



Inquiry into family, domestic and sexual violence

August 2020

**Financial Counselling Australia (FCA) is the peak body
for financial counsellors in Australia.**

About Financial Counselling Australia

FCA is the peak body for financial counsellors in Australia. We support financial counsellors and provide a voice on national issues. We advocate on behalf of the clients of financial counsellors for a fairer marketplace that will prevent financial problems in the first place.

What Financial Counsellors Do

Financial counsellors provide information, support and advocacy to people experiencing financial difficulty. Working in community organisations, their services are free, independent and confidential. Financial counsellors are required to hold, or to obtain, a Diploma in Financial Counselling. They need knowledge of a wide range of areas of law and policy, including consumer credit law, debt enforcement practices, the bankruptcy regime, industry hardship policies and government concession frameworks.

Financial counsellors also document their experiences and highlight issues that have a negative impact on their clients. Either individually, or through FCA, they consult with industry, government and other stakeholders and to encourage practices that prevent financial and consumer problems in the first place.

About Specialist Family Violence Financial Counsellors

In response to the Victorian Royal Commission into Family Violence, the Victorian State government committed \$1.75 million to train and employ 10 full-time specialist family violence financial counsellors. With strong demand for this service and significant results from the initial investment, in 2019 the Victorian State government announced further funding of \$5.5 million for an additional 11 full-time positions.

This submission has been informed by the specialist knowledge of these financial counsellors.

About financial abuse

Financial abuse (also known as economic abuse) is a common form of family violence. Financial abuse occurs when one person controls another's person access to money or economic resources. Examples include one person having no money of their own, or all of the debts are in one person's name or a person not being allowed to work or study.

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SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1

Where a person is receiving child support payments on a private basis, the actual payments should be reported through a mechanism such as the tax or child support system by both parties, so that a reconciliation can be made. A debt should be raised against the non-payer if there is a deficit.

RECOMMENDATION 2

Flexible Support Package funding is made available nationally to assist women to leave abusive households with their children and establish safe and affordable housing.

RECOMMENDATION 3

Increased funding is needed for women's legal services and Legal Aid to provide free and/or affordable family law and property law advice and representation.

RECOMMENDATION 4

National funding is provided for an additional 50 specialist family violence financial counsellors to work in an integrated service model with frontline family violence services and women's and community legal services.

RECOMMENDATION 5

Financial institutions adopt a technology-facilitated abuse policy to protect customers experiencing family violence from technology-facilitated abuse.

1. SERVICE IMPACT ON THE ABILITY OF WOMEN TO ESCAPE DOMESTIC VIOLENCE

The way that health, housing, access to services, including legal services and women's economic independence impact on the ability of women to escape domestic violence.

1.1 Financial Abuse – the use of the Social Security System to facilitate financial abuse

The social security system assumes that people in an intimate partnership, or who share children, also share their finances in an equitable way. This is manifested through the Centrelink "couple rule". The difficulty is that this creates a dependency for the partner who is receiving Centrelink or child support income (in most circumstances, women) on the higher wage-earning partner.

The dependency created by the couple rule provides an opportunity for one partner to use the "system" to control the other, and to engage in financial abuse. In the experience of financial counsellors, this can occur both during a relationship and after it ends. This is because the two people's financial circumstances remain connected until the youngest child turns 18 years of age.

The current system, by connecting partners, disempowers women and stops them from having the financial capacity to leave an abusive relationship.

1.2 Child Support

Financial counsellors see women either electing not to receive any child support payments from the other parent, or receiving payments through a "private" arrangement due to fears of retribution if she was to elect for Child Support – Services Australia to manage the collection process.

A woman receives less income from Family Tax benefit (Part A) than she would have if the other parent was assessed to pay contributions towards raising their children (through Child Support). This is illustrated in the following scenario.

Scenario 1: Kate is a stay at home mother and has a daughter, aged 2. Kate left a violent relationship. The other parent earns \$140,000 per annum and has been assessed to contribute \$644/fn. Due to safety concerns, Kate has elected to receive child support through a private arrangement. This means that Centrelink do not record the actual payments she receives, rather rely solely on the assessment made in working out her Centrelink entitlements.

| Situation | Assessed Income | Actual |
|--|-----------------------------------|--|
| Child Support (private collection) – assessed as being paid by Centrelink | \$644/fn C.S. \$0 other income | FTB A \$ 60.90 FTB B \$161.14 Child Support (received) \$644.00 Total income: \$866.04/fn |
| <i>Actual situation</i> – perpetrator only paying \$50/fn (deficit \$594/fn) | \$644/fn C.S. \$0 other income | FTB A \$60.90 FTB B \$161.14 Child Support (received) \$50 Total income: \$272.04/fn |

If Kate decided a few years after separation to request Child Support – Services Australia to collect from the other parent, they would only have to go back three to nine months under the current DSS guide.¹ Exceptional circumstances are noted, however this once again places the onus on the woman to raise and pursue this.

The way the current system works has a significant financial and emotional impact on woman trying to raise their children and re-establish as a sole parent after escaping family violence. This system provides a way for perpetrators to continue to exercise power and control over a woman once she has physically left the relationship and can continue until the children are over 18 years of age. It also places the onus on a woman to make the decision on whether or not it is safe for her to apply.

The Family Assistance Guide² used by Centrelink currently provides the option for a full or partial exemption in applying for child support, however the current criteria place the onus on the victim to prove the violence at a time when they are experiencing significant trauma and fear of further abuse.

The Family Assistance Guide states under the heading “Family Violence or Fear of Violence”³ that it may be inappropriate for an individual to take maintenance action where:

- there have been documented incidents of violence towards the individual and/or their immediate family by the payer, or
- violence by the payer may occur if the individual takes maintenance action.

¹ [DSS Guide - Child Support](#)

² FA Guide [3.1.5.100](#) Role of the ISO & social worker

³ FA Guide [3.1.5.70](#)

However, as illustrated in Kate’s scenario, not taking maintenance action further impacts a woman financially where her sole income is Centrelink and the other parent earns a substantial income.

RECOMMENDATION 1

Where a person is receiving child support payments on a private basis, the actual payments should be reported through a mechanism such as the tax or child support system by both parties, so that a reconciliation can be made. A debt should be raised against the non-payer if there is a deficit.

1.3 Assistance to leave and re-establish or to stay in a safe home

Financial assistance to support women to leave

“I stayed four years longer than I should have. I didn’t know how I could afford to leave. I didn’t qualify for Centrelink payments due to my husband’s income. We had significant debt and I couldn’t see a way clear. It was difficult to try to find out what money might be available to assist me to leave, Centrelink is so complicated. I found out I could apply for a crisis payment once I left, however this wouldn’t be enough to cover the cost of bond and rent in advance for a rental property. Any money I had was tied up in our family home. It wasn’t safe for me to stay in the same town as him. I was fortunate to live in Victoria (post Royal Commission) and was referred by a friend to a family violence caseworker who accessed a State government flexible support package funding to help my children and I to leave. If I didn’t have access to this money, I would still be living there [in the family home] subjected to emotional, financial and sexual abuse.” – Terese (name changed)

Financial counsellors work with women fleeing family violence to assist in addressing debts through various hardship options or waivers of debts.

Financial barriers to leaving an abusive relationship and the importance of access to sufficient money to empower woman to leave, access safe housing and move forward were identified by the Royal Commission into Family Violence 2016⁴ which saw the expansion of Family Violence Flexible Support (FSP) packages to provide direct financial assistance to survivors in their re-establishment and recovery from family violence.

From July 2017 FSP packages provided a maximum assistance package of \$10,000 (with an average package of \$3000) and access for children to a package in their own right as part of their individual case plan.

⁴ [Royal Commission into Family Violence \(Victoria\) 2016 Summary Report](#)

The flexible support packages⁵ aim to provide outcomes for victim-survivors that is targeted and fits their individual needs and priorities including:

- freedom from abuse and violence
- suitable and stable housing
- good physical and mental health
- participation in learning and education
- participation and contribution to the economy
- financial security and independence
- social engagement
- identification and connection to community

RECOMMENDATION 2

Flexible Support Package funding is made available nationally to assist women to leave abusive households with their children and establish safe and affordable housing.

1.4 Affordable access to Legal Services

The ability to afford legal representation for women impacted by family and domestic violence is a barrier in accessing property entitlements including superannuation where there is no other matrimonial property. Financial Counsellors report seeing woman walk away from entitlements where there are financial barriers to seeking representation and also where a woman feels fearful of the repercussions in pursuing a property settlement. Where there is a joint property linking the parties, accessing affordable legal assistance to arrange property settlement is often a lengthy and expensive process.

Case study

“Tania fled her family home with only the clothes she was wearing after 35 years of marriage and abuse. She was fearful for her life and was placed in safe housing to protect her as there were significant fears for her safety. When I first met Tania she had attempted suicide four times within three months. She told me she didn’t know how she was going to stay safe once the assistance (of safe housing) had ended and how she was ever going to move forward with a property settlement. She had never managed the family finances (which he controlled) and stayed at home as the primary caregiver of her now adult children. The family home she had left behind was mortgaged, although it had significant equity built up. He damaged the home extensively when she left which impacted the potential sale price. He also stopped making mortgage and rate payments on the property which was now in default. Tania was living on Newstart allowance, with no money in the bank for emergencies and had sought free legal advice regarding the sale of the property. Unfortunately, no-one was able to assist, and she was advised she would need to pay for a private lawyer if she was to commence property settlement proceedings. The idea of a*

⁵ Flexible Support Packages [DHHS](#)

property settlement was terrifying for her, even if she could afford it, she was fearful of what he would do to her if he was served papers. The only way she could see to move forward was to let the bank sell up the property, which would mean further loss of equity through legal and clean up fees. She was fearful of seeking her entitlement of superannuation (his superannuation balance of approximately \$250,000) and could not even contemplate or see clearly how she could begin this process due to the impact of significant trauma. If she ever decided in the future to pursue him for the superannuation she would have to apply (with paid legal support) to the courts for special consideration to open a case past the two-year separation rule (under de-facto relationships in Victoria).

*I estimate Tania has lost in excess of \$270,000 due to the barriers of seeking free or affordable legal support when impacted by the trauma of family violence and the fear of seeking what she was entitled to. This will impact her financial future significantly.” - Specialist Family Violence Financial Counsellor.
(*name of Financial Counsellor omitted to ensure safety of client which name has also been changed).*

Specialist family violence financial counsellors have also reported seeing clients impacted by delays in family court proceedings and property settlement through the perpetrator either refusing to participate in the process or using delay tactics through the court system to further exercise power and control over the woman. There are significant psychological and emotional impacts on a woman through the delays caused by this, the inability for her to try and rebuild her life, not to mention the financial impact of the loss of the asset pool being eaten away by lawyer’s costs. Where there is either no or limited access to funds to pay for continued legal representation, a woman may give up and walk away.

In some circumstances where a woman has no ability to fight due to the significant impacts of family violence she may have no ability to fight for many years and may walk away or not progress the property settlement so their lives remain entangled (where there is a property) for many years.

There is also a nexus between family law and credit law that impacts on a property settlement. If the court orders that the property goes to the woman, where there is a joint mortgage, she needs to show capacity to pay under responsible lending laws to borrow the monies under a new loan, in order to transfer the property into her name. This means that the court may make orders for the transfer of say a house or car however, in reality there is no affordability for the party to take over the debt and the asset.

All of these circumstances impact on a woman’s right to access justice.

The 2015 Research report “Restoring Financial Safety: Legal responses to economic abuse”⁶ further highlights key issues in barriers to accessing legal assistance and restoring financial safety for woman impacted by family violence.

RECOMMENDATION 3

Increased funding is needed for Women’s Legal Services and Legal Aid to provide free and/or affordable Family Law and Property Law advice and representation.

2 ACCESS TO SPECIALIST FAMILY VIOLENCE FINANCIAL COUNSELLING THROUGH INTEGRATED SERVICE RESPONSES

1.1 About family violence and financial counsellors

In Australia, up to 16% of women will experience financial abuse in their lifetime.⁷ Financial counsellors report working with woman prevented by perpetrators in having access to the family finances with often no knowledge of assets or debts. The lack of access to money, the power and control exerted by the perpetrator is often a significant barrier for woman to leave a relationship. Even if a woman was able to leave safely, it could take years for her to navigate the legal system and find out what entitlements she may have through a property settlement (if she can afford a to engage a lawyer).

All financial counsellors should have some expertise and knowledge in responding to family violence. Financial Counselling Australia, Financial Counselling Victoria and Women’s Legal Service (Vic) in collaboration with WIRE have and are continuing to deliver training to financial counsellors to upskill the profession in responding to this complex work.

1.2 Need for specialist family violence financial counsellors

Working with people affected by family violence can be incredibly complex. As such, there is a need for specialist family violence financial counsellors. In recognition of this, and following the Victorian Royal Commission into Family Violence, the Victorian government committed \$1.75 million to train and employ 10 full-time Specialist Family Violence Financial Counsellors in September 2016⁸. With strong demand for this service and significant results from the initial investment, in 2019 the Victorian State government then announced a further \$5.5 million to fund an additional 11 full-time positions.⁹

⁶ Restoring Financial Safety: Legal responses to economic abuse, *Camilleri, Corrie and Moore*

⁷ [Kutin, Russell, Reid \(2017\), Economic Abuse between intimate partners in Australia: prevalence, health status, disability and financial stress – Australian and New Zealand Journal of Public Health](#)

⁸ [Financial Counsellors supporting Family Violence Victims](#), media release 14/06/2016

⁹ [2019/20 Victorian State Budget](#)

There are currently 31 funded specialist family violence financial counsellors in Australia, with 21 located in Victoria funded by the Victorian State Government. A further 10 are funded by the Financial Counselling Foundation with one position in each of South Australia, Queensland, Tasmania and the ACT and two positions in each of New South Wales, the Northern Territory and Western Australia for three years.¹⁰

Specialist family violence financial counsellors work within agencies and also in integrated service models with community and women's legal services along with family violence services to provide support to women impacted by financial abuse.

One powerful example of an outcome that can be achieved with this collaborative model is of a woman who had lost her family home in a fire caused by the perpetrator. The insurance company refused to pay out on the policy, as the damage was caused by one of the policy holders (the perpetrator). With a client centered approach and an understanding of trauma informed practice, the financial counsellor worked with the family violence case worker, therapeutic counsellor, a community legal service (dealing with the insurance issues) and a women's legal service (which led to a referral to a pro-bono lawyer). This resulted in the client being in a position to afford to have the land cleared, a new home re-built and a significant reduction in the old mortgage debt by the bank and ex-gratia settlement by the insurance company. The pro-bono lawyers were able to arrange a property settlement through the courts to ensure the perpetrator would not receive any benefit from the new home. In this case, the financial counsellor took the lead as the pivotal contact at the client's request. This reduced the number of times the client had to re-live and re-tell her story or cause further impact to the trauma she had experienced. It enabled her to make decisions with support from her therapeutic counsellor in her recovery and empowered her to actively participate in the re-building of her family home.

Having specialist family violence financial counsellors working in integrated service models is best practice. Family violence financial counsellors work with industry, community and government to improve the systems that people affected by family violence engage with. For example, financial counsellors form part of Economic Abuse Reference Group¹¹ and are involved in the Thriving Communities Partnership.¹² These collaborations have led to changes in hardship practices and policies to provide solutions for women impacted by family violence and financial abuse. It is important this work continues as a preventative measure to reduce the impacts of financial abuse.

¹⁰ [Grants for Domestic and Family Violence Financial Counsellors](#) - May 2020

¹¹ [Economic Abuse Reference Group](#)

¹² [Thriving Communities Partnership](#)

1.3 How many specialist DFV financial counsellors are needed?

There are 21 specialist family violence financial counsellors in Victoria. Extrapolating this to the other States and Territories based on population would add an additional 50 positions as shown in the table below.

| State/Territory | Population | Current funded positions* | Suggested additional number of positions (based on current Vic funding) |
|--------------------|---------------|-----------------------------------|--|
| Vic | 6,359,000,000 | 21 | 0 |
| NSW | 7,544,000,000 | 2 | 23 |
| Qld | 5,071,000,000 | 1 | 15 |
| Tasmania | 515,000 | 1 | 1 |
| Northern Territory | 244300 | 1 | 1 |
| ACT | 428,060 | 1 | 1 |
| South Australia | 1,677,000,000 | 2 | 3 |
| Western Australia | 2,589,000,000 | 2 | 6 |
| | | Total additional positions | 50 |

*Positions in States/Territories outside of Victoria are funded by the Financial Counselling Foundation for three years. We have rounded figures to the whole.

RECOMMENDATION 4

National funding is provided for an additional 50 specialist family violence financial counsellors to work in an integrated service model with frontline family violence services and women's and community legal services.

3. TECHNOLOGY FACILITATED ABUSE

All forms of violence against women, including, but not limited to, coercive control and technology facilitated abuse

3.1 Technology-facilitated abuse in banking

Recent data by the Commonwealth Bank identified more than 8,000 CBA customers receiving multiple deposits of less than \$1 with potentially abusive messages in the

transaction descriptions.¹³ In response the bank has implemented a new acceptable use policy that makes it clear that the use of their banking platform to stalk, harass or intimidate a person may result in refusal of transactions or for the perpetrator's account to be closed. The policy was developed in consultation with experts, community partners and law enforcement and guided by the e-Safety Commissioner's Safety by Design framework.

RECOMMENDATION 5

Financial institutions adopt a technology-facilitated abuse policy to protect customers experiencing family violence from technology-facilitated abuse.

¹³ [CBA moves on technology facilitated abuse](#) 04/06/2020