

1. Introduction to the Inquiry

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Summary

1.1 On 9 July 2010, the Attorney-General of Australia, the Hon Robert McClelland MP, asked the Australian Law Reform Commission (ALRC) to inquire into and report on the treatment of family violence in Commonwealth laws, including child support and family assistance law, immigration law, employment law, social security law and superannuation law and privacy provisions in relation to those experiencing family violence. The ALRC was asked to identify what, if any, improvements could be made to relevant legal frameworks to protect the safety of those experiencing family violence.¹

1.2 The ALRC was asked to consider legislative arrangements across the Commonwealth that affect those experiencing family violence and whether those arrangements impose barriers to providing effective support to those adversely affected by this type of violence. The ALRC was also asked to consider whether the extent of

1 The full Terms of Reference are set out at the front of this Report and are available on the ALRC website at <www.alrc.gov.au>.

sharing of information across the Commonwealth and with state and territory agencies is appropriate to protect the safety of those experiencing family violence.

1.3 This chapter summarises the background to the Inquiry, its scope, and the processes of reform leading to this Report and its 102 Recommendations. The ALRC also identifies key issues, such as the under-reporting of family violence, that may reflect barriers to providing effective support.

Background to the Inquiry

Government commitment

1.4 This Inquiry follows the one concluded by the ALRC in conjunction with the New South Wales Law Reform Commission (the Commissions) in October 2010. The resulting report, *Family Violence—A National Legal Response* (2010) (ALRC Report 114), contained 187 recommendations for reform. The overarching, or predominant principle reflected in the recommendations was that of seamlessness and that, to achieve this, both a systems perspective and a participant perspective must be connected, to the greatest extent possible, within the constitutional and practical constraints of a federal system. This seamlessness was expressed in recommendations focused on improving legal frameworks and improving practice.

1.5 The Commissions drew attention to the need for a further inquiry focusing on other legislative schemes in the Commonwealth field, and these are reflected in the Terms of Reference for this Inquiry.²

1.6 Both inquiries emanate from the work of the National Council to Reduce Violence against Women and their Children (the National Council), established in May 2008, which was given the role of drafting a national plan to reduce violence against women and their children.³ The report, *Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009–2021* (*Time for Action*), was released on 29 April 2009.

1.7 In response to *Time for Action*, the Australian Government announced a package of immediate actions,⁴ including investments: in a new national domestic violence and sexual assault telephone and online crisis service; in primary prevention activities towards building respectful relationships; and to support research on perpetrator treatment.

1.8 The Government also committed to working with the states and territories through the Standing Committee of Attorneys-General (SCAG),⁵ to establish a national scheme for the registration of domestic and family violence orders; to improve the

2 Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence—A National Legal Response*, ALRC Report 114; NSWLRC Report 128 (2010), [1.69].

3 National Council to Reduce Violence against Women and their Children, *Time for Action: The National Council's Plan for Australia to Reduce Violence Against Women and their Children, 2009–2021* (2009), 11.

4 Australian Government, *The National Plan to Reduce Violence against Women: Immediate Government Actions* (2009).

5 Now the Standing Council on Law and Justice.

uptake of relevant coronial recommendations; and to identify the most effective methods to investigate and prosecute sexual assault cases.⁶

1.9 The first three-year action plan of the *National Plan to Reduce Violence against Women and their Children* (the *National Plan*) was released in February 2011,⁷ providing the ‘framework for action’ by all Australian governments to reduce violence against women and children.⁸ The six ‘national outcomes’ are:

- 1—Communities are safe and free from violence;
- 2—Relationships are respectful;
- 3—Indigenous communities are strengthened;
- 4—Services meet the needs of women and their children experiencing violence;
- 5—Justice responses are effective; and
- 6—Perpetrators stop their violence and are held to account.

1.10 National Outcome 5 included as one of its three strategies that ‘justice systems work better together and with other systems’. ‘Immediate national initiatives’ pursuant to this strategy included that the Commonwealth, states and territories should ‘consider the recommendations’ in *Family Violence—A National Legal Response*; and that the current Inquiry be established.⁹

1.11 A number of the broader outcomes and strategies in the *National Plan* are of key relevance in this Inquiry. They are considered in the summary of the framing principles and themes discussed in Chapter 2.

Extent of the problem of family violence

1.12 *Time for Action* drew attention to the extent of the problem of family violence in Australia. *Time for Action* estimated that ‘[a]bout one in three Australian women experience physical violence and almost one in five women experience sexual violence over their lifetime’.¹⁰ Research undertaken for the National Council also reported that

6 In addition to the ALRC’s work that led to the report, *Family Violence—A National Legal Response*, further immediate actions included: the development of a multi-disciplinary training package for lawyers, judicial officers, counsellors and other professionals working in the family law system, to improve consistency in the handling of family violence cases; and the establishment of the Violence Against Women Advisory Group to advise on the National Plan to Reduce Violence against Women.

7 FaHCSIA, *National Plan to Reduce Violence Against Women and Their Children—Including the First Three-year Action Plan* (2011). The Government plans four three year plans overall, the first running from 2010 to 2013, 12.

8 Australian Government, *The National Plan to Reduce Violence against Women: Immediate Government Actions* (2009), 12.

9 Ibid, Strategy 5.3.

10 National Council to Reduce Violence against Women and their Children, *Time for Action: The National Council’s Plan for Australia to Reduce Violence Against Women and their Children, 2009–2021* (2009), 9.

an estimated 750,000 Australian women ‘will experience and report violence in 2021–22, costing the Australian economy an estimated \$15.6 billion’.¹¹

1.13 The National Council also drew attention to the fact that, while violence ‘knows no geographical, socio-economic, age, ability, cultural or religious boundaries’,¹² the experience of violence is not evenly spread. For example, Indigenous women reported higher levels of physical violence during their lifetime than did non-Indigenous women, and the violence was more likely to include sexual violence.¹³

1.14 Submissions to this Inquiry reiterated such evidence. The Indigenous Law Centre of the University of New South Wales reported, for example, that in New South Wales in 2008 the rates of reported victims of domestic violence were six times higher for Aboriginal females than non-Aboriginal females.¹⁴ This submission also noted that ‘[t]he true extent of the incidence and prevalence of family violence for Indigenous women and children is largely hidden’,¹⁵ and contributing factors were ‘under-reporting, inconsistent approaches to screening by service providers and incomplete data relating to the Indigenous status of victims’.¹⁶

1.15 The National Council pointed to other groups who may also experience violence in a different and disproportionate way, for example: women with disability; women who identify themselves as lesbian, bisexual, trans or intersex (LGBTI); and immigrant women.¹⁷ Such experiences were also strongly echoed in submissions to the ALRC and noted in *Family Violence—A National Legal Response*,¹⁸ as well as in submissions to this Inquiry.¹⁹

1.16 *Time for Action* identified a range of compounding factors in the presentation of violence, especially alcohol, and that of geographical and social isolation—and both were identified as critical issues for Indigenous women and children.²⁰ Similar

11 National Council to Reduce Violence against Women and their Children, *Background Paper to Time for Action: The National Council’s Plan to Reduce Violence Against Women and their Children, 2009–2021* (2009), 43; KPMG, *The Cost of Violence against Women and their Children* (2009), prepared for the National Council to Reduce Violence Against Women and their Children.

12 National Council to Reduce Violence against Women and their Children, *Background Paper to Time for Action: The National Council’s Plan to Reduce Violence Against Women and their Children, 2009–2021* (2009), 16.

13 *Ibid.*, 17.

14 Indigenous Law Centre, *Submission CFV 144*.

15 *Ibid.*

16 *Ibid.*

17 National Council to Reduce Violence against Women and their Children, *Background Paper to Time for Action: The National Council’s Plan to Reduce Violence Against Women and their Children, 2009–2021* (2009), 18.

18 Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence—A National Legal Response*, ALRC Report 114; NSWLRC Report 128 (2010), [1.9].

19 For example, Women with Disabilities ACT, *Submission CFV 153*.

20 National Council to Reduce Violence against Women and their Children, *Background Paper to Time for Action: The National Council’s Plan to Reduce Violence Against Women and their Children, 2009–2021* (2009), 29, 30–35.

concerns were reported in *Family Violence—A National Legal Response*,²¹ as well as in submissions to this Inquiry.

1.17 Not only are there compounding factors causing family violence, there are also compounding consequences, such as: financial difficulty flowing from economic dependence on a violent partner; homelessness, where women are seeking to escape violence at home; and health issues associated with treating the effects of violence on the victim.²² The Homeless Persons' Legal Service identified domestic and family violence as 'overwhelmingly central to women's trajectories into homelessness';²³ and the Department of Human Services added that '[t]here are profound repercussions for those who experience family violence, in addition to long term consequences for both individuals and the communities in which they live'.²⁴

Under-reporting and barriers to disclosure

1.18 *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.²⁵ Barriers or reluctance to disclose family violence was a theme that continued in this Inquiry.²⁶ The Inner City Legal Centre argued that 'one of the greatest challenges' in talking about family violence is that it is a 'hidden issue'.²⁷ Women's Health Victoria, for example, referred to the 'silencing effect' of 'the stigma associated with family violence'—an effect also cited by the Homeless Persons' Legal Service and the Office of the Australian Information Commissioner.²⁸ The National Network of Working Women's Centres identified a range of barriers in the employment context why people experiencing family violence may not disclose it, including:

- Loss of job.
- Not being considered for work if a disclosure of family violence is made at interview.

21 Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence—A National Legal Response*, ALRC Report 114; NSWLRC Report 128 (2010), [1.11]–[1.15].

22 National Council to Reduce Violence against Women and their Children, *Background Paper to Time for Action: The National Council's Plan to Reduce Violence Against Women and their Children, 2009–2021* (2009), 42–45.

23 Homeless Persons' Legal Service, *Submission CFV 40*.

24 DHS, *Submission CFV 155*.

25 See especially Part G, [24.17]–[24.18], [24.21].

26 For example, Inner City Legal Centre, *Submission CFV 131*; Homeless Persons' Legal Service, *Submission CFV 95*; Law Institute of Victoria, *Submission CFV 74*; Sole Parents' Union, *Submission CFV 63*; Council of Single Mothers and their Children (Vic), *Submission CFV 55*; Homeless Persons' Legal Service, *Submission CFV 40*; ACTU, *Submission CFV 39*; WEAVE, *Submission CFV 31*; AASW (Qld), *Submission*; ADFVC, *Submission CFV 26*; Joint submission from Domestic Violence Victoria and others, *Submission CFV 22*; Queensland Law Society, *Submission CFV 21*; National Network of Working Women's Centres, *Submission CFV 20*; AASW (Qld), *Submission CFV 17*; Redfern Legal Centre, *Submission CFV 15*; Women's Health Victoria, *Submission CFV 11*; ASU (Victorian and Tasmanian Authorities and Services Branch), *Submission CFV 10*.

27 Inner City Legal Centre, *Submission CFV 131*.

28 Office of the Australian Information Commissioner, *Submission CFV 142*; Homeless Persons' Legal Service, *Submission CFV 40*.

- Shame.
- An escalation of violence from a partner if they become aware that a disclosure of family violence has been made.
- Risking disclosure of their details or whereabouts by the employer or other person in the workplace, perhaps to the detriment of them and their children's safety.
- Judgemental attitudes and responses from the people they disclose to, whether that be workmates, the Union or OHS representative or the employer.
- Fears about the safety of their workmates and having to shoulder the responsibility of that, rather than the partner who is causing the threats or violence being seen as 'responsible'.
- Fears about their own safety.
- Using up all leave options and thus having no leave entitlements to access if they or their children become ill.²⁹

1.19 The Aboriginal & Torres Strait Islander Women's Legal Services NQ Inc referred to many reasons for Indigenous women feeling uncomfortable and unwilling to disclose family violence, 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 she is judgemental, paternalistic, condescending or not skilled in communicating with Aboriginal and Torres Strait Islander women;
- Not being able to recognise that family violence has occurred;
- Fear of not being believed;
- Fear of not being understood;
- Fear of being judged by others generally, particularly where the person already feels marginalised by the wider community.³⁰

1.20 Moreover, for Indigenous communities, underreporting is common

due to the fear that any attempts to obtain assistance from police or medical staff will result in mandatory reporting to child protection authorities and removal of children. In these cases the mandatory reporting requirements actually work *against* the protection of the children as well as the primary victim.³¹

1.21 Language difficulties were also seen as a significant barrier for Indigenous as well as culturally and linguistically diverse (CALD) communities.³² The Aboriginal &

29 National Network of Working Women's Centres, *Submission CFV 20*. See also Women's Health Victoria, *Submission CFV 133*.

30 Aboriginal & Torres Strait Islander Women's Legal Service North Queensland, *Submission CFV 99*.

31 Ibid. See also Aboriginal & Torres Strait Islander Women's Legal & Advocacy Service, *Submission CFV 103*.

32 Federation of Ethnic Communities' Councils of Australia, *Submission CFV 126*; Aboriginal & Torres Strait Islander Women's Legal Service North Queensland, *Submission CFV 99*. Inner City Legal Centre, *Submission CFV 131* refers to the 2010 report of Dr Hillier, *writing themselves In 3*, noting that young

Torres Strait Islander Women's Legal Services NQ Inc singled out the need for 'culturally appropriate language and procedure, for them to be able to be screened by a person whose cultural understanding places women at ease, to be able to access services which are culturally appropriate'.³³

1.22 The Federation of Ethnic Communities' Councils of Australia (FECCA) highlighted not only language barriers, but also 'cultural practices and attitudes towards private and public family issues, gender roles and information provision preferences':

there are systemic factors which may position CALD women and their families at greater risk of experiencing certain types of violence and/or disadvantage and isolation from the appropriate support services. ... [G]ender roles which can create isolating financial, cultural and religious dependency arrangements with spouses, families and communities can be considered relevant to the experiences of CALD women undergoing family violence.³⁴

1.23 The Good Shepherd Youth & Family Service stated that women from immigrant and refugee backgrounds 'face particular obstacles in their struggle to break the cycle of violence' and that women from CALD communities in rural areas 'often have unique issues',

including lack of trust in the confidentiality of support services, lack of knowledge of services, especially in newly arrived communities, higher unemployment and poor education opportunities.³⁵

1.24 For people who identify as LGBTI there are particular compounding difficulties in terms of disclosure of family violence. The Inner City Legal Centre submitted that the experiences of family violence in the LGBTI community 'differ from the wider community's experience' and that 'it may not be clearly identifiable to people who are not part of these communities'.³⁶

1.25 For men who are victims of family violence there may also be particular barriers to disclosure. The Lone Fathers Association, for example, referred to 'a complex of reasons' for a man's reluctance to disclose family violence, including:

the shame involved in publicly admitting his victim status, a desire to hold his family together and protect his children from a violent partner, and/or a belief that if he did complain he would be unlikely to be taken seriously by the police or the judiciary.³⁷

1.26 Family Voice Australia argued that reliance on the underpinning conclusion that 'family violence is predominantly committed by men', as reflected in the discussion of the nature, features and dynamics of family violence, may add to reluctance to disclose and 'runs the risk of obscuring the reality of family violence perpetrated by women and

people from CALD backgrounds were less likely to tell their parents and, if they did, less likely to get family support.

33 Aboriginal & Torres Strait Islander Women's Legal Service North Queensland, *Submission CFV 99*.

34 Federation of Ethnic Communities' Councils of Australia, *Submission CFV 126*.

35 Good Shepherd Youth & Family Service, *Submission CFV 132*.

36 Inner City Legal Centre, *Submission CFV 131*.

37 Lone Fathers Association Australia, *Submission CFV 109*, attachment, 24; FamilyVoice Australia, *Submission CFV 86*.

making male victims of family violence invisible or more likely to be overlooked’, and is ‘likely to make disclosure of family violence more difficult for male victims of family violence perpetrated by women’.³⁸

Scope of the Inquiry

Matters outside the Inquiry

1.27 While the scope of the problem of family violence is extensive, the brief in this Inquiry is necessarily constrained both by the Terms of Reference and by the role and function of a law reform commission.

1.28 The ALRC acknowledges, as it did in *Family Violence—A National Legal Response*, that the Inquiry concerns only a narrow slice of the vast range of issues raised by the prevalence of family violence—when victims of such violence encounter the legal system in its various manifestations.

1.29 In *Family Violence—A National Legal Response*, the ALRC noted widespread concern about the link between alcohol and family violence, and recognised that any serious attempt to develop preventative measures in the area of family violence must tackle the problem of alcohol abuse in Australian society. This issue is, however, beyond the scope of the Terms of Reference for that inquiry and the current one.

1.30 The limits of law, both in terms of services but also in terms of its application, was expressed succinctly in a remark by Penny Taylor, a solicitor with the Top End Women’s Legal Service, that ‘you can have the perfect law, but ...’;³⁹ and the Commissioner for Victims’ Rights, South Australia, stated that:

Law alone is not a satisfactory response to family violence. The law must be augmented by consistent, comprehensive and co-operative agencies, organisations and individuals. Existing law and range of approaches to family violence serve as a baseline from which people concerned about that violence and its effects can reach out to establish better laws and approaches reflecting victims’ needs and respecting their fundamental rights.⁴⁰

1.31 The ALRC notes that the *National Plan* identifies many other strategies in areas beyond legal frameworks to achieve outcomes such as relationships that are respectful, and services that meet the needs of women and children.⁴¹

Raising systemic issues

1.32 This Inquiry raised some broad, systemic problems that require solutions beyond those that can be described as improvements to protect the safety of those experiencing

38 FamilyVoice Australia, *Submission CFV 86*.

39 Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence—A National Legal Response*, ALRC Report 114; NSWLRC Report 128 (2010), [1.67].

40 Ibid, [1.67].

41 FaHCSIA, *National Plan to Reduce Violence Against Women and Their Children—Including the First Three-year Action Plan* (2011); Australian Government, *The National Plan to Reduce Violence against Women: Immediate Government Actions* (2009); National Council to Reduce Violence against Women and their Children, *Time for Action: The National Council’s Plan for Australia to Reduce Violence Against Women and their Children, 2009–2021* (2009), Outcomes 2, 3.

family violence. For example, concerns about the calculation of child support payments may be described as relating to a systemic issue. If recommendations were to go to the child support system as a whole, this may be seen to go beyond the brief as defined by the Terms of Reference. In such cases, where concerns of a systemic kind have been expressed to the ALRC, they are noted in the relevant context, although no recommendations are developed in response. A treatment of this kind at least provides a public forum through which to note concerns in the context of a more specific inquiry, as constrained by the Terms of Reference.

1.33 On occasion, however, the ALRC has identified particular areas of law of which stakeholders have urged review. Here the approach has been one of suggesting that ‘consideration be given’ to repeal or review of those areas, rather than making a specific recommendation that such action be taken—given the specific limits of the Terms of Reference.

Processes of reform

Consultation processes

1.34 A major aspect of building the evidence base to support the formulation of ALRC recommendations for reform is community consultation, acknowledging that widespread community consultation is a hallmark of best practice law reform.⁴² Under the provisions of the *Australian Law Reform Commission Act 1996* (Cth), the ALRC ‘may inform itself in any way it thinks fit’ for the purposes of reviewing or considering anything that is the subject of an inquiry.⁴³ For each inquiry the ALRC determines a consultation strategy in response to its particular subject matter and likely stakeholder interest groups. The nature and extent of this engagement is normally determined by the subject matter of the reference—and the timeframe in which the inquiry must be completed under the Terms of Reference.

1.35 The Terms of Reference for this Inquiry direct the ALRC to work closely with relevant Australian Government departments to ensure the solutions identified are practically achievable and consistent with other reforms and initiatives being considered in relation to the development of a *National Plan to Reduce Violence against Women and their Children* or the National Framework for Protecting Australia’s Children.

1.36 Of particular relevance in this Inquiry were the following Australian Government departments: the Attorney-General’s Department; the Department of Immigration and Citizenship; the Department of Employment, Education and Workplace Relations; the Department of Families, Housing, Community Services and Indigenous Affairs; and the Department of Human Services. Within the latter Department, the ALRC has consulted Centrelink, the Child Support Agency, the Family Assistance Office and Commonwealth Rehabilitation Service Australia. Other

42 B Opeskin, ‘Measuring Success’ in B Opeskin and D Weisbrot (eds), *The Promise of Law Reform* (2005), 202.

43 *Australian Law Reform Commission Act 1996* (Cth) s 38.

relevant Commonwealth bodies include: the Office of the Australian Information Commissioner; the Australian Taxation Office, the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission, the Treasury, Safe Work Australia, Fair Work Australia, the Superannuation Tribunal and the Fair Work Ombudsman. The ALRC is grateful to these departments and bodies for their constructive discussions and reflective practice throughout this Inquiry.

Community consultation and participation

1.37 A multi-pronged strategy of seeking community comments was used during the Inquiry. Internet communication tools—an e-newsletter and an online forum—were used to provide information and obtain comment. Four Issues Papers were released online, in discrete areas of the Inquiry—employment and superannuation law;⁴⁴ immigration law;⁴⁵ child support and family assistance law;⁴⁶ and social security law.⁴⁷ This was followed by an extensive Discussion Paper, released online, divided into seven parts, again reflecting the discrete areas of the Inquiry. This was accompanied by a Discussion Paper Summary, online and in hardcopy, to facilitate focused consultations in the final stage of the Inquiry process.

1.38 Two national rounds of stakeholder consultation meetings, forums and roundtables were conducted. In addition, the ALRC developed consultation strategies for engaging with Indigenous peoples, those from CALD backgrounds, people with disability and people who identify themselves as LGBTI. The ALRC conducted 110 consultations, as listed in Appendix 2.

1.39 The ALRC received 165 submissions, a full list of which is included in Appendix 1. Submissions were received from a wide range of people and agencies, including: individuals; academics; lawyers; unions; employer organisations; community legal centres; law societies; women’s centres and legal services; single parents groups; social workers; Indigenous legal and other services; government agencies; peak bodies; tribunals; the Office of the Australian Information Commissioner; the Commonwealth Ombudsman; and the Australian Human Rights Commission.

1.40 The ALRC acknowledges the contribution of all those who participated in the Inquiry consultation rounds and the considerable amount of work involved in preparing submissions, which can have a significant impact in organisations with limited funding. It is the invaluable work of participants that enriches the whole consultative process of ALRC inquiries and the ALRC records its deep appreciation for this contribution.

44 Australian Law Reform Commission, *Family Violence and Commonwealth Laws—Employment and Superannuation Law*, Issues Paper 36 (2011).

45 Australian Law Reform Commission, *Family Violence and Commonwealth Laws—Immigration Law*, Issues Paper 37 (2011).

46 Australian Law Reform Commission, *Family Violence and Commonwealth Laws—Child Support and Family Assistance*, Issues Paper 38 (2011).

47 Australian Law Reform Commission, *Family Violence and Commonwealth Laws—Social Security Law*, Issues Paper 39 (2011).

Appointed experts

1.41 In addition to the contribution of expertise by way of consultations and submissions, specific expertise is also obtained in ALRC inquiries through the establishment of its Advisory Committees, Panels, Roundtables and the appointment by the Attorney-General of part-time Commissioners. Because of the complex nature of this Inquiry, the ALRC established Advisory Roundtables of experts in each of the key areas reviewed, each of which is listed at the front of this publication.

1.42 The ALRC was also able to call upon the expertise and experience of its two standing part-time Commissioners, both judges of the Federal Court: the Hon Justice Susan Kenny and the Hon Justice Berna Collier.

1.43 While the ultimate responsibility in each inquiry remains with the Commissioners of the ALRC, the establishment of a panel of experts as an Advisory Committee, Panel or Roundtable is an invaluable aspect of ALRC inquiries—assisting in the identification of key issues, providing quality assurance in the research and consultation effort, and assisting with the development of reform proposals.

Overview of the Report

Definitions and terminology

1.44 This section sets out some of the terminology that will be used in this Report.

Culturally and linguistically diverse

1.45 The phrase ‘culturally and linguistically diverse’—and the abbreviation ‘CALD’—are commonly used in referring to people of diverse backgrounds. The ALRC recognises that the discussion in this publication may apply to people who are ‘culturally *or* linguistically diverse’ as well as those who are ‘culturally *and* linguistically diverse’. The phrase is used for convenience to embrace both kinds of diversity.

Family

1.46 The definition of ‘family’ or ‘domestic’ relationship varies across the Australian jurisdictions and legislation. In this Report the particular definitions of ‘family’ are considered in the context of the specific legislation under consideration.

Family violence

1.47 The terminology that should be adopted to describe violence within families and intimate relationships has been, and continues to be, the subject of controversy and debate.⁴⁸

48 See, eg, Domestic Violence and Incest Resource Centre, *What's In a Name? Definitions and Domestic Violence: Domestic Violence? Family Violence? Violence Against Women?*, Discussion Paper No 1 (1998).

1.48 As noted in *Family Violence—A National Legal Response*, state, territory and Commonwealth legislation that refers to violence within families and intimate relationships uses various descriptions—‘family violence’, ‘domestic violence’ and ‘domestic abuse’.⁴⁹ The term ‘domestic’ has been criticised on the basis that it ‘qualifies and arguably reduces the term “violence”’.⁵⁰ The Macquarie Dictionary notes the colloquial use of the term ‘domestic’ as ‘an argument with one’s spouse or another member of the household’. Thus, from a cultural perspective, the term ‘domestic’ can trivialise the impact of the violence on the victim. However the phrase ‘family violence’ has also been criticised.⁵¹

1.49 Reports and writing in this area have adopted varying terminology. Some have referred to both ‘family and domestic violence’, or vice versa;⁵² others to ‘family violence’;⁵³ and some to ‘domestic violence’.⁵⁴ In each case, the differing terminology—in the Australian context—attempts to refer to the same type of conduct, although the boundaries of such conduct have expanded over the years.

1.50 In this Inquiry the ALRC refers to ‘family violence’, rather than ‘domestic violence’ or ‘domestic abuse’, unless specifically quoting from sources including legislation which use alternative terminology.

Indigenous peoples

1.51 In this Report, the ALRC may use the terms ‘Aboriginal and Torres Strait Islander peoples’ or ‘Indigenous communities’ or ‘Indigenous peoples’, which are consistent with the terminology adopted by various organisations, including the Aboriginal and Torres Strait Islander Social Justice Commissioner in his reports. As he has explained:

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.⁵⁵

49 Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence—A National Legal Response*, ALRC Report 114; NSWLRC Report 128 (2010), [1.105].

50 B Fehlberg and J Behrens, *Australian Family Law: The Contemporary Context* (2008), 178.

51 J Behrens, ‘Ending the Silence, But ... Family Violence under the Family Law Reform Act 1995’ (1996) 10 *Australian Journal of Family Law* 35, 38.

52 See, eg, National Council to Reduce Violence against Women and their Children, *Time for Action: The National Council’s Plan for Australia to Reduce Violence Against Women and their Children, 2009–2021* (2009); Australian Bureau of Statistics, *Conceptual Framework for Family and Domestic Violence* (2009); Government of Western Australia, *Family and Domestic Violence Action Plan (2007–2008)*.

53 See, eg, Victorian Law Reform Commission, *Review of Family Violence Laws: Report* (2006); Queensland Centre for Domestic and Family Violence Research, *Indigenous Family Violence Prevention Forum 2009: Report* (2009).

54 See, eg, Australian Government Solicitor, *The Giving of Evidence by Victims of Sexual Assault* (2008); M Pyke, *South Australian Domestic Violence Laws: Discussion and Options for Reform* (2007); Australian Law Reform Commission, *Domestic Violence*, Report 30 (1986). Fehlberg and Behrens adopt the terminology of ‘violence and abuse in families’: B Fehlberg and J Behrens, *Australian Family Law: The Contemporary Context* (2008), 178.

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

1.52 This is affirmed under international law principles and by the *United Nations Declaration on the Rights of Indigenous Peoples*.⁵⁶ ‘Indigenous women’ and ‘Indigenous children’ also reflect this terminology.

People with disability

1.53 A contemporary view of disability acknowledges that, while a person may have an impairment or medical condition, it is barriers within society—negative attitudes, inaccessible buildings and environments, inaccessible communications and information—that prevent people with disability from being treated equally and from fully participating in all aspects of community life.⁵⁷

1.54 The ALRC uses the term ‘people with disability’ throughout this Report, to reflect each person’s value, individuality, dignity and capabilities. ‘People with disability’ is used rather than ‘people with a disability’, acknowledging that a person may have more than one disability.

LGBTI

1.55 The abbreviation ‘LGBTI’ is used in this Report to describe people who identify themselves as lesbian, gay, bisexual, trans or intersex, as it is a broadly understood abbreviation.⁵⁸ 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. In particular, the ALRC understands that people who identify as trans and intersex often have perspectives, issues and needs that are different from those of the people who identify as gay, lesbian or bisexual, and as a result should be separately consulted.

Structure of the Report

1.56 This Report comprises 22 chapters divided into seven parts, A–G:

Part A—Common Threads, contains four chapters, Chapters 1–4.

Part B—Social Security, contains five chapters, Chapters 5–9.

Part C—Income Management, comprises one chapter, Chapter 10.

Part D—Child Support and Family Assistance, contains four chapters, Chapters 11–13.

Part E—Employment, comprises four chapters, Chapters 15–18.

Part F—Superannuation, comprises one chapter, Chapter 19.

Part G—Migration, comprises three chapters, Chapters 20–22.

56 *Declaration on the Rights of Indigenous Peoples*, 13 September 2007, GA Res 61/295, UN Doc A/RES/47/1.

57 See, *People With Disability, A Guide to Reporting On Disability* <www.pwd.org.au/documents/pubs/Guide-to-Reporting-Disability.doc> at 21 July 2011.

58 The ALRC notes that this is also the term adopted by the Australian Human Rights Commission following their research and consultation on protection from discrimination on the basis of sexual orientation and/or sex and gender identity. See: <http://www.hreoc.gov.au/human_rights/lgbti/lgbticonsult/index.html> at 11 August 2011.

Stop press—new legislation

Family violence amendments to the *Family Law Act* passed

1.57 On 24 November 2011, as this Report was going to Press, the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 (the Family Violence Bill) passed through the Australian Parliament.

1.58 The Family Violence Bill introduces a new definition of ‘family violence’ in the *Family Law Act 1975* (Cth). This substantially implements a recommendation made by the ALRC and the NSW Law Reform Commission in the 2010 report, *Family Violence—A National Legal Response*. The report recommended a consistent two-part definition across the *Family Law Act* and certain state and territory legislative schemes.

1.59 In this Report, the ALRC extends this position, recommending that the Commonwealth legislation under review also adopt the consistent-two part definition similar to that previously recommended, now also largely contained in the *Family Law Act*. This issue is considered in Chapter 3 of this Report.

Stronger Futures in the Northern Territory Bill

1.60 In November 2011, the Australian Government introduced the Stronger Futures in the Northern Territory Bill 2011 (Cth), and its companion, the Northern Territory (Consequential and Transitional Provisions) Bill 2011 (Cth) into the House of Representatives. The bills ‘form a part of [the Government’s] next steps in the Northern Territory’.⁵⁹ All three bills were referred to the Senate Community Affairs Legislation Committee which is due to report on 29 February 2012.

1.61 The Stronger Futures Bill is intended to replace the *Northern Territory National Emergency Response Act 2007* (Cth) and contains three key measures—‘the tacking alcohol abuse measure, the land reform measure and the food security measure’.⁶⁰ In addition, the Government also introduced elements of the Social Security Legislation Amendment Bill 2011 (Cth), which applies beyond the Northern Territory, in order to provide ‘greater flexibility in for the operation of income management so it can be implemented in’ five new sites.⁶¹ It also contains proposed reforms to allow referrals by recognised state or territory authorities to trigger income management as well as measures in relation to enrolment and school attendance. Income management is considered in Part C of this Report.

59 Commonwealth, *Parliamentary Debates*, House of Representatives, 23 November, 6 (J Macklin—Minister for Families, Housing, Community Services and Indigenous Affairs).

60 Explanatory Memorandum, Stronger Futures in the Northern Territory Bill 2011 (Cth).

61 Explanatory Memorandum, Social Security Legislation Amendment Bill 2011 (Cth).