28 June 2024

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600

By email: corporations.joint@aph.gov.au

Dear Committee Secretary,

Response to Inquiry into Financial Services Regulatory Framework in Relation to Financial Abuse

Thank you for the opportunity to provide this submission to the Parliamentary Joint Committee on Corporations and Financial Services inquiry into the financial services regulatory framework in relation to financial abuse (the **Inquiry**).

Given the Economic Abuse Reference Group's expertise in economic abuse and our diverse membership of community services, we are uniquely placed to provide specialist advice to the Government across all aspects of this Inquiry. Our network has provided such feedback to industry, government and within the community sector, and is a leading voice on how to address financial and economic abuse in Australia.

We look forward to appearing before the Committee to further discuss this submission.

Yours faithfully,
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SUBMISSION

Parliamentary Joint Committee on Corporations and Financial Services

Inquiry into the financial services regulatory framework in relation to financial abuse

28 June 2024

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Table of Contents

1. About the Economic Abuse Reference Group 5

2. Improving business practices and policies to prevent and respond to financial abuse 5

2.1. The prevalence and impact of financial abuse 6

2.2. Approaches taken by financial institutions to identify, record and report financial abuse, and any inconsistencies arising therein 7

2.2.1. Inconsistencies between banks and non-bank lenders 7

2.2.2. Tendency to resolve complaints on basis of financial hardship rather than misconduct or maladministration 8

2.3. Online platforms 10

2.3.1. Electronic transactions 10

2.3.2. Abusive messages in money transfers 11

2.4. Existing financial product design and emerging financial products 12

2.4.1. Safety by design 12

2.4.2. Delays in regulation for emerging financial products 13

2.5. Employee training 13

2.6. Culturally appropriate responses 14

2.7. Mandatory reporting 15

2.8. Steps that might be taken to support financial institutions to better detect and respond to financial abuse 15

2.8.1. Specialist DFV trained staff 15

2.8.2. Accepting DFV without “evidence” 16

2.8.3. Improvements to joint accounts 16

2.8.4. Cross sector collaboration: One Stop, One Story Hub 17

2.8.5. DFV Network for Business 18

3. Developing a stronger legal and regulatory framework to prevent and respond to financial abuse 18

3.1. Risk lens for legislative and regulatory reform 18

3.2. Consumer Credit 19

3.2.1. Strengthening the responsible lending framework 19

3.2.2. Sham business loans 20

3.2.3. Point of Sale exemption 22

3.2.4. Buy Now Pay Later 23

3.2.5. Extending duration of financial hardship relief 25

3.2.6. Mandatory Credit Reporting Obligations 25

3.3. Privacy 26

3.3.1. Australia’s Credit Reporting Framework 26

3.3.2. Access to mortgage information 28

3.3.3. Fraudulent or coerced use of personal information 28
3.3.4. Extending protections to information held by small businesses 29
3.4. Financial abuse through business structures 30
3.5. Bankruptcy 34
3.6. Insurance 38
3.7. Superannuation 40
3.8. Intersections with Family Law 42
3.8.1. Bankruptcy and Property Orders 42
3.8.2. Property settlement for couples whose debts exceed their assets 43
4. Government's role in preventing and responding to financial abuse and learning from other jurisdictions 45
4.1. The tax system 45
4.1.1. Tax debt relief in circumstances of financial abuse 45
4.1.2. Intersections between tax and family law 48
4.1.3. ATO engagement with financial counsellors 49
4.2. Child Support 50
4.3. Centrelink 50
4.4. Systems abuse 51
4.5. Whole-of-government response to financial abuse and learnings from overseas jurisdictions 52
4.5.1. Benefits of a whole-of-government approach 52
4.5.2. New Zealand – Framework for Debt to Government 53
4.5.3. United Kingdom – Economic Abuse Strategy & Toolkit 54
4.5.4. Canada – National Scorecard on Financial Abuse 55
5. Funding advisory and advocacy bodies to provide expertise to financial services and government on financial abuse 55
5.1. Economic Abuse Reference Group as an advisory and advocacy body 56
5.1.1. EARG funding 56
5.1.2. Operation of EARG 56
5.2. Specialist financial abuse services to advocate for victim survivors 57
6. List of Recommendations 58

1. About the Economic Abuse Reference Group

The Economic Abuse Reference Group (**EARG**) is an informal group of over 50 community organisations across Australia that work collectively with government and industry to reduce the financial impact of family violence. Members include domestic and family violence (**DFV**) services, community legal services and financial counselling services. Our work encapsulates the experience of our members (as lawyers, financial counsellors or DFV support workers) who assist clients who have experienced economic abuse. State sub-groups have formed in Victoria, New South Wales and Western Australia to work on local issues.

Our website lists the organisations that contribute to EARG's work.[1] Not all organisations contribute on every issue, and other organisations may contribute from time to time. See EARG's Terms of Reference.[2] Some EARG member organisations have also made their own submissions to this inquiry, including members from EARG WA who have provided their unique state perspective.

EARG has been working on many of the issues discussed in this submission for eight years and has, within our membership, significant breadth and depth of expertise across the many legal, regulatory and government systems with which financial abuse intersects.

2. Improving business practices and policies to prevent and respond to financial abuse

Terms of Reference

1. *The prevalence and impact of financial abuse, including:*
    a. *the approaches taken by financial institutions to identify, record and report financial abuse, and any inconsistencies arising therein;*
    b. *the impact of the shift of financial products to online platforms; and*
    c. *any other contributory factors.*

3. *Other potential areas for reform, such as prevention, protection, and proactive systems, including:*
    a. *existing financial product design;*
    b. *emerging financial products;*
    c. *employee training;*
    d. *culturally appropriate responses; and*
    e. *any other appropriate response, for example, mandatory reporting.*

4. *Steps that might be taken to support financial institutions to better detect and respond to financial abuse.*

[1] Economic Abuse Reference Group, *About* (Web Page) <https://earg.org.au/about/>.
[2] Economic Abuse Reference Group, *Terms of Reference* (February 2024) <https://earg.org.au/wp-content/uploads/EARG-Terms-of-Reference-February-2024.pdf>.

2.1. The prevalence and impact of financial abuse

Financial abuse is a hidden epidemic in Australia. A recent report by Deloitte Access Economics found that 43 Australian women were subjected to financial abuse every hour in 2020[3], though the true prevalence is likely far higher given the underreporting of all forms of DFV. No person is immune, regardless of age, gender, wealth and education level, but women are reported to be the most affected group, particularly migrant women and women with disabilities.[4] While financial abuse occurs in many familial and non-familial relationships, the work of the EARG is focused on financial abuse in intimate partner relationships.

In our experience, victim survivors of financial abuse have complex problems in intersecting areas including consumer law, bankruptcy, family law, insurance, immigration, company law, tax, tenancy law, employment law, and victim's compensation. The costs and impacts of financial abuse often last well beyond the end of a relationship and are often exacerbated by the need for ongoing engagement with government, DFV, police and court systems as part of the recovery process. Some examples of these costs relate to housing, changes or loss in employment, ongoing legal costs particularly in the family court system, and social, medical and other health costs which are often ongoing long after the relationship has ended.

The impacts of financial abuse are discussed throughout the submission in more detail in each of the legal, regulatory and government systems through which our members see financial abuse occur.

Case Study

Kelly* ended a violent relationship with Rick.* Kelly reported that Rick refused to accept that the relationship was over and continued to stalk and assault her. He had been arrested for domestic violence offences but released on bail and she feared he would find her.

Due to the physical and emotional impact of the domestic violence, Kelly was unable to keep working and fell into rent arrears. She was evicted and the landlord obtained an order against her in the NSW Civil and Administrative Tribunal for unpaid rent and damage to her rental property totaling more than $20,000 due to Rick's violent outbursts. The landlord's insurer had paid out under their policy and sought to recover this debt from Kelly, which she could not afford to pay.

When Kelly sought help from a community legal centre (**CLC**), she was living in a women's refuge and felt she had no choice but to file for bankruptcy because she had over $60,000 worth of debt that she was aware of, but she was also being contacted daily by debt collectors and creditors that she had never heard of. She had recently received notice that her licence had been suspended for $3,000 in unpaid fines Rick had incurred while driving her car.

The CLC negotiated with the providers of the debts that Kelly was aware of and sought documents and further information from the debt collectors. The lawyer found that there were multiple payday loans where Rick had used Kelly's details to obtain small loans and taken the funds for himself.

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[3] Commonwealth Bank of Australia, *The cost of financial abuse in Australia* (Report, 2022) <https://www.commbank.com.au/content/dam/caas/newsroom/docs/Cost%20of%20financial%20abuse%20in%20Australia.pdf>.
[4] Ibid 6, 13.

The CLC successfully negotiated waivers of over $40,000 and the landlord's insurer agreed to waive the remaining debt just before Christmas. Kelly is now in permanent accommodation, has had her licence reinstated and is seeking to re-enter the workforce.

Her credit report has been cleared of the debts and other impacts of the financial abuse, and she avoided bankruptcy and its consequences, allowing her to regain her financial independence

*Names changed

2.2. Approaches taken by financial institutions to identify, record and report financial abuse, and any inconsistencies arising therein

Whilst financial services have a fiduciary duty to shareholders to maximise profits, they also have a corporate social responsibility and duty of care to act in the best interests of their customers, including protecting them from foreseeable harm such as financial abuse. The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry triggered a significant shift in momentum for financial institutions to respond to the financial impact of family violence.

2.2.1. Inconsistencies between banks and non-bank lenders

EARG members have intimate knowledge of financial institutions' approaches to financial abuse through financial counselling and legal casework. This informs EARG's engagement with financial institutions to build capacity for businesses and their representatives to better identify, record and report financial abuse. EARG is well placed to see approaches that differ between financial institutions as well as inconsistencies that arise within the same financial institution.

As noted in EARG's 2020 report, Responding to Financial Abuse, "The Australian Bankers Association (**ABA**) developed industry guidance on family violence 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. However, a lack of consistency at times was also noted, both between banks and within the same bank."[5] The customer owned banks (**COBs**) have generally been slower to respond but tend to be smaller and arguably more flexible to respond to individual customers. Our primary concern is with non-bank lenders which are a more diverse group in terms of size and compliance with regulations and best practice.

Generally, the business practices that demonstrate a willingness to support victim survivors of financial abuse include:

- accepting DFV on face value (i.e. not requiring "evidence" of DFV);

[5] Women's Legal Service Victoria, *Responding to Financial Abuse* (Report, 2020) <https://earg.org.au/wp-content/uploads/Responding-to-Financial-Abuse-Report-2020_Digital.pdf>.

- a demonstrated understanding from staff about safety risks and how to manage customer information appropriately, especially when the perpetrator is a co-borrower or joint accountholder;
- proactively confirming the customer's safe contact methods and preferred forms of communication;
- appropriately using tags on the customer file to alert other staff to DFV, safety risks and preferred forms of communication;
- providing DFV trained staff, or in some cases dedicated teams for priority customers who can navigate the systems within the bank and provide tailored solutions;
- appointing a case manager to assist the victim survivor so they do not need to re-tell their story to multiple staff;
- adopting a flexible approach and allowing additional time for victim survivors and/or their advocates to respond to requests for information or resolution offers;
- developing tools to detect abuse through their products and services (see *section 2.3.2 Abusive messages in money transfers*);
- early attempts to adopt the Safety by Design principles;
- not reporting adverse information, or correcting reported information, on a victim survivor's credit report;
- providing a hardship or DFV solution to a victim survivor without the need to notify their partner as a joint accountholder; and
- providing referrals to specialist DFV support services where appropriate.

Some problems remain, and are generally universal in the financial services sector, as discussed in the following sections.

2.2.2. Tendency to resolve complaints on basis of financial hardship rather than misconduct or maladministration

Many EARG member organisations report a tendency of financial institutions to respond to financially abusive debts by waiving them on the basis of financial hardship or on compassionate grounds, even where the victim survivor or their advocate has alleged breaches of the *National Consumer Credit Protection Act 2009 (Cth)* (**NCCPA**) or raised other legal causes of action. Financial institutions are often reluctant to engage in substantive disputes about misconduct or maladministration in the provision of the financial product, preferring instead to seek information about the victim survivor's *current* financial circumstances and, if appropriate, provide an outcome based on their financial hardship.

This trend allows financial institutions to avoid accountability for any failures to detect, prevent and respond to financial abuse, including through misconduct or maladministration, by characterising complaints as financial hardship applications. As a result, we have limited data on the proportion of complaints which raise financial hardship alone and the proportion which raise legal causes of action, such as breaches of responsible lending obligations or other misconduct. Failures by financial institutions to appropriately detect, prevent and respond to financial abuse are therefore not reflected in their data (or the data of external dispute resolution schemes), nor are they able to be used by other financial institutions as learning opportunities to improve their practices to prevent financial abuse, or to contribute to the development of precedent in external dispute resolution schemes or courts, or to test and expand the law in this area.

This tendency also makes it more difficult for victim survivors to succeed in complaints against financial institutions when they are not currently in financial hardship, even where they should nonetheless not be held liable for a debt incurred by the perpetrator and have a strong legal argument to dispute liability. EARG member organisations report that many financial institutions insist on receiving information about the complainant's current financial

position in order to progress the complaint, even where their *current* financial position has no relevance to the complaint and they have not made a request for financial hardship assistance.

We recognise that a key objective of the Australian Financial Complaints Authority (**AFCA**), like other external dispute resolution schemes, is to resolve financial disputes in a fair, independent and effective way, avoiding the need for costly and time-consuming court or tribunal proceedings. However, prioritising a commercial settlement or resolving a complaint on the basis of the complainant's financial hardship alone can obscure complaints that involve significant breaches of responsible lending obligations or other misconduct by financial institutions. Disguising complaints that have meritorious legal arguments as financial hardship matters skews the data and allows financial institutions to be complicit in the misuse of their products and services by perpetrators of financial abuse.

Case Study

Kiara's* boyfriend pressured her to take out two loans with the same bank in the space of three days, totalling $40,000, and then immediately took the funds for his own benefit. Kiara was 19 years old and completing a low-paid traineeship at the time. She sought assistance from a community legal centre, where a lawyer made a responsible lending complaint to the bank on the basis the loans were unsuitable for her under the NCCPA. The complaint was not resolved through internal dispute resolution and was escalated to the Australian Financial Complaints Authority (**AFCA**).

The bank continued to ask for evidence of Kiara's current financial hardship throughout the AFCA process, despite the fact the complaint was based on alleged breaches of the bank's responsible lending obligations under the NCCPA, and Kiara's current financial position was not relevant. Kiara's lawyer provided the requested evidence of her financial hardship, but also inquired about the outcome of the maladministration investigation the bank informed them they had commenced.

The bank ultimately offered to waive the outstanding debt based on her current financial hardship, and Kiara accepted this offer because it was the best financial outcome for her in the circumstances. Kiara's lawyer continued to press for the outcome of the maladministration investigation, but this was never provided, despite the bank's assurance that it would be. The bank closed the complaint as a financial hardship matter and never finalised the maladministration investigation or took accountability for any breaches of responsible lending obligations in approving the loans.

*Name changed

Recommendations

1. Require financial institutions to report on the proportion of complaints alleging financial abuse which are resolved on the basis of financial hardship alone, compared to the proportion of complaints which are resolved on the basis of misconduct, maladministration or other fault of the financial institution.
2. Issue guidance to financial institutions and the Australian Financial Complaints Authority that information should only be sought about a complainant's current financial position where this is relevant to the complaint or they are seeking financial hardship assistance.

2.3. Online platforms

The significant and ongoing shift of financial products to online platforms which has increased in recent years, particularly since the COVID-19 pandemic, has created specific challenges in preventing and responding to financial abuse.

2.3.1. Electronic transactions

The Problem

EARG members primarily see electronic transactions being used to perpetrate financial abuse in two ways:

1. through coercion, for example where the victim survivor of financial abuse has signed or completed a transaction online under duress or threats of harm from the perpetrator; and
2. through outright fraud and identity theft, for example where the victim survivor's details have been used online and/or their electronic signature has been forged without their knowledge or consent.

We understand the desire for financial institutions to have faster and fully-automated online platforms, especially for credit applications. However, this means there is reduced ability engage in any kind of check beyond an algorithmic assessment of available transaction history and the consumer's credit report, so there will be less opportunity to verify consent for joint applications, or identify whether the credit is for the applicant's benefit. We believe this, along with an increase in remote signing removes opportunities to identify red flags for financial abuse and makes it much easier to perpetrate financial abuse as consumers are no longer required to attend in person to sign paperwork.

Online platforms remove the opportunity for staff to identify indicators of financial abuse and take appropriate steps to prevent it from occurring. This is a shift away from expectations set out in the Banking Code of Practice and in Australian Banking Association's Financial abuse and family and domestic violence guidelines which state that banks should have appropriate processes and capability to detect and prevent financial abuse.[6] As the regime for allocating liability for losses incurred via financial abuse rests largely on what notice the financial institution had of financial abuse, this means it will become increasingly difficult to detect, prevent, or compensate financial abuse. This places more of an onus on victim survivors and their advocates to point out and actively address the financial abuse. This in effect reduces the responsibility on financial institutions to identify and prevent financial abuse, despite them having far greater resources and ability to do so.

For more information we refer to our Submission to Electronic Transaction Act Consultation (March 2023).[7]

Recommendations

3. Legislation, regulations, policies, and procedures governing electronic transactions should have added checks and balances in place to protect against

[6] Australian Banking Association, *Preventing and responding to family and domestic violence* (Industry Guideline, March 2021) <https://www.ausbanking.org.au/wp-content/uploads/2021/05/ABA-Family-Domestic-Violence-Industry-Guideline.pdf>.

[7] Economic Abuse Reference Group, *Submission into the Electronic Transaction Act Consultation in Australia* (Submission Paper, 20 March 2023) <https://earg.org.au/wp-content/uploads/EARG-Submission-ETA-Final.pdf>.

financial abuse. For example, this could include a requirement for witnessing. These added checks and balances should be culturally appropriate and accessible.
4. Ensure there is harmonisation between state, territory, and Commonwealth legislation for electronic transactions.
5. Ensure mutual recognition of electronic transactions across jurisdictions.
6. Ensure better public awareness around financial abuse and electronic transactions, particularly for marginalised groups, CALD and migrant communities, First Nations communities, specialist domestic violence support workers, and the domestic violence workforce sector.
7. All electronic transactions should be opt-in.

2.3.2. Abusive messages in money transfers

The Problem

Some perpetrators have developed a tactic where they make one or more small amount electronic funds transfer (e.g. less than $1) to the victim survivor and use the description field to send an abusive message. This is often used when other options for communication have been blocked, such as the victim survivor's email, mobile phone and social media, and/or when there is an intervention order in place with no-contact restrictions. The types of messages range from name-calling to serious threats of harm.

The Commonwealth Bank of Australia (**CBA**) was the first to address this by using Artificial Intelligence (**AI**) modelling to help identify digital payment transactions that include harassing, threatening or offensive messages. This approach has now been shared and adopted by other banks.

Some EARG members provided expertise to CBA on a range of interventions to make digital banking safer for customers who are experiencing technology-facilitated abuse. CBA have since developed several interventions they can offer their customers, depending on the severity of the abuse. These include:

- setting up new safe accounts for victim-survivors;
- de-linking the victim survivor's bank account from PayID so the perpetrator can no longer send abusive transactions to their email address, mobile number or ABN;
- sending warning letters to perpetrators;
- removing a perpetrators access to digital banking for a period of 3 months;
- referring victim-survivors to external support organisations including the Good Shepherd Financial Independence Hub; and
- in extreme cases, termination of a customer's banking relationship if they continue to breach the Acceptable Use Policy.

CBA is also piloting a program where, when they detect that a NSW customer is receiving repeated abusive transactions, they can contact the victim survivor to see if they would like it reported to the NSW Police on their behalf. Victim survivors can also ask CBA to report transactional abuse on their behalf.

Recommendation

8. All Authorised Deposit-taking Institutions adopt the Commonwealth Bank model to identify and respond to abusive electronic money transfers.

2.4. Existing financial product design and emerging financial products

2.4.1. Safety by design

Perpetrators of DFV use an array of abuse tactics, many of which are inadvertently facilitated by the products, features and services financial institutions design. These tactics may be further enabled or exacerbated unintentionally by financial institutions through poorly designed systems and/or processes.

The Centre for Women's Economic Safety (**CWES**) report, Designed to Disrupt: Reimagining banking products to improve financial safety[8] calls for each part of the finance sector (e.g. Banking, general insurance, superannuation etc) to build on the work of the eSafety Commission's Safety by Design framework and develop a tailored Financial Safety by Design framework and diagnostic tool to assess whether their products include features that prevent their misuse and mitigate potential harm. This work should be developed in conjunction with people with lived experience, academics, community service providers, and experts in domestic and family violence and financial abuse, including CWES and other EARG members.

The principles which underpin this are:

- The burden of safety should never fall solely upon the user.
- The dignity of users is of central importance.
- Transparency and accountability are hallmarks of a robust approach to safety.

The design and distribution obligations (**DDO**),[9] introduced to help consumers obtain appropriate financial products, could be better used to influence product design and distribution practices to prevent financial abuse through financial products. The Australian Securities and Investments Commission (**ASIC**) guidance on DDOs[10] could be improved by providing more specific guidance about designing and distributing financial products to protect vulnerable consumers, such as victim survivors of financial abuse. Research conducted in 2022 identified that no target market determinations referred specifically to consideration of customer vulnerability, DFV or safety.[11]

Recommendations

9. All financial institutions implement Terms and Conditions that specify financial abuse as unacceptable customer conduct and outline consequences for misuse.
10. The finance sector develops a financial safety by design framework and diagnostic tool for product and service design.
11. Amend the design and distribution obligations in the *Corporations Act 2001 (Cth)* to require the design and distribution of financial products to prevent financial abuse.

[8] Centre for Women's Economic Safety, *Designed to Disrupt: Reimagining banking products to improve financial safety* (CWES Discussion Paper 1, 2022) <https://cwes.org.au/wp-content/uploads/2022/11/CWES_DesigntoDisrupt_1_Banking.pdf>.
[9] *Corporations Act 2001 (Cth)* Part 7.8A.
[10] ASIC, *Regulatory Guide 274 Product design and distribution obligations* (11 December 2020), RG 274.47 <https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-274-product-design-and-distribution-obligations/>.
[11] Centre for Women's Economic Safety, *Designed to Disrupt: Reimagining banking products to improve financial safety* (CWES Discussion Paper 1, 2022) 6 <https://cwes.org.au/wp-content/uploads/2022/11/CWES_DesigntoDisrupt_1_Banking.pdf>.

2.4.2. Delays in regulation for emerging financial products

The complexity of the NCCPA allows space for loopholes and credit law avoidance, encouraging credit providers to adopt inventive lending models to skirt the definition of credit in the NCCPA. One notable example is Cigno, whose predatory lending model has been the subject of multiple product intervention orders by ASIC.[12] Introducing an anti-avoidance penalty provision to the NCCPA, as discussed and recommended below in *section 3.1.2 Sham business loans*, would deter credit providers from designing new products in order to avoid being subject to the regulation of the NCCPA.

Buy Now Pay Later (**BNPL**) products are another example of where the law has not kept up with emerging financial products. BNPL first hit the market in 2014 and it has taken ten years of consumer advocacy for government to introduce regulation. For further discussion and recommendations see *section 3.1.4 Buy Now Pay Later*.

2.5. Employee training

Some financial institutions have dedicated staff members or priority assist teams for people experiencing vulnerabilities, including DFV. However, the majority of financial services employees, in particular non-bank lenders, are not adequately trained to recognise the signs of financial abuse or understand the appropriate actions to take. There is a general lack of awareness about the prevalence and seriousness of financial abuse among financial services.

In our capacity building work with financial institutions, we are often told one barrier to employee training on DFV is finding suitable training providers for their business, in terms of both subject matter expertise, size of the audience and location. In response, EARG published this guide on staff training for businesses,[13] a guide on choosing a training provider,[14] and we regularly update a list of training providers on our website.

Businesses tell us that there are three key areas of training they are seeking, so we have organised our list of training providers to indicate which options may be suitable for:

A: All staff

- General awareness training for employees to improve staff well-being and as background for further training.

B: Front-line, customer-facing staff

- Responding to customers, and identifying potential signs of DFV and referring on. This would usually be planned and presented in collaboration with the business to take into account the particular business and its processes.
- Generally A would be included or be a prerequisite.

C: Internal specialists (e.g. in hardship/vulnerability teams)

- Generally A and B would be included or be a prerequisite.

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[12] ASIC, 'ASIC makes product intervention orders for short term credit and continuing credit contracts,' (Media Release, 22-182MR, 14 July 2022) <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2022-releases/22-182mr-asic-makes-product-intervention-orders-for-short-term-credit-and-continuing-credit-contracts/>.

[13] Economic Abuse Reference Group, *Family Violence Guide – Staff Training* (Report, 24 September 2018) <https://earg.org.au/wp-content/uploads/Good-Practice-training-Final-Sep-18.pdf>.

[14] Economic Abuse Reference Group, *Family Violence Training Providers* (Web Page) <https://earg.org.au/family-violence-training-providers/>.

2.6. Culturally appropriate responses

First Nations people and Culturally and Linguistically Diverse (**CALD**) people face multiple barriers engaging with financial services, and the issues below are only more difficult to overcome if the customer is also experiencing DFV:

- Language barriers, especially for people from remote First Nations communities where there may not be an interpreter available for their indigenous first language.
- Access is a problem for First Nations communities in regional and remote Australia experiencing digital exclusion as financial services move online and bank branches close. Some people must travel hundreds of kilometres to access face-to-face services.
- A lack of identification documents may exclude a First Nations person from opening a bank account. Our members have assisted people who have their Centrelink payments deposited into their partner's bank account because they were not able to open a bank account in their own name. This creates an opportunity for financial abuse if their partner wastes or restricts access to that money. Where possible, financial institutions and government agencies should accept alternative forms of identification such as a statutory declaration from a community organisation or medical service confirming the identity of the person. Our members report that banks have improved their practices, providing customers with more flexibility and understanding when it is appropriate.
- Some First Nations and CALD clients have limited financial literacy and are overwhelmed or simply do not read complicated terms and conditions, so they do not understand what they are agreeing to.
- In some cultures, it is very difficult for a person to admit they are having trouble with money.
- In First Nations communities there is a culture of sharing money with family and community, especially for people in small remote communities, and this may take priority over payments to creditors. Financial counsellors report that creditors typically do not understand the cultural significance of this and push back on its inclusion in the customer's statement of financial position or money plan if they apply for financial hardship assistance. Financial counsellors must do a lot of work to convince the creditor that there is a cultural expectation the money will be provided, so the person does not have access to their full income on paper. It is important that financial institutions understand that there are serious personal consequences for the customer if they refuse to share money with their family or community. The person might be cut off from their relationships, experience DFV or be refused financial support themselves in the future.
- CALD communities often experience added pressure to send money overseas to support their families, however these remittances are typically not accepted by creditors as a legitimate part of their living expenses. Financial counsellors must do a lot of work with creditors to explain the cultural importance of this custom.

Case Study

Denise,* a First Nations woman living in a regional area, had to use her partner's bank account for her Centrelink payments because she did not have enough ID to open her own account. Her partner would often prevent her accessing her money and would only withdraw a small cash allowance for her to use.

Denise was connected with a financial counsellor, but they were unable to help her to open an account with the bank. The bank would not assist Denise to go through an

alternate ID process to open her own account. One of the barriers she faced was that she did not have the money to buy her birth certificate, which meant that she could not get the 100 points of ID necessary to satisfy the bank.

*Name changed

Recommendations

12. If a regional or remote First Nations customer cannot complete an online form or access a hard copy form, the financial institution or government agency representative should assist the customer to complete the form over the phone.
13. Financial institutions and government agencies should consider when it is appropriate to accept alternative forms of identification for First Nations customers who do not have 100 points of identification.
14. Financial institutions should embed cultural safety training in staff training for both customer facing roles and product and service design roles.
15. Financial institutions should invest in culturally appropriate financial literacy programs and plain language product descriptions.
16. Financial institutions should promote ways of receiving financial hardship assistance that are aligned with cultural values around shared resources.
17. Financial institutions should aim to have some customer service and leadership roles filled by Aboriginal and Torres Strait Islander people to build trust with First Nations communities and provide a culturally safe service, which will result in better outcomes for customers.

2.7. Mandatory reporting

EARG cannot comment on any proposal to introduce financial abuse mandatory reporting obligations for financial institutions, or any organisation or individual. To form a position on this EARG would need to research and consult within our membership to properly consider the benefits and risks of such a proposal. There are legal, safety and jurisdictional problems which need to be carefully considered.

Recommendation

18. Government to conduct research and widespread consultation with financial services, community experts and people with lived experience before considering introducing financial abuse mandatory reporting obligations for financial institutions, organisations or individuals.

2.8. Steps that might be taken to support financial institutions to better detect and respond to financial abuse

2.8.1. Specialist DFV trained staff

Staff dealing with customers experiencing DFV need to have an understanding of the nature of family violence (including financial abuse), how to recognise indicators of potential family violence, the role of power and control and why many victim survivors do not apply to the court for an intervention order. Advocates can often recognise whether a staff member of a financial institution 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.

Recommendation

19. All financial institutions must have specialist staff trained to respond to customers experiencing domestic and family violence. The number of staff or the establishment of a dedicated team can be scaled to the size of the institution or customer base.

2.8.2. Accepting DFV without "evidence"

There are many barriers for a victim survivor to make a police report or obtain court orders to "evidence" their experience of financial abuse to satisfy a financial institution. While in some cases evidence may be required (for example if waiving a significant debt), it is increasingly accepted that requiring documented evidence of DFV 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 financial institution should consider requesting and accepting evidence that is easiest to obtain and does not disclose personal details. However, best practice is to accept DFV on face value. Some financial institutions push back on the position that DFV should be accepted at face value on the basis that this could be exploited by people who have not in fact experienced DFV. However, we are of the view this is a low risk and not one that would outweigh the need to provide a timely response to a genuine victim survivor in crisis. According to Safe Steps Family Violence Response Centre, Victoria's 24/7 family violence crisis service, "(f)alse claims about family violence are extremely rare. 80% of women who experience violence from a current partner don't contact the police about it. When talking to family, friends and others, women are more likely to downplay their experience of violence than exaggerate it."[15]

Recommendation

20. Financial institutions should accept that a customer has experienced DFV without requiring evidence.

2.8.3. Improvements to joint accounts

Joint accounts involving family violence are among some of the most difficult matters to deal with for victim survivors and their advocates. Having a joint account with a spouse is often seen as a symbol of togetherness and partnership, however in abusive relationships joint accounts can often lead to significant harm and patterns of power and control. These harms can include limiting access to joint funds, withdrawal of significant amounts of money by one party, refusing to repay debt, damage to credit scores and using transactions to stalk or monitor a person's movements and spending.
Due to the nature of joint and several liability, a victim survivor may be held responsible for any debt or overdraft in a joint account. Banks need to consider safety at both ends of the spectrum – when setting up accounts and when it comes time to separating accounts.

[15] Safe Steps Family Violence Response Centre, *Family Violence Myths and Facts* (Webpage) <https://www.safesteps.org.au/understanding-family-violence/family-violence-myths-facts/>.

Case Study

One victim survivor of family violence sought a CLC's assistance to remove her name from an everyday banking account held with the perpetrator. The perpetrator was using the everyday account for his business, and the victim survivor was concerned about being held jointly liable for any debts or fees associated with the account. The CLC negotiated with the bank for the victim survivor's name to be removed from this account. For safety reasons, this was the best outcome for both parties.

Unfortunately, this outcome is not readily available for all victim survivors to access, especially without the support of an advocate such as a financial counsellor.

Recommendations

21. When establishing a joint facility, a financial institution should be required to ensure both account holders: have their own access to the account; are informed of what information will be visible and/or shared with the other accountholder; and are informed of the mechanisms that exist to ensure safety of the account, such as 'two to sign' for withdrawals to be made.
22. Financial institutions must have a system for monitoring for unusual transactions via joint facilities and a policy for how to respond if financial abuse is detected on a joint account.
23. Financial institutions should establish simpler, safer and easier ways for parties to sever or separate their accounts, including: implementing policies and practices to ensure information is not inadvertently shared with the perpetrator (for example, a safe address or new contact information; and the ability to sever the victim survivor's name from a joint loan or account where it has been established that it was set up or used in circumstances of financial abuse.

2.8.4. Cross sector collaboration: One Stop, One Story Hub

The Thriving Communities Australia's (TCA) One Stop One Story (OSOS) Hub is an innovative platform connecting individuals experiencing family and domestic violence or financial hardship with multiple support services. This unique system allows frontline workers in corporate (including financial services), community, and government organisations to refer clients efficiently, ensuring they don't have to repeat their story multiple times, reducing traumatisation and the risk of further hardship or harm.

The OSOS Hub has processed over 4,000 referrals, including 2,500 cases of family violence and 1,500 cases of financial hardship, with up to 90% of referrals involving individuals whose family violence or financial hardship was previously unknown to the organisations. Over 70% of family violence referrals come from financial services organisations. The platform provides critical support and early intervention, such as safety planning, health checks, payment arrangements, debt waivers, and account lock downs/flags. By streamlining access to comprehensive support, the OSOS Hub is a vital tool for mitigating financial abuse and providing effective essential support services. Some EARG members, including the Centre for Women's Economic Safety have joined the hub to receive referrals.

2.8.5. DFV Network for Business

The Thriving Communities Australia Domestic and Family Violence (DFV) Network for Business provides a safe space for businesses to share practices, processes, challenges and opportunities - learning from each other and building capability to support people impacted by family violence. It has been running for over two years and includes over 80 individuals from across more than 30 organisations. This idea came out of a 'Don't Just Think Tank' workshop hosted by EARG in 2020 with community and business sector professionals working together to develop initiatives to better support victim survivors of financial and economic abuse during the pandemic.

3. Developing a stronger legal and regulatory framework to prevent and respond to financial abuse

Terms of Reference

2. *The effectiveness of existing legislation, common law, and regulatory arrangements that govern the ability of financial institutions to prevent and respond to financial abuse, including the operation of:*
    a. *the National Consumer Credit Protection Act 2009;*
    b. *the Privacy Act 1988 (Cth);*
    c. *the Australian Securities and Investments Commission Act 2001;*
    d. *the Insurance Contracts Act 1984;*
    e. *legislation and statutory instruments for superannuation; and*
    f. *state and territory laws and regulations.*

3.1. Risk lens for legislative and regulatory reform

Any reform of legislation and regulatory arrangements, including those recommended in this submission, must be undertaken with careful consideration of how reforms may impact people experiencing financial abuse and any unintended consequences for victim survivors or third parties. Any reforms intended to benefit victim survivors may inadvertently be used against them or may be used to the benefit of perpetrators.

We recognise this is a complex task and the extent of the consequences, both intended and unintended, may not be apparent until the legislation comes into effect or even years later. The experts working at the frontline of financial abuse prevention, response and recovery are well placed to inform the design and development of legislative and regulatory reform and the review of existing legislation. We recommend they should be engaged in co-design throughout the reform process, beyond simply providing submissions to public consultations. This could include working alongside the Financial Abuse Taskforce recommended in *section 4.4.1 Benefits of a whole-of-government approach*. This aligns with our recommendations regarding safety by design, design and distribution obligations and a whole-of-government approach to financial abuse.

Recommendation

24. Engage with experts in financial abuse prevention, response and recovery to co-design any legislative and regulatory reform to inform the risk assessment of such reform and mitigate unintended consequences.

3.2. Consumer Credit

3.2.1. Strengthening the responsible lending framework

When responsible lending is done correctly, it can help to prevent economic abuse because the lender will make reasonable inquiries about each applicant's financial position and assess the requirements, objectives and the financial situation of each borrower. This process is an effective mechanism to expose undue influence, imbalance of bargaining power and the underlying dynamic behind economic abuse.

Responsible lending obligations (**RLOs**) can also act as a mechanism to help victim survivors who have experienced financial abuse. RLOs can provide redress for irresponsible lending practices - such as victim survivors who are coerced into taking out credit facilities from which they derive no benefit. For example, our members have assisted victim survivors who have a car loan in their name when they do not even hold a driver's licence. When credit providers breach their lending obligations, the NCCPA provides the power for the court to grant remedies including changes to the contract and compensation.[16] These remedies can also be sought in external dispute resolution complaints.

In 2021, EARG provided a submission opposing the proposed suite of changes to Australia's consumer credit framework contained in the *National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020*. Our submission explains in detail how the RLOs in the NCCPA, when applied correctly, can detect, protect and remedy cases of financial abuse. We are of the view the current responsible lending regime remains critical, however there are some improvements that would strengthen the protections for victim survivors of financial abuse.

We recommend that s 131 of the *NCCP Act* be amended to include an express requirement that the lender must be satisfied the borrower is not experiencing financial abuse.[17] This should also be reflected in ASIC Regulatory Guide 209.

Particularly in the case of co-borrowers, it should be mandated that the lender must independently verify the requirements and objectives of *all* borrowers seeking credit and must be satisfied that they are not experiencing financial abuse.

Case Study

Debbie* was in her late 50s when she separated from her partner of over 10 years. Her partner was a gambler and exercised control over all areas of her life, refused to allow her to access to their bank accounts and forced her to live off a small allowance. Any resistance was met with severe violence and her allowance being cut off.

When Debbie separated from her partner, she discovered that the home they previously owned outright had been almost entirely mortgaged through successive loans. The current lender was threatening to repossess her home as the mortgage was in arrears. Debbie was pressured by her partner to quickly sell the home, leaving her with next to nothing once the mortgage was discharged. Debbie was homeless and struggling to survive when she sought help from a community legal centre.

Debbie was shocked to learn the amount of debt her partner had put her in. When Debbie read the joint loan application, she identified that partner had understated their living

[16] National Consumer Credit Protection Act 2009, ss 178-179.
[17] For an example, see Australian Banking Association, *Banking Code of Practice 2021* (at 25 June 2024) cl 54.

expenses and failed to disclose their liabilities. She recalled that throughout their relationship her partner would get her to sign papers that she was not allowed to read or ask questions about. She had no recollection of ever speaking to the lender directly.

Despite Debbie being on the title for the secured property and jointly and severally liable for the mortgage, the lender's records noted they never attempted to contact Debbie about the mortgage application or ask what the money would be used for.

Debbie's lawyers assisted her to make AFCA complaints on the basis that the lenders had not correctly applied the responsible lending laws, specifically that they had failed to make inquiries about the information in the application or consider Debbie's requirements and objectives for the loan, given she did not receive any benefit. On this basis Debbie's lawyers were able to successfully negotiate compensation and a fair resolution that allowed Debbie to start a new life, independent from her abuser.

*Name changed

Case Study

Samara* was a recent migrant, with three children and a victim survivor of family violence. Samara's husband forged her signature on home loan increases, which he then misappropriated and returned overseas with, leaving her with the debt. There were multiple 'red flags' for financial abuse during the application process which the bank did not pick up or respond to. With the assistance of a community legal centre, Samara was able to argue that the bank was liable because it failed to pick up indicators of abuse and take appropriate action to prevent it from occurring.

*Name changed

Recommendations

25. Amend section 131 of the *National Consumer Credit Protection Act 2009 (Cth)* to include an express requirement that the lender must be satisfied a borrower is not experiencing financial abuse.
26. Amend section 130 of the *National Consumer Credit Protection Act 2009 (Cth)* to include an express requirement that the lender must independently verify the requirements and objectives of all borrowers.
27. Update ASIC Regulatory Guide 209 Credit licensing: Responsible lending conduct to reflect above suggested changes.

3.2.2. Sham business loans

The NCCPA only applies to loans wholly or predominantly (more than 50%) for a personal, domestic or household purpose. Some of our members have assisted victim survivors of financial abuse who have been made 'dummy directors' of companies operated by their (often bankrupt) partners. We set out further information and recommendations on this in *section 3.3 Financial abuse through business structures*. It is typical in these circumstances for the victim survivor to be saddled with a car loan which is in the business name, despite the car being largely used as a family car, so that the lender does not need to conduct a suitability assessment and comply with the RLOs. Financial institutions can be complicit in falsely structuring car loans or personal loans as 'sham business loans' by advertising or encouraging them for applicants who would not otherwise pass a credit check or a suitability

assessment under the NCCPA. This has the effect of denying the borrower (often the victim survivor) the consumer protections in the NCCPA.

As victim survivors fleeing DFV and economic abuse rarely have financial records, loan documents and contracts available to them (in many cases because they have been withheld or destroyed by their abuser), they and their advocates face an uphill battle in bringing complaints against financial institutions for sham business loans. While the 'predominant purpose' test in the NCCPA allows advocates to establish that the car loan was in fact obtained predominantly for a personal, domestic or household purpose, thereby bringing it within the operation of the RLOs and exposing the lender's failure to comply with the RLOs, this process is onerous and resource-intensive for advocates to undertake. Financial institutions often rely on signed 'business purpose declarations', even if the victim survivor's signature was forged or they were coerced to sign. Disputing liability for such a debt requires arguing under section 13(3) of the National Credit Code that the business purpose declaration is ineffective because the lender would have known, or had reason to believe, *if they had made reasonable enquiries about the purpose of the credit*, that the credit was intended to be wholly or predominantly for a personal, domestic or household purpose. This avenue is not known by or accessible to victim survivors unless they have a lawyer, financial counsellor or other trained advocate representing them.

In many cases, advocates can successfully negotiate the repossession of the car and a waiver of the outstanding debt, freeing the victim survivor from liability for a car loan they never should have been given. However, lenders often agree to do this on compassionate grounds, rather than taking accountability for their failures, and in some cases, misconduct. Lenders therefore face few ramifications for inducing borrowers to sign business purpose declarations inappropriately.

The NCCPA has no overarching anti-avoidance penalty provision to prohibit a person carrying out an arrangement for the sole purpose or non-incidental purpose of avoiding the application of the NCCPA. An anti-avoidance penalty provision would protect borrowers, including victim survivors of financial abuse, from unprotected or unverified lending by deterring businesses from attempting to avoid the responsible lending obligations and consumer protections under the NCCPA.

Case Study

Sara* was an unemployed young mother with two infant children when her husband Amir* took her to a car dealership in 2018. Amir did all the talking and negotiated a loan for a new car, which he told her would be a joint loan. As Sara speaks limited English, she was unable to read or understand any of the documents he told her to sign, but she had experienced persistent physical abuse and felt it was not safe for her to challenge him.

At the time, Sara was not working as she was at home caring for their young children. Amir was the only person who drove the luxury car, worth $60,000, but because it was registered in her name, Sara was liable for all of the tolls and fines he incurred. When the relationship ended, Amir left the car with Sara, unregistered and uninsured, and with $55,000 owing on the loan.

When Sara sought legal advice, she discovered the car loan was solely in her name. When her CLC lawyer obtained the loan documents, it became clear Amir had negotiated the contract with the lender for several weeks in his own name and had only replaced his name with Sara's on the day of signing the contract so that she would bear the full liability.

As Sara was unemployed and had no income at the time, she believes Amir falsified payslips in her name so that she would qualify for the loan. The contract also stated it was

for ‘business purposes only’, despite neither Sara nor Amir having a business or even an ABN. The lender relied on this to initially refuse to provide the loan documents, and later to argue that the responsible lending obligations did not apply. Had the lender spoken to Sara at all, or taken reasonable steps to verify her payslips and other information, it would have been obvious the loan did not meet her requirements and objectives and that she certainly could not afford to repay it. The lender failed to identify or act on the significant warning signs of financial abuse.

Sara’s lawyers were able to successfully argue that the responsible lending obligations did apply to the contract and were breached, and negotiated for the lender to repossess the car and waive Sara’s outstanding debt.

*Names changed

Recommendations

28. Introduce a general anti-avoidance penalty provision into the *National Consumer Credit Protection Act 2009 (Cth)*.
29. ASIC to provide industry guidance on the appropriateness of business purpose declarations, reinforce the necessity of making reasonable enquiries about the purpose of the credit, and investigate repeat instances of credit providers inducing borrowers to sign business purpose declarations inappropriately.

3.2.3. Point of Sale exemption

The Problem

- Victim survivors of financial abuse experience significant financial harm from retail credit, where car dealers or other retailers assist borrowers to apply for finance at the ‘point of sale’. The exemption in regulation 23 of the National Consumer Credit Protection Regulations 2010 (Cth) allows these retailers to offer finance as an intermediary, without being required to hold an Australian Credit Licence or comply with the consumer protections in the NCCPA.
- As they are not licensed credit providers, these retailers typically lack the knowledge and experience to detect and disrupt financial abuse, while the financial institution approving the credit has no direct contact with the consumer and no opportunity to identify warning signs of financial abuse. These loans are typically approved within minutes.

Victim survivors who have been coerced to apply for credit at the ‘point of sale’ to purchase cars, personal electronics and household goods for the perpetrator’s benefit therefore have limited remedies available to them. The financial institution that provided the credit is able to rely on the information provided by the retailer and assert that they could not have known the consumer was experiencing DFV.

Removing the ‘point of sale’ exemption by repealing regulation 23 would fill this loophole in consumer protections and ensure victim survivors have recourse to the full suite of remedies under the NCCPA. Given the exemption was slated for review after 12 months when it was

introduced in 2009,[18] this is long overdue. Despite a Treasury consultation in 2013[19] and a recommendation from the Financial Services Royal Commission in 2019 to remove the exemption,[20] which the Government agreed to implement,[21] it continues to cause financial harm for victim survivors as car finance is ripe for exploitation by perpetrators.

A related issue is the frequent use of brokers in obtaining car finance, who are often complicit in enabling financial abuse by acting in the best interests of one borrower (the perpetrator) at the expense of the other borrower (the victim survivor), particularly when there is a personal relationship between the broker and the perpetrator. The 'best interests' obligations in Part 3-5A of the NCCPA currently only apply to mortgage brokers. In addition to the responsible lending obligations, these obligations guide brokers to gather information about a consumer, make an individual assessment, and offer their opinion and recommendation to the borrower. Given the harms caused to victim survivors of financial abuse by unscrupulous brokers facilitating inappropriate car finance, we recommend expanding the 'best interests' duty to brokers more generally.

For more detail and case studies that support this discussion, please refer to the WEstjustice submission to this Inquiry.

Recommendations

30. Repeal regulation 23 of the *National Consumer Credit Protection Regulations 2010 (Cth)* to remove the 'point of sale' exemption.
31. Extend the 'best interests' requirements which apply under Part 3-5A of the *National Consumer Credit Protection Act 2009 (Cth)* to brokers generally.

3.2.4. Buy Now Pay Later

The Problem

- As Buy Now Pay Later (**BNPL**) is one of the easiest forms of credit to obtain, BNPL accounts are routinely misused by perpetrators of financial abuse to obtain credit and leave victim survivors to bear the liability. This typically occurs through coercion, where a victim survivor is coerced to obtain BNPL for their partner's benefit, or outright identity theft, where a perpetrator uses the victim survivor's personal identity information (often with fabricated income and expenses) to apply for credit in their name.
- Many victim survivors do not realise they have BNPL debts in their name until their credit score has been tarnished or they are being pursued by debt collectors.

[18] Commonwealth, *Parliamentary Debates*, 25 June 2009 (Christopher Bowen, member of parliament) <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansardr%2F2009-06-25%2F0010%22>.
[19] See The Treasury, 'Regulation of point of sale vendor introducers,' *Consultations* (Web Page, 24 March 2013) <https://treasury.gov.au/consultation/regulation-of-point-of-sale-vendor-introducers>.
[20] *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* (Final Report, February 2019) Recommendation 1.7. <https://www.royalcommission.gov.au/banking/final-report>.
[21] Australian Government, *Restoring Trust in Australia's Financial System: The Government response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* (Government Response, February 2019) 8 <https://treasury.gov.au/sites/default/files/2019-03/FSRC-Government-Response-1.pdf>.

- The BNPL lending model facilitates identity theft and fraud because of frictionless online sign-up, and because BNPL providers are not currently subject to responsible lending obligations under the NCCPA and may not undertake any credit checks or other affordability checks prior to providing credit.
- BNPL providers currently have inconsistent responses to financial hardship and consumer vulnerability, and the BNPL Code of Practice places the onus on consumers to disclose their vulnerability rather than obliging BNPL providers to proactively identify warning signs of vulnerability such as financial abuse. Publicly available information about BNPL providers' approaches to family violence and financial hardship varies greatly, and some providers do not have publicly accessible phone numbers or contact details for their hardship teams.

We welcome the introduction to Parliament of the *Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024* which would regulate BNPL as a form of credit under the NCCPA, which our network has long advocated for. EARG is one of several consumer advocacy organisations making a joint consumer submission to the Senate Economics Legislation Committee on this Bill, led by CHOICE.

While we support the passage of this legislation as a critical step in minimising financial abuse through BNPL products, several of our key concerns about the proposed legislation have not been addressed in the Bill, including:

- The lack of income verification, which would ensure the BNPL provider's assessment of the consumer's financial situation is based on correct information and that consumers are not sold unaffordable credit;
- The lack of recognition of DFV as a factor that may lead to identity theft and fraud;
- The rebuttable presumption that BNPL products under $2000 meet the requirements and objectives of the consumer, as the requirements and objectives limb of responsible lending obligations can help identify applications for credit where the named borrower is unlikely to receive any benefit; and
- Inadequate financial hardship and family violence practices and policies.

If these concerns are not addressed, BNPL will remain easier to obtain by perpetrators of financial abuse than other forms of credit and will continue to cause harm to victim survivors.

For further information and case studies, we refer to our EARG Response to the consultation on Buy Now Pay Later regulatory reforms (April 2024)[22].

Recommendation

32. Implement the recommended amendments to the *Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024* from the EARG Response to the consultation on Buy Now Pay Later regulatory reforms (April 2024)[23] and the forthcoming joint consumer submission to the Senate Economics Legislation Committee.

[22] Economic Abuse Reference Group, *Response to consultation on Buy Now Pay Later regulatory reforms* (Submission Paper, April 2024) <https://earg.org.au/wp-content/uploads/EARG-Submission-on-Buy-Now-Pay-Later-regulatory-reforms-1.pdf>.
[23] Ibid.

3.2.5. Extending duration of financial hardship relief

The Problem

Victim survivors must re-negotiate financial hardship assistance with financial institutions every three months, even if it is known at the outset that their circumstances require a longer timeframe, especially for family law property settlements.

The regulatory framework imposed by the Australian Prudential Regulation Authority (APRA) should be reviewed to ensure its standards and guidelines permit financial institutions to appropriately address financial abuse through financial hardship and other practices. *Prudential Standard 220 on Credit Risk Management* (APS 220) imposes obligations on authorised deposit-taking institutions which result in financial institutions only approving financial hardship for periods up to three months at a time.

This duration is insufficient for many victim survivors of financial abuse, particularly those who are negotiating family law property settlements with their former partners which can take several years to resolve through the Federal Circuit and Family Court of Australia (**FCFCOA**). Current practice requires victim survivors to re-engage with their financial institution every three months, despite no changes to their financial situation. This has the potential to retraumatise victim survivors by repeating their story to new staff members, and increases the time and resource burden on the victim survivor and their advocate/s.

Recommendation

33. Amend APS 220 to clarify that financial institutions can approve longer term hardship arrangements, where appropriate, to assist victim survivors of financial abuse and align with the expected timeframe of any concurrent family law proceedings.

3.2.6. Mandatory Credit Reporting Obligations

While we discuss credit reporting in further detail with respect to the *Privacy Act 1988* (Cth) below, we note that the mandatory credit reporting obligations imposed on certain banks currently sit under the NCCPA.

The mandatory recording obligations contain no provisions on family violence. However, in July 2022 ASIC issued a 'temporary no-action position' to enable banks not to report comprehensive information about hardship arrangements where this constitutes a safety risk to a victim-survivor (for example, where the victim-survivor is a co-borrower and does not want their partner to know they have sought a financial hardship arrangement with the bank). This no-action position also covers certain notification requirements to consumers about hardship arrangements which, if strictly followed, could also lead to a co-borrower's information reporting family violence to be shared with the other borrower.[24]

ASIC has stipulated that this position is temporary pending consideration about whether permanent relief is required. We believe that such a position should be either extended

[24] ASIC, 'ASIC helps credit providers protect victims of family violence' (Media Release, 22-175MR, 08 July 2022) <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2022-releases/22-175mr-asic-helps-credit-providers-protect-victims-of-family-violence/>.

indefinitely at ASIC's direction or clarified by way of further amendment to the NCCPA and the credit reporting regime.

Recommendation

34. Amend the *National Consumer Credit Protection Act 2009 (Cth)* or make permanent ASIC's 'no action position' to allow banks to suppress comprehensive credit reporting information hardship arrangements where this constitutes a safety risk to a victim survivor of DFV.

3.3. Privacy

3.3.1. Australia's Credit Reporting Framework

The Problem

The fear of a having a "bad credit report" that may restrict their future access to credit and utilities, will often force a victim survivor to:

- Refuse financial hardship options since the creditor is required to add financial hardship arrangements (FHI) to credit reports. This can put the victim survivor in danger because FHI must be reported on both joint account holder's reports so it will alert the perpetrator to the fact the victim survivor has sought help;
- Stay in an abusive relationship because their partner threatens to stop making payments if they leave;
- Pay for debts or accounts in their sole name, even if they get no benefit from that product or service; and/or
- Take full responsibility for joint repayments if their partner isn't contributing.

The credit reporting framework plays an important role in a victim survivor being able to gain financial independence. A person's credit report is intended to be an accurate reflection of their current liabilities, repayment patterns and creditworthiness, to assist financial institutions to make an informed assessment of their suitability for credit.

However, many victim survivors obtain their credit reports and find a long list of credit applications, enquiries and/or defaults on continuing credit facilities which they did not apply for or have no knowledge of. Sometimes the perpetrator continues to make fraudulent applications and enquiries in their name to damage the victim survivor's credit report well after the relationship has ended. EARG members routinely report the correction process is tedious, time consuming and often presents many complications. It requires a victim survivor to reach out to each individual credit provider to ask that they contact the credit reporting bureaus to remove the listing. If a victim survivor wants a credit ban in place to prevent new credit enquiries being made in their name, the initial time period is 21 days and the maximum available extension period is 12 months. It is onerous for a victim survivor to have to renew the ban, and even a ban of 12 months is insufficient if the victim survivor needs it to remain in place for the duration of a protection order or family law proceedings. This timeframe should be customisable in those circumstances, from the initial ban application through to extensions.

EARG members continue to see inconsistent and obstructive practices by credit reporting bodies and credit providers, for example, some may:

- offer a debt waiver due to domestic and family violence circumstances, but insist on reporting the default; and/or
- refuse a request from a victim survivor who wants a default or other negative information removed from their credit report.

For detailed submissions and case studies that support this discussion, please refer to the WEstjustice submission to this Inquiry as well as the May 2024 Joint Submission by Financial Rights Legal Centre[25] to the Attorney-General's Department independent review of Australia's credit reporting framework which specifically addresses the credit reporting provisions in the *Privacy Act 1988 (Cth)* and the *National Consumer Credit Protection Act 2009 (Cth)*. Several EARG members had input into this joint submission.

EARG also contributed a submission[26] to the Australian Retail Credit Association (**ARCA**) consultation on the Credit Reporting Code Review and potential variations, following which they made a number of amendments to better protect victim survivors of DFV. EARG supports these changes and our members continue to work with ARCA to ensure protections in the Credit Reporting Code keep evolving.

We have also published a guide for advocates supporting victim survivors with credit reporting issues, see Credit Reporting & Economic Abuse: A practical guideline for financial counsellors and community workers[27].

Recommendations

35. Implement customer-based reporting instead of account-based reporting.
36. Amend the credit reporting framework to ensure it provides flexibility to not list or to correct past credit reporting information, especially for victim survivors of DFV.
37. Include in the credit reporting framework a mechanism for splitting joint accounts in discrete financial abuse situations when the credit provider and the individual agree it is the best option.
38. In the Credit Reporting Code, specify that DFV is considered "circumstances beyond the individual's control" for default information to be delisted and include a direction that information should be corrected or removed in situations where a debt was waived rather than repaid.
39. Establish a streamlined bulk correction process for DFV cases that can be undertaken by a credit reporting body on behalf of the credit provider and a victim-survivor of DFV.
40. Allow for a customisable timeframe for the credit ban protections in DFV cases.
41. Impose a positive obligation on credit providers to inform a victim survivor of the options available if there are circumstances of DFV.
42. The Australian Retail Credit Association should develop a best practice financial abuse guideline for credit reporting bodies and credit providers.

[25] Financial Rights Legal Centre, *Review of Australia's Credit Reporting Framework* (Submission Paper, May 2024) <https://financialrights.org.au/wp-content/uploads/2024/06/240611_Joint-Consumer-Submission_AGD-Review-of-CR-Framework_FINAL.pdf>.
[26] Economic Abuse Reference Group, *ARCA consultation on CR Code Review and potential variations* (Response Paper, 14 July 2023) <https://earg.org.au/wp-content/uploads/EARG-response-to-CR-Code-consultation-FINAL.pdf>.
[27] Economic Abuse Reference Group, *Credit Reporting and Economic Abuse: A practical guideline for financial counsellors and community workers* (Guide, 2022) <https://earg.org.au/wp-content/uploads/Final-EARG_Credit-Reporting-and-Economic-Abuse_Report_Final.pdf>

3.3.2. Access to mortgage information

A victim survivor who is not named on a mortgage (often due to DFV) but is the occupant of the home cannot obtain information about the loan terms, any arrears or negotiate arrangements to remain in the home. In many cases, the victim survivor is making contributions to the mortgage.

There is no specific provision in privacy legislation that canvasses this situation, and consumer credit laws and associated guidance documents (including the Banking Code of Practice, and the Australian Banking Association's Guideline on Family Violence) are framed in the context of the customer and credit provider relationship and do not offer obligations or guidance with respect to parties outside of that relationship.

Section 16A of the *Privacy Act 1988* (Cth) (**Privacy Act**) confirms that personal information can be disclosed to the extent that this is necessary to prevent or lessen a serious threat to the life, health, or safety of any individual.

We consider that the threat of homelessness constitutes a serious threat to the health and safety of a victim-survivor and children, particularly where this may expose them to continued violence. Conversely, the limited release of information about a home loan account may enable an individual to understand and seek advice about the stability and risks to their current situation, act in their best interests based on this, and in certain cases make arrangements to ensure any mortgage obligations are met pending the proper division and settlement of property.

Understanding of this exemption in the context of non-customers continues to be lacking in the banking and lending industry.

Recommendation

43. Amend the *Privacy Act 1988* (Cth) with a specific note that circumstances like family violence and homelessness constitute a serious threat to the life, health and safety of an individual.

3.3.3. Fraudulent or coerced use of personal information

The Problem

There is additional consideration needed for those instances in which:

- a perpetrator has fraudulently or coercively used some details of a victim-survivor (e.g. a credit card) mixed with their own personal details; and
- a financial counsellor, lawyer or other advocate is seeking access to information in order to clear a debt, prevent further compromise, or assess the basis of a complaint against a financial firm.

Our members have encountered situations in which financial firms (including Buy Now, Pay Later providers) have alleged that information about loans or loan applications which may include personal information given by a perpetrator cannot be shared under the Privacy Act.

While Australian Privacy Principle 6 confirms that personal information may reasonably be supplied for secondary use to an enforcement body, organisations like the police are often not equipped to investigate instances of financial abuse in a timely way or at all. Some members report their clients have been mocked and turned away by police officers who dismiss reports of financial abuse as “family” or “civil” issues not within their scope despite clear evidence of fraud.

We note that the approach of financial firms is not consistent in this regard – some firms see provision of this documentation as consistent with their obligations under consumer credit legislation or applicable codes of conduct and will only redact or omit information about a third party to the extent it remains consistent with their duty to supply certain documents.

This may cohere with Australian Privacy Principle (**APP**) 6 and section 16A of the Privacy Act, which states that a secondary disclosure may be required or authorised under Australian law where;

- the APP entity has reason to suspect that unlawful activity, or misconduct of a serious nature, that relates to the entity's functions or activities has been, is being or may be engaged in; or
- use or disclosure is reasonably necessary for the purposes of confidential alternative dispute resolution.

While we believe these disclosure rights should be sufficient to protect victim-survivors of financial abuse, specific guidance (including model contract clauses) should be developed for firms by either ASIC, the Office of the Australian Information Commissioner (**OAIC**) or preferably jointly about how to appropriately disclose information in family violence circumstances.

Recommendation

44. ASIC and the OAIC jointly develop guidance on the application of the Australian Privacy Principles (including, as needed, model contract clauses) to disclosure of account information to non-customers in circumstances of family violence.

3.3.4. Extending protections to information held by small businesses

Most small businesses (defined as those with an annual turnover of $3 million or less) are not currently covered by the Privacy Act and the associated APPs. Protections involving the use and disclosure of personal information, that information’s security, and appropriate rights to access and correction are important for victim-survivors, but may not be available depending on the size of the entity that holds it, even where they are providing financial or essential services.

Relevantly, we are concerned about privacy obligations where:

- an organisation is a particularly small or fringe lender (including some that may not be captured by credit laws);
- an organisation is of a kind that sells a good that a person may purchase on credit (i.e. a vehicle trader);
- an organisation offers real estate, owners’ corporation or property management services where it may come into possession of a renter or resident’s sensitive information (particularly around family violence, disclosed legal processes and personal safety).

In September 2023, the Federal Government agreed in principle with the Privacy Act review's proposal that the exemption for small businesses should be removed, reflecting community standards. We note that the Government has resolved to consult with small businesses and representatives first, but we stress that given the interaction between privacy and safety, it is no longer appropriate to expect vulnerable consumers to 'roll the dice' before entrusting their information and data to a business that may or not adhere to appropriate protections and training. The removal of this exemption should proceed as a priority.

Recommendation

45. Amend the *Privacy Act 1988* (Cth) to remove the current exemption for small businesses based on turnover.

3.4. Financial abuse through business structures

The Problem

- Business structures such as companies are commonly used to perpetrate financial abuse, including where a perpetrator:
    - coerces or fraudulently causes the victim survivor to be a sole or joint director of the company while having no knowledge or control of the business, often because the perpetrator is an undischarged bankrupt and prohibited from directorship;
    - coerces the victim survivor to sign loan agreements or provide personal guarantees for business loans, or loans which are purportedly for a business purpose and therefore excluded from the protections of the NCCP Act;
    - fraudulently incurs liability in the victim survivor's name without their knowledge; and/or
    - takes control of a business run by the victim survivor and sabotages the business or siphons off its assets.
- Victim survivors who have been appointed dummy directors of companies are often left to face the financial and legal consequences alone while the perpetrator takes the funds and the benefits of the company or contracts and avoids liability. For example, the perpetrator's failure to pay PAYG and superannuation to the company's employees will result in Director Penalty Notices being issued to the victim survivor as the director, making them personally liable for the unpaid tax.[28] Victim survivors may also be personally liable for breaches of their directors' duties, for example if the perpetrator has obtained credit while the company is insolvent, either through coercion or fraud.[29] Many victim survivors have no choice but to declare bankruptcy.
- Victim survivors may be ineligible for Centrelink payments due to their directorship or suspected business assets, even where they have no knowledge of the business, and some only learn that they are a director when their Centrelink application is refused.
- Resolution of financial abuse in business can be incredibly complex to resolve and some cases take up to 3 years to rectify through legal proceedings. A victim survivor's safety may be placed further at risk by seeking to have them removed as

[28] *Taxation Administration Act 1953* (Cth) sch 1 div 269.
[29] *Corporations Act 2001* (Cth) s 588G.

a director, as the perpetrator may be contacted to assist in resolving the financial abuse they perpetrated if their address is the company's Registered Officeholder address.

- For victim survivors of financial abuse through business in Australia, assistance is a postcode lottery, as specialist services that can assist with all forms of financial abuse in business only operate in Victoria and NSW. Pathways for resolution are limited for victim survivors as most community legal centres and Legal Aid commissions are not able to assist in business matters, specialist small business financial counselling services have been defunded in many states, the National Tax Clinic program can only assist with tax matters, and professionals may be unaware of resolution pathways.

Victim survivors who are directors of an insolvent company contravene section 588G of the *Corporations Act 2001 (Cth)* if they fail to prevent the company from incurring a debt when there are reasonable grounds for suspecting the company is unable to pay its debts.[30] Victim survivors are still legally liable even if the decisions were made by the perpetrator who had de facto control of the business, and the victim survivor was unaware of the wrongdoing. The law currently does not recognise that, in situations of family violence, victim survivors are unable to prevent the wrongdoing: indeed, powerlessness to prevent the wrongdoing and a lack of involvement have been found by the courts to be inadequate reasons to justify a breach of s 588G.[31] The consequences faced by victim survivors of financial abuse are severe, including civil penalties of up to $200,000 or up to 5 years' imprisonment for insolvent trading,[32] and prohibition from managing companies,[33] which is particularly prohibitive for victim survivors who are trying to reestablish their financial security as it prevents them from running a small business or being self-employed.

The existing defences under the *Corporations Act 2001 (Cth)* have not been interpreted to apply in circumstances of family violence, leaving victim survivors with few options to seek release from liability incurred as a result of financial abuse and coercive control. This is exacerbated by lack of access to financial information, as victim survivors are often prevented from accessing information about the company by the perpetrator and/or the company's accountant. Section 588H(4) of the *Corporations Act 2001 (Cth)* gives directors a defence to insolvent trading if they are absent from management "because of illness or for some other good reason". However, victim survivors face challenges seeking to rely on this defence and the similar provisions in the *Taxation Administration Act 1953 (Cth)* (discussed below) and courts have denied this defence where a director was relying on the conduct of their spouse.[34]

It is critical that the regulators responsible for enforcement (ASIC and the ATO), liquidators, and creditors (typically financial institutions) understand how financial abuse is perpetrated through directorships and family businesses, and have policies and practices in place to ensure victim survivors are not prosecuted or left to bear legal liability for the perpetrator's wrongdoing. While there is no equivalent example, we refer to the Australian Banking Association's Industry Guidelines for member banks Preventing and responding to family

[30] Ibid s 95A.
[31] *Elliott v Australian Securities and Investments Commission* (2004) 10 VR 369.
[32] *Corporations Act 2001* (Cth) s 1317G.
[33] Ibid s 206C.
[34] See *Deputy Commissioner of Taxation v Clark* [2003] NSWCA 91.

and domestic violence[35] and Preventing and responding to financial abuse,[36] and the Australian Financial Complaints Authority's Approach to Joint Accounts and Family Violence.[37]

We recommend ASIC incorporate an approach to family violence in its enforcement policies and regulatory guidance for liquidators. Guidance on appropriate responses, such as debt waivers and release from liability when victim survivors have incurred liability through fraud or coercion, would facilitate fairer outcomes when liquidators are seeking to recover compensation for insolvent trading. The guidance should clarify that where victim survivors are coerced or defrauded into becoming dummy directors, ASIC and liquidators should instead pursue the perpetrators as shadow directors or de facto directors with control of the company, as defined in section 9 of the *Corporations Act 2001 (Cth)*.

Many victim survivors do not realise they have been appointed the director of a company controlled by the perpetrator until they check their credit reports, a creditor obtains judgment against them or seeks to make them bankrupt, or the ATO pursues them for unpaid tax liabilities attached to the business. To find out whether they are currently (or have been) the director of a company, they must pay for a current or historical ASIC Company Extract (currently $10 and $19 respectively online) for each entity they are aware of. If they do not know the company name but suspect they have or have had a directorship role, they can contact the Australian Business Registry Services for a free name search. Unfortunately, this service is not advertised and is a relatively unknown service. For full details, a victim survivor must pay for a current and historical personal name extract (currently $24 via ASIC by mail only, or up to $51 via third party providers). ASIC is obliged to charge fees for some products under the *Corporations (Fees) Regulations 2001 (Cth)*. Obtaining these documents is a necessary step for screening for financial abuse and beginning to unwind and resolve financial and legal consequences, but is prohibitive for many victim survivors. Support services that assist victim survivors, such as community legal centres and financial counselling agencies, are not funded to pay for disbursements such as ASIC search fees.

For further information and case studies, we refer to our EARG submission to the Inquiry into Corporate Insolvency in Australia (November 2022)[38] and Chen, V., 'Hidden Risks of Economic Abuse through Company Directorships' (2024) 47(1) *University of New South Wales Law Journal*.[39]

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[35] Australian Banking Association, *Preventing and responding to family and domestic violence* (Industry Guideline) <https://www.ausbanking.org.au/resource/industry-guideline-preventing-and-responding-to-family-and-domestic-violence>.
[36] Australian Banking Association, *Preventing and responding to financial abuse* (Industry Guideline) <https://www.ausbanking.org.au/resource/industry-guideline-preventing-and-responding-to-financial-abuse-including-elder-financial-abuse>.
[37] Australian Financial Complaints Authority, 'How AFCA approaches financial complaints,' *AFCA approach documents* (Web Page) <https://www.afca.org.au/what-to-expect/how-we-make-decisions/afca-approaches>.
[38] Economic Abuse Reference Group, *Submission to the Inquiry into Corporate Insolvency in Australia* (Submission Paper, 25 November 2022) <https://earg.org.au/wp-content/uploads/EARG-Submission-to-Corporate-Insolvency-Inquiry-25-November-2022.pdf>.
[39] Vivien Chen, 'Hidden Risks of Economic Abuse through Company Directorships' (2024) 47(1) *University of New South Wales Law Journal,* 105.

Case Study

Kate* was in a relationship for five years and has two young children with her husband. During their marriage she was a victim of emotional abuse and physical abuse on several occasions.

Her husband was a businessman who had several companies. Kate was not involved in the companies and was instructed to stay out of his business on several occasions. She was not allowed to open any mail related to his business and he was in charge of all their family finances.

Kate found out she was a director when she received a court notice for a claim against her by a creditor for $4 million for a commercial loan due to a personal guarantee. A name search revealed she was a director of multiple companies that she was unaware of.

Creditors had petitioned the insolvency of her ex-husband's businesses, and creditors were now pursuing Kate due to the personal guarantees she had unknowingly signed. The appointed liquidator determined the companies had traded whilst insolvent and as director, Kate was being held liable.

There were multiple loan agreements in Kate's name either as guarantor or borrower for a total liability of $9 million, with her house used as security. They were all commercial loans from second tier lenders through to private lenders, so no consumer credit protections under the NCCPA applied. Kate had been made to sign documents without knowing what she was signing under threat of family violence. None of the contact details were hers, so she never received any loan documents or correspondence. Her husband had created fake email addresses in her name for the purposes of the loan applications and subsequent correspondence. Multiple caveats had been placed on her house by the lenders, preventing her from being able to refinance.

Kate's Tax File Number had been used allegedly to pay wages to her from the company for five years, but she never received the funds. Tax returns had been completed without her knowledge by two accountants she had never engaged with. They accessed her tax portal without her consent to complete her tax returns. Her tax refunds were paid to the husband's company bank account, as her bank details had been changed in her tax portal without her knowledge.

If no action was taken at this point, this litigation would have ended in Kate being bankrupt and losing her home. This is often the outcome when victim survivors are not aware that help is available, or they take actions in good faith that are then deemed to be those of a director, and are then held responsible.

With assistance from a Small Business Financial Counsellor and pro bono lawyers from four law firms over two years, Kate was released from all the loan agreements and the caveats were removed from her home. After applying to ASIC, Freedom of Information application and an appeal, she was removed as Director of the companies from the ASIC Register. This then removed her liability for Company taxes and Director penalties and Trading whilst insolvent liabilities.

Between the creditors, Government departments, Lawyers and support services, 46 individuals were engaged with from multiple organisations to resolve Kate's financial abuse.

*Name changed

Recommendations

46. Amend section 588H(4) of the *Corporations Act 2001 (Cth)* to expand the defence to specifically recognise family violence as a reason why a director may not have taken part in managing a company.
47. Develop an ASIC vulnerability framework, including clear and transparent processes for responding to matters involving family violence and financial abuse and appropriate family violence training of relevant staff within a dedicated team.
48. Develop ASIC internal guidelines regarding how ASIC applies its discretion to prosecute officeholders for breaches of directors' duties in circumstances of financial abuse and coercive control.
49. Develop regulatory guidance clarifying that, where victim survivors have incurred liabilities or breached their directors' duties as dummy directors, ASIC and liquidators should instead pursue the perpetrator as a shadow director or de facto director.
50. Remove the fees associated with obtaining ASIC company extracts (current and historical) and personal name searches (current and historical), including amending the *Corporations (Fees) Regulations 2001 (Cth)* as necessary to remove the legal obligation for ASIC to charge fees for these products.
51. Display a list of offices held by an individual (eg director, shareholder) in real time in their MyGov account. This would bring awareness to victim survivors who have been made officeholders without their consent and give them an opportunity to correct the ASIC business registers before they incur further financial and taxation consequences.
52. ASIC publish information on ASIC website and Company Director communications on what to do if someone has been made a director without consent, the process for resolution and contact details for Legal and Financial Counselling assistance and support services. This information should be provided to Registered Insolvency Practitioners and ATO.
53. Fund specialist small business support services in each state and territory to assist victim survivors of financial abuse in consumer and business contexts, and a national service for specialised complex case support.

3.5. Bankruptcy

The Problem

- Australia's bankruptcy system poses unique risks for victim survivors of financial abuse by incentivising perpetrators to:
    - put their debts in the victim survivor's name, and/or appoint the victim survivor the director of their company, to avoid the future threat of bankruptcy;
    - use their own bankruptcy as the rationale for putting all liabilities in the victim survivor's name, or appointing the victim survivor the director of a new company while they are prohibited from managing a company;
    - threaten that the victim survivor's life will be ruined by bankruptcy if they leave the relationship; and/or
    - use voluntary bankruptcy to force creditors to only pursue the victim survivor for joint liabilities.
- The consequences of bankruptcy are exacerbated for victim survivors of financial abuse who already face barriers to achieving financial empowerment and independence. For example, under the current bankruptcy threshold of $10,000,

victim survivors are regularly forced into bankruptcy for relatively small debts and lose standing to conduct a family law property settlement (as discussed above). Many bankrupt victim survivors had legal defences available to them to dispute the debts which gave rise to their bankruptcy, but did not receive appropriate advice in time, or did not have sufficient time to respond to a bankruptcy notice.

Debt collectors pursue small debts aggressively, which causes ongoing harm to people who have experienced financial abuse. Many victim survivors assisted by EARG member organisations are not aware of the debts in their name, have no access to information about the original liabilities, and may be unable to access the right advice at the right time to avoid bankruptcy. Bankruptcy has lifelong impacts on victim survivors' employment, housing and participation in the economy, increasing their reliance on government support.

The current bankruptcy threshold of $10,000 is inappropriately low considering the lifelong impacts of bankruptcy, particularly for victim survivors of financial abuse, many of whom are unfairly bankrupted for small debts incurred in their name by the perpetrator. While the temporary increase of the threshold to $20,000 in 2020 provided much-needed protection, many victim survivors seek advice about individual debts of between $20,000 and $50,000 and would still be vulnerable to bankruptcy proceedings if the limit was only increased to $20,000.[40] We recommend increasing the threshold to $50,000 with no transition period. This would reduce the risk of victim survivors being bankrupted for small debts, minimise the ability of perpetrators to wield bankruptcy as a threat, and remove bankruptcy as a barrier to achieving financial independence and empowerment. This reform could also mean the difference between victim survivors leaving or staying in an abusive relationship, if their partner is threatening them with bankruptcy.

When an individual is served with a bankruptcy notice, they have only 21 days to either comply with the notice or apply to the Federal Court to set aside the notice. This timeframe should be extended because receiving a bankruptcy notice is often the first time a victim survivor is made aware of debts in their name and previous court proceedings against them. It is common for victim survivors to no longer reside at their last known address where the notice is served. They may have had to leave the family home due to violence and may have transitioned through multiple different addresses (for example, temporary accommodation, refuges, homes of friends and family) due to their insecure housing situation. During the crisis and recovery period, the priority for victim survivors is to secure stable accommodation, ensure ongoing employment or other stable income, and support their children. Even where a victim survivor takes immediate steps to seek advice, due to the demand for frontline services and resource constraints, it is unlikely they will be able to receive appropriate advice from a lawyer or financial counsellor about the consequences of bankruptcy and their options for defending the bankruptcy notice within the 21-day period. This timeframe was temporarily increased to six months in 2020 in respond to the COVID-19 pandemic[41] in recognition that 21 days is a prohibitive timeframe when debtors are

[40] Financial Rights Legal Centre, *Joint Consumer Submission to the Attorney-General's Department's 2023 Personal Insolvency Consultation* (Discussion Paper, September 2023) <https://consultations.ag.gov.au/legal-system/personal-insolvency-consultation/consultation/download_public_attachment?sqId=pasted-question-1705020106.97-40100-1705020107.35-23430&uuId=994529191>.

[41] See the *Coronavirus Economic Response Package Omnibus Bill 2020* for amendments to the *Bankruptcy Act 1966* (Cth) and *Bankruptcy Regulations 2021* (Cth). The temporary measures ended on 31 December 2020.

experiencing financial hardship and juggling multiple conflicting priorities,[42] as victim survivors are.

Further, the current operation of the National Personal Insolvency Index (**NPII**), maintained by the Australian Financial Securities Association (**AFSA**), is stigmatising and presents barriers to a victim survivor's ability to regain financial security. When made bankrupt, a victim survivor, like any bankrupt person, has their name listed on the NPII for life even after the bankruptcy is discharged. In comparison, in the United Kingdom, debtors are removed from the equivalent public index (the Individual Insolvency Register) three months after discharge.[43] The NPII also records lifetime listings of bankruptcies that have been annulled (for example, by order of a court or by payment of debts in full), and creditor's petitions that have been dismissed by the Federal Court and have not in fact resulted in the person being bankrupt.

This is unnecessarily punitive for any bankrupt person (or any person who has a creditor's petition dismissed by the Court) but is particularly oppressive for victim survivors of financial abuse who have become bankrupt due to financially abusive debts and face significant barriers to reestablishing their credit score and financial security. This also exposes victim survivors to potential questioning by financial institutions about the NPII listing when applying for credit in future, forcing them to disclose their experience of abuse. This not only retraumatises the victim survivor but puts the financial institution's staff at risk of vicarious trauma by receiving that information, and poses privacy risks in that information being disclosed to third parties. The punitive approach in Australia is also inconsistent with other jurisdictions. For example, in the United Kingdom, a person whose bankruptcy is annulled only remains on the register for 28 days beyond the date of annulment.[44] This is a fair and reasonable proposal to allow time for the administrative process to be completed.

For further information and case studies, we refer to the report *Who is making Australians bankrupt?* by Consumer Action Law Centre, Financial Counselling Australia and Financial Rights Legal Centre,[45] the Joint Consumer Submission to the Attorney-General's Department's 2023 Personal Insolvency Consultation[46] and the Redfern Legal Centre Submission to the Attorney General's Department's 2023 Personal Insolvency Consultation.[47]

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[42] Australian Government, *Personal Insolvency,* (Discussion Paper, September 2023) <https://consultations.ag.gov.au/legal-system/personal-insolvency-consultation/user_uploads/personal-insolvency-discussion-paper.pdf>.
[43] Insolvency Service, Individual Insolvency Register FAQs (webpage) <https://www.insolvencydirect.bis.gov.uk/eiir/IIRFAQ.asp#13>.
[44] Ibid.
[45] Consumer Action Law Centre, '*Who is making Australians bankrupt?'* (Report, July 2019) <https://consumeraction.org.au/wp-content/uploads/2019/08/Who-is-making-Australians-bankrupt-July-2019.pdf>.
[46] Financial Rights Legal Centre, *Joint Consumer Submission to the Attorney-General's Department's 2023 Personal Insolvency Consultation* (Discussion Paper, September 2023) <https://consultations.ag.gov.au/legal-system/personal-insolvency-consultation/consultation/download_public_attachment?sqId=pasted-question-1705020106.97-40100-1705020107.35-23430&uuId=994529191>.
[47] Redfern Legal Centre, *Submission in response to the Personal Insolvency* (Discussion Paper, October 2023) <https://consultations.ag.gov.au/legal-system/personal-insolvency-consultation/consultation/download_public_attachment?sqId=pasted-question-1705020106.97-40100-1705020107.35-23430&uuId=552417477>.

Case Study

Jenny* was married for 12 years and had two children with her husband. She experienced significant family violence, including financial abuse. Her husband pressured her to sign documents without even allowing her to read them.

Jenny's husband operated various businesses and ran risky investments. Some of the risky investments and businesses were run under corporate structures, all of which incurred significant liabilities including liabilities to ASIC and the ATO. Unbeknownst to Jenny, her husband had caused her to be nominated as a sole director and shareholder of the said businesses and investments. Jenny's husband, as an employee of the company, made significant misrepresentations to the creditors.

The creditors pursued the companies and Jenny in her capacity as director. Jenny, when served with the Statement of Claim, provided it to her husband who reassured her that "it will be taken care of." The husband failed to meet the demands of the creditors and failed to file a defence to the Statement of Claim. Default judgment was entered against Jenny and the relevant companies.

Jenny received advice from her husband's accountant to file for bankruptcy, which she did. Following the bankruptcy, Jenny's husband left her. She had no assets in her name. Her husband had all of their assets in his name, including the family home which he transferred into the name of his brother.

Jenny commenced proceedings with the assistance of a private lawyer in the Family Court, as it was then known. However, she had no standing to commence proceedings and orders were made that each party retain property in their respective possessions. The bankruptcy prevented Jenny from being able to seek an order setting aside the transfer of the family home by her husband to his brother.

*Name changed

Recommendations

54. Amend section 10A of the Bankruptcy Regulations 2021 (Cth) to increase the minimum threshold for bankruptcy from $10,000 to $50,000 immediately, with no transition period.
55. Extend the timeframe to respond to a bankruptcy notice from 21 days to 60 days (or a minimum of 45 days).
56. Remove a bankrupt person's listing from the NPII two years after the date their bankruptcy is discharged.
57. Remove a bankrupt person's listing from the NPII 28 days after the date their bankruptcy is annulled.
58. Do not list on the NPII any creditor's petitions which have been dismissed by the Federal Court of Australia.

3.6. Insurance

The Problem

Financial abuse often presents through joint policies for general insurance, life insurance and health insurance, for example:

- The victim survivor is denied their claim because some insurers exclude malicious damage caused by the perpetrator if they are a co-insured or were there with the consent of the insured, even if the couple is separated or there is a family violence order issued by a court.
- A policy is changed or cancelled without the victim-survivor's knowledge.
- The claim is paid to the perpetrator alone rather than both owners of the asset.
- If a claim is made to the perpetrator and the victim survivor is concerned about them dissipating the funds, the victim survivor must seek an urgent injunction from the FCFCOA which is complicated and expensive. In some cases, this is not possible because the FCFCOA may not have jurisdiction.
- Sometimes it is not possible for family lawyers to transfer a policy into one partner's name because it impacts the rights of the insurer.
- The perpetrator does not disclose relevant information, leaving the victim survivor exposed to claim denial or even allegations of fraud.
- The victim survivor may not be able to access information about the insurance policy if it is in the perpetrator's name alone.
- The perpetrator deliberately erodes the value of a joint asset by refusing access to the property for repairs to be carried out by the insurer.
- If a victim survivor has a claims history because of damage caused by the perpetrator, they will also face more expensive premiums in future.
- The victim survivor is removed from a family health insurance policy without their knowledge or consent and:
    - must pay the full cost of health care for the children; and
    - is forced to purchase new cover at a significantly higher price,

  while the perpetrator keeps the benefit of the discounted family rate and can claim for the children's health care, even though they are often not the primary caregiver.
- In some cases, the perpetrator can retain a life insurance policy over the victim survivor notwithstanding separation/divorce, and taunts the victim survivor about this.
- In some cases, insurance investigators act inappropriately. Incorrect assumptions can be made about a victim survivor's knowledge or control in relation to the actions of the perpetrator. Interviews can be intimidating, inappropriately handled and can take several hours, after which time the interviewee is exhausted.

For further information and recommendations, please refer to submissions from our members, The Centre for Women's Economic Safety and WEstJustice, as well as the report Designed to Disrupt: Reimagining general insurance products to improve financial safety.[48]

[48] Centre for Women's Economic Safety, *Designed to Disrupt: Reimagining general insurance products to improve financial safety* (Report, 2024) <https://cwes.org.au/wp-content/uploads/2024/03/CWES_DTD-GI_Issue2_FINAL_Singles.pdf>.

For further information we also refer to the Financial Rights Legal Centre's Family Violence and General Insurance: Desktop audit of family violence policies.[49]

In addition, we note there is currently an independent review into the General Insurance Code of Practice. We refer to the Joint Submission by the Financial Rights Legal Centre on behalf of the Consumer Federation of Australia.[50] Several EARG members contributed to this submission on the initial consultation paper. Pages 31-33 of this submission specifically address DFV.

Recommendations

59. Modernise the General Insurance Code of Practice and the *Insurance Contracts Act 1984 (Cth)* to increase the financial safety of victim survivors of family violence.
60. Define domestic and family violence and financial abuse.
61. Define 'vulnerable insured' including those experiencing domestic and family violence, to make clear the 'duty of utmost good faith'.
62. Require insurers to include a link to their family violence policy and claims handling procedure in their Key Facts Sheet.
63. Include an obligation that retail policies contain a 'Conduct of Others' clause.
64. Include the 'prescribed wording' of the **'**Conduct of Others' clause to ensure consistency, clarity, and compliance across the industry and to further clarify the meaning and expectations of 'support measures'.
65. Introduce a provision that will enable 'joint policies' to become 'composite policies' on advice of the couple separating.
66. Enable an 'insured person' to cancel a life insurance policy held by a person they fear.
67. Insurers should require consent of all parties to an insurance policy before changes can be made unless such disclosure of changes would jeopardise the safety of a victim survivor.
68. Insurers should maintain a victim survivor's 'no-claim' status when the claim relates only to the action of the perpetrator.
69. Where a person has an interest in insured property, but due to family violence the insured won't make a claim or it is not safe for the victim survivor to ask the insured to make a claim, there should be a process whereby the victim survivor beneficiary is entitled to make a claim with the relevant insurer without involving the perpetrator.
70. Where a perpetrator has not disclosed or has misrepresented something to the insurer, an insurance policy should be treated as composite (i.e. the interests of the parties are separated) so that the victim survivor does not lose the benefit of the policy. Where the victim survivor is unaware of the non-disclosure or misrepresentation, the insurer should pay out the victim survivor's interest in the property where it is otherwise a valid claim.
71. If a policy has been varied or cancelled by a perpetrator for their benefit and to the disadvantage of the victim-survivor or without their knowledge, taking into consideration what is reasonable, the insurer should reinstate or back-date a victim-survivor's interest in the policy.

[49] Financial Rights Legal Centre, *Family Violence and General Insurance: Desktop audit of family violence policies* (Report, August 2021) <https://financialrights.org.au/wp-content/uploads/2021/08/210823_FamilyViolenceResearch_FINAL.pdf>.
[50] Financial Rights Legal Centre, on behalf of the Consumer Federation of Australia, *Independent Review: Initial Consultation Paper* (Report, April 2024) <https://financialrights.org.au/wp-content/uploads/2024/06/2400607_GICOP_JointSub_FINAL.pdf>.

72. Require insurers to introduce terms and conditions that make it clear that insurance polices and claim processes are not to be used for financial abuse.
73. All general insurers are required to have a family violence policy. They should ensure this is best practice and comply with and implement that policy. They should also routinely evaluate their culture of supporting customers experiencing DFV.

3.7. Superannuation

The Problem

- Victim survivors of financial abuse lose crucial funds from their superannuation accounts through coercion or unauthorised access from their intimate partner which can lead to financial insecurity, and in some cases severe poverty, later in life.
- A victim survivor's superannuation death benefit may be paid to their intimate partner who is alleged to have perpetrated financial abuse.

Superannuation is often the largest asset people own besides their home.[51] The unique scale and nature of the risk of financial abuse in super needs specific consideration. Super funds, like banks and general insurers, play a crucial role in recognising and responding to potential financial abuse when distributing super payments and managing members' accounts. Unlike other financial services, super funds distribute super payments and life insurance benefits upon death.

There is extensive evidence that the legal and regulatory settings in super are significantly failing people experiencing financial abuse, particularly in a DFV context. For instance:

- In a survey of 10,000 people, more than 1 in 10 victim survivors of financial abuse reported being pressured or coerced into giving a perpetrator access to their super within the last 12 months.[52]
- AFCA determinations highlight egregious examples of super industry responses to financial abuse and DFV, such as sending updated home address details to the address a member is leaving[53] or mandating online-only account administration despite a member's lack of internet access due to DFV.[54]
- Inadequate account security standards in super facilitate perpetrator access super accounts without the victim survivor's knowledge, enabling unauthorised changes to beneficiaries[55] or withdrawals.[56]

[51] Australian Bureau of Statistics, *Household Income and Wealth, Australia, 2019-20,* (Catalogue No 6523.0, 28 April 2022) <https://www.abs.gov.au/statistics/economy/finance/household-income-and-wealth-australia/2019-20#household-income-and-wealth>.
[52]Australia's National Research Organisation for Women's Safety, *Intimate partner violence during the COVID-19 pandemic: A survey of women in Australia* (Research Report, Issue 3, October 2021) 28. <https://anrowsdev.wpenginepowered.com/wp-content/uploads/2021/10/4AP10-Boxall-Morgan-IPV-During-Covid-ANROWS-RR.1.pdf>.
[53] *Superannuation Determination 610019* (2019) AFCA <https://service02.afca.org.au/CaseFiles/FOSSIC/610019.pdf>.
[54] *Superannuation Determination 656835* (2020) AFCA <https://service02.afca.org.au/CaseFiles/FOSSIC/636835.pdf>.
[55] *Superannuation Determination 845663* (2022) AFCA <https://service02.afca.org.au/CaseFiles/FOSSIC/845663.pdf>.
[56] *Superannuation Determination 768952* (2021) AFCA <https://service02.afca.org.au/CaseFiles/FOSSIC/768952.pdf>.

- While some voluntary guidance exists for super funds, there is no requirement for funds to have a DFV or financial abuse policy, let alone adhere to best practice in responding to financial abuse.[57]
- Sections 10 and 10A of the *Superannuation Industry (Supervision) Act 1993* (Cth) (**SIS Act**) do not permit super funds to adequately consider financial abuse circumstances when determining beneficiaries of super death benefits or the split of benefits when an account holder passes away.

There are several known instances where victim survivors of financial abuse were denied access to a perpetrator's super due to legal loopholes,[58] while people who were alleged to have committed financial abuse were able to financially benefit from the death of the person they allegedly abused.[59]

The current legal and regulatory framework for super exacerbates adverse outcomes for victim survivors and fails to protect them from financial abuse. Urgent interventions are needed to address this.

For further information about the legislation and statutory instruments for superannuation, please refer to the Super Consumers Australia submission to this Inquiry.

Recommendations

74. Implement minimum member service standards requiring funds to prevent, identify, and respond to financial abuse consistently and in line with best practice.
75. Amend sections 10 and 10A of the *Superannuation Industry (Supervision) Act 1993 (Cth)* to allow trustees to consider financial abuse circumstances when determining claimed beneficiaries' eligibility.
76. Update AFCA's approach document on super death benefit complaints to outline how it determines whether a trustee's decision on death benefit distribution was 'fair and reasonable in all the circumstances' in the presence of financial abuse.[60]
77. Ensure that super death benefit claim evidence requirements for victim survivors are in line with best practice and accommodate consumer vulnerability.
78. Waive the financial dependence cohabitation requirement in section 10A of the *Superannuation Industry (Supervision) Act 1993 (Cth)* in cases of DFV, as is the case when physical, intellectual, or psychiatric disability is present.
79. A broad-based review of the super death benefit distribution system is needed to fully examine its adequacy and whether it is fit-for-purpose.

[57] Ibid 5.
[58] *Superannuation Determination 909611* (2023) AFCA <https://service02.afca.org.au/CaseFiles/FOSSIC/909611.pdf>.
[59] *Superannuation Determination 691834* (2021) AFCA <https://service02.afca.org.au/CaseFiles/FOSSIC/691834.pdf>.
[60] AFCA, *The AFCA Approach to superannuation death benefit complaints* (Approach Document, May 2022) 4 <https://www.afca.org.au/media/614/download>.

3.8. Intersections with Family Law

The Problem

- Decision makers from financial institutions and dispute resolution authorities generally have limited understanding of how debt, bankruptcy and insurance issues intersect with family law for victim survivors of financial abuse.
- If a couple's debts exceed their assets, they cannot get property settlement orders and the victim survivor is often left to pay the debts that were incurred by financial abuse.
- If a victim survivor is made bankrupt, they are unable to seek orders for property that has vested in the trustee. This advantages their spouse in the property settlement, often leaving the victim survivor with lifelong financial insecurity.

In November 2023, EARG made a submission[61] to the Attorney General's Department in relation to the exposure draft of the Family Law Amendment Bill (No. 2) 2023 which supports the proposal to include economic and financial abuse as a consideration for property settlement matters under the *Family Law Act 1975 (Cth)* (**Family Law Act**).

Financial abuse has a direct financial impact on the financial contributions made by a party to the acquisition, conservation and improvement of the property of the parties. It also has a direct impact on the future needs of a party. Accordingly, it must be specifically addressed by a Court in its determination of a property settlement.

EARG welcomes the proposed amendments, however our submission raises further opportunities to strengthen the Family Law Act to achieve better outcomes for victims of financial abuse who are bankrupt or whose debts exceed their assets. We refer to our full discussion and recommendations in that submission, and highlight here the following issues that intersect with financial services.

3.8.1. Bankruptcy and Property Orders

Victim survivors are often forced into bankruptcy as a result of financial abuse debts to financial institutions and this not only compounds the impact of financial abuse but it also advantages the perpetrator in their FCFCOA proceedings.

If a victim survivor of financial abuse is forced into bankruptcy, while they are able to seek orders pertaining to superannuation, they are unable to seek orders pertaining to property that has vested in the trustee. However, the perpetrator is still able to seek an order for a property settlement and seek that they be prioritised over the creditor, because a non-bankrupt spouse can seek an interest in property that has vested in the trustee, even where their conduct has contributed to the forced bankruptcy. We acknowledge that this interaction between the Bankruptcy Act and the Family Law Act is intended to protect the non-bankrupt spouse. However, perpetrators of family violence often exploit the system to the detriment of the victim survivor who is left bankrupt, has no standing in the FCFCOA, and often loses their home, while the perpetrator is able to seek priority over the property vested in the trustee.

[61] Economic Abuse Reference Group, *Family Law Amendment Bill (No. 2) 2023* (Consultation Paper, November 2023) <https://earg.org.au/wp-content/uploads/Economic-Abuse-Reference-Group-submission-Family-Law-Amendment-Bill-No.-2-2023.pdf>.

We recommend the Family Law Act be amended to allow a victim survivor who is made bankrupt because of financial abuse, to have standing to seek orders in relation to vested bankruptcy property.

Case Study

Jillian* was appointed a director of Company XYZ Constructions Pty Limited. Jillian was not involved in the business but signed paperwork in the context of experiencing significant family violence and relying on her husband for her and the children's financial needs. Jillian was the primary homemaker and carer of their two children.

The company was made insolvent because of its liabilities and Jillian, who had signed personal guarantees, was made bankrupt. The liabilities exceeded $600,000. Shortly before the company became insolvent, Jillian's husband withdrew all the available money from the home loan redraw account and all the money from the offset account, which was approximately $80,000.

Jillian owned a property in her name, of which she had received one half share as an inheritance. Jillian and her husband purchased the other half share from Jillian's sister and the property was transferred into Jillian's name. The property was valued over $1 million and there was approximately $400,000 in equity. The mortgage had been refinanced over the years to support the husband's business.

When Jillian was made bankrupt, her equity in the property vested in the Bankruptcy trustee. Jillian's husband commenced proceedings in the FCFCOA, joining the trustee as a party to the proceedings. He sought sixty percent of the equity in the property. There was nominal superannuation. Jillian had no standing to seek any orders pertaining to the property as a bankrupt. Her husband succeeded in receiving fifty percent of the equity, with the creditors receiving the remainder. Jillian received no funds from the property settlement and her credit rating was severely impacted by her bankruptcy. Meanwhile, her husband used the funds to purchase another property in his sole name, then set up another company and began operating his business under a new name.

*Name changed

Recommendation

80. Amend the *Family Law Act 1975 (Cth)* to allow a bankrupt spouse or de facto to have standing to seek orders in relation to vested bankruptcy property.

3.8.2. Property settlement for couples whose debts exceed their assets

If the proposed amendments in the exposure draft of the Family Law Amendment Bill (No. 2) 2023 (the **Family Law Bill**) are enacted, financial and economic abuse will be introduced as a consideration for property settlement under section 79 of the Family Law Act. This will change the way property settlements happen, and we will need to assess how these amendments are interpreted and applied by the FCFCOA in cases of financial abuse. However, we do know that the Family Law Bill did not provide a solution in matters where the FCFCOA has no jurisdiction to make orders for property settlement because the debts exceed the value of the assets. This is a common situation for people who have experienced financial abuse because wastage of funds can result in a negative asset pool, either intentionally or coincidentally. A victim survivor of financial abuse is often left responsible for

the payment of debt that was incurred because of financial abuse. In most cases, the debt is owed to financial institutions in their sole name or joint names.

Case Study

Julie* was in a de facto relationship for twelve years. Julie's family were residing in rental accommodation. The lease was in her partner's name. She experienced significant family violence which resulted in an eating disorder and other mental health issues.

After separation, Julie discovered that her partner had obtained a credit card and store card in her name via online applications totaling $34,000. She became aware of these liabilities when she received letters of demand from the creditors, as both cards were significantly in arrears.

After obtaining her credit report, Julie discovered that her partner had obtained two further store cards in her name with a total debt of $14,000. Accordingly, she had debt totaling $48,000. Her credit report noted numerous missed payments and defaults. Julie did not receive any benefit from the debts and did not know how the funds had been spent.

The parties had an investment property that had minimal equity. A sale would have resulted in insufficient funds to pay the liabilities. The property was in her partner's name. The liabilities and default listings on her credit report impacted Julie's ability to obtain finance and secure rental accommodation. Meanwhile, Julie's partner was employed and earning an income exceeding $100,000 per annum and had capacity to pay the liabilities but refused to do so.

The FCFCOA had no jurisdiction to order the perpetrator to pay the liabilities and Julie was unable to seek a remedy in relation to the debt accrued in her name by her abuser.

*Name changed

Currently, section 81 of the Family Law Act provides a positive duty to end the financial relationship between the parties, as far as practicable (i.e. to ensure there is no ongoing litigation between the couple). A property settlement order can only be made under section 79 or 90SM of the Family Law Act if the value of the assets exceed the liabilities (except for superannuation). This means there must be *property* for a court to make a property settlement order.

In circumstances where the parties are left with liabilities only, there is no avenue to seek orders in relation to the payment of those liabilities, notwithstanding they may have arisen because of financial abuse and are a product of the matrimonial/de facto relationship.

The FCFCOA does have the power to make an order impacting the rights of a third party (e.g. a creditor) if they are joined as a party to the proceedings. However, if there are only debts, the FCFCOA does not have jurisdiction and therefore there are no proceedings within which to join the creditor as a third party. For completeness, we note creditors are almost never joined as a third party to proceedings where the assets exceed the debts, because the debts will be extinguished using the assets.

The interactions between these sections have a detrimental impact on victim survivors who are left with debts arising from financial abuse and have no remedy through the FCFCOA for their partner to be made responsible for those debts or indemnify them against the creditor.

This is a broad and complex issue possibly impacting the rights of third parties and needs to be addressed following research and consultation with experts in family law and financial services.

Recommendations

81. Establish a working group to research and examine how debts arising in the context of intimate partner violence are enforced by financial institutions and the intersection with the *Family Law Act 1975 (Cth)*. The working group should comprise financial institutions and experts from the community sector.
82. Consult on amendments to the *Family Law Act 1975 (Cth)* to expand the ambit of what the Federal Circuit and Family Court of Australia can do in circumstances of financial abuse where the total debt of the parties exceeds the value of the assets.

4. Government's role in preventing and responding to financial abuse and learning from other jurisdictions

Terms of Reference

5. *The role of government agencies in preventing and responding to financial abuse.*

7. *Any other related matters, including comparative information about arrangements in relevant overseas jurisdictions.*

4.1. The tax system

4.1.1. Tax debt relief in circumstances of financial abuse

The Problem

- When a perpetrator misuses business structures, such as trading under the victim survivor's Australian Business Number, appointing the victim survivor a director of a company without their consent, or reporting income distributions to their Tax File number as a trust beneficiary or as an employee without them actually receiving funds, the victim survivor becomes responsible for unmet tax compliance obligations and unpaid tax debts. Existing tax laws compel the Australian Taxation Office (**ATO**) to pursue victim survivors for these tax debts through payment plans, offsetting of future tax refunds, engaging external debt collectors, Director Penalty Notices, or initiating bankruptcy proceedings. Director Penalty Notices present a particularly troubling approach, because they require full payment of the tax obligations (or liquidation of the company) within 21 days to avoid personal liability, leaving many victim survivors at risk of bankruptcy for tax liabilities of a company they did not control. This type of financial abuse is not limited to intimate partner violence and often occurs within the context of the wider family unit.

- Perpetrators also weaponise tax law and administration to generate debts in the victim survivor's name through:
    - misreporting their own income (generating a Centrelink debt in the victim survivor's name due to overpayment of Family Tax Benefit);
    - failing to lodge tax returns for 2+ years (to prevent payment of Family Tax Benefit to the victim survivor). Our members sometimes see situations where perpetrators have not lodged tax returns for over 15 years with little consequence for themselves;
    - minimising their taxable income (to lower their child support liability or make the victim survivor liable to pay child support); and/or
    - making false declarations to the ATO and other government agencies such as Centrelink and the Child Support Agency.
- Tax law and administration requires the victim survivor to repay these debts, even if they are not rightfully theirs. This hinders the ability of victim-survivors to meet living costs and save funds for their future, thereby exacerbating ongoing, long-term financial instability. It is imperative that the tax system help rather than hinder (albeit inadvertently) victim survivors.

The Australian taxation system provides no specific avenues for tax debt relief on the grounds of financial abuse, leaving many victim survivors struggling to pay off tax debts on a 2-year payment plan, having their future tax refunds used to offset their debts, being chased by external debt collectors, and/or being forced into bankruptcy. The available defence to a Director Penalty Notice in section 269-35(1) of Schedule 1 to the *Taxation Administration Act 1953 (Cth)*, that a director was unable to take part in the management of the company at any time "because of illness or for some other good reason", is currently not explicit enough to apply to circumstances of financial abuse and coercive control. If a victim survivor seeks to rely on this defence, they must do so within 60 days, which is typically too narrow a timeframe to obtain appropriate advice from a lawyer or tax professional, and they must not have ever undertaken any actions that could qualify as 'director actions'. Support services regularly have 8 week waitlists so they are unable to obtain assistance in time. Many victim survivors, upon discovering that they are a director, attempt in good faith to bring the company's taxes up to date or take other steps which later prevent them from being able to rely on this defence.

Case Study

Mary* experienced consistent psychological and financial abuse throughout her relationship with her ex-husband Matt*. She was entirely financially dependent on Matt and he controlled the couple's finances and all financial decision-making, withholding financial information from Mary. He was physically and emotionally abusive when questioned.

When he was facing the liquidation of his company and imminent bankruptcy, he established a new company and coerced Mary to become a director and sign loan documents and personal guarantees for business contracts. He forced Mary to sign documents without giving her an opportunity to read or seek independent advice about them. Mary had no access to any information about the company's financial position and no role in the management of the company's affairs. She had limited financial literacy, no previous business experience and was unaware of the legal implications of directorship.

Mary continued controlling the company in name only while Matt was bankrupt, until this company was also liquidated. Mary was left with the fallout after the relationship ended, the company was liquidated, and the ATO began pursuing Mary for unpaid tax debts via Director

Penalty Notices. Mary owed approximately $40,000 in PAYG withholding penalties and approximately $10,000 in superannuation guarantee charge penalties.

Mary only became aware of the ATO debts and significant other liabilities in her name following separation. By that point she was in severe financial hardship and relied on Centrelink payments to support her children.

*Names changed

The United States offers a best practice framework for shifting tax liability from victim survivors to perpetrators. This recognises that taxpayers should not be liable for tax debts incurred due to coercive control or economic abuse, in the circumstances described above. The United States has had 'innocent spouse relief' provisions since 1971 and tax relief for victim survivors of intimate partner financial abuse since 1998, giving the Internal Revenue Service discretion to relieve taxpayers from tax debts on grounds of financial hardship or public policy. This system also includes an 'offset bypass refund' mechanism meaning that if a victim survivor's tax debt is written off because it is non-economical to pursue, the victim survivor's future tax refunds will not be used to offset the debt. In comparison, in Australia, victim survivors' future tax refunds are automatically used to offset any tax liabilities (even those incurred due to financial abuse), regardless of their financial hardship, exacerbating their long-term financial insecurity.

In addition to improving outcomes for victim survivors, the below recommendations would increase tax debt collection by enabling the ATO to pursue perpetrators who have capacity to pay the debts (rather than victim survivors in financial hardship), improve confidence in the ATO's practice, and enhance the efficient use of the ATO's debt collection resources. For more information on comparative tax reform, see a recent paper published in the *Australian Tax Forum* by Australian and US academics,[62] recent media,[63] and the submission made to this Inquiry by the UNSW Tax and Business Advisory Clinic.

Recommendations

83. Amend section 269-35 of the *Taxation Administration Act 1953 (Cth)* to explicitly include coercive control as a valid defence to a Director Penalty Notice, for example, *"because of illness, **coercive control**, or for some other good reason…"*.
84. Amend the *Taxation Administration Act 1953 (Cth)* to allow the ATO discretion to provide tax relief to victim survivors of financial abuse experiencing serious financial hardship.
85. Amend the *Taxation Administration Act 1953 (Cth)* to remove the offsetting of tax refunds against tax liabilities where the liabilities were incurred due to financial abuse and/or the taxpayer is experiencing financial hardship.

[62] Ann Kayis-Kumar, Christine Speidel and Leslie Book, 'Squeezing blood from stones? A comparative analysis of tax relief for victim-survivors in Australia and the United States' (2024) 39(2) *Australian Tax Forum* 191-220.

[63] Nassim Khadem, 'The ATO is reviving old tax debts totalling billions, threatening some taxpayers with bankruptcy' *ABC News* (online, 14 March 2024) <https://www.abc.net.au/news/2024-03-14/ato-reignites-old-debts-individuals-businesses-struggle/103578746>; Jonathan Barrett, 'Financial abuse can follow victims long after relationships end. Australian experts are calling for reform' *The Guardian* (online, 29 March 2024) <https://www.theguardian.com/society/2024/mar/29/financial-abuse-can-follow-victims-long-after-relationships-end-australian-experts-are-calling-for-reform>.

86. Develop ATO internal guidelines regarding how the Commissioner of Taxation exercises their discretion not to pursue taxpayers for tax liabilities incurred in circumstances of financial abuse.
87. The ATO and Treasury should conduct a consultation on the design and operation of the existing regulatory regime and consider designing a regime in Australia modelled on the US 'innocent spouse relief' provisions.

4.1.2. Intersections between tax and family law

As detailed further above, the FCFCOA only has power to affect a third party's interests if that third party (for example, the ATO) is joined to the proceedings as a party. This is not feasible in many cases and would significantly increase the costs and duration of legal proceedings for victim survivors. If the tax debts are a joint liability, even if they were incurred by the perpetrator in circumstances of financial abuse, they will be factored into account in the valuation of the matrimonial assets and liabilities.

There are two key points where the interaction of tax debts and family law proceedings could be addressed to minimise perverse outcomes for victim survivors.

Firstly, where parties are engaged in negotiations or proceedings have been commenced for a property settlement under the Family Law Act, we recommend the ATO pause any enforcement of any tax liability for the duration of the negotiations, court proceedings, and until orders have been made by the FCFCOA. This should include a moratorium on interest and penalties during this period. This could be operationalised by the Administrative Appeals Tribunal or Administrative Review Tribunal being given the power to grant the stay of a tax debt for victim survivors. Where a victim survivor makes submissions to the ATO (including seeking a hold on enforcement and moratorium, or the withdrawal of Director Penalty Notices), the ATO should not disclose the existence or contents of those submissions to any co-directors to protect the victim survivor's safety. This should apply whether or not any of the co-directors are the perpetrator of the economic abuse, recognising that the co-directors may also be associates of the perpetrator.

Secondly, an indemnity order in the FCFCOA does not currently prevent a third party (including the ATO) from pursuing a tax liability against the victim survivor. This can lead to perverse outcomes where, for example, a partnership is dissolved in the consent orders and the perpetrator made responsible for indemnifying the victim survivor for any debts owed by the partnership, including tax liabilities, but given there is ambiguity as to whether the victim survivor's tax debt is a partnership tax debt (as partners are assessed on partnership *income* and not the partnership), the ATO is still entitled to pursue the victim survivor for the tax debt. In circumstances where the FCFCOA makes an order (either by consent or otherwise) indemnifying a party in relation to a taxation liability, provided that party can establish they were a victim survivor of economic abuse, we recommend that the ATO be given the discretion to release the victim survivor from such liability. This would enable the ATO to instead only pursue the perpetrator.

Recommendations

88. The ATO should pause any enforcement of tax liability (including interest and penalties) while proceedings are on foot in the Federal Circuit and Family Court of Australia, for example, by the Administrative Appeals Tribunal or

Administrative Review Tribunal being given the power to grant the stay of a tax debt for victim survivors and stay the issue or execution of a Director Penalty Notice.

89. The ATO should be given the discretion to release a victim survivor from tax liability where the Federal Circuit and Family Court of Australia makes an order (either by consent or otherwise) indemnifying them in relation to the tax liability. This would enable the ATO to instead only pursue the perpetrator for the tax liability.

4.1.3. ATO engagement with financial counsellors

While the ATO consistently refers taxpayers to financial counsellors (including EARG member organisations) for assistance resolving their tax liabilities, financial counsellors are not recognised by the ATO as professional advocates, only personal advocates. ATO practice therefore restricts the ability of financial counsellors to engage with the ATO and support victim survivors of financial abuse.

Firstly, the ATO has withdrawn financial counsellors' direct access to the ATO's vulnerability team, leaving them to contact the ATO via general enquiry channels. The ATO now determines the vulnerability of taxpayers and whether to refer them to the vulnerability team, rather than relying on financial counsellors' professional judgment of the client's vulnerability and their relationship with the client. This results in victim survivors receiving inadequate tailored support from specially trained staff and needing to retell their story to ATO staff. For detailed analysis and policy recommendations regarding the ATO's approach to vulnerability, see the Law Council of Australia's submission *Improving how the ATO deals with vulnerable taxpayers* in 2021[64] and the EARG response to the Taxpayers' Charter Review in 2022.[65]

Secondly, the ATO requires financial counsellors to undertake the ATO's Proof of Record Ownership (**PORO**) process. This imposes onerous identification requirements on financial counsellors to provide their personal information in a professional setting in order to contact the ATO on behalf of their clients. For example, a financial counsellor must disclose their personal Tax File Number or Australian Business Number, or details of their employment, superannuation, investments or previous tax returns to ATO staff before being permitted as an authorised representative. This is despite financial counsellors having a National Registration Number which could serve the purpose of identifying them, and which all Australian financial service providers use to identify financial counsellors in their professional capacity. Many financial counselling agencies and individual financial counsellors have a policy of not engaging with the ATO due to these requirements, which disadvantages victim survivors who require support to engage with the ATO. Where the client is in a partnership, the ATO requires the PORO to be recorded against the other partner's individual tax account (that is, the perpetrator of financial abuse). Financial counsellors therefore cannot assist victim survivors who are involved in a partnership to engage with the ATO as they do not have the third party's consent for this, nor do they want their personal tax account linked to a third party, much less their client's perpetrator.

[64] Law Council of Australia, *Improving how the ATO deals with vulnerable taxpayers* (Submission Paper, November 2021) <https://lawcouncil.au/publicassets/bbe4b72c-fc56-ec11-9444-005056be13b5/4134%20-%20Improving%20how%20the%20ATO%20deals%20with%20vulnerable%20taxpayers.pdf>.

[65] Economic Abuse Reference Group, *Joint community organisation response to Taxpayers' Charter Review* (Response Paper, October 2022) <https://earg.org.au/wp-content/uploads/Joint-community-response-to-ATO-charter-review.pdf>.

Recommendations

90. Amend the ATO's Proof of Record Ownership (**PORO**) process to permit financial counsellors to provide their National Registration Number as an acceptable form of identification when contacting the ATO on behalf of clients.
91. Develop an ATO vulnerability framework, including clear and transparent processes for responding to matters involving family violence and financial abuse and appropriate family violence training of relevant staff within a dedicated team.
92. Accept referrals to the ATO vulnerability team directly from financial counsellors, community workers and advocates, relying on their professional assessment of the client's vulnerability.

4.2. Child Support

Child support can be used as a tool to perpetrate financial abuse, and in some instances the non-payment of child support is a form of family violence. Perpetrators of financial abuse exploit a range of financial systems and government agencies by:

- refusing to pay child support or underpaying child support post-separation;
- minimising their taxable income (to lower their child support liability or make the victim survivor liable to pay child support); and
- making false declarations to the ATO, Centrelink and the Child Support Agency.

While there are various mechanisms available to the Department of Social Services via Services Australia to collect child support, and the FCFCOA can make an adjustment in circumstances where child support is consistently not paid, our member organisations report that the burden often rests with victim survivors and their advocates, with many victim survivors walking away from entitlements to avoid the time, cost, stress and safety risks of continuing to seek financial support from the perpetrator.

Recommendation

93. Implement the recommendations from Women's Legal Services Australia's 2024 report Non-Payment of Child Support as Economic Abuse: A Literature Review.[66]

4.3. Centrelink

In recent years there have been some improvements to the social security system, however there are still many outstanding DFV issues that need to be addressed.

For a comprehensive assessment of the social security system and the role of Centrelink in preventing and responding to financial abuse, we refer to the submission made to this Inquir by Economic Justice Australia (**EJA**). EJA is the peak organisation for specialist social security rights community legal centres and an EARG member.

[66] Women's Legal Services Australia, 'Non-Payment of Child Support as Economic Abuse of Women and Children: A Literature Review' (Research Paper May 2024) <https://www.wlsa.org.au/wp-content/uploads/2024/05/Womens-Legal-Services-Australia-Child-Support-Literature-Review-May-2024.pdf>.

For further information, case examples and recommended drafting for legislative change, we refer to EJA's Legislative Brief – Reform for victim/survivors of family and domestic violence being held liable for Centrelink debts.[67]

Recommendation

94. Implement the recommendations from Economic Justice Australia's submission to this Inquiry.

4.4. Systems abuse

'Systems abuse' is the misuse of government and social service systems for the purposes of controlling victim-survivor/s of domestic, family and sexual violence.[68]

A common scenario is where perpetrators 'make multiple applications and complaints in multiple systems (for example, the courts, Child Support Agency, Centrelink child protection) in relation to a protection order, breach, parenting, divorce, property, child and welfare support and other matters with the intention of interrupting, deferring, prolonging or dismissing judicial and administrative processes, which may result in depleting the victim's financial resources and emotional wellbeing, and adversely impacting the victim's capacity to maintain employment or to care for children.'[69]

Another example of this is Services Australia's welfare Fraud Tip Off regime which can be weaponised by perpetrators because it enables members of the public to anonymously report suspected welfare fraud, including by phoning the Services Australia Fraud Tip Off Line or by completing an online web form. According to a report by Economic Justice Australia, 'once an unfounded accusation has been made, the resulting compliance processes can further traumatise victims of violence with intrusive and stressful investigation … This process can threaten the financial security of victims/survivors of domestic violence, including children, if the accusations lead to payment cancellation. It can also result in debt and/or referral for prosecution.'[70]

Further, this report found that the Fraud Tip Off Line is also used by perpetrators for malicious and coercive purposes when the victim/survivor is involved in Family Court proceedings or migration matters. This can have significant consequences for victims of violence who believe that they need to comply with a perpetrator's demands to avoid family law problems, or to avoid 'getting into trouble with the authorities' in other proceedings.'[71]

To prevent systems abuse for victim-survivors of domestic and family violence, reviews of individual forms of DFV should aim to identify opportunities within the current system that might enable perpetrators to interrupt, defer, prolong, or dismiss victim-survivors' applications to government systems. Particular attention needs to be paid to instances

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[67] Economic Justice Australia, *Legislative brief – Reform for victim/survivors of family and domestic violence being held liable for Centrelink debts* (Report) <https://www.ejaustralia.org.au/wp-content/uploads/DV-Legislative-brief.pdf>.
[68] National Domestic and Family Violence Bench Book (2023) *Systems Abuse* <https://dfvbenchbook.aija.org.au/understanding-domestic-and-family-violence/systems-abuse>.
[69] Ibid.
[70] Economic Justice Australia, *Debt, Duress and Dob-Ins: Centrelink compliance processes and domestic violence* (Report, February 2022) 36 <https://www.ejaustralia.org.au/dob-ins-and-domestic-violence-how-australias-welfare-fraud-tip-off-line-makes-women-less-safe/>.
[71] Ibid.

where this may occur because of implicit biases based on structural discrimination, for example, racism, classism, ableism, homophobia and transphobia.[72]

Recommendation

95. Review government systems to reduce opportunities for systems abuse.

4.5. Whole-of-government response to financial abuse and learnings from overseas jurisdictions

4.5.1. Benefits of a whole-of-government approach

Financial abuse is relevant to a wide range of complex and intersecting laws, policies and practices. Meaningful change cannot be achieved by one sector alone, or through amending each act, policy or guideline in isolation. The Government must lead an organised integrated whole-of-government approach to prevent and respond to financial abuse.

EARG has been working with industry and government on improving responses to financial abuse since the Royal Commission into Family Violence in Victoria in 2015. We recognise significant improvements have been achieved, but siloing has led to inconsistencies, even within the same industry. The financial abuse landscape is complicated for advocates to navigate, not to mention victim survivors who often need assistance across multiple intersecting systems that few services have the expertise to respond to holistically.

Many of the issues raised in our submission relate to current government consultations or reforms which present a unique window of time to immediately improve and harmonise these regulations to better prevent and respond to financial abuse. EARG and/or member organisations have made specific recommendations to these ongoing reforms:

- Family Law Property Settlements: Attorney General's Department's Family Law Amendment Bill (No. 2) 2023 Consultation Paper
- Buy Now Pay Later: Senate Standing Committee on Economics' inquiry into Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024 [Provisions] and Capital Works (Build to Rent Misuse Tax) Bill 2024 [Provisions]
- Bankruptcy: Attorney General's Department's Personal Insolvency Consultation
- Corporate Insolvency: Parliamentary Joint Committee on Corporations and Financial Services inquiry into Corporate Insolvency in Australia
- Credit Reporting: Attorney General's Department's Review of Australia's Credit Reporting Framework
- General Insurance: Insurance Council of Australia's Independent Review of the 2020 General Insurance Code of Practice

We recommend a Financial Abuse Taskforce is established to implement the legislative reform, policy and program recommendations from this inquiry. The Financial Abuse Taskforce should work closely with all relevant government departments and agencies through both informal day-to-day interactions and a formal Financial Abuse Working Group. The taskforce should be comprised of staff from the Attorney-General's Department, Department of the Treasury and Department of Social Services. Taskforce members should be required to complete family and domestic violence awareness training, with a focus on financial and economic abuse.

[72] See also Flat Out, *Resisting Systemic Collusion Power and Control Wheel* (Web Page) <https://www.flatout.org.au/resources/systemic-collusion-power-control-wheel>.

States and Territories should also establish a taskforce, for example via the Council of Australian Governments, to implement recommendations in relation to fines, vehicle registration, local council debt collection and strata debt collection.

This whole-of-government approach has been emerging in overseas jurisdictions (as explained below) and has recently been implemented by the Government to respond to the recommendations from the Disability Royal Commission. We understand a national task force has been established as well as state and territory task forces. This sets a good precedent for a financial abuse taskforce.

Recommendations

96. Establish a Financial Abuse Taskforce to implement the legislative reform, policy and program recommendations from this inquiry.
97. States and Territories should also establish a taskforce, for example via the Council of Australian Governments, to implement recommendations in relation to fines, vehicle registration, local council debt collection and strata debt collection.
98. Develop and implement financial abuse policies across all government departments and agencies with mechanisms for information sharing and collaboration to reduce systems abuse.

4.5.2. New Zealand – Framework for Debt to Government

In 2023, New Zealand implemented a national policy framework for debt to government[73] developed by Inland Revenue, the Ministry of Social Development, the Ministry of Justice, and the Department of the Prime Minister and Cabinet. This followed recommendations from the Welfare Expert Advisory and Tax Working Groups, which led to a cross-agency group of officials being convened in 2019 to consider a whole-of-government approach to achieve a fairer and more consistent approach to personal debts owed to government agencies. The framework recognises that debts to government departments cause particular harm to families with children and victim survivors of abuse.

The framework outlines six key principles to be considered when creating or collecting debts by a government department:

1. Minimising hardship
2. Fairness
3. Consistency with Treaty obligations
4. Accounting for behavioural responses
5. Public value
6. Transparency

The framework identifies guidelines and recommended treatment for the creation and treatment of different types of debt to government, from Crown revenue to overpayments of government support (i.e. Centrelink) and fines and infringements. The framework also recognises that debt may occur due to economic harm (financial abuse).

See, for example, at 4.32:

[73] Inland Revenue, *A framework for debt to government: guidelines for agencies managing personal debt owed to government*, Guidelines (2023) <https://www.ird.govt.nz/about-us/publications/policy-framework-for-debt-to-government>.

Debt may sometimes be the result of economic harm. Agencies should ensure that they:

- *Understand the signs of family violence and know how to support customers, including a referral system to expert support services,*
- *Avoid requiring evidence of family violence, and avoid requiring repeat disclosure of circumstances,*
- *Have a policy on allocation of debt in cases of family violence, and*
- *Have effective processes in place to protect information, including between account holders if necessary.*

4.5.3. United Kingdom – Economic Abuse Strategy & Toolkit

The United Kingdom's Government Debt Management Function[74] (**GDMF**) provides the expertise that enables government to achieve the vision of Fair Debt Outcomes for All. To achieve this, they align debt management practices across government to prevent individuals and businesses falling into problem debt by identifying and supporting the financially vulnerable, among other functions.

The GDMF collaboratively developed the Debt Fairness Group in 2016 to recommend evidence-based improvements to government's debt management practices. The Fairness Group Joint Public Statement sets out how the government works with the advice sector to support vulnerable families. The Group informed the Government Debt Strategy and Public Sector Toolkits.

The 2023-26 Government Debt Strategy[75] outlines the government's approach to the management and resolution of debt. It aims to improve the approach to the resolution of debt owed to government, enabling the vision of Fair Debt Outcomes for All. The strategy sets out the approach to achieve this vision through preventing avoidable debt, resolving debt to agreed standards, and improving government capability to resolve debt efficiently and effectively.

The Public Sector Economic Abuse Toolkit[76] was developed in 2023 to assist government agencies in identifying and responding to economic abuse in public sector debt management. The Toolkit was developed in collaboration with Surviving Economic Abuse (a charity which raises awareness of economic abuse and influences changes to professional practice, systems, policy, legislation and regulation) and Money Advice Plus (a charity which helps and supports people experiencing difficulty managing their money or financial affairs) and national and local levels of government. The Toolkit:

- Identifies examples of economic abuse that may present in circumstances where the public sector is managing or collecting debts;
- Provides guidance on policies and processes agencies should adopt in identifying economic abuse;
- Provides guidance on creating a safe disclosure environment and screening questions for economic abuse;

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[74] United Kingdom Government, *Government Debt Management Function* (Web Page) <https://www.gov.uk/guidance/government-debt-management-function-gdmf>.
[75] Government Debt Management Function, *2023-26 Government Debt Strategy 2023-26* (Report) <https://www.gov.uk/government/publications/23-26-government-debt-strategy>.
[76] Government Debt Management Function, *Public Sector Economic Abuse Toolkit* (Report) <https://assets.publishing.service.gov.uk/media/637c983e8fa8f53f41348977/Economic_Abuse_Toolkit.pdf>.

- Provides interactive call guidance[77] to help frontline staff identify and support victim survivors when interacting with customers. It has been rolled out to over 30,000 UK tax office staff and made available for businesses and charities for free; and
- Details appropriate referrals for domestic violence support, independent debt advice and welfare assistance.

4.5.4. Canada – National Scorecard on Financial Abuse

The Canadian Centre for Women's Empowerment (**CCFWE**) has recently developed a national scorecard on economic abuse.[78] The purpose of the scorecard is to examine provincial-territorial legislation relating to economic abuse.

The scorecard serves several key purposes:

- **Identification of gaps** in the legal and government response to economic abuse.
- An **advocacy tool** for activists, organisations, and community groups to raise awareness about the importance of addressing economic abuse and pushing for reforms.
- **Enhancing support for victims:** Improving provincial-territorial legislation and policy to better support and protect victim survivors of economic abuse, as stronger legal protections provide victims with the means to seek help and access resources to escape abusive situations.
- **Data Collection and Progress Monitoring:** The scorecard displays data on provincial-territorial legislation, exploring avenues for continued advocacy to support survivors, and allows for CCFWE to track changes to legislation over time.

The CCFWE also established the National Task Force on Women's Economic Justice, a group of financial institution leaders, consumer lawyers, community organisations and social policy advocates that provides strategic direction and leadership to government and industry on the financial impacts of economic abuse.

5. Funding advisory and advocacy bodies to provide expertise to financial services and government on financial abuse

Terms of Reference

6. *The funding and operation of relevant advisory and advocacy bodies.*

Our members, who consist of specialist family violence services, community legal centres and financial counsellors are best placed to advise and advocate in relation to financial abuse, however, EARG and our member organisations need sustainable long-term funding to meet the increasing demand for:

- direct support to victim survivors;
- providing policy and law reform expertise, data and research to Government, regulators and industry; and
- training and capacity building for businesses.

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[77] United Kingdom Government, *Check signs of economic abuse* (Web Page) <https://www.tax.service.gov.uk/guidance/check-for-signs-economic-abuse/start/about-this-guidance>.
[78] Canadian Centre for Women's Empowerment, *Provincial-Territorial Scorecard on Economic Abuse* (Web Page) <https://ccfwe.org/unveiling-the-national-scoreboard-on-economic-abuse-sept-2023/>.

5.1. Economic Abuse Reference Group as an advisory and advocacy body

5.1.1. EARG funding

Established following the Victorian Royal Commission into Family Violence, the EARG was initially coordinated by Women's Legal Service Victoria and is now coordinated nationally by Financial Abuse Service NSW staff at Redfern Legal Centre. There are also state sub-groups in Victoria, NSW and Western Australia.

To increase our impact, and ensure we can adequately drive systemic change to prevent and respond to financial abuse through changes to laws, practices and policies on a federal and state level, we need:

- Dedicated long term sustainable funding for the National coordination roles; and
- Funded coordinator roles in each state and territory to support reform work by state and territory governments.

5.1.2. Operation of EARG

National EARG currently has over 50 member organisations from around Australia, with representatives meeting every eight weeks online with an agenda designed by the coordinators to inform, educate and seek input on both proactive and reactive work which aligns with our strategic plan. Coordinators also distribute a monthly member update and a quarterly stakeholder newsletter, and play an important role in connecting member organisations with each other and external stakeholders for collaboration outside EARG. EARG enhances the effectiveness and efficiency of member organisations working in this space.

With this reach, EARG is best placed to identify systemic problems and provide practical improvements. The 2023 EARG evaluation found that 'the EARG provided highly valued advice and feedback to industry, regulators and government and had contributed to improved responses. The group's work included submissions to governments and industry, sharing case studies from members with industry and regulators to highlight problems that need to be addressed, reviewing products/policies/processes and advising of potential shortcomings and safety risks, and helping organisations develop resources (e.g. policies, fact sheets).'[79]

Evaluation participants identified the following as some of the most important changes the EARG had influenced:

- AFCA's factsheet Impact of family law settlements – banking and finance complaints.[80]
- Commonwealth Bank's abusive transactions initiative.
- Several major insurance companies adopted 'conduct of others' clauses
- The retention of responsible lending laws under the NCCPA through the Save Safe Lending campaign.

In relation to the benefit of EARG for industry, regulators and government, the evaluation found that 'key industry and regulator representatives value the EARG's depth of expertise, cooperative and constructive approach to developing solutions, and the case studies it shares of customer experiences. Industry and regulator representatives reported that they

[79] Economic Abuse Reference Group, Executive Summary (Evaluation report, July 2023) 1 <https://earg.org.au/wp-content/uploads/EARG-Evaluation-2023-Exec-Summary.pdf>.
[80] Australian Financial Complaints Authority, *Impact of family law settlements – banking and financial complaints* (Web Page) <https://www.afca.org.au/about-afca/publications/impact-of-family-law-settlements>.

trust the quality of the information and advice provided by the EARG and additionally, it is provided in a timely manner that supports them with their work. Industry representatives also reported that the EARG has enabled them to engage with a range of organisations more efficiently.'[81]

With additional funding, EARG would be well placed to provide ongoing expertise to government, regulators and financial services on the implementation of recommendations from this inquiry, as well as develop:

- a mapping project to assess the legal frameworks and policies relevant to financial abuse; and
- a financial abuse report card for Australia.

5.2. Specialist financial abuse services to advocate for victim survivors

All EARG members and contributors provide critical services with limited resources and are working at the cutting edge of DFV service delivery and/or policy development which is a constantly evolving area. The increasing complexity of financial abuse requires an equal increase in technical skill and expertise to resolve, with very few organisations in a position to assist victim survivors with these complex intersecting issues. If the government is serious about preventing and responding to financial abuse, it must fund frontline DFV services, community legal centres and financial counselling services to assist in the resolution of financial abuse perpetrated in both consumer and business contexts and government systems.

Further, we recommend the government provide sustainable funding for dedicated financial abuse services in each state and territory to provide holistic specialist legal, social work and financial counselling case work support for victim survivors. These services are the key to identifying emerging financial abuse issues and the solutions to prevent and respond to financial abuse. Some of our members already operate successful innovative financial abuse services in New South Wales, Victoria and Western Australia. There are also specialist family violence financial counsellors embedded in organisations around Australia.

Recommendations

99. Provide additional funding for coordinators of the National EARG to provide ongoing expertise to government, regulators and financial services on the implementation of recommendations from this Inquiry.
100. Fund coordinator roles in each state and territory to support reform work by state and territory governments from this Inquiry.
101. Fund EARG to develop a mapping project and a financial abuse report card for Australia.
102. Increase funding to DFV services around Australia.
103. Fund holistic specialist financial abuse services in each state and territory.

[81] Economic Abuse Reference Group (n79) 2.

6. List of Recommendations

1. Require financial institutions to report on the proportion of complaints alleging financial abuse which are resolved on the basis of financial hardship alone, compared to the proportion of complaints which are resolved on the basis of misconduct, maladministration or other fault of the financial institution.
2. Issue guidance to financial institutions and the Australian Financial Complaints Authority that information should only be sought about a complainant's current financial position where this is relevant to the complaint or they are seeking financial hardship assistance.
3. Legislation, regulations, policies, and procedures governing electronic transactions should have added checks and balances in place to protect against financial abuse. For example, this could include a requirement for witnessing. These added checks and blances should be culturally appropriate and accessible.
4. Ensure there is harmonisation between state, territory, and Commonwealth legislation for electronic transactions.
5. Ensure mutual recognition of electronic transactions across jurisdictions.
6. Ensure better public awareness around financial abuse and electronic transactions, particularly for marginalised groups, CALD and migrant communities, First Nations communities, specialist domestic violence support workers, and the domestic violence workorce sector.
7. All electronic transactions should be opt-in.
8. All Authorised Deposit-taking Institutions adopt the Commonwealth Bank model to identify and respond to abusive electronic money transfers.
9. All financial institutions implement Terms and Conditions that specify financial abuse as unacceptable customer conduct and outline consequences for misuse.
10. The finance sector develops a financial safety by design framework and diagnostic tool for product and service design.
11. Amend the design and distribution obligations in the *Corporations Act 2001 (Cth)* to require the design and distribution of financial products to prevent financial abuse.
12. If a regional or remote First Nations customer cannot complete an online form or access a hard copy form, the financial institution or government agency representative should assist the customer to complete the form over the phone.
13. Financial institutions and government agencies should consider when it is appropriate to accept alternative forms of identification for First Nations customers who do not have 100 points of identification.
14. Financial institutions should embed cultural safety training in staff training for both customer facing roles and product and service design roles.
15. Financial institutions should invest in culturally appropriate financial literacy programs and plain language product descriptions.
16. Financial institutions should promote ways of receiving financial hardship assistance that are aligned with cultural values around shared resources.
17. Financial institutions should aim to have some customer service and leadership roles filled by Aboriginal and Torres Strait Islander people to build trust with First Nations communities and provide a culturally safe service, which will result in better outcomes for customers.
18. Government to conduct research and widespread consultation with financial services, community experts and people with lived experience before considering introducing financial abuse mandatory reporting obligations for financial institutions, organisations or individuals.

19. All financial institutions must have specialist staff trained to respond to customers experiencing domestic and family violence. The number of staff or the establishment of a dedicated team can be scaled to the size of the institution or customer base.
20. Financial institutions should accept that a customer has experienced DFV without requiring evidence.
21. When establishing a joint facility, a financial institution should be required to ensure both account holders: have their own access to the account; are informed of what information will be visible and/or shared with the other accountholder; and are informed of the mechanisms that exist to ensure safety of the account, such as 'two to sign' for withdrawals to be made.
22. Financial institutions must have a system for monitoring for unusual transactions via joint facilities and a policy for how to respond if financial abuse is detected on a joint account.
23. Financial institutions should establish simpler, safer and easier ways for parties to sever or separate their accounts, including: implementing policies and practices to ensure information is not inadvertently shared with the perpetrator (for example, a safe address or new contact information; and the ability to sever the victim survivor's name from a joint loan or account where it has been established that it was set up or used in circumstances of financial abuse.
24. Engage with experts in financial abuse prevention, response and recovery to co-design any legislative and regulatory reform to inform the risk assessment of such reform and mitigate unintended consequences.
25. Amend section 131 of the *National Consumer Credit Protection Act 2009 (Cth)* to include an express requirement that the lender must be satisfied a borrower is not experiencing financial abuse.
26. Amend section 130 of the *National Consumer Credit Protection Act 2009 (Cth)* to include an express requirement that the lender must independently verify the requirements and objectives of all borrowers.
27. Update ASIC Regulatory Guide 209 Credit licensing: Responsible lending conduct to reflect above suggested changes.
28. Introduce a general anti-avoidance penalty provision into the *National Consumer Credit Protection Act 2009 (Cth)*.
29. ASIC to provide industry guidance on the appropriateness of business purpose declarations, reinforce the necessity of making reasonable enquiries about the purpose of the credit, and investigate repeat instances of credit providers inducing borrowers to sign business purpose declarations inappropriately.
30. Repeal regulation 23 of the *National Consumer Credit Protection Regulations 2010 (Cth)* to remove the 'point of sale' exemption.
31. Extend the 'best interests' requirements which apply under Part 3-5A of the *National Consumer Credit Protection Act 2009 (Cth)* to brokers generally.
32. Implement the recommended amendments to the *Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024* from the EARG Response to the consultation on Buy Now Pay Later regulatory reforms (April 2024) and the forthcoming joint consumer submission to the Senate Economics Legislation Committee.
33. Amend APS 220 to clarify that financial institutions can approve longer term hardship arrangements, where appropriate, to assist victim survivors of financial abuse and align with the expected timeframe of any concurrent family law proceedings.
34. Amend the *National Consumer Credit Protection Act 2009 (Cth)* or make permanent ASIC's 'no action position' to allow banks to suppress comprehensive credit reporting

information hardship arrangements where this constitutes a safety risk to a victim survivor of DFV.

35. Implement customer-based reporting instead of account-based reporting.
36. Amend the credit reporting framework to ensure it provides flexibility to not list or to correct past credit reporting information, especially for victim survivors of DFV.
37. Include in the credit reporting framework a mechanism for splitting joint accounts in discrete financial abuse situations when the credit provider and the individual agree it is the best option.
38. In the Credit Reporting Code, specify that DFV is considered "circumstances beyond the individual's control" for default information to be delisted and include a direction that information should be corrected or removed in situations where a debt was waied rather than repaid.
39. Establish a streamlined bulk correction process for DFV cases that can be undertaken by a credit reporting body on behalf of the credit provider and a victim-survivor of DFV.
40. Allow for a customisable timeframe for the credit ban protections in DFV cases.
41. Impose a positive obligation on credit providers to inform a victim survivor of the options available if there are circumstances of DFV.
42. The Australian Retail Credit Association should develop a best practice financial abuse guideline for credit reporting bodies and credit providers.
43. Amend the *Privacy Act 1988* (Cth) with a specific note that circumstances like family violence and homelessness constitute a serious threat to the life, health and safety of an individual.
44. ASIC and the OAIC jointly develop guidance on the application of the Australian Privacy Principles (including, as needed, model contract clauses) to disclosure of account information to non-customers in circumstances of family violence.
45. Amend the *Privacy Act 1988* (Cth) to remove the current exemption for small businesses based on turnover.
46. Amend section 588H(4) of the *Corporations Act 2001 (Cth)* to expand the defence to specifically recognise family violence as a reason why a director may not have taken part in managing a company.
47. Develop an ASIC vulnerability framework, including clear and transparent processes for responding to matters involving family violence and financial abuse and appropriate family violence training of relevant staff within a dedicated team.
48. Develop ASIC internal guidelines regarding how ASIC applies its discretion to prosecute officeholders for breaches of directors' duties in circumstances of financial abuse and coercive control.
49. Develop regulatory guidance clarifying that, where victim survivors have incurred liabilities or breached their directors' duties as dummy directors, ASIC and liquidators should instead pursue the perpetrator as a shadow director or de facto director.
50. Remove the fees associated with obtaining ASIC company extracts (current and historical) and personal name searches (current and historical), including amending the *Corporations (Fees) Regulations 2001 (Cth)* as necessary to remove the legal obligation for ASIC to charge fees for these products.
51. Display a list of offices held by an individual (eg director, shareholder) in real time in their MyGov account. This would bring awareness to victim survivors who have been made officeholders without their consent and give them an opportunity to correct he ASIC business registers before they incur further financial and taxation consequences.
52. ASIC publish information on ASIC website and Company Director communications on what to do if someone has been made a director without consent, the process for

resolution and contact details for Legal and Financial Counselling assistance and support services. This information should be provided to Registered Insolvency Practitioners and ATO.

53. Fund specialist small business support services in each state and territory to assist victim survivors of financial abuse in consumer and business contexts, and a national service for specialised complex case support.
54. Amend section 10A of the Bankruptcy Regulations 2021 (Cth) to increase the minimum threshold for bankruptcy from $10,000 to $50,000 immediately, with no transition period.
55. Extend the timeframe to respond to a bankruptcy notice from 21 days to 60 days (or a minimum of 45 days).
56. Remove a bankrupt person's listing from the NPII two years after the date their bankruptcy is discharged.
57. Remove a bankrupt person's listing from the NPII 28 days after the date their bankruptcy is annulled.
58. Do not list on the NPII any creditor's petitions which have been dismissed by the Federal Court of Australia.
59. Modernise the General Insurance Code of Practice and the *Insurance Contracts Act 1984 (Cth)* to increase the financial safety of victim survivors of family violence.
60. Define domestic and family violence and financial abuse.
61. Define 'vulnerable insured' including those experiencing domestic and family violence, to make clear the 'duty of utmost good faith'.
62. Require insurers to include a link to their family violence policy and claims handling procedure in their Key Facts Sheet.
63. Include an obligation that retail policies contain a 'Conduct of Others' clause.
64. Include the 'prescribed wording' of the 'Conduct of Others' clause to ensure consistency, clarity, and compliance across the industry and to further clarify the meaning and expectations of 'support measures'.
65. Introduce a provision that will enable 'joint policies' to become 'composite policies' on advice of the couple separating.
66. Enable an 'insured person' to cancel a life insurance policy held by a person they fear.
67. Insurers should require consent of all parties to an insurance policy before changes can be made unless such disclosure of changes would jeopardise the safety of a victim survivor.
68. Insurers should maintain a victim survivor's 'no-claim' status when the claim relates only to the action of the perpetrator.
69. Where a person has an interest in insured property, but due to family violence the insured won't make a claim or it is not safe for the victim survivor to ask the insured to make a claim, there should be a process whereby the victim survivor beneficiary is entitled to make a claim with the relevant insurer without involving the perpetrator.
70. Where a perpetrator has not disclosed or has misrepresented something to the insurer, an insurance policy should be treated as composite (i.e. the interests of the parties are separated) so that the victim survivor does not lose the benefit of the policy Where the victim survivor is unaware of the non-disclosure or misrepresentation, the insurer should pay out the victim survivor's interest in the property where it is otherwise a valid claim.
71. If a policy has been varied or cancelled by a perpetrator for their benefit and to the disadvantage of the victim-survivor or without their knowledge, taking into consideration what is reasonable, the insurer should reinstate or back-date a victim-survivr's interest in the policy.

72. Require insurers to introduce terms and conditions that make it clear that insurance polices and claim processes are not to be used for financial abuse.
73. All general insurers are required to have a family violence policy. They should ensure this is best practice and comply with and implement that policy. They should also routinely evaluate their culture of supporting customers experiencing DFV.
74. Implement minimum member service standards requiring funds to prevent, identify, and respond to financial abuse consistently and in line with best practice.
75. Amend sections 10 and 10A of the *Superannuation Industry (Supervision) Act 1993 (Cth)* to allow trustees to consider financial abuse circumstances when determining claimed beneficiaries' eligibility.
76. Update AFCA's approach document on super death benefit complaints to outline how it determines whether a trustee's decision on death benefit distribution was 'fair and reasonable in all the circumstances' in the presence of financial abuse.
77. Ensure that super death benefit claim evidence requirements for victim survivors are in line with best practice and accommodate consumer vulnerability.
78. Waive the financial dependence cohabitation requirement in section 10A of the *Superannuation Industry (Supervision) Act 1993 (Cth)* in cases of DFV, as is the case when physical, intellectual, or psychiatric disability is present.
79. A broad-based review of the super death benefit distribution system is needed to fully examine its adequacy and whether it is fit-for-purpose.
80. Amend the *Family Law Act 1975 (Cth)* to allow a bankrupt spouse or de facto to have standing to seek orders in relation to vested bankruptcy property.
81. Establish a working group to research and examine how debts arising in the context of intimate partner violence are enforced by financial institutions and the intersection with the *Family Law Act 1975 (Cth)*. The working group should comprise financial institutions and experts from the community sector.
82. Consult on amendments to the *Family Law Act 1975 (Cth)* to expand the ambit of what the Federal Circuit and Family Court of Australia can do in circumstances of financial abuse where the total debt of the parties exceeds the value of the assets.
83. Amend section 269-35 of the *Taxation Administration Act 1953 (Cth)* to explicitly include coercive control as a valid defence to a Director Penalty Notice, for example, *"because of illness, coercive control, or for some other good reason…"*.
84. Amend the *Taxation Administration Act 1953 (Cth)* to allow the ATO discretion to provide tax relief to victim survivors of financial abuse experiencing serious financial hardship.
85. Amend the *Taxation Administration Act 1953 (Cth)* to remove the offsetting of tax refunds against tax liabilities where the liabilities were incurred due to financial abuse and/or the taxpayer is experiencing financial hardship.
86. Develop ATO internal guidelines regarding how the Commissioner of Taxation exercises their discretion not to pursue taxpayers for tax liabilities incurred in circumstances of financial abuse.
87. The ATO and Treasury should conduct a consultation on the design and operation of the existing regulatory regime and consider designing a regime in Australia modelled on the US 'innocent spouse relief' provisions.
88. The ATO should pause any enforcement of tax liability (including interest and penalties) while proceedings are on foot in the Federal Circuit and Family Court of Australia, for example, by the Administrative Appeals Tribunal or Administrative Review Tribunal being given the power to grant the stay of a tax debt for victim survivors and stay the issue or execution of a Director Penalty Notice.
89. The ATO should be given the discretion to release a victim survivor from tax liability where the Federal Circuit and Family Court of Australia makes an order (either by

consent or otherwise) indemnifying them in relation to the tax liability. This would enable the ATO to instead only pursue the perpetrator for the tax liability.

90. Amend the ATO's Proof of Record Ownership (PORO) process to permit financial counsellors to provide their National Registration Number as an acceptable form of identification when contacting the ATO on behalf of clients.
91. Develop an ATO vulnerability framework, including clear and transparent processes for responding to matters involving family violence and financial abuse and appropriate family violence training of relevant staff within a dedicated team.
92. Accept referrals to the ATO vulnerability team directly from financial counsellors, community workers and advocates, relying on their professional assessment of the client's vulnerability.
93. Implement the recommendations from Women's Legal Services Australia's 2024 report Non-Payment of Child Support as Economic Abuse: A Literature Review.
94. Implement the recommendations from Economic Justice Australia's submission to this Inquiry.
95. Review government systems to reduce opportunities for systems abuse.
96. Establish a Financial Abuse Taskforce to implement the legislative reform, policy and program recommendations from this inquiry.
97. States and Territories should also establish a taskforce, for example via the Council of Australian Governments, to implement recommendations in relation to fines, vehicle registration, local council debt collection and strata debt collection.
98. Develop and implement financial abuse policies across all government departments and agencies with mechanisms for information sharing and collaboration to reduce systems abuse.
99. Provide additional funding for coordinators of the National EARG to provide ongoing expertise to government, regulators and financial services on the implementation of recommendations from this Inquiry.
100. Fund coordinator roles in each state and territory to support reform work by state and territory governments from this Inquiry.
101. Fund EARG to develop a mapping project and a financial abuse report card for Australia.
102. Increase funding to DFV services around Australia.
103. Fund holistic specialist financial abuse services in each state and territory.