

Executive Summary

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Improving legal frameworks

A continuing project

This Report contains 102 recommendations for reform of Commonwealth laws that affect people experiencing family violence. The Report builds upon the work undertaken by the Australian Law Reform Commission (ALRC) and the New South Wales Law Reform Commission leading to the report, *Family Violence—A National Legal Response* (ALRC 114, 2010).

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. 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.

Together the ALRC's family violence reports provide a significant contribution to improving legal frameworks to protect the safety of those experiencing family violence. They reflect the goal identified by the Australian Government 'to reduce all violence in our communities', recognising that 'whatever the form violence takes, it

has serious and often devastating consequences for victims, their extended families and the community’, and ‘comes at an enormous economic cost’.¹

The law reform brief

While the scope of the problem of family violence is extensive, the brief in this Inquiry was constrained both by the Terms of Reference, set out at the front of this Report; and by the role and function of a law reform commission, as set out in the *Australian Law Reform Commission Act 1996* (Cth).

Legal frameworks

The ALRC was asked to inquire into and report on the treatment of family violence in Commonwealth laws, specifically: 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 also asked to identify what, if any, improvements could be made to relevant legal frameworks to protect the safety of those experiencing family violence.

The ALRC was asked to consider whether legislative arrangements across the Commonwealth impose barriers to providing effective support to those adversely affected by family of violence, and whether the extent of sharing of information across the Commonwealth and with state and territory agencies is appropriate to protect the safety of those experiencing family violence.

The overarching objective of this Inquiry was to make recommendations for reform of legal frameworks to protect the safety of those experiencing family violence. In this context, the idea of ‘legal frameworks’ extends beyond law in the form of legislative instruments and includes education, information sharing and other related matters.

Safety

The overall touchstone throughout the chapters and recommendations is improving safety. In considering safety throughout the Report, the ALRC refers both to actual safety from harm and to financial security and independence, through things such as social security payments and entitlements, paid employment, and appropriate payments of child support. The importance of financial security and independence for the safety of victims of family violence was noted by participants in a study conducted by the Australian Domestic and Family Violence Clearinghouse:

Having my own financial independence and complete decision making over what I do and what I spend and how I support my children is at the forefront of any decision I make. That’s what financial security is to me.²

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

2 R Braaf and I Barrett Meyering, *Seeking Security: Promoting Women’s Economic Wellbeing Following Domestic Violence* (2011), prepared for the ADFVC.

Limits of law

A theme articulated during both family violence inquiries, and also in relation to the more general issue of responding to family violence, is the limits of law. As remarked by one stakeholder, ‘you can have the perfect law, but ...’. The ALRC also recognises that the Inquiry concerns only a narrow slice of the vast range of issues raised by family violence. A comment made by the Family Law Council, in its advice to the Attorney-General of Australia in January 2009, is equally apt. The Council, noting that it was only focusing on family violence ‘when it becomes visible in the Family Law system in Australia’, stated that ‘his visible pattern is only the tip of the iceberg of family violence, alcoholism, drug addiction and mental illness which is apparently entrenched in Australia’.³

Development of the reform response

Commitment to widespread consultation is a hallmark of best practice law reform. In undertaking the Inquiry, a multi-pronged strategy of seeking community comments was implemented. Four Issues Papers were released online, in the discrete areas of the Inquiry. This was followed by an extensive 770-page Discussion Paper, divided into seven separate parts, again reflecting the specific areas of the Inquiry. The Discussion Paper was released online, each part being presented in a separate file for easy accessibility and search capability. This was accompanied by a 49-page Discussion Paper Summary, online and in hardcopy, to facilitate focused consultations in the final stage of the Inquiry process.

One hundred and ten consultations were conducted in two national rounds of stakeholder meetings, forums and roundtables. Internet communication tools—an e-newsletter and an online forum—were used to provide information and obtain comment, building upon the successful integration of such tools into the inquiry process in the 2010 family violence inquiry. By the end of the Inquiry there were 381 subscribers to the e-newsletter. In addition, the ALRC developed consultation strategies for engaging with Indigenous peoples, those from culturally and linguistically diverse backgrounds, people with disability and people who identify themselves as lesbian, gay, bisexual, trans or intersex.

Principles for reform

The framework for reform in this Inquiry is set out in Chapter 2. In summary, the recommendations in this Report are underpinned by eight principles: seamlessness; fairness; accessibility; effectiveness; self-agency or autonomy; privacy; and system integrity. The first four underpinned the recommendations in *Family Violence—A National Legal Response*; the other three emerged as key principles in the course of this Inquiry:

- (1) *Seamlessness*—to ensure that the legal framework is as seamless as possible from the point of view of those who engage with it.

³ Family Law Council, *Improving Responses to Family Violence in the Family Law System: An Advice on the Intersection of Family Violence and Family Law Issues* (2009), 7.

- (2) *Accessibility*—to facilitate access to legal and other responses to family violence.
- (3) *Fairness*—to ensure that legal responses to family violence are fair and just, holding those who use family violence accountable for their actions and providing protection to victims.
- (4) *Effectiveness*—to facilitate effective interventions and support in circumstances of family violence.
- (5) *Self-agency or autonomy*—to ensure that legal responses to family violence respect the individual’s right to make decisions about matters affecting him or her.
- (6) *Privacy*—to ensure that an individual’s sensitive personal information concerning fears for safety is obtained and handled in an appropriate way.
- (7) *System integrity*—to ensure that, where a benefit, or beneficial outcome, is included in relevant laws, any requirement to verify family violence is appropriate to the benefit sought.

Summary of recommendations

Part A—Common Threads

Common interpretative framework

As a foundational aspect of establishing a common interpretative framework, in Chapter 3 the ALRC recommends including in the Commonwealth laws under review the same core definition of family violence.

The ALRC considers that systemic benefits would flow from the adoption of a common interpretative framework across the specified legislative areas, promoting seamlessness and effectiveness in proceedings involving family violence for both victims and decision makers. Importantly, it should also enhance consistency in the treatment of family violence across the legislative frameworks, reinforced by appropriate and regular training.

The common interpretative framework recommended in *Family Violence—A National Legal Response* is based on a core definition of family violence, describing the context in which behaviour takes place, as well as the types of conduct—both physical and non-physical—that may fall within the definition of family violence. The context, set out in the first part of the definition, is violent, threatening or other behaviour that coerces or controls a family member or causes that family member to be fearful. The second part of the definition provides a non-exhaustive list of the types of behaviour that may constitute family violence.

Disclosure and issues management

There are a number of tools and methods that may be used to identify family violence-related safety concerns. The ALRC recommends—in Chapter 4—that Department of Human Services (DHS) staff providing customer services should facilitate the

disclosure of family violence-related safety concerns by providing information about how family violence may be relevant to a person's social security, child support and family assistance case, at the point of registration and at subsequent intervention points.

The identification of family violence-related safety concerns should result in an appropriate issues management response, which may include referral to a Centrelink social worker or other expert service providers. To assist with this, and to reduce the need for a customer to re-disclose, the ALRC recommends that DHS should consider developing and implementing a 'safety concern' flag to be placed on a customer's file where family violence-related safety concerns are identified. This flag should be available to relevant agencies subject to informed consent of the customer and with appropriate privacy safeguards.

Part B—Social Security

Underlying concepts

The Australian social security system is based on four key principles, that:

1. it is based on need—measured by reference to the income and assets of the applicant;
2. it is fair and reasonable to expect unemployed people receiving income support to do their best to find work, undertake activities that will improve their skills and increase their employment prospects and, in some circumstances, contribute something to their community in return for receiving social security payments and entitlements;
3. relationship status determines eligibility and rates of payment—that a person who is a member of a couple receives a lower social security payment than one who is single; and
4. residence is a requirement to preserve social security benefits for those settled in the Australian community.

A need for transparency

To ensure fairness in the administration of the social security system and to provide a level of self-agency, greater transparency and consistency is required in relation to the information a person can rely on to support a claim of family violence. The ALRC therefore recommends—in Chapter 5—that a broad range of types of information should be available for this purpose. Finally, the ALRC recommends defined 'intervention points' at which Centrelink should promote the disclosure of family violence.

The ALRC recommends that Centrelink procedures should be included in social security legislation or the *Guide to Social Security Law*, rather than Centrelink's e-reference, which is not publicly available. This will make the procedures more transparent and accessible.

Impact of family violence on relationships

The ALRC considers that relationships are inherently difficult to define, but recognises that the effect of family violence may not always be considered appropriately in relationship decisions in the social security context. The ALRC therefore makes a number of recommendations—in Chapter 6—to ensure that the impacts of family violence are expressly considered in relationship decisions in social security law through amendments to the *Social Security Act 1991* (Cth) and the *Guide to Social Security Law*.

Proof of identity and residence

Family violence is relevant to proof of identity and residence requirements attached to certain social security payments. The requirement to provide original proof of identity documents and tax file numbers can create a barrier for persons experiencing family violence to obtain access to social security payments and entitlements. Similarly, residence requirements may mean that certain visa holders or newly arrived residents are unable to access independent financial assistance through the social security system and therefore may not have adequate financial support to enable them to leave a violent relationship. The ALRC considers—in Chapter 7—how these requirements in social security law and practice can be improved to protect the safety of victims of family violence.

Determining capacity to work

To qualify and remain qualified for social security payments that are available for job seekers, the job seeker must satisfy activity and participation requirements outlined in an Employment Pathway Plan (EPP). The ALRC makes recommendations—in Chapter 8—to improve the administration and content of the tools and processes used to determine a job seeker's capacity to work, in order to protect the safety of victims of family violence.

The chapter also examines ways in which Job Services Australia (JSA)—the national employment services system—Disability Employment Services (DES) and the Indigenous Employment Program (IEP) systems respond to the needs of job seekers experiencing family violence. The ALRC recommends that the Department of Education, Employment and Workplace Relations (DEEWR), as contractor of JSA, DES and IEP providers, should ensure that providers appropriately and adequately consider the existence of family violence when tailoring service responses.

The ALRC also makes a number of recommendations to ensure that a person's experience of family violence is adequately considered in:

- the negotiation and revision of requirements for activity-tested social security payments; and
- the granting of exemptions from such requirements.

Payments

In Chapter 9 the ALRC considers a number of barriers to accessing Crisis Payment and urgent payments and makes recommendations to overcome them to provide better protection for victims of family violence. The recommendations include removing the requirement for Crisis Payment that either the victim or the person using family violence must have left the ‘home’.

The ALRC also recommends amending the *Social Security Act 1991* (Cth) to ensure that family violence can be taken into consideration in decisions to waive the repayment of a social security debt—for example, where the debt was incurred due to economic abuse or duress by a family member.

Part C—Income Management

‘Income management’ is an arrangement under the *Social Security (Administration) Act 1999* (Cth) by which a proportion of a person’s social security and family payments is quarantined to be spent only on particular goods and services, such as food, housing, clothing, education and health care. The object is to ensure that ‘income support payments are spent in the best interests of children and families and helps ease immediate financial stress’.⁴

In Chapter 10 the ALRC identifies three broad issues that arise in relation to the ways in which income management affects victims of family violence:

- the appropriateness of compulsory income management to victims of family violence;
- applying voluntary income management to victims of family violence; and
- practical issues that victims of family violence face in accessing necessary funds.

The chapter recommends the introduction of a flexible and voluntary form of income management—an ‘opt-in and opt-out’ model—to better protect the safety of people experiencing family violence.

Following discussion of compulsory and voluntary income management, the ALRC examines practical issues arising in relation to accessing income managed funds. The ALRC considers that ensuring victims of family violence are able to access and control their income management account—whether through a BasicsCard, voucher or other form of payment or credit—is consistent with the underlying principles of accessibility and self-agency articulated in Chapter 2 of the Report. In particular, the limited definition of ‘priority needs’ is contrary to these principles and poses particular difficulties for victims of family violence. The ALRC therefore recommends that the Australian Government should amend the definition of ‘priority needs’ in s 123TH of

4 FaHCSIA, *Better Futures, Local Solutions: place-based income management* (2011) <www.fahcsia.gov.au/sa/families/progserv/welfarereform/pages/place_based_income_mgt.aspx> at 25 November 2011.

the *Social Security (Administration) Act* to include travel or other crisis needs for people experiencing family violence.

Part D—Child Support and Family Assistance

Issues management

Chapter 13 discusses the major point of intersection between the child support and family assistance legislative schemes: the ‘reasonable maintenance action’ requirement. To receive more than the minimum rate of Family Tax Benefit (FTB) Part A, eligible parents must be in receipt of child support. Family assistance policy recognises that this requirement may affect victims of family violence, and the *Family Assistance Guide* provides for exemptions.

Family violence exemptions are a key protective strategy for victims of family violence in both child support and family assistance contexts. Exemptions enable victims to opt out of obtaining child support payments—where this would place them at risk—without a consequent reduction to their FTB Part A payments. Due to this significant protective role, the ALRC recommends that exemptions should be set out in family assistance legislation.

Another focus of Chapter 13 is the accessibility of exemptions for victims who require them. This chapter recommends that further information about exemptions should be contained in the *Family Assistance Guide*. It is envisaged that the reforms contained in this chapter will operate in conjunction with those in Chapter 4—regarding identifying family violence-related safety concerns (for example, by screening), providing information, and training—to improve accessibility.

Family Assistance

The current framework for family assistance comprises a range of payments and is primarily governed by two statutes: *A New Tax System (Family Assistance) Act 1999* (Cth) and *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth). Chapter 14 discusses the family assistance framework and the ways that it addresses family violence, focusing on the two primary family assistance payments—Family Tax Benefit (FTB) and Child Care Benefit (CCB).

The safety of family violence victims who are family assistance applicants or recipients should be improved by the reforms in Chapter 4 that are targeted at legal frameworks—primarily family assistance, social security and child support. Chapter 14 recommends further reforms specifically targeted at family assistance law and policy, particularly in relation to CCB—to improve access to increased CCB in cases of family violence (including child abuse), by lowering the eligibility threshold where children are at risk of abuse.

Part E—Employment Law

A national and phased approach

Family violence is not simply a private or individual issue, but rather a systemic one arising from wider social, economic and cultural factors. Accordingly, effective measures to address family violence need to operate in both the private and public

spheres. This is particularly so in the context of employment, as the line between private and public—or family life and work—is increasingly unclear. As one stakeholder in this Inquiry commented during a consultation, ‘workplaces are becoming our new communities and therefore they must be a place for change’.⁵

Chapter 15 examines the intersections between family violence and Commonwealth employment law and, together with Chapters 16–18, recommends reforms to employment-related legislative, regulatory and administrative frameworks to improve the safety of people experiencing family violence. The ALRC suggests a phased implementation of the reforms outlined in Chapters 15–18 as follows:

- Phase One—coordinated whole-of-government national education and awareness campaign; research and data collection; and implementation of government-focused recommendations.
- Phase Two—continued negotiation of family violence clauses in enterprise agreements and development of associated guidance material.
- Phase Three—consideration of family violence in the course of modern award reviews.
- Phase Four—consideration of family violence in the course of the Post-Implementation Review of the *Fair Work Act 2009* (Cth).
- Phase Five—review of the National Employment Standards (NES) with a view to making family violence-related amendments to the right to request flexible working arrangements and the inclusion of an entitlement to additional paid family violence leave.

The Fair Work Act

The *Fair Work Act* is the key piece of Commonwealth legislation regulating employment and workplace relations. It establishes a safety net comprising: the NES, modern awards and national minimum wage orders; and a compliance and enforcement regime. It also establishes an institutional framework for the administration of the system comprising Fair Work Australia (FWA) and the Fair Work Ombudsman (FWO).

Chapter 16 focuses on potential reform of the Act, its institutions, and agreements and instruments made under the Act. The ALRC suggests ways in which these institutions and their processes may function to protect the safety of those experiencing family violence. In addition, Chapter 16 examines:

- family violence clauses in enterprise agreements—the ALRC concludes the Australian Government should support the inclusion of family violence clauses and recommends that the FWO should develop a guide to negotiating such clauses;

5 CEO Challenge, *Consultation*, Brisbane, 11 October 2011.

- individual flexibility arrangements in enterprise agreements—the ALRC considers the appropriateness of individual flexibility arrangements (IFAs) in circumstances where an employee is experiencing family violence and recommends that the FWO should include information on negotiating an IFA in such circumstances in existing guidance material;
- modern awards—the ALRC considers ways in which modern awards might incorporate family violence-related terms and suggests this should be considered in the course of the modern award reviews to be conducted by FWA in 2012 and 2014; and
- the general protections provisions under the *Fair Work Act*—the ALRC recommends that prior to the Australian Government considering inclusion of a family violence-related ground under the general protections provisions, the Australian Human Rights Commission (AHRC) should examine the possible inclusion of a family violence-related protected attribute under Commonwealth anti-discrimination law.

The NES came into effect from 1 January 2010 and enshrine ten minimum statutory entitlements for all national system employees. Chapter 17 considers possible amendments to the NES. Minimum statutory entitlements, such as those provided for under the NES, are important to ensuring fairness and consistency in access to the entitlements and, ideally, to consistent decision making and employer responses. As a result, as part of Phase Five of the ALRC's suggested strategy for phased implementation of reforms contained in Part E of this Report, the ALRC recommends that the Australian Government should consider amending the NES. In particular, the ALRC recommends that there should be consideration of: whether family violence should be included as a circumstance in which an employee should have a right to request flexible working arrangements; and whether additional paid family violence-related leave should be included as a minimum statutory entitlement under the NES.

Occupational Health and Safety

Occupational health and safety (OHS) laws are being harmonised across Australia, with a Model Act, Model Regulations and Model Codes of Practice forming the basis of the harmonised OHS regime from 1 January 2012. Chapter 18 examines ways in which the Commonwealth OHS system protects employees experiencing family violence and, where it does not do so, how that might be addressed. In particular, the chapter examines: legislative duties of care; the nature and role of regulatory guidance; the importance of further consideration of family violence as a possible work health and safety issue, including research and data collection; as well as increased awareness, education and training around family violence and its impact as a possible work health and safety issue. The central premise underlying Chapter 18 is that, where family violence is a possible OHS issue, employees should be given the highest level of protection reasonably practicable, and employers should introduce measures to address family violence and create and sustain safe work environments.

Chapter 18 contains two main approaches to the issue of family violence as a possible work health and safety issue. First, under the Commonwealth OHS system, legislative and regulatory duties appear to be sufficiently broad to capture some circumstances in which family violence may affect an employee in the workplace. In these instances, in terms of employer obligations, the risk posed by family violence is analogous to the risk posed by other forms of workplace violence. As a result, lack of knowledge, rather than legislative inadequacies, represent the greatest challenge in such instances and so improving awareness and understanding of family violence as a possible OHS issue is the focus of reforms.

The ALRC makes a range of recommendations focused on: increasing awareness of family violence and its impact as a possible work health and safety issue; the incorporation of systems and policies into normal business practice to develop the capacity of employers and employees to effectively manage family violence as an OHS risk; and data collection mechanisms to establish an evidence base upon which to plan future policy directions in this area.

Secondly, in instances in which it is more difficult to establish that family violence would engage an employer's duty of care or be covered by existing OHS law, for example where it is more analogous to psychosocial hazards, the ALRC recommends that additional research be undertaken in this area. In particular, the ALRC recommends that Safe Work Australia should identify family violence as a research priority, examine the effect of the harmonised OHS regime on duties and obligations owed in relation to family violence as a possible OHS risk and consider ways to extent and improve data coverage, collection and analysis in this area.

Part F—Superannuation

Superannuation, as a form of long-term saving for retirement, serves an important role and, for many Australians, is one of the most significant forms of wealth.⁶ As Australia's population ages, successive governments have introduced measures to maintain and enhance superannuation savings, largely through compulsory superannuation membership and contribution and preferential tax treatment.

In Chapter 19 the ALRC examines ways in which the Australian superannuation system does, or could, respond to protect those people experiencing family violence. In doing so, the ALRC makes a number of recommendations, but also acknowledges the specific role that superannuation plays as a long-term form of savings and recognises the policy tension between the need to preserve superannuation benefits until retirement and the need, in limited circumstances, to allow early access to superannuation funds.

The first part of Chapter 19 deals with circumstances in which a victim of family violence may have been coerced into taking action in respect of their superannuation and considers spousal contributions and self-managed superannuation funds (SMSFs). The ALRC concludes that the treatment of superannuation should be considered in the

6 Australian Government, *'Stronger Super': Government Response to the Super System Review* (2010), 3.

context of a wider inquiry into how family violence should be dealt with in respect of property proceedings under the *Family Law Act 1975* (Cth). The ALRC also makes a number of suggestions with respect to compliance action taken in relation to SMSFs and recommends changes to guidance material with respect to establishing, managing and winding up a SMSF.

The second part of the chapter examines circumstances in which a victim of family violence may wish to seek early access to superannuation benefits, for example, for the purposes of leaving a violent relationship. In considering early release on the basis of severe financial hardship, the ALRC recommends amendments to the eligibility requirements for making an application and to guidance material for decision makers in granting early release. The ALRC also considers early release of superannuation on compassionate grounds and makes recommendations in relation to guidance material and training for decision makers.

Part G—Migration

The policy challenge in the area of migration is to ensure accessibility to the family violence provisions for genuine victims of family violence while preserving the integrity of the visa system, given that attaining permanent residency in Australia is highly sought after.

Permanent visa pathways

Partner visas form part of Australia's family migration stream, allowing non-citizens to enter and remain in Australia on the basis of their spouse or de facto relationship (both opposite and same-sex) with an Australian citizen or permanent resident. All applicants for a partner visa must be sponsored by an Australian citizen or permanent resident. The *Migration Regulations 1994* (Cth) include an exception in the case of family violence, which provides for the grant of permanent residence notwithstanding the breakdown of the spouse or de facto relationship on which their migration status depends. In Chapter 20 the ALRC makes recommendations to improve the accessibility of the family violence exception for victims—in particular, to expand the exception to cover secondary applicants for onshore permanent visas.

A non-citizen who wishes to enter Australia for the purpose of marrying an Australian sponsor can apply for a Prospective Marriage visa (Subclass 300), that allows for entry into Australia for a nine-month period, within which the marriage must take place. After the marriage, an application can be made for permanent residence on the basis of the married relationship. The ALRC recommends that holders of a Prospective Marriage (Subclass 300) visa who have experienced family violence but who have not married their Australian sponsor should also have access to the family violence exception.

The ALRC also recommends targeted education and training for visa decision makers, competent persons and independent experts, as well as better information dissemination for prospective visa applicants and visa holders in relation to legal rights, and family violence support services, prior to and upon arrival in Australia.

Evidence

Chapter 21 focuses upon the evidence required to support a claim under the family violence exception, in light of the clear policy tension between the principles of accessibility and system integrity. If evidentiary requirements are too strict and rigid, it may prevent access to the family violence exception for genuine victims. On the other hand, if evidentiary requirements are not sufficiently robust, there is scope for fraudulent claims or other abuse of the family violence exception for migration outcomes. This was an area identified by stakeholders as being in need of substantial reform.

The ALRC recommends a new model for dealing with non-judicially determined claims of family violence. The key recommendation is for the *Migration Regulations* to be amended to provide that any evidence—in addition or as an alternative to statutory declaration from ‘competent persons’—can validly support a non-judicially determined claim of family violence. In addition, the ALRC recommends that the prescriptive requirements governing statutory declaration forms from competent persons in reg 1.26 should be repealed, allowing applicants to bring a wide range of evidence in support of their family violence claim. Where the visa decision maker is not satisfied that an applicant has suffered family violence, referral can be made to an independent expert within the Department of Human Services (Centrelink).

Such a system will increase accessibility and flexibility to victims of family violence while maintaining the need for robust scrutiny of evidence. In particular, integrity measures are reinforced through building on moves towards specialisation within DIAC and retaining the mechanism for referral to an independent expert.

The area of judicially-determined claims of family violence has proven less problematic in practice. Here, the ALRC recommends the repeal of the requirement contained in reg 1.23 of the *Migration Regulations* that the violence, or part of the violence, must have occurred while the relationship was in existence.

Partners of temporary visa holders

A number of temporary or provisional visas provide a pathway to permanent residency—that is, to be eligible for a permanent visa, a person must have previously held a temporary or provisional visa. For secondary visa holders of temporary visas, the ALRC recommends—in Chapter 20—that a new temporary visa be created to allow victims of family violence to remain in Australia for a period of time to access services and make arrangements to return to their country of origin or to apply for another visa.

Refugee law

Australia is a signatory to the United Nations *Convention Relating to the Status of Refugees* (the Refugees Convention), the key international instrument that regulates the obligations of states to protect refugees fleeing from persecution. Chapter 22 considers the position of asylum seekers who seek protection in Australia as refugees on the basis of having experienced family violence. While family violence claims can fall under the

definition of a refugee as contained in the Refugees Convention, this remains a complex area of the law marked by inconsistent decision making.

The ALRC recommends that the Minister for Immigration and Citizenship should issue a direction under s 499 of the *Migration Act 1958* (Cth) in relation to family violence in refugee assessment determinations. Such a direction should refer to guidance material on family violence contained in DIAC's *Gender Guidelines*.⁷ The ALRC further recommends that the *Gender Guidelines* should be the subject of ongoing, comprehensive and periodic review.

The ALRC recommends that DIAC amend its instruction, *Ministerial Powers—Minister's Guidelines—s 48A cases and requests for intervention under s 48B*, in the *Procedures Advice Manual 3* (PAM) to refer to secondary visa applicants who are the victims of family violence.

These recommendations are intended to improve consistency in decision making, and to ensure that procedures allow for, and support victims in, making family violence claims under the Refugees Convention.

Net effect of the recommendations

The net effect of the recommendations will be that:

- consistency in understanding and application of the law in the areas under review will be fostered by consistency of definitions, underpinned by education, training and awareness, including in service delivery areas;
- those experiencing family violence will have greater self-agency by being provided information about access to services and pathways to particular benefits or supports in the areas under review;
- there will be more appropriate identification of, and responses to, the disclosure of family violence in a range of contexts;
- decision makers will be better trained and have access to material that reflects the nature, features and dynamics of family violence leading to a greater consistency and fairness in decision making; and
- ultimately, the safety—physical, economic and financial—of people experiencing family violence will be improved.

As noted at the outset, the referral of this Inquiry to the ALRC is part of the Australian Government's goal 'to reduce all violence in our communities'. To meet the challenges of such a goal requires enormous co-operation, trust, respect, patience, commitment—and leadership. In this Inquiry, the ALRC has undertaken consultations nationwide and received over 160 submissions from a wide range of stakeholders.

⁷ Department of Immigration and Citizenship, *Procedures Advice Manual 3 Gender Guidelines: Assessing Gender-Related Claims* (2010).

The expectations of the work of the ALRC through now two major family violence inquiries—and that of the Australian, state and territory governments in response—are also considerable.

