



Lesbian, Gay, Bisexual, Trans and Intersex Community

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 members of the LGBTI community 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.

The ALRC acknowledges the significance of terminology and that terminology is often contested. While the ALRC understands there are other possible abbreviations, the term 'LGBTI' is used as it is a broadly understood abbreviation that describes people who identify as lesbian, gay, bisexual, trans or intersex. The ALRC is aware that the LGBTI community is not a homogenous group, but rather consists of individuals with differing sexual orientation and gender identity.

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 in the LGBTI community?

There are a range of forms of family violence which are unique to the LGBTI community. These include, but are not limited to:

- threatening to out, or 'outing' a partner or family member to family, friends or colleagues;
- using homophobia as a tool of control, for example by telling a partner that they will lose custody of children, be unable to access police assistance, or support from service delivery organisations, because the 'system' is homophobic;
- telling a partner or family member they 'deserve it' because they are LGBTI or that they are not a 'real' lesbian, gay or bisexual person and relying on stereotypes to hide or justify abuse; and
- threatening to or revealing HIV status or withdrawing care, where one partner or family member is dependent, for example arising from their HIV/AIDS status.

There is limited awareness of same-sex family violence both within the broader community and within the LGBTI community. This presents a barrier to recognising family violence where it exists in these relationships as well as understanding of behaviour which constitutes family violence and appropriate responses.



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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 members of the LGBTI community might face, in that context.

Recommendations 3–1 to 3–4

Encouraging disclosure

So as to encourage member of the LGBTI community to be more willing to disclose family violence, the ALRC made a number of recommendations about the provision of guidance material and the incorporation of privacy safeguards around handling the personal information of those experiencing family violence sensitively and appropriately.

People from the LGBTI community experiencing family violence face a range of barriers to service delivery and disclosure, including:

- privacy concerns;
- fear of stigmatisation or discrimination and that such disclosure will jeopardise their job or career, or that the person/system to whom they disclose will not be responsive; and
- gendered concepts and language around family violence and societal homophobia and discrimination.

Example:

Tom is a transgender man. His managers and senior staff have meeting to inform ‘relevant’ people of his transgender status. These meetings occur each time there is a change in staff, whether permanent or temporary...There is no identifiable occupational health and safety reason that the senior staff would need to be appraised of this issue. These meetings mean that Tom is outed on a regular basis...In the last meeting one of Tom’s managers mentioned that Tom had told him that he needed two days off as he had been hit across the face by his wife. The manager also noted that Tom said that it wasn’t the first time he had been hit.

Inner City Legal Centre, *Submission CFV 131*

Recommendations 8–10, 15–2



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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 those from the LGBTI community. 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 members of the LGBTI community who are experiencing family violence.

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

Unreasonable to live at home and verification of family violence

Whether a person is ‘independent’ can affect his or her qualification for, or rate of payment of certain social security payments. There are a number of circumstances in which a person may be considered ‘independent’. Of most relevance to those members of the LGBTI community experiencing family violence is the provision for independence where it is ‘unreasonable to live at home’. The combined impact of family violence and homophobia can significantly affect ‘unreasonable to live at home’ assessments for Youth Allowance. The ALRC recommended that family violence should be expressly referred to as a circumstance where it may be unreasonable to live at home.

In addition, the ALRC recommended that, where a person claims that he or she is experiencing family violence, it is not appropriate to seek verification of that claim from the person alleged to be using family violence.

See Chapter 5 and Recommendations 6–4, 6–6

Employment—a 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 content of the national education and awareness campaign should be developed in consultation with stakeholders and involve significant community consultation and involvement. The ALRC suggested it 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 members of the LGBTI community, who may face particular issues with respect to family violence in an employment context.

See Chapter 15 and Recommendation 15–1



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Family violence leave and the right to request

The ALRC recommended that the Australian Government should consider whether there should be provision for family violence leave and the right to request flexible work arrangements in the context of enterprise agreements and under the National Employment Standards.

The ALRC expressed the view that an employee who is experiencing family violence, or who is required to provide care or support to another person who is experiencing family violence, should be entitled to any family violence leave or flexible working arrangements. The ALRC suggested that any definition of ‘another person’ should include members of the immediate family or household and recognise those in same-sex relationships. The ALRC’s views recognise the impact family violence often has, not only on the victims, but also on friends, relatives and other household members, including children.

See Chapter 17

Access to the family violence exception under migration law

The ALRC made a suite of recommendations in the Final Report to improve the accessibility of the family violence exception to victims of family violence. The family violence exception contained in the *Migration Regulations 1994* (Cth)—which is invoked mainly in partner visa cases—provides for the grant of permanent residence to victims of family violence, notwithstanding the breakdown of the spouse or de facto relationship on which their migration status depends. The family violence exception is available to same-sex married and de-facto partners as they are entitled to apply for a partner visa and same-sex relationships are recognised for the purposes of being recognised as a secondary visa applicant.

Recommendations 20-1-20-6, 21-1-21-5

Further resources

Links to further resources can be found on our website at www.alrc.gov.au/CFV-LGBTI/#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 Indigenous peoples, those from a culturally and linguistically diverse background and people with disability.