

Our Ref: RH:AL

24 July 2020

Committee Secretariat
House of Representatives Standing Committee on
Social Policy and Legal Affairs
PO Box 6021
Parliament House
Canberra ACT 2600

By Email only: family.violence.reps@aph.gov.au

Dear Committee Secretary

Re: Inquiry into family, domestic and sexual violence

The LGBTI Legal Service Inc (the Service) thanks the Committee Members for considering our submission to the Senate Standing Committee on Social Policy and Legal Affairs inquiry into family, domestic and sexual violence.

Our submission will focus on the following Terms of Reference:

- a) Immediate and long-term measures to prevent violence against women and their children, and improve gender equality;
- b) Best practice and lessons learnt from international experience, ranging from prevention to early intervention and response, that could be considered in an Australian context;
- d) The way that health, housing, access to services, including legal services, and women's economic independence impact on the ability of women to escape domestic violence;
- f) The adequacy of the qualitative and quantitative evidence base around the prevalence of domestic and family violence and how to overcome limitations in the collection of nationally consistent and timely qualitative and quantitative data including, but not limited to, court, police, hospitalisation and housing; and
- h) The experiences of all women, including Aboriginal and Torres Strait Islander women, rural women, culturally and linguistically diverse women, LGBTIQI women, women with a disability, and women on temporary visas.

The Service recognises the difficulties faced by the lesbian, gay, bisexual, transgender and intersex ('LGBTI') community and seeks to assist the Queensland LGBTI community to gain access to justice. The Service provides legal assistance across a broad range of legal areas such as criminal, family, domestic violence, employment and discrimination law. The Service also has an active Law Reform division that seeks

to advocate for LGBTI-inclusive law reform and the protection of human rights in Australia.

Further, we note the gendered impact of family, domestic and sexual violence not only on women, which includes transgender and intersex women, but also on non-binary and gender nonconforming members of the community.

The inquiry

The Service acknowledges the inquiry announced on 4 June 2020 by the Standing Committee on Social Policy and Legal Affairs, that will inform the next *National Plan to Reduce Violence against Women and their Children* ('the next National Plan'). The Service has identified the relevant Terms of Reference which require particular consideration with respect to the unique experiences of the LGBTI community.

We provide the following comments for consideration to inform the next National Plan to ensure the needs and experiences of the LGBTI community are taken into consideration.

a) Immediate and long-term measures to prevent violence against women and their children, and improve gender equality.

The number of women and members of the LGBTI community who experience violence is extremely high. Data suggests that one in six women over 15 years old have experienced physical or sexual violence by a current or former partner,¹ and as many as one in three LGBTI people have experienced domestic violence from a partner, ex-partner or family member.² However, within the LGBTI community data suggests that it is likely that men are victims and women are perpetrators of family or domestic violence, at a higher rate as compared to the general population.³

These statistics provide a snapshot to the greater vulnerability of Australian people, across all sexual orientations, gender identities and sex. There is a clear need for immediate and long-term measures to be put in place to help protect these vulnerable members of our society from further violence.

i. Immediate measures

A more immediate response should be taken to reduce further violence against women, children and to improve gender equality. Importantly, there is no consistent definition of domestic, family or intimate partner violence across Australian

¹ Australian Institute of Health and Welfare, "Family, sexual and domestic violence in Australia" (2019) 3. Available at <https://www.aihw.gov.au/getmedia/b180312b-27de-4cd9-b43e-16109e52f3d4/aihw-fdv4-FDSV-in-Australia-2019_in-brief.pdf.aspx?inline=true>.

² The Equality Project Australia, "Australian LGBTIQ+ Policy Guide 2020" (2020) 9. Available at <<https://static1.squarespace.com/static/58e2f46e37c581bffa775c71/t/5e1998923ff3900c136c53bc/1578735814614/LGBTIQA%2B+Policy+Guide+2020.pdf>>.

³ Safe Steps Family Violence Response Centre and No to Violence, 'Family Violence and LGBTQI Communities' submission to the Victorian Royal Commission into Family Violence (19 June 2015).

jurisdictions. While all states and territories now agree that this form of violence occurs beyond the historical context of physical abuse,⁴ there is a need for uniformity and consistency across all legal frameworks.

For example, in Queensland ‘Domestic Violence’ is defined pursuant to the *Domestic and Family Violence Protection Act 2012* (Qld) (‘the Queensland Act’) as meaning ‘behaviour by a person towards another person with whom the first person is in a relevant relationship that is physically, sexually, emotionally, psychologically, economically, threatening, coercive, or in any other way controls or dominates the second person and causes the second person to fear for the second person’s safety or wellbeing or that of someone else’.⁵ The Queensland Act further provides an inclusive list of acts which can come under the meaning of domestic violence.

The term family violence is commonly used in situations which arise within the context of violence within Aboriginal and Torres Strait Islander communities, due to the term recognising the violence that can occur in a broad range of kinship relationships.⁶ While this definition is quite extensive, in contrast, the relevant Victorian legislation goes a step further and adds an additional subsection to their definition of ‘Family Violence.’ This subsection adds that behaviour by a person causing a child to hear or witness or otherwise be exposed to the effects of such behaviour.⁷

A broadened and consistent definition would also ensure coverage of LGBTI experiences are included under relevant domestic violence legislation. A more uniform definition should account for parents, siblings and other family members being capable of perpetrating violence against LGBTI people, especially young LGBTI people. A re-evaluation of the definition of ‘domestic violence’ should ensure coverage of the differing behaviours by perpetrators that can include threats of ‘outing’ an individual’s sexual orientation, gender or HIV status, withholding hormone treatments or other vital health treatments, prevention of participation in LGBTI specific community events that are often vital for young LGBTI people’s mental wellbeing, and acts of public humiliation or LGBTI exclusionary behaviour.⁸

It would also be beneficial to include terminology supportive of the notion that this form of violence can occur over periods of time and are not necessarily one off events, with the purpose of the violence to maintain control and power, create fear and can be of a criminal and non-criminal nature.⁹ Nonetheless, the impacts can be vast and needs

⁴ Ibid.

⁵ *Domestic and Family Violence Protection Act 2012* (Qld) s 8.

⁶ Special Taskforce on Domestic and Family Violence in Queensland, “Not Now, Not Ever: Putting an end to domestic violence in Queensland - report” (2015) 71. Available at <https://www.csyw.qld.gov.au/resources/campaign/end-violence/about/dfv-report-vol-one.pdf>.

⁷ *Family Violence Protection Act 2008* (Vic) s 5(b).

⁸ Australian Institute for Judicial Administration, “National Family and Domestic Violence Benchbook: 4.4.13. People who are gay, lesbian, bisexual, transgender, intersex and queer” (2019). Available at <https://dfvbenchbook.aija.org.au/vulnerable-groups/people-who-are-gay-lesbian-bisexual-transgender-intersex-and-queer/>.

⁹ Ibid 70.

to be appropriately defined under legislation in light of the experiences of women and children within the general population and the LGBTI community.

ii. Long term measures

Within the general population, men are more commonly the perpetrator of abuse against women.¹⁰ Yet, it is understood that there are many more victims of abuse who remain unrecorded, and groups within our communities remain under reported. In studies from the United States of America, police have been found to be less likely to intervene in domestic violence situations where the couple identifies as gay, lesbian or bisexual.¹¹

It is important to ensure that these behaviours by authorities do not take place in Australia. It is necessary that changes are made to improve the cultural understanding of family violence.

Key focus areas have recently been identified by the Equality Project that should be implemented to limit further violence to women, their children and members of the LGBTI community:¹²

- Improved reporting practices and mechanisms by police to capture data on LGBTI 'domestic' violence incidents;
- develop community awareness of Gay and Lesbian Liaison Officers ("GLLOs") to increase reporting and improve appropriate responsiveness to incidents;
- improve the presence and accessibility of GLLOs at LGBTI organisational and public events;
- further develop and promote diversity and LGBTI-specific sensitivity training of police officers and relevant officials in responding to instances of family or domestic violence:
- consider implementing an online reporting system for survivors to report the domestic violence incidents anonymously;
- promote the further development of Government funded research investigating cases of domestic or family violence, through providing data on how to improve service; and
- increase the capacity for research of domestic and family violence that effects the LGBTI community, especially within the transgender, gender diverse and intersex communities.

These measures would help foster a more inclusive response system by police and other authorities to incidents of family or domestic violence. These should be coupled

¹⁰ Seelau, S. M., & Seelau, E. P. (2005) 'Gender-role stereotypes and perceptions of heterosexual, gay and lesbian domestic violence' 20(6) *Journal of Family Violence* 363, 364.

¹¹ Ibid.

¹² The Equality Project Australia, "Australian LGBTIQ+ Policy Guide 2020" (2020) 10. Available at <<https://static1.squarespace.com/static/58e2f46e37c581bffa775c71/t/5e1998923ff3900c136c53bc/1578735814614/LGBTIQA%2B+Policy+Guide+2020.pdf>>.

with greater promotion within the community, and awareness to ensure appropriate responses to family and domestic violence occurs at a community level.

b) Best practice and lessons learnt from international experience, ranging from prevention to early intervention and response, that could be considered in an Australian context.

i. Prevention

In order to curb violence and ensure the protection of LGBTI people at risk of family or domestic violence, the Australian Government should place greater attention on the accessibility, visibility and inclusiveness of support services.¹³ Such services must be inclusive to those who are gender, sex and sexuality diverse, with greater attention needed to their unique experience of family and domestic violence and their specific vulnerabilities.¹⁴ Australia's National Research Organisation for Women's Safety Limited (ANROWS) outlines key changes that should be implemented including:

- reviewing forms to be inclusive of gender, sexual orientation and race;
- training staff about gender, sex and sexuality diversity and the use of neutral pronouns; and
- conducting a review of service aims and models of care to ensure the inclusion of trans women within service delivery.¹⁵

To further improve the inclusivity of Australia's domestic and family violence services, ANROWS outlines that "sexual violence prevention and support programs need to engage with, and be co-designed by, multicultural women's services and LGBTIQI services as well as women leaders from CALD and queer communities".

LGBTI-specific services are vital to ensure appropriate responses to instances of family or domestic violence, that encourage people experiencing family or domestic violence to access assistance and supports.

To further drive change, actions must be taken at the federal government level, to ensure compliance with the United Nations Development Programme's call to action and committing to "taking concrete actions to advance the rights and inclusion of LGBTIQI people, the impact would be profound and can drive legal, policy and social norm changes in every corner of the globe, genuinely ensuring that no one is left behind".¹⁶

¹³ ANROWS. (2020). *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*. (Research to policy and practice, 14/2020). Sydney. Page 13.

¹⁴ Ibid.

¹⁵ Ibid

¹⁶ UNDP. (2017). *Advancing the Human Rights and Inclusion of LGBTI People: A Handbook for Parliamentarians*. United Nations Development Programme One United Nations Plaza, New York, 7.

ii. Response

In order to respond more effectively to violence, Australia could take note of the approach adopted by the Nordic countries towards perpetrator intervention that is largely therapeutic. There, a model of feminist based understanding of gender based violence is adopted, whereby group work is undertaken, except where the perpetrator has displayed severe and frequent violence (with a level of psychopathology).¹⁷ This could be adopted both in an Australian context and with an LGBTI based understanding of gender based violence. The differentiation of intervention is based on the typologies of violence. The program goes through phases of consequences, responsibility and connection to personal history.

Responses to domestic or family violence should also consider implementing more appropriate genderless terminology and behaviours within responses to domestic or family violence that go beyond the male-female binary. Transgender, gender diverse and intersex individuals often receive inadequate supports as a result of the binary nature of support services and responses.

d) *The way that health, housing, access to services, including legal services, and women’s economic independence impact on the ability of women to escape domestic violence.*

i. Mental health

A number of structural factors impact on the ability of LGBTI women to escape domestic violence. Mental health outcomes are often noted to be worse among the LGBTI community, due primarily to minority stressors and discrimination.¹⁸ This tends to be significantly worsened by domestic and family violence, with the Australian Institute of Family Studies finding that 79% of participants who experienced abuse, characterised part of the abuse as “psychological”.¹⁹ The problem is particularly prevalent with young people, with one in four LGBTI young people having experienced violence in the family home due to their identity.²⁰

While the link between mental health and domestic violence is identified in all cases of domestic violence irrespective of sex, gender or sexual orientation, there are specific issues associated in the LGBTI community around practices such as “outing” (of a person’s sexual orientation, gender or HIV status to friends, family, work

¹⁷ ANROWS, “Perpetrator interventions in Australia: Part one - Literature review. State of knowledge paper” (2015) Issue PP01, State of Knowledge, Sydney, 24.

¹⁸ National LGBTI Health Alliance, “The Statistics at a Glance: the mental health of lesbian, gay, bisexual, transgender and intersex people in Australia” (2020). Available at <https://lgbtihealth.org.au/statistics/>.

¹⁹ Campo, Monica and Sarah Tayton, “Intimate partner violence in lesbian, gay, bisexual, trans, intersex and queer communities” (2015) Australian Institute of Family Studies. Available at <<https://aifs.gov.au/cfca/publications/intimate-partner-violence-lgbtq-communities>>.

²⁰ Ibid.

colleagues etc) which contribute to poorer mental health outcomes and withholding medical treatment such as HIV medication and access to gender affirming treatments.²¹

ii. Housing

Housing insecurity also impacts on the ability of LGBTI women and children to remove themselves from unsafe environments. Various sources highlight that LGBTI people are overrepresented in statistics on homelessness and housing insecurity, with the Australian Bureau of Statistics noting that 34% of lesbian or gay people have been homeless, compared to just 14% of heterosexual people.²² A paper by Samantha Senior, who practices in the homelessness law space, argues that family violence and discrimination are key risk factors for homelessness in this community.²³

A common scenario involves young LGBTI people being forcibly removed from their home due to intolerance of their identity, or alternatively LGBTI people escaping violent homes at a young age without secure housing alternatives in place. However, when people seek assistance from housing bodies, statistics from the Australian Human Rights Commission note that up to 25% of LGBTI people have been refused service due to their identity.²⁴ The combination of these factors means LGBTI women and children facing domestic and family violence face a significantly increased risk of homelessness if they seek to escape their situation.

iii. Access to justice

The Service makes particular note of access to justice problems for LGBTI people seeking assistance. Taking from the stories of those who contributed to the Taskforce, some women found it difficult to navigate, find or even understand the legal process.²⁵ Financial barriers also make it difficult for LGBTI people to access a lawyer when they need one, with many instead turning to community legal centres for assistance.²⁶

Discrimination also poses an issue for LGBTI people. A 2013 study by the Service also found that problems in seeking assistance from police were extremely common for LGBTI people, with 18.18% of participants experiencing harassment, humiliation

²¹ Meyer, Silke and Andrew Frost, *Domestic and Family Violence: A Critical Introduction to Knowledge and Practice* (2019, Taylor & Francis) 99-100.

²² Australian Bureau of Statistics, "General Social Survey: Summary of Results, Australia" (2014). Available at <https://www.abs.gov.au/ausstats/abs@.nsf/mf/4159.0#Anchor5>.

²³ Senior, Samantha, "Emerging awareness of the intersection between LGBTIQ+ homelessness and legal needs" (2019) 32(3) *Parity* 27, 27.

²⁴ Ibid, citing Australian Human Rights Commission, "Resilient Individuals: Sexual Orientation, Gender Identity & Intersex Rights" (2015) 19. Available at <<https://www.humanrights.gov.au/our-work/sexual-orientation-gender-identity-intersexstatus/publications/resilient-individuals>>

²⁵ Special Taskforce on Domestic and Family Violence in Queensland, "Not Now, Not Ever: Putting an end to domestic violence in Queensland - report" (2015) 71. Available at <<https://www.csyw.qld.gov.au/resources/campaign/end-violence/about/dfv-report-vol-one.pdf>>.

²⁶ Jordyn Jones and Gabriella Leibowitz, "Accessing LGBTI Justice: Identifying the Legal Needs of the Lesbian, Gay, Bisexual, Transgender, Intersex and Queer Communities in Queensland" (LGBTI Legal Service, 2013) 6.

or intimidation by police; 9.09% experiencing issues with their gender or sexuality being incorrectly recorded; and 27.27% noting that the police refused to address a crime or problem they had reported.²⁷ This contributed to a very low rate of reporting for domestic and family violence: although 34.37% of participants to the study noted they had experienced domestic violence, 90% of those people did not report this. This figure is 15% higher than similar problems noted among heterosexual individuals.²⁸

iv. Recommended solutions

In light of the above comments, the Service makes the following recommendations:

- 1) Ensure that statistics are gathered about LGBTI populations when surveying issues around health, housing and access to justice to gather further data.
 - 2) Establish education for health professionals around LGBTI-specific health issues, particularly around unique threats of violence such as outing.
 - 3) Implement LGBTI-specific housing programs, particularly for transitional housing suitable for people seeking to escape violent situations. Other jurisdictions such as Canada have established a number of these programs which could serve as models.²⁹
 - 4) Work to educate and change culture in justice services, particularly police, to avoid discrimination for LGBTI women and children seeking assistance.
 - 5) Continue to fund LGBTI-specific organisations to ensure that LGBTI women and children seeking assistance with domestic and family violence issues can access legal help.
- f) *The adequacy of the qualitative and quantitative evidence base around the prevalence of domestic and family violence and how to overcome limitations in the collection of nationally consistent and timely qualitative and quantitative data including, but not limited to, court, police, hospitalisation and housing.***

i. Challenges

As noted above, several studies have confirmed that LGBTI individuals experience domestic and family violence at higher rates to their heterosexual peers.³⁰ However, there are significant gaps in the evidence surrounding this issue. These results from long-acknowledged and unique challenges associated with gathering evidence about LGBTI people, including women and children. From the outset, small sample sizes

²⁷ Ibid 27.

²⁸ Ibid 20.

²⁹ Above n 29, 28.

³⁰ Special Taskforce on Domestic and Family Violence in Queensland, "Not Now, Not Ever: Putting an end to domestic violence in Queensland - report" (2015) 71. Available at <https://www.csyw.qld.gov.au/resources/campaign/end-violence/about/dfv-report-vol-one.pdf>.

mean it is difficult to obtain reliable data about minority populations.³¹ The preponderance of data to date has focused on gay men, with a 2015 literature review conducted at the University of New Hampshire identifying only two systematic reviews of inter-personal violence among sexual minority populations, both of which were concerned exclusively with men who have sex with men.³² In the Australian context, Davis and Glass identify a traditional gap in evidence around lesbians living in rural Australia.³³

A primary complication in the LGBTI space is the fact that LGBTI identity is deeply personal, and potential subjects may not be “out”, and/or or comfortable discussing their identity. This limits the effectiveness of data regarding all LGBTI communities, but particularly affects studies of LGBTI youth, who are less likely to have publicly come out. The 2015 literature review discussed above highlights a need for alternative research methodologies enabling individuals who are earlier in their coming out process to participate, providing a wider base of data.³⁴ This can extend to the inclusion of categories for people who are questioning their sexual or gender, or have had same-sex experiences, but who do not identify as LGBTI.³⁵

Further, there is a lack of standardisation (and, in some cases, precision) in current research methodologies. A 2016 paper by Calton, Cattaneo and Gebherd³⁶ notes that studies use a variety of different questions to establish LGBTI identity, including “Have you ever had a same-sex sexual experience?”,³⁷ “Have you ever cohabited with a same-sex partner?”³⁸ and “Do you identify as LGBTQ?”.³⁹ These questions do not target the same populations, making it far more difficult to generalise trends around domestic and family violence in the LGBTI community. When measuring types and prevalence of abuse, there is often a further failure to identify types of domestic violence which are specific to LGBTI populations, particularly threats of outing a

³¹ Calton, Jenna, Lauren Bennett Cattaneo and Kris Gebhard, “Barriers to Help Seeking to Lesbian, Gay, Bisexual, Transgender and Queer Survivors of Intimate Partner Violence” (2016) 17(5) *Trauma, Violence & Abuse* 585, 592.

³² Edwards, Katie, Kateryna Sylaska and Angela Neal, “Intimate Partner Violence Among Sexual Minority Populations: A Critical Review of the Literature and Agenda for Future Research” (2015) 5(2) *Psychology of Violence* 112, 113.

³³ David, Kierrynn and Nel Glass, “Reframing the Heteronormative Constructions of Lesbian Partner Violence: An Australian Case Study” in Janice Ristock, *Intimate Partner Violence in LGBTQ Lives* (2011) 13.

³⁴ Above n 32, 118.

³⁵ *Ibid.*

³⁶ Above n 31, 587-8.

³⁷ *Ibid.*, citing Greenwood, GL, MV Relf, B Huang, LM Pollack, JA Canchola, and JA Catania, “Battering victimization among a probability-based sample of men who have sex with men” (2002) 92 *American Journal of Public Health*, 1964–1969.

³⁸ *Ibid.*, citing Tjaden, P and N Thoennes, “Extent, nature, and consequences of intimate partner violence: Findings from the national violence against women survey” (2000) Rockville, MD: National Institute of Justice.

³⁹ *Ibid.*, citing Walters, M, “Straighten up and act like a lady: A qualitative study of lesbian survivors of intimate partner violence” (2011) 23 *Journal of Gay & Lesbian Social Services* 250–270.

spouse's sexual orientation or gender to family, friends or the community.⁴⁰ This lack of precision in data-gathering has resulted in contradictory data regarding the prevalence of family violence in the LGBTI community, with the UNE literature review identifying studies specifying a range of 1% to 97% prevalence.⁴¹

Gathering evidence for transgender and intersex individuals is particularly has been particularly poor.⁴² Data gathering in this space is subject to challenges in addition to those identified above. Carlton, Cattaneo and Gebherd note that there is a tendency to conflate sexual orientation and gender when researching in this space, meaning that specific challenges faced by transgender people are not separated out in data.⁴³ Common failures in data-gathering include only providing options for "male" or "female" in surveys, assumptions that transgender people are not heterosexual, and a failure to use gender-inclusive language in research materials.⁴⁴ The result of these failures is that very limited data is available on transgender and intersex individuals, such that little is known about their experience of domestic and family violence.

ii. Recommendations

In light of the above, the Service makes the following recommendations to ensure the timely and comprehensive data which is inclusive of LGBTI women and children:

- 1) Inclusion of questions relating to LGBTI identity as best practice in research relating to domestic and family violence;
- 2) Inclusion of an 'other' response when establishing the gender of participants as best practice in research relating to domestic and family violence;
- 3) Provision of standard wording for questions used to establish LGBTI identity, to obtain consistent data over time;
- 4) Separation of questions about LGBTI identity from those regarding same-sex sexual experiences or questioning of sexual orientation/gender, to encourage individuals earlier in their coming out process to participate in evidence gathering;
- 5) Separation of questions about sexual orientation from those regarding gender, to obtain specific data about the transgender populations.
- 6) Acknowledgement, when developing research methodologies, of the types of domestic and family violence experienced primarily by the LGBTI community, including threats of outing one's sexual orientation or gender; and

⁴⁰ Meyer, Silke and Andrew Frost, *Domestic and Family Violence: A Critical Introduction to Knowledge and Practice* (2019, Taylor & Francis) 99-100.

⁴¹ Above n 32, 113.

⁴² Australia's National Research Organisation for Women's Safety, *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* (Research to Policy & Practice, Issue 14, 2020).

⁴³ Above n 31, 588.

⁴⁴ Above n 31, 588, and ANROWS Crossing the Line Summary Report at page 12.

- 7) Use of language that is inclusive of sexual and gender minorities as best practice in research around domestic and family violence.

These recommendations will help to ensure that fuller and more substantive data is obtained regarding the impact of domestic and family violence on women and children, including around the role of courts, police, hospitalisation and housing.

h) The experiences of all women, including Aboriginal and Torres Strait Islander women, rural women, culturally and linguistically diverse women, LGBTQI women, women with a disability, and women on temporary visas.

The information contained throughout this submission should be considered in informing our response to Terms of Reference (h), due to our submission's focus on the LGBTI community's experiences of family, domestic and sexual violence. We provide the following additional comments.

Data suggests that Aboriginal and Torres Strait Islander women are 35 times more likely to be hospitalised for domestic assault than other members of the general population. It has been acknowledged that violence against Aboriginal and Torres Strait Islander women is overwhelmingly committed by men regardless of the victim being male or female. The Taskforce also acknowledged that the 'most common' pattern of domestic violence is committed by men against women and acknowledged that there is a "direct nexus between cultural and community attitudes."⁴⁵

However, there is a clear need for greater community engagement within the Aboriginal and Torres Strait Islander LGBTI communities to improve reporting rates and to gain further insight into their experiences, especially Aboriginal and Torres Strait Islander LGBTI women.

Australia's National Research Organisation for Women's Safety (ANROWS), identified in a recent report that trans women are at a higher risk of violence than cisgender women.⁴⁶ They also identified that trans women of colour face discrimination and violence on the basis of the intersection of their gender and racial identities.⁴⁷

ANROWS studied the migration experience of transgender women of colour. They noted that sexual violence in their earlier life and childhood was a contributor to them migrating to Australia to live in a safer community.⁴⁸ They found that many trans women of colour leave their country of origin to escape violence, persecution, family violence and economic disadvantage specifically because of their gender.⁴⁹ They also found that some of these women migrate to access better healthcare, education, employment, and to experience gender affirmation and acceptance.⁵⁰

⁴⁵ Ibid.

⁴⁶ Ibid 3.

⁴⁷ Ibid.

⁴⁸ Ibid 6.

⁴⁹ Ibid.

⁵⁰ Ibid.

While it is encouraging to note that Australia is seen by trans women and women of CALD backgrounds as a safer environment than many other countries, there is a significant lack of migration services that are transgender literate and culturally competent.⁵¹ This means that many trans women who migrate feel that they are 'locked out' of broader migrant services because of perceptions of transphobia in the migrant community.⁵² These women feel let down by migration services and in turn will experience additional barriers to those experienced by cisgender women, in turn exposing them to greater risk of domestic or family violence.⁵³

i) The impact of natural disasters and other significant events such as COVID-19, including health requirements such as staying at home, on the prevalence of domestic violence and provision of support services.

Natural disasters and other significant events that place a financial, housing and social strain on a population will continue to disproportionately affect members of the LGBTI community and place an increased strain on familial relations.⁵⁴ The current COVID-19 pandemic continues to highlight the often greater impacts and disproportionate effects faced by groups such as the LGBTI community and central concerns of strained familial relations during these times.

In times of natural disasters or other significant events, LGBTI people experience heightened vulnerability and susceptibility due to the effects of social isolation and the reduced capacity for community organisations to provide vital supports, including family and domestic violence services.⁵⁵

i. Social Isolation

Physical separation and social isolation that can occur during major events, such as the COVID-19 pandemic, is often exacerbated within particular population groups. Increased risk of family and domestic violence within the LGBTI community is an ongoing concern during such events. This is exacerbated by a reduced number of support services being available, groups within the LGBTI community being forced into living in unaccepting households, some people lacking broader support networks, as well as other cultural or social factors. Equality Australia's 2020 report entitled *LGBTIQ+ Communities and COVID-19* provides further details on the ongoing impacts of the COVID-19 pandemic.⁵⁶

As a result of COVID-19 restrictions, the closing of community and cultural spaces have greatly impacted the mental and physical health of LGBTI people. The LGBTI community already experiences disproportionately high rates of anxiety, depression,

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Equality Australia (2020). *LGBTIQ+ COMMUNITIES AND COVID-19: A Report on the Impacts of COVID-19 On Australian LGBTIQ+ Communities and Building a strong response*. Page 7.

⁵⁵ Ibid 5.

⁵⁶ Ibid 7.

self-harm and suicide, which will be further exacerbated especially due to financial, employment and home-life stresses.⁵⁷

According to the National LGBTI Health Alliance, 31.5% of LGBTI people aged 16 and over met the criteria for anxiety in the last 12 months, and 33% of LGBTI youth between 16 and 27 have self-harmed (with 53% of transgender people self-harming in their lifetime). Critically, 16% of LGBTI young people aged 16-27 have attempted suicide, and 48.1% of gender diverse and transgender people (between the ages of 14-25) have attempted suicide throughout their lifetime.⁵⁸ This underscores the importance of limiting disruptions to vital services that protect vulnerable people from domestic or family violence and the resulting mental health impacts, during times of heightened risk and anxiety.

ii. *Support Services/Community Organisations*

Support services provided through LGBTI organisations and community services are grossly underfunded across Australia. This has led to many of these services being fragmented and reliant upon the goodwill of the public and community volunteers.⁵⁹ Even at the national level, there is no single entity or organisation that “is currently placed to work across the breadth of identified community priorities, or has the capacity and mandate to do so”.⁶⁰ Due to this clear lack of service development and capacity, many LGBTI community programs and organisations struggle to provide an effective online delivery, and may face greater challenges in adapting to an isolated environment like the one that has developed during the COVID-19 pandemic.

These challenges pose a threat to the viability of these services and further broadens the gap in delivery of services that protect and support the most vulnerable members of the LGBTI community. This also raises the concern of a lessened ability to both meet demand and capacity for LGBTI people to feel comfortable in accessing these services.

The transgender and intersex communities are particularly susceptible to experience greater marginalisation and isolation by a reduced capacity from service providers. Due to impacts on community both socially and economically, the reduction of services results in transgender and intersex people being less likely to visit a doctor, pathology service or general practitioner. This is concerning in a variety of contexts, including

⁵⁷ Ibid 6.

⁵⁸ National LGBTI Health Alliance, “Snapshot of Mental Health and Suicide Prevention Statistics (February 2020) 2-4. Available 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>>.

⁵⁹ Bradshaw, K., and Seal, I. (2018). *National LGBTIQ+ Community Impact Project: Down the slippery slope to full equality for all*. Collective Impact and Three for All Foundation. Page 13.

⁶⁰ Ibid 12.

when experiencing family and domestic violence.⁶¹ A further reduced capacity will restrict access to gender reassignment surgeries, hormone therapy and specific counselling services,⁶² which can greatly impact on the mental health of gender diverse people and heighten their risk to be exposed to family or domestic violence.

An additional concern in significant events or natural disasters is an increased risk of violence due to heightened situations of stress. Evacuation centres can present a risk of verbal, physical or LGBTI exclusionary abuse.⁶³

Unique vulnerabilities arise when disasters present themselves due to the need to rely on others. When a violent intimate partner or family member controls plans for emergencies and the provision of necessities for survival, risk of harm greatly increases.⁶⁴ Events that increase risk include being prevented from evacuating, the exchange of sex for money to buy necessities, being brought back in contact with violent ex-partners in an evacuation centre or community hub etc.⁶⁵ An important consideration is that an individual may not be open to their family or friends, which can create heightened levels of control and risk to experience family or domestic violence.

iii. Family Violence

A mix of physical distancing and a reduced capacity to provide support services exacerbate the strain and impact that LGBTI people experiencing domestic and family violence face.

The family home continues to be an unsafe and hostile environment for LGBTI teens and adults alike.⁶⁶ In these households during this time as a result of the closure of community services in tandem with the social restrictions, the at risk individuals have no means of escape from a hostile family environment.⁶⁷ Places of escape for some LGBTI youth including school, university and friends' houses, are often prohibited to

⁶¹ Saxby, Karrina, "LGBTQI, stigma and community barriers to healthcare" (15 May 2020). Available at <<https://lens.monash.edu/@politics-society/2020/05/15/1380399/lgbtqi-stigma-and-community-barriers-healthcare>>.

⁶² Megha Mohan, "Coronavirus: Transgender people 'extremely vulnerable' during lockdown" (BBC News, 29 April 2020). Available at <<https://www.bbc.com/news/world-52457681>>.

⁶³ Australian Institute for Disaster Resilience, "Understanding the role gender plays in survivor responses to natural disaster: evaluating the Lessons in Disaster Program" (2020). Available at <<https://knowledge.aidr.org.au/resources/ajem-apr-2018-understanding-the-role-gender-plays-in-survivor-responses-to-natural-disaster-evaluating-the-lessons-in-disaster-program/>>.

⁶⁴ 1800 Respect, "Violence in times of disaster" (2020). Available at <<https://www.1800respect.org.au/inclusive-practice/violence-in-times-of-disaster/>>.

⁶⁵ 1800 Respect, "Violence in times of disaster" (2020). Available at <<https://www.1800respect.org.au/inclusive-practice/violence-in-times-of-disaster/>>.

⁶⁶ Rainbow Health Victoria. (April 2020). *COVID-19: impacts for LGBTIQ communities and implications for services*. Page 2-3.

⁶⁷ Rainbow Health Victoria. (April 2020). *COVID-19: impacts for LGBTIQ communities and implications for services*. Page 3; Equality Australia (2020). *LGBTIQ+ COMMUNITIES AND COVID-19: A Report on the Impacts of COVID-19 On Australian LGBTIQ+ Communities and Building a strong response*. Page 7.

function to their full capacity, or have a capped attendance, and are no longer a haven of socialisation and protection.

What can be expected from these closures without adequate alternative services, capacity for adaption, or increased funding, is an increase and worsening of violence within both LGBTI and non-LGBT relationships, as well as the gaps within service providers such as emergency accommodation will be exacerbated.⁶⁸

During times of natural disaster or national emergency, Services must be strengthened and strategies developed to mitigate their impacts and ensure the ability of LGBTI-specific services to function and thrive during times of uncertainty and social upheaval.

Equality Australia has outlined recommendations that should be considered in ensuring that LGBTI Australians are not disproportionately affected as a result of the ongoing pandemic. These recommendations involve the nationwide governmental response complying with human rights obligations and not aiding discrimination through the use of effective and discrimination-free public health mechanisms, equal access to healthcare, and any incursions on civil liberties must solely apply within the context of COVID-19 public health protection. It also includes effective collaboration and input from the LGBTI community in developing any further responses to the crisis, and also the provision of any economic stimulus recognising the few LGBTI specific organisations, businesses and community venues, and providing any necessary assistance.⁶⁹

This submission was drafted by Mr Alex Ladd, Law Reform Director, with the assistance of Mr Craig Land, Mr Angus Mival and Mr Alexander Odman.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our office.

Yours faithfully



Renea Hart

Principal Solicitor | LGBTI Legal Service Inc.

T (07) 3124 7160 | E solicitor@lgbtilegalservice.org

⁶⁸ Equality Australia (2020). *LGBTIQ+ COMMUNITIES AND COVID-19: A Report on the Impacts of COVID-19 On Australian LGBTIQ+ Communities and Building a strong response*. Page 7.

⁶⁹ Ibid 3-4.