



What is this information sheet about?

This information sheet discusses the Australian Law Reform Commission (ALRC) Commonwealth Family Violence Inquiry and briefly outlines some of the ALRC's key recommendations aimed at better protecting the safety of indigenous peoples who are experiencing family violence. Further detail about these recommendations can be found in the Final Report, *Family Violence and Commonwealth Laws—Improving Legal Frameworks*, ALRC Report 117 (2011) which is available for free download at www.alrc.gov.au.

In the Final Report, the ALRC uses the terms 'Aboriginal and Torres Strait Islander peoples' or 'Indigenous communities' or 'Indigenous peoples', which are consistent with the terminology adopted by various organisations.

Example:

Aborigines and Torres Strait Islanders are referred to as 'peoples'. This recognises that Aborigines and Torres Strait Islanders have a collective, rather than purely individual, dimension to their livelihoods. ... The use of the term 'Indigenous' has evolved through international law.

Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report* (2009), vi.

This is affirmed under international law principles and by the *United Nations Declaration on the Rights of Indigenous Peoples*. 'Indigenous women' and 'Indigenous children' also reflect this terminology.

What was the Inquiry about?

The Commonwealth Attorney-General asked the ALRC to identify the improvements that could be made to Commonwealth laws to better protect the safety of those experiencing family violence. Safety means both safety from harm and also financial security and independence. Financial security through things such as social security and child support payments and paid employment can help a person to leave a violent relationship.

The ALRC was asked to look specifically at social security law, child support and family assistance law, immigration law, employment law, superannuation law and privacy provisions and made 102 recommendations for reform.

How is family violence experienced by Indigenous peoples?

Statistics in the National Council to Reduce Violence against Women and their Children's Report, *Time for Action*, indicate that in the wider population, 'one in three Australian women experience physical violence and almost one in five women experience sexual violence over their lifetime'. However, the experience of violence is not evenly spread. For example, Indigenous women report higher levels of physical violence during their lifetime than non-Indigenous women, and the violence is more likely to include sexual violence.



Submissions to this Inquiry reiterated such evidence. The Indigenous Law Centre of the University of New South Wales reported, for example, that in NSW in 2008 the rates of reported victims of domestic violence were six times higher for Aboriginal females than non-Aboriginal females. However, the true extent of the incidence and prevalence of family violence for Indigenous peoples, in particular women and children, is largely hidden.

What did the ALRC recommend?

A common definition of family violence

To ensure consistency in the treatment of family violence across Commonwealth laws, the ALRC recommended that a common definition of family violence be inserted into relevant Commonwealth laws and other guidelines and material. The definition of family violence should include:

- conduct that is violent, threatening, coercive and controlling, or intended to cause a family member to be fearful; and
- a non-exhaustive list of examples of physical and non-physical conduct.

Other illustrative examples of family violence could be tailored to each legal framework to show the particular risks that Indigenous peoples might face, in that context.

Recommendations 3-1 to 3-4

Encouraging disclosure

The Report, *Family Violence—A National Legal Response* identified a continuing theme of the under-reporting of family violence and the range of concerns that may impede disclosure, including:

- feelings of shame relating to the nature of the family violence or to community, family or cultural values;
- feeling uncomfortable with the social worker/other person conducting the screening if they are judgemental, condescending or not skilled in communicating with Indigenous peoples;
- not being able to recognise that family violence has occurred;
- fear of not being believed or understood and being judged by others, particularly where the person already feels marginalised by the wider community.

Under-reporting is also common as a result of fears that attempts to access assistance from police or medical staff will result in mandatory reporting to child protection authorities and the subsequent removal of children.



Improving awareness

The ALRC made a range of overarching recommendations about the need for consistent, regular and targeted education and training, including in relation to the nature, features and dynamics of family violence and its particular impact on Indigenous peoples. The ALRC also recommended that such information be included in relevant policy guides to provide guidance to decision makers about the relevance of family violence to Indigenous peoples who experience family violence.

Recommendations 4–5, 5–1, 8–7, 11–1, 14–1.

Crisis Payment

A Crisis Payment helps a person in severe financial hardship who has experienced an extreme circumstance such as family violence. The ALRC made a number of recommendations to overcome barriers for victims of family violence in accessing Crisis Payment—including removing the requirement for Crisis Payment that either the victim or the person using family violence must have left the ‘home’.

Example:

A client was refused [a crisis payment] because she was living rough in a tent in the river bank in a small town. She couldn’t go back to her tent, or shift camps because the perpetrator would find it very easy to access her. She seemed like an ideal customer for crisis payment but it was refused even on review because her home didn’t fit into the definition.

North Australian Aboriginal Justice Agency, *Submission CFV 73*

Recommendations 9–1 to 9–3.

Income management

‘Income management’ is an arrangement by which a proportion of a person’s social security and parenting payments is quarantined to be spent only on particular goods and services, such as food, housing, clothing, education and health care (known as ‘priority needs’).

The ALRC recommended that people experiencing family violence should not be subject to compulsory income management and examined alternative approaches. The ALRC also recommended that the Australian government should create a flexible and voluntary form of income management—an ‘opt-in and opt-out’ model—to better meet the needs and protect the safety of people experiencing family violence.

The ALRC concluded that the complexity of family violence and the intertwining of family violence with a number of the ‘vulnerability indicators’ that trigger the imposition of compulsory income management leads to serious questions about whether it is an appropriate response.

In addition, the ALRC examined practical issues arising in relation to accessing income managed funds and recommended that the definition of ‘priority needs’ should be amended to include travel or other crisis needs for people experiencing family violence.

Recommendations 10–1 to 10–3



Employment—national education and awareness campaign

A central theme that emerged in the course of this Inquiry was the need for increased awareness and effective education and training about family violence in an employment context. As a result, the ALRC recommended that the Australian Government initiate a national education and awareness campaign in relation to family violence and its impact in the employment context. The ALRC suggested the campaign could encompass a range of issues and could also include assistance, information and support for particular groups who have specific needs or perspectives such as Indigenous employees and employers, who may face particular issues with respect to family violence in an employment context.

See Chapter 15 and Recommendation 15–1

Child support—removing limitations on informal carers

Carers of children who are not parents or legal guardians (‘informal carers’) may be eligible for child support payments in limited circumstances. Informal carers are usually relatives—most commonly grandparents—and in Indigenous communities they may be kinship carers.

The ALRC considered that informal carers should have improved access to child support payments, particularly when care arrangements are due to family violence. It recommended that the Australian Government consider amending the child support legislation to remove the limitations on informal carers’ child support eligibility. If these are not removed, the ALRC recommended that the Australian Government should broaden the eligibility criteria for child support in cases where informal carers are caring for children who have experienced family violence.

Recommendations 12–6 and 12–7

Further resources

Links to further resources can be found on our website at www.alrc.gov.au/CFV-Indigenous/#FR.

The complete Final Report and a short Report Summary are available to purchase, view or download free from the ALRC’s website www.alrc.gov.au. The ALRC has prepared other ‘community information sheets’ that provide a brief overview of recommendations that may be of particular interest to people from a culturally and linguistically diverse background, people with disability and those from lesbian, gay, bisexual, trans or intersex communities.