

30 Lesbian, gay, bisexual, transgender and intersex communities

Introduction

The Commission's terms of reference require it to consider the needs and experiences of people affected by family violence, having particular regard to, among others, people from gay, lesbian, bisexual, transgender and intersex communities.

This chapter outlines the diverse experiences of lesbian, gay, bisexual, transgender and intersex people affected by family violence. Although transgender and intersex communities are often grouped together with gay and lesbian and bisexual communities because of a shared history of discrimination, we recognise that each of these communities and the barriers they face are distinct. It is for convenience only that this chapter refers collectively to 'LGBTI communities'.

This chapter examines the unique forms of family violence that can be experienced by LGBTI people. This can include such forms of family violence as threatening to 'out' a person, using homophobia as a tool of control, refusing to acknowledge or recognise a person's sexuality or gender identity, withholding medication such as hormones or HIV medication, or threatening to disclose HIV status. LGBTI people are less likely to report family violence to police or seek help from services, due to mistrust, fear of discrimination or simply due to a lack of appropriate services being available to assist them. LGBTI people may experience additional disadvantage associated with other identities or attributes they may have—as an Aboriginal or Torres Strait Islander, a person from a culturally or linguistically diverse background, an older person, a person living in a rural, regional or remote area or as a person with a disability.

The family violence experience of LGBTI people are often invisible to the broader community. This chapter considers some of the key challenges for LGBTI people—including a lack of information, data and education within the community. The failure of a number of services and programs to recognise the unique experiences of people in LGBTI communities can lead to services being inaccessible or inappropriate for both victims and perpetrators. The potential for lawful discrimination against LGBTI people, including by providers of family violence services and other related services, also adversely affects LGBTI people.

The Commission recognises the need for greater community awareness of the needs of LGBTI people in relation to family violence. Greater attention by police, the courts and family violence services is also needed. We recommend the development of LGBTI-specific resources, programs and community education campaigns to improve awareness and understanding of family violence in this context. The Commission also recommends improvements to family violence services to respond to the needs of people in these communities.

Context and current practice

LGBTI communities in Victoria

In discussing the experiences of people in LGBTI communities, the Commission recognises that there are both diverse sexualities and gender identities. Sexuality is about a person being attracted to a person. Gay and lesbian people are attracted to people of the same sex, while bisexual people are attracted to people of a variety of sexes. Gender identity is about whether someone identifies as a woman, man or another form of gender identity. A transgender person is someone who was assigned a sex at birth that they do not feel reflects how they understand their gender identity. An intersex person is described by the *Sex Discrimination Act 1984* (Cth) as someone with physical, hormonal or genetic features that are considered neither wholly female or wholly male, are a combination of female or male or are neither female or male.¹ Others define an intersex person to be someone 'born with physical sex characteristics that don't fit medical norms for female or male bodies.'² A person can identify as a gay, lesbian or bisexual (sexuality), as well as transgender or intersex (gender identity). The concept of gender identity is discussed in more detail in the box on this page.

Understanding gender identity

Although our society has historically treated gender as a binary concept—that is, either male or female—there is a spectrum of gender, resulting in gender diversity.³

Affirming gender and transitioning between genders are deeply personal decisions that involve a person seeking to redress a mismatch between their sex and their gender identity. They do not necessarily entail gender-reassignment surgery; they simply mean that a person is living their affirmed gender.⁴

The Commission was told that while attitudes are gradually changing, discrimination towards LGBTI people is still prevalent.⁵ Gay and Lesbian Health Victoria told us that:

...Recent research indicates that, while Australians' attitudes to sexual diversity have improved in the last ten years, still 1 in 8 women and 1 in 4 men think sex between two men is 'always wrong', and 1 in 6 men and 1 in 8 women think sex between two women is always wrong.⁶

Similarly, [No To Violence and Safe Steps Family Violence Response Centre](#) note in their submission that:

the prevalence of violence, harassment and discrimination experienced generally by LGBTIQ people, is proportionally higher than that experienced in the broader community.⁷

In recent years, there has been progress in societal recognition of LGBTI people, particularly in our understanding of diverse relationships and family composition. This has been reflected in legislative changes to be more inclusive of people in these communities.

In 2000, gender identity and sexual orientation were recognised as attributes on the basis of which discrimination is prohibited under Victoria's equal opportunity legislation.⁸ In 2001, a series of legislative reforms amended a variety of pieces of legislation to recognise the rights and obligations of partners in domestic relationships, irrespective of the gender of each partner.⁹

The *Relationships Act 2008* (Vic) allowed Victorian couples in domestic relationships, irrespective of their genders, to register their relationship with the Registrar of Births, Deaths and Marriages.¹⁰ This mechanism was intended to make it easier for domestic partners to access rights afforded to other couples under Victorian law.¹¹

In 2015, the Victorian Parliament amended the *Adoption Act 1984* (Vic) to allow same-sex couples to adopt children.¹²

In addition to Victorian developments, the Commission notes the ongoing debate regarding Commonwealth law reform to recognise same-sex marriage.

The definition of family violence in the *Family Violence Protection Act 2008* (Vic) is 'expansive, non-exhaustive and ... gender neutral.'¹³ The definitions of 'domestic partner' and 'family member' are applicable to members of the LGBTI community.¹⁴ In determining whether a person is a domestic partner of another person, the genders of the persons are irrelevant.¹⁵ Further, one of the statutory examples of emotional or psychological abuse set out in the Act specifically relates to a person's sexual orientation.¹⁶

Based on the 2011 Census, in Victoria there were 1,160,880 heterosexual couples, 4666 male same-sex couples and 4056 female same-sex couples.¹⁷ While the number of same-sex couples is likely to be under-reported—including for reasons discussed elsewhere in this chapter such as a fear of homophobia and discrimination if such relationships are identified—this data suggests that same-sex couples (n=8722) represent 0.7 per cent of all couples in Victoria. Data regarding the number of transgender and intersex people in Victoria is not readily available.

Prevalence of family violence in LGBTI communities

There has been little research into family violence in LGBTI relationships, in Australia or elsewhere. The Australian Bureau of Statistics' Personal Safety Survey does not collect data on lesbian, gay, bisexual, transgender and intersex identity.

However, the research that has been done suggests that intimate partner violence is as prevalent in LGBTI communities as it is in the general population:

- ▷ A 2008 study of 390 LGBTI Victorians reported that almost one-third of respondents had been in a same-sex relationship in which they were subjected to abuse by their partner.¹⁸
- ▷ Similarly, almost 33 per cent of the 5476 respondents in the Private Lives study—one of the largest surveys of LGBTI people ever conducted—reported experiencing intimate partner abuse.¹⁹
- ▷ In that study, 41 per cent of females and 28 per cent of males reported experiencing abuse within an intimate partner relationship, while 25 per cent of females and 20 per cent of males reported forced sex within such relationships.²⁰
- ▷ Only 18 per cent of those who had experienced forced sex and 20 per cent of those who were physically injured reported this to police.²¹

Victoria Police data also reveals that between 2013 and 2014, there were 373 incidents involving a male affected family member (that is, victim) and a current or former male partner as the other party (that is, perpetrator). This represents 8.3 per cent of all family violence incidents involving a male other party and 5.2 per cent of all male victim incidents involving a current or former partner and three per cent of all male victim incidents.²²

There were 308 incidents involving a female affected family member and a current or former female partner as the other party, representing 10 per cent of all incidents involving a female other party, one per cent of all female victim incidents involving a current or former partner and 0.7 per cent of all female victim incidents.²³

As a subset of family violence incidents recorded, those involving a current or former same-sex partner accounted for 1.7 per cent of all incidents involving a current or former partner and 1.1 per cent of all incidents.²⁴

Research from the Victorian Family Violence Database shows that of some 29,978 original applications for a family violence intervention order between 2013 and 2014, 68 per cent involved a current or former domestic partner or intimate personal relationship ($n=20,284$).²⁵ Applications involving an affected family member in a same-sex relationship ($n=639$) accounted for 3.2 per cent of all applications involving a current or former domestic partner or intimate personal relationship and 2.1 per cent of all applications.²⁶

A systematic literature review of intimate partner violence among US men who have sex with men found that all forms of intimate partner violence (physical, sexual and psychological) occur at 'alarming rates'—similar to or higher than those measured in populations of women.²⁷

Australian research data has identified high incidences of intimate partner violence experienced by transgender and intersex people as compared to non-transgender and non-intersex gay, lesbian and bisexual people.²⁸ The Commission heard that transgender people experience higher levels of violence in their lives than lesbian, gay and bisexual people.²⁹ Transgender women, in particular, are at greater risk of hate crime and sexual assault than others in the LGBTI community.³⁰

Little information is available about the experiences of intersex Australians who suffer family violence, but anecdotal evidence suggests that, because of society's poor understanding of intersex people and the associated social stigma, such people are highly vulnerable to discrimination and family violence.³¹

Gay and Lesbian Health Victoria's submission explained that some aspects of identity—such as a person's age, race, cultural and linguistic background, disability, and living in rural, regional and remote areas—might put LGBTI people at greater risk of experiencing family violence and make it less likely that they can gain access to appropriate services.³²

LGBTI experiences of family violence

Members of LGBTI communities can experience the same forms of family violence as the general population. For example, family violence in gay and lesbian relationships, as in heterosexual relationships, ranges from physical or sexual violence to psychological, emotional or economic abuse. Like family violence in heterosexual relationships, family violence in gay and lesbian relationships can include a pattern of behaviour, involving one partner using and maintaining power and control over the other.³³

Unique forms of family violence for LGBTI people

Experiences of intimate partner violence within LGBTI communities can also be different to the experiences of heterosexual people. Drummond Street Services submitted to the Commission that it has been 'struck by the complexity' of intimate partner violence in LGBTI members of the community who present at counselling services. For example:

IPV assessment is very specialist to understand both sex and gender identity issues and identify victim, perpetrator in relationships where clinically we see high rates of mutual violence. This tends to be common in LGBTIQ couples where both experience or have histories of child abuse, victimisation and bullying, lack of family supports, difficult experienced of coming out or gender affirmation/disclosure and lack of supports.³⁴

The Family Violence Protection Act defines 'emotional or psychological abuse' as including the specific example of 'threatening to disclose a person's sexual orientation to the person's friends or family against the person's wishes'.³⁵ 'Outing' a person is a common form of family violence in LGBTI communities.³⁶ The following are other kinds of violence:

- ▷ telling a partner they will lose custody of children as a result of being outed
- ▷ using homophobia as a tool of control—for example, through telling a partner they will be unable to gain access to police or other support services because the system is homophobic
- ▷ telling a partner they deserve the violence because they are lesbian, gay, bisexual, transgender or intersex
- ▷ telling a partner they are not a real woman, man or lesbian, gay or bisexual person
- ▷ disclosing or threatening to disclose HIV status
- ▷ hiding, withholding or otherwise preventing a partner from taking medication or treatment such as hormones or HIV medication.³⁷

Challenging sexual and gender norms can be a major trigger of violence in some families:

LGBTI people may be at greater risk than heterosexual people from abuse, harassment and violence from family members such as parents, siblings and offspring due to entrenched homophobia ... For older people, there may be a heightened risk of homophobic-related family violence, particularly as they become more dependant or frail.³⁸

At a community consultation the Commission was told:

Too often family violence is referred to as 'difference in values'. We need to recognise abuse against children because they don't fit in. Often children who come out are at risk of being abused by their parents and family.³⁹

Barriers to reporting violence

The Commission heard that people who experience homophobia and transphobia face particular barriers when it comes to reporting family violence. A recent Sydney study found that 53.5 per cent of 116 female respondents and 67.1 per cent of 70 male respondents who had experienced abuse in a current or previous LGBTI relationship did not seek any form of assistance.⁴⁰

People from LGBTI communities are less likely to report violence, to seek support or to identify experiences of family violence and abuse, partly because of a fear of 'outing', as well as actual or perceived discrimination and harassment.⁴¹

In addition, people from LGBTI communities may have less support from family when experiencing violent relationships. The joint submission of No To Violence and Safe Steps explained:

Therefore some LGBTIQ people leaving a violent partner may be doing so without the support of biological family, who may have alienated them due to their intersex status or sexual and gender identity. This creates another layer of disadvantage, particularly if they are experiencing poverty, unemployment or under employment.⁴²

Transgender people report specific forms of family violence that might not be experienced by others; for example, a transgender person's partner might cease recognising the victim's gender as a man, woman or non-binary gender as a form of emotional abuse.⁴³

Intersex people can experience family violence in unique ways—for example, when family members do not accept a person identifying with a gender different from that which their parents attributed to them:

Intersex youth can also experience strong reactions from biological relatives if they have physical characteristics that may challenge their fundamental perception about the young person's place and role within the family. Intersex organisations have stated that these reactions can be, and sometimes are, violent.⁴⁴

The Commission was informed that the justice system as well as service providers are not always supportive of intersex individuals. Police, specialist family violence services and other sources of assistance 'should be aware that a client could be intersex, and that many intersex people identify as women or men and not as a "third gender" or "third sex"'.⁴⁵

Intersection of different aspects of identity

Different aspects of identity can intersect to make family violence different for each individual in the LGBTI community.

Aboriginal people can experience family violence that is informed by both race and sexuality:

Indigenous Victorians witness or experience high[er] levels of family violence within their own communities than the general population as well as racially-based violence from the broader community. For those who identify as Indigenous and LGBTI the effects of this exposure [to] violence can be compounded by violence that might occur in their own partner relationships or be directed towards them by family members because of their sexuality or gender identity.⁴⁶

The Commission heard that LGBTI people from culturally and linguistically diverse communities can be subject to prejudice on the part of family members who have cultural or religious objections to their sexuality or gender identification:

More recently arrived migrant groups and refugee communities often come from countries where homosexuality remains a criminal offence punishable by imprisonment (79 countries) or death (in 9 countries including Iran, Iraq, Somalia and Sudan) ... Lesbian, gay, bisexual and trans* people within such families can be at significant risk in terms of their loss of liberty and personal safety ... LGB individuals have reported situations where family have physically assaulted them, locked them in their rooms, confiscated their bankcards and mobile phones, refused access to more sympathetic family members, and been subjected to 'interventions' by community elders.⁴⁷

For same-sex attracted and gender diverse young people from refugee and newly arrived communities, feeling unsafe at home is a common experience.⁴⁸

Older lesbian, gay and bisexual people also face particular risks and mainstream understandings of elder abuse and family violence may not be attuned to these risks:

The vast majority of older LGBT people have experienced a long life history of social exclusion, family rejection, community-sanctioned violence and discrimination, and in some cases for men, a criminal record for having consensual adult sex. As they move into their final decades of life, their increasing vulnerability and frailty leaves them exposed to emotional and economic abuse, social isolation and physical violence perpetrated by family members and carers. After a life-long habitual need to conceal their sexual identities, older lesbian and gay people can be particularly vulnerable to violence from family members who threaten to 'out' them.⁴⁹

Older transgender people can be extremely vulnerable:

Most older trans* people have only had the opportunity to transition when they reached their 50s and 60s and many are estranged from their parents, siblings and children because of their transition. Consequently there are genuine concerns (founded in stories of what has happened to other trans* people), that family members will re-enter their lives as they become frail and dependant, and attempt to reverse their gender change process by controlling their medication, their income and their lives.⁵⁰

LGBTI people living in rural, regional and remote areas can also be at risk of further marginalisation as a result of social isolation, homophobia and transphobia⁵¹ and a lack of appropriate support services.⁵² Ms Anna Brown, Co-convenor of the Victorian Gay & Lesbian Rights Lobby, gave evidence that:

... we do have some very limited specialist LGBTI providers or mainstream providers with some LGBTI understanding and competency in the metro areas, very, very limited as set out in the submissions. But this obviously is deeply lacking when it comes to regional and rural Victoria and also in those areas that's coupled with the real likelihood of higher rates of discrimination, homophobia and transphobia and more likely that LGBTI people will be in the closet and fearful of seeking help. So those experiences are very much compounded in those geographical areas.⁵³

Such discrimination and lack of support can have a devastating effect on an already traumatised person:

One of our colleagues, a counsellor of family violence victims, told us of a recent case where a gay male victim of intimate partner violence was denied support by a rural domestic violence support service because of his gender. This meant that at the time of the court hearing about his assault he was forced to sit outside a small rural courthouse in close proximity to the perpetrator. He was denied access to the 'women's safe room' because of his gender. He was also denied the support of the domestic violence support worker at the court. The court process and lack of services re-victimised this man, causing him immense distress and compounded the quite significant post-traumatic stress disorder he was already suffering.⁵⁴

Gay and Lesbian Health Victoria submitted that 21 per cent of LGBTI people have a disability and that these people experience higher levels of violence than people without a disability.⁵⁵ The organisation noted that given the high levels of family violence experienced by people with disabilities generally, 'it is likely that LGBTI people face similar or greater risks due to the compounding factors of disability and sexual/gender diversity'.⁵⁶

Current prevention strategies

The *National Plan to Reduce Violence against Women and their Children 2010–2022*, is an initiative of the Council of Australian Governments with a vision to ensure that 'Australian women and their children live free from violence in safe communities'.⁵⁷ The National Plan aims to achieve 'attitudinal and behavioural change at the cultural, institutional and individual levels, with a particular focus on young people'.⁵⁸ The National Plan is supported by three-year action plans.⁵⁹

The National Plan contemplates grants to encourage primary prevention with priority given to 'women with disabilities, older women, culturally and linguistically diverse communities and gay and lesbian communities'.⁶⁰

The First Action Plan *Building a Strong Foundation 2010–2013* sought to address the needs of these diverse communities,⁶¹ though LGBTI communities do not appear to have been a focus.

While the Second Action Plan *Moving Ahead 2013–2016* addresses family violence in some diverse communities—Indigenous and culturally and linguistically diverse communities and people with disabilities⁶²—it does not specifically refer to LGBTI communities.

In Victoria, Building Respectful Relationships education programs are run in secondary schools, educating students on 'gender, violence and respectful relationships' to 'prevent violence against women'.⁶³ Ms Gill Callister, Secretary of the Department of Education and Training, told the Commission that the curriculum contains 'themes relevant to preventing family violence' and the importance of 'challenging attitudes and behaviours such as homophobia and sexism, including discrimination and harassment'.⁶⁴ The materials used to teach the curriculum discuss relationships and gender based violence, including same-sex relationships, diverse experiences of sexuality and homophobia.⁶⁵ They also recognise that '[v]iolence happens in same-sex relationships as well as heterosexual relationships'.⁶⁶

Dr Sue Dyson, Associate Professor and Principal Research Fellow at the Australian Research Centre in Sex, Health and Society, La Trobe University commended the program as a 'really good [example] of sexuality education that also address violence prevention' and is one of the 'best practice examples that we need to be building on'.⁶⁷

Ms Brown suggested that the program might also provide 'a useful model to expand ... for an adult context for LGBTI communities',⁶⁸ allowing community-wide education to occur.

The Commission heard that the Healthy Equal Youth Funding project has been a successful initiative.⁶⁹ It aims to build a same-sex attracted and sex and gender diverse (SSASGD) youth platform within the mainstream youth sector and improving the quality of mental health and support services provided to these young people.⁷⁰ Funded by the Department of Health and Human Services and jointly managed by Gay and Lesbian Health Victoria and the Youth Affairs Council of Victoria Inc., it provides one-off small grants for SSASGD youth projects.

Safe Schools Coalition

The Healthy Equal Youth Project funds the Safe Schools Coalition Australia, which provides training and resources to schools to become free of homophobia and transphobia. There are 490 member schools across Australia who work in coalition with partner organisations to offer:

a suite of free resources and support to equip staff and students with skills, practical ideas and greater confidence to lead positive change and be safe and inclusive for same sex attracted, intersex and gender diverse students, staff and families.⁷¹

The training and resources provided as part of the program include professional development and training for teachers and other school staff. Staff and student surveys are accessible online to measure perceptions, knowledge and experience, guidance and consultation. There are also printed and digital resources for teachers, and resources to support student engagement.⁷²

In a recent United Nations report into school bullying, violence and discrimination which covered the Asia-Pacific region, it was noted that Australia was the only country in the review that had a national whole school program that addresses school bullying, violence and discrimination based on sexual orientation, gender identity and expression or intersex characteristics.⁷³

Challenges and opportunities

Many submissions discussed the particular challenges experienced by those in LGBTI communities. Some of the themes which emerged from the evidence were that issues relevant to LGBTI communities are largely absent from the discourse around family violence (including in relation to awareness and education campaigns and the collection of data), LGBTI people face particular difficulties in reporting family violence to police and in accessing support services, and that discrimination against LGBTI people remains lawful in some instances.

The invisibility of family violence in LGBTI communities

The Victorian Gay & Lesbian Rights Lobby argued that LGBTI communities are rendered invisible in awareness campaigns and that this limits recognition of family violence among LGBTI communities and acts as a barrier to reporting.⁷⁴

The Commission heard that community awareness of family violence usually involves the assumption that violence is invariably perpetrated by heterosexual men against heterosexual women and therefore the majority of intimate partner violence discourse is constructed according to gendered assumptions and 'heteronormativity' (the assumption of heterosexuality). Moreover, 'misconceptions exist which suggest that those who perpetrate domestic violence must be men, or 'bitches' and those who are victims of domestic violence must be women or 'femmes', essentially emulating assumptions about domestic violence in heterosexual relationships.' These misconceptions contribute to the hesitancy of people in same-sex relationships to disclose family violence, 'mask the reality of same-sex domestic violence' and also fail 'to account for the complexities arising in same-sex relationships.'⁷⁵

Dr Philomena Horsley, Research Fellow and Senior Trainer, Gay and Lesbian Health Victoria, Australian Research Centre in Sex, Health and Society, La Trobe University, told the Commission these assumptions can mean that LGBTI victims lack the language to recognise that what is happening to them is family violence:

I think one of the key things is it is often more difficult to recognise domestic violence and family violence from the perspective of being the victim or indeed the offender, that because the language has been extensively relating only to heterosexual couples or in fact families that are all heterosexual, there is an invisibility and exclusion over this whole issue so people don't necessarily have the vocabulary or the sense of recognition around the dynamics that occur.⁷⁶

The Commission was told this was a particular problem in relationships between gay men, who might see family violence as something that happens to heterosexual women. Even if the violence is identified as family violence, there is a degree of shame associated with being a male victim of family violence.⁷⁷ As one commentator has noted, 'The lack of resources available for men in same-sex relationships mirrors the societal belief that abuse is something that only happens to heterosexual women.'⁷⁸

One submission to the Commission commented on the lack of understanding and support in relation to family violence in the gay community:

For gay men who are subjected to family violence, they will often be met with disbelief by others in the gay community or at worse disparaged. The reason for this I think is that the issue of family violence within gay relationships isn't discussed or raised prominently. This has the potential to reinforce that family violence within a gay relationship doesn't exist. Subsequently, when it does occur, the victim is less likely to disclose, thinking that he won't be believed or that the disclosure will be actively dismissed. Community education and awareness raising has a vital role to play in breaking down this response and reinforcing that family violence within gay relationships is unacceptable and that there is help available for those who are being abused or mistreated.⁷⁹

The Safe Steps and No To Violence joint submission noted that the gender-based analysis of violence within the family violence system has led to 'systemic and institutionalised marginalisation of LGBTIQ people'. Some service providers have themselves recognised this as a problem.⁸⁰

Gay and Lesbian Health Victoria further submitted that LGBTI people's 'long-lived experience of abuse, violence and discrimination' from the broader community, can result in 'a high tolerance of violence in personal relationships and an unwillingness to seek help from services':

This is likely to be particularly true for older LGBT people, most of whom who have endured many decades of rejection and/or violence from family members, and are also more likely to be isolated.⁸¹

The Commission also heard that the silence around violence in same-sex relationships may be 'reinforced by the fear that acknowledging it may feed societal homophobia and contribute to prejudice about gay or lesbian relationships.'⁸²

Lack of information

The Commission was informed that, although some family violence online resources provide a degree of support for lesbian, bisexual or 'same-sex attracted' women,⁸³ there is a general lack of relevant information and advice available to LGBTI family violence victims in Victoria. As a consequence, people in LGBTI communities are using interstate resources for information about sources of help for family violence:

There have been some broader campaigns run by the Victorian Aids Council (VAC) and the Aids Council of New South Wales (ACNSW), but nothing specific to Family Violence. Victorian people are referring to the NSW resources as the key resource because there's nothing specific for the Victorian LGBTIQ community.⁸⁴

Another Closet, a website developed by the New South Wales LGBTIQ Domestic Violence Interagency, provides comprehensive information and referrals for people experiencing family violence in LGBTIQ relationships.⁸⁵

The Commission was informed that promoting education about family violence in LGBTI communities and the broader community is an important part of preventing family violence.⁸⁶ Limited prevention strategies specific to LGBTI communities exist. Many prevention strategies focus solely on heterosexual intimate partner relationships.⁸⁷ Gay and Lesbian Health Victoria submitted that 'education initiatives need to be developed and resourced that specifically target the LGBTI community' as '[t]he need to address the gaps that exist in current prevention education programs available to the general community is urgent'.⁸⁸ This would require increased funding of inclusive family violence awareness campaigns and early intervention programs.⁸⁹

Such an education campaign could include running shared campaigns between LGBTI and family violence services so as to encourage people to make use of family violence services. The Stronger Safer Together campaign in Alice Springs was cited as an example of a successful campaign.⁹⁰ It could also include conducting targeted education campaigns for family violence services about their obligations under anti-discrimination and human rights legislation and about working with same-sex attracted and gender diverse people.⁹¹

The Commission was also told that there is a need to develop legal and non-legal resources for LGBTI communities to support the identification and reporting of family violence, along with information about safe, LGBTI-accessible sources of support.⁹² The online resource *Another Closet* provided by the LGBTIQ Domestic Violence Interagency and discussed above was cited as a useful model.⁹³

The Commission was also told that education of judges and magistrates about family violence in LGBTI communities would 'improve the culture of the justice system, including enhancing the sense of safety, confidentiality and respect for those who have experienced violence'.⁹⁴ Gay and Lesbian Health Victoria noted that in some cases, same-sex partner violence has been treated as less important or less serious in nature than heterosexual violence.⁹⁵

Lack of data

As discussed earlier, family violence in LGBTI communities remains poorly understood, partly because of a lack of research and poor data collection.⁹⁶ Data on sexuality is not captured by the Australian Bureau of Statistics, Personal Safety Survey, and may also not be captured by Victoria Police data. The limited state of research regarding the prevalence of family violence in LGBTI communities means it is difficult to understand the scope of the problem. Consequently, it is difficult to identify appropriate and effective policy responses, recognising that these may be different to those that apply to heterosexual people.

It was suggested to the Commission that one of the ways in which this could be addressed would be to improve existing data collection systems and mandate the collection of information about LGBTI status, type of violence, and outcomes and actions in order to refine future service delivery and monitor equality performance.⁹⁷ This would necessitate minor, but important, changes to existing forms and processes; for example, the Victoria Police L17 form should include a field to record 'other' gender for transgender or intersex people. Other measures could include amending the Family Violence Risk Assessment and Risk management Framework (also known as the Common Risk Assessment Framework, or the CRAF) to incorporate risk assessment indicators for specific communities—including LGBTI people⁹⁸—and including LGBTI indicators in the Victorian Government's proposed Family Violence Index.⁹⁹ Finally, the Commission was told that funding research aimed at gaining a better understanding of the nature and prevalence of and most effective responses to family violence in LGBTI communities is key.¹⁰⁰ The lack of data in relation to LGBTI people and family violence is discussed further in Chapter 39.

Reporting violence to police

Police data reveals that of the 65,154 family violence incidences recorded in 2013 to 2014¹⁰¹ there were 741 recorded family violence incidents in which the parties were in a current or former same-sex relationship.¹⁰²

The Commission was told that LGBTI communities have a deep historical mistrust of the police and the legal system.¹⁰³ The past criminalisation of homosexuality has contributed to this mistrust,¹⁰⁴ which can lead to a reluctance in LGBTI communities to report violence.¹⁰⁵ We heard that this is especially the case among older members of LGBTI communities.¹⁰⁶

In one survey, more than half the respondents who cited homophobia and heterosexism as barriers to reporting referred to difficulties with the police. A large number cited fear of the police engaging in 'hetero male ridicule' or said the police would make their gender history public, out them to their parents, or be indifferent to the specific needs of LGBTI people.¹⁰⁷

The Commission was also told of examples of family violence where the police did not realise the people involved were in a relationship:

Police in an outer metropolitan Melbourne suburb received a call-out from neighbours to attend what sounds like a violent argument in the flat next door. When they arrived they found two men inside the flat. The men appeared to the police to be flatmates ... They were assured by the taller man that the two men had simply had an argument about something trivial but that it was all over. Later that night the same police were called to the local hospital's Emergency Department to discover the shorter man had been severely beaten and was being moved to the ICU with serious injuries. On investigation it was confirmed that the two men had been in a relationship for some years. One of the attending officers reflected with great regret that, on arrival at the flat, they did not implement the standard procedure in relation to suspected domestic violence, which required that the two people involved be interviewed separately to ascertain if they felt safe. He recognised that he did not entertain the idea of the men as a gay couple at the time.¹⁰⁸

An LGBTI worker participating in one of the Commission's community consultations said that police 'don't ever' identify a situation as family violence when it involves a same-sex relationship and that 'there's a lot of assumptions and stereotypes'.¹⁰⁹ Another participant in the consultation commented that 'some police stations respond well [to LGBTI family violence incidents] where there has been training'.

In recent years, Victoria Police has sought to build trust between police and LGBTI communities. The establishment of the Police LGBTIQ Portfolio Reference Group and the implementation of a network of gay and lesbian liaison officers, along with important symbolic efforts, have had an important cultural impact in the organisation.¹¹⁰ Gay and Lesbian Health Victoria submitted:

The role of [gay and lesbian liaison officers] is critical for those who wish to report family violence. However, their numbers and their availability are somewhat limited. It is therefore critical that training on family violence [is] provided to both new recruits and current VicPol staff incorporates issues relevant to the LGBTI community.¹¹¹

During its consultations the Commission was told that some gay and lesbian liaison officers were more effective than others.¹¹²

The Victoria Police Code of Practice for the Investigation of Family Violence currently recognises that same-sex intimate partner abuse may involve:

- ▷ threatening to out their partner or someone for whom their partner cares (for example, a friend)
- ▷ telling their partner that no one will help them as the police and the justice system are homophobic
- ▷ telling a partner that they will not be believed because homosexuals do not abuse their lovers
- ▷ telling a partner that they deserve it because they are homosexual
- ▷ telling a partner that they are not a 'real' homosexual
- ▷ withholding of medication for those transitioning to another gender.¹¹³

Victoria Police recommended that the CRAF be updated 'to reflect the range of relationships, harms and risks now under the definition of family violence'.¹¹⁴ This includes incorporating risk assessment indicators for specific communities in the framework, including for LGBTI people.¹¹⁵

The Commission heard that there was support for training to be made available to police so that they could more effectively respond to family violence experienced by LGBTI people.¹¹⁶

Access to support services

The joint submission from Drummond Street Services and the Victorian Aids Council noted:

...there are no hot lines, no shelters, no support groups, no advocacy and no public campaigns for individuals in same sex relationships, or who identify as LGBTIQ who are subjected to intimate partner or family violence.¹¹⁷

The Commission was told LGBTI victims have difficulty gaining access to mainstream family violence services because of the lack of availability of these services,¹¹⁸ as well as a fear on their part that the systemic discrimination, homophobia and transphobia they experience in daily life will similarly occur when they try to make use of these services.¹¹⁹

Gay and Lesbian Health Victoria reported that 50 per cent of LGBTI people 'usually or occasionally' hid their sexuality or gender identity for fear of heterosexist violence or abuse when in public places, at work, and at social and community events.¹²⁰ Living in fear of discrimination damages victims' trust in service providers and creates apprehension at the prospect of using mainstream services.¹²¹

The Commission was told that mainstream family violence services might not have the requisite level of understanding of and sensitivity to respond to LGBTI victims and their needs. In a consultation with LGBTI workers it was said that within both mainstream and LGBTI services training in relation to family violence within LGBTI communities is largely non-existent:

When LGBTIQ people are looking for assistance in Victoria it's a real cycle of hit and miss, but generally miss. There's been no specific training in either mainstream or LGBTIQ-specific agencies, and that has contributed to the myth that there is no family violence in LGBTIQ communities, or that family violence is more applicable to straight relationships.¹²²

The Commission is aware of a variety of ways in which the capacity of mainstream and family violence services to respond to LGBTI victims might be improved.

In 2012, Gay and Lesbian Health Victoria developed what are now nationally recognised standards for LGBTI-inclusive practices in services.¹²³ This included a training program called the How2 Program package, which is designed to help organisations develop their practices in order to provide a safe and inclusive environment for LGBTI people.¹²⁴

Others identified the Rainbow Tick as another way of encouraging family violence services to better accommodate the needs of LGBTI people. Organisations that successfully pass through an accreditation process are awarded a Rainbow Tick to show that they offer a safe and inclusive place for LGBTI people to seek help. There are six standards against which a service can be formally accredited to demonstrate LGBTI-inclusive practice and service delivery:

- ▷ organisational capability
- ▷ consumer consultation
- ▷ LGBTI cultural safety
- ▷ disclosure and documentation
- ▷ professional development
- ▷ access and intake.¹²⁵

According to Gay and Lesbian Health Victoria, the Rainbow Tick is currently under-used among family violence services:

While mainstream services are showing increased interest in undertaking this workplace process, it remains the case that the family services sector remains significantly underrepresented among such organisations, and generally under-resourced to undertake such work.¹²⁶

Drummond Street Services and the Victorian Aids Council submitted:

It is becoming more evident that the LGBTIQ community both require and want LGBTIQ specialist rather than mainstream services to better understand and meet their complex needs. We would argue that ... LGBTIQ specific support services may well be more effective and provide safety.¹²⁷

Several organisations operating in Victoria assist people from LGBTI communities, including in relation to family violence. For example, Gay and Lesbian Health Victoria, the Victorian Gay & Lesbian Rights Lobby and Drummond Street Services all provide some information to do with family violence. Fitzroy Legal Service runs a free LGBTIQ legal service every second Thursday night, focusing particularly on family law matters. Mensline also provides information for male victims of family violence, including those in same-sex relationships.¹²⁸

The Commission was told, however, that the limited LGBTI-specific family violence support services that do exist are fragmented, have inadequate funding, and are limited or non-existent in rural, regional and remote areas.¹²⁹ Accordingly, the Commission was told, there is a need for specialist LGBTI family violence services¹³⁰ and capability building in existing services.¹³¹ It was submitted that there is an 'urgent and on-going need to provide professional education on LGBTI-related issues to the Victorian services sector that have responsibility for, or intersect with, family violence'.¹³²

Lack of accommodation options

Homelessness is a serious risk for people who are coming out about their sexuality or gender identity to their family if the family does not accept that identification. A literature review carried out for the University of Adelaide reported that LGBTI people are over-represented in homeless populations, often experience homophobia or transphobia in accommodation services, and suffer more adverse outcomes associated with homelessness.¹³³

The Commission was told that LGBTI people regularly experience homophobia and transphobia in housing and accommodation services.¹³⁴ A participant in the Commission's consultation with LGBTI workers said, 'There's no safe place ... assumptions are made, there's transphobia in agencies and refuges (trans being refused services)—and all that is re-traumatising'.¹³⁵ Another commented:

There is no access to suitable crisis accommodation, and LGBTIQ people experience not being taken seriously by agencies. In one instance same-sex family violence was not in the frame of reference for a worker from one agency who laughed it off thinking it was a joke.¹³⁶

The Victorian Gay & Lesbian Rights Lobby submitted that there are limited, if any, appropriate emergency accommodation options available to LGBTI victims. It was unaware of any emergency accommodation for gay men experiencing family violence. It also observed that transgender women are refused crisis accommodation set aside for women if they have not had gender-reassignment surgery.¹³⁷ The Safe Steps and No To Violence submission provided an example of a transgender man who was required to live as a woman in order to obtain services.¹³⁸ The Commission was told that Kara House, which includes a women's refuge, has provided support to several transgender clients.¹³⁹

Same-sex attracted and gender diverse young people are particularly vulnerable to family violence and face specific barriers to finding a safe place to call home.¹⁴⁰ They often express concern about experiencing violence in the home if they come out and might leave home early for fear that violence will occur.¹⁴¹ Young LGBTI people can have greater difficulty gaining access to support services because of discrimination or because staff are not adequately trained to be sensitive to the person's experiences and needs.¹⁴² In addition, some young people might not feel comfortable in youth or family violence refuges as a result of the homophobic or transphobic views of other residents.¹⁴³

The lack of safe emergency housing for these communities is a huge impediment. It's a massive issue. Especially for young trans people who have been kicked out of home, it leaves them open to exploitation. They end up sleeping around or going to saunas just to have a roof over their head.¹⁴⁴

Alsorts

Alsorts is run by Family Access Network and provides case-managed transitional housing for same-sex attracted and gender diverse young people who are homeless. Launched in 2006, the service was the first of its kind in Victoria. It offers access to transitional accommodation (with support) for young people aged 15 to 25 years in two properties and an outreach service. In addition, it helps link young people to other housing options (including private rental), provides assistance with or referrals to other support services, and offers one-on-one support through its volunteer mentors.

Discrimination against transgender and intersex people in relation to accommodation is considered further in this chapter.

Lack of access to perpetrator programs

The Commission heard that heterosexual assumptions were also a problem with perpetrator programs. The Victorian Gay & Lesbian Rights Lobby submitted that current government funding is allocated only to behaviour change programs for heterosexual male perpetrators.¹⁴⁵ This is discussed further in Chapter 18. Gay and Lesbian Health Victoria pointed out that the Men's Referral Service website focuses exclusively on heterosexual men and does not recognise gay, bisexual or transgender men.¹⁴⁶ No To Violence has prepared practice guidelines which state that programs should challenge homophobia and recommend referrals, information and resources for men who are in same-sex relationships.¹⁴⁷ This is not the same as providing programs which are targeted towards LGBTI perpetrators.

Historically, there have been no government-funded behaviour change programs at the state or national level appropriate for people in same-sex relationships.¹⁴⁸ The Victorian AIDS Council has run a behaviour change program called ReVisioning for gay or bisexual men, without support by government.¹⁴⁹ On 24 February 2016, the Victorian Government announced \$145,000 for the Victorian AIDS Council to deliver behaviour change programs.¹⁵⁰

The Commission was told that specific behaviour change programs for LGBTI people who use violence against family members should be developed.¹⁵¹

In the context of recognising the need to tailor behaviour change programs for specific groups, the Victorian Government has acknowledged the lack of programs specific to LGBTI perpetrators is a 'service gap' which needs to be considered in the future.¹⁵²

Concerns about discrimination against LGBTI people

Discrimination by faith-based service providers

Faith-based organisations play an important role in the delivery of services such as crisis accommodation, counselling and health services, all of which are essential for victims escaping and recovering from family violence.¹⁵³ Many of these organisations receive government funding to deliver such services.

Section 84 of the *Equal Opportunity Act 2010 (Vic)* allows a person to discriminate on the basis of another person's religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity if the discrimination is reasonably necessary in order for the person to comply with the doctrines, beliefs or principles of their religion.¹⁵⁴

Concern was expressed that this exception is 'extraordinarily broad' and represents a barrier to LGBTI victims seeking access to services that would otherwise be provided by government in a non-discriminatory manner.¹⁵⁵

The Commission was told that, although there is no 'concrete data' on the use of section 84 to exclude LGBTI victims from services, there is anecdotal evidence that this does happen. Ms Brown stated:

We have anecdotal stories from people, particularly, for instance, transgender women, that have experienced difficulties and we know from work we did around federal discrimination reforms that LGBTI people experience discrimination from faith based providers in a whole range of settings.¹⁵⁶

The Commission was told that a victim's perception that a faith-based provider might discriminate against them because of their sexuality or gender identity can be a powerful deterrent to seeking help. Ms Brown said:

I think a really important point to make is that it's the fear of discrimination. Even if faith based providers are doing the right thing, and I think more than often they are, it's that fear and apprehension that will stop someone from accessing those services or indeed disclosing the nature of their relationship and getting the help that they need.¹⁵⁷

One consultation participant commented, 'While there is state sanctioned discrimination it doesn't create [an] environment ... of inclusivity'.¹⁵⁸ The Commission was therefore told:

... we would strongly recommend that in this forum we explore possible amendments to discrimination laws and limiting or removing those religious exemptions when it comes to these service providers, but indeed any service provider that's delivering services to vulnerable communities.¹⁵⁹

In other contexts some religious organisations have supported confining the scope of religious anti-discrimination exemptions—for example, to religious ordination.¹⁶⁰

The Victorian Court of Appeal has previously considered the statutory precursor to section 84. In *Christian Youth Camps Ltd v Cobaw Community Health Services Ltd* ('Cobaw') it held that the exemption applies only to individuals (not corporate bodies)¹⁶¹ and adopted a narrow interpretation of what is 'necessary' to comply with a person's religious belief.¹⁶² In that case, the Christian owners of a campground denied access to a 'same-sex attracted young people's' group. The majority of the court held that it was not necessary for the Christian owners, who were in substance operating a commercial venture, to deny access to the group under this exemption in order for the owners to comply with their religious beliefs. Such an approach would generally prevent corporate bodies from relying on section 84 to refuse services to particular people on the basis of religious belief.¹⁶³

Although *Cobaw* might constrain the ability of a faith-based organisation to refuse services to people on the basis of their sexuality or gender identity, given what the Commission was told in written submissions and consultations, it appears few people are aware of the potential application of *Cobaw*. As a consequence, the fear of discrimination by faith-based providers of family violence services might still discourage victims with diverse sexualities or gender identities from seeking help.

The Victorian Government has promised to review Victorian legislation with a view to amending any provisions that 'unfairly discriminate' against LGBTI people:

We will modernise Victorian laws. We will start by reviewing all Victorian legislation to identify provisions that unfairly discriminate against LGBTI Victorians, and act to change them. Equal opportunity laws should exist to promote recognition and acceptance of the rights of every person. Victorians want their laws to be modern and reflect community attitudes. We will amend the Equal Opportunity Act 2010 to restore greater balance to the right to be free from discrimination.¹⁶⁴

It has also created a whole-of-government LGBTI Taskforce with two working groups to support it—the Justice Working Group and the Health and Human Services Working Group. The taskforce was established to provide advice to the Victorian Minister for Equality, The Hon. Martin Foley. It will work closely with the Commissioner for Gender and Sexuality, Ms Rowena Allen.

As at the date of this report, the Commission understands that the contemplated review of Victorian legislation (including the Equal Opportunity Act) is not yet under way.

Discrimination against intersex people

The Equal Opportunity Act does not list 'intersex' as an attribute on the basis of which discrimination is prohibited. In contrast, the *Sex Discrimination Act 1984* (Cth) and the *Anti-Discrimination Act 1998* (Tas) do so.¹⁶⁵ The Sex Discrimination Act specifically prohibits discrimination on the basis of intersex status;¹⁶⁶ the Tasmanian Act lists protected attributes including gender, gender identity, sexual orientation and intersex.¹⁶⁷

The Victorian Act does list 'gender identity' as a protected attribute. It defines this to include the bona fide identification by a person of indeterminate sex as being a member of a particular sex (whether or not the person is recognised as such) by assuming characteristics of that sex (whether by means of medical intervention, style of dressing or otherwise) or by living or seeking to live as a member of that sex.¹⁶⁸

In his Second Reading Speech for the Equal Opportunity (Gender Identity and Sexual Orientation) Bill 2000 (Vic), which amended the Equal Opportunity Act to prohibit discrimination on the basis of sexual orientation and gender identity, the then Victorian Attorney-General explained:

The term 'gender identity' is used in the bill ... because the amendment is designed to protect not only transgender people but also people born of indeterminate sex who seek to live as a member of a particular sex.¹⁶⁹

Although the government might have intended to protect intersex people from discrimination, the adopted definition of 'gender identity'—contrary to recognising a spectrum of genders—might be interpreted to assume that sex, whether biological, affirmed or re-assigned, is binary and so does not encompass any gender other than male or female. As a consequence, an intersex person who chooses not to affirm a binary sex (for example, because they want to identify as intersex or of no particular sex) might not be protected from discrimination. This uncertainty could be resolved by including 'intersex' as a protected attribute in section 6 of the Equal Opportunity Act.

Transgender and intersex people and accommodation

Section 60 of the Equal Opportunity Act allows providers of accommodation in a hostel or similar institution to discriminate on the basis of sex, age, race or religious belief if the institution was established wholly or mainly for the welfare of a particular sex, age, race or religious belief.¹⁷⁰

The Act does not define 'sex'. It could be interpreted narrowly to assume that sex is binary (that is, either male or female) and/or that sex refers to the biological birth sex, rather than a broader concept of 'gender identity'. As discussed, the definition of 'gender identity' as the law stands could also be interpreted to assume that sex is binary.

Therefore, if a family violence refuge is established for women it might be possible for it to lawfully discriminate against a pre-operative transgender woman who is biologically male (even if she has affirmed her gender in accordance with the Act, for example, by living or seeking to live as a woman) or an intersex person (depending on their biological characteristics). Accordingly, even if a transgender woman has lived in her affirmed gender for decades, if she has not had gender re-assignment surgery, it may be lawful to refuse her refuge accommodation. In contrast, it would not be possible to lawfully discriminate against a pre-operative transgender man who was biologically a woman, even if he was living his affirmed gender as a man.

As the Victorian Gay & Lesbian Rights Lobby submitted, transgender women have experienced difficulty gaining access to women-only shelters unless they have had re-assignment surgery. The Safe Steps submission expressed concern about these difficulties and recommended as follows:

That the Victorian Equal Opportunity and Human Rights Commission clarifies the application of exceptions under the Equal Opportunity Act 2010 with regard to transgender women's usage of women's services.¹⁷¹

The Victorian Equal Opportunity and Human Rights Commission submission noted:

Transgender women and men (from homosexual or heterosexual relationships) who are also victim/survivors of family violence also face particular barriers in escaping family violence and accessing housing support services and accommodation. This is partly based on a lack of services designed to assist this group of victim/survivors, but may also be partly caused by discriminatory attitudes and stereotypes towards these groups. More work needs to be undertaken to assist these groups of victim/survivors to safely leave violent relationships and access the supports that they require.¹⁷²

Determining a person's legal sex can be 'complex, contextual and contested'.¹⁷³ In the case of transgender and intersex people, their legal identity often does not align with their self-identity.¹⁷⁴ This 'disconnect' can have serious consequences for victims and perpetrators of family violence.

When interpreting the *Gender Reassignment Act 2000* (WA), the High Court of Australia found that the definition of 'gender characteristics' in the Act required consideration of social recognition rather than merely biological characteristics.¹⁷⁵ The court has also accepted that sex is not binary and there may be gradated changes between gender identities.¹⁷⁶ The Victorian Equal Opportunity and Human Rights Commission guideline entitled *Transgender People and Sport* is presumably referring to these cases when it says:

Sex refers to a person's physical sex characteristics. Traditionally this has been read as being either male or female, but courts are now recognising that 'sex' can have a broader meaning to specifically apply to people who are intersex, those who may be a combination, or on a spectrum, of being male and female or identify as being physically indeterminate.¹⁷⁷

Accordingly, such authorities might support a broad interpretation of 'sex' for the purposes of section 60, which encompasses a person's self-affirmed gender (that is, not merely their birth sex or their post-sex affirmation surgery sex), including intersex. Such a broad interpretation would prevent a refuge established for women from lawfully discriminating against a pre-operative transgender woman, or at least some intersex people.

It remains a concern, however, that only a person who has undergone sex-affirmation surgery may apply to the Registrar of Births, Deaths and Marriages to have their birth sex altered.¹⁷⁸ This could be seen as supporting a narrower interpretation of sex for the purposes of section 60—namely, that sex means a person's birth sex, unless altered by sex-affirmation surgery alone. The current Victorian Government has previously identified this as a problem and has also promised to '[r]emove barriers to new birth certificates for transgender and intersex Victorians'.¹⁷⁹

In a letter to the Commission, the Victorian Equal Opportunity and Human Rights Commissioner, Ms Kate Jenkins, recommended a human rights-based approach that would:

... require services to actively consider the human rights that may be engaged or limited by any overarching policies or individual decisions to exclude ... transgender [or intersex] people from accessing services. Ensuring that the safety of those both currently receiving, and seeking to receive services, is maintained should be the primary objective in these considerations.¹⁸⁰

As noted, there remains some doubt about whether the Equal Opportunity Act does prevent all such discrimination in the context of section 60.

The way forward

Family violence in lesbian, gay, bisexual, transgender and intersex communities is under-reported and not well understood. It is an invisible problem within both the broader community and the family violence system.

In addition to intimate partner violence, some LGBTI victims experience homophobic or transphobic violence from family members as a response to their sexual and gender identity. Young people and older people are particularly vulnerable to this form of violence as they may be more dependent on their family. Existing models of family violence prevention and response (including elder abuse) often do not recognise homophobia and transphobia as motivations for family violence.

LGBTI victims might have experienced discrimination when seeking access to services: they might fear and mistrust services such as the police, the courts, and health and community organisations. If victims seek help and this is denied because of their sexuality or gender identity, or the violence is not taken seriously because it does not fit social expectations of what family violence is, they may remain in or return to the relationship rather than expose themselves to such treatment. All parts of the family violence system—including the police, the courts and specialist family violence services—must improve their responses to LGBTI communities.

The Commission's recommended priority areas for action are set out below. These are in addition to the recommendations we make elsewhere in this report to improve the responsiveness of the family violence system to the diverse experiences of victims.

Overcoming barriers to reporting

In view of the current barriers to reporting, information and referral avenues should be developed for LGBTI communities in Victoria. Online and hard copy material should continue to raise awareness of family violence in LGBTI communities and identify appropriate support services for victims.

The Commission supports the development of specific LGBTI resources such as those that have been developed in New South Wales.¹⁸¹ We also support the proposal that the CRAF guidance materials need to be amended to incorporate a greater focus on risk assessment indicators for specific communities—including LGBTI people.¹⁸² For example, a risk factor for the LGBTI community might include threats to 'out' a person or denying their affirmed gender. Providing practitioners across sectors with greater guidance on how to ask questions about and recognise these forms of emotional abuse will in turn improve risk assessment practice.

If family violence is portrayed in a way that does not reflect the different relationship contexts in which it occurs, LGBTI victims will be further marginalised and will continue to remain invisible within the system. Prevention activities and community awareness campaigns, such as those being considered by the Council of Australian Governments, need to be developed in consultation with LGBTI communities; they should use imagery and language that reflect these communities and highlight the problem of family violence in all its forms.

Building capacity for and commitment to inclusive practice

Various submissions identified useful programs for helping implement LGBTI-inclusive policies, principles and practices.

One option is to devise training packages that help organisations develop their practice and so ensure a safe and inclusive service for LGBTI people. The How2Program, run by Gay and Lesbian Health Victoria, is a good example of this.

Another option is for service providers to become accredited Rainbow Tick organisations. Services that receive the Rainbow Tick are listed in a national register of LGBTI-accredited organisations. Apart from being a promotional tool, this initiative offers a structured, practical approach to helping organisations be more inclusive and responsive. Achieving such accreditation would, however, consume resources in an already overstretched service system. In the Commission's view, additional funding should be provided to enable family violence organisations to achieve this accreditation.

Further, the Commission considers that the whole-of-government LGBTI Taskforce should play an advisory role in the Commission's recommended review of the standards for family violence service providers (including men's behaviour change programs) and should also inform the revised policy and practice frameworks that will be required to establish the Commission's recommended Support and Safety Hubs (Chapter 13). Similarly, learning and development around family violence for universal services, judiciary and police (including family violence risk assessment) will need to include a strong focus on family violence experienced by LGBTI communities and the principles of inclusive practice with these communities.

Recommendation 166

The Victorian LGBTI Taskforce, supported by relevant experts, provide advice [within two years] on the following:

- ▷ research priorities relating to the nature and prevalence of and the most effective responses to family violence in LGBTI communities
- ▷ effective prevention strategies
- ▷ the review of the standards for family violence service providers—including men's behaviour change programs
- ▷ intersections between family violence and health and wellbeing initiatives.

Recommendation 167

The Victorian Government require all funded family violence services to achieve Rainbow Tick accreditation [by 31 December 2018]. This should be achieved by means of a staged approach, using workforce training and LGBTI equity auditing followed by full accreditation. An evaluation should be conducted to determine whether all family violence services are suitably responsive to and inclusive of LGBTI people [by 31 December 2019].

Targeted services

A number of parties alerted the Commission to the need for specialist services that provide support specifically for LGBTI communities.

The family violence system has historically focused on women and their children, and people outside of heterosexual intimate partnerships have been inadequately supported by service providers. This is particularly the case with accommodation services. Transgender women and gender diverse young people can face specific barriers in gaining access to accommodation. This places people at risk and goes against the human rights principles that should lie at the heart of our society's response to family violence.

At present, there is no statewide organisation or centre of expertise that is solely focused on family violence services for LGBTI communities. Such organisations or centres do exist for other communities who experience barriers in finding support for family violence, for example the Aboriginal Family Violence Prevention Legal Service Victoria; InTouch Multicultural Centre against Family Violence; Seniors Rights Victoria and Women with Disabilities Victoria.

The Commission favours building the capability and inclusivity of existing organisations among both specialist family violence and LGBTI organisations so that they can provide adequate services and support for people from LGBTI communities experiencing family violence. As discussed, there are a range of existing LGBTI organisations who provide statewide services and advocacy, including Gay and Lesbian Health Victoria and the Victoria Gay & Lesbian Rights Lobby. There are also existing family violence services which have LGBTI capability including Safe Steps, Domestic Violence Resource Centre Victoria, Kara House and Drummond Street Services (Carlton, Werribee and Geelong).

In order to develop the necessary statewide LGBTI capacity the Victorian Government will need to fund and support the development of specific resources and programs for LGBTI communities, including for LGBTI perpetrators.

Recommendation 168

The Victorian Government provide funding [within 12 months] for the following:

- ▶ development and maintenance of legal and other resources for lesbian, gay, bisexual, transgender and intersex communities to support the identification and reporting of family violence, along with information about safe, accessible sources of support
- ▶ shared community education campaigns via LGBTI and family violence services to encourage LGBTI people who are experiencing family violence to seek help
- ▶ provision of training and advice to specialist family violence services
- ▶ for those LGBTI victims who cannot remain in their home, assistance with obtaining safe accommodation.

Relevant legislation

A number of options are available to the Victorian Government in seeking to remedy the problems transgender and intersex victims of family violence have in gaining access to crisis accommodation and other services.

One option is for the Victorian Equal Opportunity and Human Rights Commission to issue guidelines under section 148 of the Equal Opportunity Act¹⁸³ to enable specialist family violence service providers to develop their organisational policies to make it clear that staff should not rely on the statutory exemptions to discriminate against transgender or intersex victims. The Victorian Equal Opportunity and Human Rights Commission told the Royal Commission it has the expertise and willingness to assist with the drafting of these guidelines.

The current state of the law is complex and indeterminate. The Commission supports the idea of the Victorian Government proceeding with a review of the Equal Opportunity Act with a view to better protecting LGBTI communities against discrimination. Any such review should consider the following:

- ▶ including 'intersex' as a protected attribute without requiring intersex people to affirm any particular sex in order to be entitled to protection under the Act—consistent with the position in both Commonwealth and Tasmanian law
- ▶ ensuring that transgender and intersex people have their self-affirmed gender recognised and protected—without the requirement to undergo sex-affirmation surgery
- ▶ allaying the concerns expressed to the Commission about the availability of exceptions offered by the Equal Opportunity Act and the chilling effect that fear of discrimination can have on LGBTI victims seeking help.

Whether the Equal Opportunity Act is amended or not, any guidelines that are developed would be most effective if combined with support for implementing non-discriminatory practices. Some accommodation providers, for example, might feel pressure to exclude transgender people from refuges because of the communal setting and the transphobic attitudes of some residents. In cases such as this, implementation of non-discriminatory practices might be best effected by moving away from a communal service model. The Commission supports the Victorian Equal Opportunity and Human Rights Commission's recommendation that a human rights approach be adopted, which seeks to balance the rights of those currently receiving and those seeking to receive support.

In Chapter 9 we recommend that the communal refuge model be phased out over the next five years and replaced with a core and cluster model of self contained units. This may not relieve all the problems that arise from homophobia and transphobia but may assist with those that occur in a shared living environment.

Recommendation 169

The Victorian Government, in the context of its commitment to review equal opportunity and birth certificate laws, examine the need to clarify relevant provisions of the *Equal Opportunity Act 2010* (Vic) to remove any capacity for family violence accommodation and service providers to discriminate against lesbian, gay, bisexual, transgender and intersex Victorians [within 12 months].

Prevention

Education about respectful relationships and diverse sexualities and genders is important to combat the homophobic and transphobic attitudes and beliefs that underlie some family violence. Such programs are also valuable in raising awareness that family violence occurs in LGBTI communities and reinforcing that relationships of all kinds should be free from violence. This builds a basis for better identification and response to family violence in all its forms across the community. For these reasons we strongly support the continuation and development of the Building Respectful Relationships program in all schools.

The Commission also supports the Victorian Government, through the Council of Australian Governments, seeking to ensure that the *National Plan to Reduce Violence against Women and their Children 2010–2022* and the third and fourth action plans take account of and seek to address family violence in LGBTI communities.

Endnotes

- 1 *Sex Discrimination Act 1984* (Cth) s 4. Intersex status is a protected attribute under the Act: *Sex Discrimination Act 1984* (Cth) s 5C. See also, Victorian Equal Opportunity & Human Rights Commission, 'Guideline: Transgender People and Sport—Complying With the Equal Opportunity Act 2010' (January 2015) 7.
- 2 Organisation Intersex International Australia Limited, *What is Intersex? Defining Intersex* (2 August 2013) <<https://oii.org.au/18106/what-is-intersex/>>.
- 3 See generally, Gay and Lesbian Health Victoria; Australian Research Centre in Sex, Health and Society—La Trobe University, Submission 821; Rainbow Families Council, Submission 865; 'Addressing Sexual Orientation and Sex and/or Gender Identity Discrimination' (Consultation Report, Australian Human Rights Commission, 2011); Caroline White and Joshua Goldberg, 'Expanding Our Understanding of Gendered Violence: Violence Against Trans People and Their Loved Ones' (2004) 25 (1, 2) *Canadian Woman Studies/Les Cahiers De La Femme* 124–5.
- 4 See Victorian Equal Opportunity & Human Rights Commission, 'Guideline: Transgender People at Work—Complying with the Equal Opportunity Act 2010 in Employment' (July 2014).
- 5 Gay and Lesbian Health Victoria; Australian Research Centre in Sex, Health and Society—La Trobe University, Submission 821, 5.
- 6 *Ibid* (citations omitted).
- 7 No To Violence; Safe Steps Family Violence Response Centre, Submission 933, 13 (citations omitted).
- 8 *Equal Opportunity Act 2010* (Vic) ss 6(d) and 6(p).
- 9 *Statute Law Amendment (Relationships) Act 2001* (Vic) and *Statute Law Further Amendment (Relationships) Act 2001* (Vic). See also, Explanatory Memorandum, Relationships Bill 2007 (Vic) 1.
- 10 *Relationships Act 2008* (Vic).
- 11 Explanatory Memorandum, Relationships Bill 2007 (Vic) 1.
- 12 *Adoption Amendment (Adoption by Same-Sex Couples) Act 2015* (Vic).
- 13 Victorian Gay & Lesbian Human Rights Lobby, Submission 684, 1.
- 14 *Family Violence Protection Act 2008* (Vic) ss 8, 9.
- 15 *Ibid* s 9(2).
- 16 *Ibid* s 7.
- 17 Australian Bureau of Statistics, *Australian Social Trends: Same-Sex Couples* (25 July 2013) <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features10July+2013>>.
- 18 Participants were able to nominate the type of abuse they experienced and could select multiple answers. Some of the types of abuse nominated were emotional abuse, psychological abuse, being physically attacked or hit, sexual abuse, and deprivation of financial independence: William Leonard et al, 'Coming Forward: The Underreporting of Hetrosexist Violence and Same Sex Partner Abuse in Victoria' (Monograph Series No 69, Australian Research Centre in Sex, Health and Society, La Trobe University, December 2008) 45.
- 19 Marian Pitts et al, 'Private Lives: A Report on the Health and Wellbeing of GLBTI Australians' (Monograph Series No 57, The Australian Research Centre in Sex, Health and Society, La Trobe University, March 2006) 51–2.
- 20 *Ibid*.
- 21 *Ibid*.
- 22 Crime Statistics Agency, 'An Overview of Family Violence in Victoria: Findings from the Victorian Family Violence Database 2009–10 to 2013–14' (January 2016) Victoria Police data source, Tab 10, Table 10: Family incidents where the affected family member and other party were in a current or former same-sex relationships, July 2009–June 2014, provided to the Commission by the Crime Statistics Agency, 30 September 2015; Victoria Police data source, Tab 40, Table 40: Relationships between Affected Family Member and Other Party where the AFM is male and the OTH is Male; Tab 41, Table 41: Relationship between Affected Family Member and Other Party where the AFM is Female and the OTH is Female, provided to the Commission by the Crime Statistics Agency, 10 February 2016.
- 23 *Ibid*.
- 24 *Ibid*.
- 25 *Ibid* Magistrates' Court of Victoria data source, Tab 9, Table 9: Primary affected family members on original applications by relationship to respondent, July 2009 to June 2014, provided to the Commission by the Crime Statistics Agency, 30 September 2015.
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