

LGBTIQ **LEGAL NEEDS ANALYSIS**

Reflections on legal need and future planning
from our two-year pilot program



Executive summary

The aim of this report is to produce an analysis of legal need in the Victorian LGBTIQ¹ population to support policy makers to better understand and meet the needs of those communities in the future. This report is informed by the experiences of the LGBTIQ Legal Service, a pilot project and health justice partnership of St Kilda Legal Service and Thorne Harbour Health, and the experiences of our clients. It is also informed by the knowledge and experience of other services and organisations we worked with over the course of the two-year pilot project and it refers to key literature relevant to LGBTIQ legal need.

LGBTIQ people have complex and unique legal needs, which are compounded by barriers to accessing justice to address their legal needs.² LGBTIQ communities disproportionately experience discrimination, harassment, violence and social exclusion as a result of the gender binary, homophobia, transphobia, biphobia, intersex discrimination, cissexism and heterosexism.³ This contributes to risk factors that increase disadvantage, including experiencing mental illness and homelessness.⁴

LGBTIQ communities face barriers to accessing legal services to address legal need, including a deep mistrust of the justice system, lack of community specific or appropriate services and lack of information about available services. Many people in LGBTIQ communities have overlapping and intersecting identities that increase their level of legal need.⁵ Many LGBTIQ people are also members of other communities, including Aboriginal and Torres Strait Islander communities, multicultural and multifaith communities, people in prison, regional/remote, neurologically diverse, people with lived experience of disability and/or mental illness, sex workers, senior or young, rainbow families and people living with HIV—all of which cumulatively impact experiences of discrimination, systemic inequity and legal problems.⁶

¹We have chosen to use the umbrella title of LGBTIQ, however we acknowledge and respect everyone's right to freely identify and affirm their sexual or romantic orientation and gender identity, including terms such as lesbian, gay, transgender, non-binary, gender diverse, genderqueer, queer, aromantic/ace, asexual, bisexual, pansexual, Sistergirl and Brotherboy. We support the rights of people born with intersex variations to be free from discrimination and mistreatment on the basis of their sex characteristics, and their right to self-determination. We acknowledge the diverse characteristics and needs of each community should not be conflated and the importance of defining and leading their own priorities.

²Law Council of Australia Justice Project, LGBTIQ+ People Final Report (August 2018) and Victoria State Government, Access to Justice Review Report and Recommendations (August 2016).

³See William Leonard, Anthony Lyons and Emily Bariola, A closer look at Private Lives 2: Addressing the mental health and well-being of lesbian, gay, bisexual and transgender (LGBT) Australians, Monograph Series No. 103, The Australian Research Centre in Sex, Health & Society, La Trobe University Melbourne (2015), p 5-6 at https://www.beyondblue.org.au/docs/default-source/research-project-files/bw0292-a-closer-look-at-private-lives-2.pdf?sfvrsn=183672ea_2

⁴ *ibid.*

⁵ *ibid.*

⁶ Victoria State Government, Access to Justice Review Report and Recommendations (August 2016), p 57 and Kaye Bradshaw and Ian Seal, National LGBTIQ+ Community Impact Project: Down the slippery slope to full equality for all, Collective Impact and Three for All Foundation (2018), p 17.

LGBTIQ communities experience legal issues that specifically relate to their identities or status, including discrimination on the basis of sexual orientation, relationship status, family status, gender identity, HIV status or lawful sexual activity. Other community-specific legal needs include administrative change of name and sex markers and identification, health and privacy complaints and expungement of historic convictions. LGBTIQ communities also experience general legal issues, including employment law, family violence, family law, criminal law, immigration law, tenancy and neighbourhood disputes, in unique and complex ways.

It is difficult to accurately measure the legal need and unmet legal need of LGBTIQ communities or scope every service that assists LGBTIQ people. The complex legal needs of LGBTIQ communities are best met by a responsive, informed and specialist integrated service that understands how identities and status influence, interact and compound experiences with the legal system. The legal sector should prioritise meaningful co-design and partnerships, listening, understanding and flexibility, to better address legal need in LGBTIQ communities. An effective response requires collaboration between legal services, non-legal services, peer-led community groups, education and law and policy reform to advance LGBTIQ rights within a fairer system.

The Law Council of Australia Justice Project Final Report made a number of recommendations, including that all 'state and territory governments should support, fund and expand specialist LGBTI+ legal services' that 'recognise the importance of supporting services to engage in both advocacy and [community legal education and information] efforts' and 'invest in public awareness campaigns as an important means of overcoming discrimination and marginalisation of this group within the broader community'.⁷

⁷ Law Council of Australia Justice Project, LGBTI+ People Final Report, Recommendations and Group Priorities (August 2018), p 20.

Contents

Recommendations for future planning	4	Consumer law	34
Introduction	5	Centrelink	34
Key indicators of legal need in LGBTIQ communities	7	Health complaints	34
Discrimination, harassment, violence and social exclusion	8	Police reports	35
Experiencing mental illness	11	Infringements	36
Alcohol and other drug use	12	Family law	37
People living with HIV	13	Immigration law	40
People experiencing homelessness	14	Administrative law/change of name and identity documents	42
Other communities and identities	15	COVID-19	43
Aboriginal and Torres Strait Islander communities	15	Specialist versus generalist legal service	43
Multicultural and multifaith backgrounds	18	Recommendations for future planning	44
Trans and gender-diverse people in prisons	19	References	45
LGBTIQ Elders	20		
Regional and remote	21		
Sex Workers	21		
The experience of LGBTIQ Legal Service clients and surveyed community members	23		
Legal issues	25		
Discrimination	26		
Residential tenancy	28		
Criminal law	29		
Family violence	30		
Employment law	32		



Recommendations for future planning

It is recommended that a response to LGBTIQ legal need in Victoria must involve:

1. The establishment of a permanent and expanded specialist LGBTIQ Legal Service that is resourced to:
 - a. respond to a range of legal needs (including immigration and family law)
 - b. effectively engage with a wide range of stakeholders and communities across the state
 - c. be guided by a permanent and paid steering committee that includes multi-disciplined members of diverse community groups, with varied lived experience, including LGBTIQ Aboriginal and Torres Strait Islander people, multicultural and multifaith LGBTIQ communities and LGBTIQ people living with a disability
 - d. support the development of partnerships with peer-led community groups and leaders to co-design and inform strategic planning, participate in decision-making and target specific areas of legal need, including LGBTIQ people living with a disability, LGBTIQ Aboriginal and Torres Strait Islander communities and multicultural and multifaith LGBTIQ communities
 - e. work in partnership with peer-led committee groups to target specific areas of legal need
 - f. provide specialised debriefing or other support for staff who may be affected by the psychological burden of working in a community they are also part of, lateral violence or the traumatic nature of the work
 - g. engage strategically and effectively in law reform efforts to address legal inequality and inconsistencies, working in partnership with peer-led groups and advocacy groups to advance shared law and policy reform goals and projects
2. Funding and other support for legal service providers, advocacy organisations, health and support services and community groups to continue and expand existing specialist or targeted LGBTIQ services in response to local legal need
3. Delivery of legal education and information, awareness-raising and capacity-building training to legal service providers, court staff, prison staff, Corrections Victoria, Victoria Police, as well as LGBTIQ communities, including people in prison, in partnership with peer-led community groups, community leaders and/or advocacy organisations
4. Further research towards a more thorough and detailed analysis of the legal needs of Victorian LGBTIQ communities, produced in partnership with a university and/or Victorian Government, as well as peer-led community groups and/or advocacy organisations.

Introduction

One of the LGBTIQ Legal Service's initial project aims was to produce an analysis of legal need in the Victorian LGBTIQ population, so as to better understand areas of LGBTIQ legal need and unmet need, which could inform Victorian policy makers about the specific needs of LGBTIQ communities into the future.

While undertaking this project it became clear that we can only analyse the legal need of the community we had direct access to, through the delivery of legal services and from what we learned from community members and organisations we had the benefit of working alongside or more closely with throughout the course of the project. We acknowledge the limitations on the breadth and scope of information we were able to gather regarding legal needs of the entire Victorian LGBTIQ community. To conduct more detailed research and provide a thorough report on the legal needs of Victorian LGBTIQ communities would require a dedicated research role, in partnership with a university and/or Victorian Government, advocacy organisations and a wider range of community groups who are supported and resourced from the beginning to engage and contribute.

This report is informed by the experiences of the LGBTIQ Legal Service, clients, key literature and stakeholders. The LGBTIQ Legal Service was initially conceived as a two-year health justice partnership between St Kilda Legal Service (SKLS) and Thorne Harbour Health (THH), funded by the Victoria Law

Foundation and matched by a private philanthropic donor with strong links to the St Kilda area. The report is intended to provide the Victoria Law Foundation, legal profession, governments and LGBTIQ communities with an overview of LGBTIQ legal need and demonstrate the importance of ongoing funding for a specialist integrated LGBTIQ Legal Service. This report can be utilised by stakeholders and legal assistance providers to plan and design services and inform funding allocation and priorities. We acknowledge the difficulties faced by many people who fall in the gap between free community or legal aid services and unaffordable private lawyer fees, particularly in family law. It is critical that every part of the courts and justice system are safe for unrepresented LGBTIQ people.

There have been significant advances in the legal rights of Victorian LGBTIQ communities, including adoption and birth certificate reform, marriage law reform and expungement of gender non-conforming historic convictions. Despite positive progress, these adversarial campaigns also mobilised hostile dissent and have had a lasting traumatic impact on LGBTIQ communities.⁸ For example, the 2017

⁸ Kaye Bradshaw and Ian Seal, National LGBTIQ+ Community Impact Project: Down the slippery slope to full equality for all, Collective Impact and Three for All Foundation (2018), p 19.

marriage law reform campaign promoted the gender binary, to the exclusion and erasure of trans and gender-diverse people.⁹ During the 2017 marriage law reform postal survey it was widely reported in the media that far-right political groups had erected posters around Melbourne falsely stating that homosexuality was a 'curse of death' and that 92% of children of gay parents suffer abuse.¹⁰ The birth certificate reform debate incentivised 'gender critical feminists' to form the Victorian Women's Guild, a group that has been criticised for providing a platform for transphobic views under the guise of academic debate and freedom of speech.¹¹ With the proposed Religious Discrimination bills looming on the horizon, there are grave fears that if passed, these legislative changes will disproportionately impact trans, gender-diverse, Aboriginal and Torres Strait Islander and multicultural and multifaith LGBTIQ communities.¹² It is vital that LGBTIQ advocacy groups maintain vigilance, representation and momentum in continuing to agitate for law and policy reform. Legal service providers should coordinate advocacy with peer-led community groups and advocacy organisations to advance common goals.¹³

Sexual orientation, gender identity and intersex status are not accurately recorded in the Australian Census data,¹⁴ but LGBTIQ people are estimated

to account for around 11% of the population.¹⁵ The overarching term LGBTIQ is used inclusively, while acknowledging the diverse characteristics and needs of each community must not be conflated and the importance of defining and leading their own priorities. For example, some people with intersex variations are heterosexual,¹⁶ and consider themselves allies of the 'LGBTQ' movement.¹⁷ The intersex community has unique aims to uphold their right to bodily integrity, physical autonomy and self-determination,¹⁸ particularly regarding coercive, unnecessary and deferable medical interventions that alter sex characteristics of infants without their consent.¹⁹ Trans and gender-diverse communities are subject to more discrimination and violence because of transphobia that stems from structural gender binary expectations.²⁰ These communities are therefore more vulnerable to poorer mental health outcomes,²¹ poverty and unemployment, than lesbian, gay and bisexual communities.²² Bisexual people are consistently found to have poorer mental health outcomes than gay, lesbian and heterosexual communities.²³ Each separate and distinct group has different experiences of marginalisation and disadvantage, particularly in combination with other identities, and each person requires a safe, flexible and responsive legal service tailored to their unique identity and status.²⁴

⁹ *ibid.*

¹⁰ <https://www.theguardian.com/australia-news/2017/aug/21/homophobic-anti-marriage-equality-material-surfaces-in-postal-survey-campaign>

¹¹ <https://www.starobserver.com.au/news/anti-trans-event-picketed-at-university-of-melbourne/185333>

¹² St Kilda Legal Service, Submission on the Exposure Draft of the Religious Discrimination Bill 2019, 2 October 2019 <http://www.skls.org.au/wp-content/uploads/2019/10/20191002-religious-discrimination-FINAL-SUBMISSION-St-Kilda-Legal-Service.pdf>.

¹³ For example the Victorian Gay & Lesbian Rights Lobby, Rainbow Votes project and Election Booklet of LGBTIQ+ Priorities <http://vglrl.org.au/rainbow-votes-2018-2/>

¹⁴ Sex was recorded as 'male', 'female' or 'other' at <https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2071.0~2016~Main%20Features~Sex%20and%20Gender%20Diversity%20in%20the%202016%20Census-100>

¹⁵ Law Council of Australia Justice Project, LGBTIQ+ People Final Report (August 2018) p 7, citing Department of Health, Australian Government, National Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Ageing and Aged Care Strategy (2012), p 4 at [https://web.archive.org.au/awa/20140803074821mp_/http://www.health.gov.au/internet/main/publishing.nsf/Content/79F04C7F62716C9ACA257BF0001ACCC2/\\$File/lgbti-strategy.pdf](https://web.archive.org.au/awa/20140803074821mp_/http://www.health.gov.au/internet/main/publishing.nsf/Content/79F04C7F62716C9ACA257BF0001ACCC2/$File/lgbti-strategy.pdf)

¹⁶ Justice Project Final Report, LGBTIQ+ People, above n 2, 6.

¹⁷ Darlington Statement: Joint statement by Australia and Aotearoa/New Zealand intersex community organisations and independent advocates, March 2017, [49] at <https://ihra.org.au/wp-content/uploads/key/Darlington-Statement.pdf>

¹⁸ *ibid.*, p 5.

¹⁹ *ibid.*, p 7.

²⁰ A closer look at Private Lives 2 (2015), above n 3, p 22.

²¹ *ibid.*, p 49.

²² *ibid.*, p 22.

²³ Julia Taylor, Jennifer Power, Elizabeth Smith, Mark Rathbone, Bisexual mental health: 'Findings from the 'Who I Am' study', Australian Journal of General Practice, Vol. 48, No. 3, March 2019, 138-144, at <https://www1.racgp.org.au/getattachment/4043cd3c-281d-41a1-937b-8df0dab838fc/Bisexual-mental-health.aspx>

²⁴ Justice Project Final Report, LGBTIQ+ People, above n 2, 6.

Key indicators of legal need in LGBTIQ communities

LGBTIQ communities disproportionately experience discrimination, harassment, violence and social exclusion as a result of the gender binary, homophobia, transphobia, biphobia, intersex discrimination, cissexism and heterosexism.²⁵ Research indicates that this contributes to risk factors that increase disadvantage, including experiencing mental illness, alcohol and drug misuse and homelessness.²⁶

According to the Access to Justice Review, a person's experience of legal need is influenced by belonging to an Aboriginal and/or Torres Strait Islander community, experiencing disability, low education levels, unemployment, single parenthood, living in disadvantaged housing, living on social security, non-English speaking primary language, and living in a remote area.²⁷ These findings are amplified in the trans and gender-diverse communities,²⁸ and legal need is experienced cumulatively.²⁹

This report provides a brief overview of key issues facing various community groups and has been generously informed by a number of organisations and individuals. A properly funded service would include more partnerships, co-design and consultation to properly represent more communities. Peer-led community groups and leaders must be centered in strategic planning to best meet their individual community needs.

²⁵ See A closer look at Private Lives 2 (2015), above n 3, p 5-6.

²⁶ *ibid.*

²⁷ Victoria State Government, Access to Justice Review Report and Recommendations (August 2016), p 54.

²⁸ LGBTI People, Discrimination and Disadvantage in Australia', cited in Law Council of Australia Justice Project, Final Report LGBTI+ People (August 2018), p 8.

²⁹ *ibid.*

Discrimination, harassment, violence and social exclusion

A wealth of information demonstrates that LGBTIQ people experience significant level of discrimination in their daily lives. A 2015 report by the Australian Human Rights Commission found that more than 70% of LGBTIQ people have been attacked, bullied or harassed.³⁰ A Closer Look at Private Lives 2 survey highlighted that heterosexist discrimination and abuse of LGTIBQ people includes physical and sexual violence, but it is also important to highlight the harm caused by less visible everyday heterosexism³¹ and cissexism. In the A Closer Look at Private Lives 2 survey, the highest rate of heterosexist harassment or abuse was reported by trans males (55.3%) and trans females (49.2%).³² The 2018 Kirby Institute Trans and Gender Diverse Sexual Health Survey reported that 53.2% of the 1613 trans and gender-diverse participants had experienced sexual violence or coercion, compared to 13.3% of the broader public in Australia.³³ The study found 66% of assigned female at birth (AFAB) non-binary people, 54.2% of trans men, 44.5% of assigned male at birth (AMAB) non-binary people and 36.1% of trans women, had experienced sexual violence and coercion.³⁴ A recent study by Australia's National Research Organisation for Women's Safety (ANROWS) found that trans women are more likely to experience multiple instances of sexual harassment and assaults than

cisgender women, and trans women of colour are at a much higher risk because their experience is exacerbated by racism.³⁵

Transgender Day of Remembrance is observed on 20 November every year to honour the memory of murdered trans people, who are disproportionately Black and women of colour.³⁶ Tragically, at 6 July 2020, an estimated 21 transgender and gender non-conforming people have been killed by violence in the United States in 2020 and the majority were Black transgender women.³⁷ This is compared with 27 people estimated to be killed by violence in 2019.³⁸ In Australia, trans women are at considerable risk of violence, for example the recent devastating murders of Kimberley McRae³⁹ and Mhelody Polan Bruno.⁴⁰ Trans women face specific discrimination and harm as a result of their experiences of transmisogyny, which occurs at the intersection of transphobia and misogyny.⁴¹ A recent international spike in trans violence is deeply concerning for community and advocates. Historically, it is reported that 88 suspected murders of LGBTIQ people occurred in NSW between 1970 – 2000, fuelled by homophobia, transphobia, HIV status discrimination, and approximately 30 cases remain unsolved.⁴²

³⁰ Australian Human Rights Commission, *Resilient Individuals: Sexual Orientation, Gender Identity and Intersex Rights* (2015), p 16, at https://www.humanrights.gov.au/sites/default/files/document/publication/SOGII%20Rights%20Report%202015_Web_Version.pdf

³¹ A closer look at Private Lives 2 (2015), above n 3, p 27.

³² *ibid*, p 28.

³³ D Callander, J Wiggins, S Rosenberg, VJ Cornelisse, E Duck-Chong, M Holt, M Pony, E Vlahakis, J MacGibbon, T Cook, *The 2018 Australian Trans and Gender Diverse Sexual Health Survey: Report of Findings*. Sydney, NSW: The Kirby Institute, UNSW Sydney, p 10 at https://kirby.unsw.edu.au/sites/default/files/kirby/report/ATGD-Sexual-Health-Survey-Report_2018.pdf

³⁴ *ibid*.

³⁵ Ussher, J. M., Hawkey, A., Perz, J., Liamputtong, P., Marjadi, B., Schmied, V., Dune, T., Sekar, J.A., Ryan, S., Charter, R., Thepsourinthone, J., Noack-Lundberg, K., & Brook, E. (2020). Crossing the line: Lived experience of sexual violence among trans women of colour from culturally and linguistically diverse (CALD) backgrounds in Australia (2020). Sydney: ANROWS at https://d2rn9gno7zhxqg.cloudfront.net/wp-content/uploads/2019/01/18094215/RP.17.03-Experiences-of-trans_women-and-DV_RR.1.pdf

See summary here: <https://www.anrows.org.au/publication/crossing-the-line-lived-experience-of-sexual-violence-among-trans-women-of-colour-from-culturally-and-linguistically-diverse-cald-backgrounds-in-australia-key-findings-and-future-directions/>

³⁶ Every year on Transgender Day of Remembrance, Trans Respect Versus Transphobia Worldwide publishes a list of all known international trans murders. The 2019 update revealed a total of 331 reported killings of trans and gender-diverse people between 1 October 2018 and 30 September 2019 <https://www.glaad.org/tdor>

³⁷ <https://www.hrc.org/resources/violence-against-the-trans-and-gender-non-conforming-community-in-2020>

³⁸ *ibid*.

³⁹ <https://www.smh.com.au/national/nsw/eastern-suburbs-woman-found-dead-in-her-apartment-20200117-p53saq.html>

⁴⁰ <https://www.theguardian.com/australia-news/2019/sep/27/man-charged-after-death-of-filipina-trans-woman-in-nsw>

⁴¹ Julia Serano, *Whipping girl: A transsexual woman on sexism and the scapegoating of femininity*, Emeryville, CA (Seal Press, 2007).

⁴² ACON, *In Pursuit of Truth Justice* (2018) at <https://www.acon.org.au/wp-content/uploads/2018/05/In-Pursuit-of-Truth-and-Justice-Report-FINAL-220518.pdf>

Discrimination impacts the intersex community in unique ways, from forced and coercive medical practices on infants,⁴³ to harmful misconceptions about gender and sexuality identity,⁴⁴—incorrect association with the transgender community,⁴⁵ and ongoing stigma and discrimination in healthcare, education, employment and access to services.⁴⁶ The Darlington Statement calls for an end to ‘genetic discrimination’, including in insurance and employment.⁴⁷ Experiences of discrimination can be exacerbated by the obviousness of any intersex variation.⁴⁸

LGBTIQ communities also report high rates of discrimination in the workplace, including being subjected to inappropriate and intrusive comments and questions from managers and colleagues, being forced to use a toilet they do not feel comfortable using, or simply not being hired at all.⁴⁹ Organisational transition policy and leave entitlements, in collaboration with compulsory staff training, would contribute to safer and more diverse work places.⁵⁰ All organisations, and particularly those who receive government funding, must ensure their policies, forms and practice is safe, inclusive, and responsive for all gender and sexuality identities.⁵¹ It is important that there is also a safe and responsive workplace culture, beyond just policies and procedure.

Aboriginal and Torres Strait Islander people often face many forms of marginalisation and discrimination that intersect and can multiply inequity.⁵² Participants of The Aboriginal Gender

Study reported racism and discrimination accessing support services and police harassment.⁵³ In the same study, all participants reported transphobia and homophobia from within the Aboriginal community and outside. This included verbal abuse, physical violence, isolation, and silencing of their trauma.⁵⁴

The LGBTIQ Legal Service recently wrote a joint submission with Liberty Victoria to the anti-vilification inquiry to seek to extend legal protections against vilification to Victorian LGBTIQ communities.⁵⁵ The examples provided as part of that submission reinforce the findings above:⁵⁶

The impact of transphobia: Hoa’s story

‘Hoa’, a trans woman, used a public women’s bathroom in her workplace to see that there were stickers on the back of toilet doors that described trans women as men in dresses. She was emotionally distressed by the experience, was unable to work for several weeks after the incident and incurred significant counselling costs.

⁴³ Morgan Carpenter, ‘The Normalization of Intersex Bodies and Othering of Intersex Identities in Australia’ *Journal of Bioethical Inquiry*, May 2018, 1–9.

⁴⁴ <https://ihra.org.au/discrimination/>

⁴⁵ <https://www.ogmagazine.org.au/20/4-20/what-do-intersex-people-need-from-doctors/>

⁴⁶ <https://ihra.org.au/discrimination/>

⁴⁷ Darlington Statement, above n 17, [11].

⁴⁸ *ibid.*

⁴⁹ Australian Human Rights Commission, *Stories of discrimination, vilification and harassment*, Consultation Report (2011) at <https://humanrights.gov.au/our-work/section-5-stories-discrimination-vilification-and-harassment-addressing-sexual-orientation#Heading249><https://humanrights.gov.au/our-work/section-5-stories-discrimination-vilification-and-harassment-addressing-sexual-orientation#Heading249>

⁵⁰ See Model Transition Leave Clause in LGBTIQ Legal Service, *LGBTIQ+ Inclusive Practice Toolkit for Community Legal Centres* at <https://lgbtiqlegal.org.au/wp-content/uploads/2020/06/LGBTIQ-Inclusive-Practice-Toolkit-June-2020.pdf><https://lgbtiqlegal.org.au/wp-content/uploads/2020/06/LGBTIQ-Inclusive-Practice-Toolkit-June-2020.pdf>

⁵¹ *ibid.*, see whole resource.

⁵² Aboriginal Health Council of South Australia Ltd, *The Aboriginal Gender Study: Final Report*, AHCSA, Adelaide (2019), p 8 at https://aboriginalgenderstudy.ahcsa.org.au/app/uploads/2019/06/AHC4831_Gender_Study_online.pdf

⁵³ *ibid.*, p 56.

⁵⁴ *ibid.*, p 57.

⁵⁵ <https://lgbtiqlegal.org.au/wp-content/uploads/2020/01/Anti-vilification-submission-LV-and-LGBTIQ-LS-submitted-17.1.20.pdf>

⁵⁶ All client story names in this report have been changed.

Lack of police protection: Vincent's story

'Vincent' (a cisgender man) and his partner (also a cisgender man) were both dressed in feminine clothing on public transport. A person approached them and publicly abused them, saying that they were disgusting faggots who should die. Vincent reported it to the police, who said that it was a civil matter and that they could not help.

Discrimination and harassment reduce the ability of Victorian LGBTIQ communities to fully participate in and contribute to society. This affects their social outcomes, as experiences of discrimination and harassment in settings such as healthcare facilities, schools, and housing providers contribute to poor health and socio-economic outcomes, and overall social exclusion.⁵⁷ It also means that the Victorian community loses the opportunity for societal contribution from a diverse range of people. Past experiences and fear of discrimination is a barrier to accessing legal assistance, other services and accessing public spaces.

The impact of neighbourhood homophobia: Abdella's story

'Abdella' is an elderly gay man who lives in a rented flat in a large Victorian country town. He found extremely homophobic and threatening graffiti on the notice board in the common area of his apartment building with a crude sexual drawing, which was not removed by building management for 3 months, despite his requests. Abdella believed the graffiti was drawn by his neighbour, who had also left abusive messages under his door. The experience left Abdella feeling fearful of his neighbours and increasingly socially isolated.

⁵⁷ See for example Australian Human Rights Commission, *Resilient Individuals: Sexual Orientation, Gender Identity and Intersex Rights* (2015), pp 17 - 19, at https://www.humanrights.gov.au/sites/default/files/document/publication/SOGII%20Rights%20Report%202015_Web_Version.pdf

Experiencing mental illness

Over 80% of LGBTIQ Legal Service clients self-reported experiencing mental illness at intake when they accessed the service. Heterosexist harassment and abuse impacts the physical and mental health and wellbeing of LGBTIQ communities.⁵⁸ The impact is more significant for trans and gender diverse people, and/or people who belong to other minority communities and experience cumulative forms of systemic inequities and discrimination.⁵⁹ People with mental illness and disability are over-represented in the justice system. The 2012 Legal Australia-Wide survey found that people with a mental illness or disability were more than twice as likely to experience legal problems. They are also more likely to experience multiple legal problems and have difficulty resolving them.⁶⁰

The Australian Bureau of Statistics (2008) reported that 45% of Australians aged 16-85 years experience mental illness in their lifetime, with 20% experiencing mental illness in the last 12 months.⁶¹ A Closer Look at Private Lives 2 (2015) found that 31% of respondents had experienced depression in the last 3 years and 22.4% experienced anxiety.⁶² The highest reported instance of experiencing mental illness was trans women (57.4%) and trans men (55.3%), in the last 3 years.⁶³

Trans Pathways is the largest study ever conducted on the mental health of trans and gender-diverse young people (aged 14 - 25) in Australia. Of the 859

participants, 79.7% reported to have self-harmed, compared to 10.9% of adolescents (aged 12-17 years) in the Australian general population.⁶⁴ Almost half (48.1%) reported attempting suicide, which is 20 times higher than adolescents (aged 12-17 years) in the Australian general population and 14.6 times higher than adults (aged 16-85 years) in the Australian general population.⁶⁵ Trans Pathways found that 72.2% of trans young people have been diagnosed with anxiety, which is 10 times higher than adolescents (aged 12-17 years) in the Australian general population.⁶⁶ Trans Pathways recommended increased and improved services for trans adults and young people. Trans Pathways recommends improving access to gender affirming healthcare so that it is affordable and covered by Medicare and the Pharmaceuticals Benefits Scheme, which would encourage private health insurance companies to include trans health needs in their policies.⁶⁷ Improving access to gender affirming healthcare and counselling would improve trans mental health outcomes,⁶⁸ which is particularly important given the high rates of self-harm and suicide in the trans community.⁶⁹

There is a lack of specific data addressing suicide rates in LGBTIQ Aboriginal and/or Torres Strait Islander communities. The Aboriginal and Torres Strait Islander Suicide Prevention Evaluation Project Consultation and Report highlights the

⁵⁸ A closer look at Private Lives 2 (2015), above n 3, p 27.

⁵⁹ *ibid.*

⁶⁰ Christine Coumarelos, Deborah Macourt, Julie People, Hugh M McDonald, Zhigang Wei, Reiny Iriana & Stephanie Ramsey (2012), The Legal Australia-Wide Survey (LAW Survey), p 69 at [http://www.lawfoundation.net.au/ljf/site/templates/LAW_AUS/\\$file/LAW_Survey_Australia.pdf](http://www.lawfoundation.net.au/ljf/site/templates/LAW_AUS/$file/LAW_Survey_Australia.pdf)

⁶¹ A closer look at Private Lives 2 (2015), above n 3, p 15.

⁶² *ibid.*

⁶³ *ibid.*

Note: this study had 3835 participants and recorded gender as male (44.4%), female (48.3%), trans male (1.2%), trans female (3.2%) and other (3%) and problematically did not record non-binary or multiple identities.

⁶⁴ Strauss, P., Cook, A., Winter, S., Watson, V., Wright Toussaint, D., Lin, A. (2017). Trans Pathways: the mental health experiences and care pathways of trans young people, Summary of results, Telethon Kids Institute, Perth, Australia

See summary at <https://www.telethonkids.org.au/globalassets/media/documents/brain--behaviour/trans-pathways-summary.pdf>

⁶⁵ *ibid.*

⁶⁶ *ibid.*

⁶⁷ *ibid.*

⁶⁸ *ibid.*, p 96.

⁶⁹ National LGBTI Health Alliance, Snapshot of Mental Health and Suicide Prevention Statistics for LGBTI People, February 2020, p 10 at <https://lgbtihealth.org.au/wp-content/uploads/2020/02/2020-Snapshot-of-Mental-Health-and-Suicide-Prevention-Statistics-for-LGBTI-People-LGBTI-Health-Alliance.pdf>

Note: the LGBTI Health Alliance produced a summary of evidence across a range of studies.

intersection of Indigenous and LGBTIQ status, both known risk factors for suicide, and this group is particularly at risk.⁷⁰ Dameyon Bonson, a Mangarayi and Torres Strait Islander man, started Black Rainbow in 2013 in response to high rates of Brotherboy and Sistergirl suicides,⁷¹ and he has been critical of government and LGBTIQ

organisations failing to contribute to data and develop strategies to improve this issue.⁷² Bonson is currently developing the first LGBTIQ+ Suicide Prevention Awareness Training for Youth Program in Australia as part of the Federal Government's National Suicide Prevention Trail, coordinated by the Northern Territory Primary Health Network.⁷³

Alcohol and other drug use

LGBTIQ people are more likely to use drugs than the general Australian population, which increases their likelihood to experience drug-related legal issues. Compared to the general population, LGBTIQ people are:

- » 5.8 times as likely to use ecstasy (11.0% compared to 1.9%)
- » 5.8 times as likely to use meth/amphetamines (6.9% compared to 1.2%)
- » 3.7 times as likely to use cocaine (8.9% compared to 2.4%)
- » 3.2 times as likely to use cannabis (31.4% compared to 9.7%)
- » 2.8 times as likely to misuse pharmaceuticals (12.0% compared to 4.3%).⁷⁵

In many LGBTIQ communities, particularly bisexual and gay cisgender men, drugs are

commonly used to enhance partying and sexual pleasure. The most common drugs used are meth/amphetamines, gamma hydroxybutyrate (GHB), 3,4-methylenedioxymethamphetamine (MDMA/ecstasy) and amyl nitrate (poppers).⁷⁶ A 2018 Sydney Women and Sexual Health Study of 1272 participants reported that about 45% of lesbian, bisexual and queer women (including cisgender and transgender) reported recent use of illicit drugs (within the last 6 months), compared to 13% of Australian women and 12% of participants reported recent crystal methamphetamine use.⁷⁷ The First Australian National Trans Mental Health Study found that trans and gender diverse people are twice as likely to have used an illicit drug as the general population in the last 12 months, including twice as likely to have used ecstasy and more than three times as likely to have used some form of amphetamine.⁷⁸

⁷⁰ Black Rainbow at <http://www.blackrainbow.org.au/2014/08/24/a-nice-entry/> citing the Aboriginal and Torres Strait Islander Suicide Prevention Evaluation Project Report (ATSISPEP) (2016) at https://www.atsispep.sis.uwa.edu.au/__data/assets/pdf_file/0006/2947299/ATSISPEP-Report-Final-Web.pdf

⁷¹ <http://www.blackrainbow.org.au/2017/04/09/hello-world/> and Dameyon Bonson talking to Daniel Browning on AWAYE! On 6 May 2017 at <https://www.abc.net.au/radionational/programs/awaye/8497788>

⁷² See for example: <https://www.theguardian.com/commentisfree/2017/dec/05/our-lgbqti-mob-are-killing-themselves-isnt-it-time-we-were-shown-a-little-love>

<https://www.starobserver.com.au/news/national-news/black-rainbow-founder-calls-erasure-indigenous-lgbti-health-dameyon-bonson/170391>

⁷³ <https://nit.com.au/indigenist-set-to-develop-suicide-prevention-program-for-indigenous-lgbtqi-youth/>

⁷⁴ Including pain-killers (analgesics and opioids including and excluding over the counter), tranquilisers/sleeping pills, steroids, methadone/buprenorphine, Australian Institute of Health and Welfare, National Drug Strategy Household survey 2016, Detailed Findings, p 16 at <https://www.aihw.gov.au/getmedia/15db8c15-7062-4cde-bfa4-3c2079f30af3/aihw-phe-214.pdf.aspx?inline=true>

⁷⁵ Australian Institute of Health and Welfare, National Drug Strategy Household survey 2016, People identifying as lesbian, gay, bisexual, transgender, intersex of queer (2017) at https://www.aihw.gov.au/getmedia/4d76c2c5-213e-45d0-bd05-b31ba4c8bbb3/AODTSFactsheet_PIALGBTIQ.pdf.aspx

⁷⁶ <https://touchbase.org.au/sexual-health/sex-and-drugs>

⁷⁷ ACON Submission to NSW Special Commission of Inquiry into the Drug 'Ice' (May 2019), p 4 at <https://www.iceinquiry.nsw.gov.au/assets/scii/response-submissions/077-ACON.pdf>, citing Mooney-Somers, J., Deacon, R.M., Klinner, C., Richters, J., Parkhill, N. 2017. Women in contact with the gay and lesbian community in Sydney: Report of the Sydney Women and Sexual Health (SWASH) Survey 2006, 2008, 2010, 2012, 2014, 2016. ACON & Sydney Health Ethics, University of Sydney, Sydney, NSW at <https://www.acon.org.au/wp-content/uploads/2017/07/SWASH-2016-Report-v4.pdf>.

⁷⁸ *ibid*, citing Hyde, Z., Doherty, M., Tilley, P.J.M., McCaul, K.A., Rooney, R., Jancey, J. 2014. The First Australian National Trans Mental Health Study: Summary of Results. School of Public Health, Curtin University, Perth, Australia.

Alcohol and other drug use cont.

The increase of information and support groups online seeks to break down the stigma and shame associated with drug use, which can improve outcomes.⁷⁹ Many resources and programs exist to provide targeted LGBTIQ support and harm reduction, including the Peer Advocacy Responsive

Training initiative (PARTi), a collaboration between Star Health and THH.⁸⁰ THH also runs the Drink Limits for cisgender lesbian, bisexual and queer women, gender-diverse and non-binary people⁸¹ and AOD services, including counselling and the Re-Wired program.⁸²

People living with HIV

There have been significant recent advances in HIV treatment in recent years, thanks to decades of activism and research. The ability of Treatment as Prevention (TasP) to achieve undetectable viral load and PrEP to achieve zero risk of HIV transmission means people on effective treatment cannot pass on HIV.⁸³ This has considerably changed community understanding of HIV, treatment and stigma.⁸⁴ In May 2016, Truvada (PrEP) was approved by the Australian Therapeutic Goods Administration for people at risk of HIV infection and people living with HIV to avoid transmission.

Health experts believe that Australia is on path to eradicating HIV. In the five years before mid-2019, the number of new diagnoses dropped by almost a quarter in Australia, with higher declines among gay and bisexual cisgender men. In 2018, just 835 HIV diagnoses were recorded nationally. At their peak, in 1987, there were 2,412.⁸⁵ According to the Australian Society of HIV, the annual number of HIV diagnoses

in Australia declined by 23% during the period from 2014–2018, and this decrease was attributable to a 30% decline in notifications among men who have sex with men (MSM).⁸⁶

However, MSM continue to be over-represented in the context of the HIV epidemic in Australia and there is no available data on the uptake of PrEP in temporary resident communities. A particular community of concern is MSM people on temporary visas without Medicare, who are not taking PrEP and have an increased risk of contracting HIV and failing their visa health requirements.⁸⁷ The LGBTIQ Legal Service experienced high demand from MSM clients with immigration law issues relating to HIV status. A properly funded LGBTIQ Legal Service must include an immigration lawyer to respond to this increasing area of need with specialist services. These clients were referred to either volunteer specialist services with limited capacity or private lawyers for clients with limited financial means.

⁷⁹ <https://touchbase.org.au/sexual-health/sex-and-drugs>

⁸⁰ <https://www.facebook.com/PARTiprject/>

⁸¹ <https://thorneharbour.org/lgbti-health/womens-health/drink-limits/>

⁸² <https://thorneharbour.org/lgbti-health/alcohol-and-other-drug-services-aod/> and <https://thorneharbour.org/lgbti-health/mental-health/therapeutic-groups/>

⁸³ Kirby Institute, Effective HIV treatment halts HIV transmission among homosexual couples (2017) at <https://kirby.unsw.edu.au/news/effective-hiv-treatment-halts-hiv-transmission-among-homosexual-couples-study-finds#:~:text=%E2%80%9CUndetectable%20virus%20level%20effectively%20prevents,chief%20investigator%20on%20the%20study.&text=The%20results%20of%20opposites%20Attract,of%20HIV%20transmission%20is%20negligible>.

Key point summary https://kirby.unsw.edu.au/sites/default/files/kirby/news/Final-Analysis-Factsheet_20170711.pdf

⁸⁴ *ibid.*

⁸⁵ <https://www.nytimes.com/2019/07/10/world/australia/hiv-aids-prep-prevention-drug.html> citing Kirby Institute, 'HIV diagnoses in Australia drop to lowest number in 18 years' (3 July 2019) at <https://kirby.unsw.edu.au/news/hiv-diagnoses-australia-drop-lowest-number-18-years>

⁸⁶ The Australasian Society of HIV, Viral Hepatitis and Sexual Health Medicine (ASHM) PrEP Guidelines Updates, Prevent HIV by Prescribing PrEP, Sydney 2019 at <http://ashm.org.au/about/PrEP-guidelines-sep-2019.pdf>

⁸⁷ *ibid.*

The LGBTIQ Legal Service refers clients to the HIV/AIDS Legal Centre (HALC), which is a volunteer run community legal centre based in the Positive Living Centre.⁸⁸ Following a period of recent rejuvenation, HALC now has a full roster of volunteer lawyers and is in position to promote its services beyond the clientele of the Positive Living Centre. HALC runs a weekly clinic on Thursday nights and then arrange appointments with a lawyer for legal advice. HALC introduced two immigration lawyers in late 2019,

and this is now a leading area of legal demand. HALC refers to the Asylum Seeker Resource Centre and private lawyers for matters outside their expertise or capacity. HALC has a longstanding family lawyer volunteer who experiences a high demand for family law services. HALC refers clients to the HIV/AIDS Legal Centre in NSW and the LGBTIQ Legal Service for other matters if the client needs urgent advice before they are able to get an appointment with HALC.

People experiencing homelessness

15% of LGBTIQ Legal Service clients self-reported that they were experiencing homelessness or at risk of homelessness when they accessed the service. The Trans Pathways survey of 859 14-25 year old trans and gender diverse Australians found that 22% had experienced accommodation problems or homelessness; those who had self-harmed were over 4 times more likely to have experienced homelessness, and those who had ever attempted suicide were over 5 times more likely to have experienced accommodation issues, including homelessness.⁸⁹ In 2015, the first national study on Australians with intersex variations was launched, and the findings of 272 people were reported in 2016. Of the participants (aged 16 to 87, with the average age 36), around 6% reported that they were in more precarious

contexts or homeless, couch surfing or living on the street – this was similar to the high incidence of homeless gender questioning youth in *Writing Themselves in 3* (Hillier et al., 2010).⁹⁰ McNair et al reports in the *GALFA LGBTIQ Homelessness: Risks, Resilience, and Access to Services in Victoria* report that lesbian, gay and bisexual people are twice as likely as heterosexual people to have experienced homelessness.⁹¹ The issue of homelessness and housing insecurity has been intensified due to the impact of COVID-19, with many share houses disbanding and people on insecure income unable to pay their rent.⁹² Tenancy law is an area of increasing and unmet legal need in LGBTIQ communities, and housing insecurity increases the risk of infringement legal issues.⁹³

⁸⁸ <https://thorneharbour.org/lgbti-health/hiv-positive-services/hiv-aids-legal-centre-halc/>

⁸⁹ Trans Pathways, above n 63, cited in Ruth McNair, Cal Andrews, Sharon Parkinson, Deborah Dempsey, *LGBTQ Homelessness: Risks, Resilience, and Access to Services in Victoria: Final Report*, University of Melbourne & Swinburne University of Technology (2017), p 7 at https://researchbank.swinburne.edu.au/file/e391af0b-f504-403f-bff5-06ecc73e90f5/1/2017-mcnair-lgbtq_homelessness_final.pdf

⁹⁰ Jones, T., Hart, B., Carpenter, M., Ansara, G., Leonard, W. & Lucke, J. (2016). 'Intersex: Stories and Statistics from Australia', p 78 at <http://dx.doi.org/10.11647/OBP.0089>, citing Australian Research Centre in Sex, Health and Society, La Trobe University 2010, Lynne Hillier, Tiffany Jones, Marisa Monagle, Naomi Overton, Luke Gahan, Jennifer Blackman, Anne Mitchell, *Writing Themselves In 3 (WTi3)* (2010) at <https://www.acon.org.au/wp-content/uploads/2015/04/Writing-Themselves-In-3-2010.pdf>

⁹¹ McNair, R, Andrews, C, Parkinson, S, Dempsey, D, *LGBTQ Homelessness: Risks, Resilience, and Access to Services in Victoria* (September 2017), Gay and Lesbian Foundation of Australia (now Pride Foundation Australia), p 19 at http://www.lgbtihomeless.org.au/wp-content/uploads/2018/04/LGBTQ-Homelessness-project-Final-report-September-2017-Final_.pdf

⁹² <https://thorneharbour.org/covid19/homelessness-during-covid-19/>

⁹³ Justice Project Final Report, *LGBTI+ People*, above n 2, 82.

Other communities and identities

Many LGBTIQ people are also members of other communities, including Aboriginal and Torres Strait Islander, multicultural and multifaith backgrounds, geographically remote, neurologically diverse, people with lived experience of disability, senior or young, HIV positive, which cumulatively affect their experience of legal problems.⁹⁴ The intersectionality

of these experiences present increased vulnerabilities and complexities. This report will not provide a conclusive analysis on every community, but rather a starting point to encourage partnership and more meaningful efforts to move the LGBTIQ advocacy space from a white centric, cisgender and able-bodied paradigm.

Aboriginal and Torres Strait Islander communities

Aboriginal and Torres Strait Islander Sisters, Brotherboys and LGBTIQ people experience a number of intersecting points of marginalisation. These include structural, institutional, and interpersonal forms of discrimination based on race, gender, colonialism and LGBTIQ status.⁹⁵ 2% of LGBTIQ Legal Service clients were Aboriginal and/or Torres Strait Islander. Aboriginal and Torres Strait Islander communities face persistent racism and discrimination accessing services, in the justice system, in police encounters, employment and family activities.⁹⁶ Racism often occurs in the form of gender stereotypes, homophobia and harassment.⁹⁷ Advancing the rights of Aboriginal and Torres Strait Islander LGBTIQ people must be considered within a broader agenda to address the structures that perpetuate systemic racism.⁹⁸

There are no specialist legal services for LGBTIQ Aboriginal and Torres Strait Islander Australians. Published reports and government policy frequently includes information that purports to apply to all Aboriginal and Torres Strait Islander people, without acknowledging individual communities, geographical or cultural differences. There is nothing inherently vulnerable about Aboriginal or Torres Strait Islander communities and their increased legal need is directly linked to the ongoing impact of colonisation, systemic racism and exclusion. A properly funded LGBTIQ Legal Service must meaningfully partner with Aboriginal and Torres Strait Islander leaders and community groups to strategically co-design a representative legal service.

⁹⁴ Victoria State Government, Access to Justice Review Report and Recommendations (August 2016), p 57 and Kaye Bradshaw and Ian Seal, National LGBTIQ+ Community Impact Project: Down the slippery slope to full equality for all, Collective Impact and Three for All Foundation (2018), p 17.

⁹⁵ AIDS Action Council of the ACT, Alison Barclay, Dr Melissa Russell and Sarah Williamson of Collective Action, Blueprint for the Coordinated Response to the Health Needs of LGBTIQ People, their Families and Communities in the ACT (May 2019), p 12 at <https://www.aidsaction.org.au/images/resource-library/Blueprint%20on%20health%20needs%20of%20LGBTIQ%20Canberrans.pdf>

⁹⁶ The Aboriginal Gender Study, the Aboriginal Health Council of South Australia, above n 52, p 67.

⁹⁷ *ibid.*

⁹⁸ *ibid.*

A recent article analysing two transmasculine Indigenous sex workers, provides a sophisticated discussion around the importance of understanding intersecting experiences of race, class, gender and sexualities, from an Indigenous point of view.⁹⁹ There is little research around Sistergirls and Brotherboys and this deficiency should be prioritised from an Indigenous point of view and properly resourced in all LGBTIQ organisations. Sullivan and Day highlight that trans experiences are frequently seen through a white paradigm, at the expense of and with limited interaction with people of colour.¹⁰⁰

Research suggests that Aboriginal and Torres Strait Islander Sistergirls, Brotherboys and LGBTIQ people have different areas of concern than other LGBTIQ people. For instance, a broad ranging analysis of studies between 1994 and 2012 indicates that for trans Aboriginal and Torres Strait Islander people, problems relating to HIV/AIDS, identity documents, alcohol and substance use, physical and sexual abuse, and community engagement were most pressing.¹⁰¹

Connectivity, community and country are essential determinants for social inclusion and belonging in Aboriginal and Torres Strait Islander Sistergirls, Brotherboys and LGBTIQ communities.¹⁰² An ACT article found that strategies that work within and across communities are needed to ensure that effective support is developed by communities, for community. Feedback from these communities suggests that merely having LGBTIQ inclusive services is not sufficient to engage, these services also need to be culturally representative.¹⁰³ Identity-affirming and appropriate care and information

needs to be developed to address the pressing needs of Aboriginal and Torres Strait Islander Sistergirls, Brotherboys and LGBTIQ people.¹⁰⁴ Aboriginal and Torres Strait Islander Sistergirls, Brotherboys and LGBTIQ people need the ability to choose to access mainstream services due to experiences of homophobia and transphobia from within and outside their own community.¹⁰⁵

In response to a lack of Aboriginal and Torres Strait Islander representation and advocacy, Mangarayi and Torres Strait Islander man, Dameyon Bonson, started Black Rainbow in 2013. Black Rainbow reports that intentional self-harm is the leading cause of death in the Aboriginal community between the ages of 15 and 34.¹⁰⁶ Bonson highlights the importance of Aboriginal and Torres Strait Islander people leading the response and being a part of the solution.¹⁰⁷

There is a lack of specific data addressing suicide rates in Aboriginal and Torres Strait Islander Sistergirl, Brotherboy and LGBTIQ communities. The Aboriginal and Torres Strait Islander Suicide Prevention Evaluation Project Consultation and Report highlights the intersection of Indigenous and LGBTIQ status, both known risk factors for suicide, and this group is particularly vulnerable. While further research is needed, a national report on youth mental health services and Indigenous lesbian, gay, bisexual and transgender clients reported mental health issues associated with increased HIV infections, suicide and alcohol and drug use key issues. The report identified the following necessary objectives:

⁹⁹ Sullivan, C.T. & Day, M, Indigenous transmasculinities and sex work. *Emotion, Space and Society* (2019) at <https://www.sciencedirect.com/science/article/abs/pii/S1755458619300271>

¹⁰⁰ *ibid.*

¹⁰¹ Blueprint for the Coordinated Response to the Health Needs of LGBTIQ People, their Families and Communities in the ACT (May 2019), p 12 at <https://www.aidsaction.org.au/images/resource-library/Blueprint%20on%20health%20needs%20of%20LGBTIQ%20Canberra.pdf>

¹⁰² *ibid.*

¹⁰³ *ibid.*

¹⁰⁴ *ibid.*

¹⁰⁵ Aboriginal Health Council of South Australia Ltd, *The Aboriginal Gender Study: Final Report*, AHCSA, Adelaide (2019), p 6 at https://aboriginalgenderstudy.ahcsa.org.au/app/uploads/2019/06/AHC4831_Gender_Study_online.pdf

¹⁰⁶ <http://www.blackrainbow.org.au/2017/04/09/hello-world/> and Dameyon Bonson talking to Daniel Browning on AWAYE! On 6 May 2017 at <https://www.abc.net.au/radionational/programs/awaye/8497788>

¹⁰⁷ *ibid.*

Aboriginal and Torres Strait Islander communities cont.

- » To ensure that the voices of the Aboriginal and Torres Strait Islander sexuality and gender diverse community are valued and present
- » To ensure ownership of the issues, the analysis and conclusions with respect to sexuality and gender diverse people
- » To ensure that new insights involving sexuality and gender diverse populations are recognised
- » To connect the voices of the sexuality and gender diverse community directly to evolving policy wherever possible and appropriate
- » To guide further development of ideas found in current reports and literature to supplement the sexuality and gender diverse populations' concerns that emerged in the Roundtable.¹⁰⁸

The LGBTIQ Legal Service welcomes the Victorian State Government commitment to introducing a spent conviction scheme and note that the absence of spent convictions disproportionately impacts Aboriginal and Torres Strait Islander Sistergirl, Brotherboy and LGBTIQ communities.¹⁰⁹

Spent convictions: Reginald's Story

LGBTIQ Legal Service client, 'Reginald', is an Aboriginal man living in urban Melbourne. He needed to get some paperwork from his local Police station in order to complete a Victims of Crime application form. Reginald was subjected to poor treatment by Police at his local station, who made him wait in reception for a number of hours before printing out the documents he needed. Reginald believed he was treated poorly by the police due to his prior criminal record for a crime he had committed over twenty years ago. Reginald sought advice about getting his conviction removed from his record to prevent future discrimination. The LGBTIQ Legal Service provided advice that there was currently no spent convictions scheme in Victoria, and so we could not assist him.

¹⁰⁸ Black Rainbow at <http://www.blackrainbow.org.au/2014/08/24/a-nice-entry/> citing the Aboriginal and Torres Strait Islander Suicide Prevention Evaluation Project Report (ATSISPEP) (2016) at https://www.atsispep.sis.uwa.edu.au/___data/assets/pdf_file/0006/2947299/ATSISPEP-Report-Final-Web.pdf

¹⁰⁹ Woor-Dungin, Criminal Record Discrimination Project, Submission to Aboriginal Justice Forum 49, Swan Hill, December 2017, p 12 at https://www.parliament.vic.gov.au/images/S5_-_Woor-Dungin_Redacted.pdf

Multicultural and multifaith backgrounds

A properly funded LGBTIQ Legal Service needs meaningful partnerships with properly resourced peer-led community groups and leaders to co-design and inform strategic planning, decision-making and target specific areas of legal need. LGBTIQ people who exist at the intersection of race, class, sexuality and/or gender diversity experience life and legal issues in unique ways. Belonging to non-dominant groups increases the likelihood a person will experience inequity because systems are designed for people who are generally white, able-bodied, HIV-negative and cisgender. People that exist outside the dominant groups experience racism, homophobia, transphobia, ableism, whorephobia and classism in different and overlapping ways. Organisations must center the experience and leadership of multicultural and multifaith communities and create a platform for them to define their own individual experience and needs on their own terms, including people seeking protection, people who have experienced detention and people with diverse and multidisciplinary expertise, backgrounds and lived experiences.

13% of LGBTIQ Legal Service clients self-reported at intake identifying as ‘culturally or linguistically diverse’, and more diversely accurate data should be obtained. Building trusting relationships and partnerships with various communities and leaders will better equip a properly funded LGBTIQ Legal Service to increase its reach and change laws and systems that perpetuate inequity. The Roberta Perkins Law Project, a partnership between St Kilda Legal Service and Transgender Victoria, can be used as an example to secure additional funding for additional partnerships with properly resourced community groups.

The Australian GLBTIQ Multicultural Council (**AGMC**) is a national body that advocates for the rights of multicultural and multifaith LGBTIQ individuals and

communities. Dr Maria Pallota-Chiarolli from Deakin University, with AGMC, provided a report to the Victorian Commissioner for Gender and Sexuality, Ro Allen, on same-sex attracted and gender diverse young people from multicultural and multifaith backgrounds in 2016.¹¹⁰ The report, among other recommendations, highlighted the ongoing need to address racism, Islamophobia, anti-religious discrimination and a lack of understanding of the significance of family and culture in young people’s lives.¹¹¹ Further, the report highlighted the need for the Pride Centre to be truly demonstrative of inclusivity by being a place of cultural and faith diversity via organisations represented there, prayer rooms, safe meeting spaces, visual culture.¹¹²

Dr Pallota-Chiarolli and the Muslim Collective reported that many Muslim LGBTIQ people experience discrimination from their faith community, resulting in shame.¹¹³ The report found that LGBTIQ services were positive experiences for Muslim LGBTIQ people when they felt welcome, understood, had agency and were not coerced or stereotyped.¹¹⁴ Muslim LGBTIQ communities experience discrimination that is influenced by negative media and political depictions, which leads to fear voicing their needs and accessing services.¹¹⁵ The report includes various recommendations, including decolonising, capacity-building and community empowering co-design research methodologies and research partnerships. The report recommends that organisations apply an intersectional lens to policy development and implementation so that ethno-religious, sexuality and gender categories are addressed as diverse and interwoven with other identity factors. Advancing the rights of multicultural and multifaith LGBTIQ people exists within a broader agenda to address the structures that perpetuate systemic racism, inequities and over-policing.

¹¹⁰ Maria Pallotta-Chiarolli, Supporting Same-Sex Attracted and Gender Diverse Young People of Multicultural and Multifaith Backgrounds: Executive Summary and Full Research Report. Melbourne: Equality Branch of the Department of Premier and Cabinet (2016) at http://www.agmc.org.au/wp-content/uploads/Supporting_Same_Sex_Research_Report.pdf

¹¹¹ *ibid.*, 31.

¹¹² *ibid.*

¹¹³ Maria Pallotta-Chiarolli, Safe Spaces, Inclusive Services: Support service access and engagement by LGBTIQ+ Muslims, Melbourne: Muslim Collective (2018), p 10 at <https://static1.squarespace.com/static/59add00c9f7456bae980bbab/t/5b31a8a9575d1fcbb1714771/1529981167392/Safe+Space+Inclusive+Services+-+FINAL4.pdf>

¹¹⁴ LGBTIQ services listed were Victorian AIDS Council (now THH), Prahran Market Clinic, Gay Men’s Meetups and Equinox Gender Centre, *ibid.*, pp 40-41.

¹¹⁵ *ibid.*, p 11.

Trans and gender-diverse people in prisons

Trans and gender-diverse people in prison experience particularly difficult circumstances, including being placed in a prison that does not align with their gender, experiencing sexual and physical violence and being unable to obtain appropriate gender-affirming healthcare.¹¹⁶ A Closer Look at Private Lives 2 (2015) found that 57.4% of trans women and 55.3% trans men had experienced mental illness in the last 3 years.¹¹⁷ It is estimated that trans people attempt suicide at 11 times the rate of the broader population.¹¹⁸ Mental illness prevalence is likely to be higher inside prisons and therefore this is a significantly vulnerable LGBTIQ community. It is essential that trans and gender-diverse people inside prisons define their own experience and priorities, elevated and assisted by specialist legal services and support services inside and outside the prison.

Trans and gender-diverse people in prisons must have access to appropriate and timely physical and mental health services, including gender-affirming healthcare. The process of updating their record of sex, name and pronouns should not be overly administratively burdensome and should parallel broader community experience. A trans and gender-diverse peer support group should be established at all prisons where trans and gender-diverse prisoners are held, where people can choose to attend. All trans and gender-diverse prisoners should be able to call LGBTIQ support services and have easy and regular phone access for services. Legal and personal support is critical for trans and gender-diverse prisoners.

All prison staff must undertake training to ensure

they are upholding the dignity and safety of trans and gender-diverse people in prison, including using each person's correct name and pronouns in verbal and written communication. To ensure this training impacts cultural change and safety, there needs to be clear policies and protocols, including clear accountability and an external complaint mechanism. Trans and gender-diverse people in prisons disproportionately experience sexual assault in prisons, from other prisoners and guards.¹¹⁹ One Australian in-depth study of seven transgender and Sistergirl prisoners and ex-prisoners reported daily experiences of sexual harassment and coercion.¹²⁰ Any reports of sexual harassment or violence must be investigated, taken seriously and steps taken to stop the behaviour. Corrections Victoria must nominate a contact person to address urgent issues concerning trans and gender-diverse prisoners.

More work needs to be done to centralise and elevate the views of people inside prisons. A review of the Operational Standards of men's and women's prisons must be undertaken, in consultation with trans and gender-diverse people in prisons with the support of their advocates. Trans and gender-diverse people in prisons should be able to choose the prison that aligns with their gender and continue to have agency, choice, and safety. In discussing improving prison conditions, it is important to be clear that the most important goal is avoiding prison and the justice system. Trans and gender-diverse lives will improve with stable employment, safe and stable housing, access to gender-affirming and mental health care. By elevating trans and

¹¹⁶ <https://www.abc.net.au/news/2020-07-03/why-are-transgender-women-jailed-in-mens-prisons-in-australia/12416562> and <https://www.abc.net.au/news/2020-07-03/life-as-a-transgender-woman-locked-up-in-a-mens-prison/12412736?nw=0>

¹¹⁷ A closer look at Private Lives 2 (2015), above n 3, p 15.

¹¹⁸ National LGBTI Health Alliance, The Statistics at a Glance: The Mental Health of Lesbian, Gay, Bisexual, Transgender and Intersex People in Australia (2020) at <https://lgbtihealth.org.au/statistics/>

¹¹⁹ Dr Jess Rodgers, Dr Nicole Asquith, Dr Angela Dwyer, Cisnormativity, criminalisation, vulnerability: Transgender people in prisons', TILES Briefing Paper (2017)

¹²⁰ Simpson, P.L., Wilson, M., Butler, T., Richters, J., Yap, L., Grant, L., Richards, A., and Donovan, B. You're a woman, a convenience, a cat, a poof, a thing, an it?: Transgender women negotiating sexual coercion in NSW male prisons (2017)

gender-diverse goals and eliminating transphobia and cissexism in our community, we contribute to an environment where trans and gender-diverse people are less likely to go to prison. Support services need to be properly funded and resourced to continue providing support and advocacy for people in prison, and work with specialist lawyers, prison staff and Corrections to centre the needs of trans and gender-diverse people.

LGBTIQ Elders

LGBTIQ Elders have frequently lived through a time where they had to hide their sexuality and/or gender and/or intersex status. Elders have often experienced criminalisation, stigma, rejection, psychological treatment, isolation and/or imprisonment.¹²¹ LGBTIQ Elders' experience of systemic institutionalised discrimination makes it challenging to access services.¹²² Many LGBTIQ Elders are unable to be open about their gender and/or sexuality because of their experiences of discrimination and family exclusion. Their legal needs frequently relate to their age, including Advanced Care Directives, ensuring power of attorney and wills and estates, ensuring the correct people are listed to protect their interests from estranged family members.¹²³

¹²¹ National LGBTI Health Alliance, Working with LGBTI People: Elders, p 3 at https://lgbtihealth.org.au/wp-content/uploads/2016/09/LGBTI_FactSheet_Elders.pdf

¹²² *ibid.*

¹²³ *ibid.*

Regional and remote

The specific issues facing LGBTIQ communities living in regional areas include difficulties accessing services, ensuring confidentiality, social isolation, increased discrimination, and the compounding effects of discrimination. There is often limited or no specialist LGBTIQ health and community services, which particularly impacts trans and gender-diverse people who require specialist gender-affirming medical treatment and expertise. LGBTIQ communities have higher suicide rates in regional areas than metropolitan counterparts.¹²⁴ The experience of COVID-19 restrictions has moved more services online and this may improve access for some regional Victorians.

Lack of LGBTIQ specialist knowledge in regional areas: Sandy's story

'Sandy' is the mother of a gender non-conforming eight-year-old called 'Jessie', in regional Victoria. Sandy and the father of her child separated due to family violence, and Jessie was primarily living with Sandy. Jessie's father believed that Sandy was 'brainwashing' Jessie into wearing female clothing, and lodged proceedings in the Family Court to prevent Sandy from taking Jessie to a child psychologist with expertise in gender non-conforming children and inclusive care. Sandy engaged a local regional law firm to help her in court, but she felt that her lawyer did not understand the needs of a gender non-conforming child and would not be able to put her views to the court appropriately. Sandy contacted the LGBTIQ Legal Service for support, and we connected her with a family law firm with a long history acting sensitively in LGBTIQ family law matters who acted pro bono for her in these proceedings.

Sex Workers

LGBTIQ communities have always been a part of the sex worker community, with some LGBTIQ people working in the sex industry, and some being clients of sex workers. St Kilda in particular has a long history of a high number of sex workers, and particularly street-based sex workers, who have lived and worked in the area.¹²⁵ Many trans and gender diverse people engage in sex work.¹²⁶

Sex workers work in licensed commercial brothels, unlicensed brothels, as sole traders, either within the legal regulations or outside of these, in both

licensed and unlicensed escort agencies and in street-based sex work. There is a Victorian government review underway which will consider how decriminalisation of sex work should occur to improve human rights and public health outcomes.¹²⁷ Because of disincentives to participate in licensing (stigma, outing etc) a two-tiered effect is created where part of the sex industry is compliant and part is non-compliant.

Sex workers have different legal needs depending on what kind of work they do, and there are

¹²⁴ <https://www2.health.vic.gov.au/about/populations/lgbti-health/rainbow-equality/building-inclusive-services/rural-services>

¹²⁵ Rowe, J. (2006). Street walking blues: Sex work, St Kilda and the street. *Street Walking Blues: Sex Work, St Kilda and the Street*, p 183.

¹²⁶ Harcourt, C., van Beek, I., Heslop, J., McMahon, M., & Donovan, B. (2001). The health and welfare needs of female and transgender street sex workers in New South Wales. *Australian and New Zealand journal of public health*, 25(1), 84-89.

¹²⁷ Minister for Consumer Affairs, Gaming and Liquor Regulation, State of Victoria. (2019). 'Review into decriminalisation of Sex work' Press Release, 27 November 2019.

different opinions from within this cohort about how the laws should change. While there has been a significant decrease in prosecutions of street based sex work offences in recent years,¹²⁸ there is a documented history of over-policing and violence in this community,¹²⁹ and people who engage in sex work may require assistance with criminal charges and fines at higher levels than the wider community. Legal issues may or may not relate to their work, but any interaction with a legal service should be respectful and ensure that workers do not experience discrimination or stigma on the grounds of their occupation. Many sex workers face questions about the validity of their work and experience stigma in their everyday life, which is compounded by the current licensing system. Stigma can impact a sex worker's ability to engage with services and disclosing their details when they do, to avoid discrimination. LGBTIQ sex workers may also have a significant prior criminal history related to sex work and 'public order' type offences. These can automatically render future prosecutions and contact with authorities more serious, leading to greater need for legal advocacy, even for the most minor offences.¹³⁰ The impact of generic legal issues that often stem from social security, housing and family violence may also impact on the LGBTIQ sex worker community more severely, due to the criminalised nature of sex work in Victoria and the stigma that sex workers face.

The decriminalisation of sex work will lead to better legal, social and health outcomes, which in turn is likely to reduce legal need in some areas.

However, it may give rise to a new level of legal recourse and greater need for legal assistance in others, such as employment law and debt recovery. Decriminalisation may also lead to increased reporting to police where sex workers are survivors of crimes, though systemic barriers will remain an issue to be addressed in terms of Victoria police gaining the trust of the sex worker and LGBTIQ communities, and the trans and gender diverse community in particular.¹³¹ As in-person sex work is currently subject to COVID-19 restrictions, many sex workers are disproportionately experiencing financial hardship and may experience increasing legal need around fines, tenancy, homelessness and social security. These issues are amplified for people without Centrelink access. The risk of police targeting, discrimination, harassment and legal issues particularly affects multicultural, migrant and people of colour workers due to structural racism. Sex workers must lead policy and law reform efforts that impact their community and define their own experiences and needs, amplified and in partnership with advocacy and legal services.

Consideration of these issues and any support for this sector of the community must be informed by peer-only organisations such as Vixen Collective and Scarlet Alliance and peer community groups, including for example Debby Doesn't Do It For Free (Debbies), a longstanding sex worker activist arts/performance group, and online sex worker group Class Whorefare. Policy and law reform should also be informed by advocacy groups including Sex Work Law Reform Victoria.

¹²⁸ Tomazin, F. (2019). 'Off the streets and on the net: solicitation charges dwindle as sex workers shift online' *The Age*, 30 November 2019 accessed at <https://www.theage.com.au/national/victoria/off-the-streets-and-on-the-net-solicitation-charges-dwindle-as-sex-workers-shift-online-20191130-p53fnw.html#comments>

¹²⁹ Rowe, J. (2006), above n 119.

¹³⁰ Noting that current proposals for the introduction of a spent convictions regime in Victoria envisage both courts and police maintaining access to information about full prior criminal history, including any 'spent' convictions. See Parliament of Victoria, Legislative Council Legal and Social Issues Committee. (2019). 'Inquiry into a legislated spent convictions scheme: A controlled disclosure of criminal record information framework for Victoria' PP No 64, Session 2018-19 ISBN 978 1 925703 79 5 (PDF version), Victorian Government Printer, August 2019.

¹³¹ Armstrong provides an account of the changing relationship between police and cisgender women sex workers in the wake of decriminalisation in New Zealand. See Armstrong, L. (2017). From law enforcement to protection? Interactions between sex workers and police in a decriminalized street-based sex industry. *British Journal of Criminology*, 57(3), 570-588.

The experience of LGBTIQ Legal Service clients and surveyed community members

The LGBTIQ Legal Service is the first and only LGBTIQ health justice partnership in Australia and was founded in mid-2018 as a health justice partnership between SKLS and THH. The two organisations identified that SKLS has a long history of providing community legal services to people experiencing substance use issues in the City of Port Phillip, Stonnington, Bayside areas, and Thorne Harbour Health assists LGBTIQ communities in those areas with AOD services. They identified the benefit of a specialist legal service and the advantage of working together to better address the needs of the community.

With funding from the Victoria Law Foundation and from a private philanthropic donor with a deep connection to the St Kilda area, the LGBTIQ Legal Service and health justice partnership was launched as a project with the following objectives:

1. Delivery of appropriate and high-quality legal advice to LGBTIQ identifying clients of THH (Victorian Aids Council at the time) over 2 years.
2. Produce an unmet legal needs analysis in relation to the Victorian LGBTIQ population.
3. Produce a toolkit setting out good practice principles for providing legal assistance services to LGBTIQ clients. Provide some training on these principles to interested legal assistance services

(including other community legal centres, and Victoria Legal Aid) in order to improve LGBTIQ appropriate legal services.

A particular challenge for the project, in producing a legal needs analysis, was the limitations of what the service could learn from client experiences if its client-base was limited to a specific cohort of clients who access particular services at the one organisation. The LGBTIQ Legal Service was initially set up to provide direct legal assistance to AOD users who identify as LGBTIQ in the St Kilda Legal Service catchment area. The THH AOD referrals were predominantly cisgender gay men, experiencing legal issues in the areas of discrimination, criminal law, infringements, social security, family law and family violence.

As the AOD team was co-located with the family violence and general counselling teams, restricting referrals to the AOD team developed into an unnecessary barrier to building a productive working relationship with THH. In response to high demand and to support a broader understanding of community need, the LGBTIQ Legal Service expanded to accept referrals from the family violence and counselling teams, the Positive Living Centre and GPs at The Centre Clinic and Equinox Gender Diverse Health Centre. The LGBTIQ Legal Service also received direct referrals from the public and maintained a flexible and ambitious approach to service delivery.

In 2019, the service was also able to expand its reach and work with clients from more diverse communities with additional funding which enabled the recruitment of more staff and development of other resources. Funding from the LGBTIQ Organisational Capacity Building Grant from the

Equality branch of the Victorian State Government enabled to service to establish a website and engage staff to support greater community engagement.

SKLS also received additional funding from the City of Melbourne to run a separate project with Transgender Victoria targeting the legal needs of the trans and gender-diverse community in Victoria - the Roberta Perkins Law Project.

While this additional funding and the flexibility of service and partnership staff enabled the service to reach a wider and more diverse client base over the course of the project, it is acknowledged there are limitations to what the project learned about legal need based on client experience. These learnings were also limited by the fact that staff expertise and resourcing within the service meant that clients could not be assisted on an ongoing basis with some issues, such as immigration and family law matters.

It would be beneficial for any projects or services with similar aims in future to partner with a broad range of organisations, to connect with more female identifying and non-binary clients. Diversity in partnership would also provide alternative locations for client appointment. In a small community, clients should have options of a meeting place, that feels neutral and safe. Partnering with properly resourced peer-led community groups and leaders will better address legal need in hard to reach communities. The Roberta Perkins Law Project, in partnership with Transgender Victoria, can be used as an example and expanded upon to address unmet legal need in other communities.

In addition to what it learned from client experience, the LGBTIQ Legal Service sought to

better understand community-wide legal need by conducting a legal needs survey at the Melbourne Midsumma Carnival in 2019 and 2020, posting this same survey online in April 2020. The survey was completed by 353 people and 231 (65.44%) of the participants reported experiencing one or more legal issues in the last 5 years.

Again, it is noted this data is limited by what we can learn from survey participants with the ability to attend Midsumma Carnival or access a computer and the internet, which limits diversity of experiences. We acknowledge the limitations of this method and hope this work will form the foundation of additional research capacity and expertise to undertake further research towards a more thorough and detailed analysis of the legal needs of Victorian LGBTIQ communities, in partnership with a university and/or Victorian Government, as well as peer-led community groups and/or advocacy organisations.

Legal issues

Based on the services delivered over the two year pilot, the top ten legal issues experienced by clients were as follows:

Discrimination

22 casework files, 9 legal tasks and 65 legal advices

19 casework files, 5 legal tasks and 51 legal advices

Residential Tenancy

Criminal Law

12 casework files, 16 legal tasks and 68 legal advices

Family Violence

5 casework files, 21 legal tasks and 34 legal advices

12 casework files, 1 legal tasks and 23 legal advices

Employment Law

3 casework files, 1 legal task and 4 legal advices

Consumer Law

Centrelink

2 casework files, 1 legal task and 5 legal advices

Health Complaints

2 casework files, 1 legal task and 3 legal advices

2 casework files, 2 legal tasks and 6 legal advices

Victims of Crime

Infringements

1 casework file, 13 legal tasks and 14 legal advices

The survey responses provided further confirmation and insight into the prevalence and experience of these legal issues within the broader community.

Discrimination

LGBTIQ People experience high rates of discrimination and harassment, which is reflected in the high demand for discrimination law assistance. 31.17% of the LGBTIQ Legal Service legal needs survey participants reported experiencing a discrimination law issue in the last five years. This was the second highest reported legal issue, after employment law, and the data may reflect the fact these areas of law frequently intersect. Discrimination is the largest area of legal service at the LGBTIQ Legal Service, at 24.44% of our legal casework (22 files) and 13.13% of legal advice (9 legal tasks and 65 legal advice). Discrimination law was the most common enquiry in the Roberta Perkins Law Project, with trans clients reporting discrimination on the basis of gender identity.

The majority of LGBTIQ Legal Service discrimination law enquiries related to gender identity, sexual orientation and disability, including:

- » Trans and gender-diverse clients regarding access to health services and issues in prison.
- » Cisgender gay males experiencing employment discrimination related to sexual orientation and sexual harassment in the workplace.
- » LGBTIQ disability discrimination at bars and private transport services.

Some of these cases were successfully resolved through conciliations at the Victorian Equal Opportunity and Human Rights Commission, the Australian Human Rights Commission and in the human rights list at the Victorian Civil and Administrative Tribunal (**VCAT**). The individual complaints-based system leads to underreporting, particularly with LGBTIQ communities lack of trust in the justice system and without access to specialist legal services.

Workplace discrimination: Eric's story

LGBTIQ Legal Service client, 'Eric', is a trans man who worked as a casual for a large national cleaning company. Eric had issues with depression and anxiety and requested a reasonable adjustment in his hours to accommodate his fluctuating mental health. One of his managers told him that 'we don't need people like you here' and he was taken off the staff roster indefinitely. Eric lodged a claim of disability discrimination at a human rights commission, and received a financial settlement, a statement of service, a donation to an LGBTIQ charity of his choice and a commitment that the national company would undertake disability discrimination training for all employees.

Discrimination by a bar: Wade's story

Another LGBTIQ Legal Service client, 'Wade', is a cisgender gay male who has cerebral palsy. Wade was refused entry to a venue by security guards who initially believed he was intoxicated. When Wade explained that he has cerebral palsy using a communication device, the security guards laughed at him, and told him to go home. We helped Wade lodge a disability discrimination complaint. Through negotiation during VCAT proceedings, we were able to obtain a financial settlement, and a commitment for all staff at the venue to undergo disability discrimination training.

Discrimination cont.

Similar findings have been made by Victoria Legal Aid's (VLA) Equality team, who specialise in discrimination law. VLA conducts a discrimination law survey at the Midsumma Carnival every year. Of the 76 people surveyed in their 2020 Midsumma survey:

- » **More than half** did not know VLA helped with discrimination law
- » **1 in 5** did not know that had protection from gender identity and sexuality
- » **31.58%** had been excluded from an event or service because of their sexual orientation, gender identity or diverse sex characteristics
- » **44.74%** had been treated badly at work or by a potential employer because of their gender identity or sexual orientation
- » **47.37%** had been treated badly at school or university because of their gender identity or sexual orientation
- » Only **23.68%** of people who had experienced discrimination took action.¹³²

Victoria Legal Aid began collecting data on gender identity in 2019 and publish ways they are making their service more safe and inclusive service for LGBTIQ clients.¹³³

This data is illustrative of the above findings regarding the prevalence of discrimination in LGBTIQ communities, and the need for well-resourced and empowered equality bodies

with strong enforcement powers coupled with legislation that provides clear positive duties on employers to eliminate discrimination in workplaces.¹³⁴ The impact of discrimination goes beyond discrimination law, to impacting socio-economic and health outcomes and increasing vulnerability to other legal issues, as well as compounding the impact of general legal issues.

¹³² Data provided by Victoria Legal Aid.

¹³³ <https://www.legalaid.vic.gov.au/about-us/news/breaking-silence-on-discrimination-this-idadobit>

¹³⁴ https://www.churchilltrust.com.au/media/fellows/Cooper_A_2018_Regulatory_framework_to_create_equality_through_discrimination_law.pdf

Residential tenancy

20.78% of the LGBTIQ Legal Service legal needs survey participants reported experiencing a tenancy law issue in the last five years. The LGBTIQ Legal Service lawyers provided tenancy law services including 19 casework files, 5 legal tasks and 51 advices, which were mostly people trying to leave their property or remove a partner due to family violence. Clients referred by the THH AOD team were typically facing eviction Notice to Vacates for rent arrears, noise and nuisance or allegations of illegal use, and often had criminal proceedings on foot at the same time.

One of the LGBTIQ Outreach Lawyers had previously worked in tenancy law, so was quick to spot these legal issues, and seek resolution by helping clients draft VCAT applications and collate evidence, and

where eviction proceedings were on foot, working with the VLA duty lawyer service to ensure they had legal representation at VCAT on the day. As VLA only covers the Melbourne VCAT on a consistent basis, it was more difficult to find complementary legal representation for clients in suburban and regional tribunals, and clients in some cases ultimately went unrepresented in those areas. A fully funded LGBTIQ Legal Service should have the capacity to attend suburban or regional courts on an as needs basis for particularly vulnerable clients. It is noted that the COVID-19 pandemic has resulted in greater capacity for legal representation by telephone, which has benefitted regional clients.

Family violence application to end a tenancy agreement: David's story

'David' and 'Sebastian' are a cisgender gay male couple who lived together in a rental property in inner Melbourne. Their relationship broke down due to Sebastian engaging in significant emotional and psychological abuse during the relationship and financially controlling behaviour. David obtained an interim Intervention Order which stated that Sebastian was not allowed to come within 200 metres of the property. Sebastian returned to the property despite this, and David called the Police. The Police did not arrive, and David left the property due to fears for his safety. Sebastian took up residence back at the shared rental property, and David moved into his parents' house in the country, despite him being legally entitled to live in the house. David sought tenancy advice about seeking to end a lease early due to family violence. The LGBTIQ Legal Service provided David with advice, assistance in preparing his VCAT application, submissions for his case and connected him to a LGBTIQ family violence service to write supporting documents for him to use at the Tribunal.

Criminal law

2.6% of the LGBTIQ Legal Service legal needs survey participants reported experiencing a criminal law issue in the last five years. Criminal law issues frequently interact with other issues, including discrimination, family violence and drug use. In criminal law, the LGBTIQ Legal Service undertook 12 casework files, 16 legal tasks and 68 advices. Most criminal law cases were referred to the LGBTIQ Legal Service by the AOD team at THH, and generally related to minor drug possession, criminal damage and family violence related offending.

The LGBTIQ Legal Service worked well with pro bono barristers to provide in court support to clients facing more serious charges, and this network could

certainly be expanded with greater resourcing of the service with a focus on partnerships. It would be particularly useful to build up networks of pro bono criminal lawyers in the outer suburban areas and regional Victoria, to ensure that vulnerable LGBTIQ clients have adequate legal support from lawyers who have competency in representing LGBTIQ communities. The LGBTIQ Legal Service represented clients in court with minor charges where they had the capacity to do so, however this was limited to cases listed at the Melbourne Magistrates' Court.

Working with THH on criminal law matters had significant benefit, for example:

The benefit of a specialised LGBTIQ Legal Service and supports: Sophia's story

LGBTIQ Legal Service client, 'Sophia', is a same-sex attracted cisgender female from the Philippines. Sophia was charged with serious family violence-related assaults that occurred in the context of a relationship breakdown with her female partner. Sophia was referred to the LGBTIQ Legal Service by Victoria Legal Aid. We connected Sophia with an LGBTIQ counselling service and helped her to write a letter of apology to be tendered in court. As Sophia was an international student, we referred her to an immigration service for legal advice about how the charges could affect her visa status.

A health justice partnership success: Boris' story

'Boris' is a cisgender gay male who lived with his two partners in inner Melbourne. Boris contacted the LGBTIQ Legal Service for advice after he was contacted by Police to interview him regarding allegations of criminal damage and an unlawful assault that allegedly occurred in the context of family violence. We helped Boris to connect with an LGBTIQ men's behaviour change program and an AOD program and provided him with pre-interview advice regarding his Police interview. When Boris was formally charged, we helped him to prepare character references from his former employer and support letters from the services he was now receiving support from. Finally, we briefed his local duty lawyer service to help him in court on the day.

Family violence

9.96% of the LGBTIQ Legal Service legal needs survey participants reported experiencing a family violence law issue in the last five years. The LGBTIQ Legal Service provided family violence legal services on 5 casework files, 21 legal tasks and 34 advices. This was a significant area of need and the LGBTIQ Legal Service worked well with the Family Violence team at THH and the LGBTI Family Violence practitioners at the Collingwood Neighbourhood Justice Centre (NJC) to cross refer clients, obtain supporting letters for Court and liaise with Victoria Police where required.

The LGBTIQ Legal Service was often unable to provide the level of service clients requested, namely in court representation at multiple hearings

in relation to family violence proceedings. We generally briefed the duty lawyer services provided by other community legal centres (CLCs) at magistrate courts to provide support, however on at least one occasion, the client felt that their legal representative did not understand the nuance of their personal situation due to a lack of understanding around inclusive service delivery for trans and gender diverse clients and community and emotional forms of family violence.

The Magistrates' Court Family Violence Branch provided the following information to assist with this report:

The Magistrates' Court of Victoria (MCV) introduced the LGBTIQ Family Violence Applicant and Respondent Practitioner Services ('the Services') at the Neighbourhood Justice Centre (NJC) in Collingwood in November 2018, and at the Heidelberg Magistrates' Court and Melbourne Magistrates' Court in May 2019. The one-year pilot has been extended to November 2020 to enhance its client reach and continue learning about what works.

The Services aims to ensure that court staff provide timely, specialist and integrated responses—in respectful and inclusive ways—to LGBTIQ people when they come into contact with the court in relation to an application and hearing for a Family Violence Intervention Order (FVIO). The expectation is that a safe and inclusive court experience will support LGBTIQ family violence victim survivors to recover and perpetrators to be held accountable. The Services therefore make access to court support services, and the likely outcomes for recovery or taking responsibility after court, more equitable. During the first year of implementation, services were delivered to 155 applicants and respondents.

The Services has been independently evaluated by Nous Group, who found they have been, overall, relevant, effective and efficient in ensuring that LGBTIQ applicants and respondents have the information, advice and support they require.

From the client research, five factors were identified and believed to matter the most for LGBTIQ applicant and respondent outcomes: visibility, safety, clarity, support and dignity.

All the interviewees commented on how valuable they found access to practitioners who understood and respected their identity and relationships without question, and who explained the court process and provide targeted referrals, including to LGBTIQ-specific services.

If you seek support for LGBTIQ family violence, please contact the Services at LGBTI.FV@courts.vic.gov.au or via the NJC at 9948 8777.

Family violence cont.

Improved court services demonstrate considerable recent growth and this will hopefully be expanded in other courts

The Royal Commission into Family Violence found that intimate partner violence is as prevalent in LGBTIQ relationships as heterosexual relationships. The level of violence against trans and intersex people, from partners and family members, is particularly high.¹³⁵ The Royal Commission found that LGBTIQ people experience distinct forms of family violence, including threats to 'out' them publicly. The Royal Commission recommended the development of LGBTIQ-specific resources, programs and targeted community education campaigns and identification of research priorities and effective prevention strategies.¹³⁶

With Respect reported on findings by OurWatch that family violence is more common for cisgender lesbian women than cisgender gay men.¹³⁷ Family violence may be higher in younger trans and gender-diverse communities, for example young people being kicked out of the family home and older people being denied hormone treatment by family.¹³⁸ There are LGBTIQ-specific risk factors of family violence, including discrimination and marginalisation, heteronormative understandings of gender roles (particularly impacts transgender women), lack of safe and appropriate support services, substance use, poor mental health and co-dependency.¹³⁹ Barriers for accessing support include distrust of mainstream services, fear of not being believed or validated and a lack of inclusive services.¹⁴⁰

The impact of a specialist LGBTIQ legal services: Leinani's story

LGBTIQ Legal Service client 'Leinani' is a trans woman. Leinani first came into contact with the LGBTIQ Legal Service via a referral from a local Family Violence Service. Leinani had been charged by police with recklessly causing injury during a family violence incident. She had no prior criminal history and was extremely worried about losing her job if she was convicted. Leinani maintained that she had acted in self-defence when she was being attacked and was misidentified as the aggressor in the incident because she was physically bigger than her partner. Leinani was a long-standing victim of family violence and had been subjected to significant controlling, financial, emotional and physical family violence by her cisgender male partner. Her partner made a statement of no complaint to Police and enrolled in a men's behaviour change program after an intervention by the Family Violence Service. The Police decided not to withdraw the charges and the matter proceeded to court. A barrister with an understanding of LGBTIQ issues appeared on a pro bono basis and the charges were eventually withdrawn before a contested hearing.

A properly funded LGBTIQ Legal Service with the capacity to represent vulnerable clients in multiple proceedings, from first mention right through to a contested final hearing is required to provide LGBTIQ communities with the high levels of support they require in this area. It is also recommended that regular training for all court staff (including sub-contracted security staff), police stations, CLCs, private lawyers and family violence services occur to better understand the needs of LGBTIQ clients to provide appropriate support.

¹³⁵ Royal Commission into Family Violence, Summary and Recommendations, March 2016, p 35 at <http://rcfv.archive.royalcommission.vic.gov.au/MediaLibraries/RCFamilyViolence/Reports/Final/RCFV-Summary.pdf>

¹³⁶ *ibid.*

¹³⁷ <https://www.withrespect.org.au/professionals/about/family-violence-lgbtqi-communities>

¹³⁸ *ibid.*

¹³⁹ *ibid.*

¹⁴⁰ *ibid.*

Employment law

34.63% of the LGBTIQ Legal Service legal needs survey participants reported experiencing an employment law issue in the last five years. The LGBTIQ Legal Service undertook the following employment law services: 12 casework files, 1 legal task and 23 advices. This was predominantly general protections involving dismissal complaints where the client had been terminated in their employment due to an alleged discriminatory reason, such as their sexual orientation or gender identity. The LGBTIQ Legal Service provided a high level of service in this area due to the outreach lawyer's pre-existing expertise, including representing clients at Fair Work Commission conciliation proceedings by telephone, and assisting to negotiate confidential deeds of settlement with respondent lawyers prior to or post conciliation.

Providing employment law services must include law and policy reform. For example, the Fair Work Act 2009 (Cth) (Fair Work Act) provides that 'An employer must not take adverse action against

a person who is an employee, or prospective employee, of the employer because of the person's race, colour, sex, sexual orientation, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.'¹⁴¹ This list problematically excludes both gender identity (which would cover trans and gender diverse people) and intersex status. This means that the Fair Work Act does not protect trans, gender diverse and intersex Australians from mistreatment or unfair dismissal based on who they are. There are various other sections that exclude trans, gender diverse and intersex people throughout the Act. This is either a gross oversight, or a deliberate choice to treat transphobic and intersexphobic workplace discrimination less seriously than other forms of mistreatment.¹⁴²

There is frequently overlap issues between discrimination and employment law issues, for example in Ricky's case:

The impact of discrimination and sexual harassment at work: Ricky's story

LGBTIQ Legal Service client 'Ricky' is a 20-year-old cisgender gay man, with he/him pronouns. Ricky first came into contact with the LGBTIQ Legal Service via a referral from Justice Connect. Ricky attended Thorne Harbour Health for his first appointment. He had allegedly suffered discrimination on the basis of his sexual orientation as well as sexual harassment at his former employer. The employer is a high-end fashion boutique focusing on women's clothing. Ricky was seeking an apology, compensation, a statement of service and anti-discrimination training to prevent a similar situation in the future. Ricky had suffered significant hurt, distress and humiliation as a result of the alleged discrimination and harassment over a prolonged period at his workplace. The employer had refused to recognise the allegations or apologise.

On referral to the LGBTIQ Legal Service, Ricky had begun a negotiation process with his former employer and received an offer, but was seeking legal advice and representation for an upcoming VCAT mediation to improve his standing in the matter. Justice Connect were over capacity and the VCAT mediation was only a week away at the time of referral.

¹⁴¹ Section 351(1), Fair Work Act 2009 (Cth)

¹⁴² <https://alastairlawrie.net/2018/05/27/unfairness-in-the-fair-work-act/>

Ricky's case continued...

Ricky would have been significantly disadvantaged if he had to represent himself in the mediation. Ricky's former employer is a large company with a significant HR Department who had engaged a law firm to represent them in the matter.

The LGBTIQ Legal Service helped Ricky by seeking and collating medical reports to support his claim, advising on the best course of action and likely outcomes, and representing him in correspondence and mediation.

The mediation was successful. Ricky was able to significantly increase his settlement and receive a letter of regret and a commitment to further training from the employer.

This is a good example of how a matter with particular LGBTIQ sensitivities can be satisfactorily resolved with the aid of a LGBTIQ-specific legal service. Ricky felt more comfortable to advocate for himself in the knowledge that he would not suffer further in engaging the legal system, and his legal representatives would have a fuller understanding of his experience. He would have been disadvantaged if he had represented himself in the proceedings. Additionally, this example demonstrates the LGBTIQ Legal Service's ability to achieve a satisfactory outcome in a short period of time where more traditional services would have been without capacity and less well-suited to deal with the matter.

The LGBTIQ Legal Service refers employment law enquiries that do not relate to discrimination to Jobwatch and private lawyers. There is no LGBTIQ specialist employment law service and this is a significant area of unmet legal need. A properly funded LGBTIQ Legal Service must prioritise employment law and specialist LGBTIQ discrimination knowledge would be beneficial to this service.

Consumer law

16.88% of the LGBTIQ Legal Service legal needs survey participants reported experiencing a consumer law issue in the last five years. The LGBTIQ Legal Service provided consumer law services on 3 casework files, 1 legal task and 4 legal advices. These enquiries were primarily referred to the Consumer Action Law Centre.

Centrelink

Social security was not an option given in the LGBTIQ Legal Service legal needs survey and no one reported it in the 'other' option. The LGBTIQ Legal Service provided social security legal services on 2 casework files, 1 legal task and 5 legal advices. This included Disability Support pension and 'Robo debt' matters and were primarily referred by the Positive Living Centre.

Health complaints

9.96% of the LGBTIQ Legal Service legal needs survey participants reported experiencing a health complaint law issue in the last five years. The LGBTIQ Legal Service provided services on 2 casework files, 1 legal task and 3 legal advices. Enquiries generally related to unauthorised disclosure of blood borne virus status, and assistance at the Health Complaints Commission to resolve these disputes through negotiation, which led to confidential deeds of settlement being signed.

Police reports

LGBTIQ people frequently feel anxiety in their interactions with police, due to their lived experience homophobic and transphobic police responses. This reduces their likelihood to report incidents to police and also to seek victims of crime assistance. LGBTIQ Victorians have a long history of experiencing police brutality, including the Tasty nightclub raid in Melbourne in 1994¹⁴³ and more recently the Hares and Hyenas botched raid¹⁴⁴ and treatment of a gender non-conforming high-profile football player with the unlawful leaking of photographs.¹⁴⁵ A NSW study found that of the participants who had experienced family violence, only 15% (12.9% to NSW Police and 2.1% to another state) reported it to the police.¹⁴⁶ Aboriginal and Torres Strait Islander people are less likely to report to police in an effort to protect the perpetrator from police brutality and racism within the justice system.¹⁴⁷

The LGBTIQ Legal Service legal needs survey asked participants whether they agreed with the statement 'If I had to report a crime where I was the victim, I feel confident the police at my local

station would assist me'. 35% either disagreed or strongly disagreed and 43% either agreed or strongly agreed. Many people mentioned police not taking reports from sex workers seriously. Participants provided comments including:

'I'm a sex worker and have seen police turn away victims'

'Historically the police have been perpetrators of violence against the LGBTIQ community and I would feel uncomfortable as a queer person'

'If I was reporting something transphobic or sexual assault, or I had to disclose my gender identity, I would feel uncomfortable and would want a lawyer or trans advocate with me'

'I am white and cis-passing so I would report to the Police'

Police discrimination of LGBTIQ people: Terry's story

'Terry' and 'Peter' are gay cisgender men who had been living together for over ten years. Peter used violence in their relationship, and on one occasion grabbed Terry by the throat. Terry was extremely frightened by this escalation in family violence, and attended his local Police station. The Police officers would not take a statement and said that he did not need an intervention order because he could just 'move out'. Terry felt that the Police Officers were not taking his safety concerns seriously because he was a male, and contacted the LGBTIQ Legal Service for advice about making a police complaint. We assisted Terry to make a complaint, and provided him with information about correct policing procedures around the investigation of family violence to include in his complaint.

¹⁴³ <https://www.theguardian.com/world/2014/aug/05/victoria-police-apologise-to-lgbti-community-for-tasty-nightclub-raid>

¹⁴⁴ <https://www.ibac.vic.gov.au/media-releases/article/outcome-of-ibac's-investigation-into-the-conduct-of-victoria-police-officers-at-the-hares-hyenas-bookstore-in-fitzroy-in-may-2019>

¹⁴⁵ <https://www.theage.com.au/national/victoria/dean-laidley-mugshot-leak-significant-breach-of-privacy-police-say-20200504-p54pj8.html>

¹⁴⁶ University of New South Wales, Calling it What is Really is: A Report into Lesbian, Gay, Bisexual, Transgender, Gender Diverse, Intersex and Queer Experiences of Domestic and Family Violence' (2014), p 27 at http://www.thelookout.org.au/sites/default/files/Calling_It_What_It_Really_Is_LGBTIQ_DfV_report_2015.pdf

¹⁴⁷ The Aboriginal Gender Study: Final Report, AHCSA, above n 52, p 57.

Infringements

6.49% of the LGBTIQ Legal Service legal needs survey participants reported experiencing an infringement law issue in the last five years. LGBTIQ Legal Service assistance included 1 casework file, 13 legal tasks and 14 advices, such as assisting with special circumstances applications on the grounds of mental health, addiction, homelessness and family violence. Most referrals came from the AOD and FV teams, or the infringement matters were picked up as a secondary legal issue while assisting LGBTIQ clients with other issues, such as tenancy, family violence and Centrelink matters. Engaging in the Work and Development Permit Scheme and obtaining materials for revocation applications highlighted the benefit of working in a health justice partnership and referring to specialist LGBTIQ support services.

Fines ‘paid off’ by LGBTIQ specialist support through the Work and Development Permit Scheme: Kacey’s story

LGBTIQ Legal Service client, ‘Kacey’, is a cisgender lesbian woman who experienced significant depression and anxiety as well as problematic alcohol use. Kacey was referred to the LGBTIQ Legal Service by a friend who had become aware that Kacey had over \$10,000 in unpaid parking fines, as well as fines relating to driving on toll roads without an e-tag and speeding. We helped Kacey to apply to find an LGBTIQ inclusive AOD service and counselling service that she could connect with under the work and development permit scheme to help her work off her fines by engaging in therapeutic treatment and mental health support.

Family law

Several LGBTIQ Legal Service legal needs survey participants reported experiencing family law issues in the last five years:

- » **16.88%** reported a separation, divorce or property settlement legal issue
- » **8.23%** reported a child protection, custody, adoption or surrogacy legal issue
- » **8.66%** had experienced a legal recognition of a relationship legal issue.¹⁴⁸

The LGBTIQ Legal Service did not have family law expertise and therefore did not provide ongoing casework for family law issues, despite it clearly being an area of high legal need. Many people approached the LGBTIQ Legal Service requesting assistance with parenting/caregiver disputes, including disputes around medical care and mental health support for gender non-conforming children. These matters were referred to the Fitzroy Legal Service (who provide specialist LGBTIQ family law services as outlined below), or pro bono private lawyers.

The LGBTIQ Legal Service also made a large number of referrals for property settlement. Many people expressed concern about perceived discrimination accessing family law services and the high cost of private lawyers prohibiting them from access.

The LGBTIQ Legal Service does not have a family lawyer, however it sometimes refers internally to the family lawyer working at SKLS where clients may be in SKLS catchment. Fitzroy Legal Service provided the following information regarding their LGBTIQ family law program:

Fitzroy Legal Service (**FLS**) provides specialist family law services to LGBTIQ communities through three avenues: the LGBTIQ family law clinic; the LGBTIQ family violence outreach at Queerspace; and, FLS's other services which are not specifically for LGBTIQ communities but attract LGBTIQ clients because of the high concentration of LGBTIQ community members in the local area around FLS. Following a merger with Darebin Community Legal Centre in 2019, FLS services the cities of Yarra and Darebin, although its advice services attract clients from beyond this catchment area. The LGBTIQ family law legal advice clinic takes place on the first Wednesday evening of each month, with four appointments available each clinic with volunteer lawyers. The clinic started with a broader focus on family, employment and discrimination law but as most of the issues presenting were related to family law, it was difficult to retain a lawyer with expertise in employment and there was limited funding available.

In some instances, clients requiring legal representation and who are eligible for a Victoria Legal Aid assistance grant or have the means to pay a low-cost fee, may be referred to a FLS lawyer for representation. The key issues that are presented at the clinic relate to parenting rights, property disputes, spousal maintenance and in some instance child protection matters. FLS reported that clients of the LGBTIQ family law legal advice clinic who disclosed their address lived in North, North-east and West Melbourne suburbs. FLS runs a health justice partnership with Queerspace that focuses on addressing legal needs arising from LGBTIQ family violence. FLS

¹⁴⁸ Participants were able to pick more than one option and may have experienced multiple family law issues.

conducts outreach at Queerspace once a fortnight on Friday mornings, with the clientele limited to people accessing Queerspace. FLS raised the issue that uptake of the service is reliant on staff at Queerspace being aware that the FLS lawyer is available, and people willing to come forward to pursue legal outcomes for the family violence issues they are experiencing. Beyond these two services, LGBTIQ people are accessing other services provided by FLS. As members of LGBTIQ communities experience higher levels of socio-economic disadvantage, some seek support on a range of legal issues which are not specifically

related to their sexuality, gender identity or sex characteristics (e.g. FLS' drug outreach program). However, FLS does not have LGBTIQ-specific funding for these services.

There is significant demand for family law services and many do not qualify for Victoria Legal Aid funding and are referred to a private lawyer, without ever seeing a community legal centre. These people frequently have limited means and experience huge legal fees. 'Shelley' was referred to a suburban family lawyer in Melbourne who she felt did not understand the nuances of her gender and this impacted on their ability to provide high quality legal services.¹⁴⁹

The benefit of a specialised family law service: Shelley's story

'Shelley' is a transgender woman who had a number of legal issues following separation from her cisgender female partner, who she shares one young child with. After the child had a medical incident, Shelley's ex-partner told Child Protection that the child was having difficulties because Shelley recently began transitioning and has a mental illness. Shelley did not receive any early intervention child protection legal advice or any support dealing with this situation. Shelley's ex-partner applied for an intervention order, on behalf of the child as the affected family member, claiming that child protection had told her that she had to. The application included serious allegations that were unfounded, listed Shelley's gender as 'male' and contained references to both 'she' and 'he'. Shelley sought advice from Victoria Legal Aid, but did not satisfy their means test because at that time a parent was helping with her rent, but she otherwise would have been eligible for legal aid funding because she was on Centrelink. Shelley was referred to a local suburban private family lawyer for assistance.

This lawyer appeared in the Magistrates' Court to contest the intervention order. The lawyer did not address the issues around gender and gave Shelley advice that an interim intervention order would be made, without making submissions around the misgendering in the application or why an interim intervention order should not be made. The application was eventually dismissed. Shelley was upset that the process did not deliver any accountability for her ex-partner making false accusations to Victoria Police and the Court.

¹³⁰ Shelley was not a LGBTIQ Legal Service client and approached our service directly to share her story to contribute to this report, she never approached any community legal service after being told she did not qualify for Victoria Legal Aid funding.

Shelley's case continued...

Shelley believes that a specialised LGBTIQ lawyer would have been better equipped to identify issues and make submissions about misgendering and more likely to fight harder against the making of an interim intervention order. The time between the application and the order being dismissed was approximately seven months, and Shelley had no contact with her child during this time.

Shelley had the same lawyer in the Family Court, where orders were eventually made that she could spend monthly supervised time with her child. The Family Court Judge initially expressed confusion in open court that the child had two mothers and asked "where is the biological father?" Shelley felt a specialised LGBTIQ legal service would have ensured the circumstances were made clear to the Family Court in preliminary correspondence to avoid this undignifying discussion in front of her in open court. The entire legal process, including the intervention order and Family Court proceedings, cost Shelley and her family around \$40,000. Shelley ran out of money during the Family Court proceedings and became self-represented and gave up. An independent children's lawyer was appointed by the Court, who eventually identified gender-specific issues at play in the case.

Shelley expressed disappointment that there was no LGBTIQ organisation that advocated for her and supported her throughout the legal process. The systemic misgendering, lack of support and stress of the legal process compounded Shelley's existing mental health issues. Shelley believes that her cases would have been handled differently by a specialist LGBTIQ family lawyer with knowledge and understanding of the issues that trans parents face. For example, identifying transphobia using transition to argue that harm was being caused to the child and misgendering in court documents were not recognised by her lawyer as Shelley's ex-partner intentionally causing harm.

There is also a specialist LGBTIQ applicant support worker at the Neighbourhood Justice Centre, who can provide referrals to services and peer support, information and care and emotional support throughout the legal process.¹⁵⁰ This is a huge area of unmet legal need and would benefit from LGBTIQ specific services.

¹⁵⁰ <https://www.neighbourhoodjustice.vic.gov.au/our-services/support-services/family-violence-support-services>

Immigration law

6.49% of the LGBTIQ Legal Service legal needs survey participants reported experiencing an immigration law issue in the last five years. The LGBTIQ Legal Service received a huge number of immigration law enquiries, totaling of 53% of all enquiries. This is a significant area of unmet legal need, particularly for gender and sexuality-based protection visa claims and HIV/health visa issues. The LGBTIQ Legal Service established a relationship with migration agent, Peggy Kerdo, who provided pro bono immigration law advice to several LGBTIQ clients. Enquiries were also warmly referred to the Asylum Seeker Resource Centre, Refugee Legal, Victoria Legal Aid, private lawyers and the HIV/AIDS Legal Centre (HALC). The LGBTIQ Legal Service also referred enquiries to LGBTIQ inclusive counsellors and psychologists.

Seeking protection in Australia: Maryam's story

LGBTIQ Legal Service client 'Maryam' is a trans woman from China studying science at a Victorian university on an international student visa. When she lived in China, her family was very upset about her gender non-conforming behaviour, and sent her to conversion therapy counselling sessions. When she moved to Australia, she was reliant upon money that her family sent to her, and was extremely anxious not to disappoint them. She tried to live up to their expectations by continuing to present as male, but ultimately chose to access gender-affirming care in Melbourne. Maryam was worried about returning home to China after her studies, as she felt her parents would be angry about her increasingly feminine gender presentation. She sought advice about applying for a protection visa on the grounds of gender identity to remain in Australia.

To assist in writing this report, the HIV/AIDS Legal Centre (HALC) provided the following case studies:

HALC immigration lawyers have recently assisted a young gay and HIV+ cisgender male student from Brunei who was separated from his family and seeking protection in Australia because he would face persecution if he returned to his home country.

Additionally, our immigration lawyers advised an Ethiopian refugee who was adapting to life in Australia with limited English, limited finances and limited social connections. Our lawyers provided assistance by gathering information to assist her fiancé who she had been separated from and lived in a refugee camp in Egypt.

The Human Rights Law Program is an independent, not for profit Community Legal Centre within the Asylum Seeker Resource Centre (ASRC) in Melbourne. They provide free legal advice and representation to people applying for Protection visas in Australia. The program also engages in community legal education, law reform, sector capacity building and advocacy. Within the Human Rights Law Program at the ASRC they run a specialist service, known as the Gender Clinic, which was started in 2015 to create a service, and a space, to offer specialist legal assistance to people seeking asylum on the basis of a risk of serious harm due to their gender, their gender identity, their sexuality or sexual identity.

While waiting several years (between 3 and 8 years) for status determination, those living in the community also face other unique legal and social barriers. As temporary residents in Australia during the refugee determination process, people seeking asylum cannot lawfully change their identity documents in Australia. This causes barriers to employment, housing, access to government services including Medicare, unless the person's legal name is used when applying. For trans people in particular, this means they must use their dead

Immigration law cont.

name for a protracted period in Australia, which inhibits their rights to express their gender identity. To counter this 'perfect storm' described above, the program established and developed the Gender Clinic, recognising that people seeking asylum due to their gender or their sexuality, were potentially going to be one of the most disadvantaged cohorts of people following these significant cuts to legal representation and changes to the processes and laws in Australia. The Gender Clinic runs weekly at the ASRC on a Thursday staffed by specialist staff and volunteers.

To assist in writing this report, the Asylum Seeker Resource Centre (ASRC) provided the following information and case example:

Seeking protection in Australia: Sina's story (ASRC)

'I knew from the age of four that I was gay and by the time I was a teenager, I knew I could not stay in my country.'

'I convinced my parents that I should study outside of Iran to improve my job prospects. Living abroad I finally had tasted freedom. I realised that I am not the only gay person in the world.' After finishing a Masters degree in Turkey, Sina was awarded a scholarship to study a PhD in construction at the Queensland University of Technology.

'Life in Iran is very different compared to life in Australia. Family is involved in every decision of life in Iran. There is not such a thing as individuality. It wasn't until I was in my late twenties and living here in Australia that I finally came out to my parents as gay: the truth of who I am.'

Unfortunately, Sina's family did not take his coming out well 'It was the most painful and hurtful experience of my life. Because of their reaction I could never live safely again in Iran.'

In Iran, homosexuality is punishable by death. Earlier this year, a man was sentenced in the courts and executed.

'I was so scared. I had nothing, I had no country to call home.'

Sina began the long process of applying to seek protection in Australia. 'I know a lot about building, but not about legal matters. I have written a PhD thesis in English about construction, but I could not understand the asylum seeker application process. I am very lucky that the ASRC lawyers took on my case.' With a lawyer by his side, Sina's application for protection was approved.

The LGBTIQ Legal Service would benefit from a dedicated migration lawyer to assist with protection visa matters and HIV migration issues. This lawyer would benefit from stronger and formal partnerships with existing refugee advocate organisations and legal services.

Administrative law/change of name and identity documents

15.15% of the LGBTIQ Legal Service legal needs survey participants reported experiencing a change of name or identity document issue in the last five years. Although changing name and identity documents is not strictly speaking a legal issue, it is a significant area of concern for LGBTIQ communities. The recent birth certificate reforms came into effect on 1 May 2020, enabling Victorians to affirm their gender on their record of sex without surgery. This change is likely to increase demand for legal assistance.

The burden of administrative law issues: Gabe's story

For example, LGBTIQ Legal Service client, 'Gabe', is a non-binary person with a diagnosis of anxiety and post-traumatic stress disorder. Gabe struggled with administrative issues and contacted the LGBTIQ Legal Service for support with changing their name and gender marker with various government organisations, as this was a major barrier for them re-enrolling in their TAFE studies. We helped Gabe complete the paperwork to change their name with Births, Deaths and Marriages, and provided them with information about how they could obtain an X gender marker on their Australian passport.

The LGBTIQ Legal Service and Transgender Victoria held a Change your ID Day event in 2019. Multiple agencies attended the event to assist people to change their identification, including the Australian Department of Human Services, the Australian Passport Office, Births, Deaths and Marriages Victoria, and VicRoads, as well as lawyers from the LGBTIQ Legal Service and St Kilda Legal Service. The free event was booked out and received a hugely positive response from attendees. This event was held online again on 18 May 2020 due to COVID-19 restrictions and was well attended and received. These events have also strengthened the relationship between the LGBTIQ Legal Service and Births, Deaths and Marriages, which has been a useful source of information and collaboration.

COVID-19

At the time of writing this report, COVID-19 restrictions present aggravated challenges for LGBTIQ communities, for example amplified experiences of mental illness, increased likelihood of suicide, unsafe family and housing situations, inability to express true gender and identity,

disproportionate loss of casual employment, lack of access to gender affirming healthcare, social isolation and discriminatory health and over-policing.¹⁵¹ These issues are likely to be amplified in communities that have lived experiences of over policing, racism and systemic exclusion.

Specialist versus generalist legal service

80% of the LGBTIQ Legal Service legal needs survey participants would prefer to get legal help from a specialist LGBTIQ legal service. Participants explained they would rather access a LGBTIQ specialist service because:

- » 'They are more likely to have an understanding of LGBTIQ+ history and specific issues'
- » 'It would mean less time and energy challenging their assumptions'
- » 'They would understand the nuances and intricacies of the type of discrimination we face'
- » 'I won't have to teach people things at the same time as accessing their service'
- » 'They would have more understanding and empathy'
- » 'If my legal issue was family law, I would want a lawyer who understood the concept of chosen family, which is often written off as non-essential, non-immediate and not recognised'

- » 'They are more likely to have an intersectional framework and understand my queerness in relation to my class'
- » 'It is very hard for me to trust any service because of the transphobia I have experienced'

Due to lived experiences of discrimination, criminalisation, violence and exclusion, LGBTIQ people feel most comfortable accessing a specialist LGBTIQ service with staff who are part of the LGBTIQ community. A permanent and expanded LGBTIQ Legal Service would act as the peak legal service for the Victorian LGBTIQ communities. The service would work alongside and compliment other legal services who are also providing specialist LGBTIQ Legal Services, including providing training. A specialist LGBTIQ Legal Service that employs members of LGBTIQ communities, including Aboriginal and Torres Strait Island, multicultural and multifaith and diversely able, is best equipped to meet the diverse legal needs of Victorian LGBTIQ communities.

¹⁵¹ Equality Australia, LGBTIQ+ Communities and COVID-19: A Report on the impacts of COVID-19 on Australian LGBTIQ+ communities and building a strong response (16 April 2020) at https://equalityaustralia.org.au/covid-report/?fbclid=IwAR28_eKgizU196kBr2Ww4_n4RTiMwS77BYR5QHGs3TKN7mr5-ATmrcLc

Recommendations for future planning

It is recommended that a response to LGBTIQ legal need in Victoria must involve:

1. The establishment of a permanent and expanded specialist LGBTIQ Legal Service that is resourced to:
 - a. respond to a range of legal needs (including immigration and family law)
 - b. effectively engage with a wide range of stakeholders and communities across the state
 - c. be guided by a permanent and paid steering committee that includes multi-disciplined members of diverse community groups, with varied lived experience, including LGBTIQ Aboriginal and Torres Strait Islander people, multicultural and multifaith LGBTIQ communities and LGBTIQ people living with a disability
 - d. support the development of partnerships with peer-led community groups and leaders to co-design and inform strategic planning, participate in decision-making and target specific areas of legal need, including LGBTIQ people living with a disability, LGBTIQ Aboriginal and Torres Strait Islander communities and multicultural and multifaith LGBTIQ communities
 - e. work in partnership with peer-led committee groups to target specific areas of legal need
 - f. provide specialised debriefing or other support for staff who may be affected by the psychological burden of working in a community they are also part of, lateral violence or the traumatic nature of the work
 - g. engage strategically and effectively in law reform efforts to address legal inequality and inconsistencies, working in partnership with peer-led groups and advocacy groups to advance shared law and policy reform goals and projects
2. Funding and other support for legal service providers, advocacy organisations, health and support services and community groups to continue and expand existing specialist or targeted LGBTIQ services in response to local legal need
3. Delivery of legal education and information, awareness-raising and capacity-building training to legal service providers, court staff, prison staff, Corrections Victoria, Victoria Police, as well as LGBTIQ communities, including people in prison, in partnership with peer-led community groups, community leaders and/or advocacy organisations
4. Further research towards a more thorough and detailed analysis of the legal needs of Victorian LGBTIQ communities, produced in partnership with a university and/or Victorian Government, as well as peer-led community groups and/or advocacy organisations.

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