



11 July 2022

Department of Communities and Justice
Statutory Review of the *Victims Rights and Support Act 2013*

By email: policy@justice.nsw.gov.au

To whom it may concern,

Statutory Review of the *Victims Rights and Support Act 2013*

Thank you for the opportunity to provide input to the Statutory Review of the Victims Rights and Support Act 2013 (“the Act”). Our input is narrowly focused on responses to economic abuse based on casework experience.

We endorse the submission provided by Women’s Legal Service NSW and we endorse the submission provided by Redfern Legal Centre (RLC). We also endorse the Joint Position Statement – the case for removing the requirement to separately prove injury in NSW Victims Support applications.

The Economic Abuse Reference Group (EARG) NSW recognises the importance of the NSW Victims Support Scheme in providing much needed support for victim-survivors to recover from trauma, violence and abuse. This support includes counselling, financial assistance for immediate needs, financial assistance for economic loss and recognition payments. When the Scheme is working well, victim-survivors comment on the importance of having their experiences validated and recognised which helps in their recovery. However, there are many barriers to victim-survivors accessing Victims Support in NSW.

EARG NSW also recognises that DFV does not occur in a vacuum and that changes made to the Victims Support Scheme can have broader impacts that need consideration, such as how it would interact with the family law system, migration law and social security. It may also have policy and practice implications for services that support victim survivors such as utility companies and the banking industry.

EARG NSW members are also of the view that economic or financial abuse should be recognised as a form of DFV. However, we believe in order to achieve better outcomes for victim survivors, there needs to be a robust, thorough consultation, education for all sectors and sustainable funding.

Some of our members have also made individual submissions to this inquiry covering issues relevant to their broader work in DFV.

Economic Abuse Reference Group

The EARG is an informal group of community organisations which work collectively to influence government and industry responses to reduce the financial impact of family violence. Members include DFV services, community legal services and financial counselling services, and we involve other organisations in our work where relevant.

This submission was prepared with input from New South Wales members and contributors to the EARG. Some of our members have experience (as lawyers or financial counsellors) providing assistance to clients who have experienced coercive controlling behaviours and in particular economic abuse. See more details about EARG members and contributors below at Appendix 1.

Economic Abuse

Economic abuse, also described as financial abuse, is a form of family, domestic and sexual violence. It has significant and devastating impacts at an individual, community and societal level. Economic abuse can take various forms, including accruing debt or other liabilities in the other person's name, not contributing to joint loans, controlling all finances, not making shared financial decisions, withholding necessities, preventing someone from obtaining or remaining in employment, and stopping someone from accessing education or a means to become financially independent.

Around 85% of women who access DFV services in Australia say that they have experienced some level of financial abuse as part of the coercive control in their relationship.¹ Economic abuse can occur alongside other forms of abuse such as physical, emotional and sexual violence.

A recent study into the prevalence of economic abuse between intimate partners demonstrated that 11.5% of Australians had experienced it and that women experience it at higher rates (15.7%) than men (7.1%). The gender differences are important because it is well understood that family, domestic and sexual violence is gendered, and that women are the majority of victims and experience more severe consequences.²

Debts are a common factor in a victim survivor remaining in or returning to an abusive relationship. A victim survivor can experience the financial impact long after the relationship has ended.

The below real story is archetypal of the complex, intersecting and diverse issues people face when experiencing economic abuse and coercive control, and some of the system challenges they face in relation to the Victims Support Scheme.

Sandra's Story

Sandra is an Aboriginal woman who lives in remote NSW. She is a long-term victim of domestic violence at the hands of her ex-partner. She was in and out of a relationship with her abusive ex-partner for several decades, and experienced domestic violence including financial abuse, where her ex-partner controlled finances in the relationship and she had to ask for money for basic necessities. She suffered sexual violence in the relationship. On one of the occasions her ex-partner sexually assaulted her, she responded and was wrongly charged

¹ <https://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0/>

² Kutin, J, Russell, R and Reid, M 2017, 'Economic abuse between intimate partners in Australia: Prevalence, health status, disability and financial stress', *Australian and New Zealand Journal of Public Health*, vol. 41, no. 3, pp. 269-274.

and found guilty of the offence, which led to a Victims Restitution Order being made against her.

Due to the complex feelings of shame and the trauma of what she had gone through as well as systemic issues faced by Aboriginal and Torres Strait Islander people, Sandra did not disclose to the police at the time that her ex-partner had sexually assaulted her. She continues to carry shame about her experience of sexual assault and has to date not disclosed this to her family.

For similar reasons, Sandra did not challenge the Victims Restitution Order as she was not in a position to seek or obtain legal advice about her options at the time. In the 20 years since, she had been paying off the debt through Work and Development Orders, and has paid off approximately half of the total debt, however she found it increasingly difficult to participate in her Work and Development Orders due to her challenging personal circumstances.

Sandra was in significant financial hardship and this was compounded by living in a remote area. When she tried to leave the relationship, her ex-partner would find her and bring her back. As well as stalking her, he also limited her access to economic opportunities and independence including her access to a car.

One of the member organisations of EARG NSW is assisting Sandra to request that Revenue NSW write off the outstanding balance of her Victims Restitution Order so that she can move forward without this decades-old debt hanging over her head.

**Name has been changed for privacy*

This case study clearly indicates the impact that the Victims Support Scheme can have on someone experiencing DFV, particularly where a victim survivor has been misidentified and charged as a perpetrator, and how Victims Restitution Orders can further compound and perpetuate financial abuse.

It is not uncommon for victim survivors of DFV to have outstanding restitution debts arising in similar circumstances. If they seek support under the Victims Support Scheme at the time of leaving an abusive relationship, or afterwards, they face the risk that any Victims Support payments they receive will be used to offset or pay off their restitution debt. Some victim survivors decide not to apply for Victims Support for this reason, denying them access to much-needed financial support.

Victims Support payments – including Immediate Needs payments and financial assistance for economic loss – are intended to help victim survivors to meet their immediate needs in escaping or recovering from an abusive relationship. It is inappropriate for these payments to be redirected to pay off an existing order of restitution, particularly as that order may be historic and related to a different relationship. It is also inappropriate for recognition payments to be redirected to pay off restitution orders or any other debts, given they are intended to acknowledge a victim survivor's traumatic experience.

Victim survivors should be notified of any outstanding restitution orders at the time of lodging a new Victims Support application, and should be able to make an informed choice as to whether they use any successful payments to pay off their debt. They should also be notified of whether their restitution order has been transferred to Revenue NSW, and given information about Work and Development Order programs and other opportunities to reduce their debt, including applying for a write-off.

The EARG NSW recommends:

- 1. Payments under the Victims Support Scheme cannot be used to offset outstanding Restitution Orders without informed consent from the applicant.**
- 2. If an applicant has an outstanding Restitution Order, that they be notified at the time of making an application for Victims Support. Victims Services should also**

advise as to whether that debt has been transferred to Revenue NSW and provide information about Work and Development Order programs available so the applicant has the opportunity to reduce any debts by that scheme.

3. Uniformity of processes within Victims Services and Revenue NSW about debt collection.

Comments on Victims Support Scheme as it relates to economic abuse

Economic abuse should be included in the definition of domestic violence in NSW

Economic abuse is not considered by the *Crimes (Personal and Domestic Violence) Act 2007* (NSW).³ All other state jurisdictions in Australia have a definition for DFV that includes forms of abuse such as emotional, psychological, coercive or financial abuse.

We are of the view that economic abuse should be specifically recognised and defined in law and policy in NSW. We also think the definition should be harmonised, as economic abuse does not occur in a vacuum and will have impacts across other legislative instruments both at a state and Federal level, including the Victims Support Scheme.

We refer to the recommendations contained in the Australian Law Reform Commission's Final Report 'Family Violence – A National Legal Response' which recommended family violence definitions include economic abuse, to adopt consistent definitions across jurisdictions as well as within the Family Law Act.⁴ EARG NSW suggests the Committee consider the recommendations made in the ALRC's report as discussed above in relation to harmonisation of family violence definitions across jurisdictions.⁵

Ongoing reform work required and further consultation

Education, prevention and other mechanisms have the ability to address economic abuse without the blunt force of the law. This would make redress more accessible for the wider community, would lead to broader cultural change around how we as a community understand economic abuse and DFV, and represent a more holistic approach to a serious and devastating social problem.

Any changes to the Victims Support Scheme in NSW should be accompanied by education and training to support better understanding by both the police, judiciary, and the DFV sector, including financial counsellors, as well as industry.

As highlighted in other submissions, EARG NSW emphasises the importance of robust consultation. It is important to ensure proper consultation in this review to hear about the experiences of priority populations, including First Nations people as demonstrated by our case study, refugee and migrant communities including people on temporary visas experiencing violence, people with disability, LGBTIQ+ communities, people who are homeless, people with lived experience of prison, people in regional, rural and remote areas, older people and younger people, and the services supporting priority populations, to have input into proposed solutions and be consulted on proposed solutions. This includes ensuring

³ Barwick, K., McGorrery, P., and McMahan, M. (2020) 'Ahead of Their Time? The Offences of Economic and Emotional Abuse in Tasmania, Australia' in Marilyn McMahan and Paul McGorrery (eds) *Criminalising Coercive Control: Family Violence and the Criminal Law* Springer, 135, 155.

⁴ Australian Law Reform Commission (2010) *Family Violence – A National Legal Response* (ALRC Report 114), available at <https://www.alrc.gov.au/publication/family-violence-a-national-legal-response-alrc-report-114/> see recommendations 5, 6 and 7.

⁵ Australian Law Reform Commission (2010) *Family Violence – A National Legal Response* (ALRC Report 114), available at <https://www.alrc.gov.au/publication/family-violence-a-national-legal-response-alrc-report-114/> see recommendations 5, 6 and 7.

that voices of people with lived experience are included in policy and law reform changes in NSW.

Conclusion

Thank you for the opportunity to provide comments on this review. We would welcome the opportunity to discuss this further. Please contact Gayatri Nair at nsw@earg.org.au to arrange a meeting with EARG NSW.

Yours Sincerely,

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Appendix 1

The Economic Abuse Reference Group is an informal group of community organisations which influences government and industry responses to the financial impact of DFV. Our members include family violence services, community legal services and financial counselling services.

Initially established to consider recommendations of the Royal Commission into Family Violence in Victoria, EARG has input to national issues such as banking and insurance. The Victorian and New South Wales chapters have input to state issues (for example energy, tenancy and fines).

Not all organisations contribute on every issue – and other organisations may contribute from time to time.

Organisations which contribute to EARG NSW work include:

- Care Financial Counselling Service & Consumer Law Centre (ACT)
- Centre for Women's Economic Safety
- Domestic Violence NSW
- Financial Counsellors Association of NSW
- Financial Rights Legal Centre (NSW)
- Good Shepherd Youth and Family Services Australia & New Zealand
- Justice Connect
- Legal Aid NSW
- Northern Rivers Community Legal Centre
- Redfern Legal Centre's Financial Abuse Service NSW
- Women's Legal Service NSW