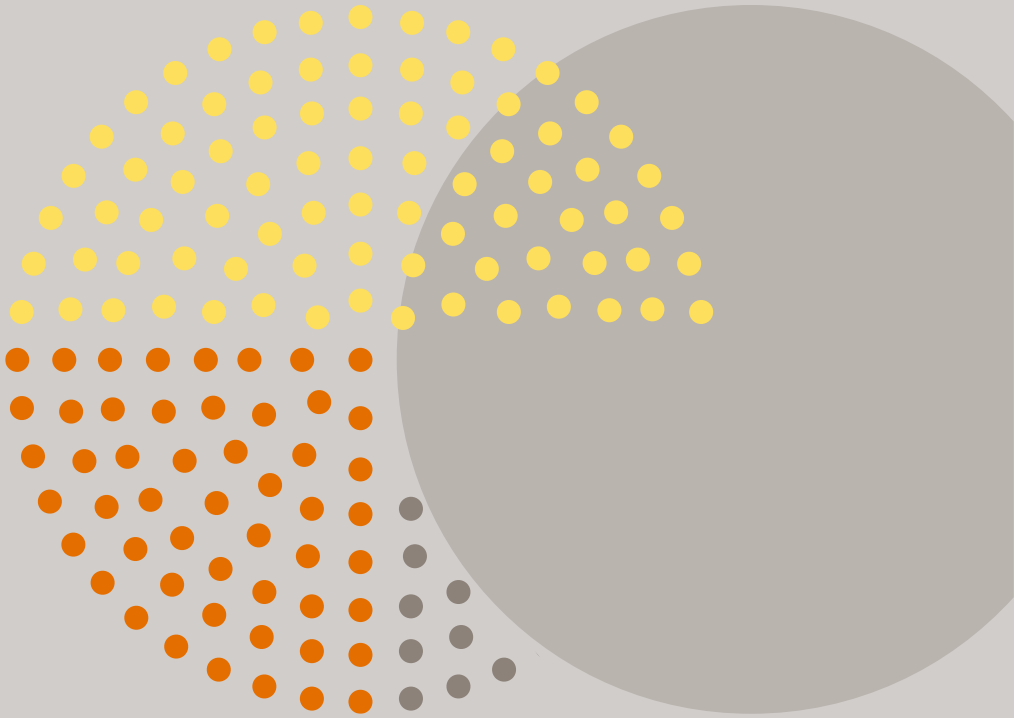
women's legal service victoria

EARG
ECONOMIC ABUSE REFERENCE GROUP

RESPONDING TO FINANCIAL ABUSE

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



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INTRODUCTION

Government, community and business sector collaboration in the Australian state of Victoria[1] has resulted in significant reforms to improve the economic wellbeing of victim-survivors of family violence.

This report describes developments over the past 20 years including recognition of economic abuse as a form of family violence and efforts to improve financial outcomes for family violence victim-survivors.

The impetus for significant change was the Royal Commission into Family Violence (the Commission), which included specific recommendations relating to financial and economic matters ("the economic recommendations") (State of Victoria, 2014-2016).

However, the authors argue that the foundation for these reforms was established many years earlier, due to:

- an effective community sector with relatively secure funding, including family violence services, financial counselling service and community legal services with expertise in financial issues
- collaboration between industry and the community sector, while the sector also advocates strongly on poor laws and practices
- broad recognition of the importance of community services in informing policy and influencing system change
- the development of:
  - industry codes,
  - industry ombudsman schemes; and
  - industry obligations to respond to customer financial hardship.

This chapter explains the background to the Commission's economic recommendations, outlines recent government and industry responses, and describes the regulatory, business and community environment in Victoria that supported these developments.

1. *In Australia, State Governments are generally responsible for key social services including funding many community service organisations. Victoria is Australia's second largest state by population with about six million residents.*

RECOGNISING AND RESPONDING TO ECONOMIC ABUSE

While economic abuse has always occurred in family relationships it has been hidden and, until recently, little has been said publicly in Australia about this form of family violence.

In 1990, the Consumer Credit Legal Service (Victoria) coined the term "sexually transmitted debt" (Taylor & Women and Credit Task Group, 1990) and the Australian Law Reform Commission referred to the term extensively in its inquiry 'Equality before the Law: Women's Equality', which recommended that the Banking Code of Practice be amended to take 'sexually transmitted debt' into account (ALRC, 1994, Recommendation 13.2).

Australian (and international) research has found that when an intimate relationship breaks down, women are more likely than men to experience financial hardship (Goward, 2005, p.54). Family violence can have a significant detrimental impact on a woman's financial wellbeing, both during the violent relationship and when a woman leaves the perpetrator. Financial insecurity is one reason a woman may stay in a violent relationship.

Women who are subject to family violence are likely to experience significant financial detriment, often over a long period (Fernando, 2018). Many of these women are subject to economic abuse from their partners, further worsening their financial situation and risking their ability to live independently. Australian researchers have identified that economic abuse was present in up to 90 per cent of cases presenting to family violence services (Cameron, 2014), and economic abuse is the most significant reason why a woman remains in (or returns to) a violent relationship (Australian Institute of Health and Welfare, 2012).

According to the recommendations from the Victorian Royal Commission into Family Violence, "economic abuse is commonly experienced during a violent relationship, and can continue post-separation. In some cases, economic abuse can begin after separation. In family violence situations, physical and sexual abuse may cease after separation while emotional and economic abuse continues. Economic abuse is a mechanism for the perpetrator to continue to exert control when other forms of violence are not available." (State of Victoria, 2014-16, p. 94)

The Commission "heard that women are highly unlikely to identify their own experience of economic abuse; some even wish they had experienced physical abuse rather than economic abuse because it is easier to identify and support is more widely available." (State of Victoria, 2014-16, p.94)

While financial abuse was recognised for some time as a form of elder abuse, for example (Kurrie, Sadler and Cameron, 1992), its recognition as a form of intimate partner family violence is more recent.

In Victoria, and most Australian states and territories, economic abuse (or conduct which would constitute economic abuse) is now identified in legislation as family violence.

Tasmania was the first state to recognise economic abuse in 2004 (*Family Violence Act 2004* (Tasmania), S.8). Since 2008, the Victorian Family Violence Protection Act has included economic abuse as a form of family violence. (*Family Violence Protection Act 2008* (Vic), S.5).

The Act defines "economic abuse" as:

"…behaviour by a person (the ***first person***) that is coercive, deceptive or unreasonably controls another person (the ***second person***), without the second person's consent—

(a) in a way that denies the second person the economic or financial autonomy the second person would have had but for that behaviour; ***or***

(b) by withholding or threatening to withhold the financial support necessary for meeting the reasonable living expenses of the second person or the second person's child, if the second person is entirely or predominantly dependent on the first person for financial support to meet those living expenses."

The early influence of community organisations can be seen in the report (Victorian Law Reform Commission, 2006) which led to legislative recognition of economic abuse as family violence in Victoria. The report cited research by the Brunswick Coburg Community Legal service and Financial Counselling Service (Branigan, 2004), which reported their clients' experiences of economic abuse.

While economic abuse is recognised in legislation, it is very rare for it to be raised in the courts, either in applications for intervention orders (see Consumer Affairs Victoria, 2017) or as evidence for breaching intervention orders. In the state of Tasmania, where economic abuse has been a criminal offence since 2004 (Family Violence Act 2004 (Tasmania), S.8), the first charge was laid in 2016 but later withdrawn (Sharpe-Jeffs, 2016).

Five pieces of research by Victorian community organisations based on the experience of people who experienced family violence, were critical in continuing the groundswell of change in Australia.

Corrie and McGuire (2013) highlighted the deficiencies in responses to economic abuse. Cameron (2014) told the stories of economic abuse experienced by 200 Victorian women.

Drawing from this research and interviews with "key contact points" for assistance (such as family violence services and utility providers), the Customer Utilities Advocacy Group (2014) made recommendations on how utilities deal with family violence and the related financial insecurity issues.

In 2015, two reports reflected on trial projects that provided clients with financial advice and advocacy alongside legal assistance, and made recommendations for reform.

The Stepping Stones project brought together financial counselling and family law legal advice (Smallwood, 2015). The project developed new ways of advocating for clients – pushing courts, government departments and creditors to take into account clients' experience of family violence and financial hardship when making decisions that affect their economic well being. The project demonstrated the importance of integrating financial counselling with legal services to better assist clients who are experiencing, or have experienced, family violence.

The Restoring Financial Safety project (Corrie, Camilleri and Moore, 2014) explored the legal and structural challenges to restoring victim-survivors' financial safety after their experiences of family violence and economic abuse. Family violence legal assistance was provided, alongside financial legal advice (often making the initial contact with the client at the courts). The project played a significant

role in drawing the industry and the community sector together to work on family violence, spearheading the establishment of the Economic Abuse Reference Group.

The group was formed to avoid duplication or inconsistency and to provide support to member organisations who were undertaking similar advocacy with industry.

By 2015, when the Commission began, significant groundwork had been done to clearly identify the range of economic issues arising from family violence. The potential reforms - by government, business and community organisations - to prevent economic abuse, or better respond were also identified.

This work also ensured that the community sector and some financial and utility businesses, were well-placed to build on this work during and after the Commission released its report.

In Victoria, and most Australian states and territories, economic abuse (or conduct which would constitute economic abuse) is now identified in legislation as family violence.

ROYAL COMMISSION INTO FAMILY VIOLENCE

In early 2014 in Victoria, Australia, 11-year-old Luke Batty was killed by his father. At the time, the community and governments were already paying increased attention to the problem of family violence, (State of Victoria, 2012). However, Luke's death, and the courageous public advocacy by his mother Rosie Batty, inspired a more heightened response. In February 2015, the Victorian Government (the Government) announced the Royal Commission into Family Violence.

Submissions by community organisations raised economic matters, including tenancy legislation, traffic fine processes, jointly owed debt, application of industry financial hardship policies, and the need for financial institutions and utilities to have clear processes for victim-survivors of family violence to resolve complex financial issues (State of Victoria, 2014-2016, p.102).

The final report included a chapter on financial security, which contained 15 recommendations (Recommendations 107 – 121), most of which reflected submissions from the community sector.

The economic recommendations covered three main areas:

- Enhance ability of community services to help address, and prevent, financial problems that result from family violence;
- Change business processes to reduce the financial impact of family violence on customers, including 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.

The Commission increased expectations that community agencies, businesses and government agencies would provide better responses to improve economic outcomes for people who experience family violence.

After the Commission's Report was released, the Government committed to implementing all 227 recommendations.

The Government also provided $572 million funding over 2016-17 for immediate reforms "including more housing and crisis refuges, more counsellors, more prevention programs and more support for children who are victims of family violence" (Andrews & Richardson, 2016).

The Commission was bold in its recommendations and, given the Government's commitment to adopting all recommendations it is having a significant impact.

The Commission increased expectations that community agencies, businesses and government agencies would provide better responses to improve economic outcomes for people who experience family violence.

ENHANCING THE CAPABILITY OF COMMUNITY SERVICES

Community-based, financial counsellors can play a significant role in the recovery of women who have experienced family violence and integrating financial counselling with family violence services can improve service provision (State of Victoria, 2014-2016, p.108). These services, which are predominantly government funded, provide free advice, support and advocacy to people in financial difficulty. They can advise in relation to debt problems, bankruptcy, credit disputes, government concessions and accessing industry financial hardship programs.

The Commission recommended that the "Victorian Government encourage the [peak body for financial counselling in Victoria] 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]" (State of Victoria, 2014-16, Rec 107)

In response, the Government funded:

- 11 specialist family violence financial counsellors (in addition to 64 generalist financial counselling positions already funded by the Victorian Government); and
- family violence training for all Victorian financial counsellors to help them to identify family violence and to respond and refer appropriately.

The Government also funded the Economic Abuse Reference Group (EARG), which represents a number of financial counselling, community legal and family violence services (see earg.org.au). Most members are based in Victoria, but other Australian organisations work with the group on issues that have national impact. The EARG has engaged with government and industry, responded to proposed law and industry reforms, and identified additional areas for reform. The authors are members of EARG.

CHANGING LAWS AND BUSINESS PRACTICES

The important role that some businesses can play has been recognised internationally. For example in the UK, Howard and Skipp (2015) noted the need for organisations such as banks to support these customers, and the British Bankers Association and the UK Government have recognised the role that banks can play in responding to domestic violence (Sharp-Jeffs, 2016). In the United States, organisations assisting energy consumers have highlighted that "..customers who experience domestic abuse may require legal protections and financial assistance... to maintain utility services (LIHEAP Clearing House, 2017).

Family violence, including economic abuse, can affect a wide range of every-day issues including tenancy, credit contracts, insurance policies, water and telephone bills.

Problems include:

- pressure to sign loan agreements for which the woman receives no benefit,
- building up debt on a credit card or utility bill that is in the woman's name
- cancelling joint insurance without the woman's knowledge
- failing to pay bills, leading to disconnection of utilities
- liability for damage to property caused by the perpetrator
- the use of telecommunications devices for surveillance; and
- making false reports to Centrelink that reduce the person's access to social security.

While community organisations have been working with various business sectors on the financial impacts of family violence for some time, the Commission confirmed the need for that work to continue, added weight to concerns about economic abuse and financial security, and provided impetus for broadening and formalising industry policies beyond those industries identified by the Commission.

In practice, responses vary. Some businesses take a leading role and act as a model for others. Others recognise the benefits to their customers but wait to see what others are doing. There is, of course, concern that some may develop policies without applying them in practice. For some industries, the changes required are reasonably clear. For others (such as insurance) some issues require further consideration, and possibly law reform.

This is new ground for many businesses, and they need to continue to learn and develop their approach based on their own experiences and that of others (Essential Services Commission, 2017a, p.1)

BANKING

Before the Commission was finalised, the Australian Bankers Association started work on developing a family violence guideline in consultation with member banks and community organisations. One concern of community agencies was that banks would not negotiate with one co-borrower in relation to a joint debt, without involving the other co-borrower. The final guideline states that a bank will, where possible, "Accept a financial hardship request from a joint borrower without the consent of the other co-borrower" and "decide to settle a claim for the whole or part of the debt against one co-borrower" (Australian Bankers Association, 2017, p.5).

Other issues covered include training, confidentiality and referring customers to family violence services.

INSURANCE

The Commission did not make any recommendations about the insurance industry, but the Insurance Council of Australia (ICA) responded to concerns raised by community organisations about laws and practices that could have a detrimental impact on victim-survivors of family violence (EARG, 2017).

Under insurance law in Australia, a family violence victim-survivor may have no right to compensation where the co-insured deliberately caused property damage (MMI General Insurance Ltd v Baktoo & Anor (2000) NSWCA 70), or where the co-insured failed to disclose something of which the victim was unaware (Advance (NSW) Insurance Agencies Pty Ltd v Matthews (1989) HCA 22).

While discussions continue on these complex legal issues, community organisations are consulting with the ICA on a draft revised General Insurance Code of Practice (for example see WEstjustice, 2017), which incorporates a new family violence guideline for insurers.

TENANCY

Some existing provisions in the Residential Tenancies Act 1997 (Vic) assist victim-survivors of family violence to obtain greater protection, and the relevant tribunal had appointed a specialist Family Violence Worker within its registry staff.

The Government has stated that it intends to amend tenancy legislation in response to Commission recommendations. The Commission recommended a family violence victim should be entitled to:

- Apply for an existing tenancy agreement in their name alone without first requiring an intervention order
- Prevent their details from being recorded on a tenancy data-base,
- Apply for an order terminating a co-tenancy (and allocation of tenancy-related debts); and
- Make reasonable modifications to a property to improve security, (which the landlord cannot refuse).

The Victorian Government has also stated that under new laws, landlords won't be able to unreasonably refuse consent to make reasonable modifications to a property (including security modifications).

Staff responsible for managing tenancies should have appropriate family violence training, which is not the case at the moment. EARG has suggested that in addition to knowledge of the law, tenancy managers should be required to understand the nature of family violence, and be able to recognise some indicators and respond and refer appropriately. This work is ongoing.

FINANCIAL OMBUDSMAN

The Financial Ombudsman Service (now the Australian Financial Complaints Authority (AFCA)), published its Approach to Joint Facilities and Family Violence (AFCA, 2018). Ombudsman services such as AFCA can make decisions that are binding on a business (AFCA, 2018a), and that are not limited to applying the law but can take into account fairness and good industry practice (AFCA, 2018, Cl 14.2). This means that the guidance AFCA provides can influence industry conduct. The publication includes expectations that a financial service will "engage effectively where there are warning signs of family violence" and "be alert to the warning signs of potential financial abuse at the time of lending or withdrawal of funds", and "speak with the customer separately from their companion or co-borrower if any warning signs of potential financial abuse are present".

AFCA confirms that, in line with the ABA's Family Violence Guideline, "It is not necessary for the FSP [financial services provider] to first obtain the other borrower's consent" before negotiating payment of a joint debt (AFCA, 2018, p12).

FINES

The Commission report was released during the reform of major infringements law in Victoria. The Infringements Working Group – a coalition of community organisations working with clients who have infringements – undertook significant advocacy, including calling for better protection and options for victim-survivors of family violence. While specific amendments were not made through this earlier infringements reform process, they were later adopted after the two fines-related recommendations of the Commission. The recommendations were:

- Government consider amending roads legislation so that a victim of family violence (in whose name the offending car is registered) can seek cancellation of the fine in circumstances where they were not the driver of the vehicle at the time, without disclosing the name of the driver; and
- A victim of family violence can rely on family violence as a 'special circumstance' in applying for withdrawal or revocation of the fine (State of Victoria, 2014-16, Recs 112 & 113).

The recommendations were adopted and there is now a special process for family violence victim-survivors who have incurred fines as a result of the abuse.

Motor Registration

The inability to transfer motor registration without the other party's (the perpetrator's) consent is at the heart of the infringement problem for many victim-survivors of family violence. This can lead to fines and demerit points being incurred in the victim's name by the unregistered perpetrator, or an unregistered victim being unaware of registration renewal (thus driving unregistered). Community workers encounter this form of economic abuse almost daily. WEstjustice and the EARG continue to try to engage the Victorian Roads Corporation on these issues.

The motor registration issue flags a major gap in the Commission's report in dealing with government agencies that create further burdens for victim-survivors of family violence. Other major omissions include immigration and social security issues.

While community organisations have been working with various business sectors on the financial impacts of family violence for some time, the Commission confirmed the need for that work to continue...

THE WATER INDUSTRY - A CASE STUDY

The water industry was one of the first sectors in Victoria to respond to the economic recommendations of the Commission.

This detailed case study illustrates some of the processes and recognises the contributions made by regulators, the industry ombudsman and community organisations.

THE WATER BUSINESS

Yarra Valley Water (YVW) is the largest of Melbourne's three water corporations, serving a diverse population of 1.9 million people across a large geographical area.

YVW had already established WaterCare, a program to help the organisation respond to the complex issues faced by its customers (YVW, 2017). This provided a solid base for its family violence response.

The Commission recommended that the regulator, the Essential Services Commission (ESC), amend the relevant code and develop guidelines (State of Victoria, 2014-16, Rec 109). However, following engagement with community organisations, the Head of Community Inclusion at YVW, Ciara Sterling, believed there was a need to respond proactively.

The company consulted staff working on the front line and examined the types of calls from customers. This showed that a significant number of customers were experiencing family violence and that staff were not properly equipped to respond. The business identified this gap in capabilities as a risk to YVW customers that could also cause vicarious trauma for staff taking and listening to these difficult calls.

An effective policy requires engagement at the most senior level. Call-centre recordings that raised family violence issues were shared with the YVW board and executive team, and were a critical factor in securing commitment.

YVW Managing Director, Pat McCafferty, became a leader in the water industry, speaking at numerous national water events, and raising the issue with the heads of other Australian water businesses. His actions helped build awareness of the complex issues around family violence and the responsibility that all businesses have in addressing them.

STAFF TRAINING

Effective staff training was critical to YVW's response. YVW engaged Uniting Kildonan[2], a community organisation that provides training for businesses about consumer vulnerability issues, including family violence.

Jo Howard and Sue Fraser from Uniting Kildonan, along with other team members who have experience with frontline family violence and perpetrator behavioural change programs, designed the training in collaboration with YVW. All staff were trained, including the Board, senior executives, frontline staff, field staff and plumbers.

Uniting Kildonan identifies several factors that are critical for organisations to respond appropriately to family violence. These include:

- Recognising that family violence affects staff as much as it does customers, as victim-survivors themselves, through friends or family members, or when dealing with customers.
- Ensuring staff and customers can express themselves without being embarrassed, judged or made to feel like they are putting their jobs or career at risk or being concerned about the impact on their water account
- Recognising that some customers and staff members are also perpetrators of family violence and that there is a need to engage both sides of the problem
- Talking about family violence in a way that doesn't diminish people
- Listening to people who have experienced family violence to understanding what they need and using a strengths-based approach
- Ensuring staff members responding to family violence have clearly defined roles, supervision systems in place and mechanisms for referring customers to specialised services where required.

Based on Uniting's 'Don't be a bystander' program YVW's core family violence training covered:

- An overview of family violence and its impacts
- The potential triggers of family violence,

- What staff can do to prevent it, including appropriate referral support pathways

Some YVW staff received additional training targeted to their role. For example:

- Frontline staff received extra training to help them recognise and respond to customers experiencing family violence.
- Further in-depth training was given to teams that work with and case manage customers experiencing especially complex vulnerabilities.
- Managers were trained in how to support staff members affected by family violence. This included staff members experiencing family violence themselves and those experiencing vicarious trauma from customers sharing their stories. Managers received toolkits to help them apply what they learned.

The training reinforced a key insight: that YVW staff are not social workers and are not equipped or required to provide counselling or advice to customers experiencing family violence.

SYSTEMS AND PROCESSES

Systems and processes were changed to better manage the safety and confidentiality of staff and customers affected by family violence.

The company implemented a 'safety flag' in its customer management system. As soon as this flag is activated on a customer's account, a dedicated case manager is assigned to the account and all external access is locked. This protects customers' privacy and confidentiality, and stops perpetrators from trying to make changes to the account (such as transferring liability for unpaid bills to the victim).

In one case, the safety flag helped YVW identify a perpetrator who was breaching an intervention order by making numerous attempts to change his partner's account details to saddle her with debt she was not responsible for.

YVW also introduced processes that ensure frontline staff can debrief after difficult conversations with customers.

YVW recognises that tackling family violence requires a consistent approach, continual improvement and close collaboration between the industry, regulator and government.

THE REGULATOR

The Essential Services Commission (ESC) is the regulator of Victoria's water and energy industries. Like most of the sector, the ESC has historically not given much thought to its role in supporting Victorians experiencing family violence.

The ESC's Chairperson, Dr Ron Ben-David, admits that the regulator's knowledge of economics and water delivery didn't prepare the regulator to deal with family violence (ESC 2017).

A key recommendation of the Royal Commission into Family Violence was that the ESC update its customer service codes to ensure that all water businesses provide support to customers affected by family violence. This was complemented by the Victorian Government's 'Water for Victoria' policy (State of Victoria, 2016), which required water businesses to work with the ESC to develop and implement family violence policies.

The ESC put together a dedicated team made up of staff, representatives from the Energy and Water Ombudsman Victoria (EWOV) and Ciara Sterling from YVW. This team collaborated with experts and practitioners from community organisations, as well as stakeholders from every Victorian water business and other key service sectors.

The ESC amended its water industry codes (ESC 2017b and ESC 2017c), requiring all water businesses to implement policies that assist customers experiencing family violence. As of 1 July 2017, water businesses are expected to:

- implement training and support for frontline staff dealing with customers affected by family violence
- prevent the disclosure of private and confidential customer information to perpetrators
- allow customers experiencing family violence to access existing payment difficulty programs
- minimise the need for customers to tell their story repeatedly to different staff
- refer customers to appropriate support services.

The ESC also published a paper with examples and guidance to help water businesses implement these important changes (ESC, 2017a).

The ESC has committed to ongoing collaboration across the industry to ensure the water sector continues to improve its response to family violence.

THE ENERGY AND WATER OMBUDSMAN VICTORIA

EWOV resolves individual disputes, but also identifies broader issues and engages with industry and the community to help prevent disputes.

Family violence-related complaints to EWOV can include issues related to family violence, such as privacy, security, customer service and liability for debts.

To highlight its commitment to addressing issues relating to family violence, EWOV hosted a family violence forum with key stakeholders, responding to staff support issues and ensuring that staff were trained to identify customers affected by family violence and to respond appropriately. It also produced a guide outlining how the ombudsman will handle complaints involving family violence, which will help businesses resolve many of these complaints themselves (EWOV, 2017).

WHO SHOULD HAVE A CUSTOMER-FOCUSED FAMILY VIOLENCE POLICY?

The Commission confirmed that the community expects a broad range of organisations to be able to identify and respond to family violence.

While all employers should implement family violence policies for staff safety and wellbeing (State of Victoria, 2014-16, Rec 192) some businesses need to implement a customer-focused family violence response to reduce the detrimental impacts on their customers.

When the life-cycle of a business' interactions with customers is examined, areas of risk can be identified: for example when establishing accounts, record keeping and disclosure, product design and debt recovery processes.

In general, a business or government agency should consider a customer-focused family violence response if it:

- Holds personal contact information
- Provides an essential service (including utilities and property managers)
- Provides financial services that could be in joint names, or held in one name for the benefit of another (for example banking, insurance, investments)
- Has processes that raise the risk of a partner accessing location information, or of making unauthorised changes to accounts
- Administers penalties (such as traffic fines) where one person could receive a fine for the actions of another person
- Handles disputes that may involve any of the above.

SHARING GOOD PRACTICE

Responding to customers experiencing family violence is new territory for many businesses, and sharing experiences and ideas is vital. Energy companies are talking to water companies, and telecommunication companies have been talking to banks, both informally and through more formal structures.

The Thriving Communities Partnership (TCP) is a recently established forum where sectors including financial services, utilities and transport, can collaborate on responses to vulnerable customers, including those experiencing family violence (Thriving Communities Partnership, 2017). Consumer Affairs Victoria hosted a forum "Responding to the Financial Impacts of Family Violence", where business, government and community representatives discussed challenges and shared ideas. (Consumer Affairs Victoria, 2017). A follow-up to the forum has been proposed.

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 (EARG, 2017a) that continue to evolve as issues are further considered and new examples of good practice arise.

SETTING THE SCENE FOR REFORM

A number of factors influenced the responses from government, business and other bodies (such as industry ombudsman schemes) to the financial impacts of family violence. The Commission hastened change, aided by the preceding work of community organisations and some industries. However, some inter-related factors set the scene for reform in Australia and in particular Victoria, including:

- the nature of the community sector and its relationships with industry (and industry ombudsman schemes)
- consumer protection developments, including industry ombudsman schemes and the application of industry codes and best practice to disputes; and
- changing industry obligations and attitudes to customer financial hardship.

THE COMMUNITY SECTOR AND ITS RELATIONSHIP WITH INDUSTRY

The Victorian Government has funded free, community-based financial counselling services since the late 1970s and State and Federal Governments have funded community legal centres since the early 1970s.

The first specialist credit community legal service in Australia was established in Victoria in 1983 in response to financial counsellors wanting to help clients challenge the legality of debts. More consumer credit legal services followed in other states. While there was some expectation early on that financial counselling services would focus on helping people budget and repay debt (Weule, 2015) this sector soon played a strong role as advocates for law reform and improved industry practices.

While regularly interacting with banks, finance companies and energy companies in relation to their clients' debts, financial counsellors and community legal centres challenged unfair practices in the courts, in law reform campaigns and media campaigns. Through this advocacy, the sector influenced laws and practices relating to credit, debt

collection and utility hardship programs and was active in establishing industry ombudsman schemes.

Increasingly, industry is consulting financial counselling organisations and community lawyers with consumer expertise, and businesses in the financial and utility sectors routinely engage these bodies to provide staff training and to consult on processes to deal with customers in financial hardship.

However, while closely engaging with industry, the sector continues to hold businesses to account – by lodging complaints with regulators, publicising bad practice in the media and lobbying for law reform where required. Just one example of this work is the public reports that rate individual businesses based on their responsiveness to financial hardship policies, such as Rank the Banks (Financial Counselling Australia, 2015) and Rank the Energy Retailer (Financial and Consumer Rights Council, 2016), both of which have led to some improvements in practise within those sectors.

While funding for community services is never adequate to meet demand, these services have had relatively stable core funding, primarily from State and Federal Governments. This stability is critical in developing expertise and allowing services to take on special projects.

While from time to time governments may try to restrict funded services to direct client assistance and discourage advocacy, the value of the systemic advocacy work organisations with day-to-day experience of the problems facing their disadvantaged clients is generally accepted. The sector's contribution to family violence and economic abuse reforms clearly demonstrates this.

REGULATORY LANDSCAPE – THE ROLE OF CODES AND OMBUDSMAN SCHEMES

Some of the most effective consumer reforms in Australia over the past two decades have resulted from the introduction of industry ombudsman schemes and voluntary codes for financial services and utilities.

Consumer advocacy bodies have a number of ongoing concerns about some industry codes, including the level of compliance with

codes (for example see Banking Code Compliance Monitoring Committee, 2017), the adequacy of compliance incentives (Care Inc, CHOICE, et al, 2016, p.23), and variation in the rigour of various codes. However, codes can be more easily changed to meet current problems (compared to legislative reforms), and the community sector plays a significant role in code development and review. The enforceability of guidelines and codes has been strengthened over time (see Bond, 2016)

Some codes are delegated legislation and enforceable by a regulator (see Water Industry Act (Vic) 1994, S.4A.) However, other codes can often be enforced in individual customer disputes, even if the business hasn't committed to a voluntary code. This is because a code can demonstrate "good practice" which is one of the bases for determination of disputes by an industry ombudsman (Financial Ombudsman Service, 2015, Clause 8.2). Some codes can also be enforced in court (National Australia Bank v Rose [2016] VSCA 169) because the code forms part of the business' contract with a customer (Australian Bankers Association, 2013, Cl 12.3).

Industry ombudsman schemes are also required to report concerns about industry practices (ASIC, 2013) and their published guidance encourages industry improvement.

In this regulatory environment, there is some confidence that developing industry policies and guidelines to address economic abuse will lead to some long-term change.

We have already seen an example of how economic abuse provisions might be strengthened through an industry code. The ABA has recently declared its support for a number of amendments recommended by an independent review of the Code of Banking Practice (Khoury, 2017). One of those amendments refers to the ABA's Family Violence Guideline, in particular the provision acknowledging that a co-debtor may seek assistance without agreement from the other co-debtor (Recommendation 54).

FINANCIAL HARDSHIP

The concept of business obligations to respond to customer "financial hardship" appears to have arisen first in Victoria in 1984 (Credit Act 1984 (Victoria), S74), although without an ombudsman scheme

enforcement was a very complex process. When electricity was privatised in the early 1990s, companies were required to comply with a code (which included financial hardship obligations) and an ombudsman scheme was established to streamline customer disputes. Over time, hardship provisions have been strengthened. For example, electricity providers can be required to compensate customers for "wrongful disconnection" if processes (including hardship processes) aren't followed (Electricity Industry Act 2000, S40B). Enforcing hardship provisions has become easier and hardship departments have become a key part of many financial and utility businesses. Most of these businesses therefore have internal structures and networks with community organisations, to help build family violence processes.

There are some community concerns that family violence responsibilities may be confined within hardship departments, because other parts of the business need to be aware of family violence. For example, a car loan issue may arise from inappropriate lending practices and require something other than a financial hardship response.

The community sector has also argued that even if a family violence victim does not qualify for "hardship" assistance based on income and assets, the victim should qualify for hardship processes based on family violence circumstances.

CONCLUSION

There is growing acceptance in Australia that many businesses and other entities can play a role in identifying and responding to customers who experience family violence. While the Commission created specific obligations, there appears to have been a cultural shift.

Some community services have also changed their way of working on family violence issues, where financial counsellors, family violence services and community lawyers have collaborated to better assist clients, as well as to identify systemic problems and propose solutions. The casework experience continues to be used to encourage government and industry to improve their practices, (Tonkin, 2018).

Recent developments have been driven by increased media coverage of family violence, the Commission and Government priorities. However, the foundation for reform was set years before by the work of community organisations, the nature of the relationship between the community and industry sectors, and the evolution of ombudsman schemes, industry codes and hardship obligations.

While there is now a high level of activity, there are some future challenges.

- While sensitivity to family violence issues may remain embedded within industry customer hardship departments, it may be more difficult to retain the focus in other business areas where economic abuse may arise, for example in product design, contract sign-up, or dispute resolution.
- To date we have seen significant developments in some large industry peak bodies and larger businesses. However, it is still a challenge to influence cultural change in smaller businesses (for example small telecommunications providers and debt collectors).
- There is also further work to do for State and Federal Government agencies, which tend to be less responsive than some industry bodies. Problems related to motor registration, public housing, social security payments and immigration can exacerbate economic abuse, and processes need to take this into account.
- While the legislation recognises economic abuse as a form of family violence, it is very rare for economic abuse issues to be

raised in an application for a Family Violence Intervention Order, or for economic abuse to be reported as a breach of a FVIO (and therefore a criminal act). While it is understandable that physical safety is paramount, potential benefits of raising economic abuse in relation to FVIOs should be further explored.

- While significant work is being done in all Australian states, many of the businesses we aim to influence are national, and it may be worth exploring options for more nationally focused co-ordination of community advocacy.

Victim-survivors of family violence in Victoria should see better outcomes now when they interact with utility and financial service businesses. However, services that assist family violence clients will play a vital role in monitoring the effectiveness of industry policies and encouraging good practice. This requires community agencies to not only focus on individual outcomes, but to continue to report problems they see and to contribute to advocacy for systemic reform.

APPENDIX – ROYAL COMMISSION RECOMMENDATIONS RELATED TO ECONOMIC SECURITY

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].

REFERENCES

- AFCA (2018a) AFCA Rules
- AFCA (2018) AFCA Approach to Joint Facilities and Family Violence.
- Australian Bankers Association (2013), Code of Banking Practice.
- Australian Bankers Association Inc (2016) *Industry guideline: Financial abuse and family and domestic violence policies*
- Australian Institute of Health and Welfare (2012) *Specialist homeless services data collection 2011-12*, Canberra, Australian Institute of Health and Welfare
- Australian Law Reform Commission (1994) ALRC Report 69 – *Part 2: Equality before the Law: Women's Equality*
- Australian Securities and Investments Commission (2013), ASIC Regulatory Guide, 139.
- Banking Code Compliance Monitoring Committee (2017), *Improving Banks' Compliance with Direct Debit Cancellation Obligations,*
- Bond, C. (2017), *Consumer Credit, Debt and Disadvantage: How Far Have We Come in 40 Years?* In: Durbach, A., Edgeworth, B. and Sentas, V, ed., *Law and Poverty in Australia: 40 Years after the Poverty Commission*. 1st ed. Annandale: The Federation Press
- Branigan, E. (2004) *His Money or Our Money? Financial Abuse of Women in Intimate Partner Relationships* Australia: Coburg Brunswick Community Legal Centre and Financial Counselling Service
- Cameron, P. (2014) *Relationship Problems and Money: Women Talk About Financial Abuse* Australia: WIRE.
- Camilleri, O., Corrie, T. and Moore, S. (2015) *Restoring Financial Safety: Legal Responses to Economic Abuse:* Good Shepherd Australia New Zealand and Wyndham Legal Service
- CARE Inc, CHOICE et al (2016), Joint Consumer Representative Submission to the Australian Bankers Association Independent Review of the Code of Banking Practice
- Consumer Affairs Victoria (2017) *Responding to the Financial Impacts of Family Violence Forum* 18/7/17.
- Consumer Utilities Advocacy Group (2014) *Helping Not Hindering – Uncovering Domestic Violence Utility* Debt Melbourne: Consumer Utilities Advocacy Centre Ltd

- Corrie, T. and McGuire, M. (2013) *Sharing Solutions Across Sectors: A Spotlight on Economic Abuse Research Report* Melbourne: Good Shepherd Youth & Family Services and Kildonan UnitingCare
- EARG (2017a), Good Practice Guide
- Economic Abuse Reference Group (2017) *Insurance and Family Violence*
- Energy and Water Ombudsman (2017), *Position Statement 7: Family Violence*
- Essential Services Commission (2017a) Moving Towards Better Practice: Implementing Family Violence Policies in the Victorian Water Sector: Essential Services Commission.
- Essential Services Commission (2017b), Customer Service Code: Urban Water Businesses
- Essential Services Commission (2017c), Customer Service Code, Rural Water Businesses
- Fernando, N. (2018) *Financial Teachable Moments for Women Affected by Family Violence* Melbourne: WIRE
- Financial and Consumer Rights Council (2016), *Rank the Energy Retailer: Victorian Financial counsellors rank the Financial hardship policies and practices of energy retailers*, Financial and Consumer Rights Council
- Financial Counselling Australia et al (2015), *Rank the Banks: Financial counsellors in Australia rank the Financial hardship policies of the 'big four' banks, some of the smaller banks and GE,* Financial Counselling Australia
- Goward, P. (2005) *Striking the Balance: Women, Men, Work and Family, Discussion Paper* Sydney: Sex Discrimination Unit, Human Rights and Equal Opportunity Commission
- Hon. Daniel Andrews MP and Hon Fiona Richardson MP, Media Release, 13 April 2016, *Urgent Family Violence Investment will Help Keep Women and Children Safe*: State of Victoria, p1
- Howard, M. and Skipp, A. (2015) *Unequal, Trapped and Controlled: Women's experience of financial abuse and potential implications for Universal Credit* London: Women's Aid and Trade Union Congress
- Khoury, P. (2017) *Independent Review – Code of Banking Practice.*

- Kurrie, Sadler and Cameron (1992) Patterns of Elder Abuse, The Medical Journal of Australia, 1 November 1992, 157 (10):673-676
- LIHEAP Clearing House (2017) *Domestic Issues Creating Hardships for Low Income Utility Customers* [online] pg. 1.
- Sharpe-Jeffs, N. (2016) *Supporting Survivors of Financial Abuse: Learning for the UK* Winston Churchill Memorial Trust
- Singh, S. (1997) *Marriage Money: The Social Shaping of Money in Marriage and Banking* St Leonards: Allen & Unwin
- Smallwood, E. (2015) *Stepping Stones – Legal Barriers to Economic Equality after Family Violence:* Womens Legal Service Victoria
- State of Victoria (2012) *Victoria's Action Plan to Address Violence Against Women and Children*
- State of Victoria (2016), *Water for Victoria: Water Plan*
- State of Victoria, Royal Commission into Family Violence: Report and recommendations (2014-2016) Vol IV, Parl Paper No 132
- Taylor, A. and The Women and Credit Task Group (1990) H*ow to Get Out of Sexually Transmitted Debt* Melbourne: Consumer Credit Legal Service
- Thriving Communities Partnership (2017), accessed 10 Jan 2018, www.thriving.org.au
- Tonkin, S. (2018) *Restoring Financial Safety: Collaborating on responses to economic abuse* Melbourne: WEstjustice
- Victorian Law Reform Commission (2006) *Review of Family Violence Laws* Melbourne: Victorian Law Reform Commission
- Victorian Law Reform Commission (2006) *Review of Family Violence Laws* p92
- WEstjustice (2017) Submission on the Operation and Effectiveness of the 2014 General Insurance Code of Practice,
- Weule, B. (2015) *The History of Financial Counselling in Australia – Early Beginnings,* Accessed 10 Jan 2018 <https://www.financialcounsellingaustralia.org.au/getattachment/Corporate/About/History/The-beginning-of-Financial-Counselling-in-Australia.doc>
- Yarra Valley Water (2017), accessed 10 Jan 2018, <http://www.watercare.com.au>

LEGISLATION

- *Credit Act 1984* (Vic) (Repealed)
- *Electricity Industry Act 2000* (Vic)
- *Family Violence Act 2004* (Tasmania)
- *Family Violence Protection Act 2008* (Vic)
- *Residential Tenancies Act 1997* (Vic)
- *Water Industry Act 1994* (Vic)

CASES

- Advance (NSW) Insurance Agencies Pty Ltd v Matthews [1989] HCA 22
- MMI General Insurance Ltd v Baktoo & Anor [2000] NSWCA 70
- National Australia Bank v Rose [2016] VSCA 169

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The authors are members of the Economic Abuse Reference Group, an informal coalition of community organisations which aims to influence business and government responses to family violence and financial abuse.

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