

**ATTACHMENT ES-1**

This is the attachment marked "**ES-1**" referred to in the witness statement of Emma Margaret Smallwood dated 10 July 2015.



**SUBMISSION**

**ECONOMIC ABUSE AND ECONOMIC  
RECOVERY OF FAMILY VIOLENCE VICTIMS**

**ROYAL COMMISSION INTO FAMILY VIOLENCE**

Prepared by Women's Legal Service Victoria

19 June 2015

*“The bank, the insurance, the utilities, centrelink, child support... everything. Everything was a struggle.” – Angela*

*“I would have left him 10 years ago [if I had legal information]” – Nadia*

*“[After separation] he would start taking things away... monetary value. He shut off the gas and electricity... it was a cold day and we still remember it...” – Angela*

*“I’m worried... I don’t want to have 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...” – Belinda*

*“I know people might say... it’s just the holding of the financial, and people might go oh its only money, but it’s not the money, it’s that control.” - Margaret*

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## **SUMMARY OF RECOMMENDATIONS**

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### Legal recognition and treatment

1. The Chief Magistrate of the Magistrates Court of Victoria considers issuing a practice direction regarding family violence intervention orders and economic abuse. The direction to set out additional conditions that can be included in intervention orders to address economic abuse, including: orders regarding the return of specific items of property that are being used to perpetrate economic abuse, that a victim be given possession of a vehicle, access particular chattels or a bank account and 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.
2. Judicial College of Victoria and the Law Institute of Victoria engage specialist organisations working with women experiencing financial hardship and family violence (including Women's Legal Service Victoria) 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.

### Police response

3. Victoria Police ensures training programs are compulsory for all officers on the nature and impacts of family violence and in particular economic abuse and financial issues faced by victims of family violence.
4. The Victorian Government fund Victoria Police and Women's Legal Service Victoria to design and deliver training for police on family violence intervention orders and in particular economic abuse. The training should include: identifying economic abuse, the significance of family violence on the financial hardship and homelessness women experience and applying the code of conduct to deal with economic abuse when applying for and enforcing family violence intervention orders.
5. Amend the Family Violence Code to include practical examples which will assist police officers in identifying instances of economic abuse.
6. The Victorian Government and Victoria Police consider the ways in which current practice does not adequately address economic abuse for victims of family violence and implement strategies to improve practice, strategies might include:
  - a. police officers to take a more proactive role in the enforcement of intervention orders as they relate to property;
  - b. creation of a specialist team within Victoria Police, such as Protective Services Unit (PSU) or Sheriff's Operations within Civic Compliance to assist women with enforcing property provisions of an intervention order;
  - c. greater police accountability in ensuring victims (and their children) can remain in their home after a family violence incident and property provisions of intervention orders are sought and enforced; and

- d. creation of a more accessible and robust police conduct complaints system for family violence victims, which should include accountability in ensuring victims (and their children) can remain in their home after a family violence incident and property provisions of intervention orders are sought and enforced.

#### Access to compensation

7. The Department of Justice undertake a comprehensive review of the Victims of Crime Assistance jurisdiction having particular regard to the experience of victims of family violence.

#### Debts and banking

8. Banking industry codes of practice and the Credit Protection Act is amended to allow for splitting of joint liabilities in circumstances of economic abuse where the parties agree to the splitting of the debt.
9. Banking industry codes of practice and the Credit Protection Act be amended to allow for the removal of victims' names from joint liabilities in circumstances of economic abuse where the debt is unable to be split by consent and where a victim would be otherwise unable to pay the debt due to financial hardship.
10. The banking sector to continue to consider the issues facing victims of family violence and identify areas for reform. For example, developing specific family violence policies to supplement existing financial hardship policies, including practices that do not require a victim to negotiate with a perpetrator to resolve their debt issue.
11. The Australian Banking Association engage specialist organisations working with women experiencing financial hardship and family violence to design and deliver training programs to financial institutions and credit providers on the nature and impact of economic abuse, and financial issues faced by victims of family violence.
12. The Australian Banking Association publish guidelines for banks in respect of family violence intervention orders and standards of best practice for dealing with victims of family violence experiencing financial hardship.

#### Utility companies

13. The Essential Services Commission in consultation with financial counsellors and family violence services develop industry guidelines or a comprehensive set of principles addressing the treatment of customers in circumstances of financial hardship, including specific policies for family violence.

14. The Essential Services Commission in consultation with financial counsellors, community legal centres and family violence services are funded by the Victorian Government to design and deliver training programs to utility providers on the nature and impact of economic abuse and financial issues faced by victims of family violence.

#### Assistance for victims

15. The Victorian Government provide funding for the Financial and Consumer Rights Council in consultation with family violence services to develop a specialist family violence financial counselling qualification and training program.
16. The Victorian Government provide funding for the Financial and Consumer Rights Council to develop and deliver a new specialist family violence financial counselling program, where financial counsellors are embedded in existing family violence services and work collaboratively to assist women. Services will include: community legal services, health services and other community services.
17. The Victorian Government provide funding for the continuation of the successful Stepping Stones pilot program at WLSV for three years from 2016 (at a cost of \$177,000 per year).

## INTRODUCTION

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Thank you for the opportunity for Women's Legal Services Victoria (**WLSV**) to provide a submission to the Royal Commission.<sup>1</sup>

WLSV will provide three submissions to the Royal Commission. This submission focuses on economic abuse and the economic recovery of victims of family violence.

Economic abuse is a form of family violence that often occurs together with other forms of violence. Research indicates that economic abuse is widespread, poorly understood and often unrecognised, even by those who experience it.<sup>2</sup>

Economic abuse can broadly be defined as a *'form of family violence that negatively impacts a person financially and undermines their efforts to become economically independent'*.<sup>3</sup> Economic abuse may result in a victim of family violence being unable to leave a violent relationship, may cause a victim to return to a violent relationship or may result in a victim becoming homeless or facing long-term financial hardship.

Our submission identifies the systemic barriers faced by women experiencing economic abuse in the context of relationship breakdown, both within and external to the legal system. Systemic barriers are identified in relation to family violence intervention orders, police responses to family violence and issues faced by victims of family violence in dealing with banks and utility providers.

Our submission draws on our experiences at WLSV and more specifically in WLSV's Stepping Stones Project, discussed at section 0 below. We have included case studies from individual clients that we have assisted. All individual client case studies are de-identified and collected for advocacy purposes with the consent of the client.

The recommendations are focused on practical changes that could be made to the law and the policies of banks, the police and utility providers to immediately create better outcomes for victims of economic abuse. WLSV is of the view that long-term systemic change is required to address family violence in Victoria; including economic abuse and the economic impacts of family violence. For that reason WLSV will provide two other submissions which propose long-term systemic reform; 'Improving the Family Violence System' and 'Multi-Jurisdictional Issues'. The recommendations of those submissions are not specifically addressed here but they are viewed as the necessary subsequent reforms to the short-term recommendations of this report. Specifically, WLSV calls for:

- Accountability in Victoria Police. Strengthened through a streamlined complaints and feedback process in family violence incidences.
- Victoria Police to strengthen family violence responses. With teams to include social workers that provide victims with support at the time of an incident.
- Development of a "one family one court model" in the Magistrates' Court.  
This is important for victims of economic abuse as it would allow women to have housing, debt and 'small property' issues resolved by the same Court that deals with issues of safety.
- Strengthening the family violence framework in the family law system.

As a part of the Stepping Stones Project WLSV is in the process of writing a research report which will further explore systemic barriers faced by women experiencing family violence and financial hardship. The research and reform recommendations will be published in September 2015. In preparing this submission we have sought to identify and summarise key issues in relation to economic abuse and economic recovery from family violence. These issues are complex and we encourage the Commission to explore these issues further in its work, including in public hearings. If the Commission would be assisted by more detailed submissions on this topic, please let us know.

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<sup>1</sup> WLSV would like to acknowledge the generous pro bono contribution of Herbert Smith Freehills in providing assistance preparing this submission.

<sup>2</sup> Prue Cameron, 'Relationship Problems and Money: Women talk about financial abuse' (2014) *Wire Women's Information*, p. 56.

<sup>3</sup> Owen Camilleri, Tanya Corrie, Shorna Moore, 'Restoring Financial Safety: Legal Responses to Economic Abuse' (2015) *Good Shepherd Australia New Zealand and Wyndham Legal Service*, p. 7.

Level 10, 277 William St Melbourne VIC 3000 P 03 8622 0600 F 03 9642 0232 E [admin@womenslegal.org.au](mailto:admin@womenslegal.org.au)  
[www.womenslegal.org.au](http://www.womenslegal.org.au)



## **WOMEN'S LEGAL SERVICE VICTORIA**

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WLSV is a not for profit organisation that has been providing free legal services to women for over 30 years. We specialise in issues arising from relationship breakdown and violence against women. WLSV provides free and confidential legal information, advice, referral and representation to women in Victoria.

WLSV operates a daily duty lawyer service at Melbourne Magistrates Court, providing advice and representation to women involved in intervention order proceedings. Through our Stepping Stones Project WLSV has a financial counsellor who works closely with our lawyers to assist women to deal with the complex financial impacts of family violence.

Through our associated service, Family Law Legal Service, WLSV operates a daily duty lawyer service at the Family Law Courts. We initiate and participate in law reform activities, ensuring that clients' experiences are taken into account when legal policy is being developed or when changes are being made to the law. We deliver legal education, training and professional development to a range of organisations and professional groups. We also coordinate a volunteer program with over 100 volunteers. WLSV is funded by the Indigenous Justice and Legal Assistance Division, Commonwealth Attorney General's Department and Victoria Legal Aid.

# 1 Recognition of economic abuse as family violence

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## 1.1 Legal recognition of economic abuse – intervention orders

Economic abuse is recognised as a form of family violence in most Australian jurisdictions, including Victoria.<sup>4</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 dependant on the first person for financial support to meet those living expenses<sup>5</sup>*

The Family Violence Protection Act includes a non-exhaustive list of the kinds of behaviour that constitute economic abuse, including:

- coercing a person to relinquish control over assets or income;
- removing, keeping or disposing of a person's property without permission;
- coercing a person to claim social security payments; or
- coercing a person to sign a contract for the purchase of goods or services or sign a contract for the provision of finance, a loan or credit.<sup>6</sup>

While economic abuse is recognised in family violence legislation, there is a need for stronger legal and practical recognition of economic abuse. This is particularly evident with respect to family violence intervention orders issued under the Family Violence Protection Act, police response to deal with family violence and victims of crime compensation schemes.

Victims of family violence can apply for a family violence intervention order under Part 4 of the Family Violence Protection Act.<sup>7</sup> In deciding the conditions to be included in a family violence intervention order, the Court must give paramount consideration to the safety of the victim.<sup>8</sup> If the Court issues a family violence intervention order, it must consider whether to include a condition excluding the perpetrator from the victim's residence.<sup>9</sup>

The Court may include provisions relating to personal property, including with respect to the return of personal property and access to premises in order to retrieve personal property.<sup>10</sup>

While it is possible to apply for a family violence intervention order on the grounds of economic abuse, in WLSV's experience this rarely occurs. This is due, in large part, to the emphasis on physical safety under the current system, which results in economic abuse rarely being dealt with in intervention orders. Where economic abuse is recognised during the application process, it is rarely specifically addressed in the clauses of the intervention order itself.<sup>11</sup>

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<sup>4</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: section 8(5) of the *Intervention Orders (Prevention of Abuse) Act 2009* (SA); sections 7 and 8 of the *Family Violence Act 2004* (Tas), sections 5 and 8 of the *Domestic and Family Violence Act 2007* (NT).

<sup>5</sup> Section 5(1)(a)(iii), Family Violence Protection Act.

<sup>6</sup> Section 6, Family Violence Protection Act.

<sup>7</sup> Victorian Police Officers can also apply for family violence intervention orders under section 45 of the Family Violence Protection Act.

<sup>8</sup> Section 80, Family Violence Protection Act.

<sup>9</sup> Section 82, Family Violence Protection Act.

<sup>10</sup> Section 86, Family Violence Protection Act.

<sup>11</sup> Owen Camilleri, Tanya Corrie, Shorna Moore, 'Restoring Financial Safety: Legal Responses to Economic Abuse' (2015) Good Shepherd Australia New Zealand and Wyndham Legal Service, p. 14.

Level 10, 277 William St Melbourne VIC 3000 P 03 8622 0600 F 03 9642 0232 E [admin@womenslegal.org.au](mailto:admin@womenslegal.org.au)  
[www.womenslegal.org.au](http://www.womenslegal.org.au)

Our experience indicates that while the legal framework recognises economic abuse, there is a lack of practical understanding with respect to the nature and implications of economic abuse. Despite the Family Violence Protection Act providing the Court with the ability to include conditions for the return of personal property or conditions around the use of jointly owned property, these conditions rarely appear in an intervention order as a mechanism to protect victims from economic abuse.

In some instances our experience has been that the standard, generic property conditions can inadvertently be used to perpetrate economic abuse or stifle a victim's economic recovery. This leads to family violence intervention orders that do not adequately recognise or address economic abuse; this is demonstrated by Helen's story.

### ***Helen's story***

*During Helen's three year marriage, her husband was violent and controlling. Helen's husband was unemployed, meaning Helen needed 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'.*

*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 Helen was not home, including whitegoods and other essential items Helen 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 however issues with locating her ex-husband, the cost and difficulty in accessing the family law system and the enforceability of the family law orders she is seeking means it is unlikely Helen will have her property restored, placing her in a very difficult financial situation.*

## **1.2 Recommendations – Legal recognition and treatment**

- 1) That the Chief Magistrate of the Magistrates Court of Victoria considers issuing a practice direction regarding family violence intervention orders and economic abuse. The direction to set out additional conditions that can be included in intervention orders to address economic abuse, including: orders regarding the return of specific items of property that are being used to perpetrate economic abuse, that a victim be given possession of a vehicle, access particular chattels or a bank account and 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.
- 2) That the Judicial College of Victoria and the Law Institute of Victoria engage specialist organisations working with women experiencing financial hardship and family violence (including Women's Legal Service Victoria) 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.

### 1.3 Legal recognition of economic abuse – police response

The police response to family violence demonstrates the need for broader recognition of economic abuse as a form of family violence. In our experience there is a lack of recognition which acts as a barrier for victims of economic abuse.

The Victorian Police Code of Practice for the Investigation of Family Violence (**Family Violence Code**) governs the conduct of Victorian police officers when dealing with family violence, and covers the following key areas:

- **Attendance at the scene of a family violence incident:** it provides guidance to ensure that police officers consider a range of factors, including economic abuse, when attending a family violence incident.<sup>12</sup>
- **Removal of the affected family member:** it states that it is preferable for the victim of family violence to remain in their home.<sup>13</sup> However, where there is no legal right to remove the perpetrator, the safety of the victim must be considered, often resulting in the victim being forced to leave the property. In such circumstances, the police officer must ensure that the victim has sufficient personal items for themselves and their children.<sup>14</sup>
- **Applying for family violence intervention orders:** As set out above, a victim of family violence, or a police officer acting on behalf of a victim, may apply for an intervention order under the Family Violence Protection Act. The Family Violence Code sets out the conditions that can be attached to an intervention order, including conditions directed towards the prevention of economic abuse such as prohibiting intentional property damage and requiring the return of property.<sup>15</sup>
- **Enforcing family violence intervention orders:** After an intervention order has been made, police officers are not required under the current framework to take steps to ensure that the order is complied with. If the property is not returned, the victim bears the onus of alerting the Court and/or police officers to the fact that the intervention order has been breached. In our experience, even where the victim reports a failure to comply with a clause of the order that relates to property, this rarely results in the perpetrator being charged with a breach of the intervention order and/or the property being returned to the victim.

While the Family Violence Code recognises economic abuse, our experience indicates that police often focus on physical and sexual abuse and can overlook economic abuse. Police officers may be better equipped to identify economic abuse if the Family Violence Code was amended to include practical examples of this type of abuse.

Additionally, in our experience police officers do not always act in accordance with the Family Violence Code. This was the case with our client, Catherine, who informed us that she stopped reporting breaches of the intervention order because the Senior Constable laughed and told her that there are more important cases than hers.

*“If it’s not physical violence, it is such a hard road. And I’m grateful it wasn’t, I mean... but unless you get punched in the face and can go, look at this, it is so hard dealing with emotional, financial and spiritual abuse” – Catherine*

Moreover, in our experience, the application of the Family Violence Code can lead to 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

<sup>12</sup> Victoria Police Code of Practice for the Investigation of Family Violence, Edition 3, V2, 201410, 19.

<sup>13</sup> Ibid, p. 10.

<sup>14</sup> Ibid, p. 10.

<sup>15</sup> Ibid, p. 32.

home because of 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. It is often very difficult for a victim to later access their property.

This inability for victims of violence to retrieve their property is exacerbated by the typical conditions that attach to intervention orders, which do not provide a mechanism for a victim to have their specific property returned, or allows the victim to access their share of joint property in a tangible way. As we have discussed, the generic intervention order clause now used stating a perpetrator is to return property to a victim is rarely complied with or enforced.

Additionally, the Family Violence 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 at a clear disadvantage in retaining their property, often too afraid to prevent a perpetrator from taking their property.<sup>16</sup>

## 1.4 Recommendations - Police response

- 3) Victoria Police ensures training programs on the nature and impacts of family violence and in particular economic abuse and financial issues faced by victims of family violence are compulsory for all officers.
- 4) That the Victorian Government fund Victoria Police and Women's Legal Service Victoria to design and deliver training for police on family violence intervention orders and in particular economic abuse. The training should include: identifying economic abuse, the significance of family violence on the financial hardship and homelessness women experience and applying the code of conduct to deal with economic abuse when applying for and enforcing family violence intervention orders.
- 5) Amend the Family Violence Code to include practical examples which will assist police officers in identifying instances of economic abuse.
- 6) The Victorian Government and Victoria Police consider the ways in which current practice does not adequately address economic abuse for victims of family violence and implement strategies to improve practice, strategies might include:
  - a. police officers to take a more proactive role in the enforcement of intervention orders as they relate to property;
  - b. creation of a specialist team within Victoria Police, such as Protective Services Unit (PSU) or Sheriff's Operations within Civic Compliance to assist women with enforcing property provisions of an intervention order;
  - c. greater police accountability in ensuring victims (and their children) can remain in their home after a family violence incident and property provisions of intervention orders are sought and enforced; and
  - d. creation of a more accessible and robust police conduct complaints system for family violence victims, which should include accountability in ensuring victims (and their children) can remain in their home after a family violence incident and property provisions of intervention orders are sought and enforced.

## 1.5 Access to compensation for victims of economic abuse

The Victims of Crime Assistance Tribunal is another area of the legal system that requires strengthening in recognition and understanding of economic abuse and its implications for victims of family violence.

<sup>16</sup> Ibid, p 34.

All Australian jurisdictions have victims' compensation schemes to provide financial assistance to victims of crime.<sup>17</sup> The *Victims of Crime Assistance Act 1996* (Vic) (**Victims of Crime Act**) provides financial assistance to victims of an 'act of violence' who have sustained an 'injury'. While family violence may constitute an act of violence under the Victims of Crime Act, the definition of injury precludes recovery for debts that result from economic abuse. Injury is narrowly defined under the Victims of Crime Act 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>18</sup>

The focus on physical and mental injury demonstrates the lack of practical recognition of economic abuse and its implications for victims of family violence. In our experience, even when a victim of economic abuse has also sustained an 'injury' as a result of physical violence, the victims' compensation regime does not provide adequate compensation for the type of losses suffered as a result of economic abuse. For example, the Victims of Crime Act provides compensation for counselling services, medical expenses and loss of earnings among other things,<sup>19</sup> however it does not make express provision for the repayment of debts incurred as a result of family violence and in our experience, even when a victim is subject to physical abuse, the Tribunal has found an insufficient connection between the physical abuse and debt incurred to warrant compensation.

Victims of crime compensation regimes are under-utilised by victims of economic abuse and do not provide adequate recognition or support for the financial impacts of family violence as demonstrated by Alana's experience.

#### **Alana's story**

*Alana is an international student living in Australia. Alana and her boyfriend Travis had been together for one year when he started assaulting her. Alana was admitted to hospital after a horrific assault, which resulted in her temporarily losing her sight. Travis threatened to kill Alana numerous times, prompting her to report the assaults to the police, who successfully applied for an intervention order on her behalf.*

*In breach of the intervention order, Travis continued to stalk Alana and drove his car into her car. Travis was charged with assault, however he threatened Alana to force her to drop the charges as a conviction would interfere with his citizenship application. Travis was fined \$1,000 for the assault. Alana has been diagnosed with Chronic Post-Traumatic Stress Disorder and severe depression.*

*WLSV applied for victims' compensation on Alana's behalf for the injuries she sustained as a result of the assault. Alana received compensation for her medical bills and counselling, however she was not compensated for the economic abuse she suffered in the relationship, including outstanding utility bills accumulated in her name when Travis was living with her, parking fines he received while using her car and legal fees incurred by Travis in defending the assault charge which he forced Alana to pay. The Tribunal found there was insufficient connection between the physical assault and the outstanding payments to warrant compensation to address the economic abuse.*

*Alana's emotional recovery was stifled because of the impacts of having to continue to pay for the debts of her abuser long after she had left the relationship.*

<sup>17</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>18</sup> Section 3, *Victims of Crime Assistance Act 1996* (Vic).

<sup>19</sup> Section 8, *Victims of Crime Assistance Act 1996* (Vic).

## 1.6 Recommendations - Access to compensation

- 7) The Department of Justice undertake a comprehensive review of the Victims of Crime Assistance jurisdiction having particular regard to the experience of victims of family violence.

## 2 Barriers outside the legal system that hinder economic recovery

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Victims of family violence can also face barriers when dealing with banks, credit providers and utility companies. Research indicates that victims of family violence face difficult issues ranging from meeting repayments, being left solely responsible for joint loans following relationship breakdown, to dealing with bills and debts incurred by an abusive partner.<sup>20</sup>

### 2.1 Victims of family violence dealing with debts, bills and banking

There are a range of consumer protection laws relevant to the management of personal debt and banking including the *National Consumer Credit Protection Act 2009* (Cth) (**Credit Protection Act**), which regulates the conduct of banks in circumstances where a consumer is experiencing financial hardship. Schedule 1 of the Credit Protection Act contains the National Credit Code, Section 72 of which allows a person with a loan to notify their bank that they are experiencing financial hardship and are unable to meet their obligations under a credit contract.<sup>21</sup> Banks are required to respond to such an application before they begin proceedings to take possession of assets.<sup>22</sup>

In addition to consumer protection laws, there are a variety of regulations such as industry codes and individual company policies relating to financial hardship.<sup>23</sup> For example, in March 2015 the Australian Banking Association released revised guidance on the type of support available to customers experiencing financial hardship.<sup>24</sup> These guidelines recognise that financial hardship can occur as a result of a relationship breakdown.<sup>25</sup>

Despite enhanced consumer protection mechanisms, research suggests that victims of family violence continue to face difficulties in practice, including a lack of readily accessible information regarding hardship policies and adverse credit findings resulting from an abusive partner failing to meet obligations with respect to joint debts.<sup>26</sup> Victims of economic abuse often experience a lack of understanding from banks and credit providers, even in circumstances where a family violence intervention order has been issued and brought to the attention of the bank or credit provider.

Our experience has identified systemic issues in the banking sector, including a reluctance to provide hardship assistance for one party to a joint debt without the consent of the other party in the context of family violence, as demonstrated by Simone's story.

<sup>20</sup> Owen Camilleri, Tanya Corrie, Shorna Moore, 'Restoring Financial Safety: Legal Responses to Economic Abuse' (2015) Good Shepherd Australia New Zealand and Wyndham Legal Service, p. 47 and Rochelle Braaf, Isobelle Barrett Meyering, 'Seeking Security: promoting women's economic wellbeing following domestic violence' (2011) Australian Domestic & Family Violence Clearinghouse, p. 35; *Consumer Utilities Advocacy Centre*, 'Helping Not Hindering: Uncovering Domestic Violence & Utility Debt' (2014), p. 10.

<sup>21</sup> Section 72, *National Credit Code*.

<sup>22</sup> Sections 88 and 89A, *National Credit Code*.

<sup>23</sup> All major banks in Australia have financial hardship policies, including The Commonwealth Bank of Australia, National Australia Bank, Westpac and Australia and New Zealand Banking Group Limited (**ANZ**). See, for example, ANZ's approach to financial hardship which specifically identifies relationship or family breakdown as a potential reason for financial hardship: <http://www.anz.com/about-us/corporate-responsibility/customers/financial-hardship/>.

<sup>24</sup> *Australian Bankers Association* 'Promoting understanding about banks' financial hardship programs' released May 2013, available here: <http://www.bankers.asn.au/Media/Media-Releases/Media-release-2015/New-guidance-to-enhance-support-for-people-in-financial-hardship>.

<sup>25</sup> *Ibid*, p. 2.

<sup>26</sup> Fiona Macdonald, 'Spotlight on economic abuse: a literature and policy review' (2012) Good Shepherd Youth & Family Service and Kildonan UnitingCare, p. 45.



**Simone's story**

*Simone 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. Simone had entered into an unsecured joint loan with her ex-partner Matthew to finance a car that was registered in Matthew's name. Matthew refused to make loan repayments and the credit provider pursued Simone for Matthew's outstanding repayments. Simone was concerned with the implications this would have for 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".*

*Simone explained the nature of the family violence committed against her and the difficulty and danger to her safety she experienced in having to seek agreement from Matthew to deal with the debt. The credit provider eventually agreed to allow Simone to service the debt by way of a payment plan. Despite Simone agreeing under this agreement to be solely responsible for payments on the joint debt, of which Matthew was receiving the benefit, Matthew refused to sign the agreement to allow Simone to enter the payment plan.*

*Following lengthy negotiations between Simone's financial counsellor at WLSV and the credit provider, including Simone demonstrating the abuse she was facing, including by providing a copy of the intervention order, the creditor eventually agreed to waive Simone's liability for the debt.*

*The credit provider could see in this case through WLSV's efforts, 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 Simone move on with her life.*

Simone's story demonstrates a common consequence for women attempting to resolve debt issues after family violence. Their initial attempts are often met with a lack of empathy and understanding from the credit or service provider. They are often required to deal directly with their abuser in order to try to resolve the debt issues. This requirement to try to confront a violent ex-partner about a debt issue can result in further physical violence, further economic abuse making the victims situation worse or (as is often the case) a victim being prevented from taking any action to resolve her debt issues because of fear of the perpetrator.

In some cases an abusive partner will coerce a victim of violence into assuming debt in her sole name, rather than increasing or refusing the pay joint debts. A family violence victim being forced to take out a loan in her sole name is demonstrated by Serena's story.

**Serena's story**

*Serena and Steve were living together for a short time when she fell pregnant. Serena was working in hospitality and earning around \$30,000 per year. At that time Serena had started to notice Steve's erratic, controlling behaviour and money disappearing from her wallet.*

*Serena was coerced by Steve to lie on a personal loan application in her name to obtain monies for his drug and gambling habits. Serena was subjected to physical, emotional and economic abuse by Steve if she refused him. This abuse included hitting her, pushing her, screaming at her, keeping her awake all night during the early stages of her pregnancy and stealing money from her bank account.*

*Once the loan was obtained, Steve made Serena go back to the bank twice more during the month and ask for increases, which were approved.*

*Serena fled the relationship and sought refuge, staying in a number of budget hotels (whilst heavily pregnant) while she was waiting for a refuge place. Serena has now been left with a \$20,000 debt which she cannot afford, relying on Centrelink benefits to care for herself and her small child.*

*This case represents a failing on the part of the bank to screen for, recognise and help protect victims from economic abuse.*

## 2.2 Recommendations – Debts and Banking

- 8) Banking industry codes of practice and the Credit Protection Act be amended to allow for splitting of joint liabilities in circumstances of economic abuse where the parties agree to the splitting of the debt.
- 9) Banking industry codes of practice and the Credit Protection Act be amended to allow for the removal of victims' names from joint liabilities in circumstances of economic abuse where the debt is unable to be split by consent and where a victim would be otherwise unable to pay the debt due to financial hardship.
- 10) The banking sector to continue to consider the issues facing victims of family violence and identify areas for reform. For example, developing specific family violence policies to supplement existing financial hardship policies, including practices that do not require a victim to negotiate with a perpetrator to resolve their debt issue.
- 11) The Australian Banking Association engage specialist organisations working with women experiencing financial hardship and family violence to design and deliver training programs to financial institutions and credit providers on the nature and impact of economic abuse, and financial issues faced by victims of family violence.
- 12) The Australian Banking Association publish guidelines for banks in respect of family violence intervention orders and standards of best practice for dealing with victims of family violence experiencing financial hardship.

## 2.3 Victims of family violence dealing with utility companies

Victims of family violence also face issues when dealing with liability to utility companies. Under the legislative framework governing energy contracts, joint account holders are jointly and severally liable for outstanding debt.<sup>27</sup> Accordingly, if a victim leaves an abusive partner the victim may be pursued for the full amount of the outstanding joint debt. The debt will remain owing by the victim until it is paid or they are removed from the account, which can be difficult in the context of family violence, given both parties must consent to the removal of one person from the account.<sup>28</sup>

In contrast to the energy sector, the *Water Act 2010* (Vic) does not include mechanisms to manage the liability of joint account holders. However, liability for outstanding amounts is tied to continuing occupation of the premises and once notice has been given that an occupier has left the premises, that occupier will not be liable for debts incurred after their departure.<sup>29</sup> While this provides a mechanism to prevent debts being incurred following the departure of a victim of family violence, it does not provide a mechanism to address the liability of joint account holders for debt owing prior to the victim or perpetrator leaving the premises.

Disputes relating to outstanding debts owed to energy and water providers are referred to the Energy and Water Ombudsman Victoria (**EWOV**). Under its Charter, EWOV is obliged to pursue complaints in a fair, reasonable, just, informal and expeditious manner.<sup>30</sup> In the context of joint debt this means that the circumstances of the customer will be considered and it may be appropriate to halve the debt and require the energy or water company to pursue both account holders separately.<sup>31</sup> However, a decision made by EWOV will not be binding and the victim of family violence may still be pursued for the entirety of the debt. A decision will only become binding if the victim escalates the dispute after the initial hearing

<sup>27</sup> *Consumer Utilities Advocacy Centre*, 'Helping Not Hinder: Uncovering Domestic Violence & Utility', p. 17.

<sup>28</sup> *Ibid*, p. 17.

<sup>29</sup> *Ibid*.

<sup>30</sup> Energy and Water Ombudsman (Victoria), *Charter* (2006), section 5.1.

<sup>31</sup> *Consumer Utilities Advocacy Centre*, 'Helping Not Hinder: Uncovering Domestic Violence & Utility', p. 17.

Level 10, 277 William St Melbourne VIC 3000 P 03 8622 0600 F 03 9642 0232 E admin@womenslegal.org.au  
[www.womenslegal.org.au](http://www.womenslegal.org.au)

and seeks a binding determination. It is very rare for a dispute to be escalated to a point where a binding decision is made.<sup>32</sup>

While utility companies have hardship policies for consumers facing financial difficulty,<sup>33</sup> most utility companies do not include family violence within the definition of hardship.<sup>34</sup> Unlike the industry guidelines set by the Australian Banking Association for dealing with hardship as discussed above, the approach taken to hardship by utilities companies is discretionary. There is no industry code of practice or guidelines to ensure a consistent and empathetic response. In our experience, victims of family violence that seek to rely on financial hardship policies are often required to provide proof of financial hardship to the utility provider.<sup>35</sup> Victims of family violence also face long processing times with research indicating that there is 'a general lack of empathy and understanding of domestic violence when dealing with utilities providers'.<sup>36</sup> Some of these issues are demonstrated by Molly's story.

#### **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.*

*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 to explain the situation and that, in fact, Liam had requested the power be cut off as a form of further family violence against her. 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.*

## **2.4 Recommendations - Utility companies**

- 13) The Essential Services Commission in consultation with financial counsellors and family violence services develop industry guidelines or a comprehensive set of principles addressing the treatment of customers in circumstances of financial hardship, including specific policies for family violence.
- 14) The Essential Services Commission in consultation with financial counsellors, community legal centres and family violence services are funded by the Victorian Government to design and deliver training programs to utility providers on the nature and impact of economic abuse and financial issues faced by victims of family violence.

<sup>32</sup> There have been no binding decisions made since 2003. *Consumer Utilities Advocacy Centre*, 'Helping Not Hinder: Uncovering Domestic Violence & Utility Debt' (2014), p. 17.

<sup>33</sup> *Consumer Utilities Advocacy Centre*, 'Helping Not Hinder: Uncovering Domestic Violence & Utility Debt' (2014).

<sup>34</sup> Only one water provider makes express provision for family violence in its hardship policy. *Ibid*, pp. 22-3.

<sup>35</sup> *Ibid*, p. 23.

<sup>36</sup> *Ibid*, p. 25.

### 3 Moving forward: Stepping Stones Project

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As outlined above, for victims of family violence, leaving the perpetrator does not necessarily end the abuse. Victims of family violence continue to suffer economic abuse at the hands of their former partners which can be exacerbated by the legal system, police and service providers such as banks and utility companies. WLSV is focused on assisting women in ending the cycle of economic abuse and improving their economic recovery after family violence.

In March 2014, WLSV established a pilot program in response to the complex legal and financial issues facing victims of family violence. The Stepping Stones Project addresses systemic barriers faced by victims of family violence, which prevent meaningful economic recovery.

The Stepping Stones Project delivers integrated legal and financial counselling services to women who are experiencing financial hardship in the context of family violence. The first year (June 2014 – June 2015) of the Stepping Stones Project has been highly successful, with WLSV assisting over 140 vulnerable women, including in relation to the following areas:

- **Debt reduction:** WLSV has assisted victims of family violence to reduce their debt by over \$217,000, particularly in circumstances where debts were accrued by an abusive former partner.
- **Dealing with utility companies:** WLSV has provided assistance to victims of family violence dealing with utility companies, including in relation to the reconnection of utilities and assistance in obtaining utility relief grants.
- **Family violence intervention orders:** WLSV has provided assistance to victims of family violence with respect to obtaining intervention orders against abusive partners.
- **Daily living expenses:** WLSV has assisted victims of family violence with respect to meeting the costs of daily living expenses such as groceries and school supplies, helping women budget and to access crisis payments, material aid and child support.
- **Homelessness:** WLSV has provided assistance to victims of family violence by negotiating with banks in circumstances where women are at risk of losing their homes due to an inability to meet mortgage repayments after family violence.
- **Debt:** WLSV has assisted victims of family violence to reach payment plan agreements where they are struggling to meet high debt repayments.
- **Property settlements:** WLSV has provided assistance to vulnerable women by securing appropriate family law property settlements.

In addition to the beneficial financial outcomes that have resulted from the Stepping Stones Project, vulnerable women have also obtained a sense of well-being and empowerment as a result of the project.

### Stepping Stones Project – Client Testimonials

*"If I hadn't turned to Women's Legal Service, I don't know what I would have done. No I wouldn't, I've got an equivalent to a year 10 education... I wouldn't have been able to handle it."*

*"Whoever is here, you talk to them. They not only tell you what they are going to do but they tell you to look after yourself. You don't know how much that matters. It matters a lot. It's just two simple words, but it matters a lot. Especially a person who is going through these rough times, each day is rougher for me."*

*"I cannot thank the Women's Legal Service enough. I'd be dead without you guys. I would be dead, there's no two ways about it. No one would help me, not a soul, not a solicitor locally, or anywhere, so I certainly owe you guys some biscuits and some..."*

Research indicates that financial counselling and legal advice are two of the most important ways to stop the cycle of financial dependence and abuse and assist in the economic recovery of victims of family violence. Accordingly, WLSV recommends that, in addition to the recommendations discussed above, financial counsellors are embedded in existing family violence services, including community legal services. Funding is crucial in order to continue to provide integrated financial and legal services. WLSV therefore recommends:

### 3.1 Recommendations - Funding for what works in assisting women

- 15) The Victorian Government provide funding for the Financial and Consumer Rights Council in consultation with family violence services to develop a specialist family violence financial counselling qualification and training program.
- 16) The Victorian Government provide funding for the Financial and Consumer Rights Council to develop and deliver a new specialist family violence financial counselling program, where financial counsellors are embedded in existing family violence services and work collaboratively to assist women. Services will include: community legal services, health services and other community services.
- 17) The Victorian Government provide funding for the continuation of the successful Stepping Stones pilot program at WLSV for three years from 2016 (at a cost of \$177,000 per year).