

Gendered Violence Research Network

Legal responses to economic and financial abuse in the context of intimate partner violence

What is the role of criminal, family and migration law?

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Glossary

Culturally and linguistically diverse: The term ‘culturally and linguistically diverse’, with the associated acronym ‘CALD’, is currently used within Australian government, the private sector, and in research and academic institutions to describe populations other than the Anglo-Celtic majority. Some commentators view the term as increasingly problematic.^{1, 2}

Disability: Article 1 of the United Nations (UN) Convention of the Rights of Persons with Disabilities defines ‘disability’ to include those who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder the person’s full and effective participation in society on an equal basis with others.³ Advocacy group People with Disability Australia extends the UN definition of disability as follows: ‘The result of the interaction between people living with impairments and an environment filled with physical, attitudinal, communication and social barriers. It therefore carries the implication that the physical, attitudinal, communication and social environment must change to enable people living with impairments to participate in society on an equal basis with others.’^{4 in 5}

Domestic and family violence (DFV): Includes any behaviour, in an intimate or family relationship, which is violent, threatening, coercive or controlling, causing a person to live in fear. The behaviour is usually part of a pattern of controlling or coercive behaviour.⁶

Dowry: A practice that involves the transfer of money, property, goods or other gifts from a bride and/or her family to a groom and/or his family within the context of marriage.⁷

Dowry abuse: Occurs when there is ‘coercion, violence or harassment associated with the giving or receiving of dowry at any time before, during or after marriage.’⁸ Dowry abuse can involve claims that dowry was unpaid and coercive demands for more money or gifts from a woman and her family.⁸

Economic abuse: A pattern of control, exploitation or sabotage of money, finances or economic resources which affects an individual’s capacity to acquire, use and maintain economic resources and threatening their economic security and self-sufficiency.

Economic hardship: While there is no agreed definition of the term ‘economic hardship’ in the literature reviewed, it can include experiences of financial stress, unemployment, having to manage on a lower household income, and having to draw on savings or go into debt in order to cover ordinary living expenses.^{9, 10} The terms ‘economic hardship’ and ‘financial hardship’ are often used interchangeably in the literature.

Economic or financial insecurity: Occurs when a person lacks the economic resources to meet their material needs so they can live with dignity. This can include lacking access to appropriate and well-paid work that is above minimum wage, inadequate social protection, unreasonable costs of living and an incapacity to absorb financial shocks. Economic and financial insecurity is a gendered problem, as women typically experience poorer economic outcomes than men.¹¹

Family violence: A term used to describe the range of forms of violence that can take place in communities including physical, emotional, sexual, social, spiritual, cultural, psychological, and economic abuses that may be perpetrated within families.^{12-14 in 15} The term recognises the broader effects of violence, including on extended families, kinship networks and community relationships, and has also been used to include acts of self-harm and suicide.^{12-14 in 15} Family violence is often the preferred term for identifying violence experienced by Aboriginal and Torres Strait Islander people to acknowledge violence perpetrated by people from a range of kinship and/or family relationships.¹⁶

Financial abuse: A pattern of control, exploitation or sabotage of money and finances affecting an individual's capacity to acquire, use and maintain financial resources and threatening their financial security and self-sufficiency. Financial abuse is a component of economic abuse involving similar patterns of abusive behaviours, but specifically in relation to money and finances and not economic resources more broadly.¹⁷

Financial hardship: Occurs when a person is unable to meet their existing financial obligations for a period of time. It may be caused by a number of factors, such as unforeseen weather events, a major change in circumstances, such as illness, injury, or a change in employment.¹⁸

First Nations: A term which recognises the peoples or nations of people who have lived in a particular geographic location from the beginning, prior to the settlement of other peoples or nations.¹⁹ In Australia, this term is increasingly used to acknowledge Aboriginal and Torres Strait Islander peoples as the sovereign people of this land, and equally recognises the various language groups as separate and unique sovereign nations.²⁰

Humbugging: Refers to behaviours such as demand sharing, asking or pressuring a family member or other person for money or other economic assistance in a way that may be bothersome.^{21, 22}

Intimate partner violence: Violence and abuse perpetrated by a current or former intimate partner (cohabitating and dating) and includes any behaviour within an intimate relationship that causes physical, emotional, psychological or sexual harm to those in the relationship.²³

Older person: There is no specific convention or guiding document that defines the term 'older person'. The UN Department of Economic and Social Affairs defines a person as 'older' if they are aged 65 years and over. This is consistent with the practice of the Australian Institute of Health and Welfare and the Australian Bureau of Statistics.²⁵

Primary prevention: In the context of DFV, primary prevention relates to strategies that aim to prevent DFV from occurring in the first place by targeting the factors that underpin DFV (e.g., underlying social norms and factors or institutions and structures facilitating or excusing DFV).²⁴

Systems abuse: Systems abuse relates to the use and manipulation of legal and other systems (e.g., Centrelink, child support) by perpetrators to commit ongoing abuse against victim-survivors. Systems abuse allows perpetrators to continue to exert coercive control over victim-survivors even after the relationship has ended.²⁶⁻²⁸

Executive Summary

Introduction

Since 2015, the Commonwealth Bank of Australia (CBA) has been working with community organisations and experts to address DFV. In July 2020, CBA launched CommBank Next Chapter, an initiative to address financial abuse for their customers and communities.

CBA has partnered with the University of New South Wales (UNSW) Gendered Violence Research Network (GVRN) to support and advance research into financial abuse, building an evidence base for best practice responses by financial institutions and opportunities for knowledge exchange between community partners. GVRN has worked closely with CBA over a number of years to deliver training and develop their response to DFV and financial abuse.

A central priority of CommBank Next Chapter is to build understanding of financial abuse through research. Phase 1 of GVRN's work under the program produced a world-first compendium of research evidence on economic and financial abuse in DFV contexts. This report marks the beginning of Phase 2. It focuses on legal responses to economic and financial abuse in an intimate partner violence (IPV) context and has been undertaken in partnership with colleagues from Redfern Legal Centre (RLC) in New South Wales (NSW). RLC has also partnered with CBA under CommBank Next Chapter.

This report focuses on legal responses in three areas with significant implications for victim-survivors who have experienced economic and financial abuse from an intimate partner – criminal law, family law, and migration law – to consider how these areas of law address (or fail to address) economic and financial abuse in the IPV context.

This report presents the findings of a scoping review of the available evidence contained in the reported legal cases in the areas of criminal, family and migration law where economic and financial abuse has occurred in IPV contexts. Composite case studies on economic and financial abuse that have been developed by RLC's Financial Abuse Service NSW are also incorporated in this report to highlight some of the key issues that underpin current legal responses to economic and financial abuse in the IPV context.

Overarching findings

This report identified three broad overarching findings:

1. There is limited legal recognition of economic and financial abuse

The scoping review did not identify any reported criminal or migration law cases which made a determination about economic and financial abuse.

A total of 86 family law cases were identified as relevant to the review. This is a relatively small number given that it is common for family law cases to include

allegations of DFV. The tactics that were most frequently held by family law courts to be economic and financial abuse were tactics that related to unreasonably withholding financial support or unreasonably denying the victim-survivors financial autonomy. However, other tactics of economic and financial abuse, such as financial manipulation and economic entanglement, appeared to be less well understood by the courts. Additionally, the review highlighted how family law may only provide limited legal remedies for victim-survivors.

2. Evidence demonstrates that perpetrators may manipulate legal systems for their own advantage, and this can be conceptualised as economic and financial abuse

Several of the case studies in this report exemplified how perpetrators may use the law and legal systems to their own advantage and to continue to perpetrate economic and financial abuse against victim-survivors post-separation. These findings are consistent with broader research on 'systems abuse' that has highlighted how perpetrators may engage in various tactics, such as refusing to pay child support, pursuing vexatious legal proceedings, and delaying financial settlements to create financial hardship for victim-survivors.

3. Victim-survivors may experience a range of barriers in trying to seek recourse through the law

Limited legal recognition of, and legal remedies for, economic and financial abuse, as well as lack of awareness amongst legal practitioners, courts and tribunals, may create challenges for victim-survivors seeking recourse through the law. Other barriers include limited understanding amongst victim-survivors of their legal rights and options, the considerable financial costs associated with pursuing legal proceedings, and restrictive criteria for accessing legal recourse. For victim-survivors who are migrants, these issues may be exacerbated by factors such as their temporary visa status, fear of deportation, lack of social support and networks, and limited English language skills.

Recommendations

This report has highlighted a need for greater legal recognition of economic and financial abuse, including the ways in which perpetrators may manipulate the law to commit ongoing abuse against victim-survivors. Based on this and other findings from the scoping review and the case studies, GVRN and RLC have developed the following recommendations.

Recommendation 1

The *Family Law Act 1975* (Cth) should be amended to provide that any victims compensation received as a result of conduct by the perpetrator is excluded from consideration in spousal and de facto maintenance matters. Similarly, such compensation should also be excluded from the asset pool and from consideration of the future needs of the parties in property settlement matters.

Specifically, we recommend the following amendments to the legislation:

- That section 75(3) of the *Family Law Act 1975* (Cth) be amended to provide:

‘In exercising its jurisdiction under [section 74](#), a [court](#) shall disregard any entitlement of the [party](#) whose maintenance is under consideration to any compensation and/or award for damages received as a consequence of the behaviour of the other party.’

- That section 90SF(4) of the *Family Law Act 1975* (Cth) be amended to provide:

‘In exercising its jurisdiction under [section 90SE](#), a [court](#) must disregard any entitlement of the [party](#) whose maintenance is under consideration to any compensation and/or award for damages received as a consequence of the behaviour of the other party.’

Recommendation 2

Legal and government institutions should enhance communications with individuals in debt or at risk of bankruptcy to ensure that they provide clear information about the importance of seeking legal advice around their financial situation, particularly if they have experienced economic and/or financial abuse.

Specifically, we recommend that:

- All levels of courts at the state, territory and federal levels should ensure that all relevant forms and notifications to individuals relating to debts clearly state that individuals should seek legal advice, particularly where they have experienced economic and/or financial abuse.
- The Australian Financial Security Authority should ensure that its webpage and communications with individuals at risk of bankruptcy clearly state that individuals should seek legal advice before applying for bankruptcy if they have experienced economic and/or financial abuse.

Recommendation 3

Members of the judiciary and relevant tribunals, particularly those who have contact with perpetrators and victim-survivors, should receive further training and education on economic and financial abuse to ensure that they are aware of the range of tactics that may constitute economic and financial abuse, and how perpetrators may manipulate legal systems to perpetrate ongoing abuse against victim-survivors.

Specifically, we recommend that:

- Judicial and tribunal education providers implement further training and education courses on economic and financial abuse to enhance the judiciary’s and tribunals’ understanding of these issues.

Recommendation 4

Professionals working with victim-survivors of economic and financial abuse, such as legal practitioners, social workers and mediators, should receive training and education on economic and financial abuse to ensure that they are aware of the tactics, dynamics and impacts of economic and financial abuse.

Specifically, we recommend that:

- Professional bodies governing these professions implement training and education courses on economic and financial abuse to ensure professionals are able to best support victim-survivors.

Areas for further consideration

Based on the findings and recommendations contained in this report, the following areas may also benefit from further consideration.

Legislation and regulation

1. Legislators should consider expanding the list of family violence (FV) behaviours contained in the *Family Law Act 1975* (Cth) to capture a larger range of tactics that constitute economic and financial abuse.
2. Legislators should consider the recommendation from Petrie²⁹ that the *Family Law Act 1975* (Cth) be amended to require courts to consider FV when making property and financial determinations.
3. Policymakers should consider expanding access to the FV provision in the *Migration Regulations 1994* (Cth) to cover a broader range of visa subclasses as recommended by InTouch Multicultural Centre Against Family Violence.³⁰
4. Policymakers should consider the Immigration Advice and Rights Centre's³¹ recommendations that the *Migration Regulations 1994* (Cth) be amended to require that any determination about FV be made before assessing for a genuine relationship, and that any evidence required to establish a genuine and continuing relationship is capable of being reasonably provided in the context of an abusive relationship.

Education and awareness

5. Government and industry should consider expanding funding for public awareness and education campaigns to enhance the community's understanding of economic and financial abuse.
6. Banks should consider developing guides for victim-survivors to enhance their awareness of economic and financial abuse and support options, including legal advice (see for example, CBA's [Recognise and Recover guide](#) which is a resource designed to help victim-survivors and others identify and find support when experiencing financial abuse).

Funding for services and support

7. Government and industry should consider expanding funding for DFV, legal and other support services for victim-survivors.
8. Government should consider providing appropriate funding for culturally specific services, education and awareness campaigns, to ensure that victim-survivors from migrant backgrounds have access to legal advice and support to understand their rights.

Banking policies and procedures

9. Banks should explore how their policies and procedures can be improved to better identify situations where there is a risk of economic and financial abuse, and intervene to support victim-survivors. For example, banks can ensure that their policies and procedures align with the practices outlined in the Australian Financial Complaints Authority³² approach to joint facilities and FV.

1 Background

Since 2015, CBA has been working with community organisations and experts to address DFV. In July 2020, CBA launched CommBank Next Chapter, an initiative to address financial abuse for their customers and communities.

CBA has partnered with GVRN to support and advance research into financial abuse, building an evidence base for best practice responses by financial institutions and opportunities for knowledge exchange between community partners. GVRN has worked closely with CBA over a number of years to deliver training and develop their response to DFV and financial abuse.

GVRN with CBA key personnel developed a three-phase project plan to build the evidence base in a systematic and comprehensive inquiry.

Phase 1: April 2021 – June 2022	
Goal	Deliverable
To produce a compendium of current evidence by identifying and analysing current research on economic and financial abuse occurring in the context of DFV in five areas. This phase is now complete.	Research papers: <ol style="list-style-type: none"> 1. Understanding Economic and Financial Abuse in Intimate Partner Relationships 2. Understanding Economic and Financial Abuse in First Nations Communities 3. Understanding Economic and Financial Abuse Across Cultural Contexts 4. Understanding Economic and Financial Abuse and Disability in the Context of Domestic and Family Violence 5. Understanding Economic and Financial Abuse and Older People in the Context of Domestic and Family Violence.
Phase 2: January 2022 – July 2023	
To identify and examine legal responses to economic and financial abuse in Australia.s	Phase 2 will undertake analyses of: <ul style="list-style-type: none"> • Australian legislation, regulations, policies and cases on economic abuse, undertaken in conjunction with RLC.
Phase 3: July 2023 – December 2023	
To showcase best practice responses to financial abuse to enable organisations, including CBA, to address the issue more effectively.	Phase 3 will synthesise findings from the reviews in Phases 1 and 2 to produce evidence-informed deliverables demonstrating best practice responses for use in different sectors and organisations.

Phase 1 of partnership under CommBank Next Chapter is now complete. This phase focused on developing a compendium of research evidence on economic and financial abuse in DFV contexts. The compendium synthesised the evidence on the state of knowledge on economic and financial abuse perpetrated as part of DFV, including evidence on risk factors, impacts, and prevention and response approaches. The compendium is available on the [Financial Abuse Resource Centre](#).

This report marks the beginning of Phase 2. It focuses on legal responses to economic and financial abuse in the IPV context and has been undertaken in partnership with colleagues from RLC in NSW, who have also partnered with CBA under CommBank Next Chapter.

1.1 About this report

This report focuses on three legal areas with significant implications for victim-survivors who have experienced economic and financial abuse from an intimate partner: criminal law, family law, and migration law. More specifically, this report considers how these areas of law address (or fail to address) economic and financial abuse in the IPV context. To date, limited research has focused on how economic and financial abuse may be addressed in the Australian legal context and how this plays out in practice. This report aims to address this gap in the literature by critically analysing current criminal, family, and migration law responses to economic and financial abuse in the IPV context. In doing so, it seeks to address the following research questions:

1. What do criminal, family and migration law cases tell us about legal responses to economic and financial abuse in the context of DFV?
2. How can criminal, family and migration law responses to economic and financial abuse be improved?

This report presents the findings of a scoping review of the available evidence contained in reported legal cases in the areas of criminal, family, and migration law where economic and financial abuse has occurred in IPV contexts. This evidence is limited by the extent to which the judiciary and tribunals have chosen to report on economic and financial abuse in these contexts. Often, economic and financial abuse is only tangentially mentioned rather than being the focus of the legal response. There appears to be emerging recognition that economic and financial abuse is a deliberate tactic of DFV pre- and post-separation that can have significant consequences for victim-survivors and their children. However, there remain barriers that limit victim-survivors' access to legal redress. This report highlights these barriers through analysis of relevant reported legal cases.

This report also presents composite case studies on economic and financial abuse in IPV contexts. These de-identified case studies have been developed by RLC's Financial Abuse Service NSW, which provides free legal assistance to victim-survivors of financial abuse across the state. The case studies highlight some of the key issues that underpin current legal responses to economic and financial abuse in the IPV context and reflect the rich practice knowledge of RLC's legal practitioners. They have been incorporated at various points in this report to exemplify and explain the tactics that perpetrators of economic and financial abuse in the IPV context may employ and draw attention to the barriers that victim-survivors may face in seeking justice and recourse through legal systems and institutions.

In presenting both the results of the scoping review and the case studies, this report aims to outline and analyse the avenues for legal redress that are available for victim-survivors and identify the scope and limits of these avenues.

2 Legal responses to economic and financial abuse

Key Learnings

- Perpetrators of economic and financial abuse may employ a broad range of tactics during intimate partner relationships and post-separation (e.g., withholding or controlling finances, failing to contribute to household expenses, making partner liable for debt, appropriating partner's income, sabotaging partner's employment).
- Perpetrators may also engage in 'systems abuse' by exploiting the legal system to perpetrate coercive control against their ex-spouse or ex-partner. Tactics may include refusing to pay child support, pursuing vexatious legal proceedings, and delaying financial settlements to create financial hardship for their former spouse or partner.
- Despite growing awareness of the tactics and impacts of economic and financial abuse in intimate partner relationships, Australian research on legal responses and remedies within the criminal, family and migration law systems remains limited.

Criminal law:

- Tasmania is currently the only jurisdiction in Australia that has criminalised economic abuse specifically. However, research undertaken as part of this report's scoping review suggests that prosecutions under the Tasmanian provisions are rare.
- NSW recently passed legislation criminalising coercive control more generally, with a number of other Australia jurisdictions exploring the implementation of similar legislation. While such legislation may provide a level of recourse for victim-survivors of economic and financial abuse, there are also concerns that it may result in the further misidentification of victim-survivors as perpetrators.
- While most Australian jurisdictions, with the exception of NSW and Western Australia (WA), explicitly recognise economic abuse as a form of DFV within their legislation, it is unclear how often authorities in these jurisdictions rely on these provisions to pursue and issue protection and intervention orders in relation to economic abuse in the IPV context.

Key Learnings

Family law:

- The terms 'economic abuse' and 'financial abuse' are not specifically used in the *Family Law Act 1975* (Cth). However, the *Family Law Act 1975* (Cth) provides a non-exhaustive list of behaviours that may constitute FV, which includes unreasonably denying a family member financial autonomy and unreasonably withholding financial support needed to meet the reasonable living expenses of a family member.
- While the *Family Law Act 1975* (Cth) highlights the need to protect children from being subjected or exposed to FV, it is unclear whether and to what extent evidence of economic and financial abuse will be taken into consideration in family law proceedings involving children.
- Similarly, the *Family Law Act 1975* (Cth) does not require courts to consider economic and financial abuse when making a determination regarding spousal maintenance of property settlements.
- While victim-survivors may rely on the common law *Kennon* rule to seek property settlement adjustments in their favour in circumstances where their contributions to the relationship have been made more arduous than they ought to have been due to violence by their ex-partner or ex-spouse, evidence suggests that the test is difficult to satisfy and the adjustment is unlikely to be applied in cases of non-physical violence, such as economic and financial abuse.

Migration law

- The *Migration Regulations 1994* (Cth) provide some recourse for migrants who have experienced FV by allowing temporary migrants who hold visas under certain subclasses (e.g., partner visa, prospective marriage visa) to apply for Australian permanent residence even if their relationship with their partner or sponsor has ended.
- However, literature suggests that the evidentiary tests and requirements under the *Migration Regulations 1994* (Cth) mean that in practice, victim-survivors may experience considerable barriers successfully applying for recourse for FV.

2.1 Economic and financial abuse in intimate partner relationships

It is well established that IPV is a significant issue in Australia, with approximately 1 in 4 women and 1 in 13 men experiencing violence perpetrated by an intimate partner since the age of 15.³³ Until recently, economic and financial abuse as a form of IPV was a relatively invisible issue despite its capacity to significantly harm the economic security of victim-survivors and limit their capacity to leave or remain separated from the perpetrator.³⁴ The 2012 Personal Safety Survey estimated that just over 1 in 10 people (11.5%) had reported experiencing economic and financial abuse from a partner, with a higher prevalence for women (15.7%) compared to men (7.1%).³⁵

2.1.1 Definitions

In Phase 1 of this project, GVRN discussed how there is no agreed definition of IPV in Australia, with terms such as DV, FV and DFV often being used interchangeably with insufficient focus on the subtle distinctions between these terms.³⁴ Not all DFV is perpetrated in intimate partner relationships.³⁴ While the term IPV captures violence and abuse perpetrated by a current or former intimate partner (co-habiting and dating),²³ the term DFV is broader and acknowledges how violence and abuse may be perpetrated between people from a range of kinship and family relationships.¹⁶ Although this report focuses on economic and financial abuse within the IPV context, it is important to recognise that such abuse occurs within the broader DFV context as well and can have serious and adverse consequences for victim-survivors' financial and economic security.

Existing research has begun to conceptualise the various dimensions of economic and financial abuse in intimate partner relationships, including risk factors, impacts of economic hardship and insecurity for victim-survivors, and prevention and response strategies.^{34, 36-39} However, there remains a lack of definitional clarity within the evidence base. The Scale of Economic Abuse (SEA) developed by Adams et al.⁴⁰ provided one of the first models for categorising economically abusive behaviours. The SEA measured economic abuse across two subscales including economic control and economic exploitation. The scale was later revised by Postmus et al.⁴¹ to include an additional category of employment sabotage, which recognises that perpetrators may prevent the victim-survivor from accessing employment opportunities and restrict their access to economic resources.⁴¹

In Phase 1 of this project, GVRN identified two additional categories of economic and financial abuse – economic and financial manipulation and economic entanglement. Financial manipulation includes perpetrators using persuasion or deception or leveraging one partner's emotions or dependence in the relationship to achieve financial gain or cause financial disadvantage for their partner. Economic entanglement includes one partner becoming adversely economically enmeshed with an abusive partner or using financial resources to keep one partner entangled in the relationship, for example, through the creation of joint debt and other liabilities.³⁴

Taken together, these categories of economic and financial abuse highlight how perpetrators may engage in a pattern of controlling behaviours and tactics to keep victim-survivors isolated and financially and economically dependent.³⁴

Literature has sought to build on this conceptualisation of economic and financial abuse as an intentional and deliberate course of conduct by perpetrators.^{40, 42} The GVRN, in Phase 1 of this project, proposed the following definitions of economic and financial abuse, which not only recognise such abuse as involving a pattern of controlling behaviours by perpetrators, but that also acknowledges the nuanced distinctions between economic and financial abuse:

- **Economic abuse:** a pattern of control, exploitation or sabotage of money, finances and economic resources, such as food, transportation or accommodation, which affects an individual's capacity to acquire, use and maintain economic resources and threatening their economic security and self-sufficiency; and
- **Financial abuse:** a pattern of control, exploitation or sabotage of money and finances, affecting an individual's capacity to acquire, use and maintain financial resources thus threatening their financial security and self-sufficiency.³⁴

Economic and financial abuse may be distinguished from each other by their scope. While financial abuse is focused on abusive behaviours that affect victim-survivors' financial resources (e.g., money, finances), economic abuse is broader and involves similar patterns of abusive behaviours but in relation to economic resources (e.g., transport, housing, employment, education).¹⁷

2.1.2 Tactics

Research has also begun to demonstrate the broad range of economic and financial abuse tactics that may be used by perpetrators within an intimate partner relationship or after the relationship has ended. These tactics are often used alongside other forms of DFV, including physical,⁴³ sexual,⁴⁴ verbal⁴⁵ and psychological abuse.⁴⁶ Common tactics of economic and financial abuse occurring in the context of IPV include:

- one partner withholding money or controlling the money in the relationship;
- failing to contribute to household expenses;
- making one partner liable for joint debt;
- appropriating the other partner's income; and/or
- sabotaging their partner's employment.³⁴

There are also specific tactics of economic and financial abuse which are relevant to legal and other systems. Known as 'systems abuse', these behaviours involve the perpetrator using and manipulating legal and government systems (e.g., Centrelink, child support) to exert coercive control over the victim-survivor even after the relationship has ended.^{26, 27}

As identified in the literature, 'systems abuse' often occurs in the family law context. Perpetrators may refuse to pay child support, instigate vexatious legal proceedings or

delay financial settlements as a way of creating financial hardship for their former partner.⁴⁷ They may also intentionally cause delays in property negotiations or cease making payments for joint debts.²⁹ Despite the significant impact these tactics may have on victim-survivors' financial security, Milne, Maury and Gulliver⁴⁸ found that judges may not be able to recognise this form of abuse during family law proceedings.

In the migration law context, perpetrators may also leverage victim-survivors' uncertain migration or visa status to control and exploit their partner. Where a victim-survivor is reliant on the perpetrator for visa sponsorship, they may be at an increased risk of IPV. Tactics used may include demanding money from the victim-survivor in exchange for visa or migration sponsorship, threatening to have the victim-survivor deported, threatening to not sponsor the victim-survivor's visa application, and sabotaging the victim-survivor's visa application.³⁶

There is also substantial evidence that economic and financial abuse can result in economic and financial hardship and insecurity for victim-survivors. Economic and financial abuse may cause greater material hardship,⁴⁹ economic hardship^{50, 51} and material and financial dependence⁵² among victim-survivors. A range of adverse consequences of economic and financial abuse on victim-survivors' financial and economic security have been identified in the literature. These include, but are not limited to, damaged credit,^{52, 53} outstanding debt,⁵² difficulties getting housing and employment,^{44, 53} and not having enough money for essential needs.⁴⁴

In 2022, Deloitte Access Economics published its report on the cost of financial abuse in Australia, supported by CommBank Next Chapter.⁵⁴ They estimated that in 2020, the direct costs of financial abuse to victims was \$5.7 billion. Broader costs to the Australian economy for the same year were estimated to total \$5.2 billion.⁵⁴ The figures highlight how financial abuse can create considerable financial and economic impacts on both victim-survivors and broader society.

Traditional gender norms regarding financial management and the division of labour within intimate partner relationships may also facilitate economic and financial abuse.³⁴ This includes stereotypes that reinforce male privilege and entitlement⁵⁵ and men being designated as the 'breadwinner' or financial decision-maker within relationships.⁵⁶ Traditional gender norms may also make it difficult for victim-survivors to recognise the perpetrator's tactics as abuse.^{45, 57}

However, despite the growing recognition of the tactics and impacts of economic and financial abuse in intimate partner relationships, there remains limited Australian research examining legal responses and remedies within the criminal, family, and migration law systems. This report aims to address this gap in the literature by examining how the law in these areas addresses economic and financial abuse in the IPV context, and limits of the law in providing victim-survivors with redress.

2.2 Role of the law in addressing economic and financial abuse

There is ongoing debate around the role of the law in addressing economic and financial abuse, and DFV more broadly. Traditionally, DFV was seen as a 'private' matter, and as such, was not subject to regulation by public institutions.⁵⁸ However, with the rise of feminist movements in the last century, there has been growing legislative recognition of DFV and the specific forms of violence and abuse that constitute it, both nationally and internationally.⁵⁹ Schneider⁵⁹ argues that legal recognition of DFV plays an important role in raising awareness of the issue and provides victim-survivors with legal avenues for obtaining restitution and justice. Practitioners have also sought to leverage legal remedies to protect victim-survivors and enhance their safety including utilising protection orders with exclusion provisions in each state and territory, personal safety alarms that alert Police Command directly, and cyber-safety options.⁶⁰

However, at the same time, numerous scholars have identified the limits of the law in addressing DFV. For example, Bishop⁶¹ argues that legal systems have a tendency to focus on physical violence in assessing DV claims. This often means that cases of DFV not involving such violence tend to be perceived as not serious enough to require formal intervention. Goodmark⁶² identified that despite a heavy reliance on criminal justice interventions to address DFV, such interventions have failed to effectively prevent such violence. Goodmark⁶² proposes that instead of looking to the criminal law to provide the dominant response to DFV, societies should adopt a more holistic lens for understanding DFV to recognise the economic, human rights, public health and other implications it has.

Goodmark's⁶² proposal is consistent with the development of 'integrated responses' to DFV in all Australian jurisdictions. An integrated response aims to ensure that all client needs are managed safely, with appropriate information sharing across service systems, providing a tailored, yet comprehensive response to each client's circumstances.^{63, 64} While not primary prevention, where effectively implemented, integrated responses can contribute to the prevention of further violence and abuse.

Criminal justice responses are central to coordinating the safety of clients in an integrated response but have been less well utilised where the abuse is not overtly physical or sexual. This may change with the criminalisation of coercive control in some Australian jurisdictions^a but there are concerns that this legislation may not effectively identify the primary perpetrator and may in fact lead to further misidentification of individuals who are already at higher risk of being discriminated against by the criminal justice system (e.g., First Nations women, LGBTQIA+ people, women with disabilities) as perpetrators.⁶⁵

^a Tasmania has criminalised aspects of coercive control (e.g., emotional abuse and intimidation, economic abuse) since 2004 in the *Family Violence Act 2004* (Tas). At the time of writing this report, NSW had just passed legislation criminalising coercive control more broadly (see the NSW Government's *Crimes Legislation Amendment (Coercive Control) Bill 2022*, which will create an offence of coercive control in the *Crimes Act 1900* (NSW)). Whilst coercive control has not yet been criminalised in other Australian jurisdictions, a number of these jurisdictions (e.g., Western Australia, South Australia) have conducted or are conducting consultations to explore the public's views on making coercive control a criminal offence.

Many of the benefits and limitations around legislative responses to DFV more broadly are also relevant to legislative responses to economic and financial abuse. In recent years, a number of international jurisdictions have introduced legislation to formally recognise economic and financial abuse as forms of DFV. For example, New Zealand amended the, now repealed, *Domestic Violence Act (1995)* (NZ) to explicitly recognise financial and economic abuse as a form of psychological abuse in the DV context in 2013.⁶⁶

This recognition has carried over to New Zealand's current *Family Violence Act 2018* (NZ), which came into force in 2019.⁶⁷ The *Family Violence Act 2018* (NZ) provides for police safety, protection and other orders to protect victim-survivors of FV.⁶⁸ More recently in 2021, the United Kingdom (UK) passed the *Domestic Abuse Act 2021* (UK) as part of reforms aimed at improving responses to domestic abuse. The *Domestic Abuse Act 2021* (UK) adopts a broad definition of 'domestic abuse', which not only encompasses physical violence, but non-physical violence as well.⁶⁹ Sections 1(3)(d) and (4) specifically recognise economic abuse as a form of domestic abuse. Under the UK legislation, protection notices and orders may be issued to protect victim-survivors from domestic abuse.⁷⁰

The experiences of these jurisdictions in giving legal recognition to economic and financial abuse offers some insights into the benefits and limitations of adopting legislative responses to the issue. In both New Zealand and the UK, part of the impetus of recognising economic abuse in DFV legislation stemmed from the advocacy of community stakeholders who argued that such recognition would facilitate increased awareness of economic abuse, provide victim-survivors with access to legal remedies, and motivate services to improve responses to economic abuse.⁷¹⁻⁷³ However, as experts in the UK have highlighted, legal recognition of economic abuse as a form of DFV alone is not enough. DFV services also need to be adequately and appropriately funded to ensure that they can provide support to victim-survivors.⁷⁴ At the same time, the legislation needs to be accompanied by education and training interventions to improve awareness and understanding of economic abuse and DFV, as well as law enforcement and staff in other criminal justice contexts to ensure that the legislation is being applied.⁷⁴

Both the New Zealand and UK experiences described above show that legal responses to economic and financial abuse can play an important role in developing recognition and awareness of these issues and offering victim-survivors avenues for pursuing protection and recourse. At the same time, however, such legal responses need to be supplemented by enhanced community resources to assist victim-survivors in accessing the non-legal support they need, as well as holistic interventions targeted at improving community awareness of economic abuse. Community resources are frequently provided as part of an integrated service response and may include, but are not limited to, mental health support, support with employment and re-training, childcare services, and financial counselling and financial literacy programs.

2.3 Overview of Australian law related to economic and financial abuse

Due to the increasing awareness of the prevalence and harmful impacts of DFV, legal advocates and policymakers have begun to address this form of abuse. However, as explored in the following section, there are limited legal remedies to address economic and financial abuse within Australian jurisdictions. Victim-survivors have stated that their needs are not always met during legal proceedings, as legal professionals, such as lawyers and judges, may consider economic and financial abuse to be 'less serious' than other forms of DFV.⁵³ The following section summarises legal responses to economic and financial abuse within Australian states and territories in three key areas: criminal law, family law and migration law.

2.3.1 Criminal law

As detailed below, Tasmania is currently the only Australian jurisdiction that has criminalised economic abuse specifically. According to McMahon and McGorrey⁷⁵ the legislation represents a movement away from conceptions of FV that rely solely on physical abuse, and instead identifies psychological harm as a core component of FV. Section 8 of the *Family Violence Act 2004* (Tas) specifies economic abuse as a criminal offence, with a maximum penalty of 40 penalty units or a term of imprisonment not more than 2 years.

Section 8 of the *Family Violence Act 2004* (Tas) states that:

a person must not with intent to unreasonably control or intimidate his or her spouse or partner or cause his or her spouse or partner mental harm, apprehension or fear, pursue a course of conduct made up of one or more of the following actions:

(a) coercing his or her spouse or partner to relinquish control over assets or income;

(b) disposing of property owned –

(i) jointly by the person and his or her spouse or partner; or

(ii) by his or her spouse or partner; or

(iii) by an affected child –

without the consent of the spouse or partner or affected child;

(c) preventing his or her spouse or partner from participating in decisions over household expenditure or the disposition of joint property;

(d) preventing his or her spouse or partner from accessing joint financial assets for the purposes of meeting normal household expenses;

(e) withholding, or threatening to withhold, the financial support reasonably necessary for the maintenance of his or her spouse or partner or an affected child.⁷⁶

When first introduced, the provision had a 6-month statutory limitation period. This was amended in 2015 to 12 months from the day on which the last action constituting the course of conduct to which the matter relates to occurred to address criticisms that the original 6-month statutory limitation period was too short.^{77, 78}

Despite the criminalisation of economic abuse in Tasmania, a review of the literature illustrates that prosecutions under this provision appear to be rare. Barwick, McGorrey and McMahon⁷⁹ noted that, at the time of writing, there had been no decisions in superior courts in relation to section 8 of the *Family Violence Act 2004* (Tas). The authors consulted with the Tasmanian Police Prosecution Service and found that five cases of economic abuse had been prosecuted in the lower courts. Perpetrators in all five cases were also charged with emotional abuse. It was concluded that impediments to prosecuting the offence of economic abuse included a lack of community awareness about non-physical DFV and deficiencies in police training and investigative practices.⁷⁹ Additionally, as the Tasmanian provision requires that the perpetrator be shown to have engaged in a course of conduct of economic abuse, it may be difficult for prosecutors to prove the offence in circumstances where the abuse is 'sporadic or cyclical.'⁷⁹ This has been identified as an additional barrier to successful prosecutions under the provision.

While Tasmania is the only Australian jurisdiction that has criminalised economic abuse specifically, there has been growing interest in other Australian jurisdictions in criminalising coercive control more generally. At the time of writing this report, NSW had just passed legislation creating a standalone criminal offence for coercive control,⁸⁰ while a number of other Australian jurisdictions, such as WA and South Australia, had undertaken or were in the process of undertaking consultations around criminalising coercive control.^{81, 82}

The criminalisation of coercive control will have implications for how economic and financial abuse is addressed by the Australian criminal justice system. The NSW legislation, for example, criminalises economic and financial abuse that is perpetrated as a course of conduct.⁸⁰ This may provide a level of recourse for victim-survivors. However, there are concerns that the legislation may not effectively identify the primary perpetrator and may in fact lead to further misidentification of individuals who are already at higher risk of being discriminated against by the criminal justice system.⁶⁵ It is important that law enforcement bodies and other actors within the criminal justice systems are appropriately trained in recognising and responding to coercive control.

Most Australian jurisdictions also have DFV legislation that allow victim-survivors to apply for protection or intervention orders against perpetrators of DFV, and breach of such orders constitutes a criminal offence. Currently, most Australian jurisdictions, with the exception of NSW and WA, explicitly recognise economic abuse as a form of DFV within this legislation.⁸³⁻⁸⁸

As such, in these jurisdictions, it is legally possible to obtain a protection or intervention order in relation to behaviours that constitute economic abuse in intimate partner relationships. The failure of NSW and WA to explicitly identify economic abuse as a form of DFV in its legislation creates barriers for victim-survivors in these jurisdictions seeking legal protection and recourse in relation to economic abuse. In the NSW context, the

issue is compounded by the legal test for making apprehended DV orders (ADVOs) set out in the NSW legislation. Section 16(1) of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) states that a court may make an ADVO if satisfied on the balance of probabilities that the person has reasonable grounds to fear and in fact fears that the other person will commit a DV offence against them,⁸⁹ or will intimidate or stalk them.⁹⁰ The use of the 'reasonable grounds' standard in relation to assessing victim-survivors' fear amounts to an objective test. This objective test has been criticised by Jeffries et al.⁹¹ as being 'less supportive of victim safety' as compared to a subjective test.

Additionally, the criteria that the fear must be in relation to the commission of a DV offence, or intimidation or stalking by the perpetrator, means that many victim-survivors are unlikely to be able to access an ADVO for economic abuse under the legislation. While some tactics of economic abuse, such as property damage, may satisfy the criteria as they meet the definition of intimidation or amount to a DV offence as defined under the legislation, most economically abusive tactics would not satisfy these criteria as economic abuse is not criminalised in NSW. In these circumstances, victim-survivors of economic abuse in NSW only have limited recourse under the state's AVO legislation.

Even in Australian jurisdictions where economic abuse is legislatively recognised as a form of DFV, the full extent to which protection and intervention orders are actually issued in practice for such abuse is unclear. Lauman and Samra⁹² in writing about family violence orders (FVOs) in the Australian Capital Territory (ACT) context, have noted that while ACT legislation allows for FVOs to be issued in relation to economic abuse, courts may require that the economic abuse is accompanied by violent or threatening behaviour that the victim-survivor needs protection from before issuing an FVO. They also note that while it is common for courts in the ACT to attach conditions to FVOs requiring the perpetrator to return specified personal property or preventing the perpetrator from removing such personal property, it is not as common for courts to attach conditions that explicitly prevent economic abuse.⁹² This highlights some of the limitations in how protection and intervention orders are operationalised by courts, and their potential to offer an avenue of recourse to victim-survivors.

2.3.2 Family law

The Family Law Act 1975 (Cth) is the primary legislation in Australia that governs the breakdown of family relationships, including in relation to maintenance, property settlement and child custody issues. Section 4AB(1) of the *Family Law Act 1975* (Cth) defines 'family violence' as violent, threatening or other behaviour by a person that coerces or controls a member of the person's family, or causes the family member to be fearful. Although the terms 'economic abuse' or 'financial abuse' are not specifically used in the legislation, section 4AB(2) provides a non-exhaustive list of behaviours that may constitute FV. Examples relevant to economic and financial abuse include unreasonably denying the family member financial autonomy⁹³ and unreasonably withholding financial support needed to meet the reasonable living expenses of the family member or their child at a time when they were dependent on the person for financial support.⁹⁴ However, a matter is only heard in the Federal Circuit and Family Court of Australia where an intimate partnership has irrevocably broken down.

In matters relating to children, the *Family Law Act 1975* (Cth) requires that decisions be made based on the child's best interests. Under section 60CC(2), the need to protect the child from physical or psychological harm and being subjected or exposed to FV is a primary issue that the court must consider. Section 61DA(2) states that the presumption of equal shared parental responsibility does not apply if there are reasonable grounds to believe that a parent of the child has engaged in abuse of the child or FV. However, it is not clear whether and to what extent evidence of economic abuse in the context of DFV will be taken into consideration, as the court is only required to consider FV more broadly when making a determination. It is also unlikely that financial abuse alone will be relevant when considering a parenting matter unless it directly impacts child support.

Despite evidence that economic and financial abuse contributes to hardship and insecurity for victim-survivors and their children, the *Family Law Act 1975* (Cth) does not require the court to consider economic and financial abuse when making a determination regarding maintenance or property settlements. Sections 75(2) and 79(4) lists the factors that court should take into consideration when adjudicating spousal maintenance or property settlement matters respectively in the context of a spousal relationship that has broken down. Neither of these provisions make any explicit reference to DFV. However, section 75(2)(o) functions as a 'catch-all' provision allowing courts to consider 'any fact or circumstance which, in the opinion of the court, the justice of the case requires to be taken into account' when deciding maintenance matters. Section 79(4)(e) also allows for such facts and circumstances to be taken into account by stating that the matters referred to in section 75(2) may be taken into consideration by the court so far as they are relevant. A similar situation exists in relation to the provisions governing maintenance and property settlement matters following the breakdown of a de facto relationship (see sections 90SF(3)(r) and 90SM(4)(e)). Given that the provisions defer to the court's opinion, courts are not obligated to consider issues relating to DFV or economic and financial abuse more specifically.

The limited legislative avenues that allow for DFV to be considered in property settlement determinations means that victim-survivors often must rely on the common law *Kennon* rule to raise the issue.²⁹ Under the *Kennon* rule,⁹⁵ DFV may be taken into account in property settlement determinations if it is found that the victim-survivor's contributions to the relationship were made 'significantly more arduous than they ought to have been' due to a course of violent conduct by the perpetrator against the victim-survivor. However, evidence suggests that the *Kennon test*⁹⁵ is difficult to satisfy, with research highlighting inconsistencies in how the test is applied by the courts and noting that adjustments under the test are not frequently made.⁹⁶ Additionally, the test's strong focus on physical violence, mean that it is unlikely that the rule would apply in cases that solely involved non-physical violence, such as economic and financial abuse.

Victim-survivors may also be at a distinct disadvantage during property settlement proceedings due to having limited financial resources and experiences of ongoing violence which may make them fearful of seeking their share of property through the family law system.²⁹ The power imbalance that is inherent in relationships involving DFV mean that women who have experienced DFV may have less negotiating power when pursuing a property settlement and may be more likely to accept a settlement that is not equitable.^{29, 97}

This is supported by evidence that perpetrators may utilise the family law system to commit further economic and financial abuse against their ex-spouses or ex-partners through tactics such as deliberately prolonging legal proceedings to exert financial pressure on their ex-partner or coercing their ex-partner to agree to an unfair settlement.^{47, 98}

Perpetrators may also transfer assets to other individuals, including family members, to prevent such assets from being part of the 'asset pool', and as such, prevent their partner from claiming them in the property settlement. This tactic is exemplified in Case Study 1 (presented below). The case study reflects a composite of practice issues that RLC's Financial Abuse Service NSW has witnessed in supporting victim-survivors, and highlights some of the barriers that victim-survivors may face in family law proceedings.

Case study 1

Melissa was married for 22 years and has three children from that marriage. She experienced severe physical violence which was eventually reported to police. At the recommendation of the police and fearing for her life and that of her children, Melissa went into hiding, leaving all her possessions behind. Her husband was convicted of several FV offences and was imprisoned.

Melissa experienced financial abuse throughout her relationship, including but not limited to having no access to funds which further isolated her from friends and family. The home they purchased together from joint savings was purchased in the husband's name. After separation, Melissa's husband transferred the property to his brother at a price that was significantly lower than the market value of the property. The transfer had the effect of preventing Melissa from obtaining any funds from the property. Proceedings were commenced on Melissa's behalf against her husband and his brother who was joined as a party to the proceedings. It was argued that the transfer had the effect of defeating Melissa's claim for a property settlement under the *Family Law Act* and that it should be set aside.

The proceedings were lengthy and were complicated by the husband's conduct. The Court had to weigh the interest of a third party with that of Melissa. Melissa's claim did not take priority over that of the third party as, by that stage, the brother had paid money to renovate the property. The brother sought to retain the property as he had spent money renovating it. The Court ordered the brother to pay Melissa a percentage of the value of the property. Melissa was involved in protracted legal proceedings over a three-year period.

The law as it stands does not recognise that Melissa's contributions were made more onerous because of the FV including the financial abuse she experienced. The husband was operating his own business and he declared a minimal income. She was unable to obtain any spousal maintenance and receives minimal child support, leaving her to bear sole responsibility for the financial needs of their three children.

Additionally, the actual and potential financial costs associated with pursuing family law proceedings may be a barrier for victim-survivors. For example, Petrie²⁹ has noted that the legal costs of matters may constitute a significant proportion of, or be more than, the value of the settlement that the victim-survivor receives, particularly in cases where the settlement value is small. In these cases, victim-survivors may be disincentivised to pursue such proceedings due to the high 'cost-benefit decision' involved.²⁹ Similarly, victim-survivors seeking an interim injunction to prevent the perpetrator from disposing of assets until final orders are made must make a financial undertaking for any damages that may arise from the interim injunction in the event that a final injunction is not awarded in their favour. This may hinder victim-survivors from pursuing this legal strategy due to a fear that they will be liable for further costs. There may also be costs involved in hiring expert witnesses to testify in support of the victim-survivors' family law case and in issuing subpoenas to get the required evidence to pursue the case. These costs may be onerous for victim-survivors and may act as a barrier to them pursuing legal recourse through family law proceedings. Case Study 2 exemplifies these issues.

Case study 2

Rhonda was married for 10 years. She had two children from the relationship. Her husband forged her signature and set up investments in her name. The investments were not profitable and there was significant financial loss. During the proceedings, her husband denied making the investments and accused Rhonda of losing the money. He made these allegations notwithstanding that Rhonda had no experience with investments and had no funds to make those investments.

To prove that she was not responsible, Rhonda needed to engage a handwriting expert to prove the signature on the investment paperwork was not hers. Even though the expert confirmed that the signature had been forged, Rhonda had to spend significant sums of money to argue that the loss should be worn by her husband with limited prospects of success.

The global approach taken by the courts in relation to property settlements results in people like Rhonda having to wear the loss even though the husband's conduct was criminal in nature. The cost of taking the matter to a trial was also prohibitive. Furthermore, Rhonda had to issue subpoenas as the financial institutions involved refused to hand over documents as soon as they became aware of the fraud.

This case study demonstrates that even where legal redress is possible and the perpetrator's conduct amounts to criminal behaviour, the costs of seeking such redress may be prohibitive.

At the same time, non-physical aspects of FV, including economic abuse, may not be well understood by legal practitioners.⁹⁹ This means that the issue may not be raised during legal proceedings or inadequate evidence may be presented to the court, resulting in allegations being unsubstantiated.

2.3.3 Migration law

Another legal area that can have important implications for victim-survivors, particularly if they are temporary residents in Australia, is that of migration law. For migrants on temporary visas, the adverse impacts of economic and financial abuse may be exacerbated by their lack of access to social security entitlements, isolation from friends and family, and limited understanding of FV and the laws pertaining to it in Australia.³⁶ Furthermore, migrants who are dependent on the perpetrator for visa sponsorship or financial support may be reluctant to report economic and financial abuse, and DFV more generally, due to concerns that the perpetrator will withdraw such support.¹⁰⁰

At it currently stands, the *Migration Regulations 1994* (Cth) provide some recourse for some migrants in these circumstances. Schedule 2 of the *Migration Regulations 1994* (Cth) provides that holders of certain temporary visas who have experienced FV may apply for Australian permanent residence even if their relationship with their partner or sponsor has ended. The provisions are applicable to individuals who hold visas under the following subclasses: partner (subclasses 309, 100, 801, 820), prospective marriage (subclass 300), global talent (subclass 858), and dependent child (subclass 445).¹⁰¹

FV is defined in regulation 1.21 of the *Migration Regulations 1994* (Cth) as actual or threatened conduct towards the alleged victim, the alleged victim's family member, the alleged victim's property, the property of the alleged victim's family member, the family member of the alleged perpetrator, or property of the alleged perpetrator's family member, 'that causes the alleged victim to reasonably fear for, or to be reasonably apprehensive about, his or her own wellbeing or safety.' While the definition does not explicitly refer to economic or financial abuse, it is arguably broad enough to encompass such conduct.

Pursuant to regulation 1.23 of the *Migration Regulations 1994* (Cth), a victim-survivor is taken to have suffered FV if there is a court injunction pursuant to section 114(1)(a), (b) or (c) of the *Family Law Act 1975* (Cth) or a protection order against the perpetrator,¹⁰² or if the perpetrator has been convicted of or had a finding of guilty against them in relation to a violent offence against the victim.¹⁰³ Given that many victim-survivors do not report FV, let alone pursue legal proceedings against the perpetrator for FV, the *Migration Regulations 1994* (Cth) also allow for FV to be proven non-judicially, using evidence from specified professionals (e.g., relevant medical reports, an assessment by a DV crisis centre, or a statutory declaration from a professional such as a social worker, registered psychologist or family consultant).¹⁰⁴ If in such a claim the Minister is not satisfied that the alleged victim has experienced FV, the Minister must seek an independent expert's opinion on the issue.¹⁰⁵ In such circumstances, the independent expert's opinion is determinative, and the Minister must treat the independent expert's opinion as correct.¹⁰⁶

While these provisions provide a level of potential recourse for migrants who have experienced FV, including economic and financial abuse, research highlights issues associated with the scope of the provisions. For example, Segrave and Pfitzner¹⁰⁷ have noted how the fact that access to the provisions are restricted to holders of certain specified visas, means that victim-survivors who hold other temporary visas are not eligible to seek recourse under them. For victim-survivors on temporary visas, their situations are often compounded by the fact that their temporary visas status precludes them from accessing a range of government supports, including Centrelink.^{107, 108}

Research also underscores some of the problems associated with the process of seeking recourse under the provisions. In a study of migrant women who engaged with the Department of Home Affairs to access Australian permanent residency following their experiences of DV, Jelenic¹⁰⁹ found that the processes may fail to listen to women and their experiences, and properly account for cross-cultural differences. The study highlighted issues experienced by women who had gone through the process, including failure to provide women with interpreters at their interviews with independent experts, lack of consideration of women's cultural backgrounds, and long processing and appeal times.¹⁰⁹

The use of independent experts in non-judicially determined claims of FV where the Minister is not satisfied that FV has occurred, and the legislative requirement that an independent expert's finding on the issue is binding has also been critiqued by stakeholders.¹¹⁰ More specifically, stakeholders have noted that independent experts' decisions are not always fair and consistent given the fact that they often lack the legal training required to assist them in applying the legislative definition of FV and are not required to afford procedural fairness to applicants.¹¹⁰

It should also be noted that access to recourse under the FV provisions of the *Migration Regulations 1994* (Cth) is dependent on the victim-survivor's ability to demonstrate that they were in a 'genuine and continuing relationship' with their partner or spouse at the time of the FV. A 'genuine and continuing relationship' is defined under the *Migration Act 1958* (Cth) as 'involving a shared life to the exclusion of all others with, either an Australian citizen or a permanent resident of Australia.'¹¹¹

In determining whether such a relationship existed, the Department of Immigration and Border Protection will have regard to a range of financial, social, and other factors that include but are not limited to whether:

- the victim-survivor and their partner or spouse lived together, or did not live separately and apart on a permanent basis;^{112, 113}
- they had any joint assets or liabilities, and/or pooled their financial resources or shared household expenses;
- they had joint or shared responsibilities in relation to housework, and or the care of their children (if any);
- they represented themselves to others as being married or in a de facto relationship with each other;

- they planned and undertook joint social activities;
- they provided each other with companionship and emotional support; and
- they saw their relationship as being a long-term one.^{114, 115}

The fact that victim-survivors have to provide evidence of the financial aspects of their relationship with the perpetrator to establish that they were in a genuine and continuing relationship with them may disadvantage victim-survivors of economic and financial abuse. Individuals who have experienced economic and financial abuse by an intimate partner may not have assets or bank accounts in their name and/or may not have control or access to their finances. In these circumstances, it may be difficult for victim-survivors to prove, from a financial perspective, that they were in a 'genuine and continuing relationship' with the perpetrator.³¹

As such, while the *Migration Regulations 1994* (Cth) offer victim-survivors who have experienced DFV, including economic and financial abuse, an avenue of recourse, the process of achieving such recourse remains complex and characterised by various barriers.

These barriers may be heightened in cases where victim-survivors are socially isolated, lack an understanding of their rights in Australia, and/or have limited English language skills. Some of these issues are highlighted below in Case Study 3.

Case study 3

Olga met her partner while travelling. They agreed to marry and Olga migrated to Australia under a temporary partner visa. She had never lived with her partner prior to this.

During cohabitation, Olga experienced physical, psychological and financial abuse. She was solely reliant on her partner for funds. Her partner did not allow her to work. He monitored all of her spending to such a degree that he allocated her money based on what she had asked to purchase and then needed to provide proof of purchase, this included the purchase of feminine hygiene needs.

Olga received advice to call the police after a friend saw bruises on her face, however she had a mistrust of police based on experiences she had in the country from which she migrated. She eventually separated from her partner with the assistance of a DV service. However, she was unable to obtain work due to her temporary visa status.

She was living with her partner for less than two years. Accordingly, she was not entitled to seek a family law property settlement. On his own disclosure, his assets totalled \$8,000,000. Under de facto relationship law, a person can only make an application for a property settlement if they had been cohabitating for more than two years or they have a child of the relationship or can show significant financial contributions to an asset. Her partner operated his own business and was able to minimise his taxable income. Her application for interim spousal maintenance was dismissed on the basis that her partner's taxable income was low. The final application was ineffective because a final hearing would have taken two years.

This case study demonstrates that women on temporary visas experiencing FV often have limited remedies available to them in family law. They also may face all or some specific barriers to seeking support, including fear of deportation, alongside a lack of social networks, understanding of their rights and English language skills. Perpetrators of violence use these barriers to maintain power and control and to continue to use violence against women on temporary visas.

2.3.4 Other relevant areas of law

There are several other aspects of the law that may be relevant to victim-survivors of economic and financial abuse and may intersect with criminal, family and migration law systems. These include privacy laws, guardianship and power-of-attorney laws, and equity law. While the current report does not cover these areas in detail due to this report's focus on areas of law that have the most considerable implications for victim-survivors of economic and financial abuse in the IPV context, it is important to recognise that these other areas of law may intersect and impact on victim-survivors' experiences of seeking legal recourse.

3 Scoping review of published legal cases

Key Learnings

- No criminal law or migration law cases identified in the review made a determination about economic and financial abuse.
- The most common tactics of economic and financial abuse identified in the family law cases included one partner failing to sufficiently contribute financially, such as refusing to pay any money for the financial support of the family, one partner taking or appropriating the other partner's financial or economic resources, including taking their partner's wages, savings or car, and controlling their partner's expenditure or access to funds.
- Economic and financial abuse usually occurred alongside other forms of DFV, including physical, sexual, emotional, and psychological abuse.
- While family law cases often made a determination about economic and financial abuse, approximately half of these cases held that economic and financial abuse did not occur. Reasons for this included a lack of evidence to support the allegations, the alleged victim having control over their finances, and tactics constituting acceptable financial management within the relationship.
- Even when economic or financial abuse was held to have occurred by the court, victim-survivors were not usually provided with a specific legal remedy.

A scoping review of reported legal cases in the areas of criminal, family and migration law that involved economic and financial abuse in IPV contexts was undertaken to explore how these areas of law address (or fail to address) economic and financial abuse.

Searches of academic legal databases were conducted to identify relevant Australian criminal, family and migration law cases that considered the issue of economic and financial abuse in the context of DFV.

Search terms were developed to identify and retrieve relevant case law which broadly examined economic and financial abuse in the context of IPV. Cases were only identified as eligible for inclusion in the scoping review if they made a legal determination about whether economic and/or financial abuse occurred in the context of IPV. Further details on the search strategy employed for this review, including information on specific databases searched, search terms used, and inclusion criteria, is available in Appendix A.

The search of case law databases initially identified a total of 1,014 results. The court jurisdiction and abstracts of these results were reviewed for potential relevance to economic and financial abuse in the context of IPV. A total of 263 cases were deemed to be potentially relevant to economic and financial abuse, and these cases underwent a

second stage of screening. The full text of these cases was examined to verify whether the presiding judge or magistrate had made a judicial determination about whether economic or financial abuse occurred. A total of 177 cases were then excluded as they did not include a judicial determination about economic or financial abuse or only included a determination about FV more broadly.

The final 86 cases were then analysed and coded to identify the tactics of economic and financial abuse alleged and held to have occurred, the legal tests used in making the determination, the reasons for the determination, the remedy imposed by the court and any other circumstances of the case that were relevant to the judicial determination. The tactics of economic and financial abuse, legal remedies and reasons for the judicial determination were then recoded into broader categories, and descriptive statistics were generated to illustrate these issues.

The following sections present the results of the scoping review as they related to each identified area of law.

3.1 Criminal law

The review did not identify any criminal law cases which made a determination about economic and financial abuse. Cases that were identified during the initial search only mentioned economic and financial abuse as part of the background to the offence and the abuse was not considered central to the case. For example, in *RH v R* [2019] NSWCCA 64, it was noted that the appellant had experienced financial and emotional abuse and threats of violence perpetrated by her partner. Even in Tasmania where economic abuse is criminalised under the *Family Violence Act 2004* (Tas), no reported criminal cases relevant to the *Family Violence Act 2004* (Tas) were identified in the search. It is unsurprising that no criminal law cases identified in this review included a judicial determination regarding economic or financial abuse. It is likely that prosecutions in Tasmania – as the only Australian jurisdiction that has criminalised economic abuse specifically – occur in the lower courts and are, as such, not published in legal databases.⁷⁹

Although the criminalisation of economic abuse in Tasmania acknowledges the broad range of behaviours which constitute FV, critics have also argued that the provisions are redundant given their limited use.⁷⁵ While prosecutions alone are not an adequate indicator of the significance of the provision,⁷⁹ the lack of cases identified in this review still calls into question the ability of these provisions to achieve justice for victim-survivors.

It is also worth noting that it is possible that economic and financial abuse in Australia is being prosecuted under more general criminal offences (e.g., theft, fraud and property destruction), where such abuse satisfies the elements of these offences. However, these cases were outside the scope of the current review. Nonetheless, the fact the review did not identify any criminal law cases that made a determination about economic and financial abuse, suggests that there is limited recognition of such abuse in the context of IPV by the criminal law.

Despite this, most Australian jurisdictions have DFV legislation which allow victim-survivors to apply for protection orders against perpetrators of economic and financial abuse. Any breach of these orders may constitute a criminal offence, which can provide some recourse for victim-survivors.

3.2 Family law

A total of 86 family law cases were identified as relevant to the review. This is a relatively small number given that it is common for family law cases to include allegations of FV.¹¹⁶ In 46.5% of these cases (n=40), the presiding judge made a determination that economic or financial abuse had occurred, either because the allegations were successfully proven or because the allegations were not challenged by the perpetrator. In 54.7% of the cases (n=47), the judge determined that economic or financial abuse did not occur. It should be noted that in one case, both parties alleged economic or financial abuse against their partner, and it is therefore counted in both categories.¹¹⁷

As shown in Table 1, the reasons for finding that economic or financial abuse did not occur included a lack of evidence to support the allegations (44.6%; n=21). However, this does not necessarily mean that the abuse did not occur – whether or not allegations meet the burden of proof is dependent on issues such as the legal practitioners' presentation of the evidence and the presence or absence of corroborating evidence.⁷⁹ With regards to the former issue, legal practitioners may not have a thorough understanding of economic and financial abuse,⁹⁹ leading to inadequate evidence being presented to the court. Similarly, judges may also lack comprehensive knowledge on the operation and impact of economic and financial abuse in IPV contexts, which may affect victim-survivors' court outcomes.

Other reasons for findings that economic or financial abuse did not occur included the alleged victim having control over their finances (21.3%; n=10). In *Parkhurst v Bardsley* [2018] FCCCA 2764, allegations of financial control were not substantiated as it was held that the mother had access to money throughout the relationship. However, she claimed that the father would not necessarily stop her from spending, but rather would complain about her spending money afterwards with the aim to increase her social isolation. This does not acknowledge the broad range of economic and financial abuse tactics used by perpetrators. While at the outset it may appear that the victim-survivor has control over their finances, the perpetrator may coerce or manipulate them to achieve financial gain or cause financial disadvantage for the victim-survivor.³⁴

Gendered financial practices were also deemed to be acceptable in some instances, as the alleged economic or financial abuse was considered acceptable financial management within the relationship (19.1%; n=9). In *Delaney v Delaney (No 2)* [2017] FCCA 1187, it was alleged that the father perpetrated financial abuse by limiting the wife's access to money and providing her with a weekly allowance. However, the judge found that these actions did not amount to financial abuse, as it was necessary for the husband to monitor the parties' spending.

Table 1. Reasons for finding that economic or financial abuse did not occur (N=47).

Reason	n cases (%)
Lack of evidence to support the allegations	21 (44.7)
Alleged victim had control over finances	10 (21.3)
Conduct amounted to acceptable financial management	9 (19.1)
Inconsistencies in the evidence	4 (8.5)
Conduct was indicative of a poor relationship between the parties, but did not amount to economic or financial abuse	2 (4.3)
Each of the parties are of 'modest means'	1 (2.1)
No reason provided	3 (6.4)

Note: A case may provide multiple reasons for finding that economic or financial abuse did not occur and may therefore be counted across multiple categories.

The definition of 'family violence' outlined in section 4AB of the *Family Law Act 1975* (Cth) was the most common legal test used by judges in making their determinations. The legislation specifies examples of FV behaviours that are relevant to economic and financial abuse. This includes unreasonably denying a family member the financial autonomy that they would otherwise have had,⁹³ or unreasonably withholding financial support needed to meet the reasonable living expenses of the family member or their children, at a time when the family member is entirely or predominantly dependent on the person for financial support.⁹⁴

Table 2 outlines the broad and specific tactics and behaviours that were held by the court as constituting economic or financial abuse. The most common broad categories identified in the cases included financial control (50.0%; n=20) and financial abuse (42.5%; n=17). In relation to specific tactics, the most common categories included one partner failing to sufficiently contribute financially (22.5%; n=9), such as refusing to pay any money for the financial support of the family, and one partner taking or appropriating the other partner's financial or economic resources (22.5%, n=9), including taking their partner's wages, savings or car. Failing to contribute financially may also include the perpetrator ceasing to make mortgage repayments as discussed in Case Study 4.

Table 2. Tactics held by the court to be economic and financial abuse (N=40).

Categories of tactics	n cases (%)
Broad categories	
Financial control	20 (50.0)

Categories of tactics	n cases (%)
Financial abuse	17 (42.5)
Economic abuse	1 (2.5)
Financial manipulation	1 (2.5)
Indifferent to financial consequences	1 (2.5)
Specific categories	
Control expenditure	7 (17.5)
Restrict expenditure	2 (5.0)
Require approval before spending is allowed	1 (2.5)
Monitor or track partner's spending	1 (2.5)
Question partner about spending	1 (2.5)
Require money to be accounted for	1 (2.5)
Angry about partner's expenditure	1 (2.5)
Control time partner spends on Skype with family to reduce internet bills	1 (2.5)
Complaining when partner sends money to family overseas	1 (2.5)
Partner pays for children's activities but says this will be subject to review	1 (2.5)
Control partner's access to funds	7 (17.5)
Partner had no access to a bank account or joint account	4 (10.0)
Give partner an allowance	3 (7.5)
Require partner to ask/beg for money	2 (5.0)
Control partner's access to funds to meet expenditure	1 (2.5)
Paying school fees directly to the school rather than to the mother	1 (2.5)
Control partner's employment	1 (2.5)
Partner only allowed to work for the perpetrator's business	1 (2.5)
Not paying partner for the time they were employed by the perpetrator	1 (2.5)
Partner failed to sufficiently contribute financially	9 (22.5)
Refuse to pay any money for the financial support of partner and children	6 (15.0)
Fail to make income available to family	2 (5.0)

Categories of tactics	n cases (%)
Withholding money from partner to buy groceries	1 (2.5)
Fail to make mortgage repayments	1 (2.5)
No significant payments by perpetrator for children	1 (2.5)
Take partner's financial/economic resources	9 (22.5)
Taking partner's income/wages	3 (7.5)
Use partner's credit card without their consent	1 (2.5)
Deplete partner's savings	1 (2.5)
Remove partner's car after separation	1 (2.5)
Provide material possessions to partner and then demand their return	1 (2.5)
Disconnect partner's telephone and internet	1 (2.5)
Throw away partner's possessions	1 (2.5)
Required to repay money to the perpetrator	1 (2.5)
Exclude partner from financial decision-making	3 (7.5)
Partner lacks say in financial decisions	3 (7.5)
Manipulate administrative and court processes/systems abuse	3 (7.5)
Manipulate Centrelink to obtain entirety of family benefit payment	1 (2.5)
Make partner incur unnecessary legal costs	2 (5.0)
Other types of tactics	7 (17.5)
Exploit partner's financial dependence as a means of control	1 (2.5)
Threaten divorce following argument about finances	1 (2.5)
Try make partner and children homeless	1 (2.5)
Keep partner and child overseas while perpetrator sells the family home	1 (2.5)
Register property in unequal shares	1 (2.5)
Drawn down loan on the family home	1 (2.5)
Refuse to facilitate sale of parties' property	1 (2.5)

Note: Cases may include multiple tactics and may therefore be counted across multiple categories.

Case study 4

Julie was married for 14 years and has two children aged 10 and six from that relationship. Julie experienced significant FV, including financial abuse, throughout her relationship. RLC helped Julie with a safety plan to leave her husband and move into rented premises. Julie was unemployed and had not worked since the birth of her first child. Her husband was convicted of several FV offences including assault occasioning actual bodily harm.

Julie's husband immediately ceased making payments on the mortgage and their bank was chasing Julie for the arrears. The bank threatened to take possession of her property and sell it to discharge the mortgage. Julie could not afford to make mortgage payments or pay the arrears.

RLC commenced urgent proceedings on Julie's behalf seeking that the property be placed on the market and that she receives funds by way of an interim property settlement. RLC also liaised with the bank seeking that they stay any enforcement of arrears in the meantime. As a result of the proceedings, the husband is now making mortgage payments and the property is being placed on the market for sale with monies to be released to Julie on an urgent basis.

Again, the *Family Law Act 1975* (Cth) does not recognise how Julie's contributions were made more onerous because of the financial abuse she experienced. Julie and her children received victims' compensation for the violence perpetrated by him. The de facto husband is seeking that this compensation be included as part of the asset pool and that he obtain a share, despite the fact the compensation was only payable to Julie because of his acts of violence. He is also seeking the money paid in victims compensation to their sons.

This case study illustrates the tactics of economic and financial abuse and that the perpetrator may manipulate legal provisions to their own advantage. Perpetrators may even exploit victim-survivors further by attempting to access payments that they have received in compensation for their victimisation by the perpetrator.

The fact that these tactics were the most frequently held to be economic and financial abuse can be explained by the fact that the *Family Law Act 1975* (Cth) defines FV as including unreasonably withholding financial support or unreasonably denying the victim-survivor financial autonomy.

However, certain tactics of economic and financial abuse, such as financial manipulation and economic entanglement are not necessarily covered by the legislation and may not be well understood by the courts. For example, in *Jarrett v Jarrett* [2014] FCCA 2183 the wife alleged financial abuse on the basis that the husband obtained a credit card in her name

due to his own poor credit rating. In *Grady v Chilcott* [2020] FAMCAFC 143, the husband borrowed money from the wife against her credit card to use for gambling, eventually creating a debt of \$50,000. In both cases, the alleged tactics were held to not constitute economic or financial abuse. This issue is demonstrated further in Case Study 5.

Case study 5

Louisa was married for almost 20 years. She has three adult children. Unbeknown to her, her husband listed her name as a director to numerous entities and then proceeded to make risky investments through those entities. He held all assets in his name and left her to bear all the risk. Louisa signed documents after experiencing relentless pressure and threats from her husband, not fully understanding the legal implications of what she had signed. Her husband's business dealings resulted in Louisa becoming bankrupt. Louisa separated from her husband.

Proceedings were commenced in the Family Court and Louisa attempted to represent herself. As she was a bankrupt, she had no standing to seek orders for a property settlement. Her husband retained the assets in his name including a property. Louisa, as a bankrupt, received nothing. Had she not been made bankrupt as a result of her husband's business dealings, Louisa would have been able to seek a property settlement. Louisa has no grounds to set aside the Orders made by the Court.

This case shows the significant disadvantages experienced by a party who has been financially abused and the interaction between family law and bankruptcy law. This is an area of law which needs reform to protect people experiencing financial abuse.

It was also common for perpetrators of economic and financial abuse to control their partner's expenditure (17.5%; n=7). Examples included restricting their expenditure, requiring the perpetrator's approval before spending is allowed, and monitoring, tracking or questioning their partner's spending. Perpetrators also controlled their partner's access to funds (17.5%; n=7) by preventing them from having access to a bank account or joint account, giving them an allowance, and requiring them to ask or beg for money.

Perpetrators' manipulation of legal systems can also amount to economic and financial abuse, as perpetrators may intentionally delay proceedings or offer unreasonable settlement amounts as a way of exerting control and creating financial hardship for the victim-survivor.⁴⁷ While some studies have suggested that judges may not be able to recognise this as abuse,⁴⁸ it is promising that several cases identified in this review held that such behaviours amounted to economic and financial abuse. This included making the victim-survivor incur unnecessary legal costs and manipulating Centrelink processes to obtain income that the victim-survivor was entitled to.

Economic and financial abuse commonly co-occurred with other forms of DFV, such as physical, sexual, emotional and psychological abuse. For example, in *Marou & Aziz* [2020] FCCA 489, financial abuse was found to be part of a pattern of coercive and controlling FV that also included physical and sexual assault and verbal abuse against the mother. Similarly, in *Simmonds & Ablett* [2018] FamCA 316, the judge found that financial control occurred alongside other controlling behaviours, such as controlling the mother's social circle and restricting her ability to leave their home independently.

Table 3 shows the remedies provided by the court in cases where economic or financial abuse was found to have occurred. It was not always clear whether the finding of economic or financial abuse led to a response or remedy. The majority of cases did not provide a remedy for economic or financial abuse specifically (82.5%; n=33). Instead, they provided a remedy for FV more broadly, such as granting sole parental responsibility to the victim-survivor or granting them a relocation order. This is likely because the *Family Law Act 1975* (Cth) does not require the court to provide such remedies.

For the small number of cases that did provide a remedy, these included adjustments to the assessment of financial contributions in property settlement proceedings, granting an order mandating how costs should be paid, and setting aside a financial agreement due to unconscionable conduct. For example, in *Jacoda v Mancie* [2019] FCCA 3279 the court decided to adjust the financial settlement to recognise that DFV, including economic abuse, had made it significantly more arduous for the victim-survivor to contribute to the relationship.⁹⁵

However, as demonstrated in Case Study 6 (see below), victim-survivors may not have the resources to seek an adjustment to property settlements. In addition, while the legislation states that subjecting or exposing a child to FV can rebut the presumption of equal shared parental responsibility,¹¹⁸ it is unlikely that economic or financial abuse alone would be sufficient to rebut this presumption. This is reflected in the very small number of cases which provided this as a remedy for economic and financial abuse.

Table 3. Remedy provided by the court in cases where financial or economic abuse was held to have occurred (N=40).

Remedy	n (%)
Adjustment to assessment of financial contributions in property settlement proceedings	4 (10.0)
Sole parental responsibility granted	2 (5.0)
Granted order mandating how costs should be paid	1 (2.5)
Financial agreement set aside due to unconscionable conduct	1 (2.5)
No remedy for economic or financial abuse	33 (82.5)

Note: A case may provide multiple remedies and may therefore be counted across multiple categories.

Case study 6

Felicity was married for over 20 years. She was unemployed and looked after the children. Her husband ran various businesses. Throughout the relationship, she was given a sum of less than \$50 per week to dress and clothe the children and buy necessities such as food. Felicity made all her clothes and that of her children, asking for money from friends and family. It was only after they separated that she became aware that he had accumulated significant assets from his business, including commercial properties that were unencumbered by any mortgages.

Her contributions were made more onerous because of the financial abuse and yet Felicity was unable to seek a further adjustment in her favour because of the financial abuse she experienced during the marriage. Her husband had chosen to retire as soon as proceedings were commenced. As all the money was tied up in assets that he wished to retain, Felicity was unable to claim spousal maintenance. She also received no child support.

During the proceedings, her husband set up a trust, appointing his parents as beneficiaries and transferring the commercial properties into the trust. This complicated matters even further. He gifted one property to an adult child from a previous relationship. This meant that Felicity had to join that adult child as a party to the proceedings.

This case demonstrates the barriers that victim-survivors may face in seeking a fair property settlement and spousal maintenance following the breakdown of a relationship. Perpetrators may continue to commit financial abuse against their ex-partner or ex-spouses by disposing of their assets or tying their assets up in legal arrangements, such as trusts, to prevent their ex-partner or ex-spouse from accessing these assets as part of the property settlement or maintenance.

3.3 Migration law

The review did not identify any reported migration law cases which made a determination about economic and financial abuse. Cases that were identified during the initial search generally mentioned economic and financial abuse as part of the background to the proceedings and the abuse was not considered central to the proceedings being reported.

Part of this seems to be due to the nature of the proceedings being reported. Many of the migration law cases that were reported in databases were judicial reviews of administrative decisions made by migration authorities. In these cases, the issue under determination was whether the relevant decision was procedurally fair (i.e., whether it was made in accordance with the law), rather than whether the decision was substantively fair. As such, in many of these circumstances, it was not within the purview of the court to undertake a fresh review of the evidence to determine whether economic or financial abuse, or FV more broadly, had occurred.

This was demonstrated in a number of cases identified during the initial search, where the court looked at the procedural fairness issue adjacent to the issue of economic or financial abuse and/or FV, but did not make a determination on whether such abuse or violence had occurred as this was out of scope due to the nature of judicial review.^{119, 120} In *Martinaj v Minister for Immigration and Border Protection* [2016] FCA 868, for example, the issue under the court's consideration was whether the independent expert had failed to apply the correct legal test to determine whether the appellant had suffered FV as defined under the *Migration Regulations 1994* (Cth). In this case, the court dismissed the appeal as it found that the independent expert had used the correct legal test.¹¹⁹

Similarly, in *He v Minister for Immigration and Border Protection* [2020] FCCA 986, the issue under the court's consideration was whether the Minister's delegate had failed to take into account relevant considerations when deciding to refuse the appellant's application for a waiver of the 'no further stay' consideration on her visa. The court ultimately held that the delegate had considered the relevant factors in making the decision, and as such, the appeal was dismissed.¹²⁰ Nevertheless, the court noted that in this case, there was potentially some evidence that the appellant's partner had exercised financial control over her by failing to pay her for work she had undertaken on his farm.¹²⁰ While it had been open to the court to refer the matter to the Fair Work Ombudsman, the court decided not to do so, and left the matter to the applicant instead.¹²⁰

It is worth noting that decisions around whether an individual can seek recourse under the *Migration Regulations 1994* (Cth) for FV that they have experienced are typically administrative decisions made by the Department of Home Affairs. While applicants may apply for these decisions to be reviewed, such reviews are usually administrative reviews that are dealt with internally by the Department or externally by the Administrative Appeals Tribunal (AAT). Such reviews are not typically reported and as such, would not have been included in this review.

While the review did not identify any reported migration law cases which made a determination about economic and financial abuse, cases identified during the initial search of legal databases shed some light on the barriers that victim-survivors of economic and financial abuse – and FV more broadly – may face in trying to seek recourse under the FV provisions of the *Migration Regulations 1994* (Cth).

In *Rettke (Migration)* [2019] AATA 856, the applicant sought recourse under the FV provisions. However, the AAT dismissed her application on the basis that she had failed to provide a sufficient amount of evidence in the form required under the *Migration Regulations 1994* (Cth) to support a non-judicially determined claim of FV.¹²¹ While the AAT accepted that the applicant had provided a piece of evidence of the type specified under the *Migration Regulations 1994* (Cth) (i.e., a statutory declaration from the applicant's psychologist regarding the FV claim), the other evidence she submitted was not in the form required under the *Migration Regulations 1994* (Cth) (e.g., psychotherapist letter on treatment undertaken by the applicant, oral testimony and correspondence from witnesses about the applicant's relationship with her former partner and the impacts that relationship had on her).¹²¹ The case highlights how a lack of understanding of evidentiary requirements for applications pursuant to the FV provisions of the *Migration Regulations 1994* (Cth) may be a barrier to victim-survivors accessing recourse under these provisions.

The fact that the FV provisions also require the victim-survivors to establish that they had been in a 'genuine and continuing' relationship with the perpetrator at the time the violence occurred to be able to access recourse under the provisions may also create additional barriers for victim-survivors. In several cases identified in the initial search for this review, applicants had their claims of FV dismissed as they were unable to establish that they had been in a genuine and continuing relationship with the perpetrator in the first place.^{122, 123}

4 Implications

4.1 Overarching findings

This report provides an overview of current Australian legal system responses to economic and financial abuse, with a specific focus on criminal, family, and migration law. Where there is some legislative recognition of economic and financial abuse, the review of legal cases and case studies highlight that economic and financial abuse is often not well understood within the criminal, family, and migration law systems. Legal remedies for victim-survivors are rarely provided by the courts, highlighting the need for greater awareness of the range of behaviours that constitute economic and financial abuse and the long-term impacts that this can have on victim-survivors' financial security.

There were three broad overarching findings from our analysis of the evidence:

1. There is limited legal recognition of economic and financial abuse

The scoping review did not identify any reported criminal or migration law cases which made a determination about economic and financial abuse. There may be various reasons for this, including that cases involving legal determinations around economic and financial abuse are typically dealt with by lower courts, tribunals or administrative decision-makers, and as such, are not reported. Nevertheless, the fact that the review did not identify a single reported criminal or migration law case that made a determination about economic and financial abuse suggests that there is limited recognition of such abuse in the context of IPV within these areas of law.

The review of family law cases identified a total of 86 cases as relevant to the review. This number is relatively small given that it is common for family law cases to include allegations of DFV. In just under half of these cases (46.5%; n=40), the presiding judge made a determination that economic or financial abuse had occurred, either because the allegations were successfully proven or because the allegations were not challenged by the perpetrator. In 54.7% of the cases (n=47), the judge determined that economic or financial abuse did not occur. The evidence suggests that whether allegations meet the burden of proof is largely dependent on a range of factors, such as the legal practitioner's presentation of the evidence, the presence or absence of corroborating evidence, and the court's acceptance of gendered financial practices.

The tactics that were most frequently held by family law courts to be economic and financial abuse were tactics that related to unreasonably withholding financial support or unreasonably denying the victim-survivors financial autonomy. These behaviours are explicitly identified in the *Family Law Act 1975* (Cth) as behaviours that may constitute FV. However, other tactics of economic and financial abuse which are not necessarily covered by the legislation, such as financial manipulation and economic entanglement, appeared to be less well understood by the courts. Additionally, the

review highlighted how family law may only provide limited legal remedies for victim-survivors.

2. Evidence demonstrates that perpetrators may manipulate legal systems for their own advantage, and this can be conceptualised as economic and financial abuse

Several of the case studies in this report demonstrated how perpetrators may use the law and legal systems to their own advantage and to continue perpetrating economic and financial abuse against victim-survivors post-separation. For example, Case Study 6 demonstrated how perpetrators may perpetrate ongoing financial abuse against victim-survivors by disposing of or tying up their assets in legal arrangements, such as trusts, to prevent victim-survivors from accessing these assets as part of the property settlement or maintenance.

These findings are consistent with broader research on 'systems abuse' that has highlighted how perpetrators may engage in various tactics, such as refusing to pay child support, pursuing vexatious legal proceedings, and delaying financial settlements to create financial hardship for victim-survivors. In this way, perpetrators may exploit the law and legal systems to perpetrate economic and financial manipulation and entanglement against victim-survivors.

However, as the scoping review has shown, these tactics are not explicitly covered by the legislation and may not be well understood by the courts.

3. Victim-survivors may experience a range of barriers in trying to seek recourse through the law

As highlighted above, limited legal recognition of, and legal remedies for, economic and financial abuse, as well as lack of awareness amongst legal practitioners, courts and tribunals, may create challenges for victim-survivors seeking recourse through the law. Other barriers include limited understanding amongst victim-survivors of their legal rights and options, the considerable financial costs associated with pursuing legal proceedings, and restrictive criteria for accessing legal recourse.

For victim-survivors who are migrants, these issues may be exacerbated by factors such as their temporary visa status, fear of deportation, lack of social support and networks, and limited English language skills.

4.2 Recommendations

This report has highlighted a need for greater legal recognition of economic and financial abuse, including the ways in which perpetrators may manipulate the law to commit ongoing abuse against victim-survivors. Based on this and other findings from the scoping review and the case studies, GVRN and RLC have developed the following recommendations.

Recommendation 1

The *Family Law Act 1975* (Cth) should be amended to provide that any victims compensation received as a result of conduct by the perpetrator is excluded from consideration in spousal and de facto maintenance matters. Similarly, such compensation should also be excluded from the asset pool and from consideration of the future needs of the parties in property settlement matters.

Specifically, we recommend the following amendments to the legislation:

- That section 75(3) of the *Family Law Act 1975* (Cth) be amended to provide:

'In exercising its jurisdiction under [section 74](#), a [court](#) shall disregard any entitlement of the [party](#) whose maintenance is under consideration to any compensation and/or award for damages received as a consequence of the behaviour of the other party.'

- That section 90SF(4) of the *Family Law Act 1975* (Cth) be amended to provide:

'In exercising its jurisdiction under [section 90SE](#), a [court](#) must disregard any entitlement of the [party](#) whose maintenance is under consideration to any compensation and/or award for damages received as a consequence of the behaviour of the other party.'

Recommendation 2

Legal and government institutions should enhance communications with individuals in debt or at risk of bankruptcy to ensure that they provide clear information about the importance of seeking legal advice around their financial situation, particularly if they have experienced economic and/or financial abuse.

Specifically, we recommend that:

- All levels of courts at the state, territory and federal levels should ensure that all relevant forms and notifications to individuals relating to debts clearly state that individuals should seek legal advice, particularly where they have experienced economic and/or financial abuse.
- The Australian Financial Security Authority should ensure that its webpage and communications with individuals at risk of bankruptcy clearly state that individuals should seek legal advice before applying for bankruptcy if they have experienced economic and/or financial abuse.

Recommendation 3

Members of the judiciary and relevant tribunals, particularly those who have contact with perpetrators and victim-survivors, should receive further training and education on economic and financial abuse to ensure that they are aware of the range of tactics that may constitute economic and financial abuse, and that perpetrators may manipulate legal systems to perpetrate ongoing abuse against victim-survivors.

Specifically, we recommend that:

- Judicial and tribunal education providers implement further training and education courses on economic and financial abuse to enhance the judiciary's and tribunals' understanding of these issues.

Recommendation 4

Professionals working with victim-survivors of economic and financial abuse, such as legal practitioners, social workers and mediators, should receive training and education on economic and financial abuse to ensure that they are aware of the tactics, dynamics and impacts of economic and financial abuse.

Specifically, we recommend that:

- Professional bodies governing these professions implement training and education courses on economic and financial abuse to ensure professionals are able to best support victim-survivors.

4.3 Areas for further consideration

Based on the findings and recommendations contained in this report, the following areas may also benefit from further consideration.

Legislation and regulation

1. The *Family Law Act 1975* (Cth) provides some examples of FV behaviours that could be considered economic abuse. While the legislation recognises that this is a non-exhaustive list, it does not adequately cover the range of tactics that constitute economic and financial abuse. While legal practitioners can raise economic and financial abuse tactics outside section 4AB in their affidavits, the court is not required to consider these in their determinations. Legislators should consider expanding the list of FV behaviours contained in the *Family Law Act 1975* (Cth). to capture a larger range of tactics that may constitute economic and financial abuse.

2. The absence of a specific requirement for courts to consider economic or financial abuse in property settlement and maintenance matters represents a failure within the legislation to reflect current understandings of the impact of economic and financial abuse on victim-survivors' financial wellbeing. Legislators should consider the recommendation from Petrie²⁹ that the *Family Law Act 1975* (Cth) be amended to require courts to consider FV when making property and financial determinations.
3. Currently, access to the FV provision in the *Migration Regulations 1994* (Cth) is limited to only certain visa subclasses. Policymakers should consider expanding access to the provision to cover a broader range of visa subclasses as recommended by InTouch Multicultural Centre Against Family Violence.³⁰
4. Additionally, victim-survivors of economic and financial abuse who are temporary migrants may have difficulties proving that they were in a 'genuine and continuing relationship' with the perpetrator based on the financial aspects of their relationship. Given that the 'genuine and continuing relationship' test is a pre-requisite for accessing recourse under the FV provisions, this means that victim-survivors of economic and financial abuse may be disadvantaged in FV claims under the *Migration Regulations 1994* (Cth). Policymakers should consider the Immigration Advice and Rights Centre's³¹ recommendations that the *Migration Regulations 1994* (Cth) be amended to require that any determination about FV be made before assessing for a genuine relationship, and that any evidence required to establish a genuine and continuing relationship is capable of being reasonably provided in the context of an abusive relationship.

Education and awareness

5. Economic and financial abuse, and possible avenues for legal and other support, is not well understood in the community compared to other forms of DFV. Government and industry should consider expanding funding for community awareness and education campaigns to enhance the community's understanding of these issues.
6. Financial institutions have an important role to play in promoting community awareness of economic and financial abuse. Banks should consider developing guides for victim-survivors to enhance their awareness of economic and financial abuse and support options, including legal advice (see for example, CBA's [Recognise and Recover guide](#) which is a resource designed to help victim-survivors and others identify and find support when experiencing financial abuse).

Funding for services and support

7. It is crucial that DFV, legal and other support services for victim-survivors are well-resourced so that they can effectively support victim-survivors. Government and industry should consider expanding funding for such services.
8. While the *Migration Regulations 1994* (Cth) contains provisions that allows holders of certain temporary visas who have experienced FV to apply for Australian permanent residence even if their relationship with their partner or sponsor has ended, there are multiple barriers that may prevent victim-survivors from seeking recourse under these provisions. Victim-survivors who are migrants may lack understanding of their legal rights and relevant evidentiary requirements in Australia, have limited social networks that they can rely on in Australia, and/or have limited English-language skills. Government should consider providing appropriate funding for culturally specific services, education and awareness campaigns, to ensure that victim-survivors from migrant backgrounds have access to legal advice and support to understand their rights.

Banking policies and procedures

9. Perpetrators may employ various tactics to exploit victim-survivors finances and assets, or to limit their financial control and decision-making. Banks should explore how their policies and procedures can be improved to better identify situations where there is a risk of economic and financial abuse, and intervene to support victim-survivors. For example, banks can ensure that their policies and procedures align with the practices outlined in the Australian Financial Complaints Authority³² approach to joint facilities and FV.

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119. *Martinaj v Minister for Immigration and Border Protection* [2016] FCA 868.
120. *He v Minister for Immigration and Border Protection* [2020] FCCA 986.
121. *Rettke (Migration)* [2019] AATA 856.
122. *Singh v Minister for Immigration and Border Protection* [2020] FCA 241
123. *1701509 (Migration)* [2018] AATA 2115

Appendices

Appendix A: Scoping review search strategy

Databases

From September 2020 to December 2020, searches of academic and legal databases were conducted to identify relevant Australian criminal, family, and migration law cases that considered the issue of economic and financial abuse in the context of DFV.

The following databases were searched:

- **Austlii**
 - Federal Court of Australia
 - Federal Court of Australia – Full Court
 - High Court of Australia
 - Supreme Court of the ACT
 - Supreme Court of the ACT – Court of Appeal
 - District Court of NSW
 - Supreme Court of NSW
 - Supreme Court of NSW – Court of Criminal Appeal
 - Supreme Court of the Northern Territory
 - Supreme Court of the Northern Territory – Court of Criminal Appeal
 - Queensland District Court Decisions
 - Supreme Court of Queensland
 - Supreme Court of South Australia
 - Supreme Court of South Australia – Full Court
 - Supreme Court of Tasmania
 - Supreme Court of Tasmania – Full Court
 - Supreme Court of Tasmania – Court of Criminal Appeal
 - Supreme Court of Victoria – Court of Appeal
 - District Court of Western Australia – Magistrates Decisions
 - Supreme Court of Western Australia
 - Supreme Court of Western Australia – Court of Appeal
 - Administrative Appeals Tribunal of Australia.

- **Lexis Advance**

- Family Court of Australia
- Family Court of Australia – Full Court
- Federal Circuit Court of Australia
- Federal Court of Australia
- Federal Court of Australia – Full Court
- High Court of Australia
- Australian Capital Territory Supreme Court
- Australian Capital Territory Supreme Court – Court of Appeal
- New South Wales Court of Criminal Appeal
- New South Wales District Court
- New South Wales Supreme Court
- Northern Territory Supreme Court
- Northern Territory Supreme Court – Court of Criminal Appeal
- Queensland Court of Criminal Appeal
- Queensland Supreme Court
- South Australia District Court
- South Australia Supreme Court
- South Australia Supreme Court – Court of Criminal Appeal
- Tasmania Supreme Court
- Tasmania Supreme Court – Court of Criminal Appeal
- Victoria Supreme Court
- Victoria Supreme Court – Court of Criminal Appeal
- Western Australia District Court
- Western Australia Family Court
- Western Australia Supreme Court
- Administrative Appeals Tribunal of Australia.

- **Westlaw Australia**

- Court of Criminal Appeal for New South Wales
- Court of Criminal Appeal for South Australia
- Court of Criminal Appeal for Tasmania
- District Court of New South Wales
- District Court of Queensland

- District Court of Western Australia
- Family Court of Australia
- Family Court of Australia – Full Court
- Federal Circuit Court of Australia
- Federal Court of Australia
- Federal Court of Australia – Full Court
- Federal Magistrates Court of Australia
- High Court of Australia
- New South Wales Court of Appeal
- Queensland Court of Appeal
- South Australian District Court
- Supreme Court of New South Wales
- Supreme Court of Queensland
- Supreme Court of South Australia
- Supreme Court of South Australia – Full Court
- Supreme Court of Tasmania
- Supreme Court of Tasmania – Full Court
- Supreme Court of Victoria
- Supreme Court of Western Australia
- Supreme Court of the ACT
- Supreme court of the Northern Territory
- Victorian Court of Appeal
- Western Australian Court of Appeal
- Administrative Appeals Tribunal of Australia.

Search terms

Search terms relating to economic and financial abuse were developed to identify relevant case law. These terms included: “economic abuse”, “economically abusive”, “financial abuse”, “financially abusive”, “economic coercion”, “economic exploitation”, “economic control”, “financial coercion”, “financial exploitation” and “financial control”. Search terms were combined using the Boolean operator “OR”.

Inclusion criteria

To be included in the analysis, cases had to satisfy the following criteria:

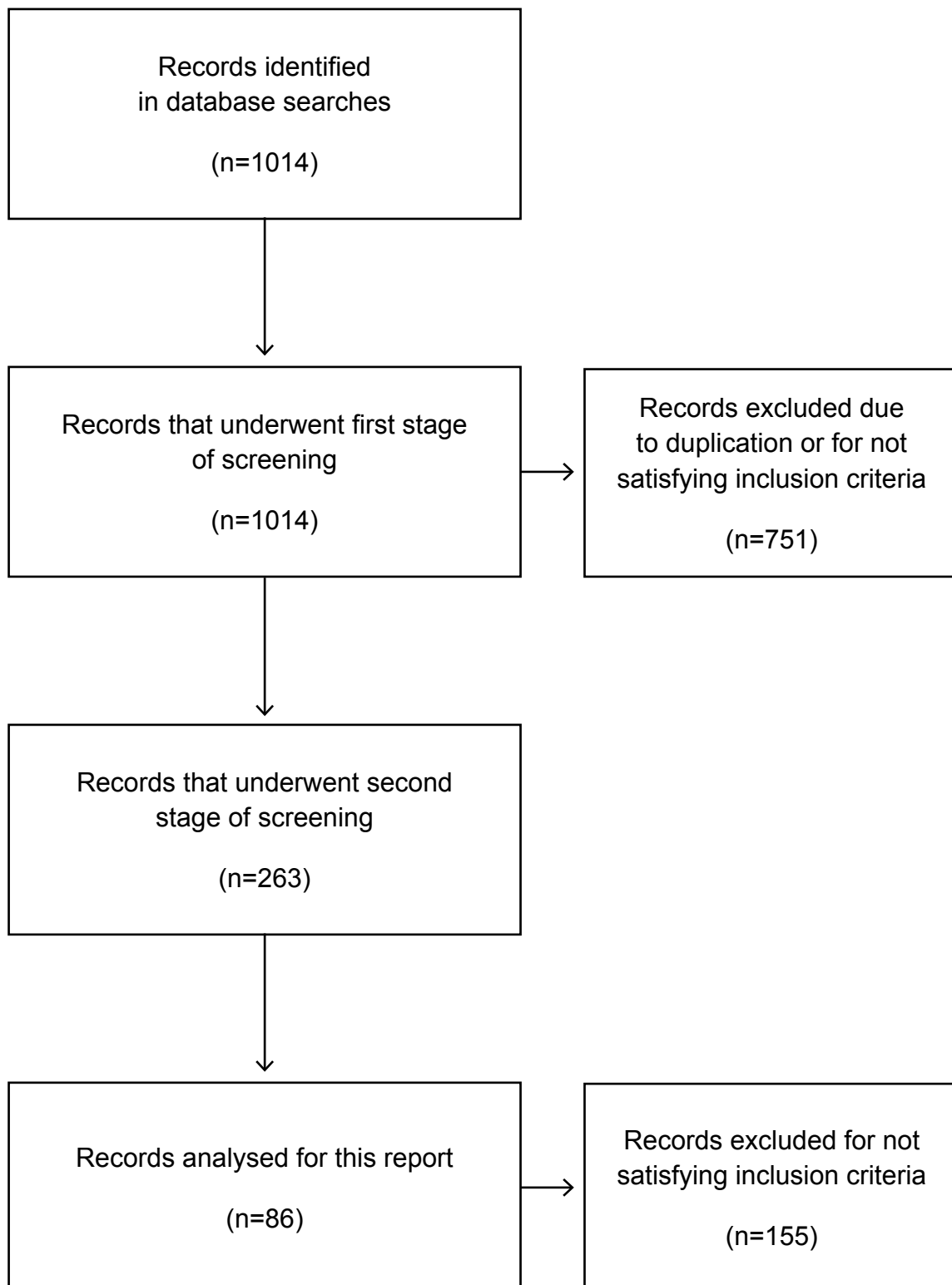
1. Reported within the last 10 years (up until September 2020).
2. Reported in an Australian jurisdiction, in either state, territory or federal jurisdictions.
3. Reported in the family, criminal or migration law jurisdictions.
4. Include a legal determination about economic and financial abuse in the context of IPV.

Screening and analysis

The search of case law databases initially identified a total of 1,014 results (see Figure 1). The court jurisdiction and abstracts of these results were reviewed for potential relevance to economic and financial abuse in the context of IPV. A total of 263 cases were deemed to be potentially relevant to economic and financial abuse, and these cases underwent a second stage of screening. The full text of these cases was examined to verify whether the presiding judge or magistrate had made a judicial determination about whether economic or financial abuse occurred. A total of 177 cases were then excluded as they did not include a judicial determination about economic or financial abuse or only included a determination about FV more broadly.

The remaining 86 cases were included in the final analysis. All of these cases were from the family law jurisdiction. These cases were analysed and coded to identify the tactics of economic and financial abuse alleged and held to have occurred, the legal tests used in making the determination, the reasons for the determination, the remedy imposed by the court and any other circumstances of the case that were relevant to the judicial determination. The tactics of economic and financial abuse, legal remedies and reasons for the judicial determination were then recoded into broader categories, and descriptive statistics were generated to illustrate these issues.

Figure 1. Search results for scoping review



Appendix B: Family law cases identified in the review

Table 1. List of family law cases analysed for the review.

Citation	Economic and/or financial abuse held to have occurred?
<i>Adair & Adair</i> [2018] FAMCA 239	Yes
<i>Atanas v Greer</i> [2015] FAMCA 223	No
<i>Badal v Shah</i> [2019] FCCA 2412	No
<i>Baldini v Baldini</i> [2020] FAMCA 137	No
<i>Baldry v Baldry</i> [2020] FCCA 1788	No
<i>Balsano v Labane</i> [2019] FCCA 3494	No
<i>Behn v Ziomek</i> [2019] FamCA 298	Yes
<i>Blakely v Blakely</i> [2020] FAMCA 647	Yes
<i>Breckenridge and Kudrna</i> [2019] FCWA 9	No
<i>Brett v Brett</i> [2014] FCCA 3124	No
<i>Callum v Lechiara</i> [2019] FAMCA 257	No
<i>Cappetto v Cappetto</i> (No 3) [2011] FAMCA 345	No
<i>Cardus v Lavrick</i> [2020] FAMCA 579	Yes
<i>Charlton v Charlton</i> [2016] FCCA 1846	Yes
<i>Clayton v Clayton</i> [2016] FCCA 119	Yes
<i>Clements v Parris</i> [2016] FCCA 1807	No
<i>Corby v Corby</i> (No 2) [2015] FCCA 3213	Yes
<i>Dagan v Saddler</i> [2019] FCCA 3027	Yes
<i>Dandridge v Barron</i> [2012] FMCAfam 141	Yes
<i>Dawar v Dawar</i> (No 2) [2019] FamCA 923	No
<i>Delaney v Delaney</i> (No 2) [2017] FCCA 1187	No
<i>Delaney v Delaney</i> [2019] FCCA 283	Yes
<i>Doran v Keyes</i> (No 2) [2017] FCCA 2205	Yes
<i>Doran v Keyes</i> [2017] FCCA 729; BC201703271	Yes
<i>Edwards v Granger</i> [2013] FAMCA 918	Yes
<i>Fagan v Fagan</i> [2014] FAMCA 1108	No

Citation	Economic and/or financial abuse held to have occurred?
<i>Gade v Jabbar</i> [2018] FCCA 1056	No
<i>Gareth v Naylor</i> [2019] FAMCA 561	No
<i>Garrod v Davenport</i> [2018] FAMCA 825	Yes
<i>Gibson v Killen (No 3)</i> [2016] FAMCA 436	No
<i>Gladwell v Gladwell</i> [2019] FamCA 731	No
<i>Grady v Chilcott (No 2)</i> [2019] FCCA 2119	No
<i>Grady v Chilcott</i> [2020] FAMCAFC 143	No
<i>Guzniczak & Rogala</i> [2017] FAMCA 758	No
<i>Hasila & Fatisi (No 2)</i> [2019] FAMCA 622	No
<i>Imbardelli v Imbardelli (No 2)</i> [2018] FAMCA 865	Yes
<i>Jacoda v Mancie</i> [2019] FCCA 3279	Yes
<i>Janome v Janome</i> [2019] FCCA 1036	Yes
<i>Jarrett v Jarrett</i> [2014] FCCA 2183	No
<i>Jennett v Kent</i> [2019] FCCA 733	Yes
<i>Jennings & Jennings</i> [2019] FAMCA 86	Yes
<i>Jolly v Minton</i> [2017] FAMCA 837	Yes
<i>Kafer v Kafer</i> [2019] FCCA 2255	No
<i>Keane v Keane</i> [2020] FAMCA 99	No
<i>Kerrison v Capps</i> [2018] FCCA 1008	No
<i>Kingston v Hiss</i> [2016] FAMCA 415	No
<i>Kostas v Kostas</i> [2018] FamCA 246	Yes
<i>Lalit v Rana</i> [2016] FCCA 79	No
<i>Leos v Leos</i> [2017] FAMCA 1038	Yes
<i>Makam and Raikar</i> [2015] FCWA 104	Yes
<i>Marou v Aziz</i> [2020] FCCA 489	Yes
<i>Martin v Payne</i> [2017] FAMCA 1041	No
<i>McClelland v Rhodes</i> [2019] FCCA 357	No
<i>McCully and McCully</i> [2013] FAMCA 860	No
<i>McGovern v Donoghue</i> [2017] FCCA 1511	No
<i>McMurphy v McMurphy</i> [2019] FAMCA 947	No

Citation	Economic and/or financial abuse held to have occurred?
<i>Merrett v Merrett</i> [2010] FMCAfam 1115	Yes
<i>MNT v MEE</i> [2020] QDC 126	No
<i>Morley v Balfour</i> [2016] FCCA 56	Yes
<i>Narkis v Narkis (No 3)</i> [2017] FAMCA 184	No
<i>Neal v Kelley</i> [2018] FCCA 2744	Yes
<i>Parke v Parke</i> (2015) 55 Fam LR 11	Yes
<i>Parkhurst v Bardsley</i> [2018] FCCA 2764	No
<i>Prescott v Prescott</i> [2015] FCCA 66	Yes
<i>Rada v Gornall</i> [2017] FAMCA 381	No
<i>Ranieri v Sullivan</i> [2015] FAMCA 1033	No
<i>Rankin v Rankin</i> [2016] FAMCA 250	Yes
<i>Reeve v Reeve</i> [2016] FCCA 2523	Yes
<i>Reynolds & Moore</i> [2014] FAMCA 1174	No
<i>Ryder v Bonham</i> [2017] FAMCA 979	Yes
<i>Salde v Salde (No 2)</i> [2019] FCCA 1573	No
<i>Schwartz v Jerald</i> [2019] FCCA 1171	Yes
<i>Seaver v Seaver</i> [2015] FAMCA 194	No
<i>Shah v Gill</i> [2020] FCCA 656	Yes
<i>Simmonds & Ablett</i> [2018] FAMCA 316	Yes
<i>Smoothe v Enmore</i> [2016] FAMCA 275	No
<i>Sweeney v Segovia</i> [2020] FAMCA 476	Yes
<i>Taro v Sanders</i> [2020] FAMCA 37	No
<i>Testa v Fields</i> [2019] FCCA 2569	Yes
<i>Theophane & Hunt (no. 3)</i> [2011] FAMCA 968	Yes
<i>Thompson v Berg</i> (2014) 51 Fam LR 247	No
<i>Verize v Hume</i> [2017] FCCA 922	No
<i>Wagstaff v Wagstaff</i> [2018] FCCA 927	No
<i>Whitcomb v Whitcomb</i> [2018] FCCA 3486	No
<i>Winters v Bean</i> [2013] FCCA 1334	Yes
<i>Zeng v Lam</i> [2017] FAMCA 66	Yes

