to have no policies for responding to these customers. More 'marginal' lenders (such as lease companies, payday lenders and pawnbrokers) most often demand payment, which is sometimes sourced from government or community family violence grants, so household goods can be retained.

There remain examples where processes are yet to be embedded in business and government practice to serve family violence impacted customers consistently. Advocates reported that the response can depend on who they speak to, sometimes experiencing both positive and negative reactions from the same business. These findings are consistent with the views of advocates interviewed for other recent research who "were of the view that within each sector, levels of understanding of economic abuse as a cause of financial hardship varied significantly, and outcomes could depend on 'who answers the phone on any given day'.¹¹

"Overall, the banks and utilities are pretty good. Definitely in the last few years since the Royal Commission – it started getting better from there...."

Financial counsellor

¹¹ 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

BOX 3 **Examples since 2017 of the changes across government and industry in response to supporting family violence victim survivors experiencing financial difficulties**

- The Victorian Government funded 21 full-time equivalent specialist family violence financial counsellor positions, developed and delivered training for all financial counsellors in identifying signs of economic abuse, and funded the EARG.
- The Victorian Government introduced the Family Violence Scheme to assist victim survivors to apply to Fines Victoria for withdrawal of fines if family violence substantially contributed to the offence.
- The Essential Services Commission (ESC), which regulates the water and utilities industry changed the Energy and Water Codes to require businesses to have processes to assist customers experiencing family violence.
- The Australian Financial Complaints Authority (AFCA) developed guidance in relation to how it handles complaints regarding joint debt where there is family violence.
- The Australian Banking Association developed guidance for its member banks ("Industry Guideline: Financial abuse and family and domestic violence policies") and family violence is referred to in the revised Banking Code of Practice.
- The Insurance Council of Australia developed a family violence guideline, amended the General Insurance Code of Practice to refer to family violence, and is continuing to consult with consumer and family violence advocates regarding some insurance specific issues arising for customers experiencing family violence.
- The telecommunications industry has developed an industry guideline ("Assisting Customers Experiencing Domestic and Family Violence").

“Generally, the big 4 banks are pretty responsive. Haven’t had any real issues to speak of with any of them – payment plans, putting things on hold, waivers in some cases.”

Financial counsellor

Banking and Finance

The banking and finance sector can have a significant impact on the lives of people experiencing family violence – in writing loans, design of credit products, and in responding to joint account issues and financial hardship.

This section covers the work of the major and customer owned banks, the difficult area of relationship debt, mortgage arrears, credit reporting, debt collection, debt management firms, and superannuation.

Banks

Royal Commission into Family Violence Recommendation 111

The Victorian Government encourage the Australian Bankers’ Association, through its Financial Abuse Prevention Working Group, to develop a family violence-specific industry guideline [within 12 months]. This should be supported by training and education for relevant banking staff, to help them understand, identify and deal with economic abuse associated with family violence.

The Australian Bankers Association (ABA) developed industry guidance on family violence¹² in November 2016 and 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 provided grants programs for victim survivors.

There have been some very good outcomes for customers of major banks, and EARG members felt that the major banks were quite good at responding to family violence, were ahead of most other businesses, and had an improved understanding of economic abuse issues.

It was noted by a number of advocates that some banks were prepared to consider solutions that went beyond what the customer expected.

On the contrary, a lack of consistency at times was also noted, both between banks and within the same bank.

“[Bank] was prepared to waive debts! At one stage I didn’t ask [Bank] for waiver because client would pay, but [Bank] waived anyway.”

Financial counsellor

¹² Australian Bankers Association, *Industry Guideline: Financial abuse and family and domestic violence policies* (2016)



Banks - Outstanding Issues

EARG considers that ongoing work is required to:

- further embed effective policies and processes and ongoing family violence training for staff
- ensure front-line staff can identify potential family violence (and can, at least, refer internally)
- consider potential family violence risks when designing products and granting credit

Customer Owned Banks

While the “mainstream” banks (i.e. ABA members) have been quick to develop family violence policies and processes, the Customer Owned Banks (COBs) (e.g. not-for-profit credit unions) generally have not. COBs tend to be smaller, and arguably more flexible to respond to individual customers, however they have been slower to respond and are yet to make an industry-wide response.

The EARG provided input into the review of the sector’s Code of Practice, which is currently in progress, and expects that the final document will incorporate a commitment to customers affected by family violence. EARG also continues to work with some individual customer owned banks to support leadership of a family violence response in the sector.



Customer Owned Banks – Outstanding Issues

EARG members consider that ongoing work is required to:

- support COB acknowledgement of family violence issues and commit to revised policies and practices
- encourage staff awareness training
- encourage dedicated and consistent responses
- consider potential family violence risks when designing products and granting credit



“My client was virtually a slave, she got signed up to a lot of joint debts. Her partner knew the person at the lender and they spoke the same language, which she didn't understand. She was signed up to large debts. The financial counsellor managed to get some good results – including from [bank] – they waived over \$20,000 and refunded all payments and removed default listing from credit listing.”

“Biggest barrier with FV clients who come through is language. Clients have got into situations because partner has got them to sign up for credit cards, multiple phones, etc – wife has lower English skills, husband has communication skills.”

Financial counsellor

Relationship Debt

A number of issues arise in relation to debts incurred within intimate partner relationships which can exacerbate problems of economic abuse.

- One person may take on liability (either jointly or solely) for a debt and receive no benefit. In some cases, there is coercion involved. Even where a joint debt is for the benefit of both parties, one party may refuse to pay (even if they are able to pay), leaving the other person to be pursued for payment.
- A perpetrator may also incur more debt in the victim survivor's name without their knowledge, typically on a credit card or re-drawing on a mortgage account.
- A perpetrator may obtain a loan on-line using the victim survivor's details – this is on the increase due to easier access to on-line credit, in particular payday loans.
- A Family Court order or settlement may involve an agreement regarding which ex-partner pays a particular debt, but this doesn't bind the lender which can pursue whoever is on the original contract.
- “in the absence of provisions for severing liability for joint debt, the legal hardship protections have limited capacity to assist victims of economic abuse”.¹³

Issues relating to relationship debt apply to all lenders, including banks. The EARG has provided input to the work of relevant bodies including the ABA, the Australian Financial Complaints Authority (AFCA), the Australian Securities and Investments Commission (ASIC), and the Australian Law Reform Commission (ALRC). The EARG has provided input to development of policies, guidelines and legal frameworks through participating in round tables, writing submissions and providing feedback.

A number of bodies have acknowledged and responded to relationship debt with a range of guidelines, policies, and reviews; some of which are not completed at the time of writing. These are outlined in the dot points below:

- The ABA produced a guideline for the banking industry.¹⁴
- The recently published ABA Banking Code of Practice recognised family violence and reflected a clause in the Industry Guideline that banks will (initially) accept a financial hardship request from a joint borrower without involving the other person (in some cases). In practice banks sometimes vary or waive payment for a loan for a victim survivor without involving the perpetrator.
- The ABA are undertaking a project on joint accounts and family violence, which is examining some of these issues in detail.
- The AFCA produced guidance¹⁵ on how it handles disputes about joint debt and family violence, which applies to both joint debt and debt obtained by one person for the benefit of the other.

¹³ Paul Ali, Evgenia Bourova, Ian Ramsay, above n11, pp.1170-1

¹⁴ Australian Bankers Association, above n12

¹⁵ AFCA, *The AFCA Approach to joint facilities and family violence* (2017)

- AFCA is considering how it responds to disputes between one borrower and the lender after the couple has settled a property dispute.
- ASIC engaged consultants to specifically consider how its guidance for industry on responsible lending obligations should take family violence into account.

These headline policies and guidelines are a very important and welcome first step, and there is considerable feedback that the policies and processes are trickling down to provide effective outcomes for victim survivors.

Ongoing work is needed to work through the complex laws and processes that continue to disadvantage victim survivors.



Relationship Debt – Outstanding Issues

EARG members will continue to advocate across the range of issues surrounding relationship debt, for example:

- processes at time of sign up
- responses to disputes
- processes to enable removal of liability when legally possible

Mortgage Arrears

Mortgage arrears raise difficult problems for advocates, clients and lenders. While banks are prepared to initially deal with one joint account holder, both borrowers are bank customers. Advocates sometimes think banks could do more, even just to give their client time to resolve other issues before selling the home.

The EARG will continue to engage with banks in relation to mortgages to ensure the right balance is achieved between not putting the family violence impacted client into worse financial difficulty and allowing the client adequate time before requiring sale of the property.



Mortgage Arrears – Outstanding Issues

EARG members will continue to work with banks to ensure balanced and appropriate responses to family violence clients with mortgages.

“Default listings on credit reports – failure to remove default listings – It should be standard practice for advocates to make sure they request default removal [when debt waived due to family violence].”

Community lawyer

Credit Reporting

Credit defaults can result from economic abuse, where the debt was incurred as a result of coercion, or the default arises because the perpetrator refuses to pay. The default can limit the person's options to borrow money in the future, and therefore to re-establish their life.

Some creditors are prepared to not list a default where they waive payment of a debt as a result of family violence. However, others may be prepared to enter into a repayment arrangement, or even waive the debt, but insist on listing a default – or refuse to remove the default.

Until recently, concerns about default listings have been raised directly with creditors. However, some advocates have been engaged in discussions with a large credit reporting agency to help design a process to deal with matters involving family violence.



Credit Reporting – Outstanding Issues

EARG members will continue to take an interest in the recent work with the large credit reporting agency designing a process to deal with family violence, and will monitor progress.

Debt Collection

Creditors contract out collection of debts or sell debts to debt collection firms. It is a problem if a creditor has effective family violence processes and the debt collector doesn't.

The ABA Banking Industry Guideline on family violence, recommends that when banks have sold a debt and are made aware of family violence circumstances, they should work with the collection agency to provide the best outcome for the customer. Advocates report that generally, banks are prepared to take debts back from a debt collector if they are advised of family violence circumstances. However, this is only effective if an advocate – or the customer – knows to provide this information to the bank.

Advocates recognised that debt collectors are now more likely than they were in the past, to respond to family violence circumstances of the customer. However, there appears to be a range of responses which frequently rely on the financial counsellor to contact a particular person within the collection agency. This raised concerns for some financial counsellors about the response their client would get without an advocate.

Debt collectors need to have adequately trained staff at the front-line, as well as 'special' staff who respond to advocates. This issue is more than just a family violence issue, and the EARG will engage with member organisations who work on these issues arising from creditors contracting or selling debt.

“[A debt collector] was reluctant to waive debt in family violence circumstances, but they are now more aware and have changed their approach.”

Financial counsellor

“Client had been with [debt management co] for 10 years. She was paying most of her income to them and they were paying some of her debts but left her to pay others. She was seeking food from community services, but still paying money into [debt management co]. She sought help from me for mortgage arrears and she decided to cancel the [debt management co] but they tried to persuade her to stay.”

Financial counsellor



Debt Collection – Outstanding Issues

EARG members will continue to engage with the industry and peak bodies to encourage:

- closer monitoring by banks (and others) of the debt collectors they use
- adequately trained, front line staff
- specialist training for dedicated staff

Debt Management Firms

A growing number of private businesses are offering services to people who are in financial trouble. Too often, these businesses can make the person's situation worse. Consumer advocates have concerns about these businesses and have called for them to be better regulated and licensed.¹⁶ Unfortunately, many of the people who pay these businesses are unaware of free financial counselling.

Industry practices across debt management firms can and do adversely impact on family violence victim survivors. EARG's role going forward will be to continue to support other consumer advocates to engage with government to encourage better regulation and licensing of the debt management firms as appropriate opportunities arise.



Debt Management Firms – Outstanding Issues

EARG members will support consumer advocacy organisations that are campaigning for better regulation and licensing of this industry.

¹⁶ Consumer Action Law Centre, *'Debt vulture companies are ripping off Australians and stirring up the credit industry'* (Media Release, 7 December 2019).

Superannuation

Work is progressing on industry endorsement for a universally accepted template for simplified superannuation splitting orders. This will save time and money for everyone, including separating couples, courts and superannuation funds themselves.

Despite superannuation being an important household asset, splitting superannuation after relationship breakdown is hugely complex and legalistic.¹⁷ The two main barriers to accessing a fair split are:

- failure of the former spouse to make financial disclosure of their superannuation interests. This includes failure to reveal the name or names of their superannuation funds.
- complex and legalistic orders that lead to costly delays and a reliance on legal assistance

This can have a significant impact on low-income families because superannuation is often the only asset available for a former partner to claim where a family had few other assets.

EARG member, Women's Legal Service Victoria (WLSV) recommended an administrative mechanism for the release of information about the identity of a former partner's superannuation fund and its value. This recommendation was adopted by the Federal Government in the Women's Economic Security Statement released in November 2018; however, at the time of writing this is still to be legislated and implemented.

WLSV has been working collaboratively with Women in Super and key superannuation industry partners to try to simplify superannuation splitting orders and processes, which will save time and money for everyone, including separating couples, courts and superannuation funds themselves.

Family violence is not a specified reason to access superannuation early under the Australian Government's financial/personal hardship early access arrangements. The EARG provided input into the Australian Government's Review of Early Access to Superannuation which is currently in progress.



Superannuation – Outstanding Issues

EARG members will continue to share information and support the campaign to simplify superannuation splitting.

¹⁷ Women's Legal Service Victoria, *Small Claims, Large Battles: Achieving economic equality in the family law system* (2018)

“Her ex-partner insured everything in his name – even her car which was registered in her name. After she left the violent relationship, she had an accident and wrote-off her car. The insurance company insisted they had to pay him because he was the insured. She had no money to buy a new car.”

Community lawyer

“We recently had a case where our client's husband destroyed the property. Even though the insurer could have legally rejected the claim, they considered the circumstances of family violence and agreed to make a payment to our client.”

Community lawyer

Insurance

Insurance issues were not identified by the Royal Commission, however EARG members initiated this work due to issues arising from their casework and in the courts. While insurance matters don't arise as often as credit issues, they can cause significant harm to victim survivors. There are multiple risks experienced by family violence victim survivors that relate to insurance. For example:

- when the victim survivor's property is insured in the name of the perpetrator
- when jointly insured, one party (the perpetrator) can instruct the insurer to cancel the policy
- when jointly insured, one joint insured is responsible for the conduct of the other joint insured (e.g. property damage)
- insurance investigators can act inappropriately when interviewing a victim survivor when the perpetrator has potentially committed fraud.

Some of these issues can be addressed through simple changes to the Insurance Code but others are legally complex and require collaboration between government, the insurance sector and the community sector.

EARG members developed a paper on the range of issues that can arise for a family violence victim survivor in relation to insurance, which formed the basis of discussions between consumer advocates and the Insurance Council of Australia (ICA).

The revised General Insurance Code¹⁸ includes a reference to customers experiencing family violence, and with further input and advice from EARG members, ICA has developed family violence guidelines.¹⁹ The Code applies from January 1, 2021 but the important family violence policy provisions take effect on July 1, 2020.

The ICA has been particularly proactive and appointed a specialist insurance lawyer to consider the more legally complex issues. They held a forum with community representatives, including the EARG, in September 2019 to further consider these issues.

The ICA's actions are filtering through to practice with community advocates noting responses from some insurers go further than their legal obligations, however this is not yet consistent across the industry.

The EARG continues to engage with the ICA on complex legal matters to reduce adverse impact on customers experiencing family violence.

¹⁸ Insurance Council of Australia, *General Insurance Code of Practice (2020)*

¹⁹ Insurance Council of Australia, *Guide to helping customers affected by family violence to support the Insurance Council of Australia's General Insurance Code of Practice (2020)*



Insurance – Outstanding Issues

EARG members recognise the need for ongoing work across government, the insurance sector and community sector to:

- support an agreed industry wide approach to some legally complex issues
- revise insurance policies, practices and products that adversely impact customers experiencing family violence

Utilities

Under recommendation 109 of the Royal Commission, the Essential Services Commission (ESC)²⁰ was required to amend the relevant industry codes to improve outcomes for customers experiencing family violence who are dealing with energy or water businesses.

Royal Commission into Family Violence Recommendation 109

The Victorian Government work with the ESC [within 12 months] to amend the Energy Retail Code and Customer Service Code—Urban Water Businesses to:

- list minimum eligibility criteria for access to hardship programs
- include family violence as an explicit eligibility criterion
- develop industry guidelines for energy and water retailers to require comprehensive and ongoing training of customer service staff to help them identify customers experiencing family violence and financial hardship
- publicise the availability of dispute resolution mechanisms for people affected by family violence

The urgency for action in this industry is because energy and water accounts can be a source of abuse, including by:

- accidental disclosure of a new address to a perpetrator
- refusing to pay for utilities which are used by the family but incurred in the name of the victim survivor
- opening an account in the name of the victim survivor without permission
- a perpetrator requesting disconnection when the victim survivor remains living in the home.

Energy and water businesses can also be the first to be alerted to potential family violence circumstances, for example, when a customer requests a new account and asks that the new address be kept confidential. Having policies and practices that can identify and respond effectively to these alerts protects victim survivors.

²⁰ The ESC is the regulator of water and energy in Victoria.

"[Water company] is taking the right steps to educate staff – and they listen to the financial counsellors."

Financial counsellor

"I had been in touch with [Energy Co] about my client – but they sold the debt and told me there had been no contact re the account!"

Financial counsellor

The ESC has been a leader in this space with EARG members contributing advice and support through written submissions, evaluation input and workshop presentations.

Water

Water accounts can be used by perpetrators to locate victim survivors and to incur debt in their name. Prior to the Royal Commission, water businesses needed better processes to identify and prevent potential abuse, to offer solutions that suit the individual victim survivor's circumstances and to understand the impact of family violence on financial hardship.

The ESC amended the Water Code in April 2017²¹ to put 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 has been able to support energy businesses by sharing experiences.

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.

Energy

Energy accounts can also be used by perpetrators to locate victim survivors and to incur debt in their name. Similarly, to water businesses, energy businesses prior to the Royal Commission needed better processes to identify and prevent potential abuse, to offer solutions that suit the individual victim survivor's circumstances and to understand the impact of family violence on financial hardship.

The Energy Code was amended in 2019²² (to apply from January 2020) to include obligations upon energy retailers to have a family violence policy and meet minimum standards of 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 businesses.²³

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 stage. EARG members will continue to engage with the energy sector to encourage consistency of responses.



Utilities – Outstanding Issues

EARG members will continue to engage with the ESC on energy and water issues including the monitoring of the new Energy Code from its introduction in January 2020.

²¹ Essential Services Commission, Amendments to Water Customer Service Codes – New requirements for family violence policies Final decision, April 2017. See details of the Code Review [here](#).

²² Essential Services Commission, *Energy Retail Code Version 14 1 January 2020*.

²³ *Essential Services Commission, Better Practice in Responding to Family Violence (2019)*.

Telecommunications

Royal Commission into Family Violence Recommendation 108 (excerpt)

Victorian Government, through Council of Australian Governments, encourage the Commonwealth Government [within 12 months] to work with the Australian Communications and Media Authority and its related representative bodies and associations to amend the Telecommunications Consumer Protections Code to:

- list minimum eligibility criteria for access to hardship programs
- make family violence an express eligibility criterion
- incorporate a requirement for specific policies for customers experiencing family violence to clarify consent
- requirements for payment plans when an account is jointly held
- include grounds for splitting jointly held debt and removing an account holder's name if family violence has occurred.

Telecommunications products/services can facilitate abuse by increasing safety risks and by enabling financial abuse (see Box 4). Telecommunications businesses can also assist or hamper recovery of a victim survivor through the way they respond to requests for assistance in relation to personal safety, financial hardship and liability for services they haven't used.

Unlike credit contracts that can be challenged if the liable person hasn't received a benefit, there are limited options to legally challenge telecommunications companies on that basis. Further, telecommunications organisations don't have a legal obligation to assess ability to pay which is very problematic for customers experiencing family violence.

BOX 4 Family violence issues with telecommunication companies identified by advocates

- Lack of staff understanding of family violence.
- Staff requesting unreasonable proof of family violence from a customer.
- Lack of processes that enable someone to tell their story only once.
- Poor financial hardship processes which also impact people experiencing family violence.
- Barriers to advocates dealing with telecommunications providers (e.g. requiring unreasonable confirmation of client consent).
- Poor sales practices that can expose someone to financial abuse.
- Failure to recognise telecommunication services as a necessity, particularly for some vulnerable people such as those experiencing family violence.
- Enabling financial abuse (e.g. perpetrator of family violence uses telecommunications services which are in the name of the victim survivor).

"My experience with some telcos is the worst. My 19 year old client signed up to all these telco contracts as a result of economic abuse, but it took a long time to get an outcome – in the end they agreed not to pursue but will put [a default] on her credit report."

Community lawyer

Telecommunications accounts can raise many issues for family violence victim survivors including:

- safety issues such as tracking mobile phones
- one person can incur significant debt due to another person's use of the service
- clients can be forced to open a number of accounts in their name for the benefit of the perpetrator, who sells the devices for cash.

Feedback from advocates about experiences with the telecommunications industry found an almost equal mix of positive and negative feedback. Several reported service providers that waived debt and/or provided phone credit. Others however demonstrated lack of understanding of economic abuse, and the potential risks of their practices to family violence impacted customers.

The telecommunication industry body, Communications Alliance, developed family violence Industry Guidance,²⁴ in consultation with the community sector including EARG members. The EARG provided written submissions and participated in a roundtable.

While the Industry Guidance covers many issues, the extent to which telecommunication organisations have adopted the 2018 Family Violence Guidelines into their processes is unclear. There are concerns that these organisations often don't respond appropriately, and basic problems remain which impact many customers (e.g. not assessing ability to pay before selling a plan and some organisations failing to recognise advocate authorities).

The Communications Alliance is reviewing the family violence Industry Guidance in early 2020. EARG members are in the process of compiling their experiences with the Guidance and proposals for change.



Telecommunications – Outstanding Issues

EARG members will have input to the review of the family violence Industry guidance, and will continue to work with other consumer advocacy groups and the telecommunications industry to encourage:

- streamlined processes for advocates to represent clients
- changes to the industry family violence guideline to increase its effectiveness
- policies and practices that reduce risk for family violence impacted clients

²⁴ Communications Alliance Ltd, *Industry Guideline G660 - Assisting Customers Experiencing Domestic and Family Violence* (2018).

Tenancies

Royal Commission recommendation 116 directed attention to the impact of tenancies on victim survivors of family violence, as outlined below:

Royal Commission into Family Violence Recommendation 116

The Department of Justice and Regulation's review of the Residential Tenancies Act 2006 (Vic) (the Act) consider amending the Act to:

- empower Victorian Civil and Administrative Tribunal (VCAT) members to make an order under section 233A of the Act if a member is satisfied that family violence has occurred after considering certain criteria-but without requiring a final family violence intervention order containing an exclusionary condition.
- provide a clear mechanism for apportionment of liability arising out of the tenancy in situations of family violence, to ensure that victims of family violence are not held liable for rent (or other tenancy-related debts) that are properly attributable to perpetrators of family violence.
- enable victims of family violence to prevent their personal details from being listed on residential tenancy databases, and to remove existing listings, where the breach of the Act or the tenancy agreement occurred in the context of family violence.
- enable victims of family violence wishing to leave a tenancy to apply to the Victorian Civil and Administrative Tribunal for an order terminating a co-tenancy if the co-tenant is the perpetrator of that violence-including, where relevant, an order dealing with apportionment of liability for rent (or other tenancy-related debts) between the co-tenants.
- prevent a landlord from unreasonably withholding consent to a request from a tenant who is a victim of family violence for approval to reasonably modify the rental property in order to improve the security of that property.

The Victorian Government has amended the residential tenancies laws to enhance protections for tenants experiencing family violence which come into effect in July 2020. During the process, the EARG provided a submission to the Victorian Government on proposed new residential tenancy laws, after consulting with members and tenancy groups. The EARG also provided feedback to Consumer Affairs Victoria on the training needs of estate agents and property managers. The final amendment to the Act included protections advocated by tenancy advocates and the EARG and increases the safety of tenants experiencing family violence, including by:

- allowing VCAT to change agreements in situations of family violence, for example by allowing a new agreement which doesn't include the perpetrator
- enabling a victim survivor to challenge the validity of a notice to vacate issued on a range of grounds where the conduct was caused by the perpetrator
- preventing a negative listing on a tenancy database against the victim survivor
- allowing a family violence victim survivor to make reasonable security-related modifications to rented premises
- allowing VCAT to apportion liability between the relevant parties in relation to bond, utility charges, other liabilities such as damage, and compensation.

The Real Estate Institute of Victoria has worked with a community training provider, and will shortly provide comprehensive, industry relevant, family violence training for estate agents and rental managers.



Tenancies – Outstanding Issues

EARG members will monitor feedback from members and others about the effectiveness of the family violence amendments to the Residential Tenancies legislation and proposed training that comes into effect in July 2020.



Department of Human Services (Commonwealth)

A range of harms and challenges arise for family violence victim survivors with regard to the current legislation, and operation of policies and procedures of services of the Commonwealth Department of Human Services (DHS), in particular, Centrelink and the Child Support Agency.

EARG members have been participating (with other community organisations) in meetings about these family violence issues with DHS and provided input to a DHS planning session regarding DHS responses to family violence.



Department of Human Services (Commonwealth) – Outstanding Issues

EARG is continuing to engage with DHS together with other community organisations to identify where EARG's input is of most value.

Consumer Data Right

In August 2019, Australia took a major step towards an open data economy by passing the Consumer Data Right (CDR) legislation, which gives customers control of their data and enables them to share it with third parties. The CDR will first apply to the banking sector, followed by the energy sector. Under Open Banking, consumers will be able to access and transfer their banking data to trusted parties. The Australian Competition and Consumer Commission (ACCC) is responsible for developing rules for data sharing under the CDR.

Rules governing the sharing of account information under the CDR need to consider and address family violence related risks, particularly sharing of joint account data. The ACCC approached the EARG and requested feedback on the draft rules.

The EARG facilitated a meeting with the ACCC and interested organisations and subsequently provided a written response.

This is an important issue, and difficult for those without technical expertise to fully understand. However, EARG members maintain contact with other community organisations who continue to work on this issue and they know EARG members are available to give feedback to them if required.



Consumer Data Right – Outstanding Issues

EARG members will continue to monitor progress and implementation of the CDR and provide feedback in relation to family violence risks.

"Fines are a constant problem for these clients. It's been brilliant now there is a Family Violence Scheme. The system was a bit clunky – although the fine was waived.... Streamlined service on website is good."

Financial counsellor

Fines Victoria

Prior to the Royal Commission people experiencing family violence were facing liability for fines because the perpetrator was incurring fines while using the victim survivor's vehicle. In order to be excused from payment, the victim survivor had to make a declaration identifying the driver, posing a threat to their safety. Unlike homelessness or health issues, family violence was not considered a special circumstance in applications to be excused from payment of fines. Victim survivors could use the option of admission of liability followed by application to the court for consideration of special circumstances, however that was potentially expensive, time consuming and a high safety risk.

The Royal Commission acknowledged the risks associated with fines for victim survivors and incorporated actions into two recommendation

Royal Commission into Family Violence Recommendations 112 and 113

112 Department of Justice and Regulation (DOJR) to investigate whether the Road Safety Act 1986 (Vic) should be amended so that if a perpetrator of family violence incurs traffic fines while driving a car registered in the name of the victim, the victim is able to have the fines revoked by declaring:

- They were not the driver of the vehicle at the time of the offending.
- They are a victim of family violence—as evidenced by a statutory declaration, a copy of a family violence safety notice or family violence intervention order, or a support letter from a family violence worker, general practitioner or other appropriate professional.
- They are unable to identify the person in control of the vehicle at the time for safety reasons.

113 requires the Victorian Government to amend the Infringements Act 2006 (Vic) to provide that the experience of family violence may be a special circumstance entitling a person to have a traffic infringement withdrawn or revoked.

EARG members arranged representation from the family violence sector and engaged with the Infringements Working Group (IWG) and the DOJR to advocate for legislation that did not require victim survivors to name the driver. The IWG commented that "the family violence sector was extremely compelling in DOJR's considerations".

The legislation 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 advocates that the changes are working well. More recently however advocates are reporting concerns, including activation of a fine while it is meant to be 'on hold' while an application is considered.

Advocates 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.

Additionally, applications have reportedly been taking considerable time to process, with one case taking nine months at the time of interview, and still waiting despite regularly checking in. These delays have been linked to significant IT problems at Fines Victoria which they are working to resolve.



Fines Victoria – Outstanding Issues

EARG members will continue to engage with Fines Victoria to:

- reduce time taken to resolve applications
- advocate for reasonable and realistic test of the nexus between family violence and the fine



VicRoads – Vehicle Registration

A related issue that also adversely impacts people experiencing family violence, although not directly part of the Royal Commission recommendations, is that of vehicle registration. There are two key problems:

- transferring registration where the car the victim survivor regularly drives is registered in the perpetrator's name; and
- a car registered in the victim survivor's name is being driven (and fines being incurred) by the perpetrator.

Some of the issues are complex, for example there is tension between making it simple for a victim survivor to transfer registration without the perpetrator's consent, and the risk of such a process being used for fraud.

The EARG is having regular meetings with VicRoads to discuss processes for transferring registration in family violence circumstances where the other person won't sign documentation. Simple processes to transfer registration, and awareness of these processes should prevent some fines being incurred in the first place and ensure that the person who drives the vehicle receives registration notices.

VicRoads staff have been receptive to the issues raised, and recognise the need to develop specific processes to deal with customers with particular vulnerabilities.



VicRoads – Outstanding Issues

EARG members will continue to engage with VicRoads to encourage:

- introduction of policies and processes for transferring registration in family violence circumstances
- increased staff capability to implement the policies and processes for family violence impacted customers

"Someone at the rates department said, 'we can't waive everyone's debt... we rely on interest for income.'"

Financial counsellor

Local Councils

There is great variation between local councils in the way they respond to residents experiencing vulnerability, including family violence. A 2012 community report found that "Councils are falling far behind best practice for financial hardship regulation, processes and practices"²⁵ and some advocates believe this remains the case for many councils. Some councils appear to have processes to assist residents with financial hardship and family violence. Advocates found these councils responded well to client requests. Other councils however are underdeveloped in this space and have no clear response to financial hardship or family violence. Among these councils, advocates reported some had "no provisions for family violence whatsoever".

The inconsistency across councils in Victoria is troubling and it is time for them to begin sharing and collaborating to achieve ethical and responsive services to their community.



Local Councils – Outstanding Issues

EARG members will continue to work with members and other advocacy bodies to engage with local governments and the Municipal Association of Victoria to encourage policies and practices that reduce financial risk for people experiencing family violence

²⁵ *Federation of Community Legal Centres and Footscray Legal Service Council Debt Collection – Alternatives to suing ratepayers in hardship (2012)*

PART THREE

FUTURE FOR INDUSTRY, GOVERNMENT AND EARG

There has been considerable progress made by industry and government in response to the six recommendations the EARG has focused on, and to the wider set of financial security recommendations from the Royal Commission.

As other issues not included in the Royal Commission have been identified (for example insurance and vehicle registration), significant achievement has been made. There remains a need for the EARG to continue to influence and encourage industry and government to strengthen policies and practice.

The high-level challenges for industry and government going forward are:

- to roll out industry wide family violence policies as soon as possible; and
- to embed the practices organisation-wide to ensure consistent and appropriate responses that reduce the burden of economic abuse on customers.

This section identifies procedures, processes and policies that could be improved to enable industry and government to better support family violence victim survivors experiencing economic abuse. It also outlines EARG's future priorities in assisting industry and government to have a shared understanding and response.

Appropriate Business Processes for all Customers

It is important that all customers can access relevant information, have their problems resolved in a timely way, or have an advocate represent them.

Poor processes can exacerbate the problems for those experiencing family violence. Delayed responses from industry and government can significantly increase the time required by advocates to assist their clients. This can waste limited resources that should be applied to supporting more people in need potentially increasing client safety and reducing their financial risks.

Accepting an Authority from an Advocate

It is standard practice for financial counsellors to provide an authority, signed by their client, so they can deal with the business on the client's behalf.

Most businesses accept this authority, but if they don't, it can cause frustration for the client and be time consuming for the financial counsellor. In some cases, it may mean that the client continues to be contacted by the business, adding to the client's stress.

Some businesses don't have clear processes to recognise another person as an advocate, even if that person is a lawyer. This appears to be a particular problem with some telecommunications companies.

"Ifinance company/ didn't accept the signed authority from my client - they wanted me to come into their office with my client and wanted me to be a power of attorney! They then sent me their own authority document for the client to sign - so I had to get the client back to my office to sign a document that was similar to the one I'd initially provided."

Financial counsellor

Requesting Documentation

Many victim survivors of family violence have little knowledge of the accounts in their name, so obtaining copies of documentation is important. There are sometimes significant delays in providing documents, and businesses sometimes want the authority of both joint borrowers (which is not necessary) meaning that some customers are unable to obtain information about accounts they hold.

Delays and Inefficiencies

Delays and inefficiencies in a business's processes will disadvantage many customers and increase the amount of time a financial counsellor needs to spend with a particular client. The negative impact on the client and the work of the financial counsellor is amplified in family violence situations where the matter is often complex, and the client may be experiencing a crisis.

Understanding how to respond to family violence

It is important that business and government have a shared understanding of family violence and economic abuse, and how to work with advocates to effectively and efficiently support victim survivors.

Requiring Evidence of Family Violence

While in some cases evidence may be required (for example if waiving a significant debt), it is increasingly accepted that requiring documented evidence can delay resolving the problem, place stress on the victim survivor and may result in disclosure of very personal information. If some evidence is required, the business should consider accepting evidence that would be easiest to obtain and won't disclose personal details.

A Commitment to Respond to Family Violence

A business must recognise the difference it can make for victim survivors and the importance of implementing policies must come from senior management.

While such a commitment doesn't mean the business always 'gets it right', there appear to be some businesses who reject the idea that they have any role to play – and unsurprisingly, these are often businesses that have a poor history of responding to customers experiencing other vulnerability issues such as financial hardship.

"[Lender] couldn't give two hoots if you had 2 weeks to live, they wouldn't care. They just want a payment arrangement, not interested in family violence circumstances, how debt came about etc."

Financial counsellor

“Since [staff member] left [water business] we have noticed a significant difference in the way they are responding to debt related issues.”

Financial counsellor

“Clients report trying to do something themselves, but they don’t even know what to ask for.”

Financial counsellor

“Where institutions understand the role of financial counsellors and about the family violence their clients are experiencing, the responses improve.”

Financial counsellor

Embedded Processes Which Don't Rely on Individual Staff

Particular members of staff can help drive change within the organisation and provide a contact point for advocates. However, over-reliance on individual staff can impede an effective response.

First, there are often a number of 'champions' within a business who help drive change, but it's important the business doesn't rely on those staff members alone.

Secondly, it can be helpful to have particular contacts within the business for advocates, who find this can make their work easier. However, businesses also need processes which ensure that all staff respond appropriately, whether or not an advocate is involved.

According to the ESC: “Best practice suggests that a strategy needs to include embedding lasting systems so that policies are not reliant on the knowledge and championing by select members of the organisation”.²⁶

The family violence response should be embedded in the business and provide a consistent response whether or not the matter is being handled by a 'special contact'.

Responding appropriately to customers without an advocate

Customers without advocates may not clearly state they are experiencing family violence. They may not be aware they are experiencing economic abuse - so it is vital that front-line staff are adequately trained to identify indicators of potential family violence and refer the matter to a manager or the specially trained hardship team.

Advocates are generally not confident that their clients would have received as good an outcome if they made direct contact with the business.

Appropriately Trained Staff

Staff dealing with customers experiencing family violence need to have an understanding of the nature of family violence (including economic abuse), how to recognise indicators of potential family violence, the role of power and control in family violence and why many victim survivors don't apply to the court for an intervention order. Advocates can often recognise whether the person they are talking to has a basic understanding of family violence.

Staff training is important (at a level appropriate to their role). Staff are not family violence workers, but they should be able to recognise, respond and refer customers appropriately.²⁷

²⁶ Essential Services Commission, *Above n23*, p24.

²⁷ See *EARG, Family Violence Guide – Staff Training (2018)*

Understand the Role of Financial Counsellors

Financial counsellors play a key role in helping people who experience family violence. In addition to specialist family violence financial counsellors, most financial counsellors in Australia have received family violence training.

Financial counsellors can also play a role in 'educating' businesses about what they do and about the types of clients they help. It is important financial counsellors do not assume that the person at the business understands the desperate circumstances experienced by the financial counsellor's client.

Business Processes That Enable Staff to Offer Solutions That Suit the Customer's Needs

People have different needs, and a solution for one person may not suit another. For example, some people welcome the offer of a business putting a 'safety flag' on their account which, among other things, might prevent online access. Another person may fear this could increase their risk if the perpetrator suspects the victim survivor has reported the family violence.

Preventing Abuse by Considering Risks When Granting Credit

Businesses need to consider their products, services and processes to ensure they are not enabling abuse and have processes which identify potential abuse at the point it occurs, for example when granting credit.

A Future Focus for EARG

The EARG can play an important role in the future by continuing to monitor, inform and advocate to industry and government as they move their responses from headline policies and guidelines towards embedded practices. As EARG membership continues to include more national and non-Victorian groups, there is an opportunity to share EARG's experience more broadly, and to support reforms in other states.

There is also a role for the EARG to continue to identify and influence emerging issues that come from members' casework to ensure that change is realised in the best interests of victim survivors. EARG will provide feedback from this report with some of the individual businesses concerned.

While the EARG will continue their broad agenda, there will potentially be an emphasis on the following priorities which have been selected due to their significance in casework and the potential to influence change as the EARG continues to collaborate, participate and inform the future.

Joint Accounts

This work has raised questions about some long-standing industry products and practices, particularly around joint accounts (such as loans and insurance), regarding appropriate processes to contract with joint parties, and in some cases, whether these accounts should be in joint names at all. Discussions between industry and community advocates on these issues is continuing.

Where the Appropriate Response isn't Clear

While the appropriate response to some problems is clear, others are more complex – particularly where the victim survivor and the perpetrator are both customers. In these cases, there can be tension between a business' obligations to two of its customers. EARG will engage in further discussions with industry to determine how some of these cases might be addressed.

Property Mortgages

One area where there sometimes appeared to be strong disagreement about lenders' responses related to mortgages – particularly where the mortgage was secured by the family home. Advocates sometimes felt that the lender should allow the client more time, for example not taking action until a property settlement was complete, or where the person wanted to stay in the property to avoid changing children's schools mid-year. This is an area where further work could be done to identify appropriate solutions.

Value of Feedback from Advocates

The advocates talk with victim survivors and engage with businesses every day. They have a valuable, and unique, perspective on how businesses and government entities are performing. They are busy and focused on helping their clients but could potentially have a greater impact on business and government processes if more of this information could be shared. EARG will liaise with the financial counselling peak bodies to ensure that this can be done in an efficient way without impacting on the important assistance advocates provide.

Outcomes for People Without Representation

This report focused on the experience of advocates and could only touch on challenges faced by victim survivors who approach an institution themselves. There is a need for some research to ensure that good outcomes are not limited to people who have assistance.



APPENDIX A

VICTORIAN ROYAL COMMISSION INTO FAMILY VIOLENCE

FINANCIAL/ECONOMIC RECOMMENDATIONS

These are the fifteen recommendations by the Royal Commission into Family Violence that relate to financial/economic matters.

107 The Victorian Government encourage the Financial and Consumer Rights Council to require that its members receive family violence and economic abuse training as part of continuing professional development and in order to remain members. The council should also work with other financial counselling member organisations to encourage them to do the same [from 1 January 2017].

108 The Victorian Government, through the Council of Australian Governments, encourage the Commonwealth Government [within 12 months] to:

- amend the National Credit Code to include family violence as a ground for financial hardship and develop an awareness campaign to ensure that both consumers and credit providers are aware of their rights and responsibilities
- work with the Australian Communications and Media Authority and its related representative bodies and associations to amend the Telecommunications Consumer Protections Code to:
 - list minimum eligibility criteria for access to hardship programs
 - make family violence an express eligibility criterion
 - incorporate a requirement for specific policies for customers experiencing family violence to clarify consent requirements for payment plans when an account is jointly held
 - include grounds for splitting jointly held debt and removing an account holder's name if family violence has occurred.

109 The Victorian Government work with the Essential Services Commission [within 12 months] to:

- amend the Energy Retail Code and Customer Service Code—Urban Water Businesses to:
 - list minimum eligibility criteria for access to hardship programs
 - include family violence as an explicit eligibility criterion
- develop industry guidelines for energy and water retailers to require comprehensive and ongoing training of customer service staff to help them identify customers experiencing family violence and financial hardship
- publicise the availability of dispute resolution mechanisms for people affected by family violence.

110 The Victorian Government encourage the Victorian Energy and Water Ombudsman and the Commonwealth Financial Services Ombudsman and Telecommunications Ombudsman to publicise the availability of their dispute-resolution processes to help victims of family violence resolve disputes with service providers in relation to debts and liabilities incurred in the context of family violence [within 12 months]

111 The Victorian Government encourage the Australian Bankers' Association, through its Financial Abuse Prevention Working Group, to develop a family violence-specific industry guideline [within 12 months]. This should be supported by training and education for relevant banking staff, to help them understand, identify and deal with economic abuse associated with family violence.



112 The Department of Justice and Regulation investigate whether the Road Safety Act 1986 (Vic) should be amended so that, if a perpetrator of family violence incurs traffic fines while driving a car registered in the name of the victim, the victim is able to have the fines revoked [within 12 months] by declaring:

- They were not the driver of the vehicle at the time of the offending.
- They are a victim of family violence—as evidenced by a statutory declaration, a copy of a family violence safety notice or family violence intervention order, or a support letter from a family violence worker, general practitioner or other appropriate professional.
- They are unable to identify the person in control of the vehicle at the time for safety reasons.

113 The Victorian Government amend the Infringements Act 2006 (Vic) to provide that the experience of family violence may be a special circumstance entitling a person to have a traffic infringement withdrawn or revoked [within 12 months].

114 The Magistrates' Court of Victoria consider [within 12 months]:

- issuing a practice direction to encourage the use of personal property conditions in family violence intervention orders
- including specific questions about personal property conditions in the information form that precedes the application for a family violence intervention order (FVIO1 form).

115 Victoria Police amend the Victoria Police Code of Practice for the Investigation of Family Violence to provide guidance and examples in relation to when it is appropriate to seek personal property conditions in family violence intervention orders [within 12 months].

116 The Department of Justice and Regulation's review of the Residential Tenancies Act 2006 (Vic) consider amending the Act to:

- empower Victorian Civil and Administrative Tribunal members to make an order under section 233A of the Act if a member is satisfied that family violence has occurred after considering certain criteria—but without requiring a final family violence intervention order containing an exclusionary condition
- provide a clear mechanism for apportionment of liability arising out of the tenancy in situations of family violence, to ensure that victims of family violence are not held liable for rent (or other tenancy-related debts) that are properly attributable to perpetrators of family violence
- enable victims of family violence to prevent their personal details from being listed on residential tenancy databases, and to remove existing listings, where the breach of the Act or the tenancy agreement occurred in the context of family violence
- enable victims of family violence wishing to leave a tenancy to apply to the Victorian Civil and Administrative Tribunal for an order terminating a co-tenancy if the co-tenant is the perpetrator of that violence—including, where relevant, an order dealing with apportionment of liability for rent (or other tenancy-related debts) between the co-tenants
- prevent a landlord from unreasonably withholding consent to a request from a tenant who is a victim of family violence for approval to reasonably modify the rental property in order to improve the security of that property.

117 The Victorian Government encourage the use of applications under section 233A of the Residential Tenancies Act 2006 (Vic) [within 12 months], including by means of training and education for family violence support workers, Victoria Police and other relevant support staff in relation to the existence and operation of the provision.

118 The Magistrates' Court of Victoria consider issuing a practice direction to encourage magistrates hearing family violence intervention order applications to inquire as early as possible about whether the applicant and respondent are in shared rental accommodation and, if so, ensure that the protected person is notified of the right to apply for a new tenancy agreement and receives information about how to do so [within 12 months].

119 The Victorian Government consider any legislative reform that would limit as far as possible the necessity for individuals affected by family violence with proceedings in the Magistrates' Court of Victoria to bring separate proceedings in the Victorian Civil and Administrative Tribunal in connection with any tenancy related to the family violence [within two years].

120 The Victorian Government ensure that Victorian Civil and Administrative Tribunal members receive training and education to ensure that they have adequate expertise in the Family Violence Protection Act 2008 (Vic) and family violence matters [within 12 months].

121 The Victorian Government support the expansion of initiatives that deliver financial literacy training and education for victims of family violence [within two years].

APPENDIX B

ECONOMIC ABUSE REFERENCE GROUP PUBLICATIONS

Available at earg.org.au

- [Family Violence Good Practice Principles](#)
- [Family Violence Guide – Making a Start](#)
- [Why to Family Violence Programs Focus on Violence Against Women?](#)
- [Family Violence Guide – Staff Training](#)
- [Find a Not-for-Profit Training Provider](#)
- [Family Violence Guide – Referral Options](#)
- [Family Violence Guide – Providing Documents](#)
- [Family Violence and Economic Abuse \(overview\)](#)

APPENDIX C

OUTSTANDING ISSUES ACROSS INDUSTRY AND GOVERNMENT

BANKING AND FINANCE

Banks

- further embed effective policies and processes and ongoing family violence training for staff
- ensure front-line staff can identify potential family violence (and refer internally)
- consider potential family violence risks when designing products and granting credit

Community Owned Banks

- build on acknowledgement of family violence issues and commit to revised policies and practices
- encourage staff awareness training
- encourage dedicated and consistent responses
- consider potential family violence risks when designing products and granting credit

Relationship Debts

- processes at time of sign up
- responses to disputes
- processes to enable removal of liability when legally possible

Mortgage Arrears

- balanced and appropriate responses to family violence impacted clients

Credit Reporting

- major credit reporting agency is continuing work with community advocates to design a process to respond to family violence
- monitor progress with any commitments

Debt Collection

- adequately trained, front line staff
- specialist training for dedicated staff
- policies and practices for contracting or selling debt.

Debt Management Firms

- better regulation and licensing of this industry

Superannuation

- simplification of superannuation splitting (where super is the only asset)

Insurance

- support resolution (via an agreed industry wide approach) of legally complex issues
- revise insurance policies, practices and products that adversely impact customers experiencing family violence

Utilities

Water and Energy

- monitor the new Energy Code from its introduction in January 2020

Telecommunications

- streamlined processes for advocates to represent clients;
- review of the industry family violence guideline to increase its effectiveness
- policies and practices that reduce risk for family violence impacted clients

Tenancies

- monitor effectiveness of forthcoming legislation and proposed training.

OUTSTANDING ISSUES ACROSS GOVERNMENTS

Consumer Data Right (CDR)

- monitor progress with program implementation and implementation of the CDR.

Fines Victoria

- reduce time taken to resolve applications
- advocate for reasonable and realistic test of nexus between family violence and the fine

VicRoads – Vehicle Registration

- introduction of policies and processes for transferring registration in family violence circumstances
- increased staff capability to implement the policies and processes for family violence impacted customers

Local Councils

- policies and practices that reduce financial risk for people experiencing family violence



The Economic Abuse Reference Group acknowledges the support of the Victorian Government.

