



# Gay and Lesbian Rights Lobby

## Response to NSW Government's Public Consultation Paper:

### The Blueprint for the domestic and family violence response in NSW

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Gay and Lesbian Rights Lobby (NSW)

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## Introduction

The NSW Gay and Lesbian Rights Lobby (“GLRL”) welcomes the opportunity to comment on the NSW Government’s Public Consultation Paper: The Blueprint for the domestic and family violence response in NSW (“the Blueprint”).

Established in 1988, the GLRL is the peak organisation for lesbian and gay rights in NSW. Our mission is to achieve legal equality and social justice for lesbians, gay men and their families.

The GLRL has a strong history in legislative reform. In NSW, we led the process for the recognition of same-sex de facto relationships, which resulted in the passage of the *Property (Relationships) Legislation Amendment Act 1999 (NSW)* and subsequent amendments. The GLRL contributed significantly to reforms introducing an equal age of consent in NSW for gay men in 2003 and the equal recognition of same-sex partners in federal law in 2008.

The rights and recognition of children raised by lesbians and gay men have also been a strong focus in our work for over ten years. In 2002, we launched *Meet the Parents*, a review of social research on same-sex families. From 2001 to 2003, we conducted a comprehensive consultation with lesbian and gay parents that led to the reform recommendations outlined in our 2003 report *and Then ...The Brides Changed Nappies*. The major recommendations from our report were endorsed by the NSW Law Reform Commission’s report, *Relationships* (No. 113), and were enacted into law under the *Miscellaneous Acts Amendment (Same Sex Relationships) Act 2008 (NSW)*. In 2010, we successfully lobbied for amendments to remove discrimination against same-sex couples in the *Adoption Act 2000 (NSW)*, and in 2013 we were instrumental in lobbying to secure the passage of antidiscrimination protections for LGBTI Australians, through amendments to the *Sex Discrimination Act (1984)*. We also campaigned successfully for the removal of the “homosexual advance” defence from the *Crimes Act 1900 (NSW)* and the extinguishment of historical homosexual sex convictions, both in 2014.

## Scope of Submission and Use of Terminology

This submission will focus on the issue of domestic and family violence (“DFV”) within the lesbian, gay, bisexual, transgender, intersex and queer (“LGBTIQ”) communities.

Whilst GLRL does not have a mandate to speak on behalf of all members of the LGBTI communities, we believe it is critical to draw attention to the impact of DVF on diverse relationships broadly and have not, therefore, limited our submission to gay and lesbian relationships. In taking this approach, GLRL does not in any way suggest that the issues that LGBTIQ people face are the same, nor that a ‘one size fits all’ solution is appropriate.

GLRL urge the NSW Government to undertake further consultation with LGBTIQ communities before any policy decisions are formulated as a result of issues arising from the Blueprint.

## Contextualising LGBTIQ DFV

In NSW, DFV policy is generally predicated upon the presumption that most perpetrators are men, while women and children primarily experience the abuse (whether physical, emotional or psychological).<sup>1</sup> Whilst this assumption is often accurate for the broader community, LGBTIQ experiences of DFV differ in a number of key ways, including in the type of abuse, the perpetrators and victims and the lack of service provision for clients.

These differences go some way to explaining the finding reached in the *It Stops Here* report, that:

**People who identify as LGBTIQ experience domestic and family violence at similar rates to that of the wider community but are less likely to identify the experience as abuse, report violence to the police, or seek assistance from a domestic and family violence support organisation for fear of prejudice and discrimination. Sometimes, services may not understand the needs of a LGBTIQ person or the nature of their relationship, or support workers may have preconceived ideas about the diversity of sex, sexuality, gender or family.**

Further, the NSW Police Force Response to Domestic and Family Violence specifically mentions LGBTIQ issues, stating:

**While the overwhelming majority of domestic and family violence reports and AVO applications are made by women against their male partners, or ex-partners, this does not preclude domestic and family violence occurring within same sex relationships and abuse experienced by transgender and intersex people. Domestic and family violence experienced by GLBTI people may be similar to the abuse occurring in heterosexual relationships however there are**

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<sup>1</sup> Women NSW, *Public Consultation Paper: The Blueprint for the domestic and family violence response in NSW* (December 2015) <<http://www.haveyoursay.nsw.gov.au/assets/Uploads/DFV-Blueprint-Consultation-Paper2.pdf>>.

**some particular and unique tactics of control and manipulation that have been reported.**

Despite this recognition, LGBTIQ victims of DFV continue to often slip through the cracks of mainstream service provision. Exacerbating the problem is also the lack of research and data on the incidence and prevalence of domestic violence in LGBTIQ relationships in Australia. As such, additional research is required to get a clearer picture of the specific nature of LGBTIQ DFV, especially for transgender and intersex people.

Against this backdrop, this submission will focus on the following three central issues:

- what makes LGBTIQ DFV different;
- the barriers that exist for LGBTIQ people accessing support; and
- what can be done, especially by service providers, to improve access and support.

## DFV in LGBTIQ Communities

It is estimated that LGBTIQ people are just as likely as women in non-LGBTIQ relationships to experience DFV, which is 1 in 3, though research does suggest that there is significant underreporting of this violence.<sup>2</sup> A report on LGBTIQ DFV by the Australian Institute of Family Studies noted:

- 26% of respondents in one survey and 33% of respondents in another reported experienced sexual abuse within their intimate relationship;
- there is difference in the way lesbian women and gay men experience violence, and it has been suggested lesbian women experience violence within relationships more than gay men;
- gay men experience sexual violence or coercive behaviour within casual and sexual encounters.<sup>3</sup>

The research on the experience of DFV of transgendered and intersex persons in an Australian context is minimal, only to suggest that they are more likely to be victims of violence in their intimate relationships.<sup>4</sup> Overseas research found that 80% of transgendered respondents experienced DFV in their past or current relationships.<sup>5</sup>

Non-intimate partner DFV is also reported as an issue, especially among young people. Research in 2010 found 24% of young people experienced DFV within a familial context, noting, the abuse varied and was often perpetrated by fathers.<sup>6</sup> This type of family violence is a key issue for young people, especially in situations where they are reliant on their primary family support.

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<sup>2</sup> Marian Pitts, Anthony Smith, Anne Mitchell, Sunil Patel, *Private Lives Report* (2006) <<http://www.glhv.org.au/report/private-lives-report>>

<sup>3</sup> Bianca Fileborn, *Sexual violence in gay, lesbian, bisexual, trans, intersex and queer communities*, (March 2012) <<https://www3.aifs.gov.au/acssa/pubs/sheets/rs3>>

<sup>4</sup> ACON, *Health Outcome Strategy 2015-2018: Domestic and Family Violence* (September 2015) <[http://issuu.com/aconhealth/docs/acon\\_hos\\_-\\_dfv\\_2015\\_web\\_res](http://issuu.com/aconhealth/docs/acon_hos_-_dfv_2015_web_res)>

<sup>5</sup> See research by LGBT Youth in Scotland, referenced in: ACON, *ibid.*

<sup>6</sup> See research by Hillier et al, referenced in: ACON, *ibid.*

## The Gendered and Binary Model and Misconceptions

In the context of LGBTIQ people in relationships experiencing DFV, and the ability of the law and legal system to respond, the traditional 'victim'/'perpetrator' distinction and the use of gendered language are particularly problematic and fail to account for the complexities arising in same-sex relationships.

Misconceptions about the perpetrators of same-sex domestic violence are particularly problematic in the context of same-sex domestic violence. Misconceptions exist which suggest that those who perpetrate domestic violence must be men, or 'butches' and those who are victims of domestic violence must be women or 'femmes', essentially emulating assumptions about domestic violence in heterosexual relationships. Specific misconceptions exist in relation to gay men, characterised as being incapable of being victims or violence being viewed as confined to physical assault without recognising that assault as intimate violence. These misconceptions contribute to the hesitancy of LGBTIQ people disclosing DFV and masks the reality.

Failing to accurately identify the primary aggressor and primary victim, may result in victims being inappropriately charged with crimes or having AVOs made against them. In such circumstances, Police and, ultimately, the Courts may in fact perpetuate the impacts of DFV. Due to misconceptions about the nature of LGBTIQ relationships, and using gender stereotypes that are not applicable, Police may make assumptions as to which partner is the perpetrator, especially in situations a financial or psychological abuse has been occurring.

## Barriers to Reporting Instances of DFV

A number of barriers are faced by LGBTIQ people in reporting DFV. Reporting by LGBTIQ people is three times lower than the national average, as at 2012,<sup>7</sup> and one piece of research found that 85% of those participants who had experienced DFV did not report the matter to the Police.<sup>8</sup>

Previous research has articulated the barriers to under-reporting, including:

- shame and stigma and fear of being 'outed' in making a report;
- discrimination previously experienced from previous interactions with law enforcement;
- the heteronormative view of DFV can suggest that abuse in a lesbian relationship must be consensual because it occurred between two women;
- the impact from LGBTI communities not wishing to acknowledge an issue that may detract from a more positive view given historical discrimination;
- lack of understanding as to what constitutes DFV;<sup>9</sup>

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<sup>7</sup> ACON, *ibid.*

<sup>8</sup> ACON, *ibid.*

<sup>9</sup> LGBTIQ Domestic Violence Interagency, *Another Closet: LGBTIQ Domestic and Family Violence* (24 October 2014) <<http://www.anothercloset.com.au>>.

- a general reluctance to take legal action.<sup>10</sup>

In addition, for many individuals in LGBTIQ communities the actual or perceived lack of confidentiality can be a barrier for those experiencing domestic violence in accessing assistance.<sup>11</sup> This is often the case in small cities or towns, where the communities may be small and close-knit. The specific barriers that can stop reporting in small communities can include feeling shame or embarrassment, their partner being friends with others in the community or the abusive partner may take steps to isolate them from the other members of the LGBTIQ community.

## Barriers in Accessing Support

Barriers to accessing service delivery for LGBTIQ people experience domestic violence are multifaceted, and in many cases a victim's reasons for not seeking assistance needs to be viewed in its broader social, political and legal context. Key issues include:

- barriers to access arising from fears of homophobia and confidentiality;
- lack of referral options for female perpetrators and male victims within mainstream services;
- lack of service provider awareness, or service provider policies and procedures, in order to identify and respond to same-sex domestic violence;
- lack of general police training in relation to responding to same-sex domestic violence. Such training and responsibility should not be limited to gay and lesbian liaison officers;
- no emergency housing accommodation for gay men, which is of particular issue in rural and regional locations;
- difficulty accessing domestic violence refuges by lesbians and the need for appropriate screening to ensure a perpetrator is unable to access the refuge;
- NSW Police Gay and Lesbian Liaison Officers (GLLOs)<sup>12</sup> are not always accessible, and for many in regional areas, there are no GLLOs at their local Police station. As such, training for general duties and DVLOs in particular on LGBTIQ issues could be of use;
- difficulty in accessing appropriate services exacerbated in rural and remote areas;

In 2011 ACON released the 'One Size Does Not Fit All' report which assessed the current services available to LGBTI victims of DFV, noting some of the gaps in service provision, some of the key findings were:<sup>13</sup>

<sup>10</sup> ACON, *ibid.*

<sup>11</sup> LGBTIQ Domestic Violence Interagency, *ibid.*

<sup>12</sup> "GLLOs are police officers located throughout the state assisting in building the overall capacity of local commands to respond to gay, lesbian, bisexual, transgender and intersex issues. GLLOs undertake a training course which covers key policing responses to homophobic violence, domestic and family violence in same sex relationships and by transgender and intersex people, among other topics." NSW Police Force, *Domestic and Family Violence Code of Practice* (25 November 2013) <[http://www.police.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0016/165202/domestic-and-family-violence-code-of-practice.pdf](http://www.police.nsw.gov.au/__data/assets/pdf_file/0016/165202/domestic-and-family-violence-code-of-practice.pdf)>

<sup>13</sup> ACON, *Gap analysis of NSW domestic violence support services in relation to gay, lesbian, bisexual, transgender and intersex communities' needs: Executive Summary and Recommendations* (2011) <[https://static1.squarespace.com/static/54d05b39e4b018314b86ca61/t/55ac6babe4b075430cc38db9/1437363115609/Gap\\_Analysis.pdf](https://static1.squarespace.com/static/54d05b39e4b018314b86ca61/t/55ac6babe4b075430cc38db9/1437363115609/Gap_Analysis.pdf)>

- Just under half of the services collected data on the number of gay and lesbian clients, and even less collected data on transgender clients and intersex clients;
- 18% of the respondents rated themselves as “fully competent” to work with gay or lesbian people, five services (7.69%) rated themselves as “fully competent” to work with transgender clients, and three services (5%) rated themselves “fully competent” to work with intersex clients.
- An overwhelming majority of services specified that resources would be needed to provide specific support, with many indicating that time and money were most needed. Many services appeared to lack an understanding of the difference between gender, sex and sexual orientation, specifically in relation to intersex and transgender clients. Services also identified the need to train mainstream services to be culturally sensitive to LGBTIQ communities and the needs of people in those communities suffering domestic violence.

The majority of services identified the need for an increase in accessible counselling services for LGBTIQ people. Accessibility for rural, regional and isolated GLBTI people was also a major issue identified. Other issues identified included the need for education of the general community about DFV, inclusion of DFV in mainstream DV events, services for queer men who have experienced DFV, employment of a specialist LGBTIQ worker within mainstream DV services, access to information on how to engage and include LGBTIQ communities and improved access to current literature and research.

The most common strategy (35 services or 53.84%) was for existing services to provide time and support for staff training for working with LGBTI people. 33 services (50.76%) displayed SSDV resources or GLBTI material and 32 services (49.23%) ensured that staff understood some of the unique aspects of LGBTIQ DFV.

Whilst emphasising the issues outlined above, the GLRL recognises and commends the important work already done by community organisations in this space. Nonetheless, more needs to be done in working with mainstream service providers to assist them in providing support to LGBTIQ clients.

## **Recognising Differing Types of Abuse and at-Risk Groups**

DFV in LGBTIQ relationships can take the form of emotional, physical, psychological and financial abuse as in non-LGBTIQ relationships; however, there are some acts of violence specific to the LGBTIQ context, including:

- using sexual orientation against them, threatening to ‘out’ them to family, friends or at work, thus often isolating a person from their support networks
- controlling access to medical treatment (for example, putting barriers in place for a transgendered person from accessing surgery or a pressure to access such surgery)
- stopping a person from attending LGBTIQ events or see others in the community



- pressuring a partner to act or appear more ‘male’, ‘female’ or vice versa or conform to stereotypes of a particular gender<sup>14</sup>

As stated above, DFV is seen in the context of gender inequality, with a man using violence toward women and children. Given that in many LGBTI relationships, this same binary way of experiencing gender inequality is not present, power dynamics may be based on a range of other factors, such as physical strength, psychological dominance or HIV status.<sup>15</sup>

There are a range of people who may, in addition to identifying as LGBTIQ, also belong to other communities who are at-risk of increased rates of DFV. Such people may require additional supports or there may be specific barriers in addition that need to be addressed, such groups include:

- Aboriginal and Torres Strait Islander people;
- People with a disability;
- People living in rural, regional and remote (“RRR”) NSW;
- Individuals and families from culturally and linguistically diverse backgrounds;
- Older Australians.

Of particular concern are those people living in RRR communities. In addition to a general lack of services in many RRR communities in NSW, those LGBTIQ individuals living in these areas are often living in small communities where there may not be a safe place for them to seek alternative accommodation or support.

## Strategies for Prevention, Early Intervention and Support

The following section identifies in brief some of the possible strategies and improvements that could be implemented to address some of the issues raised in this submission. This is not intended to be an exhaustive list, and as stated previously, GLRL strongly recommends that additional consultation occur in the future.

AIFS noted that many of studies examining LGBTIQ DFV issues have a number of limitations, including the use of inconsistent definitions of violence and assault, use of ABS data which is limited in its specifics on gender and sex of perpetrators and that there is very little research on transgendered and intersex DFV.<sup>16</sup> Further, there is very little research into the experience of the ‘at-risk’ groups as identified above. As such, additional research should be conducted into the nature of DFV in LGBTIQ relationships. This future research would improve and target any prevention, early intervention or support strategy that would be implemented, and greatly increase the effectiveness of any strategy employed in combatting LGBTIQ DFV.

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<sup>14</sup> There are a selected number of examples, a longer detailed list can be found at: LGBTQI Domestic Violence Interagency, *Another Closet: LGBTIQ Domestic and Family Violence* (24 October 2014) <<http://www.anothercloset.com.au>>.

<sup>15</sup> ACON *ibid*.

<sup>16</sup> Bianca Fileborn, *ibid*.



Strategies relation to the **prevention and early intervention** of DFV should include:

- information campaigns addressing the specific issues that arise in LGBTIQ relationships and the unique form DFV can take targeted to members of the LGBTIQ community across NSW;
- messaging in general DFV resources that include LGBTIQ issues and contacts; and
- targeting groups those at-risk groups with specific information about DFV, support services and information.

Strategies in relation to **victim support and recovery** should include:

- ensuring that all LGBTIQ people have access to safe, inclusive and independent support and advice services, including crisis accommodation, counselling, legal advice and court and advocacy support;
- funding for the continuation and establishment of additional LGBTIQ DFV information and advocacy services in key centres across the state, for example, in key regional centres (which could then operate outreach services at other locations). These could take the form the successful ICLC Safe Relationships Project (see Appendix 1);
- training for service providers, Police, court staff and other frontline workers on the specific issues facing LGBTIQ clients – in particular the barriers in accessing services and the particular form of DFV in relationships as raised in this submission;
- specific focus on LGBTIQ clients in RRR areas in working out the best way to access safe services;
- collaboration with court based advocacy services, such as the Women's Domestic Violence Court Advocacy Services which are located in most major courts in NSW, to look at ways LGBTIQ clients may able to be supported in the same of similar manner.

## Conclusion

We urge any change in DFV policy to be inclusive of all communities, and as such ensure that proper steps are taken to allow for all people in NSW to feel comfortable in accessing the support services they require. As such, the Blueprint should take into account the specific barriers facing LGBTIQ communities as well as the gap in service provision.

If you would like to discuss this submission further, please contact GLRL on [policywg@glrl.org.au](mailto:policywg@glrl.org.au).



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## Appendix 1: Organisations Working with the LGBTIQ Community

Organisations across NSW have looked at the issue and have first hand experience of DFV in the community, including:

- Inner City Legal Centre Foundation which has produced a number of resources including 'Another Closet', a website with information, a relationship checklist for individuals to assess their relationship for signs of DFV and 'Another Closet' handbook<sup>17</sup>
- Inner City Legal Centre based in Potts Point NSW runs the Safe Relationships Project.<sup>18</sup>
- Q-Life, a online and telephone counselling service for LGBTIQ communities;<sup>19</sup>
- The Gender Centre run the Transgender Anti-Violence project<sup>20</sup>
- ACON have produced a domestic violence strategy covering 2015-2018<sup>21</sup>

## Appendix 2: Select Table of Research and Reports on LGBTIQ DFV Issues

Author	Report
Inner City Legal Centre	Safe Relationships Project Resources on <a href="http://www.iclc.org.au/srp">www.iclc.org.au/srp</a>
LGBTQI Domestic Violence Interagency	Another Closet: LGBTIQ Domestic and Family Violence
ACON	Gap analysis of NSW domestic violence support services in relation to gay, lesbian, bisexual, transgender and intersex communities' needs: Executive Summary and Recommendations
Bianca Fileborn	Sexual violence in gay, lesbian, bisexual, trans, intersex and queer communities published by Australian Institute of Family Studies
Marian Pitts, Anthony Smith, Anne Mitchell, Sunil Patel.	Private Lives Report published by Gay and Lesbian Health Victoria.

<sup>17</sup> LGBTQI Domestic Interagency, *ibid*.

<sup>18</sup> See: <http://www.iclc.org.au/srp/> for further details.

<sup>19</sup> See: <https://qlife.org.au> for further details.

<sup>20</sup> See: <http://tavp.org.au> for further details.

<sup>21</sup> ACON, *ibid*.