

1 October 2015

Dr. Ron Ben-David  
Chairman  
Energy Hardship Review  
Essential Service Commission  
Level 37, 2 Lonsdale St  
**MELBOURNE 3000**

Dear Dr. Ben-David

Women's Legal Service Victoria has welcomed your report *Supporting Customers, Avoiding Labels* in relation to hardship processes for energy consumers. We also welcome the opportunity to provide our feedback.

As you may be aware the majority of the clients we see within our Stepping Stones project are family violence victims. In our research report, *Legal Barriers to Economic Equality after Family Violence*, we have discussed the issues these women were faced with obtaining access to hardship assistance and the lack of understanding of energy companies. Whilst these women may only make up a small percentage of hardship cases, it is essential that hardship departments have the capacity to make informed decisions when dealing with the effects of family violence. I also reiterate my previous comments for the need to establish "Who is a customer" when receiving calls from women who whilst living in the property are trying to deal with bills that were established in the name of their violent perpetrator.

I have attached a copy of our report and ask that you read the section dedicated to utility and telecommunication services to get a better understanding of the issues.

I would be happy to discuss any details with you.

Yours faithfully



**Donna Letchford**  
**Financial Counsellor**

# STEPPING STONES: LEGAL BARRIERS TO ECONOMIC EQUALITY AFTER FAMILY VIOLENCE

REPORT ON THE STEPPING STONES PROJECT BY EMMA SMALLWOOD  
Women's Legal Service Victoria, September 2015



Project partners



Suggested citation

Smallwood, E. (2015) Stepping Stones: Legal barriers to economic equality after family violence, Women's Legal Service Victoria, Melbourne.

Funded by



## Acknowledgements

### Women

First and foremost, we thank and acknowledge the women who shared their stories, expertise and lived experience with us. Without them, this report would not have been possible.

### Funders

Women's Legal Service Victoria (WLSV) thanks the Victorian Legal Services Board for their generosity in funding this project.

We also thank the Australian Unity Foundation for their generosity in providing funding to continue the provision of financial counselling at WLSV until June 2016.

### Partners

We thank our project partners, Camcare and Financial and Consumer Rights Council, who provided invaluable insight into the role of financial counselling in assisting our clients with the complex legal and financial issues that follow family violence.

In particular, we acknowledge our financial counsellor, Donna Letchford, for her outstanding advocacy on behalf of WLSV clients over the past 18 months, and her role in piloting a new model of service for women.

We thank the community organisations who assisted in recruiting research participants for this project and those who participated in our community survey. In particular, we thank Women with Disabilities Victoria for their support of the research.

### Volunteers

We thank the law student volunteers at WLSV who assisted with hours of transcribing. Thank you to our volunteer research assistants, Alyssa Duncan and Anja Wiersing.

### Advisors

The recommendations were developed through consultation with expert members of the Stepping Stones Steering Group:

- Peter Gartlan, Executive Officer, Financial and Consumer Rights Council
- Professor Belinda Felhberg, Melbourne Law School, The University of Melbourne
- Dr Lixia Qu, Senior Research Fellow, Australian Institute of Family Studies
- Dr Chris Atmore, Senior Policy Advisor, Federation of Community Legal Centres
- Jillian Williams, Director of Legal Practice, Consumer Action Law Centre

We are grateful for their invaluable time, knowledge and experience.

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## EXECUTIVE SUMMARY

**Women’s Legal Service Victoria has observed that there are legal and economic problems arising from family violence which result in serious financial hardship for women and, at present, there are no accessible legal remedies to these problems.**

We have researched the problems in the *Stepping Stones* project. This report contains the findings of the project and recommendations for solutions.

In interviews with women, we explored the consequences of family violence on women’s financial circumstances. We specifically directed our attention to systemic barriers women faced in their economic recovery. Common themes emerged from the interviews including:

- A lack of police understanding of the financial consequences arising from family violence, and a lack of police action in stopping economic abuse.
- The conditions included in intervention orders of the Magistrates’ Court are largely unhelpful in preventing economic abuse.
- Women who are victims of family violence often have to flee their home; this has serious financial implications and there is a major shortage of available housing for women.
- Service providers such as energy retailers, telecommunication services and banks have low awareness of the difficulties faced by women experiencing family violence and are unhelpful when interacting with these customers.
- The energy, telecommunications and banking industries insist on their right to enforce joint debts, even in circumstances of family violence. This places women and their financial recovery at risk.
- Women have little knowledge of their legal and financial rights following violence and separation. This lack of knowledge can result in women staying in unsafe relationships.
- Women who are involved in family law proceedings to resolve financial issues experience a lengthy and stressful process, and achieve outcomes that are often inequitable.

- Many women choose not to pursue financial settlements after relationship breakdown because of the particular barriers created by family violence. This causes further financial disadvantage for women.
- Perpetrators use joint debt to continue to perpetrate violence against women and there is no legal recourse to sever the joint liability.

Although there are legal mechanisms available to address some of the problems women encounter, women’s access to these mechanisms is hindered. There is potential to make better use of intervention orders in dealing with some of the debt and small property issues that arise. There are also existing mechanisms in the family law jurisdiction that could better assist women. Improving the accessibility of available legal remedies for family violence victims is key to economic equality.

During our research it became clear that reform to: family law, the family violence legal system and the regulation of energy, telecommunications and credit is needed. This law and regulation reform needs to be coupled with the adoption of better policies by industry and government departments which:

- recognise family violence
- formally recognise intervention orders or family law orders that seek to address abusive behaviour, and
- provide training to staff on the nature and impacts of family violence, including economic abuse.

Implementing these system-wide changes will remove the financial and legal barriers to women achieving economic independence after family violence.

## CONTEXT

### Jennifer's story: The snowballing effects of economic gender inequity

*"Women and children always fear the worst, men can go off and get another job. You don't even have to worry about having to buy a shirt. Half the time they're given the one type of pants, or a shirt, and can get a job. They've got a great network with their own men. But women, you know, even the jobs we go for, we have to be really highly qualified, plus we have to have more money to work, daycare in particular costs a fortune, you're working for nothing.*

*You know, for us to actually break through, to get my job, I have to have a degree and two diplomas. I've worked for years and I'm not on equal pay still.*

*The nurturers ... we look after our elderly, we look after the kids. The men, they drop us with a heap of kids, and off they go. They can rebuild a life. But women, they're trying to do so many things and rebuild themselves.*

*So it takes a long time to get back to where you were. I was investing in my marriage, like, in my home, as the homemaker and the wife, and I thought that that was going to last me forever. When I was helping my daughter [at school] ... I volunteered for 11 years. People would say, 'Oh I'm sorry I work at the bank' and off they go. I think back now, was it really worth me doing 11 years of volunteering with them? They have got bloody 11 years of superannuation..." (Jennifer)*

Jennifer left an abusive relationship after many years. She left with nothing except a car in poor condition. She did not pursue a property settlement and received none of the assets of the marriage. Jennifer survived in financial hardship, with her child, for several years after separation, couch surfing until she was able to find stable employment and rental accommodation.

Jennifer has experienced the amplified impact that inequitable access to employment, housing, childcare, superannuation, equal wages and a property settlement can have for a woman fleeing family violence.

### Economic gender inequality

In 2015, women in Australia are still at significantly higher risk of poverty than men. Women have fewer assets, employment opportunities and continue to be predominantly responsible for unpaid caring roles. Single mothers are at the greatest risk of poverty.

Women retire with 45% less superannuation and are at significant risk of having no superannuation at retirement age.<sup>1</sup> The gender pay gap is widening. It is greater now than it was in 1985.<sup>2</sup> In addition, certain groups of women experience entrenched and intersectional economic disadvantage and discrimination to a greater degree than other women.

### Gender bias in financial hardship following separation

Research demonstrates that women are more likely to experience financial difficulties after they separate, with 60% of women suffering some form of financial hardship within 12 months of their divorce.<sup>3</sup> Women experience a greater long-term decline in income than men following separation and women experience a greater reliance on government benefits.<sup>4</sup>

Additionally, research conducted on the impact of family violence on family law property settlement outcomes found that women who reported physical abuse received disadvantageous financial outcomes. Victims of violence were three times more likely than those who did not report abuse to receive less than 40 per cent of the property.<sup>5</sup>

### Family violence

Women are victims of family violence, including physical or sexual violence from a current or former partner, at significantly higher rates than men.<sup>6</sup> Australian women continue to be killed by their current

1 UPR Coordinating Committee, *Australia's 2015 UPR – NGO Coalition Fact Sheet 9* (4 August 2015) Australian Lawyers For Human Rights, <<http://hrhc.org.au/wp-content/uploads/2015/07/9+Final+Gender+Equality+Fact+Sheet.pdf>>.

2 The Diversity Council of Australia, *IWD 2015 - Are Australia's working women heading back to the future?* (5 March 2015) <<http://www.dca.org.au/News/News/IWD-2015---Are-Australia%E2%80%99s-working-women-heading-back-to-the-future-/456>>.

3 David de Vaus, Matthew Gray, Lixia Qu and David Stanton, 'The Economic Consequences of Divorce in Australia' (2014) 28 *International Journal of Law, Policy and The Family* 28.

4 David de Vaus, Matthew Gray, Lixia Qu and David Stanton, 'The effect of relationship breakdown on income and social exclusion' in Peter Saunders, Roy Sainsbury and Peter A. Kemp (eds), *Social Security, Poverty and Social Exclusion in Rich and Poorer Countries* (Intersentia Uitgevers, 2009)

5 Grania Sheehan and Bruce Smyth, 'Spousal violence and post-separation family law outcomes' (2000) 14(2) *Australian Journal of Family Law* 102.

6 Australian Bureau of Statistics, *906.0 - Personal Safety, Australia, 2012* (11 December 2013) <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0>>.

or former partners at alarmingly high rates.<sup>7</sup> Family violence compounds other gender inequalities and is a significant contributor to other social issues including homelessness for women and children. Family violence is both a cause and a consequence of gender inequality.

### Financial hardship is a consequence of family violence

Research which informed the *National Plan to Reduce Violence* indicates that domestic violence is the most common factor contributing to homelessness among women and their children,<sup>8</sup> and victims of family violence are more likely to experience financial difficulties or hardship as a result of the violent relationship.<sup>9</sup>

For the women we have assisted as a part of the *Stepping Stones* project, the negative financial consequences of family violence included:

- having to leave a job to enter refuge
- being left with a large joint debt to pay off after a perpetrator has been imprisoned
- needing to take time off to attend numerous court dates, which had an impact on employment.

Financial hardship and inability to gain financial independence is a key factor influencing a woman's decision or ability to leave, stay or return to an abusive relationship.<sup>10</sup> Economic impacts of family violence impede a woman's ability to survive on a day-to-day basis and obtain safety.

The financial impacts of family violence are inextricably linked to the physical and emotional impacts of family violence. Women in our research spoke of the

emotional toll of an abuser evading child support payments, of being required to pay for the debt of their perpetrators and the injustice they feel in facing bankruptcy because of the actions of their abuser. In many cases, the psychological impacts were more significant for women than the financial restrictions.

### What is economic abuse?

Economic abuse is a form of family violence that often occurs with other forms of violence. Economic abuse involves behaviours that constrain a women's ability to "acquire, use and maintain economic resources, thus threatening her economic security and potential for self-sufficiency."<sup>11</sup>

The research indicates that economic abuse is widespread, poorly understood and often unrecognised, even by those who experience it.<sup>12</sup>

Community awareness of economic abuse has not necessarily grown to the same degree that it has in regard to other types of family violence.<sup>13</sup>

Economic abuse research suggests four broad categories of behaviours:

- interfering with education or employment
- controlling access to economic resources
- refusing to contribute, and
- generating economic cost (or debt).<sup>14</sup>

Women in our research described controlling and humiliating behaviours that fell into each of these four categories. Forms of economic abuse often intersected or overlapped, and also intersected with non-economic forms of violence.

7 ANROWS, *Violence against women: Key statistics* (14 May 2014) Australia's National Research Organisation for Women's Safety Limited <<http://www.anrows.org.au/publications/fast-facts/violence-against-women-key-statistics>>.

8 The National Council to Reduce Violence against Women and their Children, *Background Paper to Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009-2021* (March 2009) 44 <[https://www.dss.gov.au/sites/default/files/documents/05\\_2012/background\\_paper\\_to\\_time\\_for\\_action.pdf](https://www.dss.gov.au/sites/default/files/documents/05_2012/background_paper_to_time_for_action.pdf)>.

9 Ibid.

10 Fiona Macdonald, 'Spotlight on Economic Abuse: a Literature and Policy Review' (Report, Good Shepherd Youth & Family Service and Kildonan Uniting Care, 2012).

11 Adrienne Adams, Cris Sullivan, Deborah Bybee and Megan Greeson, 'Development of the Scale of Economic Abuse' (2008) 14(5) *Violence Against Women* 563.

12 See, Prue Cameron, 'Relationship Problems and Money: Women talk about financial abuse' (Report, Wire Women's Information, 2014); Macdonald, above n 10.

13 A 2009 Vichealth survey of community attitudes found that 25% of survey respondents did not believe 'controlling a partner by denying them money' was a form of domestic violence from VicHealth, *Australians' Attitudes to Violence Against Women* (17 September 2014) <<https://www.vichealth.vic.gov.au/media-and-resources/publications/national-community-attitudes-towards-violence-against-women-survey-2009>>.

14 Nicola Sharp, 'What's yours is mine': the different forms of economic abuse and its impact on women and children experiencing domestic violence' (Report, Refuge, 2008).

### Controlling access to economic resources

*“When I did my grocery shopping, he’d see the receipt ... He wanted me to return a packet of chips because I didn’t get them on sale.” (Angela)*

*“Even if I wanted to buy a loaf of bread I’d have to justify it ... and then [he would] time me. Time me to get to the shop and back and if he thought I took too long or that I was doing something else.” (Natalie)*

*“Finally he agreed ... I went to pay for it and my credit card wasn’t there ... he set me up ... it was humiliating. Not only that, but his response to that was ‘I needed to teach you a lesson.’” (Angela)*

### Interfering with education or employment

*“He kept trying to accuse me, ‘you’re only trying to get educated so you can leave me.’” (Jennifer)*

*“He wouldn’t give me any money, he wouldn’t let me go to English classes or driving lessons.” (Mina)*

### Refusing to contribute

*“I had to provide the money for him for cigarettes and alcohol, and by doing that, I affected the mortgage, the bills. I would get attacked and threatened with knives, my clothes were ripped off me. I was pinned to the corner of the kitchen with the kitchen table just to get my ATM card off me.” (Georgia)*

*“I was working two jobs to pay for the areas he’d affected and things he’d done, and he was threatening me that he wanted the money for himself, even though he worked himself and was earning more money than me, more money than I did, and didn’t pay for mortgage, bills or anything.” (Georgia)*

### Generating cost or debt

*“He revealed all the consequences from all these financial commitments, and said, ‘you lose your job, and later when you want to buy anything on finance, no way. You got a bad record.’ Then I got frightened ... when he spelt all that out. It started off that night with no sleep, following morning, go to work, can’t concentrate.” (Fern)*

*“I said, ‘don’t, please, don’t do it, because we need to make the payment or we’ll default on the credit card’ and he did. He went to the shops ... said they needed some cigarettes, twenty dollars, and they ran down the street laughing, and I said please don’t do*

*it, but they did. They defaulted on the credit card and smoked the entire pack of cigarettes that whole day in front of me, laughing in my face ... I said, ‘I needed that money to pay it off ... What’s going to happen now?’ And he goes, ‘you pay for it.’” (Georgia)*

### Is economic abuse defined by the law?

Economic abuse is recognised as a form of family violence in most Australian jurisdictions including Victoria.<sup>15</sup> The *Family Violence Protection Act 2008* (Vic) (Family Violence Protection Act) defines economic abuse as behaviour that is:

*“... coercive, deceptive or unreasonably controls another person without [their] consent in a way that denies [that] person the economic or financial autonomy they would have had but for that behaviour; or by withholding or threatening to withhold the financial support necessary for meeting the reasonable living expenses of [that] person or [their] child, if the person is entirely or predominately dependent on the first person for financial support to meet those living expenses.”<sup>16</sup>*

The practical reality is that economic abuse is a subtle form of violence that is hard to identify. The social attitudes that prevail in relation to household finances and gender roles make it particularly hard for women to identify economic abuse.<sup>17</sup>

*“People might go oh its only money, but it’s not the money, it’s that control.” (Angela)*

Recent research regarding economic abuse has described the continuum of relationships ranging from healthy to financially controlling.<sup>18</sup> There is a grey area that makes defining economic abuse challenging.

<sup>15</sup> In 2012 the definition of family violence was broadened under the *Family Law Act 1975* (Cth) to include economic abuse. In addition, economic abuse is recognised in family violence legislation in various states and territories, including: *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s 8(5); *Family Violence Act 2004* (Tas) ss 7-8, *Domestic and Family Violence Act 2007* (NT) ss5 and 8.

<sup>16</sup> *Family Violence Protection Act 2008* (Vic) s6.

<sup>17</sup> See, Macdonald, above n 10; Cameron, above n 12.

<sup>18</sup> Owen Camilleri, Tanya Corrie, and Shorna Moore, ‘Restoring Financial Safety: Legal Responses to Economic Abuse’ (Report, Good Shepherd Australia New Zealand and Wyndham Legal Service, 2015) 17.

# SNAPSHOT OF FINDINGS AND RECOMMENDATIONS

Family violence as a cause of poverty



Victims of family violence are **three times more likely to receive a minority share** of the assets of the relationship



Family violence is the most common factor contributing to **homelessness** among women and their children

A national public information campaign to **RAISE AWARENESS** OF ECONOMIC ABUSE AND THE ECONOMIC IMPACTS OF FAMILY VIOLENCE IS REQUIRED

The Stepping Stones project has been able to **assist over**

**170** women

WITH REDUCING THEIR COLLECTIVE DEBT BY OVER

**\$250,000**

Stepping Stones project making a difference



**25%** of the women

we have assisted during this project, **HAD A DEBT THAT WAS ACCRUED BY AN ABUSIVE PARTNER AGAINST THEIR WISHES** without their knowledge, without understanding or as a result of coercion



Women's experiences of family violence and economic abuse are **BEING IGNORED AND EXACERBATED** by banks, utility and telecommunication companies

Industry needs to be part of the solution



Banks, utility and telecommunication companies must **develop industry guidelines** that cover cases of family violence and joint debt in order to protect women from further violence



A national response



A state-wide response



The family law jurisdiction must **be more accessible** to those in financial hardship and experiencing family violence

On average, women in our research



**WAITED 3 YEARS**

from the start of negotiations to reaching a final property settlement.

The **Family Law Act** must change to require a **Court to consider family violence** when determining a property division

**INCREASED FUNDING**



to the legal assistance sector is **NEEDED URGENTLY**

The **DEFINITION of economic abuse**

in the Family Violence Protection Act should be **EXPANDED**

a new specialist family violence financial counselling program **embedding financial counsellors in family violence services** is required

# SUMMARY OF RECOMMENDATIONS

## Reform to utility and telecommunication service providers

- 1 The Essential Services Commission and the Australian Communications and Media Authority develop industry guidelines that cover cases of family violence and joint debt.  
These guidelines should require providers to consider:
  - releasing a woman from liability for joint debts where the liability arose out of family violence
  - amending contract details for joint accounts on provision of a family violence protection order (or other evidence of family violence)
  - splitting joint debts and pursuing the parties separately in circumstances of family violence.
- 2 The Essential Services Commission and the Australian Communications and Media Authority develop industry guidelines requiring financial hardship policies of service providers to be publicly available and include family violence (and economic abuse specifically) as a potential cause of financial hardship.
- 3 The Essential Services Commission and the Australian Communications and Media Authority develop industry requirements for comprehensive and ongoing training of customer service staff to assist them to identify customers experiencing family violence and financial hardship.

## Reform to banking and lending

- 4 The Australian Banker's Association develop industry guidelines that cover cases of family violence and joint debt.  
These guidelines should require banks to:
  - release a woman from liability for joint debts where she can establish the liability arose out of family violence
  - amend contract details for joint accounts on provision of a family violence protection order (or other evidence of family violence)
  - split joint debts where the apportionment does not diminish the lender's practical prospect of recovery of the debt and where there is:
    - agreement between the parties (debtors), or
    - court order made under s90AE of the Family Law Act.
- 5 The Australian Banker's Association develop industry guidelines requiring financial hardship policies of banks to be publicly available and include family violence (and economic abuse specifically) as a potential cause of financial hardship.
- 6 The Australian Banker's Association develop industry requirements for comprehensive and ongoing training of customer service staff to assist them to identify customers experiencing family violence (and financial hardship) and provide an appropriate response.
- 7 The Australian Banker's Association develop an industry guideline that helps customer service staff identify women experiencing family violence who may be entering a loan agreement which gives them no benefit, is not fully understood by them, or is entered under duress.

## Reform to the family law system

- 8 The Federal Government amend the Family Law Act; specifically requiring a Court to consider family violence when determining a property division, in accordance with the Family Law Council's 2001 advice to the Attorney General.
- 9 The Federal Government amend the Family Law Act to include provisions restricting personal cross-examination by those alleged to have used violence, in accordance with the Productivity Commission's 2012 recommendations to the Federal Government.
- 10 The Australian Law Reform Commission review the suitability of current family law enforcement mechanisms.
- 11 The National Judicial College of Australia ensure that judicial education for Federal Circuit Court and Family Court judges include modules to strengthen understanding of:
  - the intersection of family violence and family law, particularly in property determinations
  - the financial impacts of family violence
  - the nature and impacts of economic abuse.The above topics are considered for inclusion in the development of the National Family Violence Bench Book.
- 12 The Federal Government amend the Family Law Act to include a requirement for an early resolution process in small claim property matters. This process should be a case management process upon application to the Court for a property settlement rather than a pre-filing requirement.
- 13 The Federal Government introduce of a unique process for small claim property matters to be dealt with quickly and fairly.
- 14 The Federal Government conduct a comprehensive audit of the Family Court and the Federal Circuit Court with a view to increasing accessibility of the family law system. Such a review should specifically look at:
  - the application requirements and form of evidence currently required by the Court to determine a small property division
  - the adequacy of current disclosure mechanisms to allow the Court to obtain the necessary financial information required to make a just and equitable property division
  - the current fees charged by the Family Court and the Federal Circuit Court

## Reform to the family violence legal system

- 15** The Victorian Government broaden the definition of economic abuse set out in the Family Violence Protection Act to more accurately reflect the range of behaviours that make up economic abuse. The definition of economic abuse should include, at least, the following additional categories:
- refusing to contribute (particularly to jointly held debts), and
  - generating economic cost or debt for the victim.
- The examples of economic abuse listed in the Act should also be expanded.
- 
- 16** The Magistrates' Court of Victoria develop additional intervention order conditions dealing with economic abuse. These additional clauses should be listed on an intervention order application and in the standard Courtlink conditions available to Magistrates. They should also be included in the "sample conditions" section of the Family Violence Bench Book at part 2.2.3.1.
- 
- 17** The Judicial College of Victoria and the Law Institute of Victoria engage specialist organisations working with women experiencing financial hardship and family violence to design and deliver professional development for judicial officers, court staff and lawyers on the nature and impact of economic abuse in the family violence and family law jurisdictions.
- 
- 18** The Magistrates' Court of Victoria commission research into systems abuse as a form of family violence.
- 
- 19** Victoria Police implement strategies to improve practice in enforcement of intervention orders as they relate to property conditions.
- 
- 20** The Victorian Government create a specialist team to assist women in enforcing property conditions of an intervention order. The team could be located within:
- a. Victoria Police; the Protective Services Unit (PSU), or
  - b. Civic Compliance; Sheriff's Operations.
- 
- 21** Victoria Police introduce requirements for comprehensive and ongoing training for all officers on the nature and impacts of family violence and in particular economic abuse.
- 
- 22** Victoria Police amend the Code of Practice for the Investigation of Family Violence to include practical examples which will assist police officers in identifying instances of economic abuse.

## Reform to the victims of crime assistance (VOCA) system

- 23 The Department of Justice and Regulation Victoria undertake a comprehensive review of the Victims of Crime Assistance jurisdiction examining the accessibility of the jurisdiction for victims of family violence.

## Greater availability of information

- 24 The Federal Government develop and deliver a public information campaign to raise awareness of economic abuse and the economic impacts of family violence. The campaign should include a website and a booklet for women. The information booklet should provide women with key legal and financial information to help reduce the economic impacts of family violence.

The Federal Government ensure the information booklet is translated into multiple languages and is widely available including at:

- every Centrelink office (and on the Centrelink website)
- every Police Station
- Hospitals and Doctor's offices'

## Greater availability of services

- 25 The Victorian Government fund a specialist family violence financial counselling qualification and training program.

The Financial and Consumer Rights Council develop the training in consultation with family violence services.

- 26 The Victorian Government fund the roll-out of a new specialist family violence financial counselling program across Victoria.

Financial counsellors to be embedded in existing family violence services and work collaboratively with other professionals to assist women.

- 27 The Federal Government and Victorian Government increase funding to the legal assistance sector including:

- Funding for additional specialist family lawyers at community legal centres to increase access to small claim property settlements for victims of family violence.
- Funding for additional lawyers specialising in family violence available at all Victorian Magistrates' Courts to assist women with the range of legal issues that result from family violence.

## ABOUT WOMEN'S LEGAL SERVICE VICTORIA

**Women's Legal Service Victoria is a statewide service that provides free legal advice and representation to women with legal problems arising from violence against women and relationship breakdown.**

With limited resources, we assist women who experience particularly severe barriers in accessing justice and conduct cases where the issues are systemic and likely to affect other women.

Our lawyers are highly skilled in the areas of family violence law (intervention order matters) and family law (children and property matters).

We believe there must be an acknowledgement that women face greater barriers in the legal system if they belong to specific groups including:

- Aboriginal and Torres Strait Islander women
- women who are newly arrived in Australia and on temporary visas
- women from diverse cultural and linguistic backgrounds
- women in regional and rural communities
- women with disabilities
- women experiencing homelessness.

Entrenched and intersectional discrimination must be named and recognised as a determinate of inequitable outcomes. In our service delivery, and in this research, we focus on women experiencing entrenched disadvantage. We do this to highlight the specific systemic barriers they face. We acknowledge that there is no satisfactory term that can capture the diversity of their experiences nor should we assume that these women form a homogenous group.

We place the experience of women from these groups at the centre of our investigation and recommendations for reform in this report because:

- these women are our clients and through our relationship with them we witness the significant systemic barriers they encounter, and
- a system that is easy to access for the women experiencing the most barriers will be a system that is accessible to all.

# THE STEPPING STONES PROJECT

## What is the Stepping Stones Project?

The *Stepping Stones* project provides free legal advice and financial counselling to women experiencing family violence and financial hardship. Our financial counsellor and lawyers work together to provide a holistic and responsive service. This model of assistance for victims of family violence is the first of its kind. Services commenced in June 2014 and current funding for the project will cease in June 2016.

Through this project, we provide advice and information to assist women navigating the financial and legal systems. We also provide ongoing legal representation and financial counselling advocacy for women experiencing significant barriers, and where specialised advocacy is likely to have the most impact.

We have developed advocacy strategies to prompt courts, financial institutions and government departments to consider the circumstances of a family violence victim when they are making decisions that will impact the victim's economic wellbeing.

The project has had high rates of success by employing this type of individual advocacy. We would like to see these practices implemented for all family violence victims, eventually removing the need for this kind of specialised advocacy.

Therefore, in addition to delivering services, we have undertaken this research to highlight the systemic barriers that must be removed for women to obtain economic equality.

## Why was the project needed?

The project arose from our inability to provide options for regaining economic security to vulnerable women fleeing family violence, given the present legal and financial systems.

We observed that clients were excluded from obtaining, for example:

- fair property settlement
- fair arrangements with their utility provider to ensure the power stayed on, or
- fair agreement with their bank allowing them to remain in their home.

We noticed the failure of all aspects of the legal system (in which we work) to recognise the impact of family violence on financial stability, and a corresponding lack of recognition in the policies and processes of many financial institutions, government departments and service providers.

There was no recognition of the ability of the perpetrator to use poverty (or the threat of poverty) to control a victim. When this abuse was combined with our client's limited income and assets, women were restricted in their ability to regain economic security, or in some cases even to flee family violence.

For these reasons we commenced the *Stepping Stones* project.

### Women left in debt

Most of the women assisted by the *Stepping Stones* project have left a violent relationship with debt. Of the women we have assisted during the project, 43% were dealing with joint debts, and 85% were dealing with debts in their sole name.

Of these women, 25% had a debt that was accrued by an abusive partner against their wishes, without their knowledge, without understanding or under duress.

Many women entered into loan contracts because of the perpetrator's poor credit record and his subsequent inability to obtain finance. In some cases, an abusive partner claimed they were unable to enter the loan contract because of a poor credit record, forcing their partner to become solely responsible for the debt, only for this to be later revealed as untrue.

The outcomes we have been able to obtain for women as a result of individual advocacy have been variable, often depending on the level of understanding of family violence by the creditor.

To date, around 25% of women involved in the project were able to fully resolve their debt, 45% of women were able to partially resolve their debt, and 15% of women were unable to resolve their debt issues despite advocacy by a financial counsellor and/or family lawyer.<sup>19</sup> Many issues that are unresolved or yet to be fully resolved are due to the complexity of the financial issues the women are facing. One such complication is; who is responsible for paying a joint debt after separation? Unless a woman is willing to assume responsibility for an entire joint debt, the splitting of joint debts can be very problematic.

### The impact of the project

The *Stepping Stones* project has been able to assist over 170 women in reducing their collective debt by over \$250,000. We have been able to assist women obtain property settlements including access to superannuation, a small amount of home equity to enable them to re-establish themselves, or access to a car.

We have assisted women in securing child support payments, spousal maintenance payments to meet basic living expenses and to enter into sustainable agreements to meet liabilities. We have assisted women to obtain victims of crime assistance payments and to assist them with budgeting and paying bills.

### Co-location reduces stress

Many of the women who have been assisted by the *Stepping Stones* project would not have had access to a financial counsellor otherwise. When women are seeking legal advice it is often because they are in crisis. Having a financial counsellor employed by our service means that women get access to a crucial service earlier and without having to contact an additional organisation.

Women going through family violence have to juggle so many government agencies, jurisdictions and professionals, and the burden is entirely on them to manage it. The model of a co-located financial counsellor and lawyer has meant that women do not have to tell their story more than once. It also provides several different solutions and perspectives on the same issue.

The co-location model means that women can receive advice on both legal and financial options, make informed decisions and eliminate the necessity of communicating the decisions to multiple professionals. It is a genuinely holistic model.

<sup>19</sup> The remaining 15% of matters and some of the partially resolved issues are still being negotiated.

# METHODOLOGY

Primarily this research employed a feminist participatory action research methodology. Many, but not all, participants received information, advice or advocacy from our service in addition to participating in this research.

Women in the research were advised at the outset that their insights, knowledge and experiences were being collected with the aim of creating social change, particularly law reform.

Interviews were conducted in a semi-structured way to encourage women to tell their story in the way that felt most comfortable to them. The researcher was conscious of creating an environment of solidarity in which women could discuss the systemic issues they faced.

## Aims

The aims of this research are to:

- provide an accurate account of women's experience of the legal and financial systems after experiencing family violence
- uncover systemic barriers to women obtaining economic well-being after family violence and in particular economic abuse
- develop systemic reform recommendations that will help women recover from economic hardship after family violence.

## Methods

The project used two methods of data-gathering:

- qualitative interviews with 30 women experiencing family violence
- online survey of workers in the sector.

## The interviews

Transcripts of the interviews were subjected to a thematic analysis. The data was read and manually coded. The thematic analysis was conducted by the principal researcher as well as a volunteer research assistant. Themes were identified by each and then compared and discussed.

This report uses direct quotes and case studies to highlight the themes that emerged from the interview transcripts.

Each participant was allocated a pseudonym so their story and quotes remain connected throughout the report. Any details that could be used to identify the women who participated have been changed.

Interviews were semi-structured and conducted in a setting where women were comfortable including homes, community centres, cafes and our office. Some interviews were also conducted over the phone. In total, 17 interviews were conducted over the phone and 13 were conducted in person.

Interpreters were provided where required (approximately 10% of interviews). The interviews ranged from approximately 15 minutes in duration to 2 hours.

The semi-structured interview questions were developed (Appendix B) in consultation with the project steering group. The questions were modified as the research progressed to incorporate the experiences of the women who participated. We sought to balance the need for consistency in the treatment of topics with the need to follow relevant trajectories.

The interview style was informed by the way each woman felt most comfortable in telling her story. Some interviews relied more heavily on the interview questions and others formed more of a conversation.

All participants received a \$30 gift voucher. All interviews were audio-recorded and transcribed for analysis. Participants were provided with a copy of the transcript of their interview.

### The survey

The secondary set of data was gathered through a survey sent to 100 community organisations who regularly assist women experiencing family violence and financial hardship. Forty surveys were completed by community sector workers.

Survey questions were developed (Appendix C) to reflect the major issues that surfaced from thematic analysis of the interview transcripts. The survey sought to identify, in the view of service providers, the prevalence of the issues identified.

The surveys served to validate interview findings and further inform this report. This research is qualitative. The findings cannot be extrapolated to quantitative findings. There is yet to be any large-scale quantitative research conducted on the legal and economic barriers women encounter after family violence, or the prevalence and impact of economic abuse.

Such quantitative research would provide a valuable contribution to the evidence on this subject.

### Recruiting participants

The interview participants were recruited principally through the service delivery component of the *Stepping Stones* project. There was no requirement to participate in research in order to receive services.

Participants were provided with a plain language information sheet, and signed a consent form (Appendix A) prior to participating. Participants were also recruited through community organisations that advocate for women experiencing family violence.

### About the participants

Of the interview participants, 30% had been or were at risk of homelessness, 20% are women with disabilities, 23% speak English as a second language, 6% were newly arrived in Australia (in the last five years) and on temporary visas; and 17% live in rural or regional Victoria.

We were unable to recruit any Aboriginal or Torres Strait Islander women to participate in this research. This is a significant limitation of our findings.

All participants had experienced family violence and financial hardship.

Women were from a range of age groups, cultural backgrounds and family situations (many women had children, some had adult children and some had no children). Women's experience varied greatly in terms of time since separation, whether family violence was still occurring and whether they were still experiencing financial hardship.

# FINDINGS

We make findings on eight broad themes that emerged from our interviews with women. The themes are:

Theme	Page
Reform to utility and telecommunication service providers	20
Reform to banking and lending	27
Reform to the family law system	35
Reform to the family violence legal system	48
Reform to the victims of crime assistance (VOCA) system	55
Greater availability of information	58
Greater availability of services	62
Other barriers to economic equality following family violence	66

## REFORM TO UTILITY AND TELECOMMUNICATION SERVICE PROVIDERS

**Victims of family violence face a range of issues regarding essential services including water, electricity, gas, internet and telephone.**

Women in our research predominantly reported problems with utility (gas and electricity) providers. There were also some women who had issues with telecommunication providers (i.e., phone, internet and mobile phone contacts). Issues regarding connection to water did not feature prominently in the research.

The pressing issue in relation to essential services is that of joint accounts.

When joint accounts go into arrears or debt, women are left holding the debt. Women leave a violent relationship, but the debt follows them. The perpetrator then uses the joint account or debt to continue to perpetrate violence against the woman. At present, there is no legal recourse to sever the joint liability.

Women also face a number of issues due largely to service providers failing to recognise family violence and economic abuse. Recognition of family violence by service providers (and in industry codes) is vital to remedying the issues.

### Joint accounts and debts

Joint accounts or joint debts are common during a relationship; for example, the electricity account is often taken out in the names of both parties. Both parties are legally responsible for this debt and can be pursued separately for the entire amount.

In our research, women revealed that utility companies can take a rigid approach when applying this legal principle. This approach often resulted in an unfair outcome.

Participants reported various problems which arose out of the utility companies' approach to joint debts after separation. These include:

- utility providers *solely pursuing women* for the whole amount of a joint debt
- women having difficulty *removing themselves from joint accounts* without the consent of the other party

- women being unable to *establish hardship arrangements or payment plans* for outstanding joint debts without the consent of the other party.

### Being pursued for the full amount of joint debt

Under the legislative framework and relevant common law, joint account holders are jointly and individually liable for outstanding debt. If a victim leaves an abusive partner, she may be pursued for the full amount of the outstanding joint debt.<sup>20</sup> In our research, this was a common experience. Of the workers surveyed, 82% had observed women being chased for the full amount of a joint utility debt after family violence.

### Vanessa's story

Vanessa contacted her energy service provider to explain her circumstances and that she had left the home fleeing violence. The service provider was initially understanding of the position she was in and put the joint debt "on hold". Vanessa entered difficult negotiations with her ex-partner who agreed to assume liability for the bill. However, Vanessa's ex-partner did not transfer the joint account into his sole name despite remaining in the home. The service provider ultimately pursued Vanessa for the joint debt, which had substantially increased, and referred the matter to a debt collector:

*"AGL initially, they were, you know, they were understanding of it ... [But] I've been separated from him for ... three years, and I go to the letterbox and I open the bills and there's a \$2,500 bill. Like, what's going on? I paid my electricity bill last week which was \$400, why? What's going on? And when they looked into it they said to me, 'this is from [address of former family home] ... I said 'oh my god, what else hasn't he paid?'" (Vanessa)*

This approach by utility providers is within the law and regulations. However, for a woman fleeing family violence and suffering financial hardship, it results in a manifestly unfair outcome.

<sup>20</sup> CUAC, 'Helping Not Hinder: Uncovering Domestic Violence & Utility' (Report, Consumer Utilities Advocacy Centre, 2014) 17.

There are currently no industry guidelines requiring the energy provider to:

- consider releasing a woman from liability for joint debts where the liability arises from family violence
- amend contract details for joint accounts on provision of a family violence protection order (or other evidence of family violence), or
- split joint debts and pursue parties separately in circumstances of family violence.

#### Being unable to change contract details without consent

Participants in our research reported they were told by telecommunication and utility providers that they were unable to resolve joint account issues without the consent of the perpetrator of violence. This meant they were required to place themselves in danger by approaching the abuser to obtain the required consent.

*“It was basically as if it was still ... part of my life and he was, yeah, it was disempowering to say the very least, especially when I had to face him and discuss these issues, made impossibly harder by the utility companies ... Negotiating with them and needing his permission and because of the situation. It was very hard.”* (Jacqui)

*“Well, the big problem was – to get him off. Take for instance the phone bill ... I’d say to him I need to put the phone in my name – [the company says] I can’t [without his consent] ... because of the Privacy Act.”* (Margaret)

#### Being unable to establish hardship arrangements without consent

The contract changes women were requesting were generally not changes that would have put the other party in an inferior position in relation to the debt. In fact, in many cases, the woman was willing to assume liability for the entire joint debt simply so she could avoid dealing with her abuser or avoid getting a negative credit rating.

However, even in these cases, women were unable to enter into hardship agreements or payment plans with energy providers without the perpetrator’s consent. Energy providers generally cited privacy obligations when receiving a request to amend joint account details without consent.

There is a need for an industry code that enables victims of family violence to amend contract details for joint accounts upon the provision of evidence of family violence (e.g., family violence intervention order). Maria’s story illustrates the need.

#### Maria’s story

Maria’s partner finally left the home after multiple police call-outs, leaving her with two small children after ten years of marriage. Maria’s partner left damage to the rental home after punching holes in the walls, a joint debt after draining a personal loan and multiple unpaid utility bills.

With her ex-partner’s wages now gone, and Centrelink as her only income, Maria was experiencing financial hardship. Maria’s attempts to manage the utility bills of around \$1,000 were thwarted by energy providers refusing to allow her to deal with the debts.

Most of the bills were in joint names, but where Maria’s ex-partner was the main account holder Maria could enquire but it was very hard for her to do anything with the debt.

*“Just because I didn’t have, like, the actual authority to change anything or ... I tried to put things in my name initially. I tried to. I was trying to put obviously my health, my concession card on everything, but that wasn’t allowed. So that was, that was probably my initial thing that I found really, really hard to, you know, just to get in there ... I had to get him to sign numerous things which took a good three months even just to locate him.”* (Maria)

In our survey, 77% of workers had observed women experiencing difficulty in removing their names from joint accounts following family violence, and 72% had observed that women were unable to enter into a hardship agreement or payment plan in relation to a joint account.

#### A practical approach is required in cases of joint accounts and debts

The legislative position, which does not contemplate circumstances arising from family violence, when combined with the unhelpful policy position taken by the utility and telecommunications companies, results in an untenable situation for family violence victims. Women are unable to sever the financial relationship with their abuser and take control of their finances.

We propose that industry codes, as well as utility and telecommunications company policies, are introduced to resolve these matters in a practical and mutually beneficial way that enables women to regain economic well-being and avoid poverty.

Such a policy decision would require companies refrain from insisting on the principle of joint and several liability in order to pursue women solely. At present, women are being solely pursued where there is no commercial benefit to the company in doing so, or where it results in dire unfairness for women.

In some cases, companies should instead be waiving a woman's obligation in relation to the debt and pursuing the abusive partner. In other cases, an agreement should be reached to split the debt between the parties.

It would also mean adopting a practical approach to amending contract details in family violence cases including removing a woman's name from a joint account and opening a new account in her sole name. This change by telecommunication and utility companies would have significant benefits for women experiencing family violence and financial hardship.

### Deficiencies in family violence policies and understanding

Women in the research reported a lack of empathy and understanding of family violence by service providers.

*"You sort of feel they don't believe you." (Chloe)*

As a result of this lack of understanding, and without any formal processes in place to deal with family violence cases, women faced a range of barriers when dealing with energy and telecommunication providers. The lack of empathy could leave women demoralised. The lack of awareness of family violence could also result in the service provider acting in contravention of the relevant laws, regulations or industry guidelines, causing particularly traumatic impacts.

Such wrongful or inappropriate behaviour on the part of the service providers included:

- disconnecting services to the home for a joint account where the victim did not consent to the

disconnection (and failing to provide compensation)

- pressuring women into paying accounts in the perpetrator's sole name
- failing to provide information on hardship policies
- failing to provide information on utility relief grants

### Expanding policies and making them publicly available

Financial hardship policies which specifically recognise family violence and economic abuse are essential. While most service providers have general financial hardship policies, the policies do not specifically recognise family violence and economic abuse, nor are the policies disseminated publicly.

The lack of public hardship policies was of concern for women dealing with energy and telecommunication companies.

*"They all have hardship programs. Eventually, yeah, I could, I could get into that. It's a completely different department and I think ... they give you a three month, four month something or other where you, you discuss what you can pay. And for me it was \$50 a fortnight I think. Um, but it doesn't get you anywhere. Meanwhile the bills are still accumulating. So once that period ends then you're like, hang on a minute." (Maria)*

*"I've only just been able to access my super and pay everything off just before Christmas, so February until then ... the numerous phone calls, the brick walls that you get, um, and then yeah, like, I don't, like, necessarily want to get on the phone and say look this has happened and you tell them the whole situation, but I got so angry that I ended up doing it ... many of the companies, you know, they just wouldn't really do anything for you and then you just, I thought look I'm going to be completely honest with you, this is the situation and then, I think maybe they were slightly more sympathetic after that so it probably is worth doing that." (Maria)*

Financial hardship policies should be publicly available and include family violence (and economic abuse specifically) as a potential cause of financial hardship. Improved training for customer service staff in identifying family violence would also assist in women accessing hardship programs and agreements.

### When an abuser has essential services shut off

In several cases in our research, women reported that a perpetrator was successful in having essential services shut off for properties in which the women and their children lived. This is in stark comparison to the situation of women who were unable to close utility accounts in their ex-partner's name, or to enter into payment plans.

Many of the women were joint account holders, thus, the accounts should not have been closed without their consent. Of the workers we surveyed, 73% had observed women having services shut off by an abusive partner while the woman remained in the home.

*"[After separation] he would start taking things away of ... monetary value. He shut off the gas and electricity ... it was a cold day and we still remember it ... My lawyer reported it and the gas company turned around and said we are at fault, we weren't supposed to do that, we were only supposed to get his name off but keep you on. Just all these excuses. They didn't charge me to get reconnected. I was meant to be compensated but I was never compensated."* (Angela)

Where the energy account is in joint names it is improper for the service provider to stop supply to the home without the consent of the other party. When this did occur, it was difficult for women to have the connection fee waived or receive proper compensation despite the provider being at fault.

### Molly's story

Molly was subject to years of abuse by her ex-partner Liam. Liam was eventually forced to leave Molly's home; however, he refused to pay the debts which had accumulated while he was living with Molly. Molly approached her energy company to request assistance and to advise them that Liam was no longer living with her and should be removed from the joint account.

Liam subsequently contacted the energy company requesting that the power be disconnected. Liam was successful in having the power to Molly's house cut off. When the power was disconnected, Molly contacted the energy company. Molly was informed by the energy provider that she was required to pay a reconnection fee in order to have the power put back on. Molly

experienced a lack of empathy and understanding from the utility company and sought financial counselling and advocacy from WLSV to have the reconnection fee waived.

### Nadia's story

Nadia's abusive partner was excluded from the home by an intervention order after kicking her with steel-capped boots, threatening to kill her and gambling all of their joint funds. After being excluded by an intervention order he cancelled all the utility accounts in his sole name. Nadia then needed to reconnect all the services and pay the reconnection fees.

*"I stayed there [with a friend] for a couple of days and then we went to court and ... the judge evicted him from the house and I was able to go in the house. But what he did is he cut off the electricity, the gas, everything."*

Despite Nadia advising the companies the disconnection was a form of economic abuse, they refused to waive the connection fees.

*"I have to connect everything again. And I have the bill."* (Nadia)

### Being chased for debts in another's name

Women also experienced being pressured to pay accounts in the perpetrator's name before they could open an account in their own name.

*"I had to wait until his phone was disconnected till I could get mine. And of course he hadn't paid the original bill. So the bill keeps on ticking over – it's \$2,500 – because you [Margret's abusive partner] didn't disconnect it... didn't originally pay it. He said well, 'you've got to pay it'. I'm going to be paying it forever."* (Margaret)

*"I [paid utility bills in his name because] I think there was probably one disconnection notice ... there were letters of demand too ... I just felt like, he'd gone, I had to sort it out otherwise I wasn't going to move forward."* (Maria)

Even after closing joint accounts and having all joint utility accounts transferred into sole names, women still reported their abusers being able to have bills sent to their home. Women also reported being called by companies and debt collectors for bills in their ex-partner's sole name.

*“I’m still getting massive amounts of bills in his name, but they’re still coming here.” (Jacqui)*

*“I had a debt collector turn up, at the door, a week before last, saying, ‘well where is he?’ and he’s given my name ... We’ve been separated legally for two years, he’s putting my name and address contact details down to agencies ... he said ‘well I’ll do whatever I want and you can’t stop me.’” (Margaret)*

*“[After family violence] it’s not a time where you can afford for them to make administrative errors or be behind administrative-wise, let alone, continue to get bills and then phoning you, for your husband, especially the telecommunications people.” (Jacqui)*

Seeking payment from a woman where the debt is solely in the name of their ex-partner (or seeking to transfer the debt to their account) is prohibited. Such action by energy and telecommunications companies is in breach of the contract law; i.e., an individual cannot be held liable for the debt of another individual.

Sometimes the actions reported by women in this research did not go so far as a company seeking payment but involved contacting her (sometimes repeatedly) to discover the perpetrator’s whereabouts. This is clearly inappropriate and was upsetting for women particularly where the ex-partner had given the company the woman’s address or contact details as a form of economic abuse.

### Training for customer service staff

It would be difficult for anyone to codify all the ways a perpetrator might exploit the service providers’ lack of understanding of family violence to further abuse or control women.

There are obvious forms of economic abuse as detailed in this chapter that need to be prevented by service providers. What is more important, however, is for providers and their staff to develop an understanding of family violence and the financial impacts of violence. This will enable companies to tackle new forms of economic abuse as and when they arise.

*“[Disclosing physical and sexual violence] that was like water off a duck’s back to them.” (Jacqui)*

Companies need to deliver family violence training to staff to ensure women receive an appropriate response to a disclosure of family violence and to ensure economic abuse cannot continue unchecked.

### Dedicated family violence pathway

Utility and telecommunication companies should consider developing specific pathways and entry points for women experiencing family violence. Women in our research suggested having a dedicated family violence team within companies or having available a financial counsellor.

*“Well I believe that the utility companies could be more flexible in the plans they offer and not unrealistic. They could be understanding, I mean if you can have a self-help line for 24/7, I’m sure a massive utility provider could have possibly either a social worker or a mediator ... a financial counsellor who would mediate through you ... And [family violence] training for those people who work for utilities.” (Jacqui)*

Women also suggested that speaking to the same person and keeping notes of their file so they do not need to continually re-tell their story would have assisted them in dealing with utility companies.

*“I think part of the problem is that there’s no one person dealing with it. Um, and just the different departments, there are a lot of people that really don’t know what they’re doing. The amount of times I relayed the same [story of family violence] ... Like I just would have thought there are notes on the system and things like that.” (Maria)*

### Utility relief grants

The research revealed utility providers do not advise women of their eligibility for utility relief grants (URGs). This scheme is administered by the Department of Human Services and is designed to provide assistance to low-income households in a financial crisis who are unable to pay a utility bill. URGs can cover the cost of utility usage for up to six months, at a maximum cap of \$500.<sup>21</sup>

<sup>21</sup> CUAC, above n 20.

*“I just said, ‘Look, I’m in a situation. I’ve got a partner who is out of control ... and he’s put me in a situation where the bills are in arrears.’ And they said, ‘Okay, we’ll put you on a payment plan’ this and that, but I didn’t realise that they can financially help you [advise of utility relief grants].” (Georgia)*

In our research, women observed that, had they known of their availability sooner, these grants would have improved their financial situation in the immediate crisis and beyond. Only 8% of workers surveyed reported observing women frequently accessing URGs after family violence.

When developing a dedicated family violence pathway or policy, companies should include a requirement that women are advised they may be eligible for utility relief grants.

#### **Avoiding transfer of debts to collection agencies**

Women may not immediately contact their utility or telecommunications provider in the aftermath of family violence.

This can result in the provider closing the account and sending it to debt collectors. In our survey of sector workers, 80% had observed women’s energy, water or telephone bills being referred to debt collectors. In our interviews with women, some reported that the debt was transferred to a debt collection agency even where they were in a hardship program and making regular payments.

#### **Nadia’s story**

Nadia was trying to deal with the debts of the family home following a violent relationship. Amongst them was an electricity debt that was still with the electricity company but being collected on their behalf by a debt collection company. Nadia’s financial counsellor was in the process of negotiating the matter to have the bill paid on the finalisation of the property settlement when Nadia received a letter from another company advising that they had purchased the debt and that Nadia had received a negative mark on her credit record.

The financial counsellor then had to liaise with the new company and the electricity company to get all decisions overturned. The impact on Nadia’s credit record might have

stopped her obtaining credit for the next five years through no fault of her own.

#### **Vicki’s story**

Vicki fled family violence with her two children to a refuge. Upon moving into transitional housing, Vicki arranged for her utilities to be connected with her previous utility company. Vicki then received bills totalling \$3,800. These bills were incurred by her abusive ex-partner after she had fled the home. Vicki could not afford these bills. With the help of her social worker Vicki attempted to explain the situation to her utility provider. Vicki was not successful in having the utility company agree to waive her liability for the bills. The utility company was within their legal rights to insist on payment of the bills in Vicki’s name despite the fact she had fled terrifying violence and had not incurred the debts herself.

Vicki sought advice and received advocacy from a financial counsellor at WLSV. The counsellor attempted to deal with the problem through the hardship department but was told they could not deal with it because it was a closed account. The counsellor was referred to the collections department. This department advised that unless Vicki agreed to an unaffordable payment plan, they would refer it to a debt collection company and that this would impact her credit record. The department declined to provide alternative treatment of the debt on the grounds of Vicki’s experience of family violence.

Eventually, the financial counsellor was able to lodge a complaint with the utility provider about this treatment of financial hardship caused by family violence. The financial counsellor had the matter referred to a staff member higher up in the department and is in negotiations to resolve the issue. This course of action would not have been available to Vicki had she not received specialised financial counselling through the Stepping Stones project. It is an example of an unfair and premature threat to transfer a debt to a debt collector.

In developing any industry guideline or company policies for family violence; service providers should be required to consider family violence before referring a debt to a debt collector. Better family violence training for staff is also likely led to better outcomes for victims of violence.

## Privacy

It is essential that women who are experiencing family violence have their privacy protected by companies. No women interviewed for this research described having private information disclosed to their abuser by a company. However, 21% of the workers surveyed reported frequently observing such a disclosure of private information. It is essential that any family violence policy properly considers the privacy of customer's information in the context of safety.

## Recommendations

### Reform to utility and telecommunication service providers

- 1 The Essential Services Commission and the Australian Communications and Media Authority develop industry guidelines that cover cases of family violence and joint debt.

These guidelines should require providers to consider:

  - releasing a woman from liability for joint debts where the liability arose out of family violence
  - amending contract details for joint accounts on provision of a family violence protection order (or other evidence of family violence)
  - splitting joint debts and pursuing the parties separately in circumstances of family violence.
- 2 The Essential Services Commission and the Australian Communications and Media Authority develop industry guidelines requiring financial hardship policies of services providers to be publicly available and include family violence (and economic abuse specifically) as a potential cause of financial hardship.
- 3 The Essential Services Commission and the Australian Communications and Media Authority develop industry requirements for comprehensive and ongoing training of customer service staff to assist them to identify customers experiencing family violence and financial hardship.

## REFORM TO BANKING AND LENDING

Women in our research found dealing with banks and other lenders in relation to loans jointly held with an abusive ex-partner to be one of the most difficult issues. These joint loans included home loans, personal loans and credit card debts.

The impact of women's inability to finalise joint debt issues had significant impacts on their emotional and economic well-being.

As with utility debts, when a perpetrator of family violence used a joint loan or debt to continue to perpetrate violence, women were unable to extricate themselves from the financial relationship. This could result in continuing control, conflict and danger.

Women found banks to be inflexible in their approach to joint debts and there was often no legal remedy allowing the joint liability to be severed.

Women also faced a number of other issues with banks and lenders due to the failure to recognise family violence and economic abuse. Adding family violence guidelines to the industry code of banking practice is an important step towards addressing the issues.

### The problem of joint debts

Parties to a joint loan (debtors) are jointly and severally liable.

This means they are both responsible for the debt and the lender can pursue them each separately for the entire amount owing. One party generally is unable to alter the contract details without the other party's consent. Altering the contract details might include:

- removing their name from the liability, or
- entering into hardship agreements or payment plans.

Approximately 25% of the women provided financial counselling in the *Stepping Stones* project had a debt accrued by an abusive partner against their wishes, without their knowledge, without understanding the loan contract or as a result of coercion.

### The impact of unresolved joint debt

When a woman is unable to deal with a joint debt because the perpetrator and/or lender withholds consent to her removing her name, entering a hardship agreement or dividing the debt, she is placed in a very difficult position.

Unresolved joint debt issues can cause financial hardship. Financial hardship can mean being unable to afford essential items such as food and heating. In our survey, 87% of workers observed women having difficulty in dealing with a joint debt such as a mortgage after family violence. Of those, 61% observed the problem occurring very frequently.

Joint debt issues can result in an increase in the amount owing and can have a negative impact on a woman's financial future. Women in our study feared bankruptcy and an adverse credit rating as a result of being unable to service debts.

*“I’m worried ... I don’t want to have, like, a problem with the bank. If in the future I have to take out loans and all that, I don’t want to have a bad record with the bank. I don’t want to claim bankruptcy ... I don’t want to have to claim it because I’m not the one spending it ... I didn’t spend it.” (Ursula)*

For women with young children who wished to return to work and hoped to obtain access to credit in the future, this fear was particularly crippling and likely to impact their long-term livelihood. The financial counsellor involved in the *Stepping Stones* project noted the psychological impact of these debts on the women she assists:

*“Women don’t want to look at bankruptcy unless it is the only option; I have dealt with far less bankruptcies than I usually would. The idea of a perpetrator of family violence being able to cause a victim to go bankrupt after she has fled the family violence is extremely traumatic for women and can significantly impact a woman’s ability to recover.” (WLSV, Financial Counsellor)*

Women experienced a state of financial limbo where they had no power or legal recourse to deal with joint debts and regain financial independence. The bank provides no option to severing the joint liability and the bank often pursues the woman for the entire debt.

In some cases, through the sustained advocacy of the *Stepping Stones* project, we were able to negotiate with a creditor to waive the woman’s liability for the debt. This was not a usual occurrence, but it was an option for some women depending on the attitude of the creditor.

### **Kylie’s story**

*Kylie works casually and cares for her young child. She is a victim of family violence and obtained an intervention order when she fled the relationship. Kylie had entered into an unsecured joint loan with her ex-partner Matthew to finance a car registered in Matthew’s name. Matthew refused to make loan repayments and the credit provider pursued Kylie for the outstanding repayments. Kylie was concerned about the implications on her credit record and wanted to resolve the issue, however, any attempt to deal with the issue was met with the following response from the credit provider: “Both parties need to be involved in the process.”*

Kylie explained the nature of the family violence committed against her and the difficulty and risk to her safety in having to seek agreement from Matthew to deal with the debt.

The credit provider eventually agreed to allow Kylie to service the debt by way of a payment plan. Despite Kylie agreeing to be solely responsible for payments on the joint debt, the benefit of which Matthew was receiving, Matthew refused to sign the agreement to allow Kylie to enter the payment plan.

Following lengthy negotiations between Kylie’s financial counsellor at WLSV and the credit provider, including providing evidence of the abuse, the creditor eventually agreed to waive Kylie’s liability for the debt.

Through WLSV’s efforts in this case, the credit provider could see that the other party was using the debt to continue to perpetrate economic abuse. For that reason alone, the credit provider agreed to waive the debt to help Kylie move on with her life.

In cases such as Kylie’s where a joint debt is clearly being used to commit economic abuse the lender needs to adopt a practical and appropriate response. This might involve waiving the debt, removing the victim’s name from the liability, allowing the victim to enter into a hardship agreement or splitting the debt on agreement between the parties or family law order.

### **What happens in the case of secured joint debt?**

A secured debt is one linked to an asset such as a home that can be sold to service the debt. When a woman fleeing violence is experiencing an issue related to a secured joint debt, generally a joint home loan, getting access to the family law system is usually the barrier. The disconnect between the banking system (credit law) and the family law system leaves women in a difficult situation.

### Common secured debt scenario

Colleen is a WLSV client. Tony is Colleen's abusive ex-husband. Tony is continuing to reside in the former family home and refusing to pay the mortgage. Tony will not agree to sell the home, transfer the home (and mortgage) into his sole name or buy out his ex-partner's share. There is minimal equity in the home.

In this case, Colleen needs to obtain urgent family law orders that would enable the house to be sold and proceeds to be divided. The longer Tony remains in the home and refuses to pay the mortgage the less equity will be left to divide. Colleen may end up with an unsecured debt for which she is jointly responsible if there is a shortfall in paying off the mortgage when the house is eventually sold.

In the *Stepping Stones* project, these cases have been routine; outcomes turn on the availability and persistence of both a family lawyer and financial counsellor, the response of an abusive ex-partner and whether a lending institution is willing to acknowledge the issue and take a practical approach.

A lawyer can enter negotiations with the other party to reach a property settlement (or issue Court proceedings where required) while the financial counsellor simultaneously negotiates with the bank to halt any further penalty or action until a property settlement is obtained. The lawyer and financial counsellor work together to reach the best outcome.

Unfortunately, the pace of the family law system is often too slow for the lender. An empathic and patient response from a lender pending a family law resolution can determine whether the ultimate outcome for women is positive or negative.

### Elena's story

Elena had received an eviction notice from the bank. She was concerned she would be forced to leave the family home with her two children. She was aware that the property would have to be sold but her husband was refusing to sign any paperwork as a form of economic abuse against her. Elena's English was poor and her attempts to discuss the matter with the bank were rebuffed. The financial counsellor was able to get the bank to stay the proceedings which allowed Elena's lawyer to contact

her husband and seek to resolve the matter. Finally, Elena's ex-husband agreed to a property settlement which involved him signing the sale contract. Elena was able to get the house sold which minimised the potential bank costs for which she would have been liable.

### What happens in the case of unsecured joint debt?

An unsecured debt is one that is not (or no longer) linked to an asset. In our research, common unsecured debts included car loans (where the car has been sold) and home loans (where there is a negative balance remaining after sale of the home).

Women who are victims of family violence and dealing with unsecured joint debts are in a considerably more difficult position than those dealing with secured joint debts. This is because without agreement from their abusive ex-partner they are left with few options other than to assume responsibility for the entire joint debt. The family law system is routinely used to divide the remaining property of the parties; it is not routinely used to divide the remaining debt between the parties (where there is no property). A property settlement apportioning debt between the parties is unavailable because of the position taken by banks; refusing to split joint unsecured debts.

As in the case of secured debts, both parties remain wholly and separately liable for the full amount of the debt. There is currently little prospect of the woman being able to split an unsecured joint debt. This results in women being unable to obtain financial independence from their abuser and often results in inequitable financial outcomes for women.

The inequity is demonstrated in the following comparative example.

### SCENARIO 1: POSITIVE ASSET POOL

Sarah and Steve have two children. Joe is 3 and Jane is 5. Jane has a disability that means she requires intensive care and medical treatment. Sarah gave up her job to care for the children and provide Jane with the intensive care she requires. Steve is violent towards Sarah. The children live with Sarah and spend weekend and holiday time with Steve. There is approximately \$30,000 equity in Steve and Sarah's home

and Steve has \$60,000 in his superannuation fund. The Court decides to split the equity in the home and the superannuation, with 70% being awarded to Sarah and 30% being awarded to Steve. The Court takes into consideration Sarah's ongoing care of the children including the additional care Jane requires and Sarah's unemployment in making this determination. The home is sold, mortgage paid and remaining funds split in accordance with the Court's decision.<sup>22</sup>

### SCENARIO 2: NEGATIVE ASSET POOL

If the scenario were the same except Steve and Sarah owed \$30,000 of unsecured debt to their lender rather than having \$30,000 equity in their home, it is unlikely Sarah would receive an outcome similar to that in the case of a positive asset pool (i.e., it is unlikely she would be held responsible for a lesser portion of the debt because of her significant future needs).

Given the bank's likely opposition, the Court may not make orders that the debt be split and Steve become responsible for 70% of the debt and Sarah responsible for 30%. Instead, Sarah would remain jointly and severally liable for the whole amount. Sarah will not receive the benefit of the Court's discretion in determining she should receive 70% of the property (or alternatively only receive 30% of the debt) because the asset pool is a negative one.

If the lender in the example determined that Steve had capacity to service the loan they may agree to issue a new loan to Steve (and to Sarah) for the agreed amounts and transfer the amounts owing, ending the joint liability.

However, should the bank determine that Steve or Sarah are not in a position to service their respective amounts they may refuse to split the loan. This is a common occurrence despite the fact it does not increase the likelihood of the lender recovering the amount owing, as Sarah is not working and unable to service the loan presently.

The outcome negatively impacts Sarah in two ways:

1. she will continue to assume the burden of the entire debt despite having no ability to pay it instead of a portion of the debt;
2. she will remain financially linked to Steve. This enables Steve greater ability to commit economic abuse against Sarah. For example, if Steve elects not to make payments on the loan in order to harm Sarah, it will impact Sarah's credit record.

The impact of a perpetrator continuing to use debts to control and harm a victim cannot be underestimated.

*"And I'm still learning to cut those ties because, you know, I still get affected. Yeah, and I know people might say ... oh it's only money, but it's not the money, it's that control."* (Angela)

### Practical approach required to severing joint debts

At present, there are no industry guidelines that require a bank to consider the impact of family violence when deciding how to deal with jointly held liabilities.

The Australian Bankers' Association's Code of Banking Practice provides that:

*"If you are jointly and severally liable under a credit facility, we will allow you to terminate your liability in respect of future advances or financial accommodation on giving us written notice. This right only applies where we can terminate any obligation we have to provide further credit to any other debtor under the same credit facility."*<sup>23</sup>

*"Guidelines setting out the manner in which we will: (a) deal with applications for transfers of mortgage and consents to transfer of title pursuant to a Family Court determination or approval; and (b) otherwise enforce debts affected by a family law property settlement, are available on our website."*<sup>24</sup>

The four major banks publish guidelines which indicate how they will deal with debts affected by family law settlements. The guidelines indicate a reluctance to release joint debtors from their joint obligation where the debt is an unsecured liability.<sup>25</sup>

<sup>22</sup> This example is illustrative only and should not be taken to provide an indication of what the Court might do in such circumstances. The Court has discretion in determining division of property matters under the *Family Law Act 1975* (Cth).

<sup>23</sup> Australian Bankers' Association, 'Code of Banking Practice', (1 February 2014) 29.3 < <http://www.bankers.asn.au/industry-standards/ABAs-code-of-banking-practice>>.

<sup>24</sup> Ibid 40.

<sup>25</sup> We located family law guidelines for Westpac, ANZ, CBA and NAB during this research.

Nothing in the banks' family law guidelines required the lender to consider family violence (including economic abuse) or the practical effect of splitting the debt on the lender's ability to recover the debt.

For example, in the above scenario where Sarah is not employed and unable to service the debt, insisting on preserving the joint debt does not place the lender in a better position to recover the money owed. Even though the lender's position is not improved by insisting on the joint debt, under the current guidelines the lender would be unlikely to split the debt between the parties.

We recommend that in cases of family violence a more practical and less rigid approach to joint debt is adopted. This would require industry guidelines that enable the severing of the unsecured debts of a relationship by apportioning the remaining debt between the parties, provided the apportionment does not diminish the lender's practical prospect of recovery of the debt. The apportionment could be effected by:

- agreement between the parties (debtors), or
- court order made under s90AE of Family Law Act 1975.

Such an approach would balance the entitlements of the lenders to recover debt owed to them and enable women in financial hardship following family violence to regain their financial independence and stop any further economic abuse.

### Lack of recognition of family violence

Our research reveals there is a lack of understanding or recognition in the banking sector about the impact of family violence. Addressing this deficiency, and introducing policies specific to family violence, is much needed.

### Existing bank policies relating to family violence

Most banks have family violence policies that relate to their employees. Such policies provide support and domestic violence leave, and are welcome and valuable.

It was more difficult, however, to ascertain the assistance offered to customers experiencing family violence. ANZ provides a notably public guideline on the treatment of customers who disclose family violence indicating that:

*"Branch and customer contact centre employees are trained to respond appropriately when they become aware that a customer is affected by family violence. As a first step, we seek to ensure no undue financial stress is placed on the customer. If the customer is already experiencing financial hardship we are able to offer individually tailored assistance through our dedicated hardship program, Customer Connect."<sup>26</sup>*

The Australian Bankers' Association's Code of Banking Practice does not contain any provisions relating to the treatment of customers experiencing family violence.

### Where the debt is in the perpetrator's name only

Bank accounts and home loans in the perpetrator's name also presented a range of challenges for women in the aftermath of family violence. Women in our research experienced the following problems:

- obtaining details about the mortgage for the family home
- preventing the perpetrator from draining the bank accounts, and
- getting access to funds to survive.

In the case of home loans held in the perpetrator's name only, women had difficulty entering hardship agreements that would enable them to meet mortgage repayments and remain in the family home. Generally, women found the bank unwilling to discuss the payment of the loan, citing privacy concerns.

<sup>26</sup> ANZ, Sustainability @ ANZ (29 May 2015) Australia and New Zealand Banking Group Ltd <<http://www.anz.com/about-us/corporate-responsibility/ad/july-2015-familyviolence/>>.

### Accessing the redraw portion

Another issue arose in cases where an abusive partner accessed the redraw portion of the mortgage held in his sole name. In these cases, the woman was usually unable to obtain information about mortgage payments or default which were eroding the value of the home in which she held an equitable interest. The situation is highlighted in Nadia's story.

#### Nadia's story

Nadia sold the home she had been paying off for ten years when she married her husband so they could purchase a home together. Nadia handed over the \$150,000 profit from the sale and her husband purchased their new home. The house was bought in his sole name. Nadia trusted her husband and did not want to cause conflict by questioning him. After they moved into the new home, he started to physically assault her. It became clear to Nadia that her husband did not want her to have any control over household finances, where she went or what she did. Nadia was concerned her husband was re-drawing on the mortgage without her knowledge and gambling the proceeds. If she asked him about it she would endure verbal and physical abuse. Nadia tried to call the bank about her concerns her partner was gambling their equity, however, she was told they could not speak to her as she was not the homeowner. Eventually, it became clear that Nadia's husband had withdrawn too much of the redraw and the mortgage payments were not being met. The bank eventually forced the sale of the home and Nadia and her children were forced to leave.

### Intervention order as remedy

An intervention order that allows a victim access to the banking details, or prevents a perpetrator from engaging in economic abuse, would remedy these issues.

The intervention order would only be effective, however, where the bank agreed to recognise and enforce the terms of the intervention order. This is because the intervention order is one that binds the respondent (the abusive partner) and not the bank (a third party).

We recommend the Australian Bankers' Association introduce an industry guideline on dealing with customers experiencing family violence. The guideline should require banks to recognise and enforce family violence intervention orders. Such a policy would ensure women can remain in the home, gain vital information or funds and prevent economic abuse.

### Disclosure of family violence to trigger financial hardship procedures

Women in our research cited the difficulty of getting hardship agreements, or accessing hardship teams, when contacting their lender to advise they are unable to pay because of a change in their circumstances due to family violence.

*"They'd go through this thing, and I'd ask if there was anything else they could do, but they would say well you need to make payments. You had to find out the words to say, and then you could access that [financial hardship] service, but it was like, a secret."* (Margaret)

When women were assisted by a financial counsellor, the counsellor was able to obtain a more realistic response from the lender than women were able to get themselves.

*"I wrote them this really long, nice letter explaining everything and I don't know if they rang me or texted me and said no, sorry, we can't do that. But the financial counsellor rang them and got them down to \$10 a fortnight."* (Chloe)

Any family violence disclosure should trigger financial hardship processes. The banking sector should consider introducing specialised family violence teams to address the range of issues including financial hardship arising from family violence.

### Screening for duress and family violence

Women involved in our research, as well as women we have assisted through the *Stepping Stones* project, have entered into joint loan contracts or loan contracts in their sole name which:

- give them no benefit
- are not fully understood by them, or
- are entered under duress by their abusive partner.

*“Ask me directly, instead of talking to my husband, you know he [my husband] said yes and we have to go ahead then [with the loan in my name].” (Fern)*

Contract and credit law already regulates lender conduct in this regard. Additionally, the Code of Banking Practice has provisions that cover these matters including:

*“We will not accept you as a co-debtor under a credit facility where it is clear, on the facts known to us, that you will not receive a benefit under the facility.”*

*“We will, before signing you up as a co-debtor, take all reasonable steps to ensure that you understand that you may be liable for the full amount of the debt and what your rights are.”<sup>27</sup>*

Despite these provisions, women in our research still entered into loans from which they derived no benefit, did not want or did not understand. A lack of family violence screening meant that the pressure women were under went unnoticed.

### **Fern’s story**

Fern migrated to Australia from Cambodia eight years ago and earns the minimum wage as a cook. Fern married Guy who works as a security guard. Guy was violent, threatened her and subjected her to economic abuse. After eight months of marriage Fern sought an intervention order for protection.

During their marriage Guy controlled Fern’s finances including having her income paid into his bank account, taking out loans in her name, attempting to restrict her and make her financially dependent on him. Guy made her enter two loan contracts for vehicles totaling \$50,000. These vehicles were registered in Guy’s name but the loans were in Fern’s sole name. During the process of signing these loans Fern was not made fully aware of what the loan was nor the consequences. The loan application process was conducted in English (Fern’s English is limited) and an interpreter was not provided. Guy spoke to the lender on Fern’s behalf and the lender did not speak directly to Fern. Fern does not hold a driver’s license nor does she derive any benefit from the cars.

Fern’s story demonstrates the need for lenders to be proactively screening for situations of family violence.

### **Comparison with elder abuse**

There have been positive steps taken by the Australian Bankers’ Association to ensure banks are screening for and helping to prevent economic abuse of elders. The ABA introduced an industry guideline *Protecting vulnerable customers from potential financial abuse*<sup>28</sup> which outlines some of the warning signs and aspects of economic abuse, in particular, the increased vulnerability of older people to such abuse.

Just as banks and lenders are increasingly on notice about the risk of economic abuse to older people, banks and lenders need to be on notice about the risk of women experiencing family violence and economic abuse. We recommend the Australian Bankers’ Association introduce an industry guideline on dealing with customers experiencing family violence. The guideline should aid customer service staff to identify women experiencing family violence who may be entering a loan agreement which gives them no benefit, is not fully understood by them, or is entered under duress.

### **Staff training**

Banks and other lending organisations need to deliver family violence training to staff to ensure:

- women receive an appropriate response when disclosing family violence, and
- economic abuse does not continue unchecked.

When family violence is identified, women should have a dedicated pathway or policy regarding their treatment. The process should include holding off on any collections process.

ANZ has taken the lead in implementing such a policy as outlined in their submission to the Royal Commission into Family Violence.

*“If a customer affected by family violence is experiencing financial hardship, ANZ ensures all collections processes*

27 Australian Bankers’ Association, above n 23, 29.2-29.3.

28 Australian Bankers’ Association, *Protecting Vulnerable Customers from Potential Financial Abuse Industry Guideline* (December 2014) <<http://www.bankers.asn.au/Consumers/Financial-abuse-prevention>>.

*relating to that customer are stopped and the customer is referred to Customer Connect for hardship assistance.”<sup>29</sup>*

It is vital banks adopt family violence policies, and find practical solutions to debt issues, which:

- assist women in becoming economically independent, and
- promote economic equality.

We recommend the Australian Banker’s Association develop industry requirements for comprehensive and ongoing training of customer service staff to assist them to identify customers experiencing family violence (and financial hardship) and provide an appropriate response.

## Recommendations

### Reform to banking and lending

- 4 The Australian Banker’s Association develop industry guidelines that cover cases of family violence and joint debt.

These guidelines should require banks to:

- release a woman from liability for joint debts where she can establish the liability arose out of family violence
- amend contract details for joint accounts on provision of a family violence protection order (or other evidence of family violence)
- split joint debts where the apportionment does not diminish the lender’s practical prospect of recovery of the debt and where there is:
  - agreement between the parties (debtors), or
  - court order made under s90AE of the Family Law Act.

- 5 The Australian Banker’s Association develop industry guidelines requiring financial hardship policies of banks to be publicly available and include family violence (and economic abuse specifically) as a potential cause of financial hardship.

- 6 The Australian Banker’s Association develop industry requirements for comprehensive and ongoing training of customer service staff to assist them to identify customers experiencing family violence (and financial hardship) and provide an appropriate response.

- 7 The Australian Banker’s Association develop an industry guideline that helps customer service staff identify women experiencing family violence who may be entering a loan agreement which gives them no benefit, is not fully understood by them, or is entered under duress.

<sup>29</sup> ANZ Head of Government and Regulatory Affairs, *Submission to the Royal Commission into Family Violence*, Australia and New Zealand Banking Group Ltd (29 May 2015) <<http://www.anz.com.au/resources/9/5/95288305-137c-40b5-98d4-4d35037d2d7b/Submission-into-family-violence/>>

## REFORM TO THE FAMILY LAW SYSTEM

One of the most effective ways to improve economic equality after family violence and relationship breakdown is to ensure that property settlements are accessible to women. Accessibility involves making the family law system less formal and legalistic in small claims matters, and ensuring the system is responsive to the dynamics and impacts of family violence.

The issue of the accessibility of the family law system is extremely problematic and relates directly to women's financial hardship following family violence:

### Catherine's story

Catherine was married for 25 years. In the last 10 years of her marriage, her husband became abusive towards her. She was the primary caregiver for her three children. Her husband was often away working in another state. Catherine's husband was earning in excess of \$100,000 per year for much of their marriage. The couple had good cars, a nice home and a comfortable lifestyle.

After a particularly horrific episode of violence against her, Catherine was able to obtain an intervention order excluding her husband from the home. She did not feel safe in the home, even with the intervention order in place. She felt it was likely her husband would return and kill her, and she fled the home. Catherine was initially unable to receive social security payments or emergency housing due to three factors: (1) waiting periods, (2) a lack of housing; and (3) because she owned her home jointly with her husband.

*"I went to Centrelink. I got a social worker at Centrelink – a male social worker – at quarter to five one evening, he sat there, he kept looking at his watch, and said I'm going to have to hurry you along ... You know, we close very soon, he kept looking at his watch, and he said to me, you know, you're well presented, you're very articulate, I see you drive an [expensive car], what possibly could be wrong? You'll have to come back tomorrow or the next day because I am in a bit of a rush."*

Catherine was forced to sleep rough for months before being able to access financial support and a rental home. Catherine had no access to the joint assets of the relationship and relied on material aid to survive.

*"I would go to the hospital, but always ending back at the tent." "And yeah, it was a really, really tough time, and you can go to organisations for food and things like that, and that's fine but you've got no way of cooking anything. You can't get your clothes washed at laundromats and things because you need money. I had a car, but you couldn't get any petrol."*

*"I've never been in trouble before in my life, but ... I went to the supermarket and they were just getting the roast chickens out, you know, the freshly cooked roast chickens, and I picked up one of these roast chickens, and I've never shoplifted in my life but, and I was scared of that feeling, and I walked around that shop for 45 minutes, trying to work out how I could get this hot roast chicken outside so I could eat it. I was starving. Common sense reigned supreme, and I put the chicken down, and I just walked out."*

Catherine was entitled to a share of the assets of the marriage, and financial support from her husband who earned a considerable income. Because she was unable to obtain legal representation, or navigate the family law system on her own, she was forced into unnecessary homelessness. Being able to access the family law system to obtain interim support and financial relief would have ended her financial crisis and put her on a path to economic stability.

### Gaps in the present system

There is an opportunity to ensure the family law system is a jurisdiction that is accessible, fair and responsive to family violence and financial hardship. We would like to see a family law system that provides practical and equitable solutions for the range of legal (including financial) issues that arise as a result of family violence and relationship breakdown.

At present, the family law system deals with some of these legal issues. However, there are gaps, and these gaps particularly affect women who are victims of violence.

## Property settlement and women who experience violence

On the breakdown of a relationship, individuals divide their property between them. This is known as a property settlement.

Property settlement can be reached by:

- informal agreement between the parties
- written agreement (including a Binding Financial Agreement), or
- Court Order (either by consent or as determined by a Judge).

Most people who separate reach their property settlement by informal agreement. Recent research found only 7% (approximately) of separated parties resolved their property matter by a judicial decision.<sup>30</sup>

### Impediments to property settlement

While informal agreement is the most common form of property settlement, this is often not an option for victims of family violence. An abusive ex-partner is frequently unwilling to enter into negotiations in order to reach a property settlement or to offer a fair division of property.

Many of the survey responses we received made the point:

*“Perpetrator not willing to negotiate through to mediation. Extremely high lawyer fees to take the case to the court.”*  
(Survey participant)

*“Men refusing to cooperate and threats of violence if women initiate legal actions. Women not feeling safe at all.”*  
(Survey participant)

Women who are unable to reach an agreement with an abusive ex-partner should not be precluded from receiving the benefits a property settlement can bring. For that reason, women require easy access to Court-based property settlements.

## Effect of family violence on property settlement outcome

The limited research on this matter has established a link between family violence and poor property division outcomes. Research found that those who reported physical abuse were three times more likely to receive less than 40 per cent of the property.<sup>31</sup> It is plausible that women who fear reprisals from a violent ex-partner will accept a smaller portion of the assets than they are entitled to, or forgo their property entitlements all together. This is a theme that emerged from several of our research interviews.

*“I mean I could’ve gone for [more] ... because of my disabled son but I [agreed on less] ... because I hate confrontation and it was just too difficult.”* (Fiona)

In the survey component of our research, 90% of participants observed that women experience difficulty in obtaining a property settlement after family violence (75% observed it “very frequently”). These results were among the most definitive in our survey.

When asked about reasons for the difficulty, participants gave the following responses:

*“Feeling powerless against the abusive partner. Often feeling they have done something to cause abuse, feeling they don’t deserve entitlements for this reason.”* (Survey participant)

*“Bullying and intimidation by ex-partner. No access to money to pay for lawyer if financial abuse has been present. Inadequate knowledge of what she may be entitled to.”* (Survey participant)

### Property settlement can prevent entrenched poverty

A property settlement can bring huge material relief to women in financial hardship; it can be a crucial part of preventing entrenched poverty following family violence.

It is important to note here that a property settlement for the women involved in this research, and for many women left in financial hardship after family violence, does not usually involve being awarded a valuable asset or large amount of cash.

30 Lixia Qu, et al, ‘Post-Separation Parenting, Property and Relationship Dynamics After Five Years’ (Report, Australian Institute of Family Studies, Attorney-General’s Department, 2014).

31 Sheehan and Smyth, above n 5.

A property settlement for women involved in this research, and for our clients at WLSV generally, means:

- attempting to deal with joint debts or debts, accrued in a woman's name, which she has no capacity to repay
- dividing superannuation, where superannuation is the only asset
- obtaining an order for spousal maintenance where a woman has no income (for example, women fleeing violence on spousal visas, who are unable to receive Centrelink benefits)
- getting access to a car, furniture or a small amount of money to allow the woman to re-establish herself
- securing, in some cases, the right to remain in the home with the children.

These types of small claims go to the heart of women's capacity to survive and recover from family violence and relationship breakdown. Access to this kind of property settlement is fundamental to economic equality.

### **Karen's story**

Karen left a violent marriage after her husband assaulted her in public. A bystander called the police. Karen has a disability and retained care of her two children after separation. Karen's partner had racked up joint debts and spent most of the joint funds. Karen, experiencing financial hardship after the change in household income, moved into a caravan in a caravan park.

*"It was horrible. I had no mobility around the caravan park ... It was horrible. We lived on two-minute noodles and that was it."*

The police provided her the contact details of a family violence service and Karen contacted the service. They were hugely helpful.

*"I rang them up, and they saved me. My God, they gave me, they paid for my rent at the caravan park!"*

Karen was referred to a family lawyer and received assistance to negotiate a property settlement. After a few months, Karen received Court orders which provided her with a portion of the equity that was left in the family home, a total of \$30,000. Karen was able to use this money provide financial stability for her children.

### **The small claim situation**

Where the pool of property is small, as in Karen's case, it can be difficult to obtain a lawyer who will agree to work in exchange for a portion of the final property settlement.

In our research, where a woman was able to retain a lawyer to assist in obtaining a property settlement, she was much more likely to receive a positive outcome. None of the women we spoke to were able to secure a property settlement without legal assistance. In our survey, participants repeatedly cited the barriers that women with minimal income or assets experienced in obtaining a property settlement.

*"There is no legal aid funding for property disputes. So where there is a small amount of property which needs to be split, the parties often face no legal assistance which is hugely compounded as a problem when there is FV."* (Survey participant)

*"Not having access to funds to afford private legal fees, not enough private practitioners prepared to act and receive professional fees from proceeds of sale; Victoria Legal Aid does not do property and most Community Legal Centres do not do property."* (Survey participant)

The issue of small claims was noted in recent research by the Australian Institute of Family Studies. They found that 19% of participants left their property matters unresolved after separation, and that 58% of those who left property unresolved held less than \$40,000 worth of assets.<sup>32</sup>

Here is the conundrum. Without legal representation, the family law process is prohibitive: the kinds of documents required to be filled out, the required fees, the arguments required in a particular format, the length of the proceedings. Yet representation is unavailable for women with small claims.

### **Free legal help is limited**

The changes to Victoria Legal Aid's family law guidelines scheduled to commence in October 2015 will increase free legal help available in some property matters. Legal aid will be available for women where:

- the dispute also involves children and that dispute is covered by a legal aid grant; and

<sup>32</sup> Qu, above n, 30

- the parent is seeking to retain the family home and will receive no payment; or
- the matter involves a superannuation split and/or a pool of equity less than \$50,000 (excluding superannuation).<sup>33</sup>

The change is welcome and likely to increase economic well-being of women. However, there are many women experiencing family violence and financial hardship who will not receive the benefit of this increased access to legal assistance. Women who will miss out under the new guidelines include:

- women experiencing family violence and financial hardship who have no current dispute involving children
- women experiencing family violence and financial hardship where the total property pool exceeds \$50,000 but the woman's potential share is far less
- women experiencing family violence and financial hardship where the total property pool slightly exceeds \$50,000, and the legal fees involved in litigating against an abusive ex-partner would far exceed the amount they are likely to receive in any property settlement.

Legal aid funding for some small claim family law matters is essential. However, it is unlikely that this funding will be available to all women (even all women experiencing family violence and financial hardship) who require a settlement for a small pool of property.

It is therefore essential that the family law system becomes accessible so that women who are unable to obtain legal representation have equal access to a property settlement and the related benefits.

## Current systemic barriers

### Legalistic and complex process

The family law system is difficult to access for an average person with no legal training. The forms that need to be completed are difficult to identify and complete. Determining what evidence needs to be put to the Court is confusing. The formal legal language and process used in the family law system can be intimidating.

*"[The paperwork], it's hard. I didn't even know how to read the pieces of paper on the board of the court to tell me where to go."* (Megan)

For women fleeing violence, the stress and difficulty involved in being able to summarise the relationship history, financial situation, contribution to assets of the relationship, and any likely future needs or other considerations to be taken into account on division of the property, is compounded by the anxiety created by the likelihood of facing an abusive ex-partner in Court.

If a woman is experiencing additional barriers such as cultural or language barriers, low literacy or the ramifications of trauma, accessing the family law system is more difficult again.

*"I've got an equivalent to a year 10 education; I work in domestic services ... It's definitely not up my alley."* (Megan)

Research participants stressed how complicated the family law system was to navigate and how long the process took compared to the other legal systems or processes they engaged with.

*"I had no idea what was going on ... I didn't know legal process and everything, and it was also hard to understand the English language as well."* (Mei)

Workers who participated our survey also observed the length and difficulty involved in the family law system for women experiencing family violence and financial hardship.

*"Delays in property settlement."* (Survey participant)

*"Not having access to information about how to proceed and being overwhelmed."* (Survey participant)

<sup>33</sup> Victorian Legal Aid, *Family Law Legal Aid Services Review Final Report* (June 2015) <<https://www.legalaid.vic.gov.au/information-for-lawyers/doing-legal-aid-work/family-law-legal-aid-services-review/actions-from-review>>.

### What would make the system less legalistic and complex?

There is a strong case for introducing measures in the Federal Circuit Court to improve access to small claim property settlements. A first, crucial step to making the process less legalistic is a review of the forms, and form of evidence, currently required by the Court.

Individuals should be able to apply for a small property settlement using a single, tick-a-box style form which is written in plain English. The form should be designed to make it as easy as possible for the parties to provide the judicial officer with the information needed to make a property settlement decision.

The forms currently required are complicated and legalistic. The current forms required to commence a small property claim (and most family law applications) include a form called an *Initiating Application*. The form asks questions such as: “Have the parties entered into financial agreement or a part VIIIAB Financial Agreement under the Family Law Act 1975 or under any relevant state or territory legislation?” In addition to completing the form, an affidavit and financial statement are also required (at a minimum).

We recommend the Federal Government commission an audit of the accessibility of the family law courts. Any such audit should specifically look at the forms currently required in order to obtain a small claim property settlement.

### Delays in the family law process

Many women involved in this research experienced a delay in the family law process. On average, women in our research waited three years from the start of negotiations to reaching a final property settlement.

*“It took me nearly three years to finish my court case. It started with the Children’s Court and changed to the Family Court. It finished after three years so it was a very long process.”* (Mei)

In Loretta’s matter she waited three years to receive a property settlement involving superannuation only. She commenced negotiation for this division many years after separation.

*“Yeah, he only showed up once [to Court] ... I think it [the final amount of superannuation awarded to me] was \$12,500.”*

Delays are in part due to complicated legal processes. For example, the Court procedure for a \$12,500 superannuation split is generally the same for \$1.2M property division.

There are, also, particular tactics engaged in by an abusive ex-partner to draw out proceedings and fatigue a woman attempting to obtain a property settlement. Some of the tactics include:

- failing to provide information about their financial circumstances, known as ‘full and frank disclosure’
- refusing to attend Court dates
- refusing to enter into meaningful negotiations.

*“Perpetrators continue to delay settlement until victim has no more finance to fight. Whilst settlement is delayed, victims are stuck – unable to move house or sell assets.”* (Survey participant)

The delays involved in finalising the property settlement can have serious implications for women living in financial hardship. In many cases, it results in the women getting more deeply in debt while they are waiting.

### Failing to provide disclosure

Something WLSV observes in our representation of women is the failure of an abusive partner to provide financial disclosure. The failure to provide information about the finances prevents a matter from reaching early resolution.

*“Nothing is progressing because he’s not offering, um, financial disclosure ...”* (Nadia)

During these periods of delay it is common for an abuser to remain in the home, fail to meet outgoings and continue to increase debt either by non-payment or continued spending.

Women who have fled the home often have substantial costs involved in setting up a new home, paying for rental bond and ensuring children’s lives remain unchanged. There is currently little disincentive for an abusive ex-partner who continues to refuse to provide relevant financial information or otherwise delay the process.

This failure to provide the information needed to finalise a property settlement is more upsetting for women when they are asked themselves to comply with onerous requests for information from the other party.

*“I have to expose everything, while he does nothing. I said, I can’t go through that again. Because during the hearing, he managed to subpoena my medical records and the judge said there is nothing here for you to see, to support your case. But the fact that it was subpoenaed, my diaries were evidence... like, he wanted all my diaries. And thank god they said no, that he had to ask for specific pages. But he got specific pages. Which didn’t help him. But I was exposed, I was.” (Angela)*

In some cases, the length of proceedings was exacerbated by an abusive ex-partner failing to attend Court dates, or attending and requesting adjournments. There is often many months between Court dates.

### Reducing delays and getting speedier resolution of property matters

A less adversarial or early resolution process at the beginning of a property matter could provide a quicker and more satisfactory resolution for women in financial hardship.

Such a process may involve a Registrar conducting something akin to conciliation conference and using a simple form completed by the parties. The Registrar would offer a preliminary view on appropriate resolution and direct the parties to mediation.

As with the mediation required at present in children’s matters, an assessment on safety would be conducted. In matters involving family violence, parties would be free to attend by “shuttle” where each party sits in a separate room. A legally assisted mediation model is also likely to be useful in property matters involving family violence.

Where an early resolution process such as the one proposed above is conducted by a judicial officer, it is essential that the judicial officer is trained in family violence and understands:

- the power and control dynamics in family violence
- the financial impacts of family violence, and
- the impacts of economic abuse.

We recommend the Federal Government consider amending the *Family Law Act 1975* (Cth) (the Family Law Act) to include a requirement for an early resolution process in small claim property matters. This process should not be a pre-filing requirement, as with children’s matters, but rather a case management process upon application to the Court for a property settlement.

A case management process (as opposed to a pre-filing requirement) is preferable in order to encourage women to obtain a property settlement rather than creating another barrier.

In introducing an early resolution process, the adequacy of the discovery and disclosure processes used at present should also be considered.

To address the delays in resolving small property matters, we recommend the Federal Government consider the introduction of a unique “list”, or case management process, by which small claim property matters are fast-tracked.

### Treatment of family violence by the Court

#### Does the Court consider family violence when determining a property settlement?

The financial consequences of family violence may be taken into account under the existing legislative provisions that examine the *contributions* of the parties under section 79(4) of the Family Law Act, as well as the *additional factors* for consideration under section 75(2). In practice, family violence is rarely considered by lawyers negotiating a property settlement and has been contemplated in a relatively small portion of the case law.<sup>34</sup>

Family violence, on its own, is not specified in the legislation as a relevant consideration in determining the division of property. A reluctance to include family violence expressly in the legislation (as well as the conservative treatment of family violence in assessing contributions in case law) has largely been seen as a product of the desire to retain the ‘no fault’ philosophy that underpins the Family Law Act.<sup>35</sup>

<sup>34</sup> Belinda Fehlberg, et al, *Australian Family Law* (Oxford University Press, 2015)

<sup>35</sup> Sarah Middleton, ‘Family Court Property Proceedings: Rethinking the Approach to the ‘Financial Consequences’ of Domestic Violence’ (2002) 25(3) *UNSW Law Journal* 704.

However, the position is inconsistent with the research which finds victims of family violence receive worse financial outcomes than non-victims, and are at higher risk of financial hardship.

### Taking family violence into account when determining the parties contributions

Section 79(4) of the Family Law Act sets out the contributions the Court must consider in determining the division of property: (a) the financial contributions made, (b) contributions other than financial contributions made to the acquisition, conservation or improvement of the property; and (c) contributions to the welfare of the family, including any contribution made in the capacity of homemaker or parent.

Family violence is not specifically identified by the legislation as a relevant consideration when the Court determines contributions under s79(4).

The case law has, however, taken into account family violence in assessing the contributions made by a victim of violence. The Full Court of the Family Court's decision *In the Marriage of Kennon (Kennon)*<sup>36</sup> remains the leading authority on this issue. *Kennon* determined that where the violence made it more difficult for the victim to have made their contributions, then those contributions should be given more weight.

The practical effect of this approach is that the onus is on a victim to establish their contributions were made more difficult by the family violence. Such an approach also fails to allow for the consideration of "negative contributions" made by the perpetrator of family violence.

In practice, *Kennon* is infrequently applied, and where it is applied, the adjustments made for the impacts of family violence are small.<sup>37</sup> Such variability is likely to influence the advice women receive and the degree to which *Kennon* is taken into account in property settlement negotiations.<sup>38</sup>

None of the women in our research (including women who received legal assistance) reported a *Kennon* adjustment, either by Court decision or a negotiated outcome.

### Taking family violence into account when determining the weight given to section 75 factors

The Court also takes into account additional factors when deciding a property division (often referred to as the *future needs* factors). These are set out in s75(2) and include: (a) [the parties'] age and health, (b) their income, property, financial resources and capacity for appropriate gainful employment, and (c) whether they have care of children.

The financial consequences of family violence (for example, being unable to work due to an injury caused by an abusive partner) are likely to be relevant under s75(2)(a) and/or (b).

It is also likely that some cases of economic abuse would qualify as wastage\* for consideration under s75(2)(o). Whether economic abuse would qualify as wastage would depend on the particular facts and the application of the principles set out in the decision *In the Marriage of Kowaliw*.<sup>39</sup>

**NOTE** \*Wastage is a term used to describe the reduction of assets, or increase in debt, by one party in a relationship as the result of intentional or reckless actions.

Family violence is not specifically identified by the legislation as a relevant consideration when the Court makes adjustments under s75(2).

Again, inconsistent practices of legal professionals are likely to influence the extent to which the financial consequences of family violence, are taken into account in any property settlement. No women in our research reported receiving an adjustment under s75(2), including an adjustment for wastage as a result of economic abuse.

<sup>36</sup> [1997] FamCA 27.

<sup>37</sup> Fehlberg, above n 34, 587

<sup>38</sup> Family Law Council, Letter of Advice to the Attorney General, *Inquiry into Violence and Property Proceedings*, August 2001 <<https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Pages/Lettersofadvice.aspx>>.

<sup>39</sup> (1981) FLC 91-092.

### Should the Act be amended to include family violence as a consideration?

At present, it is possible for the impacts of family violence to be taken into account by the Court:

- in assessing contributions under s79(4),<sup>40</sup> and
- in assessing the matters to be taken into account under s75(2), particularly economic abuse where it has resulted in wastage by an abusive partner.<sup>41</sup>

However, most cases are not decided by judicial determination; rather, they are negotiated between the parties. Without specific legislative consideration of the impact of family violence on property determinations, the potential for family violence to be taken into consideration in a property settlement will remain unknown to women.

We follow the Family Law Council in recommending the Family Law Act is amended to include family violence as a specific consideration in determining property division (see the Council's letter of advice to the Attorney General, 2001).<sup>42</sup>

### Economic abuse and systems abuse

Family violence does not end when a relationship ends. When a perpetrator can no longer commit physical violence they can use financial and legal processes to continue to control a victim.

Economic abuse often exploits the rules or processes of the financial system (for example, an energy provider requiring an abusive partner's consent to amend an account in joint names) to control or financially damage a victim.

Similarly, systems abuse is behaviour that exploits the otherwise appropriate rules of the legal system (for example, the right to appeal a decision of the Court, or the right to cross-examine a witness) to engage in controlling or abusive behaviour.

The women in our study reported the numerous ways in which perpetrators exploited otherwise legitimate financial or legal rules to control or abuse them. In

particular, they reported actions that made the family law system more difficult.

There was a high coexistence of systems abuse and financial abuse among the research participants. Systems abuse could also result in financial loss for women. Several women in the research reported highly vexatious behavior; for example, in two cases an abusive ex-partner contested and then appealed a divorce application and order without merit.

*"He contested our divorce. He contested it, and over two days I was on the stand to prove that we were separated."* (Angela)

If financial institutions or legal systems fail to acknowledge or address these forms of abuse, women are unlikely to receive equitable outcomes.

The ability of an abusive party to use the legal system to prolong the abuse is highly distressing for women, and there are few legal remedies available to them to prevent this vexatious behaviour.

*"His lawyers were like 'you need to settle this' and he was fighting them ... This financial thing is the last thing. I'm never gonna win with him."* (Angela)

Perpetrators continue to control women through the emotional and economic toll of ongoing court proceedings. Participants in our research survey also observed that systems abuse prevented women accessing family law remedies.

*"Lies, hiding money, often women are never informed or told about what the man's financial situation is. Women have debts in their name and no money to pay for private solicitors. Men can delay and browbeat women, continuing the abuse through the system. Ongoing expensive litigation. The man can delay getting a solicitor which makes it more expensive for the woman."* (Survey participant)

*"Upfront costs associated with solicitor's fees, and no free legal help available on this issue. Frivolous and vexatious litigation."* (Survey participant)

*"The abusive nature of the relationship will often continue as the perpetrator continues to wield power and control over their former partner. Threats of losing the children, assets*

<sup>40</sup> *Kennon* [1997] FamCA 27; (1997) 22 Fam LR 1.

<sup>41</sup> *Kowaliv* (1981) FLC 91-092

<sup>42</sup> Family Law Council, above n 38.

*often hidden or liquidated prior, cash in hand jobs to minimise income.”* (Survey participant)

To address the systems abuse women experience, we recommend the introduction of measures to ensure a quicker resolution of matters.

We also recommend the Federal Attorney General’s Department create a central coordinating agency to manage vexatious litigants.

### Safety and protection in court

Women who had to represent themselves in the family law courts reported finding the process, and even the Court building and Courtroom, extremely daunting.

*“It was confusing. I didn’t even know, like, my way around the court. It was so massive. I didn’t even know how to find my name, didn’t know what court I had to go to. If that lady ... in the corridor [Court Network volunteer] hadn’t directed me I would have had no idea.”* (Megan)

Women also reported facing their abuser in the Family Court as being extremely difficult. At present, there are no witness protections for victims of family violence in Family Court or Federal Circuit Court; women can be directly cross-examined by their abuser, even where there are criminal convictions in relation to the offences.

*“I hadn’t had contact with him and in between that time ... he had assaulted me and been charged for that.”* (Megan)

*“You’re too afraid to stand-up to them in court because you’re going to lose everything anyway so what’s the use? A lot of them [women in my situation] just think well what’s the use?”* (Natalie)

### Cross-examination of vulnerable witnesses

There is a risk that victims of violence will not pursue their property entitlements after leaving a violent relationship due to the fear of being directly cross-examined by their abusive ex-partner. This impediment to obtaining a property settlement is likely to have a negative impact on a woman’s prospects of recovery from family violence.

We recommend the Federal Government amend the Family Law Act to include provisions restricting personal cross-examination by those alleged to have

used violence, in accordance with the Productivity Commission’s recent recommendations.<sup>43</sup>

### Proving allegations of family violence

Women raised concerns about being believed by the Judge when they raised allegations of family violence and having those allegations of family violence taken seriously by the Court.

*“I found it difficult – and I’m educated and English-speaking ... I felt like I had to prove what was happening to me – it was sort of an unbelievable story – like, oh no, he couldn’t have done that.”* (Margaret)

The Australian Law Reform Commission Report – *Family Violence: A National Legal Response*<sup>44</sup> – identified a number of issues regarding allegations of family violence in the family law jurisdiction including:

- the difficulty in giving evidence about family violence
- the Judiciary’s lack of understanding of the complex dynamics and impacts of family violence; and
- perceptions of false allegations of family violence.

### Raising the Judiciary’s understanding

A lack of family violence expertise on the part of Judges, lawyers and Court staff can contribute to adverse outcomes for women. Varying levels of understanding of family violence can result in variable and inconsistent decision-making.

To ensure consistent decision-making, we recommend Federal Circuit Court and Family Court Judges undertake compulsory and regular professional development modules in the dynamics of family violence and the impacts (including financial) of family violence.

The recently announced development of the National Family Violence Bench Book is a welcome step in promoting best practice and consistency in judicial

<sup>43</sup> Productivity Commission, Submission No 72 to Australian Government, *Access to Justice Arrangements: Productivity Commission Inquiry Report*, 5 September 2014.

<sup>44</sup> Australian Law Reform Commission, *Family Violence: A National Legal Response*, Report No 114 (2010).

decision making in cases involving family violence.<sup>45</sup> A national bench book should include reference to the financial impacts of family violence and the nature of economic abuse.

### Treatment of unsecured joint debt by the court

As set out in the section on banking and lending, dividing unsecured joint debts after separation can be extremely problematic for women experiencing financial hardship and family violence.

Whereas secured debts are generally deducted from the total asset pool and the net assets are divided between the parties, in the case of joint debts that are unsecured, typically both parties will continue to remain jointly liable.

This can be an untenable situation for women attempting to cut ties with an abusive partner.

Section 90AE(a) of the Family Law Act expressly allows the Court to make an order directing a creditor of the parties to substitute one party for both parties in relation to the debt owed to the creditor. The Court may only make the order if it is not foreseeable that the order would result in the debt not being paid in full and in all the circumstances it is just and equitable to make the order.

The family law system is routinely employed to divide the remaining property of the parties; it is not routinely used to divide the remaining debt between the parties (where there is a net negative asset pool). A property settlement apportioning debt between the parties is, in many cases, unavailable because of the position taken by banks; refusing to split joint unsecured debts.

We return to the case study of Sarah raised earlier.

### SCENARIO 1: POSITIVE ASSET POOL

Sarah and Steve have two children. Joe is 3 and Jane is 5. Jane has a disability that means she requires intensive care and medical treatment. Sarah gave up her job to care for the children and provide Jane with the intensive care she requires. Steve is violent towards Sarah. The children live with Sarah

and spend weekend and holiday time with Steve. There is approximately \$30,000 equity in Steve and Sarah's home and Steve has \$60,000 in his superannuation fund. The Court decides to split the equity in the home and the superannuation, with 70% being awarded to Sarah and 30% being awarded to Steve. The Court takes into consideration Sarah's ongoing care of the children including the additional care Jane requires and Sarah's unemployment in making this determination. The house is sold, the mortgage is paid off and the remaining funds are distributed between Steve and Sarah in accordance with the Court's decision.<sup>46</sup>

### SCENARIO 2: NEGATIVE ASSET POOL

If the scenario were the same except Steve and Sarah owed \$30,000 of unsecured debt to their lender rather than having \$30,000 equity in their home, it is unlikely Sarah would receive an outcome similar to that in the case of a positive asset pool (i.e., it is unlikely she would be held responsible for a lesser portion of the debt because of her significant future needs).

Given the bank's likely opposition, the Court may not make orders that the debt be split and Steve become responsible for 70% of the debt and Sarah responsible for 30%. Instead, Sarah would remain jointly and severally liable for the whole amount. Sarah will not receive the benefit of the Court's discretion in determining she should receive 70% of the property (or alternatively only receive 30% of the debt) because the asset pool is a negative one.

While the Court has the power to make the order suggested above, the likely decision a Court would make in the case of Sarah is by no means obvious. It does however seem likely, based on the current family law guidelines published by the banks, that the lender would oppose any transfer or splitting of a joint debt. In practice, because of the opposition by the banks, splitting or transfer of unsecured debt between the parties in order to achieve an equitable property settlement is rarely attempted in the family law jurisdiction.

None of the women involved in this research had an opportunity to seek an order transferring unsecured

<sup>45</sup> Senator the Hon George Brandis QC, *National Family Violence Bench Book*, Attorney-General's Department (9 June 2015) <<http://www.attorneygeneral.gov.au/MediaReleases/Pages/2015/SecondQuarter/9-June-2015-National-Family-Violence-Bench-Book.aspx>>.

<sup>46</sup> This example is illustrative only and should not be taken to provide an indication of what the Court might do in such circumstances. The Court has discretion in determining division of property matters under the *Family Law Act 1975* (Cth).

debt. There seems to be a general reluctance among legal practitioners to run such a case based on the expected opposition by the bank. Also, a woman in the second scenario would not have the funds to pay for legal representation making it unlikely such an order would be sought.

A more accessible family law jurisdiction would promote the use of remedies such as orders that split or transfer unsecured joint debts. Access to this remedy is likely to provide huge relief to women in financial hardship who are unable to service joint debts, and particularly to those women who are solely and unfairly pursued for joint debts by a creditor (as discussed in the section on banking and lending).

### Enforceability

Finally, enforceability of Court orders poses a huge barrier to women receiving fair property settlements. The women who participated in this research had difficulty in enforcing the Court order they had obtained at great expense and delay.

*“He hasn’t done it. He was court ordered by the judge. The judge gave him um instalments to pay which he didn’t pay at all ... So he got away with that. So now I’m left paying for it now ... chase it up and not let it slide. Because it’s like a let-down. It’s like why did I do all this stress and everything. And running to the doctors and not sleeping and going on anxiety pills, for what?” (Loretta)*

When a final property order is made, there is no continuing oversight by the Court of the enforcement of the order, and there are rarely penalties imposed if the property orders are disregarded.

To enforce an order, a woman would be required to return to Court and commence discrete enforcement proceedings. In cases involving an abusive partner who is unlikely to comply with any further Court order, this can prove too much for women and result in significant unfairness.

*“I’m going to go bankrupt because I can’t pay all this money and why didn’t the lawyers enforce the Order. I didn’t know anything about that. As far as I knew as soon as I got the Order I thought that was the end of it – done and dusted. I didn’t know I had to get the lawyers to act on it. They didn’t tell me either.” (Belinda)*

This becomes particularly difficult for women who receive an “indemnity” in relation to joint debts in a final property settlement. An indemnity does not require the third party creditor to do anything but rather provides a cause of action to the woman against the other party who has provided the indemnity should the woman be pursued for the debt by the creditor.

Often, in cases where an indemnity is given the abusive partner fails to transfer the debt into their sole name. Despite the indemnity; the debts remain in joint names and the woman remains liable for the whole amount of jointly held debts. Women in our research found indemnities of this kind to be of little value in protecting themselves from being pursued for joint debts.

### Megan’s story

Megan left the home after family violence. Megan’s ex-husband remained in the former family home. He stopped paying the joint mortgage after Megan left and their joint home loan started to go into arrears. He refused to talk to her about selling the home and dividing the proceeds, or buying her out.

*“Yeah, he stayed in the house but it’s to be sold because he’s not in a position to refinance and have the mortgage in his name so it should have been sold already but he is just stalling it.” Eventually Megan was able to initiate Court proceedings to seek a division of the assets. She said, “My Nanna paid for a barrister for that day.”*

*All of the joint bills such as water, rates and electricity had gone into serious arrears with Megan’s ex-husband failing to meet any outgoings after separation. “The credit card debt is in my name but he’s admitted it is his fault and he agreed to be making payments on it which sometimes he makes, I think, and other times he doesn’t ... there were several fines that he got in my car which ... were meant to be paid at settlement like when the house sells.”*

Despite Megan’s ex-husband agreeing to an order whereby he would indemnify her in relation to the debts of the relationship and sell the house to service the remaining debts, he has failed to comply with the order. Megan now has to return to Court again, more deeply in debt this time, to seek enforcement of the orders.

Where there is no asset to sell such as a house enforcement is even more difficult. There are few ways to recover the money owing or penalties for disregarding the family law property order.

### **Loretta's story**

After three years of negotiations and litigation, Loretta finally obtained orders for \$12,500 of superannuation to be transferred into her name and a payment of \$7,500 from her ex-husband to assist with her daughter's medical bills.

Loretta found the Court proceedings very difficult. She has a disability and her ex-partner had continued to be abusive throughout the proceedings.

After the order was made, Loretta's ex-husband failed to pay Loretta the \$7,500 as ordered. He does only cash-in-hand jobs,

and although his parents have significant financial resources, there is little in the way of assets to which Loretta can point to enforce the order. Loretta is in extreme financial hardship and there is little possibility of her being able to enforce her order.

*"I'm behind with my rent. And I have St Vincent's coming here once a month to help me get food. They give me like a food voucher. That's the main thing – food. I mean the kids should probably have maybe once a week a good meal. Otherwise, it's... 2 minute noodles."*

Loretta has applied to have the superannuation she received in the property settlement paid to her now because of her financial hardship. Loretta will be required to pay tax on any withdrawal of superannuation under hardship.

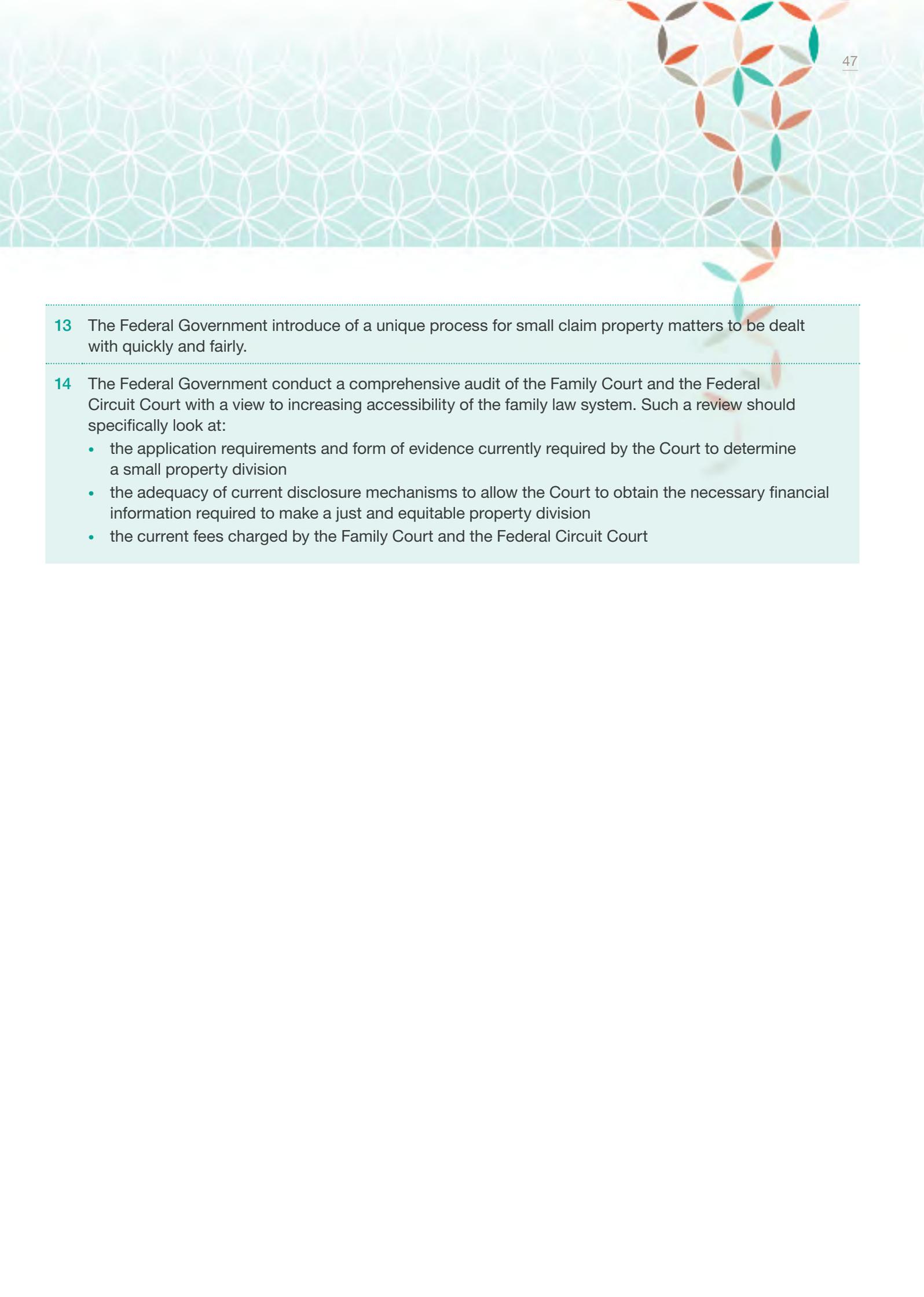
We recommend The Australian Law Reform Commission review the adequacy of current family law enforcement mechanisms.

## **Recommendations**

### **Reform to the family law system**

- 8 The Federal Government amend the Family Law Act; specifically requiring a Court to consider family violence when determining a property division, in accordance with the Family Law Council's 2001 advice to the Attorney General.
- 9 The Federal Government amend the Family Law Act to include provisions restricting personal cross-examination by those alleged to have used violence, in accordance with the Productivity Commission's 2012 recommendations to the Federal Government.
- 10 The Australian Law Reform Commission review the suitability of current family law enforcement mechanisms.
- 11 The National Judicial College of Australia ensure that judicial education for Federal Circuit Court and Family Court judges include modules to strengthen understanding of:
  - the intersection of family violence and family law, particularly in property determinations
  - the financial impacts of family violence
  - the nature and impacts of economic abuse.

The above topics are considered for inclusion in the development of the National Family Violence Bench Book.
- 12 The Federal Government amend the Family Law Act to include a requirement for an early resolution process in small claim property matters. This process should be a case management process upon application to the Court for a property settlement rather than a pre-filing requirement.

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- 13** The Federal Government introduce of a unique process for small claim property matters to be dealt with quickly and fairly.
- 14** The Federal Government conduct a comprehensive audit of the Family Court and the Federal Circuit Court with a view to increasing accessibility of the family law system. Such a review should specifically look at:
- the application requirements and form of evidence currently required by the Court to determine a small property division
  - the adequacy of current disclosure mechanisms to allow the Court to obtain the necessary financial information required to make a just and equitable property division
  - the current fees charged by the Family Court and the Federal Circuit Court

# REFORM TO THE FAMILY VIOLENCE LEGAL SYSTEM

## The situation at present

The existing civil law response to family violence provides a protective mechanism for victims of family violence. This includes protection from economic abuse.

The *Family Violence Protection Act 2008* (Vic) (Family Violence Protection Act) allows for the making of a civil protection order, i.e., an intervention order, which prohibits certain conduct. Contravening an intervention order can constitute a criminal offence.<sup>47</sup>

While this civil response to family violence provides vital protection for victims of family violence, the legislative framework can be improved to better protect women from economic abuse.

In addition to improving the legislative framework, there are professional practices affecting the outcomes women receive when seeking legal intervention or assistance which also need improvement.

The practices to be improved include:

- conduct of the Courts and Magistrates in determining economic abuse matters
- police conduct in applying for and enforcing intervention orders relating to economic abuse, and
- lawyers' practice of seeking specific clauses in intervention orders which address economically abusive behaviour.

In summary, the family violence legal system needs to become more responsive to women experiencing economic abuse and financial hardship related to family violence. We recommend:

- changes to the law that will allow a more thorough consideration of economic abuse
- changes to professional practices in the family violence legal system that are preventing women obtaining equitable outcomes and safety.

## Law reform required

Victims of family violence have difficulty establishing that the financially controlling and damaging acts against them constitute economic abuse within the meaning of the act.

As a result, and because economic abuse often coincides with other types of family violence such as physical abuse, the family violence legal system often focuses on the other types of family violence when deciding to make an order for protection.

Where economic abuse is not the focus of an application, a woman is unlikely to receive an order that specifically addresses economic abuse.

No women in this research received an intervention order that specifically addressed economic abuse. Many received an intervention order and most of those women were experiencing economic abuse. This can leave a woman unable to stop the economic forms of family violence which can have long-lasting and serious consequences.

Both the definition of economic abuse, and the example conditions for intervention orders that are set out in the Act, have a role to play in addressing this shortfall.

## Is the current definition of economic abuse sufficient?

The Family Violence Protection Act defines economic abuse as:

*“Coercive, deceptive or unreasonably controls another person without [their] consent in a way that denies [that] person the economic or financial autonomy they would have had but for that behaviour; or by withholding or threatening to withhold the financial support necessary for meeting the reasonable living expenses of [that] person or [their] child, if the person is entirely or predominately dependant on the first person for financial support to meet those living expenses.”<sup>48</sup>*

The Act also includes a non-exhaustive list of the kinds of behaviour that constitute economic abuse.<sup>49</sup> The current definition of economic abuse is narrow.

<sup>47</sup> *Family Violence Protection Act 2008* (Vic) s 123.

<sup>48</sup> *Family Violence Protection Act 2008* (Vic) s6.

<sup>49</sup> *Ibid* s 6.

It is confined to behaviour that involves: (a) denying economic or financial autonomy, or (b) withholding or threatening to withhold financial support. This definition fails to reflect the range of behaviours that women are subjected to and which constitute economically-abusive behaviour.

Research on the types of behaviour which constitute economic abuse indicates that economic abuse falls into four broad categories:

- interfering with education or employment
- controlling access to economic resources
- refusing to contribute, and
- generating economic cost (or debt).<sup>50</sup>

As outlined in the beginning of this report, women in our research have described behaviours that fall into all four of these categories.

More recent research on economic abuse has described a wider range of behavior, and has highlighted the subtlety and complexity of economic abuse which has the effect of making it difficult to define in legislation.<sup>51</sup>

### **Broadening the definition of economic abuse**

There is a case for expanding the definition of economic abuse in the Family Violence Protection Act to include, at the least, the following additional categories:

- refusing to contribute (particularly to jointly held debts), and
- generating economic cost or debt for the victim.

There would also be value in expanding the examples of economic abuse listed in the Act to include the types of examples that have been detailed in recent research (including this report).<sup>52</sup>

While economic abuse is recognised in the family violence legislation, there is a need for stronger legal and practical recognition of economic

abuse. Revisiting the legislative definition would ensure economic abuse is accurately defined and satisfactorily recognised by the law.

### **Intervention order conditions that remedy economic abuse**

Section 86 of the Family Violence Protection Act includes examples of conditions the Court may include in any intervention order relating to property. These include:

- a condition directing the respondent to return the protected person's personal property
- a condition that the respondent return property that will enable the protected person's everyday life to continue with as little disruption as possible, and
- a condition that requires the furniture or appliances that enable the normal running of the home to remain in the residence, where the respondent has been excluded.

The above conditions are only examples and are not intended to restrict the court's discretion to include any conditions that are necessary or desirable in the circumstances.

Section 88 also clarifies that "the inclusion under section 86 of a condition relating to personal property in a family violence intervention order does not affect any rights the protected person or respondent may have in relation to the ownership of the property."

### **What conditions are used to address economic abuse at present?**

The general practice of lawyers, police civil advocates and Magistrates when drafting and making intervention orders is to include two standard clauses designed to address economic abuse and the financial impacts of family violence.

These orders:

1. prevent a respondent from damaging the property of an applicant (there is an additional clause that prohibits him from getting another person to do so)

<sup>50</sup> Sharp, above n 14.

<sup>51</sup> See, Camilleri, Corrie, and Moore, above n 18; Cameron, above n 12.

<sup>52</sup> See, Tanya Corrie and Magdalena McGuire, 'Sharing Solutions Across Sectors: A Spotlight on Economic Abuse Research Report' (Report, Good Shepherd Youth & Family Service and Kildonan Uniting Care, 2013) 7.

2. require a respondent to return to the applicant their property within two days.

These are also the standard conditions included as options on the application for an intervention order.

### Problems with the standard conditions

The standard conditions used at present are too broad to remedy economically abusive behaviours. Because the conditions do not specify which property is to be returned or provide any other specific direction, police often fail to enforce these provisions of the intervention order.

Additionally, as the clauses are not specific in relation to a particular joint bank account or utility account, the orders are generally not observed by third parties such as utility companies or banks.

As discussed earlier in this report, an intervention order is not binding on a third party. However, in developing family violence policies banks, telecommunication and utility companies should recognise intervention orders and give effect to their terms wherever possible. On this basis, it seems the more specific an order, the more useful it will be to a victim in stopping economically abusive behaviour.

We recommend that orders use more tailored and specific clauses to increase police enforcement and compliance by third parties.

### What conditions should be used to address economic abuse in future?

Following are examples of the kind of more tailored and specific clauses we are advocating:

- the return of specific items of property that are being used to perpetrate economic abuse
- that a victim be given possession of a vehicle
- that women are able to deal with essential service contracts including severing joint utility accounts and entering hardship arrangements without having to deal directly with a perpetrator
- that women have access to funds to meet everyday expenses and minimise the disruption to the victims' lives.

Additional intervention order conditions dealing with economic abuse should be listed on an intervention order application and in the standard Courtlink conditions available to Magistrates. They should also be included in the "sample conditions" section of the Family Violence Bench Book at part 2.2.3.1.

### Court practices requiring reform

In addition to changes to the law, changes to practice are needed. We recommend improved understanding of economic abuse and better prevention of systems abuse by the Court.

### Understanding of economic abuse by Magistrates

A lack of family violence expertise on the part of Magistrates, lawyers and court staff can contribute to adverse outcomes for women. The majority of workers surveyed (72%) had observed the Court failing to recognise economic abuse.

*"Most women don't know economic abuse is family violence and would not add it to applications for intervention order or tell police about it as a breach." (Survey participant)*

There are varying levels of understanding of the nature of economic abuse among Magistrates, and this results in variable and inconsistent decision-making.

We support a strengthening in the family violence knowledge of all Magistrates. This can occur initially through inclusion of a more expansive treatment of economic abuse in the Family Violence Bench Book and through development of a module on economic abuse in the family violence training given to Magistrates by the Judicial College of Victoria.

We recommend the Judicial College of Victoria and the Law Institute of Victoria engage specialist organisations working with women experiencing financial hardship and family violence to design and deliver professional development for judicial officers, court staff and lawyers on the nature and impact of economic abuse in the family violence and family law jurisdictions.

### Systems abuse

Women in this research discussed the ability of the perpetrators of violence to engage in systems abuse in the family violence legal system including applying for rehearing, appealing and lodging cross-applications with little merit.

Women described their distress in their perpetrator being able to delay and prolong proceedings. They were particularly distressed by having to return to Court on the expiry of each intervention order and face another contested hearing, vexatious cross-application and possible appeal. On its own, this behavior is abusive but it could also have a significant financial impact on the victims.

*“He contested all the IVO’s so that was money. He contested the intervention order, oh, the amount of times, this is what I couldn’t understand in the system, the amount of times you can contest an intervention order ... I was in court, on average, at least once a month. It came to a period that I was in court about three times a month.” (Angela)*

We have discussed elsewhere in this report the interrelated nature of systems abuse and economic abuse. A large majority of workers surveyed (87%) had observed women experiencing systems abuse in the family violence legal system.

Women in the research described the devastating impact systems abuse could have on them, particularly when they had to deal with this behaviour across multiple jurisdictions or government agencies.

*“This person thinks he’s above the law. And he did, he cheated on the intervention order, he cheated on child support, he got around things, he just kept beating the system.” (Angela)*

Some of the previous research on economic abuse has highlighted the prevalence of this type of abuse and its crushing effects.<sup>53</sup> However, there is yet to be any large-scale research on the prevalence, nature and impacts of systems abuse.

In order to build an evidence base on which policy decisions can be made, we recommend the Magistrates’ Court commissions research into systems abuse as a form of family violence.

### Police practices requiring reform

We recommend police practices be reformed in two areas:

- Increased enforcement of intervention orders that relate to property or economic abuse.
- Increased police awareness of the economic impacts of family violence and in particular better assistance to women to remain in the home.

The women interviewed for this research experienced inconsistency in police practices when dealing with economic abuse. Police intervention was a particularly important time for women’s long-term economic and safety outcomes. Police conduct could mean the difference between women retaining the things they need to continue daily life and remaining in their home, or becoming homeless. It could prevent an abusive partner from inflicting significant financial damage on a victim.

### Contravention of intervention orders

Women in our research described the failure of police to investigate or act on reported breaches of intervention orders relating to economic abuse.

*“I stopped reporting any breaches on the intervention order because the senior sergeant or constable on certain occasion laughed in my face and another said; well if you were my girlfriend I would cut you off as well.” (Angela)*

Similarly, 87% of workers surveyed in this research observed police failing to recognise economic abuse, and 86% observed police failing to enforce intervention orders.

Women reported feeling disempowered and having little recourse when police did not investigate or charge perpetrators with breaches of the intervention order. The failure of police to act to stop economic abuse could result in the abuse continuing, sometimes for years, and consequent financial hardship and poverty.

<sup>53</sup> See for example, Cameron, above n 12.

We are recommending the inclusion of specific conditions relating to economic abuse on intervention orders, and this is likely to better enable police to investigate economic abuse where it amounts to a breach of an intervention order.

We also recommend that Victoria Police implement strategies to improve practice in enforcement of intervention orders as they relate to property conditions, and improve accountability where breaches of intervention orders are not investigated. It is recommended that Victoria Police create a more accessible and robust police conduct complaints system for family violence victims.

#### Absence of assistance in enforcing the order

Women in our research consistently reported difficulties in getting their possessions returned to them or collecting their possessions after fleeing family violence.

The Victoria Police *Code of Practice for the Investigation of Family Violence* (the Code) specifically recognises economic abuse and indicates the desirability of assisting a victim of family violence to remain in her home. However, a lack of understanding of the nature of family violence and economic abuse by the police officers applying the Code could result in adverse economic outcomes for victims of family violence.

For example, removing a victim to a “safe house” with “sufficient personal items” often means in reality the police asking the victim whether they have a friend to stay with and only allowing them to take essentials for the next 24 hours such as some clothing.

Many of our clients will never return again to their home for fear of the perpetrator and so the police course of action in these circumstances precludes victims from leaving relationships with their personal property, or their share of joint property.

For the Code to be properly applied, it is important for police officers to receive extensive family violence training, which includes training to understand and identify economic abuse.

It may also be helpful for Victoria Police to amend the Code to include practical examples that will assist police officers in identifying instances of economic abuse.

#### Police role in retrieval of property unclear

The police role in the retrieval of property is unclear. The Family Violence Protection Act provides for a condition of an intervention order requiring the perpetrator be “in the company of a police officer” or some other agreed third party in order to collect property.

In practice, the willingness of police to attend for the purpose of ensuring safety during property retrieval varies. The Code states that where it is necessary for a respondent to return to a residence for the purpose of property retrieval and police presence is required *to maintain the peace between the parties*, police officers are not to arbitrate disputes over individual items for retrieval.

This puts victims in a difficult position. The power imbalance makes it difficult for women to collect their property when an abuser objects or prevent a perpetrator from taking the woman’s property. In the present system, the burden of returning to collect property, or preventing the perpetrator from taking property to which they are not entitled, is placed on the victim of family violence.

#### Helen’s story

During Helen’s three year marriage, her husband was violent and controlling. He was unemployed which meant that Helen had to ask her family for regular support. After a violent incident Helen went to visit her family. Helen’s husband withdrew all of their savings. On separation, an intervention order was issued for Helen’s protection against her husband. The intervention order contained the standard clause that “the respondent must arrange to return personal property belonging to the protected person within 2 days of the service of this order” and the standard exception that the respondent could return to the home in the company of a police officer to collect his possessions.

After this order was made, the police allowed Helen's ex-husband to return to the property three times to collect property from the home. On one occasion, the police failed to inform Helen that the perpetrator was returning to the property and allowed him to remove various valuables from the property while she was not home including whitegoods and other essential items she could not afford to replace.

Helen was forced to vary the intervention order to prevent her ex-husband from returning to the house again. Helen is engaged in family law proceedings to recover her portion of the savings and the personal property removed from her home. Given issues in locating her ex-husband, as well as the cost and difficulty of accessing the family law system and enforcing the orders she is seeking, it is unlikely Helen will have her property restored. This places her in a very difficult financial situation.

It is vital that women retain what little property they may have after suffering family violence. As we have highlighted, the family law system is a jurisdiction that is often out-of-reach for a victim of family violence. It is unlikely they will be in a position to obtain a family law order that results in retrieval of a small amount of property. Consequently, the treatment of the victim's possession in the intervention order system is of great importance.

We recommend the Victorian Government create a specialist team to assist women in enforcing property conditions of an intervention order. The team could be located within:

- Victoria Police; for example, the Protective Services Unit (PSU), or
- Civic Compliance; for example, Sheriff's Operations.

Increased resourcing and a clear process would allow the property conditions of an intervention order to be implemented without the victim of violence being required to enforce the terms of the order herself.

This type of enforcement assistance to women in relation to small property matters is likely to make a significant impact to their economic well-being.

### Absence of support to remain in the home

As mentioned above, despite the provisions of the Code, several research participants reported police asking them if they had somewhere else to go after suffering an abusive incident, rather than forcing the perpetrator to leave the home .

*"It was like when he'd kick us out; when the kids were babies. I had to stay in a hotel one night ... The police would get called and he'd come and say no, she and the babies have to go."* (Natalie)

This approach by police is in contradiction of the Code and ultimately penalises the victims of violence. This approach can also have long-lasting financial consequences for women and put them at risk of homelessness.

Ensuring that the default position of police is to assist women to remain in their home after violence is one of the most significant steps police can take to reducing the financial hardship women experience as a result of family violence.

## Recommendations

### Reform to the family violence legal system

- 15** The Victorian Government broaden the definition of economic abuse set out in the Family Violence Protection Act to more accurately reflect the range of behaviours that make up economic abuse. The definition of economic abuse should include, at least, the following additional categories:
- refusing to contribute (particularly to jointly held debts), and
  - generating economic cost or debt for the victim.
- The examples of economic abuse listed in the Act should also be expanded.
- 
- 16** The Magistrates' Court of Victoria develop additional intervention order conditions dealing with economic abuse. These additional clauses should be listed on an intervention order application and in the standard Courtlink conditions available to Magistrates. They should also be included in the "sample conditions" section of the Family Violence Bench Book at part 2.2.3.1.
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- 17** The Judicial College of Victoria and the Law Institute of Victoria engage specialist organisations working with women experiencing financial hardship and family violence to design and deliver professional development for judicial officers, court staff and lawyers on the nature and impact of economic abuse in the family violence and family law jurisdictions.
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- 18** The Magistrates' Court of Victoria commission research into systems abuse as a form of family violence.
- 
- 19** Victoria Police implement strategies to improve practice in enforcement of intervention orders as they relate to property conditions.
- 
- 20** The Victorian Government create a specialist team to assist women in enforcing property conditions of an intervention order. The team could be located within:
- a. Victoria Police; the Protective Services Unit (PSU), or
  - b. Civic Compliance; Sheriff's Operations.
- 
- 21** Victoria Police introduce requirements for comprehensive and ongoing training for all officers on the nature and impacts of family violence and in particular economic abuse.
- 
- 22** Victoria Police amend the Code of Practice for the Investigation of Family Violence to include practical examples which will assist police officers in identifying instances of economic abuse.

# REFORM TO THE VICTIMS OF CRIME ASSISTANCE (VOCA) SYSTEM

All Australian jurisdictions have victims of crime assistance (VOCA) schemes to provide financial assistance to victims of crime.<sup>54</sup> The *Victims of Crime Assistance Act 1996 (Vic)* (Victims of Crime Act) provides for awards of financial assistance to victims of an “act of violence” who have sustained an “injury” in Victoria.

The Victims of Crime Assistance Tribunal (VOCAT) was established by the legislation to decide on the financial assistance to be awarded to victims. VOCAT may award assistance for counselling, medical and safety-related expenses. Lump sum payments may also be made in certain circumstances (referred to as special financial assistance). These special financial assistance payments are designed to assist victims with recovery and recognise the trauma suffered.<sup>55</sup>

## Can victims of family violence apply to the VOCA scheme?

A victim of family violence can receive an award from the Tribunal for assistance under the Victims of Crime Act if the act of violence constituted a criminal act and resulted in an injury within the definition in the act.

An injury is defined as “actual physical or bodily harm; or mental illness or disorder; or pregnancy or any combination of these arising from an act of violence.”<sup>56</sup>

In practice, the legislation creates significant barriers to victims of family violence obtaining assistance because the law is based on a model of “stranger” violence and fails to recognise the dynamics of family violence.<sup>57</sup>

In order for the scheme to genuinely assist victims in recovering from family violence, extensive reform to the legislation is required, as well as changes to Tribunal practice.

<sup>54</sup> *Victims of Crime Assistance Act 1996 (Vic)*; *Victims of Crime Assistance Act 2009 (Qld)*; *Victims of Crime Act 2001 (SA)*; *Victims Rights and Support Act 2013 (NSW)*; *Victims of Crims Assistance Act 2006 (NT)*; *Criminal Injuries Compensation Act 2003 (WA)*; *Victims of Crime (Financial Assistance) Act 1996 (ACT)*; *Victims of Crime Assistance Act 1976 (Tas)*.

<sup>55</sup> VOCAT, *Victims of Crimes Assistance Tribunal* (2015) <<https://www.vocat.vic.gov.au/>>.

<sup>56</sup> *Victims of Crime Assistance Act 1996 (Vic)* s 3.

<sup>57</sup> Isobelle Narrett Meyering, ‘Victim Compensation And Domestic Violence: A National Overview’ (Stakeholder Paper 8, Australian Domestic and Family Violence Clearinghouse, February 2010).

## The role of VOCA in empowering women

In practical terms, a compensation payment will greatly assist women who are in financial hardship after fleeing family violence to rebuild their lives. If the payment is timely, it may have a role in preventing entrenched poverty. Such a payment may assist with a rental bond for a new home, basic furniture, appliances or clothes that are needed after leaving the former family home.

Importantly, a VOCA award can also provide validation and recognition of the victim’s experiences. This is especially true in the case of family violence where the perpetrator has engaged in a course of conduct designed to injure the victim physically, psychologically and financially.

The current scheme does not adequately meet the needs of women who have experienced family violence. Women who would benefit enormously from payments of compensation – those left in financial hardship by family violence – have limited access to the scheme.

Women in this research who had experiences with VOCAT expressed both positive and negative experiences. Some women stated the VOCAT process was a validating one.

### Angela’s story

Angela’s husband Dan was convicted and incarcerated for serious physical assaults against her. During the relationship, he was financially controlling and manipulative. After their separation, Dan lived in a unit at the back of the family home. In breach of Angela’s intervention order against him, he continued to contact her and enter the main house. He also withdrew money from the children’s accounts and cut off electricity to the house.

Women’s Legal Service Victoria assisted Angela in applying to VOCAT for assistance. She was awarded a monetary lump sum to help fund further education, a computer and counselling. The children were awarded self-defense classes, reimbursed the money their father took from their accounts, and provided with counselling.

*“[VOCAT] was great because it validated that what I was saying was the truth, and it validated everything. So that was great. And I’m so grateful and every day I’m still grateful.” (Angela)*

In Angela’s case, she has great difficulty in obtaining a family law property settlement and child support payments, and was not able to pursue any civil damages against the perpetrator. When an abusive partner is imprisoned, creditors seek payment of joint debts solely from the victim. Because of the difficulty in accessing remedies to resolve financial issues in other jurisdictions, VOCA is often the only option available to women to obtain financial assistance.

Given the great financial and psychological relief VOCAT payments can provide victims of family violence, there is a strong case for making the scheme more accessible.

### **The legislative barriers in the present VOCA system**

Victims of family violence have difficulty in establishing that the acts of violence against them constitute criminal acts and that those criminal acts resulted in an injury within the meaning in the Act. Victims of family violence are presented with additional legislative hurdles including:

- s29 which requires the Tribunal strike out an application where it is not brought within two years of the act of violence except in a narrow range of circumstances
- s34(2) which allows the Tribunal to give notice of the hearing to the offender, and
- s52 which requires the Tribunal to refuse to make an award if the act of violence was not reported to the police in a reasonable timeframe, except in “special circumstances.”

These are significant legislative barriers, and their effect is to create a system that fails to assist victims of family violence in their recovery.

### **Many women are unaware of VOCA**

Many women simply do not know that VOCA exists. VOCA did not feature prominently in our research interviews with women. Only a small number of participants cited the VOCAT system as helpful or otherwise.

Other research has found a similar lack of awareness.

*“... victims’ compensation schemes, which are available in all states and territories, appear to be under-utilised by women as a source of financial support following domestic and family violence.”<sup>58</sup>*

In addition to extensive legislative reform, work must be done to raise awareness of the scheme among victims of family violence.

### **Long waits for VOCAT decisions**

Women in our research reported long waits for VOCAT matters to be concluded. In fact, approximately 41% of all VOCAT applications last year were pending for 9 months or more, with 31% of applications pending for over 12 months.<sup>59</sup>

The waiting periods were distressing for women left in serious financial hardship by their abuser.

*“It’s a long process though, like especially for ... I dunno if there’s like a fast track for women who really, really need help.” (Kylie)*

The delay is compounded by the concern that victims of family violence are unlikely to receive an award for special financial assistance (a lump sum payment) as an interim award, but rather only as a part of the final determination. This means that compensation rarely arrives when a woman is most vulnerable, and that she may be obliged to live in financial hardship for months.

*“A lot of matters will take a couple of years from initial instructions to final determination, particularly if there are complicating factors.” (Danielle, WLSV Lawyer)*

The wait times for a determination of an award under the scheme needs to be specifically considered in any comprehensive review of the Victims of Crime Assistance jurisdiction.

<sup>58</sup> Macdonald, above n 10, 43.

<sup>59</sup> Victims of Crime Assistance Tribunal, *Victims of Crime Assistance Tribunal 2013-14 Annual Report* (1 September 2014) 30 <<https://www.vocat.vic.gov.au/sites/default/files/VOCAT2013-14%20Annual%20Report%20Final.doc.pdf>>.

## Recommendations

### Reform to the victims of crime assistance (VOCA) system

- 23 The Department of Justice and Regulation Victoria undertake a comprehensive review of the Victims of Crime Assistance jurisdiction examining the accessibility of the jurisdiction for victims of family violence.

## GREATER AVAILABILITY OF INFORMATION

### Information is power

Women involved in this research relied on information, often given by their abuser, to make decisions affecting their wellbeing.

Having accurate information about financial and legal realities and rights is vital to discrediting the misinformation a partner may use to control a victim. In our research, women cited the following common beliefs as affecting their decisions: the abuser would take their children, take their home or all of their property, impact their credit record, their employment or their ability to find housing.<sup>60</sup>

*“I didn’t leave the relationship because I was scared that if we went to court and I didn’t have enough proof, the court will make me share my children with him and I know that they would have been in danger ... When I found my social worker it was like my life completely changed.”* (Nadia)

In many cases, receiving accurate information about their rights regarding safety, the safety of their children and their property or debts meant dissolving the perpetrator’s power. Women identified the point at which they received accurate legal or financial information as a turning point; it was the point at which they were able to flee the violence or engage the legal system for protection.

*“I would have left him 10 years ago [if I had information about the family law legal system].”* (Nadia)

For the women in the research a lack of access to accurate information about the law and finances contributed to their financial hardship and stress, or prolonged the family violence they suffered.

*“I didn’t know what options were available really. So, yeah, I guess that would have helped [to have information about property entitlements] ... I think just having more awareness about it.”* (Belinda)

Getting accurate information also had an empowering effect.

*“But what a lot of women don’t realise – so many women in my situation don’t realise – the men don’t actually have control over the court system. They don’t actually have control over what you are entitled to.”* (Chloe)

### The benefits of early access to accurate information

The women in our research indicated there were several items of information they wished they had known earlier. If they had, it could have prevented financial problems from getting worse.

They would have known, for example:

- to contact utility companies when they left the home to ensure they were not responsible for bills incurred after that date
- that utility relief grants are available (as well as crisis payments from Centrelink)
- to freeze joint accounts, credit cards or redraw facilities on a mortgage where possible.

### Contacting utility companies when vacating the home

With respect to utility bills like electricity and gas, if the abusive partner is still in the household, the energy retailer can hold that person solely liable for bills incurred from the day a woman vacates the property, so long as the utility company is notified of the vacation.<sup>61</sup>

Many women overlook this notification because they are understandably concerned for safety and have other immediate priorities. This makes the issue of who is liable for the joint debt, at a later date, much more difficult.

### Utility relief grants

Women in the research indicated how helpful Utility Relief Grants (URGs) had been for them in difficult times. These are government grants to people in financial hardship to assist in paying utility bills. The grant application form is available from the utility company.

<sup>60</sup> It is essential to note here that being able to leave safely is of the highest importance. Many women identified being very concerned their abuser would kill them or their children and this was a key reason they decided not to leave. Women and children are killed at unacceptable rates by a perpetrator of family violence in Australia and physical safety is imperative.

<sup>61</sup> *Energy Retail Code (2013)* cl 7.6(c); *National Energy Retail Rules (2012)* r 53-54, as set out in CUAC, above n 20, 18.

Unfortunately, some women in serious financial hardship were not made aware of such grants, and their financial situation worsened.

*“Every time I rang up these companies I don’t think they believed me about what was going on in my home ... If I had somebody who was listening to me they would have said, ‘look if you’ve got financial problems or whatever I will send you these forms, you get so much ...’ I think they [utility relief grants] give you like five hundred dollars ... If I knew that from the start ... But I never got that. I never got any advice, from any company. Actually, if someone had told me about this [earlier] I would not have been in so much trouble.”* (Georgia)

### Preventing legal issues from escalating

As in the case of financial information, providing basic legal information at an early stage can empower women and prevent legal (and safety) issues from escalating.

The crucial information includes:

- how an intervention order works
- how an intervention order might impact parenting arrangements
- how the family law courts determine division of property, and
- how the family law courts decide matters such as where children live and how they spend time with the other parent.

Access to this information facilitates a woman leaving a violent relationship because she does not have to fear “losing the children” or exposing them to violence. It also means parties are less likely to have misapprehensions about the likely outcome of litigation, and disputes may be resolved more quickly.

*“Just simple things ... even um ... the actual factors regarding removing of children from the mother. What actually has to happen for children to be removed? And what are police measures to hopefully assist in the prevention of children being taken away? The police told me that once a child goes missing, then the federal police get involved. If they go interstate, you’ve got federal police. I’m like, you’re not a federal police, I don’t know anything about anything. So I really would like to see a booklet because while you’re sitting there in tears on your first or*

*second night, and he’s threatened to take the kids, the house, the car, if you’ve got something written down that says, no, he can’t actually do that ... you know?”* (Samantha)

Availability of information emerged as an important way to begin to address the financial and legal problems that emerge for women after family violence. In our survey, participants identified the following information as most needed (in order):

- housing options
- family law
- dealing with utility debts
- navigating Centrelink and child support
- discussing violence and hardship with the bank.

Information on entitlements, rather than budgeting, was perceived to be more useful to women in financial hardship following family violence.

### Where to provide the information?

Getting accurate information can be difficult where there is a safety risk or where the perpetrator deliberately gives misinformation about the law, rights and services.

Women pinpointed moments when, had it been available, they would have most benefited from accurate information. They identified two points:

- interaction with Centrelink
- interaction with the police.

*“Maybe in conjunction with Centrelink, when somebody separates ... just sort of like you know when you move into a house, the real estate will give you a welcome package? Centrelink could maybe do something like that, with services that might help you. Something like that.”* (Belinda)

*“Where [do] they [culturally and linguistically diverse women] go? The police”* (Eve)

*“I think what needs to happen is that there needs to be a booklet that the police can give you that gives you the basic legal stuff. Because you panic, you do, you think, ‘I can’t afford a solicitor, how am I going to afford a solicitor?’ ‘What does legal aid cover?’”* (Samantha)

### Centrelink and the Police

Every woman we interviewed had contact with police and/or Centrelink either during their relationship, or immediately after separation, making these good points of contact for women to receive other relevant information.

Research participants also highlighted the need for the document to be brief and cover the main facts. Recent research into economic abuse has also identified medical practitioners and banks as good places for women experiencing family violence to get information about money and the law.<sup>62</sup>

Workers in our survey indicated that information should be available at Centrelink as a first priority, closely followed by the internet (ensuring that information is easy to find by an online search). They also indicated the information should be widely available and proposed the following locations for distributing information:

the police station, the bank, the doctor's office, at schools, migration agent's office, immigration department, financial counsellors, neighbourhood centres, sexual assault counsellors, community information and support centres, gyms, beauticians, childcare centres, hairdressers, community health centres, family support services, housing agencies, specialist family violence services, generalist community services, government departments, libraries, maternal health centres, public toilets, courts, domestic violence services, sexual assault services, hospitals, real estate agencies, culturally specific information at relevant services and community organisation, Magistrates' Courts, Family Law Courts, Community Legal Centres.

### Preferred forms of information

The survey results indicated the location and form of the information (for example, whether a website, app or booklet) should be varied to reach the greatest number of women.

Some women (particularly when experiencing homelessness) do not have access to a smartphone or the internet, while others who were extremely isolated relied on the internet as their only way of obtaining information.

Similarly, getting information to culturally and linguistically diverse women, or young women, or Aboriginal and Torres Strait Islander women would need to be achieved using different methods.

*"And when you're like me I can't use the computer, um, I can't, I don't understand English language, for example."* (Eve)

At present, there are various information booklets and guides available in relation to family law, family violence law, family violence and tenancy, separation and finances, and financial and legal information for women experiencing economic abuse. However, these guides are not widely accessible.

Recent research in the area stresses the need to make information widely and easily available.<sup>63</sup> For this reason, we recommend the development of a Nation-wide, government-funded awareness campaign to ensure information is made more widely available for women.

Getting information from service providers is discussed in the next section. At this point, it is important to note that women in this research received important information from their social workers and family violence workers. An awareness campaign, while important, cannot replace face-to-face services for vulnerable women.

<sup>62</sup> Cameron, above n 12, 53.

<sup>63</sup> Cameron, above n 12 recommended funding for the provision of information to women about financial abuse and ensuring this information is made available in a variety of access points as well as a national public awareness campaign.

## Recommendations

### Greater availability of information

24 The Federal Government develop and deliver a public information campaign to raise awareness of economic abuse and the economic impacts of family violence. The campaign should include a website and a booklet for women. The information booklet should provide women with key legal and financial information to help reduce the economic impacts of family violence.

The Federal Government ensure the information booklet is translated into multiple languages and is widely available including at:

- every Centrelink office (and on the Centrelink website)
- every Police Station
- Hospitals and Doctor's offices'

## GREATER AVAILABILITY OF SERVICES

Women in our research identified that finding an advocate such as a social worker, community lawyer or financial counsellor was pivotal in getting solutions to the issues arising from family violence.

*“Hanover... they have almost been like they’re a family member, in regards to how much they can do in their job. Which I’m thankful for.” (Jenna)*

*“I saw the Women’s Legal Service and begging them could they please help me and thank god they did. And without the service, I wouldn’t be alive today without them.” (Catherine)*

### Best practice principles

Women identified aspects of service delivery that are crucial to obtaining services and assisting their economic recovery. These aspects include:

- that the services be holistic (to prevent women from having to go place-to-place)
- accessible (accessibility means different things to different women), and
- non-judgmental.

The women in this research indicated these ‘best practice’ principles would make services more helpful and less daunting. These principles apply to community organisations, the private sector and government departments alike.

### Holistic services

Holistic services were identified as being extremely important to women dealing with legal, financial, health and emotional consequences of family violence.

*“It would be nice if there were counselling services that could help you adjust to society after being in that kind of relationship. But then having [the counselling service next door to the lawyer] ...” (Natalie)*

*“... to have a case manager would be helpful because having to go to this place and that place and not get any help and not know what you’re entitled to ... I don’t mean a legal case manager, I mean a case manager to cover all aspects of the separation.” (Fiona)*

Women in our research experienced having to go to numerous places to get answers regarding the various financial problems arising from family violence. Our survey of sector workers also identified that services are fragmented and difficult to navigate for women with little time and resources.

*“Competing obligations and time commitments mean some services are preferred over others.” (Survey participant)*

*“Having to retell their stories over and over, navigating all the various services.” (Survey participant)*

*“Not knowing how to navigate the service system, while trying to juggle a range of issues including survival, trauma, and potentially adjusting to being a sole parent and returning to the workforce.” (Survey participant)*

Holistic services, though, means more than co-location. It means sharing information between services and removing some of the burden from the victim. This might include offering combined appointments, or other practical assistance such as childcare.

*“Holistic models are a good way of addressing this by bundling different services together and allowing multiple workers to collaborate after a single client attendance.” (Survey participant)*

### Accessible services

Whether a service is accessible will depend on a range of factors that vary for each individual. Of the women we spoke to there were particular issues concerning geographical isolation and a lack of anonymity for women in regional and rural Victoria when accessing services and disclosing family violence.

*“I think, I don’t know, you feel more isolated in the country, because everyone knows everyone. And everyone’s in everyone’s pocket. But then, you feel like there’s no help.” (Natalie)*

This perception could make obtaining help unachievable for women, particularly when combined with a lack of services and physical isolation.

Perpetrators used a number of tactics that exploited the physical isolation and victim’s financial dependence on them including “conflicting them out”

of free legal services (by accessing the services first) or preventing women from obtaining drivers licences or access to vehicles.

*“He could [only] get it [our car] started by lifting the bonnet, and hitting the starting motor with a hammer. I couldn’t even get the bonnet open. Over time I realised that he actually liked it, the fact that he was the only one who could use the only car. And he’d go away for days and leave me.”* (Jennifer)

It is important for services to consider the impact of these barriers for rural and regional women when designing service delivery.

Our survey identified a range of barriers for women accessing services:

- age and lack of recognition of elder abuse
- cultural barriers
- lack of services in rural areas where there are long distances to travel
- shame and stigma
- time limitations (this can disadvantage women with disabilities, in particular).

In our research, the barriers to accessing services cited most frequently were language barriers and lack of linguistically appropriate services.

### Taking a non-judgmental approach

It is crucial that services understand the psychological impacts of family violence, and ensure they have processes that contribute to a woman not feeling judged, blamed or uncomfortable when using the service.

*“But you feel like even now, like two years later, like I’m applying for a car loan at the moment and I’m so negative about it. I feel like I don’t deserve it or like ... you feel so shit about yourself. It doesn’t matter what you think, like you try and think good about yourself, but it always comes back to that ... I’m still not [confident in my financial decisions].”* (Natalie)

### When receiving material aid

Women involved in the research felt concern about being judged when receiving material aid.

One woman spoke about having her disability pension siphoned off by an abusive partner for gambling and feeling as though she could not seek help from charitable organisations because she would be viewed as enabling a gambler.

*“I’m resourceful so my kids always got by and all of that sort of stuff and I didn’t do it unless I really had to do it [seek material aid from charities] ... Some assistance I did get was also you have to present a certain way to receive that assistance. Oh your ... children look like they’re well fed, they’re well behaved. I mean if one of the kids had shown a behavioural problem, god knows whether I would have got the help or not.”* (Jacqui)

### For legal and financial counselling services

It is particularly valuable for legal and financial counselling services to look at how they may be perpetuating power imbalances. Where a level of technical expertise is required to navigate a particular legal or financial system or process, the service provider becomes the expert and the woman seeking help is reliant on that expertise. This can be disempowering for women.

*“They [financial counsellors] make you feel like you’re an idiot. Like, I was like ... I walked out of there feeling like an idiot.”* (Natalie)

It is important for these services to examine the way they engage with clients and ensure an empowerment approach is taken. The risk of traditional or transactional advocacy methods is that clients are further disempowered by their interactions with a legal or financial system that is designed to preserve the status quo; the “most well-intentioned lawyers often leave their clients worse off by perpetuating dependency on outside actors”.<sup>64</sup>

*“A more accepting and supportive response from professionals (clients report feeling judged or intimidated by legal professionals, banks, accountants etc).”* (Survey participant)

*“Use of everyday language especially for financial matters.”* (Survey participant)

<sup>64</sup> Nancy Cook, ‘Looking for justice on a two-way street’ (2006) 20 *Washington University Journal of Law & Policy* 169.

Women who did receive a more empathic response from professionals found it valuable:

*“Her patience is beyond being measured, like, just, it’s like professional, but with empathy or sympathy, I don’t know if she’s been through it, but, um, just patience and that open-mindedness and being empathetic, so important, you know, you feel like you’re being heard. Sometimes I apologise cause I know how busy she is, but she’ll still listen and sometimes I actually called her just to say guess what happened now, and she’s, you know, and she’ll listen and she’ll give me that shoulder and then say OK, well this action is what you can be proactive in. So it wasn’t oh you poor thing and then leave it at that, then she’ll carry it that step further so she always maintained that professionalism but ... amazing.” (Angela)*

Such responses indicate the value in:

- funding for community organisations to do this work
- having professionals receive specialist family violence training, and
- having specialist services that advocate for women in financial and legal matters.

### Increased funding to services

Women in our research identified legal assistance, financial counselling and family violence or social workers as being helpful in resolving economic abuse and financial hardship.

### Legal assistance

Access to legal advice and representation was identified as very important by many of the women interviewed.

*“If there was more free, readily available legal advice and legal counsel, that would be amazing. Because you don’t know what your rights are. When you come out of that kind of relationship you don’t really know anything.” (Natalie)*

A key barrier for women was a lack of affordable (or free) legal assistance.

*“But, and I went to a legal service originally to talk to them about it, they told me that they don’t help pursue superannuation.” (Fiona)*

*“No, I went through Legal Aid. And I did find that hard, basically, it was impossible to get on the phone line, I found it very overwhelming, I just went OK, I’ve just got to keep on doing*

*this. It’s just the old story of limited resources. You’re just not left with a hell of a lot of dignity at the end of the day.” (Margaret)*

*“I guess it’s just funding, having you know, more access, it’s heart-wrenching to go in and see a lawyer and get some advice, and they say I’ll call you back and let you know when we can take your case – and you’re just left with that. And you think – what am I going to do? And they’ll say – oh we’ll put you onto another legal service that may or may not take you on – and it’s such an overwhelming thing to even go to one legal service.” (Margaret)*

### Social workers

Women found social workers, family violence services and housing advocacy hugely helpful. When asked what helped most in solving legal and financial problems some women elected their social worker or family violence worker, notwithstanding a lack of technical financial or legal expertise. These workers were crucial to women finding help, understanding the legal or financial process, and staying engaged and safe during the process.

*“I couldn’t do anything without the [family violence] workers.” (Mei)*

The role of family violence workers in supporting women through their legal and financial problems cannot be underestimated. Often, this involved:

- completing forms
- helping women to find housing
- explaining correspondence from professionals like lawyers, and
- providing support throughout lengthy legal processes.

The vital role played by the family violence or social worker in assisting women to resolve their legal or financial issues demonstrates that the current collaboration model (i.e., between the family violence and community legal sectors) is highly valuable.

We recommend the collaboration be expanded.

### Financial counselling

As with legal help, financial counselling was generally considered useful and valuable by women.

*“She’d [Financial Counsellor from Women’s Health] give me like, petrol cards, to use, like a voucher thing and a Safeway*

*one and helped me with other things that I was paying off and rang them up for me. If they'd say no to me she'd ring them and she'd work out a plan. Yeah, the financial counsellor was really good.” (Chloe)*

However, as with affordable legal assistance, many women found financial counselling hard to find and with long waiting lists.

*“Once you're able to get off the waiting list and in to see them, often because you had to wait so long to see them the financial situation was already exacerbated just by the sheer fact that you're waiting to see these people and it takes these sorts of people to negotiate with the utility providers. They carry weight, so to speak, or credibility.” (Jacqui)*

*“They give me a line to ring, but there's no workers to pick up the call.” (Jodie)*

### No-interest loans

Some financial counselling programs offer no-interest loan schemes. The women who had access to such schemes found them valuable.

*“... getting a loan and things like that to get you started again, your washing machine or your fridge or your beds or whatever you need. So I found them and walked in there. It was quite hard though because you don't know where to start, you don't know*

*who to talk to. You find it all a bit humiliating. Yeah but they were wonderful in there. We've got a couple of loans off them and they really helped and we got new things and we set up this house really nicely. They were really good.” (Chloe)*

### Financial literacy

Some financial counselling programs provide financial literacy training, including pairing women with “money mentors” to assist them in budgeting, finding entitlements and negotiating with creditors. Women felt empowered by financial literacy elements of financial counseling services.

*“They set up, like a mentor ... I met her every week and we'd go through budgets and what I was saving and she'd even help me look for a job. That was for twelve months, but I met her one day a week which was really good.” (Chloe)*

### More resources for services

Overwhelmingly, women in our research expressed the need for more services.

Women discussed long wait lists for financial counsellors, limited capacity of legal assistance services to provide ongoing representation and difficulty in securing refuge or housing. Immediate funding increases are required to meet the needs of women experiencing family violence and financial hardship.

## Recommendations

### Greater availability of services

- 25** The Victorian Government fund a specialist family violence financial counselling qualification and training program.  
The Financial and Consumer Rights Council develop the training in consultation with family violence services.
- 26** The Victorian Government fund the roll-out of a new specialist family violence financial counselling program across Victoria.  
Financial counsellors to be embedded in existing family violence services and work collaboratively with other professionals to assist women.
- 27** The Federal Government and Victorian Government increase funding to the legal assistance sector including:
- Funding for additional specialist family lawyers at community legal centres to increase access to small claim property settlements for victims of family violence.
  - Funding for additional lawyers specialising in family violence available at all Victorian Magistrates' Courts to assist women with the range of legal issues that result from family violence.

## OTHER BARRIERS TO ECONOMIC EQUALITY FOLLOWING FAMILY

There were numerous other issues and barriers that were identified in the course of this research that, within the scope of this report, we are unable to cover in sufficient detail. Nevertheless, we feel it necessary to note the issues here.

In the case of many of these issues, further research is required; in some cases, comprehensive research and advocacy work is already underway.

This is not a comprehensive list of the barriers women encounter in obtaining economic equality following family violence. Rather, it is a list of the major themes that emerged from our research interviews.

### Housing issues

Housing emerged as one of the most important issues for women involved in this research. Access to housing was viewed by many women as a key factor in their decision to leave the relationship or remain in the home.

Access to housing also impacted on women's financial hardship following separation.

*"[Housing] is the biggest thing that just frightened the daylight out of me because my daughter [suffers a chronic disease] ... my daughter needs to have gas and electricity, she needs heating and she needs good home cooked meals; she has four injections a day ... I think guaranteeing housing [is the most important system change needed]." (Natalie)*

*"[You need] a guarantee that if you're going to leave a violent situation that there is genuine support out there, because for a woman who's gone through what I've gone through [leaving is very difficult]." (Vanessa)*

Women found housing support difficult to access. The majority of women had difficulty and a long wait to obtain more permanent or stable accommodation.

*"... before I gave birth ... I would have to stay in one place in Coburg and when they closed from Fridays to Sundays, I had to stay in a budget motel. Until I gave birth, then when I came home from hospital, the next day, they took me to the refuge. (Ursula)*

*"It's hard because some of the services are gone and we need them back." (Natalie)*

The women who did not have family or friends to stay with faced particular barriers in leaving a violent relationship.

Of the workers we surveyed, 89% indicated that women "very frequently" had difficulty obtaining housing after family violence, and a further 8% observed this "sometimes". Every survey respondent (100%) indicated that a lack of available housing influenced a woman's decision to leave a violent relationship.

A lack of appropriate housing also had flow-on effects for women including:

- constraining their ability to obtain or maintain employment
- increasing personal debt, and
- impacting their ability to maintain social networks and family support crucial in times of financial hardship.

In at least one case in our research, the issue of housing affected the Court's decision on which parent the children should reside with. In turn, the Court's decision then impacted the woman's access to social security payments and housing support.

*"I was caught again in a catch-22. I didn't have a place to stay and therefore I couldn't have the kids, but I couldn't have the kids unless I had a place to stay in." (Jenna)*

Where women did have access to a more comprehensive housing service, this tended to have flow-on benefits and set them on a pathway to regaining their economic stability more quickly.

*"... [the family violence service] set me up, like I found a rental property but they got me umm furniture and the bond and the rent and everything, they were just like, come out and spoke to the kids and I and they were fantastic but you know once I got on my feet ... my employer wanted me back and I just yeah I got on with life again." (Vanessa)*

*"Like, really. I wouldn't be where I am without them. Help to get housing like, housing's a really hard thing to get in [the country]." (Natalie)*

Many women were concerned about the private rental market and feared receiving a black mark against their name.

*"I left the rental property that we were sharing. And I found somewhere else to rent by myself. I said that I would continue to pay my share of the rent in the place that we had shared up until the end of the lease. And there was, there was about four months left on the lease. Um, he at this point said that he couldn't afford to pay rent and he couldn't afford to move so I would have to pay for everything."* (Sandra)

In Sandra's case, she was able to approach Victorian Civil and Administrative Tribunal to seek an order that removed her name from the lease and ended her liability to pay the rent for a home she was no longer living in.

When women remain in the home, and have few other accommodation options, but are unable to meet the rent repayments because of a sudden drop in household income, they can face significant barriers to remaining housed.

We support the recommendations of the joint submission led by *the Council to homeless persons* and *Justice Connect* for the Federal and Victorian Government to increase funding to homelessness services and improve measures to prevent homelessness.<sup>65</sup>

## Gambling

There was a high incidence of co-morbidity of family violence and problem gambling revealed in this research.

*"He would gamble all the money in the credit cards, he will steal jewellery from me, even my brother that died of brain tumour. I had a bracelet that [was my brother's and it was to be given to my son one day], he stole that."* (Nadia)

Some women also experienced an increase in violence when their partner had gambled and lost, or wanted to gamble and couldn't.

*"... the pokies, the pokie machines [were taking all the household income] ... and it was just better not ... to mention it and just get by however you could. [Otherwise he would] punch walls, throw mugs through windows, scream at me..."* (Jacqui)

Women discussed trying to contact gamblers help with little effect. There was no screening for family violence, nor assistance to women in protecting themselves and the children from the impact of the gambling.

*"So I rang up Gamblers Anonymous and they were just basically useless, they said 'well you can't help a gambler unless he helps himself' and I said 'well, where does that leave me?!'"* (Margaret)

Women had particular difficulty in entering payment plans and meeting payment deadlines when their abuser was also a problem gambler.

*"I was actually dealing with a gambler ... you couldn't actually make a forward plan, because it wasn't likely to happen because a compulsive gambler isn't able to moderate when there is money there, it's like an obsessive eater, they can't, they won't moderate."* (Margaret)

*"I did a lot of negotiating then and I just got into the habit of phoning the electricity companies up which weren't all together very helpful at all, um to say listen, don't have the money can we negotiate this, um how can I go into a payment plan, but then he'd delve into the account and lo and behold when it came around to the payment it was empty."* (Jacqui)

We found very little research on the co-occurrence of gambling and family violence and what help is available to women. Further research on the links between gambling and family violence would be valuable in determining how best to assist women experiencing family violence and financial hardship as a result of gambling.

<sup>65</sup> Council to Homeless Persons, *Joint submission – affordable housing and family violence* (29 May 2015) Council to Homeless Persons, <<http://chp.org.au/wp-content/uploads/2015/06/Joint-submission-affordable-housing-and-family-violence-May-2015.pdf>>

## Centrelink

We have highlighted Centrelink as an early contact point for women experiencing family violence, and as such, an important player in women receiving vital legal and financial information at an early stage.

It is essential that Centrelink adopt policies to ensure routine and regular screening for family violence including economic abuse.

It is also essential that staff receive training, and that family violence pathways are established to enable victims to receive appropriate and early support. Such training and pathways should include referrals to financial counsellors and legal advice. There are also opportunities for Centrelink to link in with existing holistic services.

In our research, women cited difficulties with Centrelink as a result of economic abuse. This could include an abusive partner forcing them to lie to Centrelink to enable them to collect payments.

*“He even threatened, don’t tell Centrelink this or that cause he had created lies everywhere so I was scared to do anything and he did everything. And when we separated and I wanted to tell them everything and he said, you can’t, you’ll get me into trouble.”* (Angela)

Women identified the following gaps in the Centrelink system which were significant causes of financial hardship following family violence including:

- waiting periods for social security payments following separation
- payments being insufficient to support even a basic standard of living (particularly where children were over eight years of age, forcing women on to Newstart rather than parenting payments)
- ineligibility of women on spousal visas fleeing violence to receive payments
- lack of information, and
- tight time limitations on receiving a crisis payment after fleeing family violence.

*“Initially when he disappeared I had, like, no money, because obviously there’s a wait time. Um, there’s a bit of, you can apply for, like, something, you know, some money to get you through and then someone else said, no that’s not gonna happen, you have to wait. So, there’s a bit of discrepancy as to what is actually happening.”* (Maria)

*“When I ran away from him I only got twenty dollars with me ... and many other bills under my name.”* (Fern)

*“I didn’t know what options were available, really. So yeah, I guess that would have helped. Like, when I first left Qld, you know like just after the assault, I went to Centrelink and I actually spoke with a social work there. She actually helped put together like an emergency payment for me, so I could actually leave. So I packed my car and I got my dog and drove down. And without her help, I wouldn’t have been able to do that.”* (Belinda)

Reform to Centrelink policies and the social security payments system, to better assist women to recover from family violence is needed.

## Child support

Most women involved in this research had difficulty in receiving the amount of child support they were entitled to receive under the current legislation. This difficulty was a result of a range of tactics by perpetrators and systemic failings including:

- inability or unwillingness of the child support agency to pursue fathers where the income was received predominantly in cash
- fathers having assessed payments reduced by other payments they had made, for example, to a joint debt or mortgage

*“He said he was paying the mortgage as the child support, and then he’d go and redraw on the house ... So he hadn’t paid anything, so now I’ve got further in, we owed, we owed all of it.”* (Natalie)

- women being too fearful to claim child support
- “I didn’t ask for child support ... Because he always said to me ... he will never, ever pay me child support ... I do believe that he is going to get very angry and I do believe that he can kill me.”* (Nadia)

- Centrelink payments being reduced by a failure to collect child support or a discrepancy between an assessed amount of child support payable and the amount actually being paid

*“I decided I wanted to ask for child support and then I got terrified, I got into panic attack because I know that he always told me he wasn’t going to pay. So the problem with um child support is: you call today and today they send information to Centrelink and Centrelink cancels the payments.” (Natalie)*

A recent Government inquiry into the child support system has provided a recommendation to further investigate and trial a guarantee payment system. The introduction of a guarantee system is likely to provide relief and more equitable outcomes to women experiencing economic abuse.

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## APPENDIX A

### Participant Information Sheet

#### Researcher

Emma Smallwood, Women's Legal Service Victoria (WLSV), project research co-ordinator, phone: 03 8622 0600, email: emma@womenslegal.org.au

#### What is the project about?

We are seeking to interview 30 women about their experience of family violence and financial hardship.

By participating in this research you will help us better understand the experience of women who seek help in relation to their legal and money problems after family violence.

We hope to use this research to improve these systems. This research will be published in 2015.

#### If I agree to participate, what will I be asked to do?

You have been asked to participate in this research because you:

- have experienced or are experiencing family violence, and
- have experienced or are experiencing money problems.

If you choose to participate in this study you will be asked to participate in a face-to-face interview with our researcher. We anticipate this interview will take approximately one hour. The interview is able to occur at a place of your choosing.

A follow-up interview may take place approximately two – six months after your participation in an initial interview. This follow-up interview will likely occur by telephone and take approximately 20 minutes.

WLSV can organise interpreters for women requiring them. Please notify the researcher of your preferred/required language and we will organise an interpreter for you.

WLSV can organise aides or other assistance for women with a disabilities or health issues that make it difficult to participate in this research. Please notify the researcher of your health or personal care requirements.

#### What will happen with the information I provide?

The audio of the interview will be recorded by the researcher and the recording will be transcribed later by either the researcher or a research assistant. The interview and all research data will be stored on password protected computer systems and in locked cabinets at the WLSV office.

Your interview, or parts of it, may form a part of the published research report. The findings of this study may be published in academic and practitioner journals and reports, and presented at conferences. Evidence, case studies and quotes from the interviews may form part of the public advocacy that WLSV does in the future to promote changes to the legal and financial systems. The material we publish could take the form of tweets, e-bulletins, media releases or other published material. We will not name you in the report, or in any published material.

We will change all names, addresses and ages disclosed by participants prior to publishing the research. We will make all possible efforts to anonymise your story including changing any identifying details where possible. However where details are required in order to describe a systemic issue, details of the story (other than your or your family member's name/s, address and age/s) will need to remain the same.

#### What are the possible risks and benefits?

Whilst we will anonymise all research data, there is a risk that a person reading our research will recognise your story. This risk may be increased if it is known you are a client of WLSV.

The special nature of family law matters, which often involve children, requires that no identifying material is published regarding family law cases. WLSV will ensure our research report complies with these legal requirements by taking extra care to de-identify interviews that have family law court involvement.

The interview may involve you being asked to describe events where you were subject to violence (including intimate partner violence). If you think this will make

you upset or distressed, please think carefully about your decision to participate in this research.

If you experience any distress as a result of your participation in this research, you are encouraged to seek assistance by contacting a counselling support service. Some services you could contact include:

<b>Beyond blue</b>	<b>1300 22 4636</b>
<b>Lifeline</b>	<b>13 11 14</b>
<b>1800 RESPECT</b> (National sexual assault, domestic and family violence counselling service)	<b>1800 737 732</b>
<b>WIRE</b> (Women's Information and Referral Exchange)	<b>1300 134 130</b>

### What are my rights as a participant?

Your participation in this research is **completely voluntary**.

You can choose not to answer a question, have a break or stop the interview at any time.

You can withdraw your data from the research any time prior to 1 March 2015.

You can request a copy of the transcript of your interview.

Your choice to participate or not participate in this research will in no way impact the legal or financial counselling services WLSV provides you with.

The researcher will not provide you with legal advice or financial counselling in your interview and nothing the researcher says should be considered to be legal advice. Should you need legal advice you should contact WLSV advice line on: 8622 0600.

The researcher is available to answer any questions about the research, your participation or other concerns. Contact Emma Smallwood at [emma@womenslegal.org.au](mailto:emma@womenslegal.org.au) or by phone; 03 8622 0624.

I have read the above information sheet and I understand the purpose of the research, my rights as a voluntary participant and what my information will be used for.

I consent to participate in the research:

Name

.....

Signature

.....

## APPENDIX B

### Interview questions

**Overarching question: How could systems better assist women to recover from economic hardship following family violence?**

- 1 Have you seen a lawyer or financial counsellor from this service?  
1a If no, do CLSIS sheet to get demographics
- 2 Have you separated?  
2a If so, when?
- 3 How long was your relationship?  
3a Were you married?
- 4 Do you have children?  
4a Are the children of that relationship?  
4b How old are they?  
4c Since separation who have the children lived with and how do they (if at all) spend time with the other parent?
- 5 Was there any family violence during the relationship?  
5a Can you describe the family violence and how that impacted you?
- 6 How were financial decisions made during your relationship?
- 7 Did either you or your spouse gamble?
- 8 Did either you or your spouse have drug or alcohol abuse problems?
- 9 Do you have any health issues that were impacted by the financial stress or family violence?  
9a i.e. disability based violence
- 10 Did you have money problems during your relationship?  
10a Can you describe them for me?
- 11 Who did you seek help from in relation to those problems?  
11a Can you tell me about your experience in seeking help?
- 12 Did you have any money problems after separation?  
12a Can you describe them for me?
- 13 Did you have any legal problems after separation?  
13a Can you describe them for me?
- 14 What would you say the biggest difficulty you have faced since separation has been?
- 15 Were there any other organisations you contacted after separation (such as the police, DHS, child support, Centrelink, your bank or lender, your Electricity Company or phone company?)  
15a Who was most helpful and why?  
15b Is your ex-partner paying child support?  
15c Did you receive a property settlement – why/why not?  
15d Do you have any outstanding debts?
- 16 What has been the most positive change for you since you separated?
- 17 What changes to any of the legal or financial systems do you think a woman going through your situation would benefit from?

## APPENDIX C

### Community sector survey

#### Barriers to economic equality after family violence

- 1 Please enter the name of your organisation:
- 2 What types of information would be most helpful to women to help alleviate financial hardship after family violence? Information on ...
  - housing options
  - how to talk to the bank about hardship and preventing economic abuse
  - family law issues - property settlements
  - family law issues - children's matters
  - intervention orders and preventing violence
  - court process
  - navigating centrelink and/or child support
  - budgeting or investing
  - how to resolve joint debt issues
  - bills and hardship arrangements for energy, water and telecommunication
  - other (please specify)
- 3 If the Federal Government produced an information booklet with basic legal and financial information to assist women after family violence, where is the best place for that information to be available?
  - the police station
  - the bank
  - Centrelink
  - the doctors office
  - online
  - at schools
  - Other (please specify)
- 4 What format would be most helpful for women to access information on financial and legal issues, following family violence and separation?
  - A website
  - An app on mobile phone
  - A booklet that is widely available (i.e. Centrelink, the bank)
  - Training and information package delivered to build the capacity of support workers to deliver information to clients
  - Other (please specify)
- 5 In your opinion what services are or would be most useful to women experiencing financial hardship after family violence?
  - Legal assistance
  - Counselling
  - Financial counselling (advocacy on debts and bills)
  - Social workers (safety planning, support and general advocacy)
  - Housing advocacy
  - Other (please specify)

- 
- 6 What barriers do women experience when trying to access any of these services?
- 
- 7 What improvements could these services make to better meet the needs of women experiencing family violence?
- 
- 8 Which of the following issues do women experiencing family violence encounter when dealing with electricity, gas, water or telephone bills?
- Unable to be removed from a joint account
  - Power shut off by an abusive partner whilst still living in the home
  - Chased by the service provider for the whole amount owing on a joint account
  - Chased by the service provider for a bill in the perpetrator's sole name
  - Unable to enter into a hardship agreement to deal with joint accounts
  - Had private information disclosed to a perpetrator
  - Had a bill referred to a debt collector
  - Had a positive and empathetic response from the service provider
  - Had success in accessing a utility relief grant
  - Had success in entering a hardship payment
  - Had a bill reduced or waived
  - Other (please specify)
- 
- 9 What change to electricity, gas, water or telephone company policy would help most in reducing financial hardship after family violence?
- Splitting joint debts after separation
  - Staff understanding family violence and providing an empathetic response
  - Speaking to the same staff member about hardship arrangements
  - Having staff suggest applying for utility relief grants
  - Not requiring victims to seek the consent of their abusive ex-partner order to deal with joint debts or accounts after separation
  - Other (please specify)
- 
- 10 Do women have difficulty with a joint debt with the bank, such as a mortgage, after family violence?
- Very frequently
  - Sometimes
  - Rarely
  - Never
  - Unsure
  - Other (please specify)
- 
- 11 Do women experience difficulty in dividing the property of the relationship (property settlement) after family violence?
- Very frequently
  - Sometimes
  - Rarely
  - Never
  - Unsure
  - Other (please specify)
-

- 
- 12** What barriers do women encounter in obtaining a property settlement?
- 13** In your experience, do women encounter any barriers in the family violence legal system to obtain an intervention order?
- No barriers to obtaining an intervention order
  - Did not use the family violence legal system
  - Court did not recognise economic abuse
  - Police did not recognise economic abuse
  - Police did not enforce intervention order
  - Victim didn't understand what happened at Court
  - Abuser engaged in systems abuse (i.e. appeals, cross application, re hearings)
  - Other (please specify)
- 14** In your experience how often does a lack of available housing influence a woman's decision or ability to leave an abusive relationship?
- Very frequently
  - Sometimes
  - Rarely
  - Never
  - Unsure
  - Other (please specify)
- 15** Do women have difficulty finding housing after leaving a violent relationship?
- Very frequently
  - Sometimes
  - Rarely
  - Never
  - Unsure
  - Other (please specify)
- 16** Do women find it easy to access the social security payments they are eligible for from Centrelink after family violence?
- Very frequently
  - Sometimes
  - Rarely
  - Never
  - Unsure
  - Other (please specify)
- 17** Do women find it easy to receive the child support payments they are entitled to after family violence?
- Very frequently
  - Sometimes
  - Rarely
  - Never
  - Unsure
  - Other (please specify)

---

**18** Do women experience problems with fines or infringements after family violence?

- Very frequently
- Sometimes
- Rarely
- Never
- Unsure
- Other (please specify)

---

**19** How often do women who experience an injury as a result of a criminal act apply to receive victims of crime financial assistance after family violence?

- Very frequently
  - Sometimes
  - Rarely Never
  - Unsure
  - Other (please specify)
-

Produced by

women's legal  
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