



Culturally and Linguistically Diverse Communities

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 people from culturally and linguistically diverse (CALD) communities 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 phrase 'culturally and linguistically diverse'—and the abbreviation 'CALD'—are commonly used in referring to people of diverse backgrounds. The ALRC recognises that the term 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.

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 CALD communities?

People from CALD communities—especially newly arrived residents—may share common experiences of unplanned departures, long periods without access to health or education, low levels of language proficiency, different understandings of family violence, lack of familial and social support networks, and dependence on an Australian sponsor. These factors contribute to the disproportionate impact of family violence on those from CALD communities. For example, lack of knowledge about the legal system may leave a CALD person vulnerable to threats of being 'removed from Australia' or 'deportation' as a means of perpetuating family violence.



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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 people from culturally and linguistically diverse communities might face, in that context.

Recommendations 3-1 to 3-4

Improving awareness

The ALRC made a number 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 people from CALD backgrounds. This information should be included in relevant policy guides—the *Child Support Guide*, the *Family Assistance Guide*, and the *Guide to Social Security*—to ensure that the circumstances of people from CALD communities who are experiencing family violence are taken into account when making decisions about things such as child support or social security payments, or whether they have experienced family violence for the purposes of migration law.

Recommendations 4-5 , 5-4, 14-1 and 20-5

Educating CALD communities about their rights and entitlements

The ALRC recommended that people from CALD communities be provided with information about their rights, entitlements and services that are available to them in dealing with family violence in the social security or family assistance context. In the migration context—for those who are newly arrived in Australia—such information should include information about the family violence exception in migration law (discussed below). The ALRC also recommended that Australian Government initiate a national education and awareness campaign in relation to family violence and its impact in the employment context, including information and support for members of CALD communities.

Recommendations 4-2, 15-1 and 20-6



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Migration Law

Many of the issues dealt with by the ALRC in the migration area will necessarily affect those from CALD communities. Some of the ALRC’s key recommendations in this area are outlined below.

Expanding the family violence exception

The ‘family violence exception’ allows a victim of family violence to be granted permanent residence, notwithstanding the breakdown of the relationship on which their migration status depends. This aims to ensure that a person does not have to remain in a violent relationship in order to obtain permanent residence. The ALRC made a number of recommendations to expand access to the family violence exception.

Secondary visa applicants and holders

Currently, the family violence exception is available to secondary visa applicants—the partner of someone applying for a visa (primary visa applicant)—for some, but not all, onshore permanent visas. To ensure consistency, the ALRC recommended that the family violence exception be made available to all secondary visa applicants for onshore permanent visas.

The ALRC also recognised the need to protect secondary visa holders, who may experience family violence during the time they are on a temporary visa, but cannot access the family violence exception. The ALRC recommended that a new visa be created to allow such persons time to make arrangements to leave Australia or to apply for another visa in their own right. Holders of this new visa should be given access to Special Benefit payments.

Recommendation 7–2, 20–2 and 20–3

Prospective Marriage visa holders

The ALRC also recommended that the family violence exception be expanded to cover Prospective Marriage visas. Stakeholders considered this group of people to be especially vulnerable, as they cannot access the family violence exception unless they have married the sponsor. In particular, the threat ‘to withdraw marriage’ or ‘removal from Australia’ is often used by the sponsor to perpetuate family violence.

Example:

In our experience, some men are able to convince vulnerable women to move to Australia on the promise that he will one day marry her. However, once in Australia, the woman becomes the victim of abuse and then ultimately, the engagement is called off. Some women are falsely imprisoned in their fiancés’ homes and are regularly raped—an action justified by their abuser with the promise of marriage. Many women are financially and psychologically abused ... Such cases seem to equate to sex-trafficking of women who have come to Australia in good faith. Despite this, however, these women are not entitled to rely on the family violence provisions in the *Migration Regulations*.

Erksine Rodan & Associates, *Submission CFV 80*

Recommendation 20–1



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Simplifying the evidentiary requirements

Claims of family violence in the migration context can be made judicially or non-judicially. The ALRC recommended the implementation of a new model of non-judicially determined claims of family violence. If implemented, the model will allow victims to submit any kind of evidence in support of their family violence claim.

Currently, to make a valid non-judicially determined claim of family violence, applicants must submit statutory declarations from certain ‘competent persons’, such as doctors, nurses, psychologists and managers of women’s refuges. There are prescriptive rules about the content of statutory declarations, and the courts have applied the requirements in a similarly strict manner. These requirements may adversely affect those from CALD communities, who may not be able to access competent persons and ensure that statutory declarations are presented in the correct manner.

Example:

The evidentiary requirements are onerous, and particularly so for women from culturally and linguistically diverse backgrounds. Women receiving support from family violence services can be assisted with strategies to document and collect evidence of family violence; however these methods are difficult and require a high degree of accuracy and detail in record-keeping. For women who do not speak English, or who may be illiterate in their own language there are considerable challenges to being able to meet evidentiary requirements.

Domestic Violence Victoria and others, *Submission CFV 33*

See Chapter 21 and Recommendations 21–3 and 21–4

Social Security

People from CALD communities who are newly arrived in Australia are likely to be dependent on their sponsor for financial support. Where they experience family violence, such a person may need social security payments—such as Special Benefit—to help ensure their safety. However, due to various residential waiting periods, they may not be able to access these payments.

To change these residence requirements may create an inequity in that a similar provision would not exist for other vulnerable migrants. So the ALRC noted that this is an area of widespread concern and considered it appropriate that such residence periods be reviewed as a whole.

See Chapter 7

Further resources

Links to further resources can be found on our website at www.alrc.gov.au/CFV-CALD/#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 those from lesbian, gay, bisexual, trans or intersex communities.